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Dirty Work: PRUs and SEALs

Two small groups of unconventional warriors wreaked havoc on the VCI throughout South Vietnam. Their names and reputations became legendary: Provincial Reconnaissance Units, the bad boys of unconventional warfare in Vietnam, and the U.S. Navy SEALs (Sea, Air, and Land teams). The PRUs were indigenous troops recruited and trained for paramilitary small-unit action and the SEALs were American forces designed to strike at enemy strongholds deep in communist-controlled territory. In short, both units took the fight to the Viet Cong.

PRUs and SEALs often worked together. Both had many of the same characteristics: small numbers, high morale, and specialized training. These factors led to a large degree of success in anti-infrastructure operations. But their effectiveness was a double-edged sword. Both PRUs and SEALs came to symbolize sneak attacks in the dead of night on unsuspecting victims. Assassination became the catchword, a label that clung to the Phoenix program. The charge was inaccurate. Both SEALs and PRUs killed many VCI and Viet Cong guerrillas—that was war. They also inevitably killed innocent civilians—that was regrettable, but inevitable when fighting an enemy that wrapped itself in the population.

Small numbers also limited overall effectiveness. PRUs and SEALs together amounted to fewer than six thousand men in all of South Vietnam, not enough to seriously damage the VCI on their own. Yet on a per capita basis, PRUs and SEALs accounted

for more VCI neutralized than all other anti-infrastructure units combined. Aside from specialized training and esprit de corps, another factor helped PRU and SEAL effectiveness—intelligence. PRUs and SEALs had access to the best intelligence, often coming straight from the CIA. Its timeliness and accuracy directly resulted in the neutralization of high-ranking VCI on many occasions.

Provincial Reconnaissance Units

If any single organization came to be synonymous with assassination it was the PRU. When critics recited examples of how the Phoenix program dealt in murder and terror they inevitably used examples of the PRU. Some of the stories were true—PRUs were brutal and did hate their enemy. But they also were effective anti-infrastructure operatives, man for man the best the Phoenix program ever had. Yet they never numbered much more than five thousand in all of South Vietnam and their mission included more than just anti-infrastructure operations for Phoenix. A majority of their work was guerrilla-type, behind-the-lines, hit-and-run operations designed to harass the Viet Cong.

The PRU had its roots in the Counterterror Teams of the early 1960s. William Colby, who was at that time the CIA Far East Division chief, saw that the name and reputation of the CTT had to be changed for it to transcend its killer image. In 1966 the CTT became the PRU, but the mission remained the same. As anti-infrastructure operations became viewed as more important to the war effort, the PRU also became more important. The CIA remained in control of the PRU and in 1967 Robert Komer saw it as an available asset that could be used as the pointed end of his new anti-infrastructure apparatus.

PRU Structure

If a strict chain of command, a rank structure, and rigid rules make up military structure and discipline, then the PRU defi-

nately was not part of the military. But that was not the point of the PRU. CIA reasoning behind the creation of the PRU was that an unconventional enemy called for unconventional methods. The PRU needed to fight like the Viet Cong and most importantly they needed to hate the Viet Cong. That was where recruitment came in.

Within each province, the CIA looked for men who would do well in the ranks of the PRU. One CIA official in I Corps recalled what he looked for in his men:

They were recruited locally and it was pretty much by word of mouth. It was strictly friends of friends and hoi chanh and that sort of thing. . . . These were hard-bitten guys who were really ticked off by the communists. They had lost families and they wanted revenge.'

The CIA did not often have to actively search for men to become PRUs. Potential recruits tended to gather in each province, linked by their hatred of the communists. There was very little "overrecruiting" to be done; few recruits were weeded out of the original batch. The CIA knew who they wanted:

The people who were of like mind and like ability automatically gravitated to that sort of thing. Roughnecks tended to stick together. That's the kind of guys who went into the PRU. It was very clannish. You really had to be a tough nut to get into the PRU and stay in.'

Only a small number of men were made of the right stuff for the PRU. For that reason, and because a large PRU force would have been unwieldy, PRU operated in small groups. Each province had at its disposal three squads—one platoon—of PRUs for anti-infrastructure operations. Another reason for their small number was security. Sensitive intelligence would surely have been compromised if too many operatives were in on operations planning. The PRU managed to consistently surprise the VCI, largely because tight security kept Viet Cong infiltrators out of their ranks. Other branches, such as the National Po-

lice, were not so careful and often were riddled with communist informers.

Alone among South Vietnamese forces, PRUs took anti-infrastructure operations seriously. To these men, playing cat and mouse with the VCI was not something to be attended to only when the Americans were looking, it was their entire existence. Much of the reason for their continued success as anti-infrastructure forces was the effective use of intelligence. For the most part these men did not rely on the PSB, which tended to have a difficult time generating enough hard intelligence to keep the police busy. CIA intelligence played a large part in PRU operations, but unlike other Vietnamese anti-infrastructure forces, PRUs often created and acted upon their own intelligence. After an operation PRUs and their American advisers put together reports based on visual information during the raid, field interrogations, informer reports, and information provided by hoi chanh. The result was more operations.

The DIOCC also played an important role. Although the PRU was a province-based force, it operated in all the districts depending on where intelligence pointed it. Each DIOCC made it a top priority to take PRU operation reports and combine them with other local intelligence, feeding it back to the PRU if additional targets could be identified. The combination of self-generating intelligence and special attention from the DIOCCs contributed heavily to PRU successes.

After intelligence pointed out a target, PRUs went to work. Operations were small affairs—two squads was generally the upper limit—that struck swiftly at the VCI. PRUs usually worked during the late night or early morning, when their targets were sleeping. PRU operations rarely lasted more than a single day; they were not out in the field vainly chasing an elusive enemy as conventional forces often did. Good intelligence did the chasing for the PRU. It simply went in and picked up the pieces.

Charges of Brutality and Torture

Capture of the enemy was important because the PRU needed additional intelligence gathered from interrogations to continue

its success. However, the PRU was not reluctant to kill its-intended targets, and it often did. Many Americans back in the United States could never understand this, preferring to view it as cold-blooded murder. But the result of what PRUs did was not much different than body counts from search-and-destroy missions, aerial bombings, and artillery strikes. Both resulted in death to the enemy, but PRU operations were much more discerning than the massive affairs launched by conventional U.S. and ARVN forces. That fact was often lost in the rhetoric of assassination and murder. For the Vietnamese—particularly the PRU—this was total war. There was no time for the niceties of rules of engagement. Americans could afford that; they were going home. But whoever lost in Vietnam was sure to pay the price to the victors, so the PRU fought with all its heart, and sometimes that heart was blackened by years of bitter fighting that no American could ever comprehend.

Even though brutal death was part of the war, American advisers did not generally condone what they considered excesses by the PRU. When an adviser saw excessive brutality it was generally reported through official channels. In December 1969, the PRU in Quang Tri Province captured eight VCI after killing seven others; a number of the captives were district-level cadre. Without bothering to interrogate the prisoners, the PRUs calmly shot five of them, each with a single pistol bullet to the head.'

Americans were particularly angered when potential intelligence died with prisoners. But they also learned to use the PRU reputation for violence as a threat to hold over recalcitrant VCI. One CIA province adviser stationed in the Mekong Delta between 1973 and 1975 had the good fortune to capture a regional-level VCI. The VC official was on his way by boat to a cadre meeting when he got lost and ran into a remote RF outpost at the edge of the U Minh forest. He was brought back and turned over to the PIC.

The CIA had known of this man for some time and he was a real prize. The CIA adviser interrogated him, but the VCI was hardcore and would volunteer nothing, saying that he was a simple mechanic on his way to Saigon to visit his daughter. The CIA adviser threatened to turn the prisoner over to the Vietnamese at the regional interrogation center (he was obligated to do so

anyway) where he would be away from any Americans. But the VCI continued to resist. He was sent on up to the regional center where the Vietnamese cut out his tongue and finally hanged him. They cared nothing about the intelligence they were losing.⁴

U.S. Advisers and the PRU

American advisers to the ARVN were seen as carrying on the tradition of the combat soldier. They trained their Vietnamese charges to fight the enemy in battle; fire and maneuver—shoot and scoot in grunt parlance—were the basics of warfare. Americans had fought that way because it was the right thing to do. But part of the advisory effort in Vietnam was aimed at training guerrilla soldiers in the ways of the revolutionary battlefield. It was an up-close-and-personal style of warfare, one that could not always make a clear distinction between armed enemy soldier and underground political cadre. American advisers with the PRU fit the second category. They taught—and often fought with—this small group of aggressive unconventional warriors in combat aimed at the VCI.

Although the roots of the PRU dated back to the early 1960s, its role within the Phoenix framework began in 1967. In May of that year NSAM 341 made the PRU part of CORDS under the special assistant to the ambassador (in reality the CIA chief of station), John Hart. The memo only formalized the presence of the PRU within CORDS; the CIA had been using the PRU in the same role for over a year. A letter from John Hart to General Westmoreland in June 1967 resulted in an agreement on the role the PRU and the CIA would play in anti-infrastructure operations. The CIA would be responsible for:

. . . policy guidance, technical direction, support and coordination of the program. The CIA Regional Officer in Charge (ROIC) was to be the next in the chain of command with the CIA Province Officer handling PRU field operations. Therefore, military assigned to PRU would fall under CIA OPCON [operational control] at each level.⁵

At this stage the CIA was to remain firmly in control of the PRU, even though it lacked the manpower to advise PRUs in each and every province. Military advisers were to be assigned to the PRU under the direction of each ROIC. They were to assist in operational coordination, administration, and training. At the province level their duties were the same except that there would be more hands-on participation. Instructions to advisers stated that "under direction of the CIA province representative . . . [advisers] *will participate*, as appropriate, in operational missions" (emphasis in original).⁶

Compared with American involvement in the Phoenix program as a whole, the number of U.S. military advisers involved in the PRU program was small from beginning to end. In 1967 the CIA requested four officers and forty-nine enlisted men; the request was approved by Westmoreland on 1 July 1967 and was to remain in effect until 30 June 1968. MACV had always felt uncomfortable with this type of unconventional warfare and wanted to reserve the right to withdraw from the PRU program.'

Although MAC V seemed to be in the perfect position to control its options with the PRU, another factor crept in to upset the symmetry. Like many problems, this one came from the GVN, although the Americans brought it down on their own shoulders.

By emphasizing the conventional side of the military out of all proportion to the actual situation in South Vietnam, high-level U.S. advisers convinced the GVN to give ARVN manpower preference. All able-bodied males were subject to the draft, even if they were in the NP or the PRU. In many instances, members of the PRU would be drafted out of their units, even if they were clearly best-suited for anti-infrastructure operations. Steps were taken to change the draft laws so that service in the NP, RF/PF, and PRU counted as military service. **In** the case of the PRU, General Westmoreland personally appealed to the GVN to consider time in the PRU as military service:

Looking forward to 1968, it seems clear that the PRU should be maintained at peak effectiveness. Presently, however, PRU members are not given credit for military service. Under the new mobilization law a substantial number stand to be inducted

within a very short time. This can only result in seriously compromising the effectiveness of this highly-trained force.'

The problem of manpower preference for ARVN continued throughout the war and as Vietnamization took hold, a compromise was worked out that allowed a sufficient pool of qualified draftees for the ARVN as well as the police. The solution was far from perfect, but both the PRU and the police were allowed partial draft exemptions for service in the paramilitary forces.

Despite bureaucratic interference by the GVN, MACV continued its support of the PRU. On 18 November 1968 MACV conducted a review of the PRU advisory program and concluded that "there was a continuing need on an expanded basis for military advisers." The decision was based on the significant contribution made by the PRU in anti-infrastructure operations. MACV forwarded the request for more military PRU adviser slots to JCS, which approved an increase in April 1969. The new number of military advisers with the PRU was thirty-nine officers and sixty-nine enlisted nien.⁹

By early 1969 MACV was still sufficiently comfortable with the PRU to continue the military advisory effort. In October 1969 there were 104 military advisers participating in the PRU program throughout South Vietnam. The number of advisers assigned to each region roughly followed the degree of threat posed by the VCI in those areas: the greater the control over the population by the VCI, the more military PRU advisers. Most MACV PRU advisers were from the Army, but three of the military branches were represented. In I Corps there were six Army and five Marine advisers; in II Corps twenty-three Army; III Corps had twenty-five Army and four Marines; and IV Corps had six Army and twenty-four Navy advisers. At the PRU Headquarter and Training Center there were eight Army, two Marine, and one Navy adviser."

As MACV became fond of noting, the 104 military advisers represented a small manpower investment for the large returns of the PRU program. Numerically this was true, but in its totality the PRU program represented the largest per capita advisory program within the pacification effort. Besides the military advisers there were between fifteen and thirty (the CIA has not

revealed total figures) CIA advisers who dealt exclusively with the PRU. This represented a total of roughly 125 American PRU advisers. Against a maximum total of five thousand PRUs nationwide the ratio of Americans to PRUs was 2.5 percent. Considering that in 1969 twelve thousand NPFF had only thirty American (U.S.AID) advisers the reason for the PRU program's effectiveness becomes clearer."

As we have seen, the GVN only grudgingly gave priority to anti-infrastructure operations and in the first year or so of CORDS existence, gains against the VCI were almost exclusively because of the American advisory effort. The continued success of the PRU throughout the war was directly because of American participation. Americans remained intimately involved on a broad scale with operations, logistics, training, and financing of the PRU until 1973. The CIA itself fully funded the PRU, providing an average of \$7 million a year through 1972. Even after MACV left Vietnam in March 1973, CIA financial and advisory support for the PRU continued right up until the fall of Saigon.¹²

Despite the clear connection between American support of the PRU and its dramatic success against the VCI, MACV began to realize that benefits were outweighed by problems. Reaction on the home front to charges that PRU operatives were CIA assassins forced a reappraisal of American military involvement.

Reexamining the System

The specific motive behind MACV's uneasiness with continued involvement in the PRU program stemmed from bad publicity. Continuing allegations of atrocities both inside the PRU program and within standard military operations focused more attention on an old target—the Phoenix program. The military was already reeling from the November 1969 revelation of the My Lai massacre that had actually occurred on 16 March 1968. The coverage was particularly awkward since it came just as MACV was contemplating what should be done with the PRU and perhaps helped force a premature decision.

Another problem stemmed from unanswered questions re-

garding the legal status of the PRU. Although it was unquestionably effective against the VCI, there was some controversy about its place within Vietnamese society and law. Under Vietnamese law, former members of the VCI were not permitted to serve in the armed forces. The PRU often was made up of former VCI or guerrillas who had rallied through the Chieu Hoi program. The law remained on the books until Saigon fell. Technically, the PRU existed and operated outside the GVN legal system. The solution would have been to change the law, but circumstances made it simpler to phase the PRU into the National Police.

The problem of a legal framework for the PRU went back to the beginning of Phoenix. As early as October 1968 high-ranking Phoenix officials were pointing out that the PRU organization presented a problem with both the status of U.S. advisers and with who had the authority to command them. William Colby, who would take over the helm of CORDS in less than one month, observed that:

From time to time a problem arises as to the authority of the Province Chief over the PRU, as distinct from American authority. The PRU has no legal base, but operates under a cover arrangement with JGS [Vietnamese Joint General Staff]. . . . [There needs to be] some legal base within the GVN so that the force [PRU] is included within the GVN structure, and so its operations can be given a legal and constitutional character and avoid the danger of extra-legal activity."

This legal question also spilled over to the American advisory effort. As civilians, CIA personnel were not governed by the UCMJ. Nor was the PRU since it was made up of foreign nationals. But the one hundred or so U.S. military advisers were subject to the UCMJ and the lack of legal status held by the PRU provided a chink the arrows of critics were sure to eventually penetrate.

Serious efforts to address the PRU problem always seemed to come back to integration into the National Police. No other practical solution was at hand. Colby and CIA advisers tended to disapprove of integration because such a move would dilute PRU effectiveness. Some PRU advisers even went so far as to

turn their displeasure into action: on a number of occasions CIA advisers refused to permit the NPFF to participate in joint operations with the PRU."

Control of the PRU began gradually shifting to the NP in the spring of 1969. A decree by the prime minister on 31 March placed the management of the PRU directly under the Directorate General for National Police (DGNP) and entrusted PRU operational guidelines to the minister of interior and the minister of defense. In principal, the decree placed the PRU within the same framework as the Phoenix program. PRU structure and mission would remain unchanged, but the reins would pass from CORDS and the CIA to the GVN.r)

While the transfer to the National Police was official the long process of U.S. disengagement from the PRU remained. In the field, both American advisers and Vietnamese province and district chiefs remained unclear as to their command status within the PRU. As usual, official proclamations issued in Saigon were not always easily implemented out in the countryside. Both GVN province officials and U.S. advisers continued to vie for control; the Americans felt that to give control of the PRU to the province chief would result in an end to its effectiveness. To clarify the fact that the PRU was now part of the police, the new PRU director within the DGNP, Major Nguyen Van Lang, gave a series of briefings at the PRU training center at Vung Tau. All PRU leaders and American advisers were required to attend in the hopes that all points of confusion would be clarified."

The easiest way for MACV to solve the management confusion and at the same time remove the military from the rising PRU controversy was to pull out of the program. The first step was taken on 30 September 1969, when MACV reversed itself and issued instructions that PRU advisers no longer would participate in PRU combat operations:

They will act only in strict advisory capacity, remaining at command posts, at launch sites, in command ships on helicopter insertions and/or at fire support bases; they will, however, participate fully with PRU chiefs in operational planning and ensure that proper mission coordination is effected, and that air, fire, other support properly laid on."

Two factors combined to make MACV reverse its 1967 decision to require U.S. advisers to accompany PRUs on operations. First, press attention on the Phoenix program prevented MACV from keeping in close operational touch with the PRU. Somehow the military thought that if it kept at arms-length from the PRU it would not be tainted by allegations of brutality. In many cases it simply didn't realize that critics were out to tar both Americans and Vietnamese with the same atrocity brush.

Second, as Vietnamization took hold, MACV correctly saw that one of the primary areas that demanded immediate South Vietnamese self-sufficiency was the Phoenix program. If the GVN couldn't control the VCI without help from the Americans it was lost. Because there were so few military advisers involved in the PRU program it was one of the easiest from which to disengage.

General Creighton Abrams felt the pressure to disengage the military from continued participation in the PRU program. In fact, he wanted the Army out immediately. The 104 military advisers with the PRU were to be pulled out by the end of October 1970. The CIA did not appreciate the sudden change of heart and resented being left holding the bag. A CIA counterproposal suggested that MACV scale down the number of military advisers to sixty by the end of FY 1971.18

MACV would have none of it. Abrams was adamant about immediate withdrawal and stopped filling PRU adviser vacancies created by end-of-tour departures. At that rate, military participation in the PRU program would end as planned in October 1970."

Confusion regarding the PRU, as well as reluctance to continue military involvement in the program, was not confined only to U.S. officials in Vietnam. Objections made their way directly to the office of the secretary of defense in Washington. A report by Secretary of the Army Stanley R. Resor questioned both the PRU program and Phoenix in general:

In my view, one of the serious problems attending the Phoenix program is the danger that we may make the program more "efficient," without due regard to the social and moral costs which that might entail. I believe that we should review the

program to determine if its emphasis should shift from the present dragnet system to a more selective attack on the [VCI] leadership.²"

Of course, the secretary of the army was reporting not on what the Phoenix program was designed to do—selectively target VCI—but rather on the method used in most provinces to neutralize VCI—cordon and search. But his point was well made: the existence of the PRU outside the legal framework of the National Police could not continue.

More briefing papers from Vietnam found their way up the bureaucratic ladder in Washington. They were read and reaction made its way back down. American reassessment of its involvement with the PRU soon came from the highest levels. In November 1969 Secretary of Defense Melvin Laird called for a reevaluation of involvement with the PRU:

I would like to outline my concern over Department of Defense involvement in the Provincial Reconnaissance Unit Program. My concern is accentuated by the mounting publicity that has recently been directed toward isolated incidents involving U.S. personnel in the Republic of Vietnam. . . . I believe the U.S. military involvement in advisory functions other than those concerning RVN military units and pacification should be reviewed. One such function is the PRU Program. . . . I believe we should divest ourselves of this mission as early and as completely as possible. . . .²¹

In his memo about rethinking U.S. involvement with the PRU, Secretary of Defense Melvin Laird had fallen victim to the notion that pacification was purely peaceful; he did not regard anti-infrastructure operations as an integral part of pacification. But part of his argument was valid. There would be charges of American complicity in atrocities as long as U.S. advisers remained with the PRU.

Yet in one form or another American advisers remained with the PRU until the end of the war. The only difference lay in the chain of command. After mid-1969 the PRU fell under the command of the province chief, who was to use it in an anti-

infrastructure role. But as was the case with the NPFF, GVN province officials often did not follow the guidelines and PRUs became virtual palace guards or, worse, armed thugs used to extort the population by ruthless province officials. This was not always the case, but it happened often enough late in the war to cause concern within CORDS.²²

Military involvement in the PRU program had been a bargain for MACV. Aside from the salaries of the military advisers involved, funding for the PRU came entirely out of the CIA's pocket. For that small investment MACV received intelligence from one of the best indigenous sources in South Vietnam and it could claim partial credit for a highly successful anti-infrastructure effort. During the final ten months of U.S. military involvement, the PRU conducted 50,770 missions, reporting 7,408 Viet Cong and VCI captured and 4,406 killed. One hundred-seventy-nine PRUs were killed during the same period. For a force of fewer than five thousand men, those were tremendous results."

But at this late stage in the war, image was more important than results. Following the dramatic surge in anti-war sentiment back in the States after the Cambodian incursion in the spring of 1970, MACV could not afford any more public relations black eyes. In the opinion of the Joint Chiefs of Staff and Secretary of Defense Melvin Laird, the PRU was another potential embarrassment. Yet the Defense Department recognized the importance of the program to the Phoenix effort; the military just wanted someone else to run it. The chairman of the Joint Chiefs of Staff wrote that ". . . the importance of the PRU program in neutralizing the VCI is fully appreciated [but the JCS] concurs in the desirability of withdrawing U.S. military advisers." The JCS simply wanted someone else to do the dirty work."

And so it was. The CIA took over the job of advising and managing the PRU, as it had in the years before 1968. The numbers of PRU personnel and operations remained fairly constant throughout the rest of the war, but the CIA lacked the manpower to fill in all the gaps left by MACV. Whether the shifting advisory situation noticeably affected PRU performance is difficult to judge. However, most observers agreed that the PRU remained a formidable force.

PRU Effectiveness against the VCI

The PRU was called the most effective action arm within the Phoenix program. The reputation was largely true. Despite complaints that PRUs were brutal, few American advisers could find fault with their courage, combat ability, or competence. On the whole, the PRUs were the best fighters in each and every province. Advisers reported that PRUs were the only forces that could be consistently relied upon to perform their anti-infrastructure task. But like the rest of the Phoenix program, PRU effectiveness varied from province to province and over time. In 1967, at what was perhaps the height of PRU operational independence and effectiveness, U.S. officials in Gia Dinh Province reported that the province chief had destroyed PRU effectiveness by dividing its twenty-one men into sections, a few to each district. In Binh Chanh District there were only seven PRUs. Worse still, the few PRUs in each district often were unavailable for operations. An adviser reported that in May 1967 all the province's PRU agents were in jail for a drunken brawl they had started with a local Revolutionary Development team.²⁵

Late in the war PRU effectiveness was also spotty, mostly because the new structure that placed the PRU within the National Police resulted in a corresponding decrease in U.S. advisory and financial input. It can be said that PRU effectiveness was directly proportional to American control. As long as the PRUs were paid and controlled by the Americans they worked well; when they became part of the GVN's unwieldy and often corrupt and incompetent system, performance suffered. The GVN did not emphasize anti-infrastructure operations, even near the end of the war. For example, in Kien Giang Province during the final two years of the war, the PRU had degenerated into bands of armed thugs who extorted money from the local population at will. Because the GVN was losing control of the country, the PRU sometimes became a haven for criminals and ARVN defectors looking to make some easy money.²⁶

Despite the inevitable problems from area to area, PRUs were man for man the best anti-infrastructure arm available to

the Phoenix program. However, their small numbers doomed their efforts to insignificance in the big picture.

In mid-1968 the PRU was getting rave reviews at CORDS headquarters in Saigon. At the end of May there were 4,205 PRU agents in South Vietnam, an increase of 532 since the beginning of the year. Fifty-eight percent of these were in III and IV Corps, the areas with the most serious VCI problem. Anti-infrastructure operations made up 65 percent of all PRU missions in 1968, with the biggest increase coming in May. By the end of May 1968 the PRU had conducted 1,730 anti-infrastructure operations (out of 2,650 operations of all types), as opposed to a monthly average of 1,300 (out of an average total of 2,200 operations) during February, March, and April. The PRU killed or captured 968 Viet Cong in May 1968, a decline from February's total of 1,165. The PRU managed to score these totals while suffering few casualties of their own. That presented a kill ratio of 25:1—twenty-five VC killed for every one PRU operative. When captured VCI were included in the ratio—a majority of PRU neutralizations—the figure jumped to 75:1. But this total included VC regulars as well as VCI. In May, PRUs accounted for sixty-nine VCI captured or killed, or 20 percent of all PRU neutralizations. The rest were VC guerrillas. During February, March, and April of 1968 PRUs had 188 VCI neutralizations, or 12.5 percent of the total number of VC captured and killed. These figures did not include apprehensions made by the PRU during joint operations with the NPFF or RF/PF.²⁷

The figures looked good to CORDS. And they were. By the middle of 1970 PRU effectiveness continued to climb. Between January and July the PRU had killed 285 VCI, captured 553, and had been responsible with rallying twenty-four. This represented 862 VCI neutralized, or 7 percent of the total by all GVN and American forces. That was the problem: the PRU was such a small organization that, despite its tremendous effectiveness, it could only manage to account for 7 percent of total VCI neutralizations. The neutralization rates for 1970 were higher than in 1969 despite a numerically smaller PRU—in mid-1970 its strength had fallen to some thirty-five hundred members nationwide because of the restructuring of the National Police.²⁸

Throughout the war operational appraisals consistently

spoke highly of the PRU. On 22 December 1968, William Colby passed along a cable to the CIA office in Saigon noting that the PRU was wracking up dramatic successes against the VCI:

At 1600 Hours 17 Dec. a 60-man PRU unit supported by six troop helicopters, 1 C&C [command and control] and four gunships inserted . . . approximately 9 kilometers south of Can Tho. The action caught the VC in the process of assembling. The action lasted until 1730 hours and resulted in 23 VC KIA [killed in action], 4 VCC [VC captured], 3 weapons captured and 10 kilos of documents. Two PRU were wounded.²⁹

Praise for the PRU continued and the figures seemed to back it up. By 1971 the PRU accounted for 422 VCI neutralized per 1,000 PRU strength, or almost one VCI neutralized by every two PRU operatives. This was astronomically high, especially when placed beside the second-highest man-for-man neutralization rate—the National Police (including the NPFF), which accounted for a paltry 36 VCI for every 1,000 NP.³⁰

Clearly the PRU was a very efficient VCI hunter, easily living up to its reputation as the best anti-infrastructure unit in Vietnam. No one could have disputed the Phoenix program's effectiveness if everyone had performed as well as the PRU. But when the final count came in PRUs accounted for only a small portion of all VCI neutralizations.

The PRU did hurt the VCI, but MACV was using a double standard when judging them. Saigon criticized Phoenix because it did not eliminate a high percentage of the total estimated VCI strength nationwide, yet it praised the PRU based solely on man-to-man ratios that ignored the total VCI picture. Saigon might have done better to find a middle ground, some method that credited overall statistics and individual unit performance. In the end all that counted was how the communists' ability to continue functioning in South Vietnam was affected, not total numbers.

Most importantly, the real benefit of examining PRU effectiveness was not to prove that it was the best in the anti-infrastructure business, but to see why it was. PRU operational professionalism and the use of intelligence were the two main

reasons. One "typical" operation provides some insight into why the PRU became known as the best.

A PRU Operation in Ben Cat31

PRU operations were not all gunfire and bloodshed. In fact, if the intelligence was good VCI targets would be surprised and would have no chance to put up a fight. Most operations went off without a hitch; they could almost be called mundane. And in many cases good intelligence began with the Chieu Hoi program. Communist ralliers provided Phoenix with the initial intelligence for operations that led to the capture of important VCI throughout South Vietnam. In Ben Cat District the Phoenix program netted enough intelligence through Chieu Hoi to capture Nguyen Van Dang. Dang was the assistant party secretary to the Chau Thanh VC District Committee. But his capture was only the first cast of a widening net.

The Ben Cat DIOCC had compiled information on Dang from the interrogation of a Hoi Chanh and, using the intelligence, targeted Dang for neutralization. On 13 August 1969 the PRU team assigned to Ben Cat prepared for another routine operation. Information from the hoi Chanh indicated that Dang was holed up in a tunnel used as a safe location for various VCI. Far from being safe, however, the tunnel served as a trap for Dang as the unit moved in for the capture.

A field interrogation produced quick results; Dang was in no mood to anger his captors, so he quickly revealed the location of another tunnel that held Dang Van Mai, a former assistant party secretary, and Vo Van Banh, the Viet Gong security section chief for the district. The PRU wasted no time in reacting.

A team moved quickly to the tunnel pointed out by Dang and called on the two VCI to surrender. But these two were not as willing to surrender as Dang had been. After a short, sharp firefight the PRU had its prisoners. Banh was wounded and evacuated by helicopter before he could be interrogated, but Mai and a large stack of captured documents were taken immediately to the Province Interrogation Center (PIC). Mai and the docu-

ments provided the intelligence for the next step in the operation.

The province PRU chief and his American counterpart conducted the interrogation using the captured documents both to jog Mai's memory and to trip him up if tried to lie. Mai had nothing to gain by concealing information; he revealed the names of five additional Party members as well as their usual haunts and probable routines. The district party chairman, Nguyen Van Kia, became the main target.

Kia was a real prize because he was a "legal," a communist operating within the legal system of South Vietnam. He had the required ID card and worked as a horse cart driver, using his legal status and mobility as a driver to maintain contact with other members of the infrastructure. Without the intelligence gathered during the interrogation of Mai, Phoenix would have had a difficult time tracking down Kia.

Since Kia was a special case the PRU used special methods for his capture. A few days after the interrogation a PRU team divided into four- and five-man cells prepared to snatch Kia. They all dressed in civilian clothes and carried only pistols. Since no one could predict exactly when and where Kia would show up, the PRU was positioned at the main traffic intersections within the target's suspected area of operation. Kia showed up driving his cart and the PRU picked him up without incident.

The remaining four VCI named by Mai were even easier to capture. Like Kia, all four were legal residents of Mai's village in Ben Cat District and all held jobs that allowed them to fit into the society around them so as not to arouse suspicion. Although the arrest of Dang Van Mai was quiet and had aroused little attention, it was a sure bet his comrades would hear of his capture before long. The PRU had only hours before its targets would disappear from the district.

The captured documents did most of the work for the PRU by providing addresses of the four VCI. By early evening, only an hour or so after the capture of Mai, another PRU team closed in on the remaining four VCI. The operation was a success. All four were captured in their homes. The PRU had netted the chairman of the PRP executive committee, the civilian proselyt-

ing section chief, liaison section chief, and a district security cadre. All four were quickly sent to the DIOCC where they fingered the five remaining district committee-level cadre. Once these five were arrested, the VCI in Ben Cat District would be completely wiped out.

One of the remaining VCI was Phan Van Mua, chief of the supply and transportation section in the district. By day Mua watched over his small herd of water buffalo (purchased by the Viet Cong to provide him with a cover); by night he used his livestock to transport rice to a Viet Cong pickup point across a nearby river. Early the next morning, as Mua sat in the shade watching his buffalo, the PRU appeared and carried him off to the DIOCC. The Viet Cong had to find another way to get their rice that night.

Nguyen Thi Bah was the VC message section chief for the district. It was her job to coordinate the clandestine communications network by which the VCI passed messages. Her job was especially dangerous because it required her to move around the district frequently as she carried messages back and forth between various cadre. The PRU did not know her exact location, so it set up ambush teams along the routes revealed during the interrogation of the previously captured VCI. On the second evening of the watch Bah was captured.

A few days later the remaining three VCI were captured and Ben Cat District was rid of the VCI, for the time being. The Viet Cong would attempt to reintroduce a political infrastructure to the district, but would be at a disadvantage because the new cadre would lack familiarity with the people and the surroundings. As long as the Phoenix program continued along the same effective lines, the GVN would have the initiative.

This Phoenix operation ranks high on the list of effectiveness and many Phoenix advisers only dreamed of such spectacular results. Everything went right for the PRU and the DIOCC. First, a valuable Hoi Chanh provided timely information that led to a key cadre who in turn revealed information on other VCI. The documents captured allowed the DIOCC to add details that probably would have been unavailable with interrogation alone. Perhaps most importantly, it is clear from the after-action report that the American adviser at the PIC and the PRU chief had the

ability to quickly translate the captured documents into useful intelligence. The result was information that could be acted upon immediately. And while captured documents were a common commodity during the Vietnam War, the PRU in Ben Cat District was particularly lucky with the stack it recovered from the tunnel. All factors clearly combined to make a successful Phoenix operation.

The PRU could never have become the effective anti-infrastructure force it did without massive American help. The CIA trained the operatives, paid them, and in the beginning, fought with them. Because the PRU was a small force, it received a greater degree of individualized training from the American advisers. The National Police and the RF/PF were not so fortunate. They had to substitute quantity for quality, spreading scarce resources and advisers throughout the ranks. The PRU had the benefit of CIA and military advisers, as well as better pay, an important consideration in the underpaid South Vietnamese military and paramilitary. With all the benefits of being in the PRU it is small wonder that it became the best in the business.

Besides the CIA and the Army, another group of American advisers trained and fought with the PRU, honing it into a cohesive and effective fighting force. But these Americans weren't soldiers, they were sailors.

United States Navy SEALs

The legend that grew up around the U.S. Navy's SEALs (sea, air, and land were the three elements SEALs are trained to operate in) did not die when United States forces left Vietnam in 1973. To this day SEALs are larger-than-life covert warriors with a reputation for fierceness and efficiency. But whatever they have become today, the SEALs were born and bred in Vietnam.

When American involvement in Vietnam was in its infancy, President John F. Kennedy brought to public attention the warfare technique that came to be called counterinsurgency. His most famous creation was the Green Berets, the U.S. Army Special Forces. But he also authorized the Navy SEALs. At an NSC meeting in January 1962 Kennedy asked about counterinsur-

gency capabilities in all the services. He knew that the Special Forces were already operational, but what about the Navy? "We have our SEALs," replied the Navy's NSC representative, knowing full well the SEALs were barely off the drawing board.³²

Back in June 1961 the chief of Naval Operations had ordered a study on the "development of an improved guerrilla/counterguerrilla capability." By December the general outline for SEAL Teams 1 and 2 had taken shape, waiting only for final approval.³³ Now there was no more time for planning. On the same day Kennedy asked about the Navy's counterinsurgency capability, word went out to activate SEAL Team 1 at Coronado, California and SEAL Team 2 at Little Creek, Virginia. SEAL Team 1 consisted of five officers and fifty enlisted men drawn from the ranks of UDT 11 and 12 (Underwater Demolition Team), and SEAL Team 2 had ten officers and fifty enlisted men, mostly from UDT 21. The history of UDTs went back to WWII, when Navy swimmers scouted beaches in both the Atlantic and Pacific Theaters, gathering valuable intelligence on beach conditions and enemy defenses. Their forays paved the way for landings such as Anzio, Normandy, and Okinawa. Although many SEAL operations in Vietnam were in support of the Phoenix program, a majority of them were reconnaissance missions such as those in WWII, or small-unit strike missions aimed at the heart of enemy territory.

The SEALs understood their mission from day one:

To develop a specialized capability for sabotage, demolition and other clandestine activities conducted in and from restricted waters, rivers, and canals, and to conduct training for selected U.S. and indigenous personnel in a wide variety of skills for use in naval clandestine operations.

The SEALs were destined for Vietnam."

In July 1962 the first SEALs arrived in Vietnam. Their mission was to train Biet Hai (Junk Force Commando Platoon) and Lien Doi Nguoi Nhai (LDNN—South Vietnamese SEAL equivalents) personnel in special tactics. SEALs also found themselves on the cutting edge of the war in the early days. SEALs on duty with training teams were sent to Danang, where they worked

with elements of MACV SOG (Special Operations Group) preparing LDNN to run operations in North Vietnam.

In 1966 SEAL activity expanded rapidly. In February SEAL Team 1 deployed Detachment Golf to Nha Be for duty in the Rung Sat Special Zone (RSSZ)—also known as the Forest of Assassins. The RSSZ was a tangled area of jungle and villages stretching from just east of Saigon to the South China Sea. Both the GVN and the Viet Cong considered it strategic ground because control of the RSSZ meant control of the vital link between Saigon and the sea.

In January 1967 SEAL Team 2 sent Detachment Alfa to the Mekong Delta, with some platoons going to Nha Be and My Tho, others to Binh Thuy. A second unit, Detachment Bravo, was made up of specially trained SEALs whose mission was to advise PRUs in anti-infrastructure operations, sometimes in support of the Phoenix program. SEAL Team 1 tasked Detachments Bravo and Echo with serving as advisers to the PRU program on highly classified missions. Unlike the SEAL detachments in the RSSZ, which were under the command of COMNAVFORV (Commander Naval Forces, Vietnam), Detachments Bravo and Echo came directly under MACV.³⁵

These SEALs were not simple advisers and planners; they also actively led most of the combat missions. Anti-infrastructure operations were generally "snatches," nighttime raids into enemy territory with the express purpose of bringing back a live prisoner, the essence of the Phoenix program. After a successful raid in September 1967 a SEAL lieutenant told a reporter, "We like to grab people. That's of real value. Killing them does no good. Any time we make a hit we're there to take them alive. But once we're seen, we're compromised. Our primary mission ceases and we turn to our secondary mission—killing VC."³⁶

A combination of superb training, special weapons, and a hands-off attitude from the Navy and MACV got results for the SEALs. Small teams of SEALs working with PRUs would slip ashore in enemy territory night or day to ambush enemy guerrilla units, kidnap an unwary political cadre, or destroy a weapons cache. The Viet Cong in the Delta never knew when or where the SEALs would strike. It was a fitting role reversal for Vietnam's guerrilla war.

Because SEAL duty in Vietnam was extraordinarily strenuous and dangerous, members served only six-month tours instead of the normal twelve- and thirteen-month stints pulled by the Army and Marines. Yet many SEALs returned to Vietnam after rotating stateside, extending for three and sometimes four tours. In 1968 through 1970, the height of SEAL participation in Vietnam, SEAL personnel numbered around 250 in-country at one time, a small number for the results produced."

SEALs generally operated apart from the everyday grind of the Army's search-and-destroy strategy, though on a few occasions SEALs participated in the cordon-and-search operations that often characterized U.S. military participation in pacification. They were not well-suited for the role. On the morning of 6 September 1968 a platoon from Alfa Detachment, SEAL Team 1, was inserted by boat into a VC-controlled village in Go Cong Province. Along on the mission were one hundred PRU and one hundred fifty uniformed NPPF. After patrolling several thousand meters around the village, the force surrounded and searched the villages, hoping to snare important members of the VCI. After four hours and several "house calls" at the residences of suspected VCI, the mission was terminated. The SEALs were not enthusiastic about their role. An after-action summary observed: "Do not recommend SEALs operate with this large a group. Creates havoc."

SEALs definitely operated best in small teams. That was the way they were trained. Before leaving their base in the States SEAL teams trained for the type of warfare they would encounter in Vietnam. Besides exercises in mobile operations, counter-insurgency, specialized weapons training, and heavy doses of physical endurance training, SEALs spent time in the classroom learning about the enemy they would face. Both officers and enlisted men learned about the communist political infrastructure to understand its importance to the Viet Cong war effort. Because the SEALs emphasized anti-infrastructure operations, they could boast of dislodging the communists' hold on many parts of the Mekong Delta. SEAL advisers to the PRU operated in twelve of fourteen Delta provinces and by the end of 1968 netted an average of eight hundred VCI captured or killed per month."

SEALs against the VCI

There was no such thing as a typical SEAL anti-infrastructure operation. But the successful ones did have one thing in common—they used timely intelligence. Some intelligence came through the PSB or other Phoenix assets, though much of it came straight from the CIA. But the SEALs often found it was more convenient to run their own intelligence nets. These nets generally were made up of specially trained PRUs and were designed to penetrate the VCI. Sometimes things went awry. On 15 November 1968, 3rd Platoon, Detachment Alfa, SEAL Team 2 received word that one of its PRU agents was in trouble. He had been posing as a minor VC official and had been uncovered and captured. The SEALs went in to get him out of the fire. The agent was rescued and the SEALs nabbed three VC security cadre, who in turn led the SEALs to a large cache of weapons.^{4°}

More conventional "snatch" operations were the hallmark of SEAL participation in the Phoenix program. They went deep into hostile territory the Viet Cong called home and captured cadre, bringing them back for interrogation. But because the SEALs operated in the midst of heavy concentrations of VC security forces, they often lacked time for the niceties of capturing an enemy. SEALs and their PRU teams often killed as many VCI as they captured. This was mainly because VCI neutralized by the SEALs did not include defectors through the Chieu Hoi program or the numbers of cadre who were rounded up in cordon-and-search operations. Only those VCI captured or killed by the SEALs and their PRUs were counted. Obviously, in the heat of battle many VCI were going to be killed; that was war. And because SEALs and PRUs operated deep in enemy territory they often lacked the luxury of taking time to capture a prisoner and drag him back to safety. When bullets flew and the enemy threatened to surround them, SEALs and PRUs shot first and took prisoners second.

During the early stages of the Phoenix program, American anti-infrastructure operatives, such as the SEALs, CIA PRU advisers, and U.S. Army Phoenix advisers, bore the brunt of op-

erations as CORDS tried to get the police geared to handle most of the work. But the police sometimes were involved as the SEALs tried to use intelligence from whatever source they could. On 12 May 1968 the Dinh Tuong Province National Police gave a prisoner to the local SEALs for interrogation. The prisoner agreed to lead the SEALs into a village that had long been controlled by the VCI and point out the main cadre. Six suspects were arrested by the National Police. Interrogations yielded the names and locations of thirteen more "Viet Cong espionage/intelligence agents," all of whom were rounded up by the SEALs. The after-action report said intelligence gathered from the operation led to the "arrest of over 100 other Viet Cong agents operating in and near the provincial capital of My Tho." These agents had penetrated "every U.S. and allied agency and military unit in the city and their removal completely blocked the enemy from knowledge of U.S. and allied intentions within Dinh Tuong Province."

As the SEALs became more proficient at "snatch" operations, the VCI could not consider themselves safe even in the most secure areas. On at least two operations in June 1968, SEALs in Vinh Long Province captured communist cadre from under the noses of their security guards in Viet Cong-controlled areas. On 9 June, reacting to intelligence, SEALs were inserted into their mission area by boat and quickly captured thirteen VCI as they attended a political rally (because SEAL operational reports are still highly classified, many do not include the mission location). On 30 June a SEAL platoon pursued one particularly troublesome and clever VC tax collector. Because the insert zone was near an area of heavy river boat traffic, the SEALs made their landing in a Vietnamese junk. On foot, they moved to the prearranged ambush site: a dense grove of banana trees. They found more than they had bargained for. Besides the VC tax collector, four other black-clad cadre, a platoon of security guerrillas, and eight "cargo handlers" from two VC sampans were pulled up to the bank. Rather than risk being overwhelmed, the SEALs opened fire, killing all eight of the VC boatmen as they ran for their sampans, as well as three of the VC security guards. Two VCI were captured, although the tax collector managed to escape.⁴²

SEALs also tried to work with other Vietnamese units that sometimes operated against the VCI, particularly the RF/PF. Unfortunately, the RF/PF was not always very good at it. During a two-day operation on 6 and 7 November 1968, four SEALs, a platoon of PRUs, and one platoon from a local RF company were assigned to conduct ambushes on known VC trails. Since there were no American advisers operating with the RF, they soon lost interest in their jobs. In fact, they did absolutely nothing. Not once did the RF leave the main road, nor did it bother to make radio contact with the SEALs. One RF trooper had an epileptic seizure. Despite the RF's lack of involvement, the SEALs and their PRUs managed to pick up one known VCI."

Of course, the highest priority went to high-level VCI. When the SEALs got intelligence on one of the big fish they moved quickly. On 22 February 1969 seven men from 5th Platoon, Alfa Detachment, SEAL Team 2 set an ambush based on intelligence handed down from the PSB. The report said some high-ranking VCI were on their way toward a meeting near the My Tho River. The SEALs and their PRUs reached the outskirts of a village at last light and set a hasty ambush. Almost immediately eight apparently unarmed men walked through the killing zone—the SEALs let them pass. Within a few more minutes seven men—this time heavily armed—walked down the trail and the SEALs opened fire. Five were killed and two captured. Intelligence reports said three of the Viet Cong were "very high-ranking Viet Cong officials.""

During another specifically targeted operation, on 1 July 1969, G Platoon, Golf Detachment, SEAL Team 1 set out to capture four important VCI, including Bui Ngoc Tan, the Viet Cong Party chief for Long An Province. All four VCI were known to be meeting in Ben Luc District near the Vam Co Dong River. The SEALs were inserted by Boston Whaler. As they crept over the side of the boat, they made their way upstream to where the VCI were to meet. The heavy security net set out by the VC spotted the SEALs and a sharp firefight erupted. The SEALs got the best of it, but all four targets were killed during the action. Besides the province Party chief, the SEALs neutralized Nguyen Thanh Tuan, a squad leader in the VC military intelligence section for SR-3; Huyen Tan Cong, the assistant squad

leader; and Pham Van Hiep, chief commo-liaison cadre for SR-3. Later the SEALs found out they had also killed the assistant Party secretary for Long An Province.⁴⁵

At first glance it may seem as though the SEALs could never fail. In reality, many of their missions turned up empty. Faulty intelligence, early warnings to the Viet Cong of impending SEAL operations, and lack of adequate support from the Vietnamese combined to let hundreds of VCI escape death or capture at the hands of the SEALs and their PRUs. The SEALs' operational independence and penchant for secrecy also combined to inflate the image of their exploits. Journalists rarely saw them in action and their figures were not subject to the same scrutiny as other Phoenix statistics. In some cases SEALs were privately reported to have been dismal failures at selectively neutralizing the VCI, although none of them could be accused of lacking in warlike qualities.⁴⁶

Like all other aspects of American involvement in the Phoenix program, the SEALs found themselves more and more constrained as the date for U.S. withdrawal from Vietnam drew closer. By 1970 problems and restrictions that were tightening around the Army also began to constrict the SEALs. Popular condemnation of the war at home and revelations of the brutal massacre of civilians at My Lai led to a redefinition of the rules of engagement. Rumors that the Phoenix program was assassinating innocent civilians raised questions about the SEALs' legal status while operating against the Viet Cong infrastructure.

Although congressional inquiries did not turn up any hard evidence to back the charges against Phoenix, the SEALs became caught up in the swirl of discontent. Public knowledge of SEAL operations was limited, but all units involved with Phoenix were affected by the furor. In June 1971 SEALs cut back on anti-infrastructure operations because MACV was uncomfortable with the charge that "civilians" were the target of Phoenix and the SEALs. In mid-July, all SEAL operations except for Bright Light (operations aimed at freeing American and ARVN POWs in Viet Cong prison camps within South Vietnam) were put on hold until a team from Navy headquarters visited SEAL personnel and tested them on their understanding of the rules of engagement.⁴⁷

The SEALs had ceased most operations on their own initiative because, in the words of one SEAL member, "the rules were so strict we had to even announce that we were coming before we could shoot, and then we could shoot only when we were shot at."⁴⁸ Things had changed drastically since the early days of SEAL operations in the Delta. Even the PRU training mission which had been so successful was altered. New standing orders written in late 1970 specifically said SEALs were "not permitted to actively participate in combat missions."⁴⁹

As Vietnamization released advisers, soldiers, and sailors from duty in Vietnam, so, too, did the SEALs begin to trickle home. By June 1971 most SEALs had returned to Little Creek and Coronado, leaving behind a small contingent of advisers with the Vietnamese Navy.

Rough totals for SEAL involvement in Vietnam were impressive. By the end of 1970 SEALs and their South Vietnamese allies had killed more than two thousand Viet Cong and captured about twenty-seven hundred, many of them important members of the political infrastructure. All this had been accomplished relatively cheaply in terms of SEAL casualties. Only three dozen or so were killed during nine years of involvement in Vietnam."

In the overall conduct of the war, SEALs did not change the tide of battle. But they did illustrate that a few well-trained men using counterinsurgency tactics and specially trained allies could devastate a guerrilla enemy, particularly the political infrastructure. General William Westmoreland was quick to sum up their contribution when he said, "I would like to have a thousand more like them.'

Long Arm of the Law: Courts and Detention Systems

MUCH of American outrage over the war in Vietnam was directed at what was viewed as South Vietnam's lack of regard for democracy and human rights. The Phoenix program in particular bore the brunt of much of the criticism because it was seen as the leading edge of a system that disregarded individual rights and threw noncombatants and victims of hearsay into an inhuman prison system. Like many of the accusations against the Phoenix program some of these charges were true, some not. All were exaggerated.

South Vietnam was at war and was forced to take special steps to protect itself from an enemy that struck from within as well as from North Vietnam. These steps had no precedence in Vietnamese history and culture, which had relied on tradition and religion to solve its legal woes. What laws it did have were introduced first by the Chinese and then by the French. Both were considered oppressors. Although the Americans were not imperialists and South Vietnam was a sovereign state that instituted its own laws, Vietnamese peasants were suspicious and never learned to trust or accept this new concept of law.

The emergence of the Phoenix program put a strain on an already overloaded legal and detention system and throughout the war this problem was never adequately redressed. However, steps were taken that improved prison conditions, diminished

abuses of arrest and interrogation, and strengthened due process under the law.

The laws that empowered the police and the Phoenix program to arrest and try members of the VCI were well-founded in the South Vietnamese legal system. National Security Laws had been passed to cope with the internal rebellion and Saigon saw itself as protecting the young nation from destruction by the communists. In addition, infrastructure neutralization was well within the parameters of the Geneva Convention concerning treatment of prisoners. Torture during interrogation and abuse within the prison system were not standard procedure and steps were taken to correct them.

Perhaps the greatest shortcoming of the Phoenix program was its inability to cope with the flood of VCI suspects into the detention system. Innocent people swept up in the dragnet sat in jail for weeks and sometimes months before they were interrogated and either charged or released. Many were eventually released for lack of evidence, but the damage was already done; the GVN had provided a willing pool of converts to the Viet Cong cause. On the other hand, the average sentence given to proven VCI was less than one year. To the average citizen, it often seemed that the Phoenix program treated innocent suspects worse than it did convicted VCI. In many cases they were correct.

Sitting and Waiting

In 1970 the war was quiet over most of South Vietnam. At least as far as wars go it was quiet. The Tet Offensive had given way to guerrilla actions, isolated terrorism and, of course, the pacification battle in the countryside. Phoenix advisers who had served in Vietnam in 1968 and 1969 agreed that the countryside was quiet compared to the old days. And they used the driving rule to prove it. The driving rule said that if you could drive a Jeep across the district without getting shot at, mortared, or generally harassed by the Viet Cong then it was pacified. Hardly a scientific methodology for determining pacification, but in many ways it was an accurate reflection of reality.

The Phoenix program was in high gear, bringing in more VCI than in the previous two years. Most importantly, the program was attempting to work out the flaws and shortcomings that had plagued it since its inception. The biggest problem had been what to do with the hundreds and sometimes thousands of VCI arrested nationwide each month. Many innocent suspects sat for weeks or months in province jails waiting for the Province Security Committee to convene, review the evidence, and release the suspects on grounds of insufficient evidence. Throughout the war, Phoenix was unable to correct the injustice of holding suspects for long periods without bringing them to trial. In many cases the Phoenix program had extensive dossiers or blacklists as evidence of the suspect's association with the VCI. But in many other cases there was no evidence at all.

On 14 March 1970, seven women sat in a small, bare cell, absentmindedly brushing at the flies buzzing around their faces. They were being held in the Kien Phong Province Interrogation Center in Cao Lanh, which doubled as a detention center for accused VCI waiting for a hearing. They were all suspected of being VCI.' The rules were strict and simple. The suspects were not allowed to speak to one another and no unauthorized visitors were permitted in the PIC.

The cell was about ten feet by twelve feet with a concrete floor where the women sat, ate, and slept. Although there was no room to walk around, the women did not seem to mind sleeping on the floor, although they complained of the cold that seeped through their thin sleeping mats and into their frail bodies at night. The PIC provided no blankets to keep them warm.

Meals were sent to the women and the guards allowed their families to bring extra food and clothes. But these women seemed to be lost in the system and it was unlikely that their families even knew where they were. During the day the seven women worked in the PIC cleaning offices or outside in the compound doing various jobs.

By Third World standards the PIC was not a horrible place. No stories of torture and brutality came from behind the barbed wire walls, the prisoners got two meals a day, and none languished for endless days in cells. All prisoners worked on the grounds or were allowed out of their cells daily for exercise.

None of the seven women complained of maltreatment and none looked the worse for their confinement.

But none of them knew what their eventual fate would be either. One small woman, Nguyen Thi Hon, had been arrested one month before and was afraid she might never again see her family. She said all she did was give rice to some local guerrillas who came through her village one night. The local police heard about this from a neighbor and Hon was arrested a few days later. She clearly was not a VCI, and the Province Security Committee probably would agree, but it had already been a month and Hon was still in the PIC. Only one of the women, Thuong Thi Dung, had been cleared by the Province Security Committee for release.

None of the women knew their rights under South Vietnamese National Security law. Theoretically the Province Security Committee had three months to decide their cases, and although none of them had been in prison that long, it was a serious inconvenience for them if they were deemed innocent by the committee. The inability of the GVN legal system to quickly handle suspects was contrary to the stated goal of the Phoenix program to protect the people from terrorism. While it might be argued that Phoenix was putting away legitimate VCI and preventing them from carrying out their terrorism, it was also holding many innocent people for months without charge or trial.

Only one of the women had been tried and found guilty. Nguyen Thi Ranh was convicted of being a minor member of the VCI and sentenced to one year, half the maximum sentence. She probably had been coerced into joining the communists. Ranh did not seem to have any deep ideological commitment to the Viet Cong and because of her good behavior the province officials sent her back to the detention center as a sort of supervisor for the other women who had not yet been tried.

If any of the other women were found guilty they would be sentenced commensurate with the importance of their role within the Viet Cong political infrastructure. The more important their status within the VCI the more severe the sentence.

The women had been interrogated separately by the National Police stationed at the PIC. Each had endured the same questions over and over for an entire day. "What is your name,

who are your parents, where is your village, who are the other VCI in the area?" The lack of direction or specific questions during the interrogations indicated that the police had little or no evidence on the women and were simply probing, hoping to come up with something that might incriminate other VCI in the area.

All the women were scared, uncertain of what the future held. All except one, a self-assured young woman who gave her name as Tran Kim Dinh. She told the interrogators she was married and had a four-month-old baby who was cared for by her mother-in-law. Dinh had been arrested six weeks earlier and still had not been formally charged. It was her husband the National Police really wanted; they were not sure what part Tran Kim Dinh played in the local VCI, if any. But Dinh was proud of her husband's role with the Viet Gong, telling anyone who was interested that he was a VC propaganda cadre. She also seemed proud that her husband's activities had kept them apart for over a year, and that she did not really know if he was dead or alive.

Dinh had told her interrogators that she was from a farming family, but everyone noticed that she had smooth skin on her hands and feet, very different from the rough, calloused leather that covered the other women's hands and feet. Dinh was also aloof from her six cellmates, and they all seemed to act as if she was not one of them. But none would talk about Dinh to the interrogators.

A group of American reporters received special permission to talk with some of the prisoners in the PIC and Dinh and her six companions were among them. While photographers snapped pictures of the women only Dinh seemed to mind. She turned her head, moved into the corner, and simply walked away whenever a photographer pointed a lens at her. The other women didn't seem to notice the cameras. Dinh was very aware of what some of the photos might be used for. The police often took pictures from press clippings and used them on wanted posters. In case she was released, Dinh did not want her face showing up later on some Phoenix poster.

If the journalists had not talked with the seven prisoners no one outside the PIC might have ever known about their predicament. As it was, the seven women faded from sight after the

journalists left and it was impossible to determine their fates. If other civilian prisons throughout South Vietnam were any indication, the women probably remained in jail for another month or so waiting patiently for the Province Security Committee to review their cases.

The detention centers often became breeding grounds for Viet Cong sympathies. Ideologically committed VCI often were mixed with low-level suspects who, after a month or so of exposure to the haranguing of their communist cellmates, were sure to leave with Viet Cong sympathies. On the other hand, innocent people rounded up on slim or nonexistent evidence and dumped in a detention center for months before being released for lack of evidence were also a ready source of converts to the communist cause. They were unlikely to understand the logistical problems within the legal system that landed them in jail, or sympathize with the predicament of the province chief who was too busy with other tasks to pay immediate attention to the fate of those in the detention center.

In many ways the legal apparatus behind the Phoenix program was much too sophisticated for rural South Vietnam. The rules called for detailed dossiers to be put together on each suspected VCI to bring the case to trial. But most peasants did not lead the sort of life that left a paper trail by which to build a dossier. They were simple folk, trained by years of war to bend with the tide of battle and cooperate with whatever side had the power to affect their lives on any particular day. The people of rural South Vietnam simply did not care about the twists and turns of the Phoenix program's evolution toward efficiency and fairness. All they knew was that many of their friends and relatives ended up in a province detention center simply because someone suspected them of being VCI.

Concept of Law and War in Vietnam

Arrest, trial, and detention under special laws designed for wartime have always attracted criticism from Americans. Vietnam, like many other Third World nations emerging from colonialism onto the untested ground of independence, faced legal problems

in mixing colonial and traditional customs into a system of law that addressed the demands of a newborn state. Only time would allow them to experiment and develop their own legal system.

South Vietnam had these problems, but to them were added a burgeoning war that strained the legal system and the state itself. Vietnam under the French had had two systems of justice: one traditional, based on Confucian ideals and a rural lifestyle, the other imposed by the French and aimed largely at the urban population. French law was widely regarded as a tool of oppression used by a foreign government to control rather than protect. When South Vietnam became a sovereign state in 1954, South Vietnamese citizens had no perspective from which to trust and respect the new laws.

Because President Diem was faced with the competing forces of nation building and fighting a civil war, he relied on the use of decrees to control the population and maintain order. Although many of Diem's decrees were based on some previous law, some were not.

In 1962 Diem's sister-in-law, the infamous Madame Ngo Dinh Nhu, felt that South Vietnam did not possess the appropriate ethics and morals befitting a Christian nation. Of course, the majority of citizens in South Vietnam were Buddhists, but Diem, a celibate Catholic, approved of the measure and signed into law a decree prohibiting abortion, sorcery, smoking by anyone under eighteen, and "voluptuous activities," defined as dancing, prostitution, and beauty contests. The decree was vague and could not be enforced. Such laws only reinforced the notion that the new government was not acting in the interests of the people.²

Although laws dealing with the Viet Cong—the threat from within—directly affected the security of the new nation, they too, were often vague and unenforceable. Diem recognized the need to strike at the communist infrastructure, but he was unsure of how to do so. Instead, he decreed that the VCI was a threat to state security and membership in it was defined as a subversive act. The prescribed penalty for this "hooliganism" was death.'

Two decrees set forth after Diem's death established a national emergency. The first, in August 1964, declared South Vietnam to be in a state of emergency, and another in June 1965

defined the situation as a state of war. Both statutes gave the government power to take appropriate measures for maintaining security.

Early Prison System

Any law, whether capricious or just, cannot have an impact upon society unless there exists an effective enforcement mechanism. The two chief mechanisms are the police and the court and detention systems, neither of which were effective in Vietnam during the early 1960s.

In 1965 there were only 160 lawyers and about the same number of judges in all of South Vietnam. In 1967 there were 193 lawyers, 150 of whom practiced in Saigon. Only fourteen out of forty-four provinces had even a single lawyer. This handful of men was expected to handle a caseload that increased astronomically between 1965 and 1970.⁴

Between January and December 1965 the number of political prisoners jumped almost 100 percent, from 9,885 to 18,788. This number did not include common criminals or prisoners of war. The total capacity of all civilian jails and prisons in South Vietnam was 21,400. Most of the political prisoners were VCI, but because an organized anti-infrastructure system was virtually nonexistent, many of the prisoners were merely minor supporters or collaborators.'

By 1966 there was no more room for additional prisoners. The most practical measure to alleviate overcrowding was to release old prisoners when new ones came in. The average time of imprisonment for offenders, including VCI, was six months. Even the most hardcore VC was often sent back to his old haunts through this revolving door of justice.'

Prisoners of war fell under a separate system created and maintained by MACV. The Americans constructed camps and prisons, all within the guidelines of the Geneva Convention. The International Red Cross agreed. In 1966 a Red Cross report stated that "the MACV instruction [regarding facilities and treatment of POWs] . . . is a brilliant expression of liberal and realistic attitude . . . [and] goes far beyond the requirements of the Ge-

neva Convention." Regular Red Cross inspections continued to report American compliance with international law.'

Unfortunately, the emphasis on POW facilities and the total disregard for civilian prisons to house convicted VCI was another indication of the military's misunderstanding of the nature of the war. MACV was content to watch political prisoners swell provincial jails, never admitting that although they had the problem of POWs well in hand, the most important enemy—the VCI—was not being adequately handled within the detention system. Worse, by allowing local prisons to handle VCI, MACV set the stage for allegations of human rights abuse. Provincial prisons lacked funds, space, and quality personnel, and abuse was common. The courts dealt with the problem by simply releasing excess prisoners. Even if a prisoner was only a collaborator, he was almost sure to join the VC after a little time in a local jail.

Against this setting of misplaced priorities the VCI continued to grow. Because MACV regarded the infrastructure as a civilian problem, the court and detention system was unprepared to handle the influx of prisoners once anti-infrastructure operations became a priority in late 1967.

Interrogation: American Involvement

As had been the case with early anti-infrastructure operations in general, responsibility for interrogation and detention of VCI fell on the CIA. The most important consideration was to separate VCI suspects from common criminals and Viet Cong civil detainees, who already filled the national and provincial prisons. The CIA also hoped that by designing and maintaining separate facilities for VCI, they could ensure rapid exploitation of intelligence extracted during interrogation. Separate facilities also would make screening of suspects easier and provide rapid release for the innocent. Responsibility for the operation of these new facilities would fall on the province chief.⁸

It had been recommended that interrogation facilities be built down to the district level to get the most out of intelligence gathered through interrogations. This was impossible because

the CIA lacked the manpower and resources to extend its presence down to the district level. Instead, it settled for facilities in all forty-four of South Vietnam's provinces. These were the Province Interrogation Centers (PIC) and by 1968 most had been completed. They were designed to employ the highest standards of interrogation techniques on captured VCI before they went to trial. Unfortunately, by not having a district equivalent of the PIC, intelligence gathered from interrogations was sometimes old by the time it could be acted upon.

Each PIC had at least one American adviser, usually a CIA officer, who taught the South Vietnamese professional interrogation techniques. This was not to include torture, although many CIA advisers reported encountering the use of torture by Vietnamese interrogators. Torture was regarded by both the GVN and the communists as a time-honored and valid method of gathering information and it was often a difficult habit to break. It was the job of the American adviser to convince his counterpart and other PIC officials that torture produced unreliable intelligence. William Colby, who in 1968 was Komer's deputy for CORDS, noted that intelligence extracted under torture was often worse than having no intelligence at all. If accepted as fact, erroneous information painted a skewed picture of the VCI situation and could only play into the communists' hands.'

Though Americans often were reluctant to admit it, torture was just a way of war. Captured enemies were routinely mistreated, intelligence value be damned, and there was nothing the Americans could do about it. Agency personnel at the PICs reported that when they were around to watch, the Vietnamese followed American interrogation guidelines. When the Vietnamese were alone, anything could happen.

One CIA regional officer in charge in III Corps took weekly trips to inspect the PICs in the eleven provinces under his direction, and to keep in personal touch with the Vietnamese and their American advisers. In one year of duty, he saw only one piece of evidence to indicate that the Vietnamese were torturing their prisoners. In one interrogation room he came upon an electrical telephone crankset and some wires that could be

hooked up to an unfortunate victim. The incident was reported and the Vietnamese dismantled the device. 10

Did they put it up again after the American left? Probably. The incident proved little: either the Vietnamese did not practice torture regularly in III Corps, or they were clever enough to do it away from American eyes. But American advisers could do only so much to stop the problem. After all, as many Americans opposed to U.S. involvement in Vietnam were fond of saying, it was their war.

Although the Americans objected to the use of torture for practical and humanitarian reasons, MACV did not specifically address the problem in a written memorandum forbidding advisers from participating in torture, nor did MACV require them to report incidents whenever they occurred. Only after protests from antiwar groups and the press did MACV act.

On 18 May 1970 a directive was issued that specifically set guidelines for American Phoenix advisers and their conduct during interrogation of VCI suspects. They were not to participate and they were instructed to make their objections known to the Vietnamese interrogators. Finally, they were required to report their observations to "the next higher U.S. authority for decision as to action to be taken with the GVN." This is not to say that CORDS or MACV condoned torture before the directive was issued; they did not. The directive was only a written recognition of a policy that had long been in place.

While the directive was partly in response to criticism Phoenix was receiving, it also directly stemmed from an embarrassing incident that helped feed anti-Phoenix fires within the United States. On 14 February 1969, ACLU attorney William H. Zinman filed a proffer on behalf of a U.S. Army intelligence officer, Lieutenant Francis T. Reitemeyer.

The proffer stated that Lieutenant Reitemeyer had been assigned as an adviser to the Phoenix program, and that he was to command a band of PRUs whose job was to capture or kill as many Viet Cong sympathizers within a given area as possible. There was nothing horrible in that statement, but Reitemeyer went on to claim that he would be required to maintain a "kill quota of fifty bodies a month."

Critics of the Phoenix program seemed to be vindicated in their belief that Phoenix was a program of assassination and torture. The only problem was that Lieutenant Reitemeyer had never been to Vietnam; he had no personal experience on which to base his charge. Reitemeyer was only passing along war stories he said were told by instructors at the Army's intelligence school. '2

In fact, Lieutenant Reitemeyer had had a strange career before joining the Army. He had been born in Clark, New Jersey and held a degree in classical languages from Seton Hall University. In 1967, when he joined the Army, Reitemeyer was studying for the priesthood at Immaculate Conception Seminary. After receiving a commission he was assigned to the Army Intelligence School at Ft. Holabird, Maryland, where he completed his training as a Phoenix adviser on 6 December 1968.

Reitemeyer decided the Phoenix program was not for him and he asked for release from the Army as a conscientious objector. Another student at Ft. Holabird, Lieutenant Michael J. Cohn, also took the same legal action to get out of the Army. The two were never called upon to testify on the allegations in the proffer, but the judge in the case ruled on 14 July 1969 that the two men were entitled to release from the Army as conscientious objectors. The Army appealed the decision, but abruptly withdrew the appeal in October. The case was closed."

When the proffer became public in February 1969 hardly any notice was taken. Then in November 1969 the massacre of Vietnamese civilians at My Lai came to public attention. Journalists scurried to find other stories of American atrocities and someone remembered the Reitemeyer case. The Army was besieged by questions. A Pentagon spokesman told reporters that Reitemeyer and Cohn had been dismissed from the intelligence school for academic failure, hinting that perhaps they had made up the story to cover their failure. More damaging to the two officers' allegations was a sworn statement given to the Army by Reitemeyer on 6 December 1968—almost three months before the proffer had been filed. In the statement Reitemeyer denied that he had received "assassination training."

Why had the Army required such a statement? It had come

to the attention of instructors at Ft. Holabird that Reitemeyer had told a girlfriend he was being trained to murder. Reitemeyer willingly stated for the record that he had not told his girlfriend any such thing, and that he was not being trained in assassination. ¹⁴

Half-truths and innuendo plagued the Phoenix program from its inception, but the My Lai massacre and the Reitemeyer affair focused full attention on charges of assassination. And because the CIA had begun the program and continued to run many of the PICs, it caught most of the fire. But by 1969 Phoenix had expanded into a bird too big for the CIA's limited manpower to handle. The problem only got worse. By August 1971 the CIA would spare only twenty-six advisers to work in the PICs, providing interrogation advice.¹⁵

At the district level the CIA had no responsibility; MACV provided the personnel. These were the Phoenix advisers, the men who were supposed to keep the district level interrogation and operations facilities—the DIOCCs—functioning. At the DIOCCs, Phoenix advisers and their Phung Hoang counterparts conducted an initial screening and interrogation of VCI suspects, releasing those deemed innocent and passing important detainees on up to the PIC for further interrogation.

At the end of 1968 DIOCC performance was sketchy. Success or failure was generally dependent upon the quality of Vietnamese leadership and intelligence-gathering capabilities. And throughout South Vietnam, intelligence personnel assigned to track and neutralize the VCI were generally poor. The Police Special Branch and the Military Security Service (MSS) did not have the training and background for this type of work, despite the presence of their CIA advisers. At the district level many GVN personnel could barely read and write and had only a basic understanding of the mission they were involved with."

Only at the province level was there any talent in intelligence gathering, but even there success or failure depended largely upon competent leadership. In Vinh Binh Province, for example, local authorities prohibited a planned operation against known VCI because the communists were reported to have connections high in the GVN.'

Power of Arrest

Almost since its inception, the Phoenix program was plagued by accusations that it sidestepped due process and wrongfully arrested suspected VCI. In 1970 the GVN, at the prodding of CORDS, set forth a system for processing those accused and arrested as VCI. On the surface the system was fair, fast, and efficient. Sheer numbers, however, and the nature of the myriad resources that made up the Phoenix program, combined to prevent the system from remaining workable. Anyone suspected of an offense against the "National Security" could be taken into custody and held up to twenty-four hours for interrogation by an "apprehending agency" (PRU, ARVN, RF/PF, etc.) before being turned over to the National Police. All arrests had to be preceded by a warrant issued by a "competent judicial authority," which usually included the province chief, mayor, district chief, or police chief from the area in which the suspect resided. In case the Vietnamese became too exuberant and arrested a suspect without obtaining the proper papers, there was a provision by which a warrant could be issued after the fact by any proper official.¹⁸

Proper arresting officials were members of the uniformed National Police, the National Police Field Forces, Judicial Police, Military Police, Military Security Service, and any civilian witnessing a crime. Although regular army units were careful to take members of the National Police along as arresting officials on any operations where VCI might be encountered, the law provided the twenty-four-hour interrogation period before suspects must be turned over to the police.

Once a suspect was in police custody, the authorities had two days to complete the preliminary inquiry and identification process and turn over the evidence to a screening committee, which decided whether there was enough evidence to prosecute the suspect. If the evidence was sufficient the police had a maximum of three more days to transfer the suspect to the PIC, where yet another investigation was begun, this one for up to thirty days. The province chief and the public prosecutor could spend up to three days reviewing the suspect's dossier before it was required

to be forwarded to the Province Security Committee (PSC—this body was created within Vietnamese law in 1957), which then had to sentence or release the suspect, or, if it was decided that the suspect was part of the military rather than the political infrastructure, the case was referred to a military court. The Province Security Committee had seven days to act. Any deviation from this rigid timetable required authorization from the minister of interior."

This process also sought to address the problem of rapidly screening legitimate suspects from among innocent civilians caught up in troop sweep operations. Because the Phoenix program had intended to use intelligence gathering and specific targeting as its means of neutralizing VCI, it was unprepared to handle the scores of civilians rounded up in troop sweeps. Many of these innocent civilians were held for days, and in some cases for months, before the legal machinery got around to letting them go. Oversights such as these did nothing to win the confidence of the people for the GVN. In an attempt to rectify the problem, Phoenix legal guidelines called for screening committees to meet at either the district or province headquarters. They were made up of the province or district chief, his deputy, representatives from the National Police, PSB, MSS, personnel from the PIOCC or DIOCC, and various military intelligence personnel. In particular, the screening committees were to use assets in a position to know who was innocent and who was not. Members of local Chieu Hoi bureaus, village and hamlet officials in particular, often were familiar with the population and could clear some detainees on sight. But to prevent these officials from using the power of release from arrest for corrupt purposes, they were not allowed to order any releases. They could only request that the screening committee do so.²

Screening committees made clear-cut decisions that fell into one of three categories. One, they could be found innocent and released. If this was the case they would be returned to the place where they had been arrested. Two, suspects could be determined to be members of an "enemy military organization," either NVA regulars, or VC soldiers. If this was the case, they were classified as prisoners of war and turned over to military

custody. Three, the suspect could be classified as a national security offender. These were the VCI and they were not considered part of the enemy military. Anyone placed in this category was a civil detainee and was placed in police custody.

Any village cordon-and-search operation was required to bring along a village screening committee. This committee was to consist of the village chief and his deputy, chief of the Revolutionary Development Cadre, and a village National Police representative. The most important aspect of the screening committee was the inclusion of hamlet and village officials in the release process. This represented a departure from the standard overcentralization of authority within the GVN system and it came about largely because CORDS pressured Saigon into accepting the change. Also important was the inclusion of local village officials into the legal system, a major step in the attempt to make Phoenix a popular program within the general population.

Evidence and the Accused

Anyone accused of being a member of the VCI was subject to an emergency detention procedure called *an tri*. The *an tri* laws were special powers that allowed the state to sentence "command echelon VCI and Communist Party members" to a two-year minimum sentence, and "cadre-level VCI" a minimum of one- to two-year sentences. In contrast to normal democratic procedures of due process, including the right to face one's accuser, *an tri* made it possible to try and convict VCI suspects based on dossiers. The Provincial Security Committee had the authority to impose detention on anyone deemed to be a threat to national security.

In principal, this was not as capricious as it might seem. The committees were not bound by any rigid rules, but the burden of proof did rest upon the prosecution, not the accused. The prosecution had to prove that the defendant was in fact a member of the VCI by presenting evidence in the form of captured documents, eyewitnesses (at least three witnesses were required),

intelligence reports, and confessions. No suspect could be convicted solely on a confession or on the results of an interrogation.²¹

Part of the problem behind sentencing lay in the definition of VCI categories. The basic categories A, B, and C had been defined in 1968, but Saigon felt that a more precise system of definition would insure more effective prosecution and sentencing. On 21 March 1969 the Ministry of Interior issued a circular on classification and rehabilitation of VCI offenders.²²

The circular emphasized capture of VCI members and proposed that a lenient rehabilitation program was the best policy. From a national perspective the new guidelines represented a uniform procedure for moving the VCI through the legal system. In practice they were not always workable, nor did they address the problems that would plague the Phoenix program throughout its existence: failure to sentence VCI properly, overcrowding of detention centers, and lengthy detention time before trial.

The reality of the situation on the ground tended to negate any gains made in neutralizing the VCI. Although the legal minds behind the Phoenix program had tried to think out every conceivable way to keep the sentencing process fair and fast, the situation immediately bogged down. After becoming DEPCORDS in November 1968, William Colby quickly brought up the lack of speed in sentencing and addressed the crux of the problem.

One reason that the local National Police and Special Police have a difficult task in constructing good dossiers is because it is unclear what amount of evidence is sufficient to guarantee an appropriate sentence from the Security Committees.²³

This problem was never solved. The administrative capacity of the GVN to handle the influx of arrested VCI could not keep up with the flow of prisoners. Roughly 50 percent of the prisoners in jail at any given time were there awaiting sentencing rather than serving sentences. This was not fair to those held on little or no evidence, but the GVN often responded to the prob-

lem by simply releasing prisoners when the administrative load became too heavy.

Another method of coping with the overload was to declare a general amnesty, generally applied to low-level VCI. On 1 November 1968, National Day in South Vietnam, the GVN released 782 convicted VCI as a propaganda ploy. In addition, another 5,043 prisoners were released during numerous other amnesties during 1968 alone."

Problems within the Legal System

Like so much else within the Phoenix program, the well-thought-out arrest and detention plans that seemed to address every possible problem gave way to the realities of everyday operations in South Vietnam. Foremost was the tendency of province officials to falsify reports or outright ignore instructions from Saigon. In August 1969 Deputy Undersecretary of the Army James V. Siena took a trip to Vietnam and recorded his observations of the Phoenix program in a memorandum to his boss, Secretary of Defense Melvin Laird. Siena gave the example of one highly regarded province chief who refused to back the Phoenix program and made no secret of his reasons for doing so. In his view the program "exact[s] too high a price in social stability for the returns it yields." He pointed out that most of the VCI neutralized by Phoenix were not ideologically committed to communism and they were not regarded as "bad men" by their fellow citizens. Delving into the sociological roots of the war in Vietnam, the province chief noted that becoming "a VC or an ARVN soldier depends on who was in control when you became old enough to bear arms."²⁵

Another problem that stood in the way of American plans to craft an efficient legal machine lay in the unpredictability of the future. For Americans the future was certain—one day they would all go home. For the South Vietnamese it was not so simple. The ongoing Paris Peace Talks hinted of a political settlement some time in the future. Today's VCI might become tomorrow's political leaders and there was a reluctance on the part of many provincial GVN officials to "make life miserable now

for someone who might be a legitimate political power in the future."26

Corruption was a serious problem within the legal framework of the Phoenix program. A district official might use his power to extort money or favors from wealthy, but innocent, members of the community by threatening them with prosecution as VCI if they did not cooperate. In other cases the Viet Cong would sometimes buy the dossier on an important VCI so that he could not be prosecuted, or pay outright for the release of a key VCI being held in a local detention facility.

Most disturbing from the point of view of Phoenix advisers was the tendency of detention officials to release VCI or to give them lenient sentences. Most critics at the time completely ignored this disturbing aspect of Phoenix in favor of overblowing the charges of assassination. It made better copy. But in reality the inefficiency and outright incompetence of the detention system was the real failure within the Phoenix program. The VCI classification and sentencing guidelines set forth by the **MOI** were routinely ignored in the field and reports by Phoenix observers noted a uniform "pattern of lenient sentencing and early release."27

According to official observers, the processing and detention system was like a revolving door. Although many arrests of VCI were made daily, few of them remained in jail for long. An estimated sixty thousand to one-hundred thousand persons were arrested yearly (on all charges, not simply those accused of being VCI) between 1968 and 1972 but the total prison population increased by only several thousand a year. The problem lay in the lack of detention facilities, combined with local GVN attitudes toward the VCI. To be on the safe side, VCI were being released rather than imprisoned.

The Ministry of Interior often overruled the decisions of Province Security Committee, ignoring its own classification sentencing guidelines, which called for a minimum two-year sentence for class A VCI offenders. An estimated 75 to 90 percent of VCI arrested in 1968 and through April 1969 were released between six and twelve months after capture. A majority of those were actually set free soon after capture.28

These are not the actions of a bloodthirsty government bent

on murdering all suspected VCI. In fact, given the figures of VCI arrested and then released, it becomes impossible to make a case that Phoenix was simply an assassination program.

VCI in Prison: Facts and Figures

The statistics on VCI held in jails throughout South Vietnam clearly illustrate the situation faced by the Phoenix program. Between January and November 1968, 75 percent of the prisoners held in civilian prisons either escaped or were released. In January 1968 the GVN prison system held 34,000 prisoners. By October, the number had grown to only 37,515. This net increase of 3,515 prisoners was offset by 2,665 prisoners set free during Viet Cong attacks on the prisons, 5,825 prisoners released in a series of general amnesties, and 8,389 prisoners released when their sentences were up. The total number of prisoners released—16,879—and the net increase in the prison population 3,515—added up to 20,394, more than the number of VCI arrested from January to November 1968. Therefore, while Phoenix neutralized some 15,000 VCI during 1968, a trend toward releasing a majority of them made their efforts practically useless.

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The situation did not get any better as time went on. Although in late 1969 the Phoenix program began requiring that a suspected VCI be sentenced before being counted as neutralized, the new criteria only succeeded in building up the backlog of prisoners awaiting a decision on their fates from the Province Security Committees. While people could no longer be arbitrarily labeled as VCI to satisfy the quota, the new rule did nothing to help the thousands of innocent victims sitting in jail awaiting their fate.

II Corps had the worst record for PSC performance. At the end of May 1970, 1,009 VCI suspects were awaiting action on their cases. None could be counted as neutralized until a decision was made by the PSCs, so the reputation of the Phoenix program in II Corps suffered in the monthly province reports, which generally failed to point out that the reason for the low neutralization figure was the PSC's lack of action and not the Phoenix pro-

gram's ability to get out and round up suspects. Binh Dinh Province turned in the worst performance, with 779 suspects waiting in jail cells for a decision.")

Even as late as 1972 the PSCs had not worked out a system that quickly released those detainees deemed innocent. In III Corps the Vietnamese public prosecutor pointed out to American CORDS officials that conditions varied from province to province. In Long An the average pretrial detention period was ten days—not an unreasonable wait. In Hau Nghia the waiting period was twenty days. The difference resulted directly from a lack of strong leadership. In Long An the province chief took an active interest in the PSC and attended all meetings. The province chief of Hau Nghia was more interested in tactical operations against enemy main-force units, so he paid little attention to the Phoenix program and the legal system.³¹

In many cases the PSCs were overwhelmed by the backlog of cases waiting to be heard. But the real problem lay in their unwillingness to follow MOI guidelines and meet at least once a week. In cases where the province chief felt the case load was especially heavy he called for the PSC to meet more than once a week. In general, such instructions were ignored. Again, II Corps provided the worst example. During the first half of 1970 the twelve PSCs met in the entire Corps seventy-six times. If they had followed the rule of one meeting a week they would have met at least 240 times during the five-month period.³²

The impact on detainees awaiting their fate in the PIC was obvious: those who were finally found innocent went away bitter at the GVN for making them endure such hardship. The Viet Cong couldn't have had a better recruiting service. Those sentenced as members of the VCI went on to serve their sentences in the province prison. But while the PSC was often callous in its lack of concern for those awaiting a preliminary hearing, they were just as often lax in sentencing real offenders to long jail terms: Although the maximum sentence was two years for category A offenders (with extra time added at the end of the sentence if the convicted VCI was considered especially dangerous), few received it. II Corps again provided a good example of the problem. The average sentence for all VCI imprisoned in II Corps during the first five months of 1970 was 9.17 months. The

province with the longest average sentence was Darlac with 18 months. The shortest was Binh Thuan, with a mere 5.25 months.³³

Because the average sentence was less than one year, a majority of those VCI imprisoned were not counted as neutralized by the Phoenix program. So while the number-watchers in Saigon criticized Phoenix for failing to meet its quota, other critics lambasted the program for failing to cope with the detention problem. Phoenix got it coming and going.

Crowd Control: National Registration

In Vietnam, the communists knew many things that were never understood by the GVN or the Americans. Perhaps the foremost lesson came from deep within Leninist teachings on revolution: control of the population is paramount to the consolidation of power. Since WWII Hanoi had concentrated on controlling the population of North Vietnam, while in the South, President Diem paid attention only to his power base in the urban areas. Not until 1966 did the GVN seek to undertake a program of population registration, and then only at the prodding of the United States. The plan was called the National Identity Registration Program (NIRP).

The original planning would be based on population figures for South Vietnam, but the GVN soon discovered there were no population figures; registration would have to proceed based on an estimated census. The last complete census had been taken in 1935, so all figures were suspect, but American advisers (under the auspices of U.S.AID) set out to guess at the percentage of the population that should be registered.

The registrable population was arrived at by assuming that 65 percent of the total population was fifteen years of age or older and 35 percent was under fifteen years of age. These figures were based on computations from the 1935 census, data from the National Institute of Statistics, and U.S.AID and public health figures. In 1967 the registrable population was estimated at 9.35 million, often rounded off in tables and charts to 9.5 million.³⁴

An ID card system had been instituted in the early 1960s and seven hundred thousand cards had been issued. But because the population had not been fingerprinted and a record of the ID cards entered into a central system, the program had become virtually worthless. On 1 October 1968 NIRP began traveling from village to village, registering and fingerprinting all members of the population over the age of fifteen. The program went slowly and the National Police, who were assigned to implement NIRP in the countryside, did not take the job seriously. Very few ID cards were issued during 1968. Record-keeping was shoddy and the program faltered. To make matters worse, in October 1969, at the urging of the United States, Saigon revised the population estimate upward to 11.3 million, based on new pacification figures. The number still reflected the assumption that 65 percent of the population was over the age of fifteen.³⁵

But the NIRP still lacked the essential GVN motivating factor—deadlines and quotas. Beginning in 1969 and into 1970 the prime minister requested that the NIRP be accelerated and completed in July 1971. The "request" got the National Police into action, but, like many other American-brokered GVN programs, the goal was unrealistic. It was simply impossible to issue more than 11 million ID cards in one year, even if the National Police had been geared to perform the task.

By December 1970 many provinces were far behind schedule. In Quang Ngai, police officials reported 63,631 unprocessed persons and 13,988 unissued ID cards. Since figures were only based on a population estimate, the GVN measured progress by averaging the number of registrations made per day by the various NIRP teams in each province. Kien Giang Province turned in the best average, with 466 registrations per day. The next best province total came from An Giang Province, with 285.5 ID cards issued a day. But those were the best examples: "Long Khanh Province failed to report the required information and twenty other provinces reported incorrectly."³⁶

As the July deadline approached and it became clear the NIRP was not going to issue all the required ID cards, the National Police Command was allowed to revise the total downward. This was done in three steps—to 10.9 million in April; to 9.2 million in May; and finally to 9.1 million in June. The regi-

strable population was still believed to be around 11.5 million, but only a little more than 9 million would have cards issued to them by July 1971.³⁷

The deadline came and went. As of September 1971 NIRP teams were still roaming South Vietnam, but they had almost reached the total number of ID cards that were to have been issued by July. On 31 September the NIRP reported it had registered 9.3 million persons nationwide. Of those registered, 8.3 million had received ID cards.³⁸

As of January 1972 the National Police had entered the 9 million registered names into a central computer in Saigon called Big Mack. Information on arrested suspects could be cross-checked against the records on the computer, making the building of dossiers much simpler. At the end of January 1972 300,000 "offenders" had been identified, including 225,333 ARVN deserters, 2,053 "subversive criminals" (mostly VCI), 36,725 draft evaders, 19,954 "miscellaneous criminals," and 38,194 "registration irregularities." The computer system worked best for identifying deserters; relatively few VCI were identified."

As far as Saigon was concerned, this was good progress, and NIRP quotas were quietly done away with as the police slipped back into their former registration pace. Even if the goal had been reached, MACV estimated that about three-hundred thousand Vietnamese would turn fifteen each year.⁴⁰ Given the previous pace of NIRP, it was unlikely the National Police were capable of handling the yearly quota. But the question was moot. By the spring of 1972 about 1 million Vietnamese had still not been issued ID cards, and with the communist Easter Offensive in April and May 1972, the NIRP faded away.

Like much else within the war effort, opportunities for corruption and personal politics arose in the NIRP. Because the general population was required to possess identification, some police saw an opportunity to make money on the side. There were cases of ID cards withheld when the unfortunate individual refused to pay a fee to the policeman on duty. In one case, two policemen in Bac Lieu Province were accused of fraud when it was reported that they had been charging three hundred to four

hundred piasters (\$3 U.S.) for ID cards. Some villagers reported that they had spent more than ten thousand piasters (\$45 U.S.) and had spent days in line at the local police station just to get a receipt so they would not be charged again. They said they never did get the ID cards.⁴¹

Local police administration officials often were selective in the attention they devoted to the NIRP. In Kien Phong Province the police chief did nothing to smooth the registration procedure as it became more and more tangled in inefficiency. The American PSA reported that "[the] official seems helpless to correct the unbelievable confusion in the NIRP which fosters an ever-growing backlog compounded of inefficiency, inadequate film-processing, noxious work conditions and woefully inept direction."⁴²

Why issue ID cards to all South Vietnamese citizens over the age of fifteen? Simply because it was thought that a system of national registration would make it impossible for VCI living underground to mingle with the population. In Malaya the British had succeeded in virtually starving the insurgents with a system of ID and ration cards. In Vietnam it would not be so simple. The Viet Cong quickly realized they could actually make their lives easier by flouting the NIRP system. In many cases local VCI were able to get ID cards, either through bribery, stealth, or by infiltrating the Chieu Hoi program. With an ID card a member of the VCI became a "legal," a communist agent making his way through society with the appropriate paperwork.⁴³

The NIRP was supposed to make VCI targeting easier for the Phoenix program. It allowed police to build dossiers and check suspects' legal status against registration statistics. In reality the NIRP made it easier for the police to rely on cordon-and-search operations. Whenever an Army unit went into a village to search for Viet Cong and weapons caches, they took along police, who would set up a check station and run every villager through. Any person not holding an ID card was immediately suspected of being VC. The police also matched ID cards of known VCI "legals" against lists drawn up in the DIOCC. This method produced some VCI, but it did the Viet Cong little irreparable damage.

Phoenix and the Geneva Convention

The American public often was led to believe that VCI caught and convicted under the Phoenix program represented a new high in undemocratic methods. In reality, such special powers had been used for centuries by beleaguered nations to cope with insurgencies and civil wars. The United States suspended the writ of habeas corpus during the Civil War in an effort to control spies and Confederate sympathizers in the North. More recently, the United States interned Americans of Japanese descent under the pretext of preventing espionage and sabotage. Without addressing the morality of such measures, it is easy to see how desperate circumstances can cause a nation to resort to special laws.

Following the American and ARVN incursion into Cambodia in April 1970, public opinion in the United States swung dramatically against the war and called for U.S. troops to leave Vietnam at once. The Phoenix program had been under fire since its inception, but new attention was drawn to it in the wake of Cambodian incursion. In keeping with the general mood within the United States, Congress held hearings on the war that included an examination of the legality of the Phoenix program.

On 19 July 1971, during hearings by the House Committee on Government Operations on U.S. Assistance Programs in Vietnam, Congressman Paul N. McCloskey questioned William Colby on whether U.S. and GVN actions within the Phoenix program were in keeping with the Hague Regulations of 1907 and Geneva Conventions of 1949. The conventions of 1949 updated the 1907 Regulations to reflect world experience in World Wars I and II. In particular, the 1949 conventions addressed the issues of insurgents and irregular forces, which had not been a serious part of WWI, but had become prevalent during WWII.

But even these additions failed to address the realities of the Vietnam War. For example, the conventions do not cover the role of a subversive political infrastructure within the types of people's war that rose to prominence after 1945. In Colby's opinion the Phoenix program fell within the guidelines of the conventions where they applied, although there were some "individual failures in its implementation." It was those failures

Congress harped on, but the failures were minor and did not violate the conventions as a whole.

Article 4 of the Third Geneva Convention of 1949 sets standards for what constitutes a prisoner of war and how he is to be treated. Any "member of the armed forces of a party to the conflict as well as militias or volunteer corps forming part of such armed forces" were to be treated as POWs. The most important characteristics that placed a captive in the POW category were a "fixed distinctive insignia recognizable at a distance" and openly carrying arms. The VCI did not fall into these categories, as they were dressed in civilian clothes and they carried concealed weapons when they carried them at all.

Article 3 called for humane treatment of "persons taking no active part in the hostilities." Clearly, these two articles did not cover a member of a subversive political infrastructure that directed and supported the war, but took no "active" part in it. On the one hand the VCI did not fall within the definition of a POW; on the other hand they were much more than persons taking no active part in the hostilities. The United States and the GVN were under no legal obligation to treat the VCI as anything other than common criminals, but they accepted a general obligation of humanitarianism under Article 13.45

Articles 42 and 43 of the convention allow for internment if certain conditions are met. The an tri procedure sought to meet those conditions. According to the conventions, persons sentenced under Articles 42 and 43 were to have their sentences reviewed every six months. The an tri laws called for review after a maximum of two years, so if there was a clear violation of the Geneva Conventions it was here. But as we have seen, only some 30 percent of VCI convicted received a two-year an tri sentence, so any violation fell far short of the criticism leveled at the Phoenix program and the detention system.

Tangle of Legalities

The Phoenix program sought to make itself a legitimate part of the war effort by building around it a system of laws, sentencing procedures, prisons, and secondary programs designed to in-

volve the population in hunting down the VCI. It did not—as the critics charged—build these programs as a false front to cover up a pointed and deliberate program of assassination and torture. Unfortunately, the system turned into a net that tangled both the GVN and the U.S. pacification advisory effort in complex legal directives and confusing subprograms.

The NIRP was one example. It was designed to aid the Phoenix program and at the same time protect the rights of the population. Of course, many examples of corruption and infringement on personal rights muddied the waters, but, at the behest of the Americans, the GVN was trying to institute a system that reached into the countryside in an attempt to tear the population away from the Viet Cong. It was largely unsuccessful because the programs were begun too late. The Americans were leaving Vietnam and the GVN was neither willing nor able to take up the slack.