

arrived in Vietnam shortly after the wing commanding general moved his flag to Da Nang on 11 May. Major St. Amour's overseas tour ended a month and a half later and Colonel Harry S. Popper replaced him.

Colonel Popper, like most of the senior legal officers of the period, had served in World War II. He had commanded a light antiaircraft group and in 1956 was the commanding officer of the 3d Battalion, 2d Marines.<sup>45</sup> As the wing SLO in 1965, he supervised four lawyers, a gunnery sergeant as legal chief, five other enlisted legal clerks, and the wing's sole Marine Corps criminal investigator.

Like the 3d Marine Division, the 1st MAW had few cases with which to contend. Through the first eight months in Vietnam the Wing's lawyers tried no general courts-martial.<sup>46</sup> A variety of special courts similar to those in the 3d Division were conducted in addition to routine legal matters.

#### *Legal Duty in a Combat Zone: Problems*

The supporting elements that made the trials possible were of great importance to the accomplishment of the lawyers' mission in Vietnam. The enlisted legal clerks and legal chiefs met the daily challenges of administrative and clerical support under difficult conditions. Their dedication and ability to improvise were indispensable in bringing military justice to the combat zone.

More prosaic, but also important, was court recording equipment. Article 19 of the 1951 UCMJ specified that a bad conduct discharge could not be imposed unless "a complete record of the proceedings and testimony" had been made. Because a bad conduct discharge was a possibility in virtually all special and general courts-martial, almost every court required a verbatim record. The court reporter accomplished that by using an electrically powered recorder employing either a belt or reel-to-reel tape in conjunction with a closed-mask microphone—a mask/microphone fitting flush against the face, into which the reporter repeated everything said by the court-martial participants. The reporter's voice, contained by the mask, was inaudible to others in the courtroom. A "back-up" recording was made on a second machine with an open microphone. After the court concluded, the reporter replayed the tape, either employing a speaker or, more often, earphones, and typed a word-for-word record on a manual typewriter, making four carbon copies. Dictaphone was the prevalent brand of recording equipment early in the war, but there were others, as well.<sup>47</sup>



Photo courtesy of Col Harry S. Popper, USMC (Ret.)  
*1st Marine Aircraft Wing (Forward) working spaces were no better than those of III MAF/3d Marine Division, early in the war. Here Col Harry S. Popper, Jr., Wing Staff Legal Officer, stands beside his "office."*

The variety of recorder brands and models made repair and resupply a significant problem and created confusion when equipment familiarization was necessary. The expeditionary setting of Vietnam, where personnel were frequently transferred and resupply problems were greater, magnified the difficulties. Lieutenant Colonel Verne L. "Bubs" Oliver, a Yokosuka-based law officer in 1965, noted: "Each command would end up with two or three different makes, with no single agency or facility to service them. I do not care what make of machine you are employing, you must have a service and repair facility to help keep them on line."<sup>48</sup>

Lance Corporal Gene E. White was a legal clerk assigned to Headquarters Battalion, 12th Marines. His experience with the equipment of that period was typical. He recalled:

A lot of trouble was experienced with my recorder/transcriber. I was using the old plastic belt, electric Dictaphone machine . . . Sand/dust was also a big problem with my machine. The "floor" of our tent was ankle-deep sand. This sand filled the foot pedal on my machine and



Photo courtesy of Col Harry S. Popper, USMC (Ret.)

*Lawyers of the 1st Marine Aircraft Wing (Forward) legal office posed at Da Nang, Vietnam, June 1965. From left: 1stLt Bruce A. Hoffman; 1stLt John W. Clark; Col Harry S. Popper, Jr., Staff Legal Officer; LtCol Frederick H. Campbell; Lt Edward A. Arianna, USN.*

got into the the Dictaphone itself. Only luck and a lot of cleaning kept them going.<sup>49</sup>

A number of court reporters used their personal tape recorders at trial in an effort to overcome balky government-issued equipment.<sup>50</sup> That usually precluded the professionally embarrassing exchanges found in a number of appellate opinions of that period, such as the case of *United States v. Private First Class Gary O. Harrison*, a general court-martial for murder. The opinion read:

At the pre-sentencing stage the defense counsel offered an eyewitness . . . . After the testimony was given, it was discovered that the recording machine had failed and did not pick up [the witness'] testimony. The following stipulation of testimony was then entered: "DC: Due to a mechanical failure of the recording machine the machine did not pick up the testimony of [the witness], so trial counsel, with the express consent of the accused will enter into a stipulation with the defense concerning the sworn testimony of [the witness]."<sup>51</sup>

But what if the accused was not as agreeable as in this case, and would not stipulate? Was the witness still available to again testify? What effect would inevitable minor inconsistencies in the two testimonies have on the court? How might the opposing counsel attack the testimony, given a second "bite of the apple?" The potential pitfalls were several.

The U.S. Army, subject to the same reporting requirements and difficulties, took action to end the equipment problem. In October 1965, the senior Army judge advocate sponsored an interservice conference at MACV headquarters in Saigon. Colonels Popper, Sevier, Peltzer and Blackburn attended. Colonel Popper noted in a letter to Headquarters Marine Corps:

One item of particular interest was the announcement that, after extensive investigation the Army has adopted the Gray Audiograph equipment; both the regular office model and the portable power pack model. I have not seen either of them, but we are particularly interested . . . . One advantage in regard to the Gray is that it can be serviced out of Saigon. I wonder if anyone in Headquarters Marine Corps has checked out . . . this equipment?<sup>52</sup>

Benefitting from the Army's research, the Marine Corps purchased Gray Audiograph recorders and the smaller, portable Gray Keynoters for issue to legal offices in Vietnam. But what looked promising at the outset became a serious problem. The machines proved unreliable in the extreme heat and dust, and, worse, repairs were unavailable in Saigon, contrary to initial assurances. Whether any recorder employing the technology of the 1960s could have overcome the harsh operating conditions that defeated the Grays is ques-



Photo courtesy of RAdm Hugh D. Campbell, JAGC, USN (Ret.)

*USO Entertainer Martha Raye visits Da Nang, 13 November 1965. She is flanked by 3d Marine Division lawyers Capt Fred R. Files, left, and Lt Hugh D. Campbell, USN.*

tionable. Those machines, combined with the undependable power sources upon which the reporters had to rely, vexed the legal system as long as the Marines remained in Vietnam and led to the reversal of several cases for lack of the required verbatim record.<sup>53</sup>

Another problem was the lack of a brig in the III MAF area, through 1966. At first, convicted Marines were confined at their unit in a tent, with a chaser (an armed Marine guard) posted at the "door."<sup>54</sup> That was satisfactory only so long as the sentence was not lengthy and the number of confined Marines remained very small. As the frequency of courts-martial rose with the number of Marines deployed to Vietnam, and sentences escalated in severity, another solution was required.

While the 3d Division and III MAF were still collocated, the provost marshal improvised a confinement "facility," which was simply a hole in the ground, quite deep, covered by barbed wire. Convicted prisoners with long-term sentences were to be kept there for the several days it took for transportation to be arranged to a brig on Okinawa or in Japan.<sup>55</sup> Colonel Peltzer, the III MAF SLO, was alerted to this procedure, which was contrary to military law and the Department of the

Navy *Corrections Manual*. He immediately acted to ensure that the division did not use the "facility." His forceful discussion of the issue with General Walt's

*The Martha Raye USO show pick-up band of Marine Corps musicians included lawyer-cum-civil affairs officer Maj James P. King, left, a trombone player of professional caliber, in Da Nang, 14 November 1965.*

Photo courtesy of Mr. Donald W. Harris





Photo courtesy of Mr. Donald W. Harris  
*Brig-in-a-tent without the tent. The week-long pretrial confinement of a Marine in this open-air enclosure at Phu Bai resulted in the dismissal of charges.*

chief of staff led to a reexamination of the prisoner holding policy. The use of aircraft for ferrying prisoners to Okinawa could not continue indefinitely, because tactical missions required more and more aircraft, which left few to carry prisoners. Plans were initiated for a brig to be built in Vietnam, but construction was not completed until late 1966.<sup>56</sup> Until then the brig-in-a-tent system continued for short-term prisoners, while those with more substantial sentences were flown to Okinawa or Japan for confinement.

Offenses new to Marine Corps lawyers, if not to Marines, began to appear on court-martial charge sheets. The profits to be had from currency manipulation and black marketeering attracted the few who were willing to accept the risk of trial and punishment. Currency violations became common. Until 1 September 1965 U.S. dollars were an authorized medium of exchange in Vietnam. After that date U.S. currency was withdrawn from the economy and military payment certificates (MPC) substituted. The Vietnamese piaster remained in circulation in the civilian community. All

service personnel entering the country had to exchange their "green" for MPC and were paid in MPC while they remained in-country. All U.S. facilities, such as PXs, clubs, and post offices, accepted only MPC. The purpose of withdrawing U.S. dollars from circulation was to keep U.S. and Vietnamese monetary systems separate and to deter black market operations and currency manipulation. This dampened the country's severe inflation which had lured some Americans to play the exchange rate of the piaster against that of the U.S. dollar, pocketing the difference as illegal profit.<sup>57</sup>

Illegal currency transactions often involved black market sales of items stolen from the PX system. Exchange pilferage losses in Vietnam for 1965, alone, amounted to \$2.25 million. Besides the dollar loss, black marketeering weakened the already fragile Vietnamese economy.<sup>58</sup>

Black market activities were common among soldiers and Marines who were absent without leave (AWOL) from their units. They often found refuge in Da Nang and other large cities in South Vietnam, frequently with prostitutes. Captain Robert W. Wachsmuth, a Force Logistic Command trial counsel, recalled:

AWOL Marines were afforded safe haven with Vietnamese prostitutes. They were told they could have all of the women, beer and food they wanted . . . in exchange for their making one trip to the exchange in Da Nang. Vietnamese prostitutes had collected considerable MPC in consideration of their favors, but were prohibited from possessing or spending MPC. Consequently, MPC would be given to the AWOL Marine who was instructed to purchase television sets at the exchange. When the television sets were handed over to the pimps or heads of the operation, the sets would be transported to Saigon where, upon resale, they often brought five to ten times their original purchase price.<sup>59</sup>

It was another, newer variety of crime that Marine Corps lawyers prosecuted throughout the war.

*From a Lawyer's Case File:  
The Marine Corps' First  
War Crime Conviction in Vietnam*

"War crime" is the legal expression for a violation of the law of war by any person, military or civilian.<sup>60</sup> Directive Number 20-4 of the Military Assistance Command, Vietnam, defined a war crime simply as, "every violation of the law of war." It referred to a willful killing (other than in combat) as a "Grave Breach."<sup>61</sup>

No Marine was charged with the commission of a war crime, as such, in Vietnam. Rather, any "violation of the law of war" committed by a Marine against

a Vietnamese was charged as a violation of the UCMJ. For example, the murder of a civilian noncombatant was charged as a violation of Article 118, murder, rather than as a war crime in violation of the Geneva or Hague conventions. Technically, the killing of a South Vietnamese could not be a war crime. The victim was a citizen of an allied nation, protected by the laws of Vietnam, rather than an enemy protected by the Geneva Conventions.<sup>62</sup>

Other than homicides, the Marine Corps did not maintain records of offenses committed against Vietnamese.<sup>63</sup> Ninety-five U.S. Army personnel were convicted by court-martial of the murder or manslaughter of Vietnamese. Twenty-seven Marines were found guilty of the same offenses.<sup>64</sup> Lance Corporal Marion McGhee was the first Marine to be convicted of the murder of a Vietnamese noncombatant.

On 12 August 1965 Lance Corporal McGhee was a fireteam leader in Company M, 3d Battalion, 3d Marines, located on the Chu Lai perimeter. He had no record of prior disciplinary violations. Several of his buddies noted on the 12th that his behavior seemed unusual. Drunk, some testified; "strange," but not drunk, others testified.

Around 2100 that night Lance Corporal McGhee

walked through Marine lines, past the defensive barbed wire and toward a nearby village. In answer to a Marine sentry's shouted question, he responded that he was going after a VC. Two Marines were dispatched to retrieve McGhee. As they approached the village they heard a shot and a woman's scream and then saw McGhee walking toward them from the village. Calmly, he said he had just killed a VC and other VC were following him. The other two Marines saw nothing. McGhee then exclaimed that he was going to get the other VC and strode back toward the village, despite efforts to stop him. Within a few minutes he returned to Marine lines a second time, now with a "wild look," according to a defense witness.

At trial Vietnamese prosecution witnesses testified that McGhee had kicked through the wall of the hut where their family slept. He seized a 14-year-old girl and pulled her toward the door. When her father interceded, McGhee shot and killed him. Once outside the house the girl escaped McGhee with the help of her grandmother. McGhee stood by his assertion that he had been pursuing someone he suspected to be a VC and, in a pleading encountered many times over the next few years, raised the defense of insanity.

After lengthy testimony by two psychiatrists the

*LtCol Charles B. Sevier, right, with law officer Capt James E. Keys, USN, in 1965 stands behind the 3d Marine Division command post. Four years later Capt Keys represented Navy Cdr Lloyd M. Bucher, captain of the ill-fated Pueblo (AKL 44), at his court of inquiry.*

Photo courtesy of Col Charles B. Sevier, USMC (Ret.)



court concluded that the government had met the burden of proving Lance Corporal McGhee's mental capacity; that beyond a reasonable doubt, he was free from mental defect, disease, or derangement and was able to distinguish right from wrong and adhere to the right. The court found him guilty of unpremeditated murder and sentenced him to reduction to private, loss of all pay and allowances, confinement at hard labor for ten years, and a dishonorable discharge. At the appellate level McGhee's confinement was reduced to seven years.<sup>65</sup> He actually served six years and one month.<sup>66</sup>

### *Perspective*

In March 1965 the single Marine Corps lawyer assigned legal duties in Vietnam taped a hand-written sign to the door of his room: "Staff Legal Officer." By the end of the year three staff legal officers, all colonels, and more than 30 other Marine Corps lawyers and Navy law specialists were involved in trying courts-martial in Vietnam. Official totals of the number of cases tried in Vietnam in 1965 were not kept, but according to the Navy's Judge Advocate General, the number was proportionally lower than in other locations where Marines were based.<sup>67</sup>

High-level concern regarding the treatment of Vietnamese prisoners of war was already evident. In September the Commanding General, Fleet Marine Force, Pacific, Lieutenant General Victor H. Krulak, contacted Major General Walt, saying, "I am anxious that all of our people are made fully aware of their obligations, under the Geneva Convention, as to the treatment of prisoners. This point acquires particular importance now that the flow of replacements will bring you a large group of new and uninitiated people each month."<sup>68</sup> General Krulak emphasized the same point two months later, in another message to General Walt: "Ensure that every officer in the chain of command knows the rules, the reasons for the rules, and the penalties for their violation, and then accept no compromise at all."<sup>69</sup> Despite the concern for the proper treatment of prisoners, throughout the war Marine Corps lawyers would try Marines charged with the very acts feared by General Krulak.

But for the moment, while the war increased in intensity and the number of Marines in Vietnam continued to rise, crime remained a minor problem. Except for isolated instances, drugs were not yet a concern. "Fragging," the murder of officers and noncommissioned officers by their own men, was unknown. Civilian lawyers were not yet regular arrivals at the Da Nang Airbase. Racial conflict had not spread to the Marine Corps in any significant way.

For Marine Corps lawyers, 1965 was the first test of the *Manual for Courts-Martial* under expeditionary circumstances. Still, as staff officers, lawyers played no part in the commander's operational scheme. Lieutenant Colonel John L. Zorack, who led the 1st Marine Division's legal office at Chu Lai, recalled, "we were just 'there,' to be frank with you. When they [the Marine commanders] had a problem, they called on us."<sup>70</sup>

In Washington Colonel Robert B. Neville continued in charge of Discipline Branch, which remained a part of Personnel Department. The Marine Corps tried 204 general, and 4,620 special, courts-martial, world-wide, during the year.<sup>71</sup> So far, no special programs or requirements were identified that would assure an increase in the number of lawyers on active duty to keep pace with the 40 percent increase in Marine Corps strength.<sup>72</sup> The Corps did, however, increase recruitment levels in the Platoon Leaders' Class (Law). By 1965 there were 75 entrants, as opposed to only one officer in 1961, the program's first year.<sup>73</sup>

Personnel Department and Discipline Branch were concerned with the serious lack of senior lawyers who carried a primary legal MOS. To meet the need for these experienced majors, lieutenant colonels, and colonels, Colonel Neville and his seniors decided that the Marine Corps would have to rely on those with secondary legal MOSs—those officers who had been commissioned in fields other than legal then gained law degrees along the way, some on their own, and some with Marine Corps assistance. For the next decade, said the planners at Headquarters Marine Corps, they would have to serve solely in legal billets.<sup>74</sup> The choices earlier given riflemen-lawyers were narrowing with the drift toward lawyer specialization.

## CHAPTER 3

# 1966: Building on Sand

*Trying Cases: Using 'The Red Book'—From a Lawyer's Case File: Pilot to Copilot to Brig  
The Other Prisoners: North Vietnamese POWs—The 1st Marine Division Arrives: More Lawyers, More Cases  
Force Logistic Command: New Guy on the Block—Trying Cases—Courtroom Personnel: Just Passin' Through  
Homicide on Patrol: Men, Women, and Children—3d Marine Division: On The Road Again  
III MAF: Double-Hatting The Lawyer—Perspective*

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By January 1966 Major General Lewis W. Walt, Commanding General of III MAF and the 3d Marine Division, had more than 41,000 men under his command. The United States' recent decision to double U.S. forces in Vietnam meant that the 1st Marine Division, lately moved from Camp Pendleton, California, to Okinawa, would be moving again, this time to the combat zone.

The Marines in Vietnam were located in I Corps Tactical Zone, the northernmost of South Vietnam's four military regions. I Corps was bordered on the north by the Demilitarized Zone; to the south, by the Army's II Corps Tactical Zone; to the east, by the South China Sea; and to the west by Laos. The Marines operated from three tactical areas of responsibility (TAORs), and virtually all courts-martial arose from events that occurred within those TAORs. The Da Nang TAOR covered 530 square miles and contained over a quarter of a million South Vietnamese. The headquarters of III MAF, the 3d Marine Division, and the 1st Marine Aircraft Wing were located there. Three infantry regiments, an artillery regiment, and two aircraft groups were based in the Da Nang TAOR as well.

Fifty-seven miles to the south the Chu Lai TAOR contained over 100,000 civilians in 205 square miles. Chu Lai was home to two Marine Corps infantry regiments, an artillery group, and three aircraft groups. Units of the 1st Marine Division arrived during the first three months of 1966 and assumed tactical responsibility for the Chu Lai TAOR.<sup>1</sup>

The Phu Bai TAOR, 35 miles northwest of Da Nang, covered 76 square miles and held 36,000 South Vietnamese. Two infantry battalions, an artillery battalion, and one aircraft group were based there.

As the new year began Colonel Vernon A. Peltzer's Force Legal Office remained with the III MAF Headquarters staff at the Da Nang Airbase. Colonel Charles B. Sevier's 3d Marine Division legal office had moved from the airbase to the northern slope of Hill 327, southwest of Da Nang, along with the rest of the division staff. Colonel Harry S. Popper, Jr., and his 1st

MAW legal office remained at the airbase with the 1st Marine Aircraft Wing staff.

### *Trying Cases: Using 'The Red Book'*

Most of the courts-martial convened in Vietnam were being tried by officers who had never opened a law book. Their reference was the *Manual for Courts-Martial, 1951*, known to lawyers and nonlawyers alike as "the Red Book" for the color of its cover. (It was actually a distinctly maroon color.) Appendix 2 of the Red Book reprinted the Uniform Code of Military Justice (UCMJ), usually referred to simply as, "the Code." Article 27(b) of the Code read: "Any person who is appointed as trial counsel or defense counsel in the case of a *general* court-martial (1) shall be a judge advocate of the Army or the Air Force, or a law specialist of the Navy or Coast Guard." (Emphasis supplied.)

The prosecutor and defense counsels at special courts-martial most often were not lawyers, because lawyers were required only in general courts. (Lawyers had never been a part of summary courts-martial.) So most special courts were tried "in house" by the officers of the battalion to which the accused Marine belonged. The nonlawyer trial counsel and nonlawyer defense counsel, usually lieutenants and captains, were the work horses of the system represented by the Red Book. As a convenience, the staff legal officer (SLO) usually made a lawyer defense counsel available to a unit, either for advice or for an actual trial, in cases where the facts were unusually complex, or where potentially difficult legal issues were present. A questionable search, a shaky confession, or a circumstantial case, might lead to a request for lawyer assistance. But nearly every junior officer eventually acted as a trial or defense counsel in a special court-martial, and as a member (juror). Every Marine lawyer a rifleman, and every Marine officer a court-martial counsel.

In 1966 First Lieutenant John T. Fischbach was an artillery officer who had not been to law school, but who enjoyed participating in the military justice system. As he recalled:



Department of Defense Photo (USMC) A186827

*1stLt Anthony P. Tokarz, without helmet, later a judge advocate, was an infantry platoon commander in Company L, 3d Battalion, 7th Marines, in March 1966. He was seriously wounded and earned the Silver Star Medal the day after this photograph was taken.*

I travelled between battalions in the 12th Marines . . . as a wandering trial counsel. Since I liked to try courts-martial and most other non-lawyers didn't, the battalion adjutant, 1st Lieutenant Pete Van Ryzin, put me on most appointing orders when I was not out on operations . . . I recall one trial interrupted by sniper fire and two interrupted by fire missions which required members of the court, witnesses, and the accused to man their posts. It was interesting to try cases where most parties, including the accused, were armed. Some cases were tried outdoors, with members sitting behind tables made of ammo boxes and everyone sitting either on camp stools or empty ammo boxes.

It was my experience trying cases as a non-lawyer counsel . . . that caused me to leave active duty to go to law school . . . Practicing law under combat conditions gave me the opportunity to distinguish between the essentials of the law and the trappings.<sup>2</sup>

Lieutenant Fischbach's experiences were similar to those of other nonlawyer counsels who "practiced" under the Red Book.

Each battalion was assigned a legal clerk to monitor the companies' unit punishment books, track battalion disciplinary matters, and execute court-martial documents such as the charge sheet, convening authority's action, and Article 32 investigating officer's report. The legal clerk was also responsible for "taking" the court—recording the proceedings via the closed-microphone recording system. Finally, he typed the record of trial as well.

Usually, the legal clerk was also assigned other administrative duties within the battalion office, such as unit diary clerk, R & R clerk, or files clerk; whatever clerical work the battalion required. This approach to assignments inevitably had a negative effect on the performance of the legal clerk's specialized and demanding duties. Battalion adjutants, responsible for all of the many administrative matters within the com-



mand, often did not have the luxury of choice when it came to assignment of clerical personnel. Nevertheless, in an area as detailed as the law there was no room for part-time legal clerks. Court-martial processing errors were too often made because field commands could not afford to assign exclusively legal duties to their legal clerks.

What did the Marine infantry commander think about lawyers? Lieutenant Colonel Paul X. Kelley, later the 28th Commandant of the Marine Corps, commanded the 2d Battalion, 4th Marines, during part of 1966. Asked if lawyers had played any part in his exercise of command, he replied: "They really didn't, and there was a very good reason for that . . . . We had very little opportunity to have what I would consider the rear area problems; you don't have problems, normally, in the field . . . . So, as a battalion commander, I had very little requirement for lawyers." He went on to say that, until he had a court-martial case that required a lawyer, he simply gave lawyers no thought. So long as they were there when you needed them, lawyers were properly supporting the commander.<sup>3</sup>

Several nonlawyer trial and defense counsels in Vietnam later attended law school and returned to duty as judge advocates. The experience they gained in operational matters and in the command of Marines in combat would serve them well, and serve the Marine Corps well, in future years.

Among the future lawyers was Captain Kenneth T. "K.T." Taylor. In 1966 he was awarded the Silver Star Medal for heroism while an advisor to a Vietnamese army battalion.<sup>4</sup> In future years, as a colonel, he was the staff judge advocate of several major commands.

Corporal Philip A. Seymour, an infantryman, was awarded the Bronze Star Medal, the Navy Commendation Medal, the Vietnamese Cross of Gallantry, and the Purple Heart. He later gained college and law degrees and became a Marine Corps judge advocate.<sup>5</sup>

First Lieutenant Anthony P. "Tony" Tokarz was an infantry platoon commander. In March 1966, in a series of search and destroy missions during which he was seriously wounded, he earned the Silver Star Medal.<sup>6</sup> He later became a lawyer and attained the grade of colonel.

Captain James S. May, the combat cargo officer on board the *Calvert* (APA 32), was also the ship's legal officer.<sup>7</sup> As a colonel he was a staff judge advocate as well as a judge on the Navy-Marine Corps Court of Military Review. While in the latter billet he was to

write the opinion upholding the conviction of turncoat Private First Class Robert R. Garwood.\*

Captain Wallace L. "Wally" Campbell was an RF-4 Phantom reconnaissance systems operator in 1966. The Commandant of the Marine Corps presented him a Silver Star Medal for heroism in a series of reconnaissance missions over North Vietnam.<sup>8</sup> He, too, would become a colonel and the staff judge advocate of several Marine Corps commands.

Although not the only Marines to move from line billets to the courtroom, they belonged to that category of post-Vietnam lawyer who knew the military courtroom from the perspective of both commander and jurist. Like their World War II and Korean War predecessors, they were to lead a new generation of Marine Corps lawyers. Unlike their predecessors, they would have to deal with the disciplinary problems spawned by a nationally divisive war.

Along with other nonlawyer counsels and officer-lawyers, they also filled the need for court-martial personnel in Vietnam. The modest disciplinary rate of 1965 continued into 1966. According to the 1st Marine Division's command chronology:

The current low disciplinary rate within the Division is indicative of the high state of morale. During the months of April through June 1966, the Division had 116 court-martial [including summaries]. During a like period in 1965 when the Division was stationed at Camp Pendleton, there were 266.<sup>9</sup>

Although those circumstances would worsen dramatically within two years, light caseloads continued to prevail in Vietnam.

*From a Lawyer's Case File: Pilot to Copilot to Brig*

In 1966 the review was completed in the general courts-martial of the *United States v. Privates First Class Robert L. Bright and Lucien J. Gonzales*. In retrospect their cases may seem humorous footnotes, but they did not amuse those involved. A record of trial does not reveal the fear, anger, uncertainty, and violence involved in dealing with drunken, belligerent individuals in the prime of physical strength and aggressiveness. Potential tragedy was never far away in the less-than-grave events that transpired in the Bright and Gonzales cases.

At about 2030 on a July night Bright and Gonzales were returning to their unit, the 3d Engineer Battalion, after an evening of drinking. They were quite

\*See Chapter 10.



Department of Defense Photo (USMC) A188367

*Capt Kenneth T. Taylor, later a judge advocate, received the Silver Star Medal from MajGen Wood B. Kyle while sporting the black beret of the Black Panther Company, 1st ARVN Division, to which he was an advisor. Capt Taylor said, "General Kyle was less than enthusiastic about my rather unorthodox cover and facial hair. While he made no comment . . . . We did not spend any time in light conversation."*

*Infantry squad leader Cpl Philip A. Seymour, later a judge advocate, received the Bronze Star and Navy Commendation Medals and the Purple Heart, as well as the Vietnamese Cross of Gallantry, for combat actions in Vietnam with the 1st Battalion, 1st Marines.*

Photo courtesy of Maj Philip A. Seymour, USMC



Marine Corps Historical Collection

*Col James S. May, shown in a 1988 photograph. In 1965, as a captain, he was the combat cargo officer and also the legal officer on board the Calvert (APA 32) off Vietnam. He later became a judge advocate.*

*Capt Wallace L. Campbell, later a judge advocate, was an RF-4 reconnaissance systems operator with VMCS-1 when he was awarded the Silver Star Medal by Gen Leonard F. Chapman, Jr., Commandant of the Marine Corps, for a series of classified combat missions.*

Photo courtesy of Col Wallace L. Campbell, USMC



drunk. Their route took them across the Da Nang Airbase and, as luck would have it, past the U.S. Air Force flight line where two B-57 bombers sat on 15-minute alert. Each bomber was armed with four 500-pound bombs, a number of smaller fragmentation bombs, and a machine gun. The bombers' jet engines could be started from the cockpit without an external power source, and the bombs, which were armed, could be dropped with the push of a button, even if the bomber was not airborne.

Recognizing their opportunity, a plan began to form. As Gonzales later testified, "me and my best friend wanted to do something more about the war . . . . We decided to try and fly one, to kill all the V.C. we could . . . . Bright, he is a pretty smart guy, he was going to drive the plane." Bright added: "I would fly out there on a bombing run and bomb the V.C. This is my fourth time down here [at Da Nang] and I know the land real well. I always wanted to fly, anyway." Minutes later, as a night-shift mechanic walked past the bombers, he heard someone calling, "Sir! Sir!" Looking up he saw Bright in the pilot's cockpit and Gonzales behind him in the navigator's cockpit. They had dropped a helmet and wanted the mechanic to pass it back up to them.

Within moments Bright and Gonzales were surrounded by numerous Air Force personnel who, recognizing the dangers of the armed munitions, tried to talk the Marines from the cockpit. Bright and Gonzales, however, only wanted help in starting the engines. As Bright worked the plane's controls, Gonzales yelled, "Leave the pilot alone. Co-pilot to pilot, let's get this thing off the ground!"

Frustrated by the lack of cooperation, Gonzales explained his next actions, saying, "if I couldn't fly it . . . nobody else was going to fly my plane, so I broke it." He pulled wiring loose, smashed indicator lights, and broke control mechanisms. "It seemed to me," he later testified, "every time you turned a knob, everything would fall off. It was fascinating." As he broke off each fascinating piece of equipment, he tossed it to the tarmac.

Eventually, Gonzales was induced to climb from the cockpit. Bright, however, remained determined to go "up to twenty thousand feet" and bomb VC. "Some people tried to get me to leave the plane. When I asked them for advice on how to start it, they pulled me out, without my consent." Indeed, Bright finally had to be lifted from the cockpit by the straps of the parachute he was almost wearing.

At trial, defense counsel for Gonzales, First Lieu-

tenant Donald W. Harris, raised a spirited defense to the charges presented by First Lieutenant Frederick C. Woodruff, the trial counsel. But little could be done, given the accused's apprehension while engaged in the acts charged and surrounded by officers and air police. In his separate trial Bright was found not guilty of attempted wrongful appropriation of the bomber, but like Gonzales, he was convicted of willfully damaging it and of being drunk and disorderly. The court found Gonzales guilty of the attempted wrongful appropriation of the aircraft. On initial review the commanding general reduced their sentences to confinement at hard labor for twelve months, minor forfeitures for a year, and reductions to private. On appeal, after seven months of confinement had been served, the sentences were further reduced to five months' confinement and forfeitures.<sup>10</sup> Privates Bright and Gonzales both returned to duty, as engineers.

#### *The Other Prisoners: North Vietnamese POWs*

On 1 July 1966 U.S. Navy ships in the Gulf of Tonkin were attacked by three North Vietnamese PT boats. All three PT boats were sunk. Nineteen survivors were recovered and held on board the *Cavalier* (APA 37) as prisoners of war (POWs). At MACV's instruction, III MAF engineers completed construction of a POW screening facility near Da Nang on 5 September. It eventually included an adjacent, permanent brig facility for Marine prisoners in pretrial and post-trial confinement. Finally, the practice of holding Marine prisoners in a tent, or flying them to Okinawa, could be discontinued.

The 19 POWs were later transferred to the compound, where they were "screened" for the next four years. MACV considered them potentially valuable for exchange purposes and, just as importantly, they were said to be providing valuable information about North Vietnamese naval capabilities. For those reasons, the 19 never joined the other POWs that U.S. forces routinely turned over to the South Vietnamese.<sup>11</sup>

Because the POWs were held in the Da Nang TAOR, the SLO of the 3d Marine Division was responsible for ensuring that the conditions of the POW screening camp (which never held anyone other than the 19 PT boat crewmen) were in accord with the Geneva Convention. Later, III MAF assumed responsibility for the POWs. The 19 North Vietnamese were finally repatriated to North Vietnam in 1970.<sup>12</sup>

Aside from this nominal contact, Marine lawyers were never involved with enemy long-term prisoners



Department of Defense Photo (USAF) DF-SN-83-07782

*A U.S. Air Force B-57A Canberra bomber, shown here in a single-seat version, was the subject of wrongful appropriation charges against Marine PFCs Bright and Gonzales.*

of war, or with the five POW camps jointly manned by the South Vietnamese and the U.S. Army.<sup>13</sup>

*The 1st Marine Division Arrives:  
More Lawyers, More Cases*

On 27 March 1966 the 1st Marine Division's forward headquarters moved from Camp Courtney, Okinawa, to Chu Lai, South Vietnam. Initially, the senior lawyer with the advance party at Chu Lai was Navy law specialist Commander William E. Clemmons, accompanied by the legal chief, Master Sergeant Len E. Pierce, and a few lawyers and enlisted personnel. The Division's SLO, Colonel George P. Blackburn, Jr., along with his acting legal chief, Gunnery Sergeant Wesley Crow, and the remainder of the lawyers, remained at Camp Courtney until June, as did other support sections of the division staff not directly associated with combat operations. But by July they, too, had deployed to Chu Lai.

Colonel Blackburn had been an infantry platoon commander and artillery battery commander during World War II. After that war he commanded the 2d Battalion, 3d Marines, as well as the 1st Amphibian Tractor Battalion. In 1950 he attended law school on Marine Corps orders. In 1966, soon after accompanying his 12 lawyer-officers and 18 enlisted legal clerks to Vietnam his overseas tour of duty ended and in early August Lieutenant Colonel Tom P. Casey, the deputy SLO since January, assumed the SLO's duties.<sup>14</sup>

As were most of the senior lawyers in Vietnam, Lieutenant Colonel Casey was serving in his third war. He joined the Marine Corps as an enlisted man in December 1942. Commissioned shortly after boot camp,

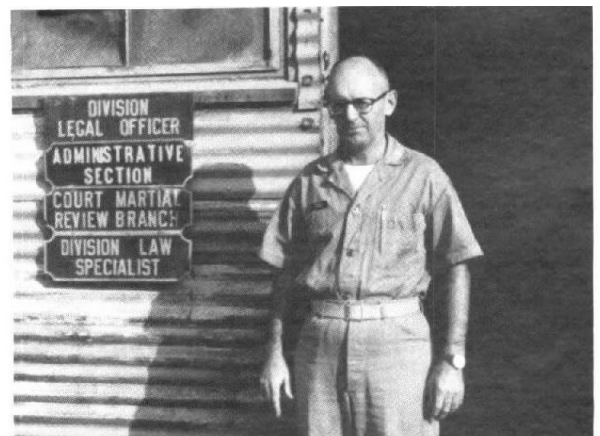
he received the Bronze Star Medal and the Purple Heart as an artilleryman on Saipan, Tinian, and Okinawa. After the war, on inactive duty, he earned his law degree and was recalled to active duty during the Korean War.

Now at Chu Lai, he and the other legal personnel moved into a partially completed camp near the beach. While awaiting conclusion of camp construction, the legal office was located in two widely separated areas, but within a month their offices were consolidated. As Lieutenant Colonel Casey remembered, "Except for some minor inconveniences such as crowded office spaces and an occasional generator failure, it was business as usual."<sup>15</sup>

Four Southeast Asia huts (SEAhuts) constituted the legal section offices. These were raised plywood build-

*LtCol Thomas P. Casey, the Staff Legal Officer, 1st Marine Division, seen outside his office at Da Nang.*

Photo courtesy of LtCol William B. Draper, Jr., USMC (Ret.)



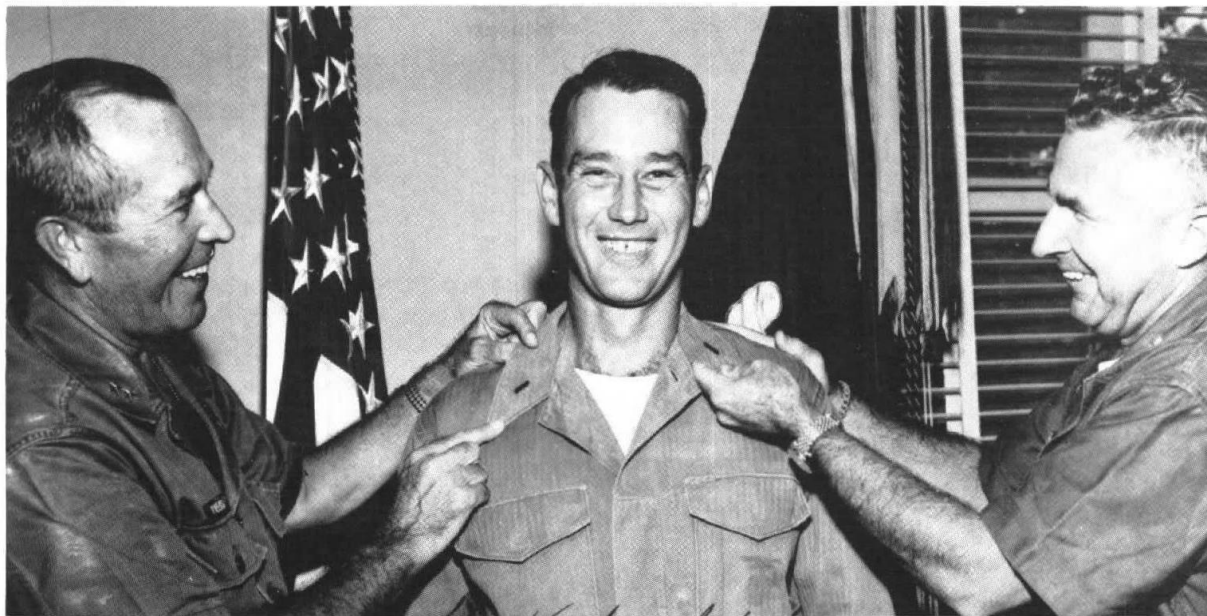


Photo courtesy of Capt William S. Kirkpatrick, USMC (Ret.)

*GySgt William S. Kirkpatrick was promoted to the grade of second lieutenant by Maj-Gen Lewis J. Fields, left, Commanding General, 1st Marine Division, at Chu Lai on 15 July 1966, assisted by the Division Staff Legal Officer, Col George P. Blackburn.*

ings roughly the same size as a general purpose tent, with plywood sidewalls, screened from the corrugated tin roofs halfway to the flooring. Eventually, the screens were augmented with canvas or green, translucent plastic sheeting which could be raised or lowered and served as protection from the frequent heavy rains. The staff conference room of division headquarters (in another nearby SEAhut) served as the general court-martial courtroom.<sup>16</sup> All in all, these were fairly comfortable accommodations for a combat zone.

As with the other major commands in Vietnam, the caseload was at first notably light in the 1st Division. "We had a low level of disciplinary problems during my entire tour as Division legal officer," Colonel Blackburn recalled. "We conducted intense schooling on the UCMJ prior to entering Vietnam, and believed it contributed a great deal to the low level of disciplinary problems."<sup>17</sup>

Inevitably, as more of the division's personnel deployed to Vietnam, the number of offenses grew. As in the other units, a disproportionate number of serious crimes were committed. In September, for example, 24 criminal investigations were initiated, of which three were rapes and eight were homicides.<sup>18</sup>

More than the caseload was changing. As at the beginning of World War II, Vietnam brought change in

the fabric of the Marine Corps. Wartime expansion created a demand for many more Marines: more recruits, more officers, a shortened boot camp, and accelerated promotions. While the overall quality of the Marine recruit remained high, recruiters in all the Armed Services enlisted individuals who in peacetime would not have been accepted. The Armed Forces reflect the society from which they are drawn, and troubling aspects of civilian societal conflicts began to appear with the Marines arriving in Vietnam in 1966, although the signs remained muted.

To meet the need for experienced leadership, Marine noncommissioned officers were given temporary commissions to the grades of second lieutenant and warrant officer. In the past such "mustang" officers had proven their value in numerous campaigns and wars, and they were to do so again in Vietnam.

Gunnery Sergeant William S. Kirkpatrick was the administrative law and foreign claims chief in the 1st Marine Division's legal office when, on 15 July 1966, he became the first enlisted legal noncommissioned officer (NCO) to be commissioned a second lieutenant. Lieutenant Kirkpatrick had enlisted in the Marine Corps in December 1950 and had been a machine gunner in Korea. Selected for the legal field in 1958, his performance as an NCO was superior. In Vietnam, for example, his SLO noted: "His drive, enthusiasm,

perseverance, and professionalism resulted in [the 1st Division being termed by . . . MACV as having the most outstandingly effective foreign claims section in the entire Republic of Vietnam."<sup>19</sup> After receiving his commission, Second Lieutenant Kirkpatrick was transferred to the 7th Marines to serve as the regimental legal officer.<sup>20</sup>

Two weeks after Lieutenant Kirkpatrick's promotion, Gunnery Sergeant Kenneth W. Jones, chief court reporter of the 1st Marine Division's legal office, was similarly commissioned a second lieutenant and became the assistant foreign claims officer. A month before, on 30 June, the legal chief, Master Sergeant Len E. Pierce, had been appointed a warrant officer, and like Lieutenant Kirkpatrick, was promptly transferred, and became the adjutant of the 1st Battalion, 7th Marines.<sup>21</sup>

In October 3d Marine Division Headquarters moved from Da Nang to Phu Bai. The 1st Division's Headquarters, in turn, moved from Chu Lai to the vacated 3d Division headquarters area at Da Nang. Four Marine infantry battalions and their supporting units, designated Task Force X-Ray, remained at Chu Lai under the command of the 1st Division's assistant commander.<sup>22</sup> Lieutenant Colonel Casey and most of the 1st Division legal personnel left their recently occupied SEAhuts at Chu Lai and moved north with the division headquarters.

Lieutenant Colonel Casey's deputy, Lieutenant Colonel John L. Zorack, and a few lawyers and clerks remained at Chu Lai. Lieutenant Colonel Zorack, formerly an infantry company commander in Korea, had enlisted in the Marine Corps in World War II and was commissioned a second lieutenant in 1945. While Task Force X-Ray remained at Chu Lai from October 1966 to March 1967, Lieutenant Colonel Zorack's three lawyers, Captains Francis T. Coleman, Paul R. Constantino, and Daniel M. Hanlon, tried 26 general courts-martial, 16 of which involved capital offenses. It was an extremely taxing period, even though the Chu Lai lawyers were temporarily augmented by five lawyers from Colonel Casey's Da Nang office during the height of the trials.<sup>23</sup>

*Force Logistic Command: New Guy on the Block*

The procurement, distribution, and replacement of materiel is a major wartime challenge. In 1965 the Marines looked to the Force Logistic Support Group (FLSG), based in Da Nang, for logistic support. During that year, as the Marine presence escalated, FLSG grew from 700 personnel to more than 3,000 officers

and men. To accommodate the increased size, function, and importance of the Vietnam logistic effort, a new unit, Force Logistic Command (FLC), was established on 15 March 1966 to provide sustained support to III MAF organizations.<sup>24</sup> Initially located near Da Nang, adjacent to a Vietnamese settlement fondly referred to as Dogpatch, in July FLC moved to Camp Books, Red Beach, eight miles northwest of Da Nang, where it would remain until the Marines left Vietnam. FLC's first commanding officer was Colonel George C. Axtell, Jr., an aviator and 1952 law school graduate who did not practice law while in the Marine Corps. Within 75 days of its formation, FLC grew to a strength of over 5,300.<sup>25</sup> Among the new personnel was Lieutenant Colonel Charles R. Larouche, FLC's first staff legal officer and, for several weeks, its only lawyer.

Lieutenant Colonel Larouche joined the Marine Corps in 1942, and was an enlisted scout on Guadalcanal. On Tarawa, Larouche received the Purple Heart. He saw further combat on Saipan and Tinian. Commissioned in 1945, he left active duty, completed college, and returned to the Marine Corps in 1950 with a law degree, after having briefly practiced law in Boston, Massachusetts. But FLC was a new experience:

My reception at FLC was far from enthusiastic . . . No one, other than the C.O., Colonel George Axtell, could even imagine why a lawyer was needed there. I was told to find myself a bunk, preferably unoccupied at the moment, since this new command was short of everything, especially bunks. This I did, for several nights, lying down on freshly vacated sacks . . . While this was unpleasant, it was better than some of the infantry units . . . I moved into at least a dozen different huts/tents while in VN. This was due to the constantly growing FLC.

My working facilities were only slightly better: I was told there was no space then available for a legal office, but I could occupy a small corner of the messhall. I scrounged a large packing box for a desk and a small one for a chair, and a few pencils . . . My library consisted of my own Manual for Courts-Martial and JAG Manual . . . I had no clerk—I was the "legal office."<sup>26</sup>

Because the command was new it did not yet have any courts-martial pending, but a number of accidental death investigations awaited Lieutenant Colonel Larouche's review.

The command's sole attorney, Lieutenant Colonel Larouche sat upon his packing box writing reviews in longhand without clerk, references, or typewriter. An equitable borrowing of lawyers from the other nearby commands was initiated, and supplies were acquired. In June Major James R. Ziemann arrived, and other enlisted and officer personnel soon followed.

Major Ziemann located a tin shed, which allowed



Photo courtesy of LtCol James R. Ziemann, USMC (Ret.)

*"Dogpatch" was the cluster of Vietnamese small business establishments on the heavily travelled highway between the 1st Marine Division and Force Logistic Command headquarters. Many offenses that were tried by Marine Corps lawyers had their genesis here.*

the office to move from its corner in the messhall. That the shed had formerly been a pig sty did not deter the lawyers. FLC's caseload was expanding with its population, and a permanent office was required, regardless of its past history.

Legal clerks were a constant problem. They were too few, and those who arrived in Vietnam were often inadequately trained. In 1967 Naval Justice School, at Newport, Rhode Island, would initiate a five-week legal clerk/court reporting course, but in 1966, Marine Corps legal clerks were receiving on-the-job training. Battalions and squadrons routinely dragooned Marines into legal clerk billets, even though the Marines might lack legal training or basic administrative skills. Usually, the units soon recognized that the legal arena was unsuited for OJT. Colonel Larouche devised a solution:

It was painfully obvious that my Office needed more clerks . . . our subordinate units needed more legal clerks, and the two Divisions and the Wing needed more legal clerks. Rather than wait for clerks that would never come, or come too late, I decided to run a legal clerk school to train clerks for all the major commands in III MAF. The school would run for two weeks . . . All major commands would pro-

*LtCol Charles R. Larouche, shown in a 1968 photograph as a colonel, was Force Logistic Command's first staff legal officer and, for a while, its only lawyer.*

Photo courtesy of Col Charles R. Larouche, USMC (Ret.)





Photo courtesy of LtCol James R. Ziemann, USMC (Ret.) *Maj James R. Ziemann, left, and LtCol Charles R. Larouche stand in front of the former pig sty that was Force Logistic Command's first legal office location.*

vide a few instructors each, and I would coordinate the whole thing.<sup>27</sup>

Colonel Larouche was well-qualified to form the class, having previously been the Marine Corps instructor on the staff of the Naval Justice School for three years. On 29 August the first class convened and graduated 30 newly trained legal clerks two weeks later.<sup>28</sup> The graduates were addressed by the III MAF Assistant Chief of Staff, attorney Colonel Robert B. Neville, now assigned to Vietnam after guiding Discipline Branch at Headquarters Marine Corps. Over the course of the next year, Lieutenant Colonel Larouche conducted several more legal clerk schools, temporarily solving the clerk problem.

Although the legal pace was quickening, duty was not onerous at the "Funny Little Circus," as FLC was dubbed by its less respectful Marines.<sup>29</sup> The SEAhuts were an improvement over tents, even if monsoon rains blew through them and summer heat made their interiors unbearably hot, much as the tents. One

hundred and three Vietnamese women, usually called "hoochmaids," were hired to keep the officers' tents and clothing clean.<sup>30</sup>

Legal assistance services were a staple in the three-lawyer office. (Captain Franklin P. "Skip" Glenn reported on board in July.) The lawyers regularly visited FLC units at Chu Lai, Phu Bai, and Dong Ha to meet their legal assistance needs.<sup>31</sup> Domestic relations problems predominated, typically involving a wife back home seeking a divorce. In such instances, steps were taken to protect the Marine's interests and carry out his desires.

Besides their primary duty as litigators in the criminal forum, Marine Corps lawyers handled the usual problems faced by any attorney in civilian practice, such as powers of attorney, indebtedness, taxes, wills, naturalization, adoptions, contracts, name changes, and passports.

The issues involved in marrying a Vietnamese arose on a regular basis.<sup>32</sup> A proxy marriage between a regimental executive officer and a prospective bride in Georgia was unsuccessfully attempted, as well.<sup>33</sup> Some of the issues the lawyers solved would have challenged the most experienced counsel.

Vietnamese claims for compensation were similarly time consuming. Most often claims were submitted for relatively minor damage or compensation: a motor scooter hit by a Marine Corps truck, a rice paddy damaged by a tank, or a defaced burial mound. Usually, the claims presented were for legitimate and appropriate recompense for injury or damage done by Marine Corps activities or personnel. But not always. For example, Colonel Neville said:

I recall one incident where Vietnamese villagers were claiming the standard payments for deaths and wounds of several villagers, saying one of our patrols had inflicted the damages . . . . The emphasis on prompt reporting made first reports very sketchy and generally unreliable. I stopped the report [for further investigation] . . . . The medical officer's examination of the wounds raised many doubts and a few hours later the basically friendly villagers told us the VC had inflicted the wounds and sent the villagers to collect the payment which was, of course, to be turned over to the VC.<sup>34</sup>

Soon FLC and the other commands would encounter similar claims which regrettably would prove legitimate.

At Camp Books, the new FLC camp at Red Beach, the general court-martial caseload was rising. During the same time the legal chief, Staff Sergeant Jerome E. Riser, was commissioned a second lieutenant and promptly transferred, hobbling office productivity.<sup>35</sup>



The SLO's offices had come a long way from the original partitioned corner of the messhall. Now they consisted of two Quonset huts, one of which was office space for the SLO, counsels, and clerks. Lieutenant Colonel Larouche directed Major Ziemann to arrange the other hut as a courtroom, which was to conform as closely as possible to civilian standards. Major Ziemann scrounged materials to produce a hearing room featuring a jury box and a judge's bench with a hand-carved figure of justice on its front. On the ceiling were 140 egg carton separators, each hand-dipped in white paint, their function purely decorative. Within months an enemy rocket would badly damage the courtroom, egg separators and all.

#### *Trying Cases*

In February 1966 Colonel Earl H. Johnson summoned the SLOs from III MAF Headquarters, the 1st and 3d Marine Divisions, and the 1st Marine Aircraft

Wing to Camp Smith, Hawaii, headquarters of Fleet Marine Force, Pacific (FMFPac). Force Logistic Command was not formed until the next month, so was not represented. That first Staff Legal Officers' Conference was held from 15 to 17 February. Such conferences were to be an annual event until the war's end.

Numerous problem areas that had come to light over the 11 months since the Marines had landed in Vietnam needed resolution. Agenda items included such questions as: Were too many lawyer colonels assigned to Vietnam? What was a fair distribution among the legal offices of lieutenants and captains, given caseloads and trials? Would any electronic recording gear work in the hostile climate of Vietnam, and if so, how could the SLOs get that gear? How could the Marine Corps best retain the first-term lieutenants and captains who, for the most part, were returning to civilian law practice as soon as their obligated service was completed?<sup>36</sup>

*A lawyer's quarters are rain-soaked at Camp Books, Red Beach, the morning of 31 August 1966. Rain is puddled on the plywood flooring, having blown in through the screening.*

Photo courtesy of LtCol James R. Ziemann, USMC (Ret.)





Photo courtesy of LtCol James R. Ziemann, USMC (Ret.)

*Force Logistic Command's first general court-martial convened in the Red Beach officers' club. Trial counsel, Maj James R. Ziemann stands at left. Defense counsel, Lt John S. Szymanski, USN, a 1st Marine Aircraft Wing defense counsel, awaits the accused.*

*Force Logistic Command's Quonset hut courtroom had a judge's bench; members' seating, right; counsel tables, left; and 140 hand-dipped egg carton separators overhead.*

Photo courtesy of Col Charles R. Larouche, USMC (Ret.)

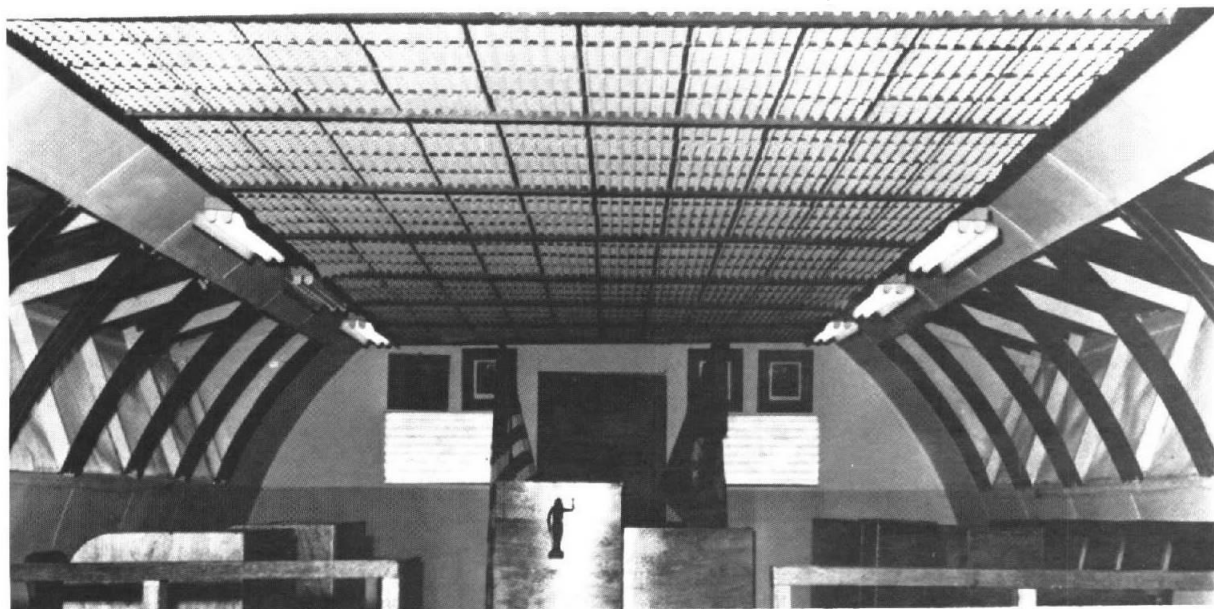




Photo courtesy of Col Daniel F. McConnell, USMC (Ret.)

*The I Corps Bar Association's initial social event was held at Camp Books, Red Beach, 17 September 1966. At the head table, from left, unidentified officer; 1st Marine Aircraft Wing SIO, LtCol Ralph Culver; law officer LtCol William Wander; FLC Commanding Officer and lawyer, Col George C. Axtell, hidden; FLC's SIO, LtCol Charles R. Larouche; 3d Marine Division SIO, Col Charles H. Beale, Jr., standing; 1st Marine Division SIO, LtCol Thomas P. Casey, hidden; and two unidentified officers. Fly paper hangs from the rafters.*

At such conferences, both in formal sessions and in casual conversation at the officers' club, common issues were raised and policies were informally hammered out. In Vietnam the lawyers had the I Corps Bar Association, a loose amalgam of lawyers primarily from the Marine Corps but with representation from all the Armed Services. The sole requirement for membership was presence at an association social event, really the principal purpose of the association. The I Corps Bar Association (originally called the Red Beach Bar Association) was, probably, the idea of FLC's Lieutenant Colonel Larouche. He hosted the first social event on 17 September 1966 at Red Beach, attended by most of the lawyers in I Corps, including four Navy law specialists from the nearby Naval Support Activity and four Army judge advocates attached to III MAF Headquarters as foreign claims specialists. "Jim Ziemann and his legal chief, Gunnery Sergeant [Bill] Dedic," Major William B. Draper, Jr. recalled, "did a substantial amount of scrounging, borrowing, and midnight requisitioning to supply steaks, a cocktail bar, wine, rolls, etc."<sup>37</sup> (Colonel Beale, the 3d Marine Division's SIO, referred to Major Ziemann as "possibly the greatest liberator since Lincoln," out of respect

for Ziemann's skill as a scrounger.)<sup>38</sup> FLC's commanding officer, Colonel George C. Axtell, was the party's guest of honor. In Lieutenant Colonel Larouche's words: "The event seemed to generate ideas for a better future legal clerk's school, to develop ideas for greater mutual help and cooperation among all major commands in I Corps area."<sup>39</sup> In other words, there was plenty to drink, and everyone had a good time.

On a more serious level, lawyers continued to take part in the Marine Corps' people-to-people program. Lieutenant John F. Erickson, a Navy law specialist loaned to FLC by the Naval Support Activity, coordinated a program, supported by his home county in Kansas, which provided clothing and toys for a Vietnamese orphanage.<sup>40</sup> A thank-you letter from the commander of the 51st ARVN Regiment read, "The children of our orphanage, that is, the sons and daughters of men of our Regiment who has given their lives for our country's freedom, will be the recipients of your donations . . . Words do not hold enough meaning to rightfully express our feelings."<sup>41</sup> Lieutenant Erickson later received a Navy Achievement Medal, in part for his civic action work.

Major Draper, a 1st Marine Division defense coun-

sel, wrote to the *Daily Dartmouth*, the newspaper of his alma mater, suggesting that shirts would be appreciated by the local Vietnamese children. The Marine on the Dartmouth Navy ROTC staff, Major Orlo K. Steele, organized a major clothing collection effort on campus and at nearby Hanover, New Hampshire, based on Major Draper's letter. Soon, Major Draper found himself before the 1st Division's public affairs officer, explaining where 4,000 tee-shirts had come from (most emblazoned with "Dartmouth" across the chest) and why the public affairs office had not been consulted beforehand. That bureaucratic detail satisfied, Major Draper soon passed out the shirts to appreciative children in the Da Nang area.<sup>42</sup>

The Marine Corps had little direct involvement in Revolutionary Development, which was essentially civic action on a higher political level. An exception was Lieutenant Colonel Charles J. "Chuck" Keever. Formerly a 3d Marine Division lawyer on Okinawa, he came to Vietnam as a major on the III MAF staff. His subsequent expert direction of I Corps' civic action effort was noticed by U.S. State Department representatives in Saigon. In December 1966 Lieutenant General Walt

advised the Commandant of the Marine Corps, General Wallace M. Greene, Jr., that:

LtCol Keever has been offered high level policy making job on national level in Office Civil Operations (OCO), the new organization to control all civil agencies in revolutionary development in RVN . . . Keever wants the job and I believe he could do us a lot of good in that position. Ambassador Porter recognizes Keever as an expert in civic action who can get things done and he needs that kind of man, especially now. Request guidance as to your desires in this matter. Very respectfully, Lew<sup>43</sup>

A week later, the Commandant indicated his approval of the unusual arrangement and Lieutenant Colonel Keever was soon in civilian clothes, reporting to the Office of Civil Operations in Saigon, where he was to earn the Legion of Merit for his work.<sup>44</sup>

In Marine Corps courtrooms, meanwhile, lawyers were beginning to recognize that problems with witnesses were going to be difficult, if not impossible, to solve. While a criminal trial and the cross-examination of witnesses may be a great engine for the discovery of truth, unusual courtroom difficulties arose in Vietnam's expeditionary circumstances. The

*Maj William B. Draper, Jr., a 1st Marine Division defense counsel, hands out tee-shirts featuring his alma mater's name, Dartmouth, to eager children of the Da Nang area.*

Department of Defense Photo (USMC) 02-0465-67





Photo courtesy of Col Curtis W. Olson, USMC (Ret.)

*Maj Curtis W. Olson conducts an investigation in a Vietnamese schoolhouse. "We rapidly found out that going to the people with investigative hearings was not the way to go."*

trial process was foreign and disquieting to the Vietnamese witness. First the alleged offense was investigated, usually by an officer from the accused's unit. Next, witnesses were interviewed by the trial counsel and then the defense counsel, seldom on the same day. Then, if a general court-martial was anticipated, the lawyers conducted an Article 32 investigation. Finally, the Vietnamese witnesses were summoned to relate their testimony at the court-martial, and then cross-examined. Captain Francis T. Coleman recalled:

Long patient hours must be expended in eliciting even the most simple narrative from these frail, bewildered, awe-struck onlookers. Questions must be methodically worded and reworded . . . . Even the most diligent pretrial preparation of a witness often leaves the attorney shaking his head at the trial. Successful cross-examination is practically negated by the language barrier.<sup>45</sup>

South Vietnamese witnesses, like Marine Corps witnesses, were sometimes killed or wounded. They often were moved to new villages or resettlement camps. Frequently, not even the Vietnamese National Police could locate Vietnamese witnesses. Major Curtis W. Olson, a 1st Marine Division lawyer, recalled that "Vietnamese witnesses never fully understood why they had to appear again and again to repeat the same story over again."<sup>46</sup>

Occasionally, as Major Olson noted, the Marines would attempt to take the hearing to the witnesses:

The theory was that we would take the investigations to the people, and thus get better cooperation from them, as it would be less of an interruption in their lives. It didn't work for a number of reasons. First, our portable recording equipment was not that good. Second, the Vietnamese did not have a very good appearance record at these hearings. They seemed to respond better if we sent a vehicle out to round them up . . . . [That] seemed more officially important to them than just showing up at the local schoolhouse . . . . We rapidly found out that going to the people with investigative hearings was not the way to go.<sup>47</sup>

Another factor influencing Vietnamese witnesses was that they were not paid a witness fee if the proceeding was taken to them. To be paid, they had to appear at a hearing held in a Marine compound. Colonel Charles H. Beale, SLO of the 3d Marine Division, recalled that "the witnesses were brought in by helicopter, and we paid them at the end of each day. They would immediately go on shopping trips and bought everything in sight."<sup>48</sup>

Even when Marines brought a Vietnamese witness to court things could go awry. Once, a general court-martial was in progress when the trial counsel called the rape victim to the witness stand. He began his direct examination, but encountered difficulty from the start. As the trial counsel questioned the woman, through the interpreter, he could not even establish her identity, as basic as that should have been. Finally the prosecutor discovered that, yes, she had been

the victim of a rape, and yes, she was to testify at a Marine's court-martial, but, no, this accused was not her attacker. The wrong rape victim had been brought to court.<sup>49</sup>

Two FLC cases involving two Marines who were separately charged with committing the same offense, reflected the difficulty in securing Vietnamese witnesses for trial. The trial counsel, Captain Franklin P. Glenn, caught a ride to the Da Nang Airbase where he was able to get manifested on a C-130 departing at 0630 for Dong Ha. At Dong Ha he transferred to the unlikely-named "African Queen II," a 4-knot per hour LCM (landing craft) that took him down the Cua Viet River to the Gulf of Tonkin. There he crossed sand dunes, waded a stream, and traversed marshlands, finally reaching the small fishing village of Phoi Hoi, located in an area of heavy enemy activity. He found the witnesses and escorted them back to Da Nang. They testified, then departed for Phoi Hoi via a helicopter, arranged for by Captain Glenn. He accompanied them on the helicopter to persuade them of the need for them to later journey to Da Nang, again, for the trial of the second accused. At Phoi Hoi the trial counsel inadvertently was left behind by the helicopter pilot. After a tense night beyond friendly lines Captain Glenn caught an LCM and began his

journey back to Red Beach.<sup>50</sup> The Vietnamese witnesses would not return for the second trial, and the case had to be dropped for lack of proof.

In Vietnam, not only Vietnamese witnesses presented difficulty. The memories of Marine Corps witnesses could become hazy, as the date of their return to "the world" approached. Advised that their testimony might require that they be kept in Vietnam on "legal hold," they sometimes developed signs of pronounced amnesia in an effort to avoid remaining in Vietnam any longer than necessary.<sup>51</sup>

In the courtroom problems with reliable electrical power and recording equipment persisted. Generator failure in the midst of trial was common; court adjourned until power was restored. Often, the generators would run, but their output was so reduced that the reporter's tape would barely turn. Other times power surges resulted in a recording on which all voices sounded like cartoon characters.<sup>52</sup> At the 1966 General Officers Symposium at Headquarters Marine Corps Major General Avery R. Kier noted that "generators have been another recurring problem. The expeditionary type generators do not stand up under continuous usage. The garrison type generators . . . are not supported by adequate spare parts. There is an insatiable demand for power."<sup>53</sup> In the 3d Marine Division

*Two 1st Marine Division lawyers conduct interviews far from the Division Headquarters.  
"Vietnamese witnesses never fully understood why they had to appear again and again."*

Photo courtesy of RAdm Hugh D. Campbell, JAGC, USN (Ret).



the Staff Legal Officer cured his power problem by purchasing portable Honda generators; expensive but effective.<sup>54</sup> Nor was efficient power the only courtroom problem. "The most frustrating aspect," recalled Colonel Benjamin B. Ferrell, "was the continual breakdown of recording equipment. No system we tried could be relied on to function for long in the dusty or rainy weather of Vietnam."<sup>55</sup> Recording equipment and power sources remained unsolved issues for the war's duration.

*Courtroom Personnel: Just Passin' Through*

In Vietnam, with the Uniform Code of Military Justice of 1950 and the 1951 *Manual for Courts-Martial*, military law was maturing with wartime application, despite the staggered changing of personnel every 13 months (the length of a Marine's tour of duty in Vietnam).

The judicial process began with the commander, who had the power to send, or refer, Marines in his command to a court-martial that convened at his direction. Colonel Robert B. Neville was an infantry officer in World War II, who saw combat on Guadalcanal, New Guinea, and New Britain, before he became the III MAF Deputy Chief of Staff and Headquarters SLO.<sup>56</sup> He said of convening authorities:

In all honesty, I never met a convening authority who was disposed to violate or disregard the law. I have seen more subjective, arbitrary decisions and conduct by judges, justices of the peace, and prosecuting attorneys in civilian life than I have even heard about in the military . . . . I found convening authorities who were not lawyers to be more compassionate and understanding of human frailty than those who had formal legal training.<sup>57</sup>

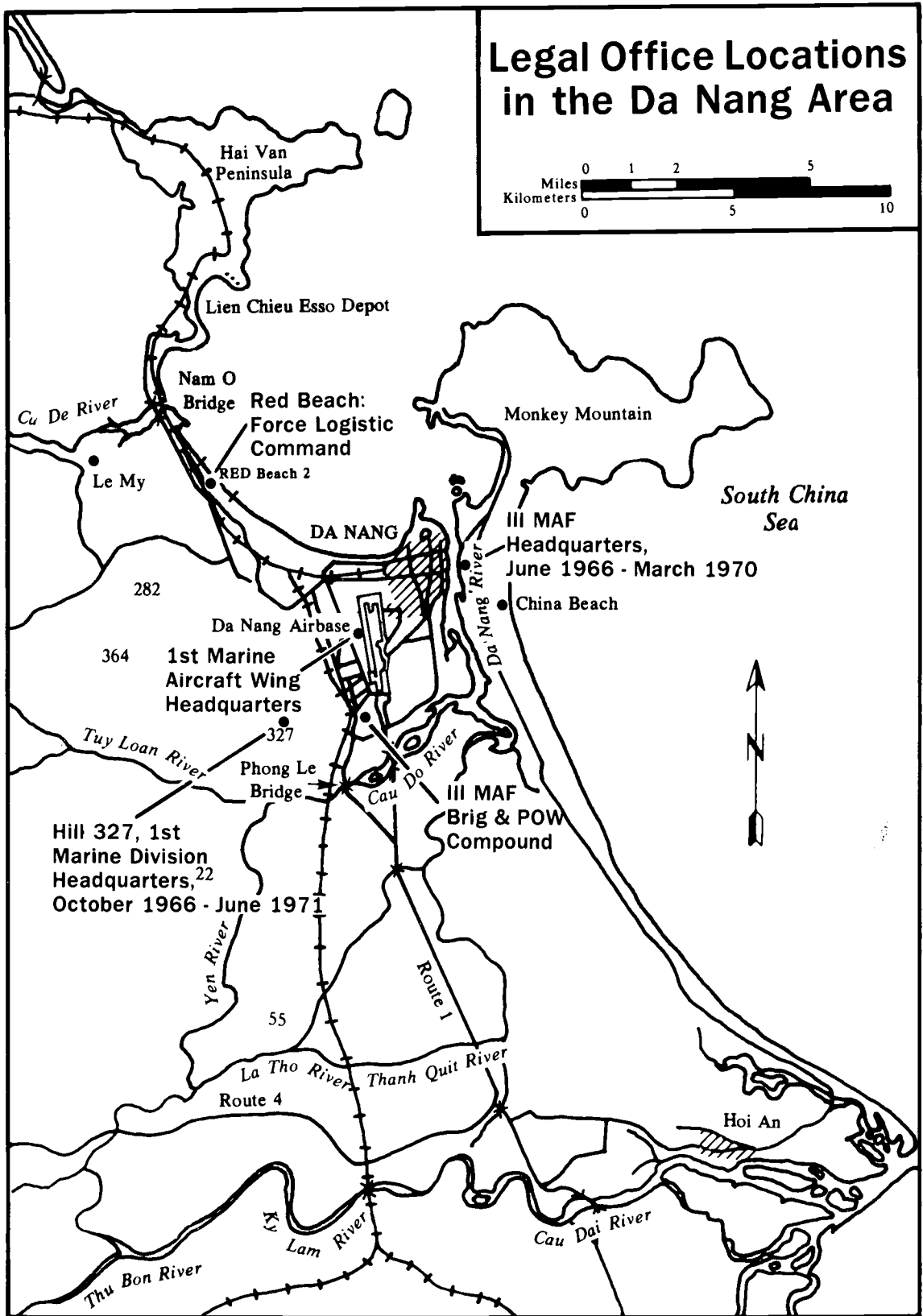
Once referred to trial, if lawyer counsel was appointed, lieutenants and captains still tried most cases. Numerous attorneys were in Vietnam now, but experienced trial lawyers were few.<sup>58</sup> Lawyers who had not tried a case until arriving in Vietnam were often assigned to prosecute or defend the most serious of offenses after the briefest apprenticeship. Despite their lack of legal experience, most of the young lawyers thrived on the challenges, which they viewed as opportunities. When he was Judge Advocate General of the Navy, Rear Admiral Hugh D. Campbell recalled: "My experience in Vietnam [as a Navy lieutenant] is probably what caused me to augment into the Navy . . . . I was amazed at the responsibility I had in the trial arena—the types of cases . . . . I've never had challenges any greater than the challenges we had there."<sup>59</sup> "The dedication of the lawyers," added Navy

Lieutenant John F. Erickson, "thrown together in a semi-combat situation, was remarkable . . . . I often thought, while I was at my second duty station in Hawaii, that the cases were tried better and faster in Vietnam."<sup>60</sup>

All general courts-martial were presided over by law officers, all of whom were lawyers. Under the Red Book, the law officer advised the members of their duties, directed the progress of the trial, ruled on motions and objections, and instructed the members. Like a judge he had broad discretion, and by virtue of his position and senior grade, was a figure of some authority in the courtroom. They were appointed law officers by the Navy's Judge Advocate General, the departmental judge advocate for the Marine Corps. Consideration for appointment came only after long seasoning as a trial-level defense counsel and trial counsel. The maxim that there is no test of character like authority fully applied to law officers. A law officer with a tyrannical or petty streak could make life very unpleasant for counsel. Most valued were those law officers who were firm, yet fair; who remained undisturbed by the inexperienced lawyer who might perform poorly in trial. Not every law officer possessed the wisdom and character to be a good jurist, but Vietnam lawyers were fortunate in that most were both highly respected and able.<sup>61</sup>

Colonel Beale, 3d Marine Division SLO, wrote: "I would be completely remiss if I did not mention the magnificent performances of the various military judges [law officers] during my tenure. I recall, in particular Colonel William Wander, Colonel Verne L. Oliver, Colonel Don Holben, and Captain [Wyman] Jackson, U.S. Navy."<sup>62</sup>

During 1965 and 1966 law officers were stationed in Yokosuka, Japan, and on Okinawa. In May 1966 a Navy-Marine Corps Judiciary Activity branch office was established in Da Nang.<sup>63</sup> When the SLO of a particular command believed that enough general courts were ready for trial to justify requesting a law officer, he did so and specified the anticipated period the law officer would be required. After arrival, if the general court-martial docket permitted, law officers also served as senior members of special courts-martial, sort of a super-juror. The canny wisdom of these senior lawyers was reflected in Major Draper's recollection of "the travelling law officer, Colonel Wander, who displayed his in-depth knowledge of lengthy supply lines and the inconveniences inflicted thereby, when he showed up in Chu Lai with his own olives and his own toilet paper."<sup>64</sup>





The enlisted Marines of every staff legal office were critical to the system's operation. Although legal chiefs were not found in the courtroom (they had already served their time in court, usually as reporters), they supervised and scheduled the work of the clerks and reporters. They assured the correct preparation of the numerous documents necessary to courts-martial, including the verbatim record of trial. Regarding his enlisted Marines, Colonel Beale recalled:

I was blessed with two of the best—Master Sergeant Harold L. Tetrick and, later, Gunnery Sergeant Bill Dedic. And the court reporters were the most dedicated people I have ever known. We had so much trouble with our recording equipment that many of them used their own personal tape recorders (Akai or Sony) as back-up [to the closed-microphone recording system]. I always marveled at their efficiency; most of the time they typed up the record with a headset that had music from recording tapes going in one ear, and the court record playing into the other ear. The performance by these court reporters was absolutely superior. It goes without saying that the legal chiefs were outstanding leaders. They solved all difficulties.<sup>65</sup>

The caseload, meanwhile, continued to rise modestly, while remaining generally low. In FLC only about six general courts-martial per month were docketed.<sup>66</sup> The pace was even slower in the 1st Marine Aircraft Wing, where each lawyer's caseload averaged two or three cases at any time.<sup>67</sup>

Although the numbers were low, the caseload did not always tell the whole story. Sometimes a few cases could be overwhelming in terms of effort. In September 1966, 18 months before the killings at My Lai, a series of such difficult cases fell to the lawyers of the 1st Marine Division.

#### *Homicide on Patrol: Men, Women, and Children*

Lieutenant General Leo J. Dulacki was a colonel in 1966. He said:

I remember sitting in General Walt's office—I was chief of staff at that time . . . discussing the case with him at length. Let me say, he had deep problems in trying to accept the results of the investigation. He couldn't believe that a Marine, any Marine, would do something like this . . . This had to be someone other than Marines, because Marines just wouldn't do something like this . . . We had to do this [refer the cases to general courts-martial] because the evidence was such that it indicated that these people were involved. Whether they were eventually acquitted, or not, we had no alternative . . . We would not tolerate such action, they would be punished, and we didn't cover it up.<sup>68</sup>

At 1900 on 23 September a nine-man ambush patrol from the 1st Battalion, 5th Marines, left Hill 22, northwest of Chu Lai. Private First Class John D. Potter, Jr., an aggressive, combat-experienced 20-year

old, effectively took control of the patrol, supplanting the nominal leader, Sergeant Ronald L. Vogel. Unusual as that was, the other Marines followed Potter rather than Vogel, whom they viewed as ineffective. The patrol's Navy corpsman, Hospitalman Jon R. Brettag, later testified:

He [Potter] said that this would be a raid instead of an ambush . . . We are to beat up the people, tear up the hooches, and kill, if necessary . . . He told us to roll down our sleeves, take our insignias off, make sure our covers are on [and] assigned us numbers. He said if you want to get somebody, don't mention his name, call him by number . . . The entire squad moved out.<sup>69</sup>

They entered the hamlet of Xuan Ngoc (2). They seized Dao Quang Thinh, whom they accused of being a Viet Cong, and dragged him from his hut. While they beat him, other patrol members forced his wife, Bui Thi Huong, from their hut. They pulled her three-year-old child from her arms. Then four of them raped her.

A few minutes later three other patrol members shot her husband, her child, her sister-in-law, and her sister-in-law's child, with automatic and semi-automatic rifle fire. Hearing the sister-in-law moan, Potter exclaimed, "Damn, she's still alive!" He fired another burst of automatic fire into her at point blank range. Potter then tossed a hand grenade near the bodies in an attempt to cover the patrols' atrocities and "to make it look good." Next, they shot the rape victim, Bui Thi Huong, and left her for dead. She lived to testify at their courts-martial.

Upon returning to the battalion command post, the company commander sought details of the reported "enemy contact." Suspicious, he ordered their new platoon leader, Second Lieutenant Stephen J. Talty, to go back to the scene of the "contact" with the patrol. Once there, Talty realized what had happened and directed efforts to disguise what had occurred. As they were doing so, one of the previously wounded children was discovered still alive. Potter raised his rifle over the child, saying, "someone count for me." Vogel counted to three as Potter repeatedly slammed his rifle butt into the child's head, killing him.<sup>70</sup>

The morning after the killings, the rape victim, Huong, was carried by her villagers to the Marine base for treatment of her gunshot wounds. The Navy doctor immediately reported her wounding and rape. When confronted by his company commander, Lieutenant Talty, a Marine for only ten months, admitted all.

Potter was convicted of five specifications of

premeditated murder, of rape, and the attempted rape of a second Vietnamese. He was sentenced to confinement at hard labor for life, reduction to private, loss of all pay and allowances, and a dishonorable discharge. The conviction and sentence were approved through the appellate levels. Potter was released in February 1978, after having served twelve years and one month. His was the longest period of confinement served by any prisoner convicted by Marine Corps court-martial of murdering a Vietnamese noncombatant.<sup>71</sup>

Hospitalman Bretag testified against Potter, hoping to gain favorable consideration regarding his six-month sentence for his own part in the rape of Huong. Another patrol member, Private First Class James H. Boyd, Jr., pleaded guilty to murder and was sentenced to four years confinement at hard labor and a dishonorable discharge. He, too, testified against Potter, as did Vogel. Vogel, convicted as a principal in the murder of one of the children and in Huong's rape, was sentenced to 50 years confinement at hard labor and a dishonorable discharge.\* On appeal, his confinement was reduced to 10 years. After he had served more than nine years, the Secretary of the Navy further reduced confinement to eight years, and Vogel was released.<sup>72</sup>

Two patrol members were acquitted of major charges, but were convicted of a relatively minor assault with intent to commit rape. After final review each one's approved sentence included six months confinement. Three others were acquitted of all charges.

Lieutenant Talty was found not guilty of being an accessory to murder, but was convicted of the innocuous charge of making a false report. He was sentenced to dismissal from the Marine Corps, forfeitures of \$500, and a loss of numbers on the promotion lineal list. Two years later, the dismissal was set aside upon appellate review.<sup>73</sup>

How could young Marines and a sailor, all with good prior records, commit such crimes? Potter did not speak in his own defense, but the words of the Navy psychiatrist, who found him to be sane, shed light on the actions of Potter and other Marines who committed war crimes:

War in Vietnam is one where the enemy is usually unseen until he chooses to make himself known, while the Marines are forced to repeatedly expose themselves to attack and ambush. Civilians often shelter and aid the enemy and

\*A principal is one who does not actually commit an offense, but "aids, abets, counsels, commands, or procures its commission." (Art. 77, UCMJ, 1969.)

give rise to very strong resentment from the Marine troops, especially when it is clear that the civilians can prevent the death of numerous Marines by providing information about the presence of enemy troops and the location of booby traps and mines. This is a situation that caused PFC Potter to feel appropriately angry and frustrated and to look forward to raiding a village . . . Potter's state of emotional turmoil against the Vietnamese people probably accounts for his [acts].

Captain James P. Shannon received the Navy Commendation Medal, in part for his energetic, tenacious, but ultimately fruitless, defense of Potter.<sup>74</sup>

These were not the last murders of Vietnamese noncombatants by Marines, though they were among the most heinous. If anything positive is to be found in these cases, it was the Marine Corps' approach to such cases. As Major William B. Draper pointed out, "we did not close our eyes or our ears to the allegations that a crime may have been committed in the name of combat . . . Nothing was swept under the rug in hopes that it would go away."<sup>75</sup>

### *3d Marine Division: On The Road Again*

The Marines' Vietnam command structure underwent major alteration in 1966, as Marine leadership was adjusted to best meet the tactical situation in I Corps. The year began with Colonel Sevier as the Division SLO, located at the division command post (CP) on Hill 327. In mid-March General Walt relinquished command of the 3d Division to Major General Wood B. Kyle in order to devote more time to his duties as III MAF Commanding General.

In June Colonel Sevier returned to Headquarters Marine Corps in Washington, D.C. His replacement as 3d Division SLO was Colonel Beale, another World War II combat veteran.

Then, in October, the division CP moved to Phu Bai, while 3d Marine Division (Forward) was established at Dong Ha.<sup>76</sup> When the division CP moved, several serious felonies were pending trial. The brig, with the lawyers' "clients," was at Da Nang. Phu Bai had no space for a legal office, nor could the base be expanded until the rainy season was over. So Colonel Beale's office remained temporarily at Hill 327, with the 1st Marine Division CP, which had moved into the area the 3d Division had vacated. Colonel Beale recalled:

The physical plant changed so many times that it is difficult to recall. Originally [on Hill 327] the office was located in four strong-back tents. One of these was used as a courtroom. Then we moved the offices into a double Quonset hut, and still used the tent for a courtroom, [then, after moving north, we] used the officers' club for courts-martial.<sup>77</sup>