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LOUISIANA STATE UNIVERSITY
AND AGRICULTURAL AND MECHANICAL COLLEGE

730-0371

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April 21, 1969

PROJECT FIELD PARTY'S STATEMENT OF PROJECT STATUS AND PLANS

Following a six-day survey tour in December 1968, LSU contracted with the US government in January 1968 to supply consultative services to the government of Vietnam in the reorganization of its judicial system and the revision of its Penal Code, Code of Penal Procedures, Civil Code, Code of Civil and Commercial Procedure, and its Commercial Code. The cost of the services to the United States government is approximately \$400,000. The work to be done is described in the attached "operational plan" which forms part of the University's contract (Exhibit A). This plan reflects the terms of a project agreement between the government of the United States and the government of Vietnam. Essentially, the contract obliges the university to supply an on-site team of two members of its faculty, who will direct a flow of consultations and a program of research, for which nineteen man-months overseas, twelve man-months in the United States, and 17 round trips between the 2 countries are provided in the project budget.

Simultaneously with its engagement of the university for this work, the University understands that the United States government made a grant to the Asia Foundation, reportedly for the purpose of assisting the legal community of Vietnam in improving legal education, assisting the bar association in development programs, and assisting in the establishment of a "legal research center" for long-range studies. The university's contract is not intended to include the areas of activity envisioned in the reported grant to Asia Foundation.

The university's field party, consisting of Professors Donald J. Tate and W. Lee Hargrave, arrived in Vietnam on January 13 and January 26, respectively. At the present time, the sum of approximately \$16,000 has been expended by the university, and the further sum of approximately \$6,000 has been committed for state-side research and overseas consultations.

The first six weeks of the field party's work were devoted largely to making the acquaintances of the Minister of Justice and his staff, the Justices of the Supreme Court, and other leading figures in the legal community, and to exploring with them the nature of the problems to which the university's efforts should be addressed. On February 7, 1969, the field party circulated a tentative proposal for allocating the contract resources to the various problems discussed (Exhibit B). On March 6, 1969, the field party addressed to the Supreme Court and the Ministry of Justice, and circulated among the other leaders of the legal community, a survey of the

problems uncovered during the orientation period (Exhibit C). On March 18, 1969 the field party circulated among the same persons a proposal for coordination of the reorganization work, based on certain American models (Exhibit D). The follow-up conference on these communications were informative but productive of no spectacular results. The field party is presently considering the possibility of retaining as a consultant a distinguished jurist of the Vietnam legal community, to help organized the movement for reform on the Vietnamese side. It is at this juncture that this report is written.

THE SPIRIT OF REFORM

The Project was conceived by the university as an opportunity to enrich on-going legal reform and reorganization in Vietnam through comparative law consultations earnestly desired by the Vietnamese. The preliminary December 1968 survey tended generally to confirm this view. At that time, the survey team, Professor Francis C. Sullivan (now serving as Campus Project Coordinator) and Professor Donald J. Tate stated:

"Given the contemplated adequate and sustained cooperation of the Supreme Court and the Ministry of Justice and appropriate personnel, financing and logistical support by the United States government, it appears as a result of the briefings, discussions and observations of the survey team that the proposed project is both necessary and desirable and has great potential for producing significant results."

This statement of feasibility is still accurate, if proper emphasis is placed on the essential condition of cooperation between the project and the interested agencies of the government of Vietnam.

The university did not, of course, contract to organize a program of legal reform in Vietnam. It contracted to supply consultative services to those engaged in legal reform - merely to satisfy, not to create and demand for its resources. It is for this reason that the Operational Plan repeatedly states:

Such advice and assistance will be in response to the expressed needs of and desires of the Supreme Court (or Minister of Justice) as they shall be expressed during the the term of this contract, and as may be approved by A.I.D., and as specific requirements become known.

It is in this view of its obligations that the university reports that, in spite of diligent effort over and above its contract responsibilities to develop channels of consultation through which its supply of expertise can be effectively supplied, it finds less organized reform activity in the Vietnam legal community to exploit its resources, and therefore less "expressed needs and desires" for its services, than the terms of its contract envisioned. A number of facts can be cited to explain this condition:

The project agreement was developed with a Minister of Justice who has since become a justice of the Supreme Court and has been rep-

laced by another. The project agreement was executed with an agency of the government of Vietnam - the Ministry of Justice - which then had official over-riding responsibility for the entire legal system, including the judicial system, before the creation of the Supreme Court. When, in October of 1968, many months later, the Supreme Court was established, responsibility for the entire judicial organization except the prosecution function passed to that body of nine men, whose many duties at the inception of its efforts to establish the Court as an independent branch of the government relegated reform to a lower status than it may have had originally in the Ministry of Justice. Furthermore, the areas of responsibility between the Ministry of Justice and the Supreme Court have not, as a practical matter, been clearly delineated. Within the executive branch itself exists yet another center of responsibility for the legal system, the President's Legal Advisory Committee, performing functions which the Ministry of Justice might be expected ordinarily to perform. Moreover, the legislative branch itself has responsibility for the legal system centered in the judiciary committees of both chambers of the National Assembly. And finally, the organized bar does not have a tradition of active participation in legal reform movements in collaboration with governmental agencies, and the twenty two members of the Saigon University Faculty of Law, in which approximately 10,000 students are currently enrolled, have obvious problems distracting them from legal reform generally - these well-springs of legal reform in the United States, the law faculties and the bar, play no similar role here.

In addition to these impediments peculiar to legal reform is the overriding fact of the war, the effect of which ~~no~~ long-range planning generally is no doubt very great. Moreover, the slow pace of the new democratic processes tends to undermine the sense of urgency in the formulation of a plan of reorganization which prospects of prompt legislative adoption might otherwise create.

But all is not negative and bleak. Vietnam is extremely fortunate in having as the leaders of its legal community men of outstanding learning, ability, personal integrity, and dedication to the future of their country. These men are possessed of a remarkable sense of systematization, of draftsmanship, of the importance of law in society, and of its role in the future of the Republic. With faith that the impediments previously mentioned will be overcome by events, there is every reason to believe that these qualities will be reflected in a movement for legal reform which will achieve significant results. Meanwhile, however, viewed in the perspective of the seventeen months remaining in the university's contract, it must be recorded that the desired level of organized reform activity into which the university can effectively channel its resources does not seem to exist.

NEED FOR REFORM

The French segment of Vietnam's history left in its wake the French legal system as the principal component of the country's legal tradition. The Vietnamese leaders in legal reform will not therefore be writing on a clean slate, as some casual observers may believe, nor starting from a primitive stage of development. Foreign programs of assistance in legal reform must also guard against bringing to Vietnam a scale of values for the ordering forces in a community, and a conception of law in that scale, unsuited to the Vietnamese culture. The field party suggests that the following reforms seem urgently needed to implement the underlying concepts of Vietnam's new Constitution:

1. Unification of the law throughout the country by adoption of the codes prepared and being prepared by the Ministry of Justice and by compilation and systematization of auxiliary legislation.
2. Establishment of efficient courts accessible to the people to administer those laws wherever civil order is restored.
3. Maintenance and recruitment of a well-paid and independent magistracy to operate the courts justly.
4. Increasing the supply of legal services to the citizenry to facilitate recourse to judicial redress.
5. Improving the quality of legal education to maintain a strong bench and bar.
6. Developing an indigenous legal tradition in keeping with national independence through research, publications, and training programs.

*Small idea
that some are
intending to be
implemented.
Suggests need -
logical aspect
Plan.*

ORGANIZATION FOR REFORM

The University field party has recommended that the legislature create a commission for the reorganization of the legal system representing the various branches of the government and the various segments of the legal community. Without such a body, the spirit of reform will find no means of clear expression, and uncoordinated efforts to achieve stop-gap improvements will be wasteful and relatively ineffective. More important than this, however, the university field party has suggested adoption of the American device (employed in executive reorganization and in the revision of the federal procedural rules) of placing inertia on the side of proposals for reform, by having the National Assembly in effect adopt the commission's recommendations conditionally, in advance. Those recommendations, when reported to the National Assembly, if not objected to by a relative

majority of either chamber within a specified reasonable period, would be deemed enacted (see Appendix D generally). This suggestion is an effort to make reform feasible under present legislative procedures, and, by giving reasonable assurance that reorganization proposals are likely to have immediate consequences when made, to make reform a work of statesmanship as well as scholarship.

The university field party has also recognized its inability to fully penetrate the problems of reorganization of a foreign legal system and has under active consideration the possibility of retaining the consultative services of a Vietnamese jurist, who would assume responsibility for coordinating the Vietnamese organization for reform with the university's efforts to supply a comparative-law range of choices and recommendations to its leaders.

The university's program has proceeded in this direction, because the tentative list of counterpart Vietnamese officials provided by the United States government for various aspects of the university's contractual obligation did not reflect the actual division of responsibilities on the Vietnamese side. While all of these counterpart agents were perhaps willing to receive the university's consultative resources, there was no indication that they were necessarily in a position of responsibility or leadership with respect to the subjects of the consultations. Consultations arranged in that framework would have had long-range academic value at most. It must again be emphasized in this regard that the establishment of suitable counterpart relationships for the utilization of the University's resources is the responsibility of the governments of the United States and Vietnam. In recognizing the practical necessities of the problem and assisting in its solution, the university has not committed itself to this task.

PROSPECTS FOR REFORM

The prospects for legal reform in Vietnam are functions entirely of the willingness of the Vietnamese legal community to organize a coordinated reform movement based on its genuine needs and desires. At this time, the University field party is still optimistic.

STATUS OF UNIVERSITY PROJECT

The university has performed, is performing, or is committed to perform, the following work:

1. The field party has penetrated the principal problem areas, as outlined in its communication of March 6, 1969 to the Supreme Court and the Ministry of Justice, and as confirmed by subsequent conversation with various officials who expressed substantial agreement with the analysis in broad terms.
2. An expert in constitutional law is scheduled to arrive for

consultations with the Supreme Court on an agenda prepared by the field party in June 1969.

3. A study of prosecution systems world-wide, designed to fix the lines of debate on the questions of abolishing the examining judge, has been ordered and is scheduled for submission to Vietnamese counterparts on May 1, 1969.
4. Recruitment of consultants for the review of the Penal Code, the Code of Penal Procedure, and the Code of Civil and Commercial Procedures has begun. A general review of the main outlines of these codes will be submitted to the Vietnamese counterparts for further sharpening of the definition of the problem areas in which overseas consultants may be desired.
5. Recruitment of an expert to prepare a stateside survey of the problems of military court jurisdiction over civilians is underway.
6. (A considerable amount of ad hoc advice has been given: for example:
 - (a) An analysis of the Supreme Court's role in the political life of the country by American standards has been furnished to the Chief Justice and by him translated for distribution to the other justices.
 - (b) A description of the public defender system has been requested and supplied.
 - (c) A description of the American system of criminal prosecution - the adversary system - has been requested and supplied.
 - (d) A description of the American state's experience with "advisory opinion" by the Supreme Court has been requested and supplied.
 - (e) Various documents, such as early American constitutional decisions, the early judicial organization statutes, and leading constitutional cases have been supplied to individual members of the Supreme Court.
 - (f) A description of the American presidential veto powers has been requested and supplied.
 - (g) Friday evening and Saturday morning English-language comparative law seminars conducted by the Field Party with small groups of jurists are underway.

PLAN OF OPERATION

The university field party has not devoted its efforts to the isolation of small technical problems on which its specific recommendations to the legal community at large might make a more institutionally acceptable report. Indeed, the university field party has concluded as a matter of policy that a diffusion of its efforts on minor technical problems (assuming it could contribute to their solution) would be a disservice to those, including the University law faculty, who conceive of the university's role as a significant factor in a broad program of thoroughgoing legal reorganization in Vietnam. Nor has the university field party attempted to foster mere surface studies by short-term consultants, leading to discussions between the Vietnamese and such consultants in merely general terms. These may have long-range value as part of the country's legal traditions and literature, but their effect would be insignificant viewed in relation to the practical objectives of the university's contract. For this reason, the university will maintain its primary interest, not in purely cultural exchange, but in substantial legal reforms, actually achieved.

The Operational Plan incorporated in the contract repeatedly states that the University's advice and assistance "will be in response to the expressed needs and desires" of the Supreme Court or Ministry of Justice" as they shall be expressed during the term of this contract, and as may be approved by A.I.D., and as specific requirements become known." The services rendered by the University to date conform generally to this guideline. Future operations will likewise be determined by the expressed desires and needs of the Supreme and the Ministry of Justice.

It must be reported candidly that expressions of desire for the University's services appear at times ritualistic and perfunctory. For example, the Minister of Justice first refused to allow review of the codes in the process of revision, stating they would be given to the University as finished products, then proceeded to transmit them to the President for submission to the Assembly, without reference to the University's presence. The University successfully pleaded with the President's legal advisor to withhold the codes from the Assembly momentarily to permit review. The degree of receptivity and interest demonstrated is difficult to describe objectively, but that example may suffice for present purposes. Subjectively, it is the Party Chief's impression that the interest of the Vietnamese in the contemplated consultations is on the whole very moderate.

In considering the Field Party's plan of operation, it must be clearly understood that the University will not risk great embarrassment to itself, to USAID, or to members of the American legal profession by going through the motions of costly consultations which are purely cultural exchanges between American experts and Vietnamese counterparts

with no particular responsibility or official interest in the area of discussion. (The Constitutional Law consultant scheduled to arrive in June cannot be assured that more than four of the nine justices will participate at any of the five two-hour meetings scheduled on alternate days. These consultations were specifically requested by the Supreme Court prior to the Field Party's arrival). It is for this reason, for example, that the codes will be subjected first to a general stateside review, then to more detailed on-site studies if sufficient interest appears. (The enthusiastic approval by the Minister of Justice of this approach instead of an initial on-site review is an indication of the present interest.) In general, consultants will be brought to Vietnam to address their expertise to specific problems of responsible leaders.

The basic difficulty in formulating a detailed plan of operation is that the role of advisor or consultant is a dependent one, determined by the plans of operation of those to whom the advice and consultations are addressed. There is no coordinated plan of over-all legal reform and judicial organization yet discernible in the government of Vietnam. Where movements exist - as in the area of code reform and constitutional law - the University is meeting its responsibilities. As movements develop, the University will respond.

DONALD J. TATE
Chief of Party

DJT:mvr

Attachments:

- (A) Operational Plan
- (B) Proposed Allocation of Consultant Man-Months
- (C) Survey of Organization Problems
- (D) Suggested Reorganization Commission

Contract Between the United States of America and

Louisiana State University

Appendix B - Operational Plan

I. SCOPE OF WORK

A. Specific Services

1. Assistance to Supreme Court of Vietnam.

The Contractor will assist the Supreme Court in its process of internal organization, in formulating an orderly and expeditious method of hearing and disposing of cases, and in developing rules of court governing the operations of the Court. Further advice and assistance will be provided in developing the jurisdiction of the Court, the method of presenting appeals to the Court, and a method of timely and adequate reporting of decisions. Such advice and assistance will be in response to the expressed needs and desires of the Court as they shall be expressed during the term of this contract, and as may be approved by A.I.D., and as specific requirements become known.

2. Establishment of an Integrated Court System.

The Contractor will provide advice and assistance to the Supreme Court of Vietnam in the establishment of an integrated court system throughout the country subordinate to and under the

direct control of the Supreme Court. Assistance will be provided in the determination of the nature, type and location of inferior trial and appellate courts required to effectively administer justice, and assistance will also be made available in the preparation of necessary implementing legislation. Appropriate advice and assistance will be provided in developing court rules governing administrative matters and procedural requirements. Assistance will be made available as required for the establishment of plans for effective administration and fiscal control of the inferior courts. Such advice and assistance will be in response to the expressed needs and desires of the Supreme Court as they shall be expressed during the term of the contract and as specific requirements become known.

3. Developing and Revising Legal Codes and Laws.

The Contractor as requested by the Government of Vietnam, will review the civil code, penal code, code of civil procedure, code of criminal procedure and commercial code prepared by the Government of Vietnam and will make such suggestions and recommendations as may be required. Should advice be sought in the revision of such codes the Contractor will provide reasonable specialized assistance. The Contractor will also provide assistance to the Government of Vietnam in the revision, amendment and development of such public laws as may be requested by the Government. If requested, advice will be provided in the development of informational material on basic legal matters for distribution to the general public. To the extent requested, and as may be consonant with judicial seminars developed by the Asia Foundation, the Contractor will assist in designing the ^{and} presenting training programs on legal matters for government officers.

4. Assistance to the Ministry of Justice.

The Contractor will provide advice and assistance to the Ministry of Justice in making an orderly transfer of judicial functions to the Supreme Court and in the reorganization of the internal operations and administration of the Ministry including its responsibility for the prison system. Advice and assistance will also be provided to the Ministry on reorganization of the system of criminal prosecution and adaptation of the system of criminal procedure to the requirements of the new Constitution and the new court structure. As the Ministry is developed as the chief law office of the government appropriate assistance will be offered. Such advice and assistance will be in response to the expressed needs and desires of the Minister of Justice, and as may be approved by A.I.D., as they shall appear during the term of the contract and as specific requirements become known.

B. Procedures

1. The advice and assistance to be provided will be performed as the Supreme Court and Ministry of Justice shall from time to time request. It is anticipated that work will proceed concurrently on each of the tasks outlined above with highest priority being given to the internal organization and administration of the Supreme Court and the organization of an integrated court system. The Contractor will afford a high degree of flexibility in scheduling the work to be performed under the proposed contract so

as to respond to the most urgent needs and desires of the Government of Vietnam. To accomplish the tasks called for above, the Contractor will provide nineteen man months of specialized legal services in Vietnam in the general areas of court organization and administration, organization of the Ministry of Justice, and civil, commercial and criminal law and procedure. Until the specific requirements of the Government of Vietnam are known, the precise specialized areas and the personnel to be provided cannot be detailed, but the Contractor will provide competent legal specialists in those special areas of the law mutually agreeable to the Government of Vietnam and the Contractor and within the broad legal areas described above.

2. In addition the Contractor will provide twelve man months of specialized legal services in the United States in support of the on site party. The nature of the specialized legal services and the personnel to be provided will be determined by the specific needs and desires of the Government of Vietnam as expressed from time to time during the period of the proposed contract but within the broad legal areas described above.

C. Method of Performance

Acting under the general supervision of the campus coordinator the Chief-of-Party will establish an office in Saigon and will immediately establish liaison with the Supreme Court and the

Ministry of Justice and with appropriate officials of USAID.

During this period the Chief-of-Party will, with the cooperation of the Vietnamese and USAID officials, develop detailed plans for the operation of the project, schedule the work to be performed under the contract, and determine the specific nature and timing of the specialized legal services to be provided. The Contractor will provide immediate advice and assistance to the Supreme Court in the completion of its internal organization and its plans for the creation and implementation of an integrated system of courts throughout the country. The Contractor will also provide advice and assistance to the Minister of Justice in reorganizing the Ministry and in transferring judicial functions from the Ministry to the Supreme Court. As the basic legal codes are completed by the Government of Vietnam and translated into English by USAID, the codes will be sent to the United States for review and recommendation by the Contractor's campus staff. During the period of creation of an integrated court system by the Supreme Court advice and assistance will be provided in the areas of organization, jurisdiction, internal administration, and trial and appellate procedure. As the need and desire for legal specialists appear the Contractor will furnish the services of specialists both in Vietnam and in the United States in accordance with a schedule mutually agreeable to the Government of Vietnam, A.I.D., and the Contractor. At an early date the Contractor will consult with

the Supreme Court, the Ministry of Justice, and USAID concerning GVN requirements for legal materials and equipment and will assist in providing them as detailed in the contract or by other means through A.I.D. sources. The Contractor will at all times maintain a high degree of flexibility in ascertaining the developing needs of the Supreme Court and the Ministry of Justice and in providing the services necessary to meet such requirements.

II. PERSONNEL

During the period of performance called for herein the Contractor shall supply the following personnel for approximately the period indicated below:

Off-Campus

Professor Donald Tate, Chief-of-Party	20 months
Assistant Professor Willie L. Hargrave	20 months
Legal Secretary <i>Rita Hyle de Fleur</i>	20 months
Consultants <i>George Kuyf</i>	19 months

On-Campus

Professor Francis Sullivan, Campus Coordinator	10 months
Secretary	20 months
Legal Research Assistant (part time)	20 months
Consultants	12 months

LOUISIANA STATE UNIVERSITY
LEGAL PROJECT
Saigon, Vietnam

PROPOSED ALLOCATION OF CONSULTANT MAN-MONTHS

SUBJECT	No. of Consul- tants	Man-Months Stateside (12*)	Man-Months Over-seas (19*)	Trips (17*)	Approximate Dates
<u>ORGANIZATIONS</u>	10	6.0 50%	10.5 62%	9	
<u>Supreme Court</u>	7	4.0 33%	6.5 38%	6	
1. Constitutional Role	1	0.5	0.5	1	Spring 1969
2. Rule-making powers	1	0.5	0.0	0	" "
3. Court Organization	1	1.0	2.0	1	Summer 1969
4. Court Administration	2	1.0	2.0	2	Fall 1969
5. Civil Rights and Transition to Civil Authority	2	1.0	2.0	2	Summer 1970
<u>Ministry of Justice</u>	3	2.0 17%	4.0 24%	3	
6. Organization of Prosecutors	1	1.0	2.0	1	Summer 1969
7. Civil Rights, Police, and Investigation Function	2	1.0	2.0	2	" "
<u>CODES</u>	5	6.0 50%	6.5 38%	5	
8. Criminal Procedure	1	1.0	2.0	1	Summer 1969
9. Commercial	3	3.0	3.0	3	" 1970
10. Civil	1	2.0	1.5	1	" "
<u>TOTAL</u>	15	12	17	14	

* Maximum in contract.

LOUISIANA STATE UNIVERSITY
LEGAL PROJECT
Saigon, Vietnam

March 6, 1969

The Justices of the Supreme Court
and the Minister of Justice
Republic of Vietnam

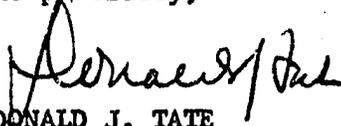
Gentlemen:

Based on my American experience in judicial reorganization and court administration, I respectfully submit a very rough and brief statement of the principal problems I perceive in the reorganization of Vietnam's legal system.

Many of these problems may exist only in the imagination of the outsider, looking briefly and superficially at another legal system over a language barrier. Many serious problems may have been overlooked entirely. But many may be real and ripe for solution. If so, the experience in state after state in the American system has been that solutions are best found by a reform committee representing all elements of the legal community, and I commend to your consideration that way of proceeding.

Meanwhile, I would respectfully request that you assign the various parts of this memorandum to various persons in the Court and in the Ministry, asking each to answer the questions on the attached sheet, and to make such other comments as are deemed necessary, in writing. I will translate the comments and compile them into a brochure which can then form a somewhat complete inventory of problems and their status. I would expect nothing but the same kind of tentative, rough appraisal that my own memorandum represents. Could this be done in two weeks?

Respectfully,


DONALD J. TATE

P.S.

The preliminary and tentative broad-gauge views presented do not require precise understanding, but if translation is desired, please let me know.

DJT:mvr

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Questions relating to each Problem
Suggested in Memorandum

1. In your opinion, are the problems referred to serious and deserving of immediate attention? Which ones in your opinion are not serious?
2. Are there serious problems in this category which this memorandum over-looks? If so, what are they?
3. What is currently being done and by whom to solve these problems?
4. What are the obstacles and difficulties likely to be encountered in their solution?
5. Who has the primary responsibility for developing solutions to these problems and proposing them - the Supreme Court, the Ministry of Justice, the National Assembly, or who else?

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ORGANIZATION FOR REFORM

The American experience has been that when bench and bar do not reform and reorganize the legal system from within to meet the needs of changing times, laymen force reforms upon them from without, to the embarrassment and detriment of all.

Several factors make organization for reform difficult in Vietnam. The general disorder created by the war is not conducive to long-range planning, but more to stop-gap measures. The apparently slow procedure of the legislative assembly stifles hope for bold and decisive action. The corps of professionals is small, underpaid, and burdened with many problems. The Supreme Court is new on the scene, and the Minister of Justice is perhaps reluctant to invade the Court's province by taking the initiative in court reorganization programs. The present system is not so glaringly deficient as to create a sense of crisis. Funds are apparently not available to defray even the fairly nominal expense of organizing for reform. These and undoubtedly other factors have contributed to the slow development of any broad-scale attack on the problems of the legal system on all fronts.

The considerable achievements for reform should not be overlooked, however; for example:

1. The Penal Code, Code of Civil Procedure, and Code of Penal Procedure have been drafted and revised.
2. The Civil Code and Code of Commerce have been drafted and their revision is well under way.
3. The Supreme Court is organized and has decided four constitutional cases and approximately 68 ordinary cases.

And undoubtedly other achievements could be cited as complete or nearing completion.

There does seem to exist a serious need, nevertheless, to coordinate all efforts in progress on a scale of priorities established after a survey of the principal problems. Otherwise, the surge toward the establishment of a strong and responsive government under the new constitution will lose its force from dissipation through many uncoordinated approaches to improvement, and eventually the country will settle down to business as usual under a legal system less susceptible of change than it is now.

X

CONSTITUTIONAL CASES IN THE SUPREME COURT

Under the Supreme Court Law, access to the Supreme Court is greatly facilitated by provisions allowing the President of the Republic, the President of each house of the National Assembly, and one-third of the membership of each house of the National Assembly to request advisory and interpretative opinions of the Supreme Court. Some tendency exist for the Supreme Court to restrict this access jurisprudentially. But it is highly probable that between the extremes of letting any citizen at will invoke the jurisdiction of the court in constitutional interpretation matters and the other extreme of letting practically no one do so, there is a happier solution than that represented by the Supreme Court Law.

Another aspect of the Supreme Court Law which merits careful study is the procedure by which litigants raise the question of unconstitutionality of laws in litigation. Generally, it appears that any litigant can bring any proceeding to a complete halt by raising a constitutional question. This practice is perhaps required by the notion that the power to interpret the constitution and invalidate laws lies solely in the Supreme Court.

A study in depth should be made to determine whether or not the judicial review power exists in the judiciary considered as a whole or merely in the Supreme Court, especially since this power includes the power to invalidate decrees for illegality as well as unconstitutionality, and seemingly makes the Supreme Court under present law the court of first instance and final resort in contesting on administrative excesses.

The conclusion that judicial review power exists in the judiciary as a whole would of course greatly make it extremely simple to let questions of constitutionality reach the Supreme Court as they usually in the American experience, with the rest of the case, and not as a special question, the determination of which requires all collateral proceedings to come to a halt.

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THE EXAMINING JUDGE FUNCTION

The question of retaining the examining judge, or transferring his function to the prosecutors, as well as the status of the "accusation chamber" in any revised system of criminal prosecution, is one of profound importance. A study of other systems will soon be made available for general reference. But ultimately the question must be resolved on the basis whether any new system will be fair and just in consideration of two principal factors:

1. Prosecutors confined by the Constitution to that function are likely to be more zealous and state-oriented than has heretofore been the case; and
 2. 200 private lawyers will have difficulty protecting the rights of the accused without additional protection built into the system. In this connection, the American institution of "public defender" must be considered along with a possible revision of the system of judicial assistance.
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JUDICIAL ORGANIZATION-ORIGINAL JURISDICTION OF COURTS

The distribution of population and available man-power resources raises doubts about what seems to be the strong tradition of maintaining a court of general jurisdiction in each province. The institution of circuit riding is one solution to this problem, but another is to include in the territorial jurisdiction of certain courts more than one province, depending upon the predictable case load, since some provinces are not populous enough to justify being served by the constitutionally required 2 or 3-"judge" court.

The question of retaining the specialized courts should be considered in the judicial organization, in the light of the usual factors which lead to the creation of specialized courts - the need for high expertise or a staff of expert auxiliary personnel; the need for speedier procedures than are available in ordinary courts; or the strong preference of certain ethnic groups, like the Montagnards. Also in this regard should be considered the problem of "phasing out" the Courts of Peace with Extended Jurisdiction, since the only reason for being of those courts is to allow those Courts of Peace (with only one judge) to exercise the jurisdiction of a Court of First Instance (which presently requires 3 counting the prosecutor as a "judge").

The Constitution requires that each court have a clear division of authority between the prosecution and the judicial functions. This is generally interpreted to mean that there must be a prosecutor attached to each court, creating the great need for prosecutors, for example in the Courts of Peace with Extended Jurisdiction. The idea should be explored of creating courts covering broad geographic areas, with divisions serving different areas, and thereby satisfying the constitutional requirement by having at least one prosecutor assigned to the court, although not to each division. Means should be found to avoid the consequence of having a prosecutor attached, for example, to a Court of Peace, wherein he may have little function in view of the case load and in view of the tradition that the Court of Peace is really one of conciliation and not litigation.

The question of venue should be carefully studied, to make it possible in view of transportation problems to litigate matter as close to one's residence as possible. At the present time, for example, there are only 2 courts of appeal in the entire country, sitting in only two places, and the courts of appeal should perhaps themselves establish a circuit riding procedure. Such other courts like the administrative court, handling reparation of damage done by employees of the government, sits exclusively in Saigon and should be made more accessible to the citizenry if it continues to exist. A careful study of the meaning of the Supreme Court Law provision that the Supreme Court may fix the jurisdiction of the courts should be made. This is a very great power and if it means both territorial competence and subject-matter jurisdiction, this would seem to leave little to the legislative body in

the reorganization of the courts except the funding of the proposed system, a view contrary to that held by certain influential members of the Senate.

In considering the original jurisdiction of the court, efforts should be made to minimize the number of non-judicial functions which the court performs. To the extent that these practices exist, such things as the certification of documents, the administration of successions, tutorships, and interdictions, the administration of the estates of bankrupt persons and associations, the swearing-in of officials, etc. should be carefully weighed as to their desirability. Of special importance in this regard is the reported participation of judges in the provinces in the system necessitated by the war of arresting and detaining for as much as two years (and an additional two years) persons considered dangerous by a "provinces security committee", whose proceedings are secret and reportedly highly informal.

APPELLATE JURISDICTION OF THE COURTS

Trial de novo on appeal, even in the Court of Appeal, although perhaps not encountered frequently in practice, ought to be considered for abolition in principle. The reasons for this "double degree of jurisdiction" in the continental procedure from which it is taken should be carefully studied to determine whether or not similar reasons are valid here at this time.

There seems to be a tradition of almost unlimited appeals to the Court of First Instance all the way to the Supreme Court. Some means should be devised to stop the appellate procedures in the Court of Appeal in certain classes of cases, giving the Supreme Court a merely discretionary review jurisdiction over them, to be exercised sparingly in the interest merely of monitoring the uniform application of the law throughout the country. Furthermore, there are undoubtedly minor cases which can be entrusted to the judiciary without benefit of appeal of right, subject only to review at the discretion of a higher tribunal.

Reference is made under the heading "Constitutional Cases in the Supreme Court" to the necessity of determining whether or not the Constitution of Vietnam places the power of judicial review of legislation in the Supreme Court alone or in the judiciary as a whole. Perhaps the question can be framed as whether or not the judicial review power of the Supreme Court can be delegated to lower courts under the Supreme Court Law's grant of power to the court to fix the jurisdiction of the courts. Assuming that the judicial review power resides in the entire judiciary, then the Supreme Court Law ought to be revised to make constitutional questions presentable not only to the Supreme Court, but also to other tribunals and without halting the entire proceedings until the constitutional determination is made, except in rare and exceptional cases where the Supreme Court might exercise a discretion to stay proceedings.

The Supreme Court, consisting now of 9 men, and ultimately of 15, may find itself with an excessive work load, with constitutional cases and dissolution of political party cases under its jurisdiction. The present internal regulation of the Supreme Court, dividing the court into 3 separate divisions for constitutional, cassation and administrative matters, represents a recognition of this fact by the court. However, this division of the Supreme Court into chambers would seem to detract from the weight of the court's decisions as precedents and may lead to the constant invocation of the Supreme Court's powers by those who detect in shifts of personnel the probability of changing the jurisprudence, especially in view of the fact that the various chambers of the Supreme Court change in membership at rather frequent intervals, and in view of the further fact that the Supreme Court justices hold office only for 6 years.

In connection with this division of the Supreme Court's efforts into various chambers, a study should perhaps be made of the rehearing procedure, which might be developed so as to make a consideration of the application of rehearing reflect the view of the entire court, sitting in plenary session, and not merely of those three members deciding the case in the first place. Similarly, perhaps another group of 3 of the judges ought to consider application for rehearing, with provision for "automatic" rehearing whenever less than the majority of the court concurs in the first result. ?

The Supreme Court is perhaps able to handle its work load because of the tradition of mere cassation of judgments below as distinguished from disposition of the case on the merits familiar in the American experience. But consideration ought to be given to the effect on the delays of litigation of maintaining a cassation tradition, requiring in principle a retrial of the case upon reversal of the lower court judgment, instead of a complete disposition of it on the merits by the Supreme Court itself.

The strong tradition favoring appeal in the present system probably facilitates the taking of suspensive appeals beyond the requirements of justice. Consideration ought to be given to increasing the amount of security required for suspension of the judgment, with a view to reducing delays of frivolous appeals.

The form of records on appeal ought to be studied with a view to eliminating unnecessary expense in preparing them. The availability of modern copying-machine technology makes it possible to prepare multiple copies of records, in order to facilitate the consideration of cases by the appellate tribunals.

The tradition with regard to briefs and oral argument ought to be examined. If there is a tradition of submitting complete and exhaustive briefs, oral argument is perhaps not needed in every case and ought perhaps to be allowed only in the discretion of the court, thus saving much of the appellate court's time otherwise devoted to largely ceremonial hearing of attorneys.

A study should be made of the delays within which an appeal should be taken. With increasingly improved means of communication and transportation, it is possible that the appellate delays can be greatly shortened with a view to reducing the time required for litigation.

A system of wide and complete reporting of decisions, and a practice of giving reasons for decision, would tend to reinforce the jurisprudence of the appellate courts and would tend to reduce the number of appeals taken either in ignorance of the jurisprudence or from the lack of understanding of the reasons on which it is based. With the small number of attorneys and judges, a system of reporting decisions and the reasons therefor,

Handwritten note:
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perhaps with accompanying commentaries of jurists, may not be self-supporting, but in terms of reducing the appellate work loads may well be worthwhile undertaking.

COURTS AND OTHER ADJUDICATING AGENCIES

The method of separating cases between the courts, administrative agencies, and other authorities such as the military is usually to leave the statutes granting jurisdiction to the courts untouched, and to make specific grant of administrative jurisdiction in the statute creating the administrative or other agency involved, frequently with provisions for recourse to the courts in the event of abuse of power by those agencies. The Republic of Vietnam undoubtedly has many governmental programs which place the power of applying the law, either in disputes between private parties and the government, in agencies other than the court. The attitude of the citizen to his government is shaped frequently as much by the treatment that he received in the hands of these administrative agencies as by the treatment that he receives at the hands of the court. Certainly in the American experience, there has been a tendency for the Congress and Executive to avoid the courts as the tribunals of first instance in the administration of certain social programs. A study of the criteria by which occasions for the application of the laws are allocated between judicial and other law-applying agencies ought perhaps to be made.

Related to the above suggestions is the observation that, at the present time, detention of persons suspected of presenting a threat to public order for a period of two years (and an additional possible extension of two years) is apparently handled by a "province security committee", an arm of the executive branch of the government, reportedly with occasional participation of the member of the judiciary sitting in the particular province involved. A careful plan should be made to fix the conditions under which this system of administrative and executive detention will be terminated.

Related to this problem is the question whether or not the military authorities ought to have jurisdiction over military personnel who are involved in litigation not arising out of their military duties, such as prosecutions for crimes of passion in off duty hours. There should further be examined the question whether or not military tribunals ought to have jurisdiction over civilian and, if so, in what narrow circumstances. (The matter of "Status of Forces" agreements with foreign powers is involved in this problem).

At the present time, there exist in effect 2 systems of courts, the judicial court and the administrative court (of which latter type there is only one, sitting in Saigon). The administrative court appears to have some jurisdiction over offenses committed by employees of the government, and also has jurisdiction to provide reparation for injuries done by such employees. This is the principal work of the administrative court, and careful consideration should be given to placing this jurisdiction in the judicial courts. Closely related to this question is whether or not the Council of State should continue to exist as the highest tribunal of the administrative court system or whether instead the executive branch should be organized so as to give some appellate

remedies within that branch, with ultimate appeal lying to the courts. Furthermore, at the present time, appeals in administrative matters appear to be taken directly from the Council of State to the Supreme Court. In order to spare the Supreme Court resources for more important matters, a system ought to be devised by which the litigant seeks relief against decisions of the highest administrative tribunals by entering the judicial system at a lower level, either in the Court of First Instance by some type of injunction procedure against the enforcement of administrative decisions, or perhaps at the Court of Appeal level.

JUDICIAL ORGANIZATION-FISCAL, STATISTICAL AND INSPECTIONAL FUNCTIONS

Consideration should be given to establishing of an Office of Court Administration whose function would be exercised by an officer of high rank with primary responsibility for overseeing the operation of the court organization as a whole. The American model of Judicial Administrator makes that officer the chief administrative officer of the courts, with responsibility for publishing statistics, making studies on operations, publishing periodic reports on those operations, and generally assuming a quasi-autonomous function vis-a-vis the judicial machinery. This concept fixed responsibility squarely on one officer for the entire judicial service and tends to inspire suggestions for needed reforms and improvement.

In fiscal matters, it is expected that the Supreme Court will try to minimize as much as possible the amount of accounting services which will be required in administering its autonomous budget. In this area, it is assumed that patterns of fiscal administration exist in the Vietnamese administrative system which are easily transferrable to the Supreme Court's budget. Of interest in this regard is the American practice in some states of paying the judges "on their own warrant" drawn on the state treasury, and a practice which recognizes the power of each magistrate to demand and receive his compensation without going through the usual channels of receiving a check in payment for his services, subject to various deductions for income taxes, retirement system, etc., which would tend to place the judge in the same position as other civil servants.

In the matter of collection and publication of judicial statistics, a determination will have to be made as to what statistics the Minister of Justice will continue to collect on judicial business, if any, as distinguished from those to be collected by the Supreme Court, again if any. It seems that the proper exercise of the court's administrative responsibility requires the collection of some statistics. The principal purpose of the statistics would be to determine the comparative workloads of the various courts, to inventory at regular intervals the amount of judicial business pending and undisposed of, and by collecting statistics by general category of cases, to discover means of improving the processing of those types of cases which seem to move at a pace slower than that considered satisfactory.

In the more elementary American systems, statistics are confined to the number of civil cases filed, the number of criminal cases, and the number of each type disposed of, usually during an annual period, sometimes with statistics also on the number of cases submitted to the court for decision and not disposed of within a given period of time. More sophisticated systems make an attempt to trace the progress of each case from filing to ultimate disposition with a view to determining the stages during which the greatest amount of delay occurs, usually with a refined categorization of cases beyond the general division of "civil" and "criminal". It would seem that the needs of the Vietnamese court organization would be served by a more elementary type of statistical system at least for the present.

The purpose of collecting judicial statistics should be carefully distinguished from the purposes served by the collection of statistics on crimes ~~or~~ and vital statistics on birth, death, divorce, marriage, etc., which can best be left to other agencies directly involved in those purposes. Furthermore, confining judicial statistics to the purpose of judicial administration makes it possible to require reports on the judicial business from the magistrates themselves, instead of their clerical personnel or court attaches, thus making the statistics collected more reliable. In a collection of raw statistics under an elementary statistical method, the need for frequent publication is probably not very great. An annual publication, separate and apart from the statistical collection of the National Institute of Statistics, directed primarily to the judges and lawyers, would seem sufficient to serve present needs.

Although the collection of statistics on judicial business will yield much of the information needed for the proper administration of the court, on-site inspection of the court by the administrators would also seem to be desirable. Since the justices of the Supreme Court and other judges have other duties, the inspection function should perhaps be delegated to a "court administrator", whose inspection trips would be primarily designed to verify the accuracy of statistics, to investigate complaints about the operation of any particular court, to collect information on the need for physical, clerical, and administrative improvements in particular courts, and generally to establish a close liaison in the Supreme Court and the judicial system as a whole, providing a means for the Supreme Court to receive and to make suggestions about the judicial operation as a whole.

RESPONSIBILITY FOR THE ADMINISTRATION OF THE JUDICIAL SYSTEM

The Supreme Court has, under the Supreme Court Law, undertaken to exercise the functions of transferring, removing, promoting, and generally exercising control over the judges, pending the establishment of the Judicial Council provided for in the Constitution. A question that must be solved in the establishment of the Judicial Council is whether or not it acts in a merely advisory capacity to the Supreme Court, perhaps determining matters of policy with regards to the judiciary, but leaving the application and execution of that policy to some Supreme Court agency or the Supreme Court as a whole. This type of Judicial Council is the one which is familiar to the American experience, but it appears that the French tradition views such agencies as the Judicial Council as a means of protecting the judiciary from arbitrary action of the Minister of Justice or other comparable authority vested with supervisory control over the judiciary.

Assuming that the Judicial Council will exercise a merely advisory function in the administration of judicial system, the next question which is presented is whether or not the administrative authority within the Supreme Court is to be exercised by the Court in plenary session, by a section of the Court only, perhaps by the Chief Justice alone, or finally perhaps by an agency of the Supreme Court, reporting either to the Chief Justice, a section of the Court, or the Court as a whole.

A further problem involves the definition of the areas of "administration", with a view possibly to assigning some administrative tasks to the Judicial Council, some to the Court as a whole, some to sections thereof, others to the Chief Justice, and still others to other agencies, either of the Court or of the Judicial Council.

Whether or not the administrative responsibility is fixed in the Supreme Court or in the Judicial Council, attention must be given to the further problem of perhaps establishing a hierarchy of administrative responsibility, delegating some of the responsibility to the Courts of Appeal, for example, over matters within their territorial jurisdiction, and even perhaps some to the Courts of First Instance, over the special courts within their territorial jurisdiction.

Specific problems of administration properly speaking are dealt with under another heading.

ORGANIZATION OF THE MINISTRY OF JUSTICE

The organization of the Ministry of Justice itself will probably follow the pattern set by other Ministries and presents no problem not easily solved within the tradition of that executive organization. Determination of the responsibilities for the various functions of the Ministry will probably vary with Ministers and with the personalities and capabilities of the members of the staff. The organization of the office of the Ministry does not seem to warrant extensive consideration in a broad examination of problems of policy.

*except as to divisions
responsibility with
Court System & coordi-
nation between the two.*

PROSECUTOR'S FACILITIES, EQUIPMENT AND STAFF

When the prosecutor and judicial functions were exercised by the same corps of magistrates, problems of housing, management of court personnel, and use of court equipment presented a single range of questions common to all magistrates. The separation of the prosecution from the judging function raises these questions for the prosecutors, viewed as "outsiders" in relation to the court. The separation presents a similar problem with regard to the services of the police, who may now have to be placed under some kind of joint control of the prosecutors and the examining judges, if those judges continue to function.

Since the police are under the direction of the Ministry of the Interior, their relationship to the Ministry of Justice should be formalized, not only with respect to control and direction, but also with respect to such matters as access to crime detection and investigation facilities and laboratories.

THE PROSECUTOR CAREER SYSTEM

When prosecutors were only judges within the judicial career system transferring from the judicial to the examining to the prosecuting function under the general direction of the Ministry, the force of the judicial tradition ^{serva} to assure a measure of compassion and solicitude for the interests of the accused which may be altered by the separation of the prosecuting function entirely from the judicial function. Furthermore, since service as prosecutor was part of the general advancement through the judicial career, there is a possibility that unless some means of easy transfer from the prosecutor career to the judicial career under the present division of functions is made possible, the career prosecutor will not attract the same high quality of personnel as has heretofore been the case. In a country with few lawyers to protect the rights of the accused, a combination of excessive zeal and limited capacity could present a dangerous threat to liberty. From this point of view, serious attention should be given to combining the prosecutor and judicial careers, while keeping the prosecution and judging functions separate and distinct. Such a combination would of course require the coordination of administration over this personnel between the Supreme Court and the Ministry of Justice, which is perhaps impossible to attain without disturbing the constitutional balance of powers. But at least a system of easy transfer ^{from} of one function to the other should be established, to assure the continuation of a tradition of fairness in prosecutors and to assure the attraction of high caliber men into the prosecuting career.

The question whether or not the prosecutors or judges should be subjected to different examinations for suitability to those careers must be explored. Economy and efficiency may dictate the administration of only one examination, letting those who passed it choose their career thereafter, and also be free to make transfer from ^{one} branch of the service to the other.

From the standpoint of the prosecutors, the separation of the prosecuting function from the judicial function deprives prosecutors of the protection against abuse which they have previously found in the Council of Magistrates or Judicial Council, and the possibility of establishing a similar "Prosecutor Council" should be explored. Otherwise, the career prosecutor will be so precarious in matters of transfer, promotion, advancement, discipline, and removal, that the quality of person attracted to that career may be adversely affected. On the other hand, the nature of the prosecution function requires that prosecutors be responsive to the national policies and does not require the same independence which the Judicial Council tends to assure for judges.

will be more difficult under such a system

There appears to be a great shortage of prosecutors at the present time, and the legislature has failed to supply the funds necessary to recruit more. This lack of funds will delay the placement of sufficient number of prosecutors in service to assure the smooth functioning of the judicial machinery. In this regard, the two or three year probation period, which in fact is not enforced but is frequently reduced to four or five months, according to reports not verified, should perhaps be replaced by a short period of probation with intensive formal training instead.

The entire range of problems surrounding the retirement, pension, mandatory retirement, and removal of prosecutors must be reevaluated in the light of the factors presented by the new organization separate from the judiciary.

THE JUDICIAL CAREER

It is apparently contemplated that judges other than Supreme Court judges will continue to be selected through the examination and apprenticeship system administered by the Supreme Court. It would not seem that the traditions or needs of the Vietnam judicial system would permit consideration of such a radical departure as the election of judges at stated intervals. However, between the present system and that radical departure, many other possible methods of appointment exist. The current American movement for the improvement of methods of selection of judges is substantially to let the executive appoint them from a panel of nominees submitted by a commission representing a cross section of the legal community, and then to submit their right to continue in office to popular vote at intervals of four to six years. The traditional continental and Vietnam method of selecting judges, and in effect of assuring them life-time tenure in a judicial career, has the possible disadvantage of making the judiciary less responsive to the will of the people, the conscience of the community, and to the needs of the national development. Requiring perhaps confirmation by the National Assembly, with appointment by the executive, with recommendation or nomination by the Supreme Court or a commission representing various segments of the bench and bar, might introduce an element of democracy in the judiciary which would serve the present needs of the country. However, it is recognized that the present method of selection and control of the judicial career is extremely favorable to the magistrates in office, and that any consideration of a departure therefrom will be looked upon with great suspicion by those likely to be in charge of considering the entire problem of reorganization.

With the separation of the judicial career from that of the prosecutor under the Constitution, there is likely to result a dual career system, one for judges, and one for prosecutors. There is a possibility also that advancement for prosecutors, who are presently much fewer in number, will be more rapid than advancement for judges. Furthermore, the administrative judges appear to belong to a separate career system themselves, and since there are only approximately 6 such judges at the present time, advancement in that particular career system is also more rapid than in the regular magistracy, and they are not likely to look with favor upon any suggestion to incorporate their career system into the other.

DECISION REPORTING AND CLASSIFICATION

A determination must be made as to what decisions of which courts will be published to form the foundation of the jurisprudence of the new system. A determination should also be made on the form of opinions, with special attention paid to the value of full expositions of the reasons for particular decisions, as a means of enriching the jurisprudence and keeping the bar informed as to its development.

Hand in hand with an expanded system of reporting decisions must proceed a design of analytical tables or digests for the classification of these decisions to make them readily accessible to those engaged in legal research.

Since the Ministry^{of} of Justice has traditionally published selected decisions in his quarterly "judicial review", it is possible that the responsibility for developing a reporting system should be assumed by that Ministry instead of the Supreme Court. On the other hand, since the "judicial review" publication serves other purposes, as well, perhaps the narrow class of reporting decisions and developing classification system and digest therefore ought to be undertaken by the Supreme Court.

STATUTORY COMPILATION

It is expected that the Legal Research Center in which the Asia Foundation has manifested an interest is the appropriate agency to comment upon the problems of the compilation of statutes in force, the development of a system for incorporation of new statutes in the compilation, and the development of some form of systematic arrangement of administrative regulations and decrees.

ORGANIZATION OF THE BAR

All problems related to the organization of the bar fall within the responsibility of the Asia Foundation and not within the LSU Project.

LOUISIANA STATE UNIVERSITY
LEGAL PROJECT
Saigon, Vietnam

18 March 1969

To the Chief Justice and Minister of Justice
Republic of Vietnam

Sirs:

I enclose for your information photocopies of the following U.S. statutes:

28 U.S.C. 2071 et seq. - It is under this law that a commission appointed by the Supreme Court accomplished a thorough reform of the U.S. judicial procedure in 1938. It is also under this law that the commission has made frequent changes in the procedure, as experience uncovered problems. It is under such a law that I have suggested the possibility of your avoiding legislative delays in adopting the new codes of procedure. (Like your Article 30, the U.S. Constitution provides - art. I, Sec. 1- "all legislative powers herein granted shall be vested in a Congress of the United States")

5 U.S.C. 901 et seq. - This law permits the President to develop detailed reorganization plans for the Executive branch, which take effect 60 days (Sec. 906) after their submission to the Congress, unless the Congress objects. The same device could be employed for judicial reorganization, of course.

Because the President's legal advisor and the Chairman of the Senate Judiciary Committee have both honored me with a visit to my office, on which occasions we discussed the judicial reorganization problem, I am sending to each a copy of this letter and enclosures, as well as the survey of problems attached to my letter to you of March 6. (I am sure they will treat these papers as private communications.) The other justices of the Supreme Court are also receiving copies of this letter, and the Chief Justice has undoubtedly transmitted to them the copies of my March 6 survey which I supplied to him.

I am personally very much convinced that your reorganization movement needs close collaboration among all interested parties, and these American statutory models of delegation - either to the Supreme Court, the Executive, or in your case perhaps a specially created agency representing your legal

-2-

community.- may be helpful to you in your planning.

Respectfully,



Donald J. Tate

P.S.

Also enclosed is the broad framework of a statute creating a "Commission for Reorganization of the Legal System" which reflects my views more specifically. This draft may serve as a starting point for your own consideration of specific measures.

ROUGH DRAFT
SUGGESTED FORM OF LAW ESTABLISHING
COMMISSION FOR REORGANIZATION OF THE LEGAL SYSTEM

AN ACT

To establish a coordinating agency for the reorganization of the entire legal system; to define the commission's powers; to prescribe its composition; and to provide for its financial support.

PREAMBLE

The Republic is conducting a great experiment in representative democracy, the results of which will shape the destiny of the Vietnamese people for all time to come. This experiment is underway in a time of troubles, when foreign powers and some of our impatient brethren threaten the very existence of the nation. It is therefore of the utmost urgency to demonstrate to the nation at large the adaptability of democratic institutions to the conditions of our society, even in times of foreign invasion and internal upheaval. Among these democratic ideals is the concept of the rule of law, which restrains both citizen and government in their proper relations to each other.

The rule of law cannot be extended to the whole country without a comprehensive program to reorganize our courts, bring a high degree of uniformity to our basic laws, deploy our magistrates throughout the country, assure our judges and prosecutors of independence and security through adequate career systems, simplify and streamline our legal procedure, and provide for an efficient judicial administration, all to the end that the most humble as the most powerful of our citizens may learn in time that a government of laws, fairly administered, is a source of justice and of order.

The reorganization of the legal system is proceeding at a pace which, in normal times, would be quite satisfactory and praiseworthy. But in these troubled times, the work must be accelerated beyond the usual progress of such measures. Accordingly, with a view to stimulating and coordinating the work of reform now underway, the National Assembly, at the request of the Supreme Court, with the President of the Republic concurring, in the interest of showing a united front in the great tasks lying before us, establishes an agency to formulate and expedite the plan of reorganization and, in due course, to submit this plan to the Assembly for adoption by acquiescence, for rejection, or for amendment, as follows:

Article 1. The Commission for the Reorganization of the Legal System of the Republic of Vietnam is hereby created for a period of one year, commencing on the effective date hereof, with its domicile in the national capital.

Article 2. The Commission shall:

- a. Immediately establish an organization and plan of operation in accordance herewith.
- b. Formulate a plan for the reorganization of the entire judicial system, including the prosecutor function, and further including specific proposals for the territorial, original, and appellate jurisdiction of all the courts, for the central administration and management of the entire judicial system, for the deployment of personnel throughout the country to administer the laws through the judicial system, and for the recruitment, appointment, training, compensation, discipline, and removal of judges and prosecutors.
- c. Review and if necessary revise the codes prepared and being prepared by the Ministry of Justice and propose their adoption.
- d. Formulate a plan for the orderly transfer of the administration of justice from military and administrative authorities to the judicial system under objectively determinable conditions as those conditions arise in different parts of the country.
- e. Formulate such other plans for the improvement of the legal system as the President, any member of the Supreme Court, the Minister of Justice, or the Chairman of the judiciary committees of the Senate and chamber of deputies may from time to time request.

Article 3. (a) The Commission shall be composed of the following:

- i. The Chief Justice and two other members of the Supreme Court, designated by the Chief Justice.
- ii. The Minister of Justice, or his designee, and two jurists designated by him.
- iii. Two jurists designated by the President of the Republic.
- iv. The Chairman of the Senate Judiciary Committee or his designee.
- v. The Chairman of the Judiciary Committee of the House of Deputies, or his designee.
- vi. The deans of the law schools, or their designees.
- vii. The President of the Saigon Bar Association or his designee.
- viii. The President of the Hue Bar Association or his designee.

- ix. The Presiding Judge of each Court of Appeal, or his designee.
- x. The Minister of Interior, or his designee.

(b) Each member may be represented by a person designated by him in writing, and that proxy shall have all the powers of the member represented.

Article 4. (a) The Chairman of the Commission shall be the Chief Justice of the Supreme Court or his designee; the Vice Chairman shall be the Minister of Justice, or his designee; the Executive Secretary shall be one of the jurists designated by the President; and the Coordinator of Research shall be one of the Deans of the law schools or their joint designee.

(b) The Commission shall adopt by-laws and internal regulations governing its operations. These by-laws shall provide that the commission can be convened by the chairman, the vice chairman, or the executive secretary, or by any ten members thereof. The Minister of Justice shall proceed forthwith to prepare draft by-laws for adoption by the commission by simple majority vote.

(c) The Supreme Court shall forthwith submit a detailed plan of operation in draft form to the commission, for adoption by simple majority vote.

(d) In the event that the commission is unable to agree upon any measure or plan for reorganization of the legal system by simple majority vote, the question shall be submitted to an Arbitration Committee composed of the Chief Justice or his designee, the President of the Republic or his designee, the chairman of the Judiciary Committees of the House of Deputies and of the Senate, or their designees, and the Minister of Justice or his designee, who shall serve as chairman. The decision of the committee by simple majority vote shall be binding on the commission.

Article 5. (a) The Commission may present its reorganization plan in the form of one proposed law, or in the form of several proposed laws, at one time, or at different times. It shall be the duty of the Chairman and, upon his neglect or refusal, the Vice Chairman of the commission, to submit such plans, together with a clear explanation thereof, to the presiding offices of each house of the National Assembly. Such plans shall be deemed enacted by the National Assembly 60 days after submission, counting only those calendar days, not necessarily consecutive, in which the Assembly has been in regular, extraordinary, or extended session, unless, between the date of submission and the end of the 60 day period, either house passes a resolution stating in substance that that house does not favor the reorganization plan. Under provisions contained in a reorganization plan, all or part of a proposal may be effective at a time later than the date on which the plan would otherwise be effective.

A plan thus enacted in the absence of a resolution of either house stating that it does not favor it shall be promulgated forthwith, or its reconsideration requested, by the President of the Republic, as any other law.

Article 6. The reorganization plans submitted under Article 6 hereof to the National Assembly may include but are not necessarily limited to the following subjects:

- a. The procedures in constitutional litigation and interpretation cases before the Supreme Court.
- b. The revision of the system of investigation and examination in the penal procedure.
- c. The original jurisdiction of the courts in civil and penal matters.
- d. The appellate jurisdiction of the courts, including the Supreme Court.
- e. The territorial jurisdiction of the courts, including the Court of Appeal.
- f. The division of jurisdiction between the judicial, administrative and military power.
- g. Matters of judicial administration, including fiscal, statistical and inspection functions.
- h. The status of the prosecutors in the various courts, including his functions with respect to facilities, equipment and staff.
- i. The judicial and prosecutor career system.
- j. The reporting and classification of decisions.
- k. The adoption of the Penal Code, Civil Code, Code of Civil and Commercial Procedure, Code of Penal Procedure, Code of Commerce and other related legislation.
- l. The salaries and emoluments of the judicial and prosecutor offices.

Article 7. No plan or reorganization proposal submitted hereunder may reduce the salaries of judges during their terms of office, change the domicile of the Supreme Court, reduce the numbers of judges or prosecutors, or contain an appropriation of money.

Article 8. No plan of reorganization enacted hereunder shall abridge, enlarge, or modify any substantive right of any party litigant, nor shall any such plan affect the jurisdiction of any court over proceedings then pending before it.

Article 9. The president shall allocate to the commission, from such unincumbered funds as he may have available in his budget, a sum sufficient for the conduct of the Commission's work, and shall provide within the limitations of the resources of the executive branch such physical facilities and professional and clerical services as he deems appropriate. Compensation or expenses paid to Commission members or staff shall be paid by the Commission and shall not be subject to any limitations of law.

Article 10. Any person may serve as a member of a commission or as a member of the commission staff and may receive a compensation therefor, regardless what other position he may hold in any other branch of the government or other private or public associations.

Article 11. If a quorum of the Commission cannot for any reason be convened after three successive calls under Article 4(b), the Arbitration Committee provided for in Article 4(d) may call a meeting of the Commission, stating the purposes thereof in general terms, and if a quorum does not appear for the meeting so called, the Arbitration Committee may decide upon the matters stated in the call and its decision shall be binding upon the Commission.

§ 2073. Admiralty rules for district courts

The Supreme Court shall have the power to prescribe, by general rules, the forms of process, writs, pleadings, and motions and the practice and procedure in admiralty and maritime cases in the district courts of the United States and all courts exercising admiralty jurisdiction in the Territories and Possessions of the United States.

Such rules shall not abridge or modify any substantive right.

Such rules shall not take effect until they have been reported to Congress by the Chief Justice at the beginning of a regular session and until after the close of such session.

All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect. Nothing in this title anything therein to the contrary notwithstanding, shall in any way limit, supersede, or repeal any such rules heretofore prescribed by the Supreme Court. As amended May 24, 1949, c. 139, § 104, 63 Stat. 104.

CHAPTER 133—REVIEW—MISCELLANEOUS PROVISIONS

Sec.

- 2101. Supreme Court; time for appeal or certiorari; docketing; stay.
- 2102. Priority of criminal case on appeal from state court.
- 2103. Appeal from state court improvidently taken regarded as writ of certiorari.
- 2104. Appeals from state courts.
- 2105. Scope of review; abatement.
- 2106. Determination.
- 2107. Time for appeal to court of appeals.
- 2108. Proof of amount in controversy.
- 2109. Quorum of Supreme Court justices absent.
- 2110. Time for appeal to court of claims in tort claims cases.
- 2111. Harmless error.

Section analysis amended by Act May 24, 1949, c. 139, § 105, 63 Stat. 104.

§ 2101. Supreme Court; time for appeal or certiorari; docketing; stay

(a) A direct appeal to the Supreme Court from any decision under sections 1252, 1253 and 2232 of this title, holding unconstitutional in whole or in part, any Act of Congress, shall be taken within thirty days after the entry of the interlocutory or final order, judgment or decree. The record shall be made up and the case docketed within sixty days from the time such appeal is taken under rules prescribed by the Supreme Court.

(b) Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceeding, shall be taken within thirty days from the judgment, order or decree, appealed from, if interlocutory, and within sixty days if final.

5 § 901

THE AGENCIES GENERALLY

Ch. 9

Note 12

torney General. *Hart Coal Corporation v. Sparks*, D.C.Ky. 1933, 9 F.Supp. 826.

13. — Indictment

Indictments, which charged defendant with filing false and fraudulent income tax returns, were not faulty because evidence on which they were based was presented to grand jury by United States attorney without authorization to do so by Attorney General's office. *Sullivan v. U. S.*, Kan. 1951, 75 S.Ct. 182, 318 U.S. 170, 69 L.Ed. 210.

Under the Twenty-First Amendment, Treasury regulation, Treasury decision, executive order and statutes determining proper officer to accept registration of set up stills, indictment for possession, custody, and control of unregistered still on August 23, 1936, properly charged failure to register the still with district supervisor of Alcohol Tax unit in the Bureau of Internal Revenue, as an agent of Deputy Commissioner of Internal Revenue in charge of the Alcohol Tax Unit. *Czarnecki v. U. S.*, C.C.A.N.J. 1938, 95 F.2d 92.

11. — Compromises

Where criminal proceeding had been instituted based on alleged attempt to defraud and evade income taxes of a corporation, the Attorney General had authority to settle both civil and criminal liabilities arising out of the transaction especially in view of fact that he collab-

orated with officers of Bureau of Internal Revenue, was acting on their request and conferring with them and the Bureau had direct correspondence with officials of the corporation's transferee and had approved and ratified the compromise and accepted check in settlement. *Aviation Corporation v. U. S.*, 1942, 40 F.Supp. 491, 97 Ct.Cl. 550, certiorari denied 63 S.Ct. 730, 318 U.S. 771, 87 L.Ed. 1141.

Where rent due under lease covering lands of restricted member of Osage Indian Tribe was reduced with consent of allottee and approval of Secretary of Interior after lease had completely terminated and suit had been instituted for recovery of rental, Attorney General was not bound by recommendation of Secretary of Interior that compromise be accepted in view of executive order giving Department of Justice authority to determine whether case transferred to Department of Justice should be compromised. *U. S. v. Sandstrom*, D.C.Okl. 1938, 22 F.Supp. 100.

The Attorney General was justified in refusing to accept the recommendation of Department of Interior for a compromise involving a reduction, with consent of allottee and approval of Secretary of Interior, of rentals due under lease covering lands of restricted member of Osage Indian Tribe, where lease had expired and suit to recover rent had been instituted prior to the reduction in rent. *Id.*

§ 902. Definitions

For the purpose of this chapter—

(1) "agency" means—

(A) an Executive agency or part thereof;

(B) an office or officer in the executive branch; and

(C) any and all parts of the government of the District of Columbia other than the courts thereof;

but does not include the General Accounting Office or the Comptroller General of the United States;

(2) "reorganization" means a transfer, consolidation, reorganization, authorization, or abolition, referred to in section 105 of this title; and

(3) "officer" is not limited by section 2104 of this title.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 394; Pub.L. 90-83, § 1(c) Sept. 11, 1967, 81 Stat. 220.

Historical and Revision Notes

Reviser's Notes

1960 Act

Division:	United States Code	Revised Statutes and Statutes at Large
(1)	5 U.S.C. 1332-5	June 20, 1910, ch. 220, § 7, 63 Stat. 205.
(2)	5 U.S.C. 1332-6	June 20, 1910, ch. 220, § 8, 63 Stat. 200.

Explanatory Notes.

In paragraph (1) (A), the words "an executive agency or part thereof" are restated with and substituted for "any executive department, commission, council, independent establishment, Government corporation, board, bureau, division, service, . . . authority, administration, or other establishment in the executive branch of the Government" and to conform to the definition in section 105.

In paragraph (1) (B), the words "an office or officer in the civil service or reformed services in or under an Executive agency" are substituted for "office, officer, . . . in the executive branch of the Government" to conform to the conditions in sections 105, 2101, and 2104. Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the profiles to the report.

1960 Act

This section amends section 602 of title 5, United States Code, so as to preserve the application of the source statute for which section 602 is substituted of the Reorganization

Act of 1910). In the codification of title 5 by Public Law 80-554, that application was inadvertently restricted due to the operation of section 2104 of title 5, providing a title-wide definition of "officer." Briefly, that section defines "officer" as a civil appointive officer of the Federal Government. In the Reorganization Act of 1910, the word "officer" was not defined, and has been construed to include not only civil appointive officers, but uniformed officers, the President, and officers of the government of the District of Columbia. Thus, this section amends section 602 of title 5 by inserting a paragraph providing that the title-wide definition of officer is inapplicable to chapter 9 of title 5. Also, paragraph (1) (B) of section 602 is amended so that the wording thereof is identical to that formerly appearing in section 7 of the Reorganization Act of 1910.

Effective Date of 1967 Amendment. Amendment by Pub.L. 90-83 effective Sept. 6, 1966, for all purposes, see section 6(h) of Pub.L. 90-83, set out as a note under section 5102 of this title.

§ 903. Reorganization plans

(a) When the President, after investigation, finds that—

(1) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of another agency;

(2) the abolition of all or a part of the functions of an agency;

(3) the consolidation or coordination of the whole or a part of an agency, or of the whole or a part of the functions thereof, with the whole or a part of another agency or the functions thereof;

(4) the consolidation or coordination of a part of an agency or the functions thereof with another part of the same agency or the functions thereof;

(5) the authorization of an officer to delegate any of his functions; or

(6) the abolition of the whole or a part of an agency which agency or part does not have, or on the taking effect of the reorganization plan will not have, any functions;

is necessary to accomplish one or more of the purposes of section 901(a) of this title, he shall prepare a reorganization plan for the making of the reorganizations as to which he has made findings and which he includes in the plan, and transmit the plan (bearing an identification number) to Congress, together with a declaration that, with respect to each reorganization included in the plan, he has found that the reorganization is necessary to accomplish one or more of the purposes of section 901(a) of this title.

(b) The President shall have a reorganization plan delivered to both Houses on the same day and to each House while it is in session. In his message transmitting a reorganization plan, the President shall specify with respect to each abolition of a function included in the plan the statutory authority for the exercise of the function and the reduction of expenditures (itemized so far as practicable) that it is probable will be brought about by the taking effect of the reorganizations included in the plan. Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 394; Pub.L. 90-83, § 1(99), Sept. 11, 1967, 81 Stat. 220.

Historical and Revision Notes

Reviser's Notes

1960 Act

Derivation:	United States Code 5 U.S.C. 1337-1	Revised Statutes and Statutes at Large June 20, 1910, ch. 226, § 3, 63 Stat. 203
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Explanatory Notes.

In subsection (a) (5), the words "officer in the civil service or uniformed services" are substituted for "officer" to conform to the definitions in sections 2101 and 2104.

In subsection (b), the words "The President shall have a reorganization plan delivered" are substituted for "The delivery . . . shall be".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 Act

This section amends section 903(a) of title 5, United States Code, to conform to the wording formerly appearing in the source statute 1909, ch. 226 of the Reorganization Act of 1910. In this regard, the explanation appearing in the title text of this bill is equally applicable to this section.

Effective Date of 1967 Amendment: Amendment by Pub.L. 90-83 effective Sept. 6, 1968, for all purposes, and section 9(b) of Pub.L. 90-83, set out as a note under section 5102 of this title.

Cross References

Text of reorganization plans, see Appendix to this title.

CHAPTER 9—EXECUTIVE REORGANIZATION

- Sec.
901. Purpose.
902. Definitions.
903. Reorganization plans.
904. Additional contents of reorganization plans.
905. Limitations on powers.
906. Effective date and publication of reorganization plans.
907. Effect on other laws, pending legal proceedings, and unexpended appropriations.
908. Rules of Senate and House of Representatives on reorganization plans.
909. Terms of resolution.
910. Reference of resolution to committee.
911. Discharge of committee considering resolution.
912. Procedure after report or discharge of committee; debate.
913. Decisions without debate on motion to postpone or proceed.

§ 901. Purpose

(a) The President shall from time to time examine the organization of all agencies and shall determine what changes there are necessary to accomplish the following purposes:

(1) to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the business;

(2) to reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Government;

(3) to increase the efficiency of the operations of the Government to the fullest extent practicable;

(4) to group, coordinate, and consolidate agencies and functions of the Government, as nearly as may be, according to major purposes;

(5) to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions thereof as may not be necessary for the efficient conduct of the Government; and

(6) to eliminate overlapping and duplication of effort.

(b) Congress declares that the public interest demands the carrying out of the purposes of subsection (a) of this section and that the purposes may be accomplished in great measure by proceeding under this chapter, and can be accomplished more speedily than by the enactment of specific legislation. Pub.L. 89-554, § 1, 1966, 80 Stat. 394.

Notes of Decisions

Laches

Power of President 1

1. Power of President

Under the Reorganization Act of 1949 (see this chapter) the President was given the power to promulgate reorganization plans which would affect the administrative functions of a Government agency as well as its executive and administrative functions, since the Act [this chapter] contained no express limitation with regard to the effects which a reorganization plan might have upon quasi-judicial and quasi-legislative functions as did the predecessor Reorganization Act of 1939, 59 Stat. 615, and thus under the 1949 Act [this chapter] the President could abolish a quasi-judicial function such as the War Claims Commission, whose members he could not constitutionally remove from office, and transfer

its functions to a newly created function, the Foreign Claims Settlement Commission, whose members held office during his pleasure. *Lusk v. U. S.*, 1965, 173 Ct. Cl. 201.

2. Laches

In addition to delay in bringing suit, the one asserting the defense of laches must show that he has been prejudiced by the delay, so that in a case in which former officials of a quasi-judicial function claim that an act authorizing the abolishment of the function and its transfer to a new agency is unconstitutional, delay even of a short time in challenging the constitutionality of the legislation results in detriment to the Government since all the actions and decisions of the new agency would be brought into question and possibly invalidated. *Lusk v. U. S.*, 1965, 173 Ct. Cl. 201.

§ 904. Additional contents of reorganization plans

A reorganization plan transmitted by the President under section 903 of this title—

(1) may change, in such cases as the President considers necessary, the name of an agency affected by a reorganization and the title of its head; and shall designate the name of an agency resulting from a reorganization and the title of its head;

(2) may provide for the appointment and pay of the head and one or more officers of an agency (including an agency resulting from a consolidation or other type of reorganization) if the President finds, and in his message transmitting the plan declares, that by reason of a reorganization made by the plan the provisions are necessary. The head so provided may be an individual or may be a commission or board with more than one member. In case of such an appointment, the term of office may not be fixed at more than 4 years, the pay may not be at a rate in excess of that found by the President to be applicable to comparable officers in the executive branch, and, if the appointment is not to a position in the competitive service, it shall be by the President, by and with the advice and consent of the Senate, except that, in the case of an officer of the government of the District of Columbia, it may be by the Board of Commissioners or other body or officer of that government designated in the plan;

(5) increasing the term of an office beyond that provided by law for the office; or

(6) transferring to or consolidating with another agency the government of the District of Columbia or all the functions thereof which are subject to this chapter, or abolishing that government or all those functions.

(b) A provision contained in a reorganization plan may take effect only if the plan is transmitted to Congress before December 31, 1963. Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 396.

Historical and Revision Notes

Reviser's Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
(a)	5 U.S.C. 1332-3(a)	June 20, 1910, ch. 220, § 5(a), 63 Stat. 203. July 2, 1904, Pub.L. 88-351, § 2, 78 Stat. 240.
(b)	5 U.S.C. 1332-3(b)	June 20, 1910, ch. 220, § 5(b), 63 Stat. 203. Feb. 11, 1953, ch. 3, 67 Stat. 4. Mar. 25, 1953, ch. 10, 69 Stat. 14. Sept. 4, 1957, Pub.L. 85-280, § 1, 71 Stat. 611. Apr. 7, 1961, Pub.L. 87-18, 75 Stat. 41. July 2, 1961, Pub.L. 89-351, § 1, 78 Stat. 240. June 18, 1963, Pub.L. 89-43, 79 Stat. 135.

Explanatory Notes.

Standard changes are made to conform style of this title as outlined in the preface to the definitions applicable and the changes to the report.

Library References

United States Code.

C.J.S. United States §§ 31, 62.

§ 906. Effective date and publication of reorganization plans

(a) Except as otherwise provided under subsection (c) of this section, a reorganization plan is effective at the end of the first period of 60 calendar days of continuous session of Congress after the date on which the plan is transmitted to it unless, between the date of transmittal and the end of the 60-day period, either House passes a resolution stating in substance that that House does not favor the reorganization plan.

(b) For the purpose of subsection (a) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

(c) Under provisions contained in a reorganization plan, a provision of the plan may be effective at a time later than the date on which the plan otherwise is effective.

5 § 906 THE AGENCIES GENERALLY (C.)

(d) A reorganization plan which is effective shall be printed (1) in the Statutes at Large in the same volume as the public laws and (2) in the Federal Register. Pub.L. 80-554, Sept. 6, 1965, 80 Stat. 571

Historical and Revision Notes

Reviser's Notes

Derivation	United States Code	Revised Statutes and Statutes at Large
(a)-(c)	5 U.S.C. 1332-4	June 20, 1940, ch. 226, § 6, 63 Stat. 24 Sept. 4, 1957, Pub.L. 85-280, § 2, 71 Stat. 611.
(d)	5 U.S.C. 1332-9	June 20, 1940, ch. 226, § 11, 63 Stat. 24

Explanatory Notes.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Notes of Decisions

1. Generally
 A Presidential reorganization plan may be rejected by Congress within 60 days of its submission and if it is not rejected in this period it becomes law. *Young v. United Parcel Service of America, Inc.*, 459 U.S. 19, 103 S.Ct. 212, 72 L.Ed.2d 236, 64 U.S.App.D.C. 51, certiorari denied 74 S.Ct. 870, 347 U.S. 1015, 69 L.Ed. 1137.

§ 907. Effect on other laws, pending legal proceedings, and unexpended appropriations

(a) A statute enacted, and a regulation or other action made, prescribed, issued, granted, or performed in respect of or by an agency or function affected by a reorganization under this chapter, before the effective date of the reorganization, has, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, the same effect as if the reorganization had not been made. However, if the statute, regulation, or other action has vested the functions in the agency from which it is removed under the reorganization plan, the functions insofar as it is to be exercised after the plan becomes effective shall be deemed as vested in the agency under which the function is performed by the plan.

(b) For the purpose of subsection (a) of this section, "regulation or other action" means a regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.

(c) A suit, action, or other proceeding lawfully commenced by or against the head of an agency or other officer of the United States in his official capacity or in relation to the discharge of his official duties, does not abate by reason of the taking effect of a reorganization plan under this chapter. On motion or supplemental petition filed at any time within 12 months after the reorganization plan takes effect, showing a necessity for a survival of the suit, action, or other proceeding to obtain a settlement of the questions involved, the court may allow the suit, action, or other proceeding to be main-

ained by or against the successor of the head or officer under the reorganization effected by the plan or, if there is no successor, against such agency or officer as the President designates.

(d) The appropriations or portions of appropriations unexpended by reason of the operation of this chapter may not be used for any purpose, but shall revert to the Treasury. Pub.L. 89-554, Sept. 8, 1966, 80 Stat. 396.

Historical and Revision Notes

Reviser's Notes

Derivation	United States Code	Revised Statutes and Statutes at Large
1	5 U.S.C. 1332-7	June 20, 1910, ch. 220, § 9, 63 Stat. 206.
1	5 U.S.C. 1332-8	June 20, 1910, ch. 220, § 10, 63 Stat. 206.

Explanatory Notes.

In subsections (a) and (c), the words "the provisions of" in the phrase "under this chapter" are omitted as unnecessary.

In subsection (e), the words "the suit, claim, or other proceeding" are substituted for "the same".

In subsection (d), the words "shall revert" are substituted for "shall be . . . returned", and the words "Impounded and" are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Notes of Decisions

1. Tax Court proceedings. Here, under 1959 Reorganization Plan No. 21, set out in the Appendix to this title, United States Maritime Commission and office of its Chairman were abolished, and their relevant functions were transferred to Secretary of Commerce, and chairman had been named respondent in action before Tax Court in reorganization proceedings, cause did not date when contractor failed to file motion or supplemental petition within 60-day period requesting that ac-

tion survive against Secretary of Commerce, and, therefore, Tax Court still had jurisdiction to render its decision. Chairman of U. S. Maritime Commission v. California Eastern Line, 1959, 201 F.2d 207, 62 U.S.App.D.C. 207.

Provisions of this section concerning abatement and substitution are inapplicable to proceedings in Tax Court in which agency or officer later affected by reorganization plan is named as respondent. Id.

§ 908. Rules of Senate and House of Representatives on reorganization plans

Sections 909-913 of this title are enacted by Congress—

(1) as an exercise of the rule-making power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by section 909 of this title; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of

5 § 908**THE AGENCIES GENERALLY**

Ch. 9

(that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 397.

Historical and Revision Notes**Reviser's Notes**

Derivation:	United States Code 5 U.S.C. 1332-10	Revised Statutes and Statutes at Large June 20, 1910, ch. 226, § 201, 63 Stat. 24
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Explanatory Notes.

The words "Sections 908-913 of this title" are substituted for "The following sections of this title" to reflect the codification of sections 202-206 of Title II of the Act of June 20, 1910.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 909. Terms of resolution

For the purpose of sections 908-913 of this title, "resolution" means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: "That the _____ does not favor the reorganization plan numbered _____ transmitted to Congress by the President on _____, 19____.", the first blank space therein being filled with the name of the resolving House and the other blank spaces therein being appropriately filled; but does not include a resolution which specifies more than one reorganization plan. Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 397.

Historical and Revision Notes**Reviser's Notes**

Derivation:	United States Code 5 U.S.C. 1332-11	Revised Statutes and Statutes at Large June 20, 1910, ch. 226, § 202, 63 Stat. 24
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Explanatory Notes.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 910. Reference of resolution to committee

A resolution with respect to a reorganization plan shall be referred to a committee (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be. Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 397.

Historical and Revision Notes**Reviser's Notes**

Derivation:	United States Code 5 U.S.C. 1332-12	Revised Statutes and Statutes at Large June 20, 1910, ch. 226, § 203, 63 Stat. 24
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Explanatory Notes.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 911. Discharge of committee considering resolution

(a) If the committee to which a resolution with respect to a reorganization plan has been referred has not reported it at the end of 10 calendar days after its introduction, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution with respect to the reorganization plan which has been referred to the committee.

(b) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same reorganization plan), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(c) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same reorganization plan. Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 307.

Historical and Revision Notes**Reviser's Notes**

Derivation:	United States Code 5 U.S.C. 133a-13	Revised Statutes and Statutes at Large June 20, 1910, ch. 220, § 204, 63 Stat. 207.
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Explanatory Notes.

In subsection (a), the words "at the end of 10 calendar days . . . It is" are substituted for "before the expiration of ten calendar days . . . It shall then (but not before) be".

In subsection (b), the words "A motion to discharge" are substituted for "Such motion".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 912. Procedure after report or discharge of committee; debate

(a) When the committee has reported, or has been discharged from further consideration of, a resolution with respect to a reorganization plan, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(b) Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and

59

5 § 912 THE AGENCIES GENERALLY Ch. 4

those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to. Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 398.

Historical and Revision Notes

Reviser's Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 1332-14	June 20, 1910, ch. 226, § 205, 63 Stat. 267

Explanatory Notes.

Standard changes are made to conform style of this title as outlined in the preface to the report.

§ 913. Decisions without debate on motion to postpone or proceed

(a) Motions to postpone, made with respect to the discharge from committee, or the consideration of, a resolution with respect to a reorganization plan, and motions to proceed to the consideration of other business, shall be decided without debate.

(b) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a reorganization plan shall be decided without debate. Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 398.

Historical and Revision Notes

Reviser's Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 1332-15	June 20, 1910, ch. 226, § 206, 63 Stat. 27

Standard changes are made to conform style of this title as outlined in the preface to the report.