

#204

March  
April 72

Meyer  
memo:  
An Tri  
Observations

9/26/72

Important. Reconn  
Meyer Memo

1. Make hearings public
2. Make rule against detention after serving Ct. sentence retroactive.
3. Let Directorate of Political Security also review PSC releases
4. Province-by-Province -  
claim -
- 5 - Don't sentence - Detain

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HEADQUARTERS  
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MACCORDS-PP&P

MEMORANDUM FOR RECORD

SUBJECT: An Tri Observation and Recommendations

1. OBSERVATIONS:

- a. Since the passage of Art. 19 of Decree Law 004 of 1966 the Prime Minister has been vested with the power to preventively detain persons who are considered a danger to national security. Over the years, a set of procedures, ever more detailed and hedged with restrictions, has accreted on the basis of Article 19 to form what is called the "An Tri System." In truth, it is not a system at all, but a series of regulations and procedures generated in response to widely varied pressures and interests, both American and Vietnamese, without any coherent focus or animating principle beyond the need to immediately satisfy whatever element of the Anglo-Vietnamese community was most agitated at the time.
- b. Now that the GVN and the American Mission are beginning to think and plan in terms of four year periods and longer, an opportunity is presented to examine An Tri from the perspective of the long term. The intent of this paper is to analyze the system in terms of the actual situation on the ground in the provinces of Vietnam without the distractions and irrelevancies of short run considerations such as the presence or lack of Congressional interest, occasional spectacular media reports of fiendish oriental tortures, etc.
- c. What are the long-term criteria any system of preventive detention in Vietnam must satisfy in order to be called successful? I suggest there are five. They are: effectiveness against the enemy political and paramilitary organization, acceptance by the various security agencies that are charged with the anti-VCI mission, cultural and political acceptance by the population which constitutes the system's environment,

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accountability and control by central government agencies, and flexibility to allow for local variations in the security and political situation. Obviously, an optimum system will not be wholly satisfactory to any one of the interest groups involved. The objective of the recommended changes in the present system to be presented at the end of this paper will be to adjust An Tri to the situation that will obtain over the next 5-10 years so that, though it fails to satisfy any one group entirely, the net effectiveness of the system will be maximized. Hopefully, An Tri will gain a focus that will, in part, insulate it from the shifting winds of publicity and short run political brouhaha.

- d. The analysis and recommendations of this paper are necessarily based on an assumption that, in general, the political and military situation in South Vietnam will continue the trend they have followed over the past three or four years; that the GVN will continue to make slow and uneven progress toward economic, political and administrative viability, and that the RVNAF, supported by US airpower and supplies, will continue to hold significant enemy units away from the population so that economic, political and administrative development may continue in the countryside. Should this assumed environment change to any significant degree, wholly different and extremely powerful forces will come in to play whose effect on An Tri as well as on other institutions cannot be predicted.
- e. The first criterion of any preventive detention system is that it detain those people whose loss will be felt by the subversive organization they serve. At the same time, the social and political strains caused by adoption of such an extraordinary tactic as incarceration without trial must not become so severe that they create a net gain for the other side in terms of political strength. In short, the system must have maximum net effectiveness against the target organization. There is no doubt that the detention under AnTri procedures of several thousand executive level cadre for an indefinite period through the device of repeated extensions has led to a weakening in the strength the VCI would have commanded. On the other hand, the net result of detaining large numbers of suspected VCI and VC supporters for short (one year and less) periods has been, in my opinion, negative. The opinions and attitudes of people, including families, fellow villagers, etc.

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who gain a personal stake in the outcome of an An Tri proceeding generate an emotional and political climate that works counter to the GVN's efforts to win the people's loyalty, or at least neutrality, in the struggle. The fewer such people there are, and the more damage done to the VCI for each such person created, the better off the GVN will be.

- f. The second criterion to be met by a preventive detention system is acceptability to the security agencies charged with the anti-subversive mission. It must be recognized that, in Vietnam least, preventive detention is a substitute for killing people. If a member of a security agency is in a position to identify, track down, and capture a member of the VCI, he is also in a position to chalk up another KIA. He, and more importantly, his superior, must be willing to take the extra risks involved in capturing a suspect alive; no one is any position to deny their claim that the man was killed "resisting arrest". There are advantages, of course, in capturing the suspect alive in terms of intelligence potential, propaganda, etc. If these advantages are outweighed by the likelihood that the suspect, on whom sufficient information exists to satisfy the security agency that he is indeed a VCI, may be released, either through corruption of the fact-finding process, legal technicalities better left to the peace-time court-room, or sheer incompetence in the compilation and presentation of evidence, the agency will opt for the safer and surer KIA. This is not conjecture on my part. Enough reports from several provinces pointing up this problem have been received over the last several months to make me quite sure that this sort of thing has happened, and is likely to happen whenever a security agency "gives up" on An Tri. Therefore, it is essential that the security agencies be sold on whatever system is employed to preventively detain VCI. Without their cooperation, no system, no matter how attractive it may appear on paper, will really be implemented on the ground where it counts.
  
- g. We come now to the most difficult criterion to analyse objectively. The perceptions "the people" have of An Tri and of the Phung Hoang program are almost impossible to accurately describe. In general, it appears that the great majority of the Vietnamese people are completely ignorant of the purposes, procedures, and results of either Phung Hoang or An Tri.

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Only when someone they know personally is caught up in the system do they take an interest and form an opinion. So then, the requirement that the preventive detention system accord itself to the cultural and political position of "the people" in whatever area it operates seems superfluous. But this is not the case, and especially so in the future. The power of media to amplify a single injustice to the dimensions of a national tragedy will grow in South Vietnam very rapidly over the several years. As political organizations continue to increase in strength and sophistication, the detention issue, with heavy emotional overtones generated by the arbitrary nature of the procedures combined with the secrecy surrounding the sources and nature of the information used against the suspect, will almost certainly be used to attack the GVN as repressive, anti-libertarian and brutal. It is essential that the GVN recognize the fact that An Tri is a potential "hot" issue, and take steps to defuse the timebomb that An Tri, represents while at the same time maintaining its effectiveness. The GVN must stop being in a position only to react to the sporadic eruptions of An Tri sentiment that are sure to occur. They must take the offensive in an attempt to anticipate attacks and remove the source of irritation before the attack materializes.

- h. The central-level agencies that are responsible for the proper execution of detention policies must be in a position to closely monitor and strongly control the actions of province-level personnel who actually operate the system. The independent status of Province Chiefs who, in effect, dictate whether or not guidelines are followed, makes it impossible for the Directorate of Political Security to manage or control the system. The only independent power held by the DPS is the ability to modify the recommendation of the Province Security Committee that a certain suspect be detained. The Directorate does not have the power to review decisions by the PSC to release suspects. Such a decision, regardless of the amount of evidence against the suspect, is final. Release accounts for over 50% of PSC actions. Obviously, a situation in which the managing agency has control only over less than one half of the actions it is responsible for does not allow for effective control and accountability. If changes are to be made in An Tri on a scale similar to those made under Circular 1042 last year, the hand of the central government must be strengthened in order to ensure that changes that may well be unpopular among Province Chiefs and other province-level officials are carried out despite the feelings of these elements. The guidelines of Circulars 757 and 2212 are still not being adhered to by PSCs in some provinces, and the changes instituted

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by Circular 1042 are still meeting resistance in limited areas. Without intense and constant pressure from Saigon, An Tri can never become a unified, national system containing standards that are adhered to universally.

- i. The fifth criterion An Tri must attempt to satisfy is flexibility. At present, the system makes no attempt to conform to the undeniable fact that the security situation in various areas of Vietnam ranges from complete peace to almost total war. It is apparent that a program such as An Tri must take into account these local variations in order to operate at an optimum level in each area. The need to resort to extreme measures varies from place to place; the imposition of those measures should vary in the same way. Currently, the necessary flexibility is created by the independent status of Province Chiefs, who informally adapt An Tri to conform to their needs. If the government takes real control over the system, it will be necessary to build in the flexibility now allowed by the system's lack of management.

2. Recommendations:

- a. How can the An Tri "system" as presently operating best be altered to fulfill the five long-term criteria discussed in the foregoing section? In its present chaotic, unmanaged state, the system is open to abuse by both under and over enthusiastic local officials. This, in turn, makes the GVN vulnerable to attack by opposition groups and the media, and increases the chance that An Tri will eventually become the sort of over-riding issue that preventive detention in Northern Ireland has become in the last few months. The GVN must avoid this at all costs if it is to maintain the capability to attack the VCI effectively.
- b. In order to increase the effectiveness of An Tri against the VCI, the GVN should consider implementing the following changes:
  - 1) The present two-year maximum term of detention should be eliminated. There should be a minimum term established of six months. Every six months, the Correction Center Commandant, acting as chairman of a detentions review committee, would make a determination as to whether or not the detainee should be released, sent to the Chieu Hoi

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Program, or kept under detention. The Directorate of Political Security should be asked to concur in the Commandant's decision. An Tri should be operated as a detention program, not as a sentencing program. The GVN should detain VCI until either they or the situation change sufficiently to safely allow their release. The struggle for power in South Vietnam will continue for many more years; the present policy of imposing short terms of detention, then renewing them over and over again reflects a basic inconsonance of the An Tri procedures with that fact. Only by converting An Tri into a system of indeterminate terms of detention can this inconsistency be eliminated, and An Tri function against the VCI at maximum effectiveness.

- 2) The proposal contained in the preceding paragraph would, if accepted, create problems unless the system of determining who is to be released and who is to be kept under detention is strictly controlled and subject to detailed inspection. The proposal should not be implemented unless all An Tri detainees are sent to national corrections centers operated directly by the Directorate of Corrections of the MOI. The practice of keeping An Tri detainees at Provincial Correction Centers, under the command of the Province Chief, should be eliminated. Although current procedures call for the transfer of all detainees serving a term of one year or more to a national center, this requirement has not been strictly enforced. If a system of indeterminate detention were instituted, the province Chiefs would be given virtually unregulated power to continue confinement indefinitely. This would inevitably give rise to abuses that would be very difficult to control from the central level. On the other hand, if all detainees were kept at national corrections centers, a close watch on the situation could be kept by the Directorates of Corrections and Political Security. The capacity of the national centers is 20,249. Allowing for the current level of convicted inmates of about 10,000 spaces, there remain about 10,000 spaces for An Tri detainees. The present

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An Tri population is 10,040 (January 1972). Thus, the transfer of all An Tri detainees to the national centers could be accomplished without any expansion of capacity being required. Also, as the Phung Hoang Program shifts its emphasis toward targeting small numbers of important VCI, the task of transferring all detainees to national corrections centers will become even easier.

- g. If the proposals contained in the two paragraphs above were to be implemented, the task of convincing the various anti-VCI agencies that An Tri constitutes an effective weapon against the VCI would be eased. The imminent assumption of responsibility for the anti-VCI mission by the National Police Command also simplifies the task of "selling" An Tri, as there is to be more unified and effective control over operations at the local level than heretofore. Yet the GVN can not afford to ignore at any point the feelings of the organizations and the men who actually do the hard and dangerous work of tracking down and capturing members of the VCI. Each change in procedures must be communicated to the local level and explained to the security agencies in terms of how it will affect their mission. The inclusion of An Tri items in a newsletter published by the National Police Command on Phung Hoang problems, similar to that published by the Phung Hoang Directorate of CORDS for its field advisors, would be a first step in establishing a communications link between Saigon and the field in this area. Also, an attempt should be made to issue supportive explanations of change in the system as it is made, aimed specifically at convincing the men in the field that the change is in the long-term interests of their mission. Most importantly, proposed changes in the system should be analysed in terms of their probable effect upon the anti-VCI mission, and proposals that make that mission more difficult should be made only when they are absolutely necessary.



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- d. In the near term (one to three years), the An Tri system will face its most severe challenges in convincing politically active groups and institutions that the benefits to the body politic derived from preventive detention of dangerous persons are not outweighed by the inherent anti-libertarian nature of the system. There are four things the GVN should do to reduce the vulnerability of An Tri to political attack:

(1) Narrowly limit the use of preventive detention so that it applies only to VCI. The use of An Tri detention against non-communist oppositionists serves only to inflame public opinion against the government generally, and against An Tri specifically. Employing preventive detention against such persons, though technically legal under current statutes, does nothing to weaken the VCI, and in fact, strengthens them by providing ready-made propaganda material. Past explosions of public sentiment against An Tri detention have almost always been based on cases where a non-communist was subjected to detention. The GVN may or may not have good reason to repress opposition elements such as the radical students, etc., but An Tri should not be employed for this purpose.

(2) Open Province Security Committee hearing to the public. One of the most damaging features of the An Tri procedures, in psychological terms, is the shroud of secrecy that surrounds the whole business. This proposal has been made before, and rejected due to fears that the meetings could not be secured and that confidential information might become public knowledge. Neither objection is convincing. If a Province Chief is unable to secure a meeting of the Province Security Committee in his own compound in the province capital, it says little for the capability of the GVN to secure anything anywhere. Certainly, the PSC is not going to release confidential information to the suspect, who must appear at the hearing according to Circular 1042. Why, then, is there any more danger of releasing confidential information if the general public is also allowed to attend? The benefits to the GVN of opening PSC hearings to the public would be great, even

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if hardly anyone attends, as is the case with most public hearings of any type. The covert nature of the procedures would be eliminated, the public would be able to see that hearings were fairly conducted, and that suspects did have an opportunity to be heard. Public awareness of the VCI threat would be increased, and a sharp contrast between the Viet Cong's system of "justice" for those who oppose it and the GVN's would be created.

(3) The provisions of Memo 2686 of November 8, 1971 should be extended retroactively to the some 900 detainees now incarcerated under An Tri procedures who have completed court-imposed sentences. Memo 2686 removed the authority to continue a prisoner's incarceration under An Tri procedures at the completion of his court-imposed sentence, but, so far, it has been applied prospectively only. At that time, there were about 900 detainees who had already been "converted" from prisoner to detainee status and thus have not benefited from the memo. Among these is a student leader, Nguyen Truong Con, who is the subject of considerable interest in the United States and elsewhere. If the GVN feels the release of such a large number of detainees at one time would strain its capacity, a second alternative would be to not renew the term of detention they are currently serving, thus releasing them over a period of months. In any case, the clear injustice represented by failing to extend the benefits of Memo 2686 to such a large number of detainees merely because they were unlucky enough to finish their sentence before November 8, 1971 should be remedied. If it is not, the GVN can expect unfavorable public reaction in the near future.

(4) The presently unrestricted power of Province Chiefs to issue arrest warrants in national security cases should be eliminated. Now that there are Courts of First Instance with a Public Prosecutor operating throughout Vietnam, it is possible for most arrest warrants to be either issued

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by or at least reviewed by the Public Prosecutor before the arrest is made. In every case, the correction center should give the Public Prosecutor of the Court having jurisdiction over the province a copy of the order of detention containing at least minimum justification for the arrest and detention of the individual. In this way, the Public Prosecutor could more effectively exercise his assigned duty to monitor detentions to ensure that the broad powers of arrest and detention made necessary by the war-time situation are not abused.

- e. The fourth standard that must be met by An Tri in the future is accountability and manageability by central-level agencies. There are two areas that deserve attention from the GVN:

(1) If the proposal made earlier that all An Tri detainees be held in National Corrections Centers were to be accepted, the task of accounting for each suspect and detainee would be greatly simplified, but the problem would still not be eliminated. There would remain a need for Saigon to be able to identify by name and location all persons being held prior to hearing in the provinces, as well as to be able to track detainees through and beyond the detention period. The computer assisted national confinement monitoring system, now being developed by the National Identifications and Records Center of the National Police Command will, when effectively implemented, enable the Directorates of Political Security and Corrections to monitor the entire An Tri system on a real-time basis. It will give the Directorates the information they must have to enforce the procedures they have established. In order to implement the monitoring system, however, strong and continuing command interest by the highest levels of the GVN must be applied. The monitoring system is totally dependent upon accurate and timely reporting by the field. This will not occur unless the field is compelled by the GVN's most powerful elements to report.

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The field elements will not voluntarily comply with the reporting requirements that will be established because the system's purpose is to reduce the field's ability to ignore procedures they find uncongenial. It will be natural, then, for the field to ignore the reporting procedures, unless Saigon insists that they be followed. The pressure to report will have to come from the Prime Minister's Office and the Presidential Palace, as well as from the Ministries of Justice and Interior, and will have to be both strong and continuous.

(2) Under present procedures, the Directorate of Political Security has no power to review decisions by PSCs to release suspects. Only recommendations to detain are reviewable. This obviously leaves a large gap in the central-level's span of control over local action. The gap should be closed. The PSCs should be required to submit the dossiers of those they release as well as those they recommend for detention for review by the Directorate of Political Security. The Police Special Branch, which is responsible for compiling the prosecution dossier should be allowed to "appeal" those cases in which they believe a release was unjustified, especially in cases involving persons suspected of high level VCI activity. The Directorate of Political Security should be empowered to re-open a case and to require a hearing de-novo, before the Central Security Committee in Saigon. Only in this way can the central level exert effective control over the actions of the Province Security Committee, and ensure that the good work of the security agencies is not wasted because of corruption or incompetence at the PSC.

(f) The fifth criterion that An Tri must meet in order to be effective in the coming years is flexibility. If we assume that the central level will exert increasingly strict control over local implementation of An Tri procedures, the need for flexibility to adjust to local conditions will have to be met by the procedures themselves;

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not by allowing the Provinces to alter and ignore certain procedures as is now the case. As the security situation improves in the countryside, the need for strict wartime measures decreases. When the security situation in a particular province reaches the point where preventive detention powers are no longer absolutely necessary to protect the GVN from enemy subversion, they should be eliminated. This means, for example, that in An Giang Go Cong, which are generally agreed to be completely pacified provinces, there is no need for the GVN to use An Tri procedures against those few persons who may still constitute a danger to security. The PSCs in those two provinces should be eliminated, and all cases of national security violations arising there should be adjudicated by the MR IV Special Military Field Court. If current trends continue, several other provinces in the Delta and MR III could soon qualify for elimination of An Tri. Over the next decade, the GVN should eliminate, on a province by province basis, An Tri procedures throughout the nation. In this way, An Tri would be retained only in those provinces where conditions require the use of preventive detention. The political and social irritation that inevitably accompany the use of this extreme measure would be eliminated in those areas where it was no longer necessary. It is of the first importance that An Tri not become institutionalized within the governmental structure of Vietnam. It must be regraded as a temporary war-time measure that will be eliminated as soon as the situation permits. The incarceration of citizens without trial in peace time is characteristic of regimes that fear their own people. The aim of the GVN over the next decade must be to do all possible to make itself a government that is supported by the people because it is a good government not merely to become a strong government that is endured by the people because they have no other choice. Only in this way can the sacrifices that have been made and the hardships that have been endured by the Vietnamese people over the many years of struggle be redeemed.

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