



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

*Col Charles B. Sevier, center, stands with his relief as 3d Marine Division SLO, Col Charles H. Beale, Jr., second from right, with Navy law specialist Lt Bruce C. Murphy, left; Division Legal Chief, MSgt Harold L. Tetrick, second from left; and deputy SLO, LtCol Fred Grabowski, right, in front of one of the Division legal Quonset hut offices on Hill 327.*

*The 3d Marine Division SLO's office was on Hill 327, near Da Nang, in June 1966. "The [3d Marine Division's] physical plant changed so many times that it is difficult to recall."*

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





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

*The III MAF Staff Legal Officer, Col Vernon A. Peltzer, left, in Da Nang with 3d Marine Division lawyer Maj Robert J. Chadwick (gesturing), and 1st Marine Division Staff Legal Officer, LtCol Thomas P. Casey (sunglasses). An unidentified officer stands at right.*

Transportation was a major difficulty. The SLO and the lawyers were required to travel continually between Da Nang and Phu Bai to confer with the commanding general and other convening authorities, interview witnesses, and meet with accused Marines.

Finally, on 27 November 1966, more than a month after the 3d Division's CP had moved, the legal office followed. At Phu Bai they again had tents for office and courtroom, but as Colonel Beale noted, "I had a few uncomfortable nights, but the sack was always dry . . . and I always had clean, dry clothes."<sup>78</sup>

### *III MAF: Double-Hatting the Lawyer*

On 26 June 1966, as Colonel Peltzer's tenure as III MAF SLO was ending, General Walt's Headquarters moved from the Da Nang Airbase, across the Han (Da Nang) river, opposite east Da Nang.<sup>79</sup> Shortly thereafter, Colonel Peltzer was relieved by Colonel Robert B. Neville.

Colonel Neville had served under General Walt as an infantry company commander in World War II and as an instructor at Marine Corps Schools, at Quantico, Virginia. Later, he and General Walt had also served together at Headquarters Marine Corps. When General Walt assigned Colonel Neville as his assistant chief of staff, as well as the Staff Legal Officer, Colonel Neville gladly accepted such double duty.<sup>80</sup> He was

of the school that still considered nonlegal field assignments as necessary for promotion, and it was rumored that a general officer's legal billet might soon be authorized.

As under-utilized as his predecessor had been, Colonel Neville now found himself very busy. The III MAF chief of staff was a brigadier general, and the day-to-day direction of the MAF staff was largely left to his assistant, Colonel Neville. To relieve the pressure on him, General Walt asked the Commanding General of FMFPac, Lieutenant General Krulak, to assign in-coming Captain William B. Draper, Jr., to his staff. When General Krulak refused the request for Captain Draper or any other lawyer, General Walt persisted:

[I] feel constrained to request you reconsider . . . I need all the talent I can get . . . If I assign Col. Neville primary duties as legal officer I am wasting his effectiveness. On the other hand if I continue him as deputy chief of staff with additional duties as force legal officer I am . . . subjecting him to an unacceptably excessive workload . . . He has competed for selection [for promotion] as infantry officer, not as primary MOS lawyer . . . He desires to complete his career in the same way . . . It is again requested that Capt. W. B. Draper be assigned to III MAF.<sup>81</sup>

General Krulak relented: "[I] will provide a second lawyer to your staff immediately . . . You are there



Department of Defense Photo (USMC) A189713

*LtGen Lewis W. Walt poses with the III MAF staff in November 1966. LtGen Walt is seated, center. To his right sits his Assistant Chief of Staff, lawyer Col Robert B. Neville.*

and know better than anyone else the nature of your staff needs . . . . The commander on the spot deserves the maximum support that his superiors can give him.”<sup>82</sup> (Although General Walt got a second lawyer, he did not get Captain Draper.)

#### *Perspective*

By the end of 1966 Marine Corps strength stood at 278,000 men and women, the highest total since World War II. Two hundred and twenty-three of that number were lawyers—only one of whom was a woman.<sup>83</sup> Throughout the Marine Corps, 213 general and 4,728 special courts-martial were tried in 1966.<sup>84</sup> No records survive that detail the number of courts-martial tried that year in Vietnam, but the total clearly was escalating. Drugs, fraggings, and racial conflicts were

<sup>82</sup>First Lieutenant Patricia A. Murphy, first commissioned in June 1963, was the Marine Corps' second woman lawyer. The first, Lieutenant Colonel Lily H. Gridley, was commissioned in February 1943 and retired in 1965.

not yet on court-martial dockets in significant numbers. Reassuringly, the Uniform Code of Military Justice and the 1951 *Manual for Courts-Martial* appeared to be workable tools for pursuing justice in a predominantly static combat environment.

In Washington a Navy Commendation Medal was awarded and forwarded to Colonel Neville for the work he had done before going to Vietnam. His citation read, in part: “Fruition of his project recommendations for the combination of the Discipline and Legal Branches of the Personnel Department brought about significant economy of personnel and effort.”<sup>85</sup> Despite the inference of the citation, however, there was still no separate legal branch at Headquarters Marine Corps. So Colonel Neville’s successor at Headquarters, Colonel Charles B. Sevier, continued to bend Code DK, Discipline Branch, away from the Personnel Division and toward a separate legal section within Headquarters Marine Corps.

PART II  
BUILD UP AND CONSOLIDATION

## CHAPTER 4

# 1967: Trying Times

*III MAF: Double-Hatted Twice—1st Marine Division: Rising Caseloads, More Lawyers*  
*3d Marine Division: More Combat, Fewer Courts—Force Logistic Command: Continue to March*  
*1st Marine Aircraft Wing: Much Like Home—From a Lawyer's Case File: Psychiatry and Appellate Review*  
*Project 100,000: Prelude to Problems—Drugs: Recognizing the Problem*  
*Transportation: Hitchhiking to Court—Trying Cases—Marine Corps Lawyers in Combat: They Also Serve*  
*The First Lawyer General Officer: No Immediate Change—Perspective*

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As 1966 ended, the Marines of III MAF were fighting essentially two separate, interrelated wars. The 3d Marine Division fought a conventional war along the DMZ against North Vietnamese Army formations. At the same time, the 1st Marine Division continued a combination of large-unit and counter guerrilla operations south of Hai Van Pass, which stood a few miles north of Da Nang.

At the beginning of 1967 18 Marine infantry battalions and 21 aircraft squadrons occupied bases throughout I Corps. Those units and their supporting organizations totaled more than 70,000 Marines and sailors.<sup>1</sup>

On the legal front four general court-martial (GCM) commands were based in I Corps.\* The 1st Marine Division was still headquartered at Da Nang with a detached brigade-sized force, Task Force X-Ray, at Chu Lai. Lieutenant Colonel Tom P. Casey remained the staff legal officer (SLO) at Da Nang (sharing space with the 3d Division legal office during the first part of the year), while his deputy, Lieutenant Colonel John L. Zorack, was in charge at Chu Lai. The 3d Marine Division (Forward) command post was at Dong Ha with the main command post at Phu Bai. The 3d Division's office moved from Da Nang to the main command post during April and May 1967. The 1st Marine Aircraft Wing (MAW), meanwhile, remained at the Da Nang Airbase. Its legal staff was now led by Lieutenant Colonel Ralph K. Culver. Force Logistic Command (FLC) was at Camp Books, Red Beach, near Da Nang with Lieutenant Colonel Charles R. Larouche still SLO. The fourth SLO was Colonel Robert B. Neville, who continued as III MAF's assistant chief of staff with collateral responsibility for MAF Headquarters legal matters.

In 1967 the Marines' missions were to counter the

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\*A general court-martial command is one that is empowered to convene GCMs. The fact that a general officer commands a unit is not determinative of GCM jurisdiction. For example, III MAF, commanded by a lieutenant general, did not have GCM convening authority. In contrast, units commanded by colonels sometimes did have such authority.

threat of enemy incursion across the I Corps border, to destroy Viet Cong/North Vietnamese Army units entering III MAF's tactical area of responsibility, and to ensure the security of allied base areas and lines of communication. In a change of strategy, South Vietnamese forces assumed primary responsibility for pacification of the civilian populace. Marine efforts in that regard nevertheless continued. The tempo of guerrilla warfare had substantially increased, and III MAF Headquarters anticipated large-scale attacks along the DMZ by enemy regular forces.<sup>2</sup>

Concern increased over the potential for legally significant incidents occurring in combat situations. The Commandant of the Marine Corps, General Wallace M. Greene, Jr., in a bulletin to all commanding officers, noted:

I am extremely concerned in regard to recent incidents of wanton disregard for the personal lives and property of the civilian populace of the Republic of Vietnam . . . . I charge all Commanding Officers with the responsibility to insure that all personnel receive instruction in regard to the standards of conduct expected of the U.S. Marine.<sup>3</sup>

Equally concerned, General Krulak, Commanding General, FMFPac, wrote:

The nature of the conflict in Vietnam has placed an unusual requirement on low ranking leaders to carry out sensitive combat operations, often in an environment where large numbers of civilians are present . . . . Determination of right and wrong . . . has to be made on the spot, and often in the heat of battle . . . . The weight of this decision often falls on the shoulders of the small unit leader—platoon leader, squad leader, patrol leader . . . individuals who, because of their relative youth and short time in service, are least able to exercise mature, deliberate judgement under the pressure of combat . . . . Nevertheless, [they] must be fully aware of their responsibilities for their conduct, and the conduct of their subordinates . . . . Moreover, every Marine must be made to understand that deviation from these standards is a grave offense and not to be tolerated.<sup>4</sup>

The SLOs continued to support the execution of their command's mission by prosecuting offenses, providing general legal advice to the commander, and furnishing technical support, such as legal assistance, claims service, and administrative discharge processing.

By 1967 Marine Corps colonels and lieutenant colonels designated to be SLOs in Vietnam attended the Army's Judge Advocate General's School, in Charlottesville, Virginia, for a five-day indoctrination course.<sup>5</sup> Only then did they proceed to Vietnam.

More lieutenant—and captain—lawyers were in Vietnam now, but a high number of senior lawyers were also assigned there. Colonel Eugene B. "Doc" Fallon, slated to become the 3d Marine Division's SLO, believed that "[Headquarters Marine Corps] sent too many colonels to Vietnam." He noted that at one time in 1967, in the 1st Marine Division alone, there were four lawyer colonels, making turnaround time for colonels too brief.\* He suggested that only three lawyer-colonels were required in Vietnam: one each for the 1st Division, 3d Division, and FLC. Neither III MAF Headquarters, nor 1st MAW, in his opinion, had enough work to justify a colonel as SLO.<sup>6</sup> Headquarters Marine Corps accepted the recommendation as to totals, if not distribution, and in later years the number of colonel lawyers in Vietnam dropped.

Headquarters III MAF, 1st Division, 1st MAW, and FLC, all benefitted from their common location in Da Nang. With the passage of time their facilities became more comfortable and settled, although subject to rocket and infrequent sapper attacks.

Numerous amenities were available in and around Da Nang. Twenty-four post exchanges and 43 snack bars were in American base areas there.<sup>7</sup> Large fans, small refrigerators, television sets, high-quality cameras, and a wide variety of other goods were routinely available. The 1st Division's incoming SLO, Lieutenant Colonel William T. Westmoreland, Jr., noted, "we were in pretty much of a base camp tactical situation during the time I was there, and any minor difficulties [were cured] by the fact that we had about 12 hours a day, 7 days a week to overcome them. A moving situation, of course, would have been different indeed."<sup>8</sup>

The first woman Marine arrived for duty in Vietnam in March 1967 and served with MACV in Sai-

\*Turnaround time was the period between Vietnam assignments. Those of the same grade and military occupational specialty with the longest time since their last overseas/unaccompanied tour of duty (usually Vietnam) became next scheduled for such duty. The fewer lawyer-colonels in the queue, the sooner each lawyer-colonel was sent to Vietnam; similarly, the more who were sent to Vietnam during any given period, the faster the queue moved and the faster one's turn came again.

\*\*Colonel Westmoreland was not related to Army General William C. Westmoreland.

gon.<sup>9</sup> Numerous female Navy nurses, Red Cross workers, and civilian news personnel were in the III MAF area, but no woman Marine lawyer was ever assigned to Vietnam.<sup>\*\*\*</sup>

### *III MAF: Double-Hatted Twice*

Across the Han River at III MAF Headquarters, on 1 June, Lieutenant General Robert E. Cushman, Jr., relieved Lieutenant General Walt as commanding general. In Saigon MACV directed III MAF to plan for construction of a strongpoint obstacle system south of the DMZ.<sup>10</sup> The incoming SLO would be heavily involved in that planning. Colonel Robert B. Neville, who was still "double hatted" as assistant chief of staff and MAF Headquarters SLO, was relieved on 30 July by Colonel Duane L. Faw.

Like his predecessor, Colonel Faw had seen extensive World War II combat. After Pearl Harbor he had enlisted as a Navy seaman and then become a Naval Aviation Cadet. Commissioned a Marine second lieutenant, he later piloted dive bombers in aerial combat over Guadalcanal, Munda, the Russells, and Rabaul. On inactive duty after the war, he earned his law degree and then returned to active duty during the Korean War. After that war he commanded the 2d Battalion, 6th Marines and led its deployment to Guantanamo during the 1961 Cuban Crisis. Later, for a brief period, he commanded the 6th Marines.<sup>\*\*\*\*</sup> Colonel Faw, a self-taught Vietnamese linguist, had sought the III MAF billet. "It was," he later said, "where the action was, with respect to the war, but there was practically no legal work." When Colonel Faw reported on board, Brigadier General Robert C. Owens, Jr., the MAF chief of staff, was about to go on R & R. He told Colonel Faw that in his absence, Colonel Neville, who was not returning to the United States for several days, would be the acting chief of staff. Could Colonel Faw act as the assistant chief of staff for that period of a few days? "Thirteen months later, I was still there," Colonel Faw recalled.

Although Colonel Faw was both assistant chief of staff and MAF Headquarters legal officer, the deputy legal officer, Major Ronald J. Kaye, handled day-to-day operations of the legal office. These included mak-

<sup>\*\*\*</sup>In 1967 the sole woman Marine lawyer on active duty continued to be 1st Lieutenant Patricia A. Murphy.

<sup>\*\*\*\*</sup>After leaving Vietnam Colonel Faw became one of the original 12 Navy Court of Military Review appellate judges. He then became the third Director of the Judge Advocate Division and the first to hold general officer grade, advanced to brigadier general on 7 August 1969.



Photo courtesy of BGen Duane L. Faw, USMC (Ret.)

*Col Duane L. Faw, left, was III MAF Assistant Chief of Staff and Headquarters Staff Legal Officer, as was his predecessor, Col Robert B. Neville. Here, Col Faw discusses a III MAF case with civilian lawyer, Mr. Melvin Belli, who was visiting III MAF headquarters.*

ing arrangements for the return from the United States of witnesses required in courts-martial and coordinating legal holds for all of III MAF.\* Few disciplinary problems arose in III MAF Headquarters, and seldom were there more than one or two active cases at a time.<sup>11</sup> The few serious cases that arose in the headquarters were convened by other commands that, unlike III MAF, had general court-martial convening authority.

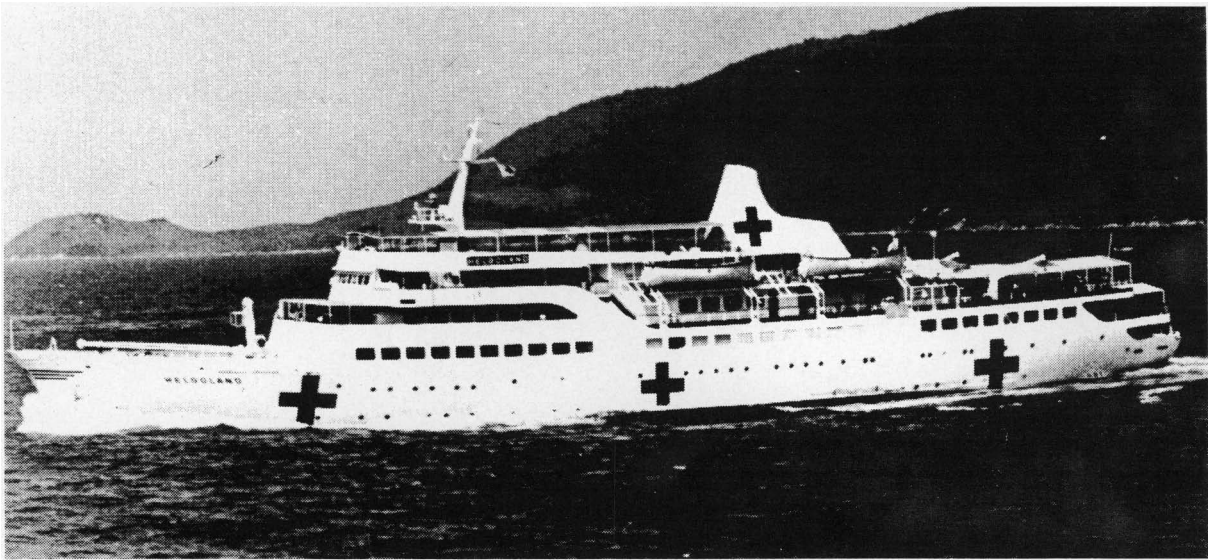
One of Colonel Faw's duties was to maintain liaison with the civilian mayor of Da Nang, Le Chi Cuong.\*\* At one of their meetings the two realized

\*Legal hold was an administrative action that held a Marine in Vietnam until an ongoing legal proceeding was concluded, or until the legal hold was lifted. Since it often resulted in keeping an individual in Vietnam beyond his scheduled departure date, legal holds were very unpopular with Marines.

\*\*Eventually, Brigadier General Faw sponsored the American citizenship of Le Chi Cuong, his wife, two sons, and three daughters, all of whom escaped, separately, from Vietnam as it fell to the North Vietnamese. Their eventual reunion in California is an amazing story. In all, General Faw sponsored the citizenship of 13 South Vietnamese. (Faw intvw.)

that, between Marine intelligence sources and the mayor's less organized, but nearly as effective information sources, a fair guess could be made as to when VC rocket attacks on Da Nang would occur. Besides warning their respective countrymen, both were concerned about the safety of the *Helgoland*, a German hospital ship which had recently docked on the Han River near III MAF Headquarters. Colonel Faw and Mayor Cuong visited the *Helgoland's* captain and offered to warn him of impending attacks so that he might move to safety in nearby Da Nang harbor. The captain haughtily declined, saying that his ship's medical staff treated all Vietnamese, including VC, and no VC rocket would be fired that might endanger his ship.

Nevertheless, a few days later, Colonel Faw warned the *Helgoland's* captain that a rocket attack was anticipated that night. The warning was ignored. Late that night there was indeed a heavy rocket attack, in which two rockets bracketed the hospital ship, one hitting a ship moored just outboard of the *Helgoland*. After that warnings were welcomed and heeded by the



1966 NSA Cruise Book

*The German Red Cross hospital ship Helgoland steams in Da Nang Bay. "People around there got to know that when the Helgoland left, we were likely to get a rocket attack."*

*1st Marine Division lawyers seen at officers' call in the club. From left, Maj Winn M. Thurman; LtCol William T. Westmoreland, Jr.; 1stLt Donald E. Wittig; Capt Harry D. Sabine; Capt Ross T. Roberts; unidentified motor transport officer; Maj William B. Draper, Jr.; unidentified nonlawyer; Capt Paul R. Constantino; and Capt James P. Shannon.*

Photo courtesy of Col Donald Higginbotham, USMCR







Photo courtesy of LtCol William B. Draper, USMC (Ret.)  
*Capt Donald Higginbotham was a 1st Marine Division lawyer and CO of Headquarters Battalion Reaction Company. At a Sunday steak fry, he is teased by officers' club employee, Mai Lee. Hill 327's cantilevered SEAhut living quarters are in the background.*

*Helgoland*, and she would move into the harbor to escape the anticipated rockets. Colonel Faw recalled, "People around there got to know that when the *Helgoland* left, we were likely to get a rocket attack, so when it pulled out everybody buttoned up."<sup>17</sup>

The *Helgoland*, soon referred to as the "Chicken of the Sea," otherwise remained at its customary dockside position near III MAF Headquarters for almost three years. The ship, with its complement of nurses, hosted several I Corps Bar Association parties and dances over that period.<sup>13</sup>

#### *1st Marine Division: Rising Caseloads, More Lawyers*

In February Colonel Casey was relieved as SLO by Lieutenant Colonel William T. Westmoreland, Jr., who during World War II had commanded the Marine detachment on board the *Savannah* (CL 42). After World War II he commanded the 3d Battalion, 9th Marines and later the 1st Infantry Training Battalion. Remembering that promotions for senior lawyers had in the past required command of line units, he hoped for an infantry billet in Vietnam and was a staff legal officer only over his own objection.

After less than a year the 1st Division SLO's office had grown from 13 officers and 18 enlisted men to 24 officers and only 14 enlisted Marines. This included one lawyer assigned to process claims and a full-time legal assistance officer. As Lieutenant Colonel Westmoreland noted:

I don't recall the caseload, but we had too many lawyers. I encouraged those hard-chargers who wished to, to seek duty with [combat] troops. As I recall, [Major] Winn Thurman was a battalion XO in the 7th Marines, for a while; [Captain Paul R.] Constantino had a rifle company; and [Captain Bernard A.] Bernie Allen had a platoon. [Captain Donald] Higginbotham was C.O. of the Headquarters Battalion Reaction Company. In addition, other personnel, both officer and enlisted, made inserts . . . with patrols from reconnaissance battalion.\* [Navy Lieutenant John J.] Martens, the law specialist, was particularly enthusiastic about recon patrols.<sup>14</sup>

Until late March 1967 three 1st Division lawyers and several enlisted legal clerks remained at Chu Lai under the deputy SLO, Lieutenant Colonel John L. Zorack. By this time Chu Lai's tents had been replaced by SEAhuts, but living conditions remained more austere than those at the Da Nang Airbase. The SEAhuts were always damp and unheated. (Vietnam was surprisingly cold during the monsoon seasons.) Cold water showers were available.<sup>15</sup> Finally, on 26 April 1967 Task Force X-Ray was deactivated, and the U.S. Army's Task Force Oregon took over its responsibilities and facilities. After the other 1st Division lawyers left to join the rest of the office in the Da Nang area, Lieutenant Colonel Zorack remained at Chu Lai as the "Chief of Staff, Chu Lai Installation Coordinator," until completion of his tour of duty three months later.<sup>16</sup>

The location of a U.S. Army command in the I Corps TAOR was recognition by MACV of III MAF's difficulty in countering enemy incursions across the DMZ while also keeping base areas secure. During this time, III MAF had launched Operations De Soto and Cochise with units from Chu Lai. Further north 1st Division units had initiated Operations Stone and Lafayette in the first two months of the year. By deactivating Task Force X-Ray, the 1st Marine Division could move men northward and more easily meet the enemy threat to the 3d Marine Division on the DMZ. For the division's lawyers Task Force X-Ray's deactivation meant the SLO's office was once again consolidated, this time at Hill 327, near Da Nang.

The number of cases increased, but because a greater number of lawyers was available to try them, on an individual basis the caseload remained low: around four or five general and eight to 10 special courts-martial per counsel. Most special court-martial cases were still being tried by nonlawyers at the battalion

\*The patrol inserts involved legal personnel accompanying the helicopter insertions of patrols. Lawyers did not participate in the patrols. More than one helicopter engaged in inserts or extractions was shot down, although never when a lawyer was on board.



Photos courtesy of author (top) and LtCol John L. Zorack, USMC (Ret.)

*General purpose tents served as living quarters at Chu Lai until mid-1967. Plastic is nailed to the top frame to minimize rain leaks. The tents' sides were rolled up, weather permitting. Lower photograph shows the two Task Force X-Ray legal SEAhuts, with a four-holer, right.*

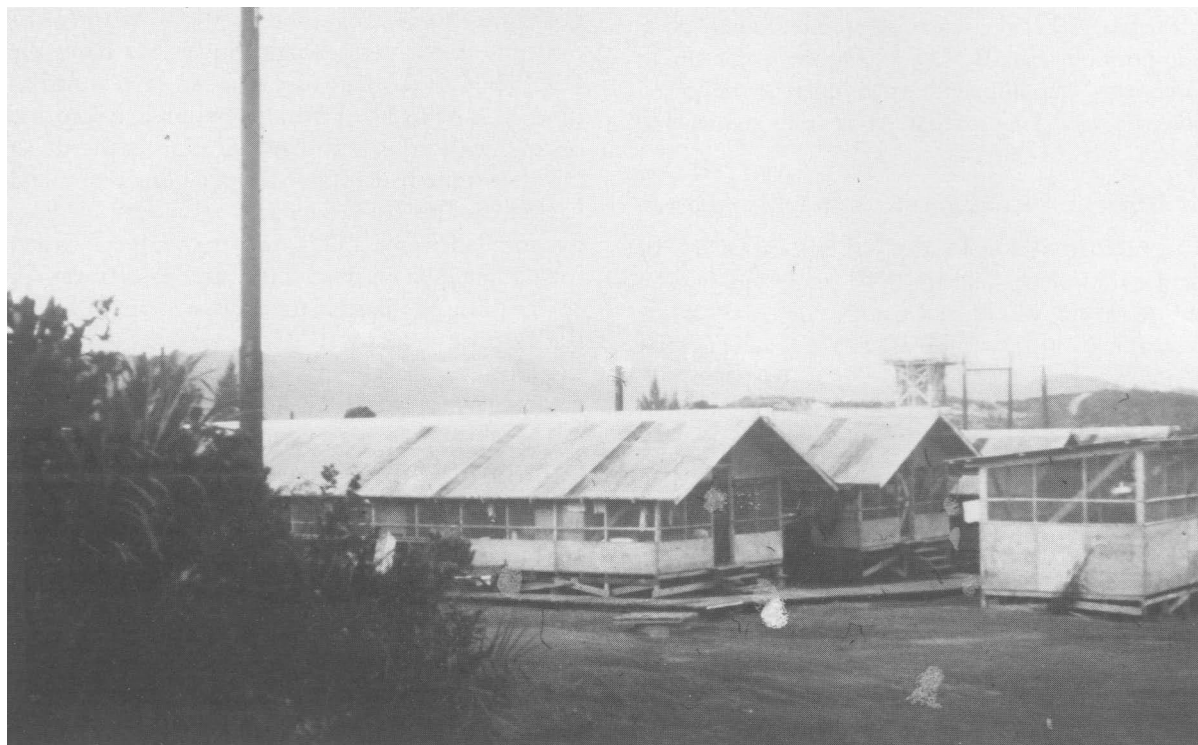




Photo courtesy of Col Donald Higginbotham, USMCR

*Saturday night poker is played in the 1st Marine Division legal office. From left, 1stLt James Ehlers; Capt Harry D. Sabine; Maj William B. Draper, Jr.; and 1stLt James E. Barnett.*

level, and some cases referred to trial with lawyer counsel were disposed of without trial. So the number of cases actually tried was less than the caseload indicated.\* For example, during one year and two weeks in Vietnam, Captain Donald Higginbotham tried only six general and 12 special courts. (Although, like most counsels, a portion of his tour was spent in duties other than trial or defense counsel, reducing the time he was assigned to try cases.)<sup>17</sup> In August Colonel John J. Ostby relieved Lieutenant Colonel Westmoreland as SLO of the 1st Marine Division.

Meanwhile, the 1st Marine Division continued to conduct operations throughout the TAOR. Operations Union II and Medina were particularly hard-fought battles in III MAF's plan to destroy enemy bases previously left alone because of the lack of forces.<sup>18</sup>

### *3d Marine Division: More Combat, Fewer Courts*

North of Da Nang the 3d Marine Division (Forward) command post remained at Dong Ha, not far from

\*A case could be dropped for lack of evidence, or it could be taken back by the accused's commanding officer and be dropped, or referred to a summary court-martial or an administrative discharge board. Essential witnesses may have been unavailable due to inability to locate them, if Vietnamese, or due to death or being wounded, if Marine.

the coast and the South China Sea.\*\* To the west of Dong Ha the 3d Division held Cam Lo, Camp J.J. Carroll, the Rockpile, and Khe Sanh, the latter only a few miles from the Laotian border. Just south of the DMZ, Con Thien and Gio Linh were being established as strongpoints and enemy contact was routine. Operations Prairie II, III, and IV continued throughout the year, with continuous, heavy combat. The first battle of Khe Sanh began early in the year.

A civilian-conducted study had proposed a barrier system across infiltration routes into South Vietnam. Secretary of Defense Robert S. McNamara, over Navy and Marine Corps objections, directed that a portion of the system be made operational by 1 November 1967. Construction of the strongpoint obstacle system, or "McNamara Wall," as it was often referred to, began in May.<sup>19</sup>

From Phu Bai, 3d Division lawyers served Marines throughout the TAOR, visiting each camp and out-

\*\*During 1967, Major Walter J. Donovan, serving near Dong Ha, was the operations officer of the 1st Amphibian Tractor Battalion, and later, of Task Force Hotel. He was awarded the Legion of Merit for his performance of duties in Vietnam. Returning to the United States, he attended law school at night, gaining his law degree in 1973. Later, he was a Distinguished Graduate of the Naval War College. In April 1983 he was promoted to the grade of brigadier general and became the ninth Director of the Judge Advocate Division.



Photo courtesy of BGen Walter J. Donovan, USMC (Ret.) *Maj Walter J. Donovan was operations officer of the 1st Amphibian Tractor Battalion. The future Director of the Judge Advocate Division is shown in October 1967 at Cua Viet with his trademark two wristwatches.*

post as needed. The division SLO was Colonel Charles H. Beale, Jr. In World War II he was a radar officer on Guadalcanal and later participated in the invasions of Munda, Rendova, and Guam. After the war he earned his law degree and returned to active duty in the Korean War as commanding officer of a signal company. His duties after Korea were a mix of communications and legal assignments. After becoming SLO, Colonel Beale supervised the legal office's move from Da Nang to Phu Bai, conducted in stages from 28 March to 5 June.<sup>20</sup> The SLO's work spaces were the usual SEAhuts. By midyear, three of them housed all of "legal," one of the huts being the courtroom with not one, but two, air conditioning wall units.<sup>21</sup>

Familiar problems persisted through 1967. Lawyers arrived in Vietnam with no legal experience. Of the several captain-lawyers in the 3d Division, all but one had come directly from Naval Justice School. The young lawyers were only too aware of their lack of seasoning. Captain Charles E. Patterson's first general court-martial was a six-day murder trial with lengthy psychiatric testimony. As he recalled: "There were many times during the course of that trial that I wished that I had considerably more experience in the courtroom than I'd had at the time."<sup>22</sup>

The junior enlisted personnel constituted "a gross injustice," foisted upon field commands as trained le-

gal clerks, in Colonel Fallon's opinion as the incoming SLO. Five had been assigned their administration MOSs after only two weeks of legal school and then sent directly to Vietnam. Two of the five could not type, nor record a court-martial.

Telephones remained a test of patience. To get through to Da Nang from Quang Tri took hours, if one was fortunate. It sometimes took as long as two days. Captain Francis T. Coleman (a 1st Division lawyer), wrote: "The switchboard network . . . is more reminiscent of a backyard walkie-talkie than a serious vehicle of communication."<sup>23</sup>

The III MAF brig posed difficulties for the 3d Division lawyers, because it took defense counsels two to three days to visit an accused Marine incarcerated there. The SLO's suggestion of a detention facility, a brig extension at Quang Tri, was rejected by division headquarters as being unnecessary.<sup>24</sup>

In June Colonel Beale was briefly relieved by Lieutenant Colonel Norris C. "Sweeper" Broome. Lieutenant Colonel Broome became the deputy SLO less than a month later, when Colonel Eugene B. "Doc" Fallon arrived.

Colonel Fallon was a 1944 Naval Academy graduate who had been an infantry platoon commander in

*Senior lawyers pose at Phu Bai, north of Da Nang. From left: 3d Marine Division Staff Legal Officer, Col Eugene B. "Doc" Fallon; his deputy, LtCol Norris C. Broome; and law officer, LtCol Donald E. Holben.*

Photo courtesy of Col Paul F. Henderson, USMC (Ret.)



the battle for Okinawa. One of those few officers sent to law school by the Marine Corps in the early 1950s, he described his tenure as SLO as “the most challenging tour I’ve ever experienced as an officer lawyer, the most frustrating . . . and the most rewarding.”<sup>25</sup>

He found that the several moves the office had experienced had been hard on recording equipment and typewriters. He also found that electrical power, essential to the office, was shut off for several hours every day. He turned to portable generators as a solution. Two newly arrived electric typewriters came with one power pack and no means by which to recharge it. Given the increasing number of trial records to be typed, Colonel Fallon instituted a 24-hour-shift system for court reporters.

Like the 1st Marine Division, the lawyer strength of the 3d Division had grown, but unlike the 1st Division, greater numbers were needed. Combat units were so heavily committed they could not muster enough officers to prosecute, defend, and make up members panels for their own special courts-martial. Colonel Fallon’s solution was to provide them with trial

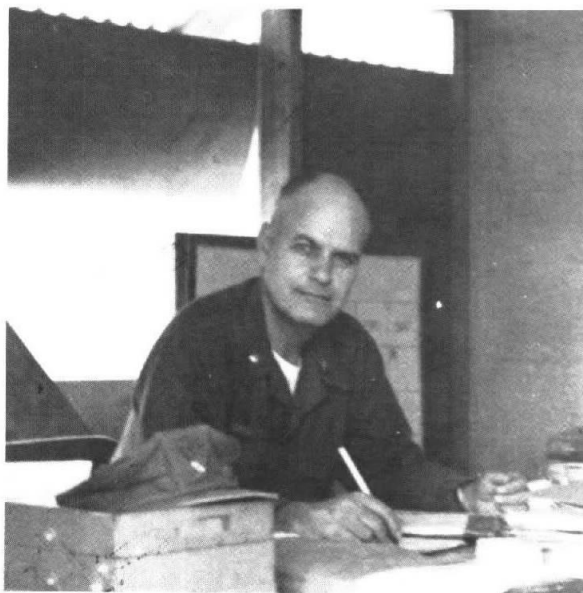


Photo courtesy of Col Paul F. Henderson, USMC (Ret.)  
*3d Marine Division Deputy Staff Legal Officer, LtCol Paul F. Henderson works in his Phu Bai office. Trial counsels worked on the other side of the partition.*

*Force Logistic Command's legal personnel, seen at Camp Books, Red Beach, early 1967. From left, Cpl Eckes; Sgt Harms; Capt Franklin P. "Skip" Glenn; Cpl Grover; SLO, LtCol Charles R. Larouche; Capt Charles J. Kall; Deputy SLO, LtCol Richard E. Wray; Cpl Hayes; Capt Larry J. Miner; Cpl Carr; unidentified driver; and office Legal Chief, GySgt Lyon.*

Photo courtesy of Mr. Charles J. Kall



teams whenever possible: a trial and defense counsel and a senior member—all lawyers—and a court reporter.<sup>26</sup> Throughout the division, in any special court where a bad conduct discharge might be imposed, a trial team was detailed to the unit.<sup>27</sup>

The 3d Marine Division SLO's office was to move yet again. In December 1967 the commanding general ordered establishment of a new forward command post at Dong Ha and the actual movement of division support elements from Phu Bai to Quang Tri.<sup>28</sup>

*Force Logistic Command: Continue to March*

Logistical support of the Marines of III MAF continued to be the mission of the 5,500 officers and men of FLC. Although redesignated Headquarters, 1st Force Service Regiment/Force Logistic Command on 16 February 1967, it still was referred to as "FLC", or "Flick." The command grew to a strength of 9,551 by the end of the year.

Colonel Larouche and his lawyers supported FLC units located at the Da Nang headquarters, as well as Support Unit 1 at Dong Ha, Force Logistic Support Group (FLSG) Alpha at Phu Bai, and FLSG Bravo at Chu Lai.<sup>29</sup> Simultaneously they conducted their third legal clerk school for the five legal offices in Vietnam.<sup>30</sup>

On 1 June Colonel Larouche was relieved by Lieutenant Colonel Verne L. "Bubs" Oliver, who had already served in Vietnam in his previous billet as a law officer, based in Yokosuka, Japan. Lieutenant Colonel Oliver found that, besides a rising caseload (three general and 26 special courts-martial were tried dur-

ing June, alone), the number of foreign claims and legal assistance cases increased. Most claims by Vietnamese involved motor vehicle accidents. Combat-associated claims were not considered, as they were under the cognizance of the Military Civic Action Program, handled by the Government of Vietnam.<sup>31</sup>

FLC's legal assistance docket for a typical month numbered 127 cases. Included were 32 domestic relations cases, 25 powers of attorney, 10 letters of indebtedness, 8 wills, 4 tax problems, and 3 naturalizations.<sup>32</sup> By late 1967 legal assistance attorneys in Da Nang could, with patience, occasionally complete telephone calls to the United States. This involved making the call through the division's communications section via one or more radio patches. Success depended upon good weather in the China Sea/Pacific area, after taking into account the international date line and a minimum of an eight-hour time zone difference. When successful, the lawyers often heard a disbelieving state tax clerk respond to a phone call from Vietnam.<sup>33</sup>

FLC's school for legal clerks fell by the wayside. Colonel Oliver noted that "various commands, for one reason or another, did not want to lose the services of their people for two weeks."<sup>34</sup> But, on a much reduced scale, Colonel Oliver continued training new clerks from the local FLC units

Marijuana offenses were being noticed for the first time. Judging from the charge sheets, replacement personnel in 1967 had more drug and disciplinary in-

*Basic legal clerks shown at their graduation. LtCols Larouche and Wray stand, center. The third basic legal clerk's class graduated at FLC's Camp Books in April 1967.*

Marine Corps Historical Collection



cidents than their predecessors. In rear area units, like FLC, the most severe disciplinary problems were to occur in coming months.

*1st Marine Aircraft Wing: Much Like Home*

Throughout 1967 fixed-wing aircraft squadrons rotated between the Da Nang Airbase and Iwakuni, Japan, where they underwent aircraft rehabilitation. Three squadrons returned to the United States and another to Japan and were replaced by squadrons from those locales.<sup>35</sup>

Living and working conditions at the airbase remained comfortable, despite the threat of rocket attacks. Captain Charles H. Mitchell recalled his arrival in Vietnam for duty with 1st MAW:

I flew in to Da Nang airport on a Continental Airliner, replete with stewardesses . . . I sort of expected there to be things like security, and people to be running around with guns, and . . . all I saw, looking out the window, were all the accouterments of U.S. garrison existence . . . Then you got off the aircraft and . . . have the impression that you should be looking for a foxhole, or something . . . and when they finally get you inprocessed to the command you're going to, somebody comes by in a jeep, picks you up and drives you over to a compound which is stucco buildings and tile roofs and a good deal of air conditioning . . . It was pretty comfortable. The culture shock in going to war, for me, was not one of deprivation, but shock at the opulence . . . As time went on, I found out that, with the exception of the combat units . . . there wasn't any war going on at all, except an occasional rocket attack.<sup>36</sup>

The Wing SLO was Lieutenant Colonel Ralph K. Culver, another World War II veteran. His deputy was Lieutenant Colonel Charles E. "Chuck" Spence, described by a later director of the Judge Advocate Division as "one of the greats in this business."<sup>37</sup> In August, Lieutenant Colonel Culver was relieved by Colonel Robert C. "Curly" Lehnert, and the following month, Major William H. J. Tiernan became the deputy SLO, relieving Lieutenant Colonel Spence.\*

Before becoming a lawyer, Colonel Lehnert had been a Marine fighter pilot during World War II and Korea and had been awarded a Distinguished Flying Cross in each conflict. Since the Korean war he had

\*Brigadier General Tiernan became the eighth Director of the Judge Advocate Division in April 1980. As a captain he was an infantry company commander during the 1961 Cuban Crisis, and deployed to Guantanamo Bay. He served in the Office of the Judge Advocate General of the Navy, and was editor the JAG Journal. After Vietnam he served in a variety of legal billets, was a distinguished graduate of the Naval War College, SJA of five major commands, and chief of staff of the 1st Marine Division. (Biographical Files RefSec, MCHC).



Photo courtesy of Col Charles H. Mitchell, USMC  
*Capt Charles H. Mitchell, 1st Marine Aircraft Wing lawyer, waits in the Wing legal office to join a Rough Rider resupply convoy from Da Nang to Dong Ha.*

alternated between flight duty and legal duty and recently had been squadron commander of VMF-312.<sup>38</sup> Now in another combat zone he took every opportunity to return to the cockpit. The Wing was willing to employ qualified, experienced pilots, and Colonel Lehnert flew with Marine Aircraft Group 12 out of Chu Lai, logging combat missions in A-4 aircraft. As Major Tiernan later recalled, "the figure that sticks in my mind is 85 combat missions . . . He rarely missed a week."<sup>39</sup> And as Captain Mitchell remembered, "Major Tiernan ran the office, really, and Colonel Lehnert fought the war."<sup>40</sup> In his third war, Colonel Lehnert won a third Distinguished Flying Cross.

In an effort to better manage the wing's general court-martial caseload, Colonel Lehnert initiated a special court-martial "task force," and assigned a lawyer to be counsel for each wing unit, responsible for the special, as well as the general court-martial cases that arose in his group or squadron. Often, trial teams would be in the field several days a week and typically traveled to a squadron, prepared the cases for trial the first day, tried them the next, and returned to Da



Department of Defense Photo (USMC) 88583  
*1stLt Robert C. Lehnert stands beside his F4U Corsair in the Marshall Islands during World War II. He earned his third Distinguished Flying Cross as a colonel, while SIO of the 1st Marine Aircraft Wing in 1967-68.*

Nang the third. General courts were usually tried at the wing headquarters at Da Nang.<sup>41</sup>

Despite these efforts to be responsive to the legal needs of the Wing commands and the relatively light caseload, problems of transportation, communications, equipment, and personnel made it impossible to satisfy everyone. Later, Major Tiernan recalled: "[There were] group commanders who were constantly complaining about the system being inadequate, and of course it was. It was a question of trying to get the work done with the resources we had . . . . Inadequate resources . . . . Too much work and not enough resources."<sup>42</sup>

Colonel Lehnert noted that commanders often were dissatisfied with delays in trying simple marijuana possession cases. But, as Colonel Lehnert pointed out:

In the absence of a stipulation [that the substance was marijuana], which eager defense counsel rarely advised, the substance had to be transported out-of-country to Japan for laboratory analysis . . . . There were always the evidentiary problems relating to chain of custody, lack of cross-examination [of the analyst], coupled with the attendant delays.<sup>43</sup>

On the bright side, electrical power for courtroom recording equipment was seldom a problem at 1st MAW "legal." Additionally, its law library had improved, and publications like *Law Week* and the *Crimi-*

*nal Law Reporter* were promptly received.<sup>44</sup> On a more substantive level, Colonel Lehnert noted that, "the wing [legal office] was blessed with one sergeant/reporter who was skilled in the use of a stenotype machine — he was worth his weight in gold.\* That equipment needed no power, was very portable, and could set up in field in an instant.<sup>45</sup> Reporters with stenotype proficiency, unfortunately, were rare in the Vietnam war.

*From a Lawyer's Case File:  
 Psychiatry and Appellate Review*

The general court-martial of Private First Class Edward P. Boltik illustrates the roles of appellate review and psychiatry in the court-martial process.<sup>46</sup> Although both psychiatry and appellate practice figured in courts-martial convened under the old *Naval Courts and Boards*, under the "Red Book" they played an even more important part.

While Private First Class Boltik was standing sentry duty, a young Vietnamese boy grabbed a bottle of soda from him and ran. Private First Class Boltik raised his rifle and killed the boy with a single shot. At a general court-martial convened by the commanding general of the 3d Marine Division, Private First Class Boltik was charged with murder. He was defended by Captain Mark L. Haiman, the third lawyer assigned to represent him. The first assigned defense counsel, Captain James W. Jones, withdrew after he was physically beaten by Boltik, when Jones visited him in his cell. The second defense counsel, Captain Paul S. Zonderman, only participated in pretrial proceedings.

Prior to trial Boltik underwent psychiatric examinations in Vietnam, Japan, and Philadelphia, Pennsylvania.\* At the Da Nang trial the law officer was Lieutenant Colonel Donald E. Holben; the trial counsel was Captain Charles E. Patterson. Psychiatric testimony raised questions as to Boltik's mental responsibility at the time of the shooting, but the members, nevertheless, found him guilty of unpremeditated murder. He was sentenced to a dis-

\*Beginning in the late 1970s closed microphone court reporting of special and general courts-martial gave way to reporters using stenotype machines. Stenotype reporting, despite its advantages, was not considered practical for Vietnam employment because skilled reporters took several years to train, and were prohibitively expensive to school in the required numbers.

\*\*The records of the case do not explain how Boltik came to be examined in Pennsylvania, an unusual occurrence in light of the numerous uniformed psychiatrists available in Vietnam and the western Pacific area.





All photos on this page courtesy of Col Charles H. Mitchell, USMC  
*LtCol Ralph K. Culver, the Wing SIO, was about to return to the United States after completing his tour of duty in July 1967. From left, Legal Chief, MSgt Evoy; Deputy SIO, LtCol Charles E. Spence, Jr.; LtCol Culver; Sgt Morgan; 1stLt Macauley Carter, Jr.; and Capt David B. King. Hidden behind King are GySgt Russell and Cpl Mitchell.*



*Left, the 1st Marine Aircraft Wing legal office, seen in 1967. One of the numerous post-World War II French-built buildings adjacent to the Da Nang Airbase runways. Below left, the deputy SIO, LtCol Charles E. Spence, Jr., right, at work in the 1st Marine Aircraft Wing legal office. Below, electrical power was seldom a problem at the 1st Marine Aircraft Wing. Wing defense counsel Capt Donald R. Pritchard rests in his bachelor officers' quarters room beside his reel-to-reel tape deck, fan, Tensor light, and radio.*

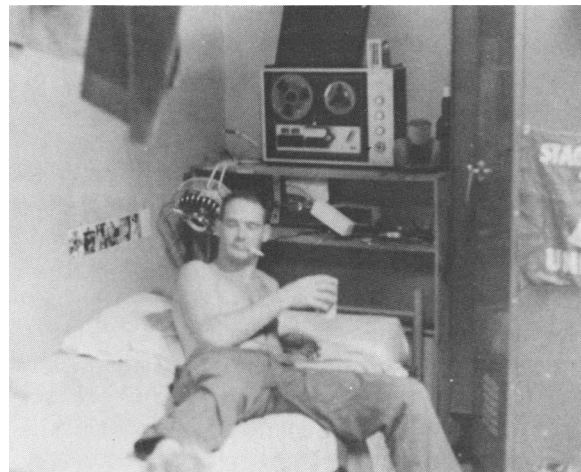




Photo courtesy of Col Rufus C. Young, USMC (Ret.)  
*A 1st Marine Aircraft Wing trial team shown in transit. Capt Donald R. Pritchard looks toward Capt Rufus C. Young's camera as the two lawyers fly from Da Nang to an outlying Marine unit in a CH-46 helicopter.*

honorable discharge, confinement at hard labor for 30 years, forfeiture of all pay and allowances, and reduction to private. The convening authority approved the findings and sentence. The case then went to the Navy Board of Review in Washington, where military appellate counsels entered an appeal on Boltik's behalf.

At the Navy Board of Review in Washington, a panel of three senior judges heard oral argument and considered government and defense briefs. Boltik was not present, nor did the appellate panel ever see him. The panel was composed of Colonel George P. Blackburn, who had been the SLO of the 1st Marine Division in Vietnam; Colonel Ralph K. Culver, formerly the SLO of the 1st Marine Aircraft Wing in Vietnam; and K. B. Hamilton, a civilian judge serving on the Navy Board of Review.

On 5 September 1968 the Court issued a unanimous opinion finding Boltik insane. They observed that during the trial a Navy psychologist, when asked whether Boltik was responsible for his actions at the time of the shooting, answered no. He felt that Boltik was psychotic at the time, and gave his reasons for thinking so. Another Navy psychiatrist also testified that Boltik was indeed unable to distinguish right from wrong and that Boltik was not responsible for his actions. Next, the Chief of Psychiatry of the Navy Hospital, Yokosuka, a Navy captain with 17 years experience as a psychiatrist, testified similarly. A third Navy psychiatrist who also examined Boltik, however, testified that he believed him to be antisocial, but able to distinguish right from wrong. Yet another Navy psy-

chiatrist testified and agreed with the third psychiatrist—Boltik could distinguish right from wrong.

The appellate court, in its opinion pointed out the greater experience of the Navy captain psychiatrist (the third expert witness who found Boltik unable to distinguish right from wrong), noting that he was neither selected nor paid by the accused, and repeated the psychiatrist's testimony from the record of trial:

It has been my experience that psychiatrists in the Navy . . . are very conservative in the area of this "knew right from wrong" and "adhere to the right" and so on; that a person has to be quite sick, ill, mentally disturbed, before we will say this about him. And I think, personally, that I am probably more conservative than most of the psychiatrists within my acquaintance.

Placing the burden of proof where required by the 1951 *Manual for Courts-Martial*, the appellate court concluded:

This Board is clearly convinced that the prosecution failed to prove . . . beyond reasonable doubt that the accused was so far free from mental defect, disease, or derangement as to be able . . . to distinguish right from wrong and to adhere to the right . . . Accordingly, the findings and sentence are set aside and the charge and specification . . . are ordered dismissed.

Private First Class Boltik was tried in a combat zone and defended by a Marine lawyer, whom he did not meet until the lawyer was assigned his case. At his counsel's request, he received psychiatric examinations in hospitals in Vietnam, Japan, and the United States from a psychologist and four psychiatrists. Upon conviction his case was appealed on the basis of the stan-

*Accused murderer PFC Edward P. Boltik, right, is shown with his defense counsel, Capt Mark L. Haiman, in the 3d Marine Division's legal office.*

Photo courtesy of Col Mark L. Haiman, USMC





Photo courtesy of Navy-Marine Corps Court of Military Review

*A panel of the Navy Court of Military Review similar to this one dismissed Boltik's conviction and sentence, finding that the government had failed to prove him sane. Shown in this 1972 photograph are, front, from left: Judge John L. Ostby, Col, USMC; Senior Judge Charles Timblin, Capt, JAGC, USN (Ret.); Chief Judge Gale E. Krouse, Capt, JAGC, USN; Judge J. Fielding Jones (a civilian jurist); Judge Robert C. Lehnert, Col, USMC. Rear, from left: Senior Judge Horace H. Morgan, Capt, JAGC, USN; Judge Louis L. Milano, Capt, JAGC, USN; Judge Paul F. Henderson, Jr., Col, USMC; Judge Thomas P. Smith, Jr., Capt, JAGC, USN; and Judge Raymond W. Glasgow, Cdr, JAGC, USN (Ret.).*

dard one-paragraph, written request of his trial defense lawyer. An appellate defense counsel who never met Boltik represented him before a panel of experienced lawyers, two of whom had combat backgrounds and Vietnam service. They reversed his conviction within eleven months of his court-martial, all without financial cost to Boltik. That was the military justice system, as experienced by a Marine private first class in 1967 and 1968.

#### *Project 100,000: Prelude to Problems*

In 1964 the Federal Task Force on Manpower found that the military services rejected about 600,000 men each year who failed to meet intelligence standards. The task force, chaired by Daniel Patrick Moynihan, suggested that some of those individuals were suitable for military duty. The Department of Defense established a program which required the Armed Services to accept some of those previously rejected men. Secretary of Defense McNamara called the program "Project 100,000."<sup>47</sup>

The Armed Forces Qualification Test is administered to all prospective Armed Service volunteers and draftees. It classifies them in one of five intelligence categories according to their test scores. Those scoring in categories I, II, and III are automatically acceptable for enlistment or induction; those in category V are automatically rejected.<sup>48</sup> Since 1952 recruiters had accepted a small number of individuals scoring in category IV, but now all Services were required to significantly lower their standards to accept many more "Cat IVs," as they were termed by Marine Corps lawyers. In October 1966, the Secretary of Defense directed that 40,000 category IVs be accepted by the Services during 1967 and 100,000 each year thereafter.

After the first year the Marine Corps was required to accept 18 percent (18,000) of the 100,000 category IV individuals each year. As Brigadier General Jonas M. Platt told the 1967 General Officers Symposium: "Unfortunately it has been necessary to turn away many high quality applicants in order to meet the

mandatory quotas of individuals of lower mental caliber. The Marine Corps is on record as opposing this requirement.”<sup>49</sup>

The influx of category IV Marines had an immediate negative effect on discipline and on Marine lawyers. Major General Rathvon McC. Tompkins, commanding general of the 3d Marine Division in late 1967, said “that [Project 100,000] was a very grave problem . . . . [Category] IV was a guy who could see lightning and hear thunder, maybe . . . . It’s a great waste of the taxpayer’s money and every other damned thing . . . . Great waste of effort, great waste of time, and a very dangerous thing.”<sup>50</sup> Captain W. Hays Parks, the 1st Marine Division’s chief trial counsel, complained that “in the midst of the war the military—through Project 100,000—became a uniformed Job Corps . . . . The idea worked much like that of tossing water on a drowning man.”<sup>51</sup> Army General William C. Westmoreland put it more bluntly:

Category IV is a dummy . . . . Give him menial jobs and he is not a troublemaker. But it is awfully difficult to utilize that many category IVs . . . . That is important when you start reflecting on the drug syndrome, the fragging . . . . That introduced a weak-minded, criminal, untrained element . . . . When those people came to Vietnam . . . that’s when disciplinary problems began on the battlefield.<sup>52</sup>

Statistics for the life of the program that compare the disciplinary rate of category IV Marines with other Marines have not been discovered, but category IV Army enlistees were initially found to have disciplinary problems and court-martial convictions at about double the rate of other soldiers.<sup>53</sup>

Disciplinary incidents associated with the “Cat IV” Marine did not end with the Vietnam War. Until the enlistments of the “Cat IVs” were completed in the mid 1970s, they remained disciplinary problems for commanders and cases for lawyers.

#### *Drugs: Recognizing the Problem*

Drugs and marijuana became a major concern in Vietnam only in 1967.\* This coincided with the dramatic rise in their use in America. First noticed in 1966, military commanders only became aware of the depth of the drug and marijuana problem in the fol-

\*Marijuana is a drug, according to Schedule I of the Controlled Substances Act (21 USC 812). A distinction is made in this volume because of the usual dichotomy between the two in the view of commanders and, usually, lawyers. The specification for charging a marijuana offense differs from that of other drug offenses, in both the 1951 and 1969 *Manual for Courts-Martial*. In the 1969 *Manual*, the maximum confinement for a marijuana offense is half that of other drugs, further illustrating the distinction.

lowing year. III MAF’s commanding general, Lieutenant General Cushman, Jr., shared his concern with Lieutenant General Krulak, Commanding General, FMFPac, in a September 1967 message:

[I] am sure you have noticed that the use of marijuana is mentioned in far too many administrative and disciplinary reports originating in Marine units in Vietnam . . . . There has been a substantial increase in marijuana traffic in I Corps, this year . . . . It is sold locally both in bulk and in machine-rolled cigarettes. Major CID [Criminal Investigation Division] effort has been devoted to locating the source. It is clearly a Vietnamese operation . . . . Street vendors are usually women and children. Appetites are teased by tossing cigarettes on passing trucks carrying troops. Vendors are found at almost every place where American servicemen can be contacted. Prices have increased from 10 to 50 piastres per cigarette, over the past few months . . . . In spite of the seriousness of the problem, there is no epidemic of marijuana use in III MAF . . . . With the promised support and cooperation of the Mayor [of Da Nang, Le Chi Cuong,] and Vietnamese law enforcement agencies, the problem should be greatly reduced.<sup>54</sup>

But the U.S. command found drug abuse difficult to deal with in Vietnam: Vietnamese drug laws were ill-defined, no central Vietnamese narcotics enforcement agency existed, and enforcement of existing laws was lax. By 1967 opium sold for \$1.00 per injection, and morphine was \$5.00 per vial. Heroin had not yet appeared on the market.<sup>55</sup>

It seemed that all at once marijuana use was common. Da Nang and the Army’s Long Binh-Bien Hoa areas were major problem areas.<sup>56</sup> A Congressional inquiry revealed that between 1 June and 3 October marijuana had been discovered in the III MAF brig on 16 occasions. In all 16 instances the source was said to have been Vietnamese who passed it to prisoners on working parties, often throwing it into passing trucks in which prisoners were being transported.<sup>57</sup>

General Krulak was concerned. He sent a confidential message to General Cushman: “The existence of the problem is apparent . . . . In order to acquire a full picture of the problem, I am sending LtCol W. C. Jaeck from this HQ on 24 November to confer with you, your staff, and anyone else who can help put the matter in perspective.”<sup>58</sup>

Lieutenant Colonel William C. Jaeck was the assistant Force Legal Officer at General Krulak’s Hawaii headquarters. His investigative mandate included only marijuana, because, as he noted, “in those days we were hardly conversant with anything stronger.”<sup>59</sup>

Lieutenant Colonel Jaeck’s subsequent report highlighted many of the problems associated with the prosecution of marijuana cases. He confirmed its ready



Department of Defense Photo (USMC) A229525  
*LtGen Victor H. Krulak was Commanding General, Fleet Marine Force, Pacific. To gain a view of the burgeoning marijuana problem he sent LtCol William C. Jaeck, of the FMFPac legal office, to Vietnam.*

availability and the difficulty in determining with any accuracy the extent of its use. He also noted the disparity in disciplinary approaches in the several commands: In FLC, marijuana possession or use was virtually an automatic general court-martial; in other commands it could go to a special or even a summary court. "The difficulty," Lieutenant Colonel Jaeck wrote, "is to determine the appropriate action to be taken against one who has had one [marijuana] cigarette while not in a specific duty status, who is no more impaired than the man who has had his daily ration of two beers."

The lack of a crime laboratory in Vietnam, he reported, was a major handicap to prosecutions. The only laboratory in the Far East was at Camp Zama, Japan, and test results could take as long as 45 days to be returned to Vietnam. He noted that "Dogpatch," a collection of Vietnamese shops astride the major Da Nang roadway, was a particularly troublesome area. It was a traffic chokepoint that allowed easy access by marijuana street vendors to Marines in slow-moving

vehicles. Vietnamese authorities, he noted, were not overly concerned with the problem. His report concluded that "disciplinary measures are having little apparent effect in deterring the use of marijuana." Lieutenant General Krulak, in a handwritten addendum to the report, approved Lieutenant Colonel Jaeck's recommendation that Vietnam commands submit a monthly report to FMFPac on disciplinary and administrative actions taken in regard to marijuana, and he noted the need for uniformity in disciplinary action.<sup>60</sup> As accurate as his report was, Lieutenant Colonel Jaeck could hardly foresee the impact that marijuana and other drugs were to have on the Marine Corps in Vietnam and beyond.

#### *Transportation: Hitchhiking to Court*

Captain Donald Higginbotham, a lawyer in the 1st Marine Division SLO's office at Hill 327, said of transportation:

Travel in RVN was purely on a "catch as catch can" basis. While there was assigned one Mighty Mite for some 20-plus personnel the damn thing was always broken down . . . . I have travelled in DC-3s which were used, at the same time, to bring the dead from staging areas; ridden helicopters, both Marine and Army; travelled on "rough rider" convoys where my temporary duties . . . were to man an M-60 machine gun; and became a past master at hitchhiking . . . . Transportation was a simple matter of going to a helipad or convoy staging area and begging or intimidating a ride to one's destination, limited only by one's ability and initiative as a con artist . . . . Travel for lawyers was normally based upon very low priorities.

[Once], while returning by vehicle from the 3/1 area near Marble Mountain, three lawyers and the driver received sniper fire from a tree line . . . . We all departed the vehicle, with haste, into a ditch. Unfortunately, the ditch and the sniper were on the same side of the road. We never knew whether the sniper ran out of ammunition or simply could not draw another bead due to laughter.<sup>61</sup>

Despite the many vehicles usually in a Marine-controlled area, it was seldom easy to get to the scene of an offense, meet with witnesses, or report to a convening authority in the field. In rainy weather roads became virtually impassable; in some areas no roads existed. In hot weather, helicopters could muster only enough lift to carry essential passengers, which usually did not include lawyers. Helicopters were subject to abrupt and unannounced diversions from scheduled destinations.<sup>62</sup> Captain Robert A. Godwin recalled that this led "to uncomfortable situations, such as being left in remote areas at dusk when no Marines or ARVN troops were in the area. This happened to me on several occasions."<sup>63</sup> Regardless of the mode of travel, the