

as high as in the 1st Marine Division, the offenses tended to be less serious.

Interestingly, infantry officers and air observers who had completed roughly 10 months of their 12-month tours in Vietnam with good combat records were sometimes assigned to be standing court-martial members until their tours of duty ended. Those officers, captains and lieutenants, were temporarily quartered in the judge advocate's SEAhuts. The lawyers enjoyed the company of the combat veterans, and the visiting officers enjoyed the more relaxed assignment at Quang Tri.<sup>34</sup> The periodic rocket attacks were minor matters to them. As Captain Clarke C. Barnes, a 3d Marine Division attorney, recalled, "a rocket attack was considered no big deal. It was just another inconvenience that would pass."<sup>35</sup> The question of court members fraternizing with and actually living with the lawyers who tried the cases in which they sat as members, never arose.

*From a Lawyer's Case File: Murder on Stage*

On 20 July 1969 a USO show was in progress in the Staff and Officers' Club at the 1st Force Reconnaissance Company's base camp. Miss Catherine Anne Warnes, singer for the Australian musical group, "Sweethearts on Parade," stepped back from the microphone after singing the show's final song, just as there was a muffled shot. The 20-year old Australian fell to the floor, dead.<sup>36</sup>

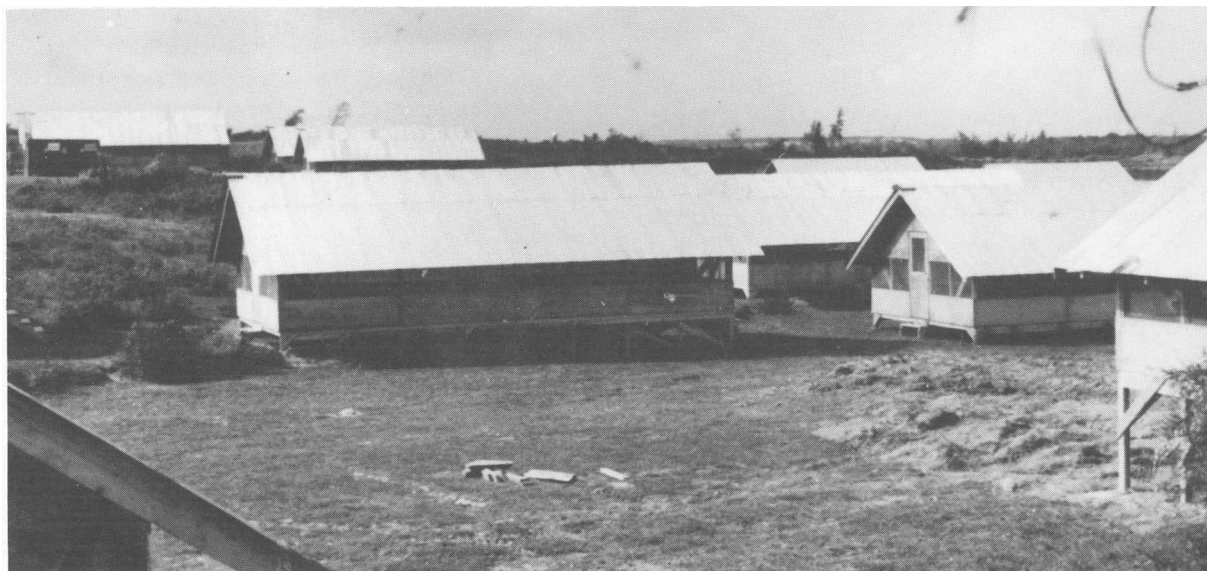
A month before, during the night of 21-22 June,

*The 3d Marine Division courtroom at Quang Tri, Vietnam, center, was a styrofoam insulated SEAhut. It stands among other structures housing division headquarters elements.*



Department of Defense Photo (USMC) 016248573  
*LtCol Benjamin B. Ferrell, shown as a colonel, was SJA of the 3d Marine Division. Under his leadership the division's judge advocates left Quang Tri for Okinawa.*

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





Marine Corps Historical Collection  
*Miss Catherine Ann Warnes was a USO performer in Vietnam. She was shot and killed as she sang in the 1st Reconnaissance Battalion's staff and officers' club.*

a .22-caliber Hi-Standard semiautomatic pistol had been stolen from the desk of the 1st Force Reconnaissance Company operations office. The pistol had a silencer permanently affixed to its muzzle. According to later testimony, on the afternoon of Miss Warnes' murder Corporal Robert E. Stockham and Lance Corporal Ronald B. Prohaska were examining a handgun said to belong to Stockham. They fired a round into the deck of their hooch to test the pistol's functioning. The handgun was a discolored, rust pitted, .22-caliber Hi-Standard semiautomatic, without a magazine or grips. It had a nonremovable silencer. Because the slide return spring was broken, each round had to be individually inserted into the chamber, and the slide manually pushed forward into the locked position. Sergeant James W. Killen, a 28-year-old reconnaissance scout and the battalion operations NCO, entered Stockham's and Prohaska's hooch.\* Sergeant Killen, often referred to as "Pappy" because of his relatively older age, held the Purple Heart and the Viet-

\*1st Force Reconnaissance Company, of which Killen was a member, was attached to the 1st Reconnaissance Battalion, thus he could be assigned to the battalion staff although not a member of the battalion.

namese Cross of Gallantry and had been on numerous combat operations. At his request he was loaned the pistol and several rounds of ammunition before he left. Killen later testified that he took it to shoot feral dogs that were in the area, and finding none, he claimed he returned the weapon within a few minutes. Before he left, Killen, Stockham, and Prohaska discussed how a person could kill without discovery by using a silenced weapon.

By 2100 the Staff and Officers' Club was filled with Marines anxious to hear the band and the attractive singer in the pink miniskirt. The 1st Force Reconnaissance Company commander, Major Roger E. Simmons, sat about eight feet from the stage. At the nearby Enlisted Mens' Club Sergeant Killen drank 11 to 12 beers and then left at around 2120. Later investigation revealed that the killer had fired one .22-caliber round from behind a jeep that was parked 35 yards from the Staff and Officers' club. The bullet cut through the club's screen wall, entered Miss Warnes' left side, pierced her aorta, and exited her right side, killing her almost instantly.

Was Major Simmons the intended target? Newspapers speculated that Miss Warnes had stepped into the line of fire ("Was Girl's Killer Gunning for Maj?" read one headline), but Major Simmons thought not.<sup>37</sup> It was not an issue at trial, although a straight line could be drawn from the major's position to Miss Warnes to the jeep from behind which the fatal round was fired.

At Sergeant Killen's court-martial, Lance Corporal Prohaska testified that Killen had entered his, Prohaska's, hooch just after the incident, while the camp was still searching for the presumed enemy sniper. Suspicious, Prohaska, according to his testimony, asked Killen, "Why in the hell did you do something like that for?" Killen replied, "She was just winged." Asked where the gun was, Killen replied it was "taken care of." Those statements were the only evidence linking Killen to the murder. The pistol, later found in a ditch, revealed no fingerprints and there were no witnesses.

The trial counsel, Captain John D. Moats, and assistant counsel, Captain John A. Milici, used the testimony of Stockham and Prohaska to prove Killen's possession of the murder weapon near the time of the killing. They also used his incriminating statements shortly after the event. Defense counsels Captains Daniel H. LeGear and Theodore J. Padden were unable to shake their accounts. Sergeant Killen testified

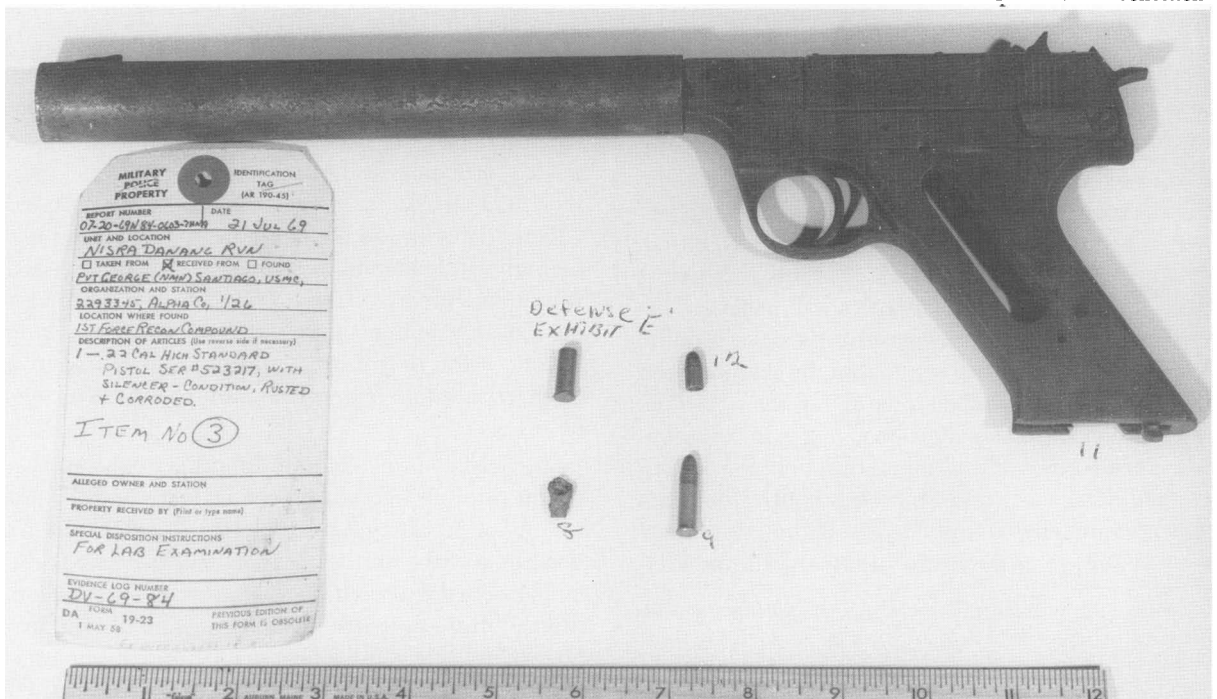


Marine Corps Historical Collection

*The 1st Reconnaissance Battalion's thatch-roofed staff and officers' club was located near Da Nang, Vietnam. Miss Catherine Warnes was standing in the center of the cleared area when she was killed by a .22-caliber bullet that passed through the screening at left.*

*A .22-caliber Hi Standard semiautomatic pistol with a silencer permanently affixed. Although rusted and without grips, on 20 July 1969 this weapon killed Miss Warnes.*

Marine Corps Historical Collection

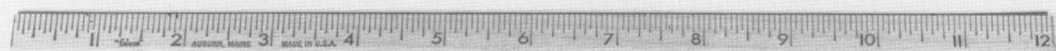


MILITARY PROPERTY	IDENTIFICATION TAG (AR 170-43)
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LINE AND LOCATION NISRA DANANG RVN	
<input type="checkbox"/> TAKEN FROM <input checked="" type="checkbox"/> RECEIVED FROM <input type="checkbox"/> FOUND BY: GEORGE (GARY) SANTIAGO, USMC, ORGANIZATION AND STATION 2293345, Alpha Co, 1/26	
LOCATION WHERE FOUND 1ST FORCE RECON COMPANY	
DESCRIPTION OF ARTICLES (SEE INSTRUCTIONS IF NECESSARY) 1 - .22 CAL HI STANDARD PISTOL SER # 523717, WITH SILENCER - CONDITION, RUSTED & CORRODED.	
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ALLEGED OWNER AND STATION	
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EVIDENCE LOG NUMBER DI-69-84	
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Defense Exhibit E

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Marine Corps Historical Collection

*The headline read: "Was Girl's Killer Gunning for Maj?" Maj Roger E. Simmons, Sgt James W. Killen's company commander, points to the hole in the screening made by the bullet that killed Miss Warnes.*

in his own defense that he had handled the murder weapon earlier on the day of the murder, that he had been intoxicated, and that he had left the Enlisted Club at about the time of the murder. He denied any knowledge of the killing itself. A motive for the killing was never established.

On 29 October 1969 the court members found Sergeant Killen guilty of unpremeditated murder and sentenced him to 20 years confinement at hard labor, loss of all pay and allowances, reduction to private, and a dishonorable discharge.

The day after the court-martial, the trial counsel mentioned to Captain LeGear, the defense counsel, that Stockham and Prohaska had at one point been offered grants of immunity in return for their testimony, but that ultimately, the immunity grants had not been required. That was the first the defense had heard of an immunity offer, and Captains Dan LeGear and Ted Padden immediately recognized an issue of importance to the defense. (If a witness testifies under a grant of immunity, the members must be advised of that fact so they may evaluate the credibility of the testimony in light of the immunization.) In this case, because Stockham and Prohaska, the closest of friends, had themselves been initial suspects and because the two admitted they had lied in their initial sworn statements to investigators to avoid incriminating them-

selves or each other, immunity took on an even greater import. According to affidavits submitted later, Stockham and Prohaska had been told that immunity was "available." Prohaska was shown a copy of a letter from the SJA to the Naval Investigative Service assuring the latter that immunity would be granted, "if necessary." The trial counsel also orally assured Prohaska that immunity was obtainable. Shortly thereafter, Stockham and Prohaska both revised their original statements and implicated Killen, in the mistaken belief that they enjoyed full immunity. The case proceeded to trial on the basis of the revised statements.

A year and a half later, the Navy Court of Military Review, in a unanimous opinion, held that "unquestionably, the testimony of Stockham and Prohaska was induced, in part at least, by the offers of immunity. To what extent their testimony might have been rendered less believable by this inducement is a question for the [members]." <sup>38</sup> Significantly, the court added, "the evidence of record, if believed, supports a finding beyond a reasonable doubt that the accused [Killen] shot her." Nevertheless, the court members were required to evaluate Stockham's and Prohaska's testimony, knowing that it was given after the two thought they were immune from possible prosecution. Killen's findings of guilty and his sentence were set aside.

A rehearing—another trial—was authorized. In mid-1971, after the 1st Marine Division had returned to Camp Pendleton the SJA advised the commanding general: "Because it has been nearly two years since the death of Miss Warnes any rehearing would be time consuming and expensive . . . Physical evidence and vital witnesses are scattered across the United States . . . however, due to the serious nature of the charges I respectfully recommend that you order a rehearing." <sup>39</sup> Killen was retried on the same charges on 4 and 5 August 1971. He was found not guilty and immediately released from confinement. His enlistment having expired in August 1969, he was released from active duty. He served only two years and nine days confinement for his initial conviction of the murder of a 20-year-old woman.

#### *1st Marine Aircraft Wing: Looking For Action*

The 1st Marine Aircraft Wing had as many as 26 squadrons in Vietnam. At the end of 1969, because one fighter and two helicopter squadrons had departed for Okinawa and Iwakuni, Japan, a new wing legal office was established in Japan. <sup>40</sup> But for the time being, Colonel Max G. Halliday continued as wing SJA

at the Da Nang Airbase. Throughout the year the number of lawyers on board varied from 12 to 16, and enlisted personnel from 10 to 19.<sup>41</sup>

Late in 1969 Colonel Halliday traded the SJA's office spaces in the old French compound for a larger, air conditioned building outside the compound near the Golden Gate USO. The new building had recently been vacated by the 1st Light Anti-Aircraft Missile Battalion, which had returned to Okinawa in August. Although not as centrally located, the new building's air conditioning allowed for greater comfort and productivity.<sup>42</sup>

Colonel Halliday and his deputy, Major David M. Brahms, had the same complaints legal officers always had in III MAF: equipment durability, a lack of transportation, and untrained court reporters.\* As in the other legal offices, IBM equipment was gradually replacing the Grey and Dictaphone recorders, but problems persisted throughout most of 1969. Each brand was repaired in a different location, Saigon, Okinawa, or Japan, and each required someone to accompany it through the otherwise interminable repair process. Even new gear had to be jury-rigged to accommodate the closed-microphone mask reporting technique. Major Brahms recalled the difficulty:

There were no masks that came with any of this equipment. It was an IBM machine with an open microphone. So we simply took the closed-microphone mask, cut a hole in it, and put the microphone from the IBM machine into the closed microphone mask. We also had to jury-rig the plug because none of the plugs were appropriate to the receptacles we had. Despite the warnings from the IBM folks that our warranties would be invalidated, we whacked the plugs off and put on our own. Screw it! It got the job done.<sup>43</sup>

To meet the critical need for competent preparation of records of trial, Colonel Halliday took novel measures. He hired five female Vietnamese typists to assume some of the burden. The young ladies spoke little English. However, two other Vietnamese civilian

secretaries, "Sally" and "Lee," who had been working for the SJA for some time, relayed instructions to the new typists each morning. Marine Corps court reporters worked through the night preparing rough records of trial from tapes of courts-martial. The roughs were reviewed and corrected by the counsel involved in the case. The corrected roughs were then turned over to the Vietnamese typists who copied whatever was on the pages in the smooth, understanding little of what they were typing. Major Brahms recalled "it didn't work very well . . . . The guys would work all night and spend all day chasing after all the pretty, young Vietnamese, so they weren't getting much sleep. The equipment was breaking down because it was being used 24-hours a day . . . . We finally said, 'That ain't gonna work.' " The experiment was abandoned after a month's trial.<sup>44</sup>

A new legal chief, Master Sergeant Cecil Reitz, found a solution to the backlog of untyped records by instituting team reporting. He formed several teams around a few competent reporters and initiated a competition between the teams to see which could produce the most error-free pages the quickest.

Among the more capable reporters were two enlisted Marines with law degrees. They were draftees who had been sent to court reporter school because of their backgrounds. Not sure how to best utilize enlisted Marines with such unusual credentials, the two were used sometimes as reporters and sometimes as legal assistance attorneys.<sup>45</sup>

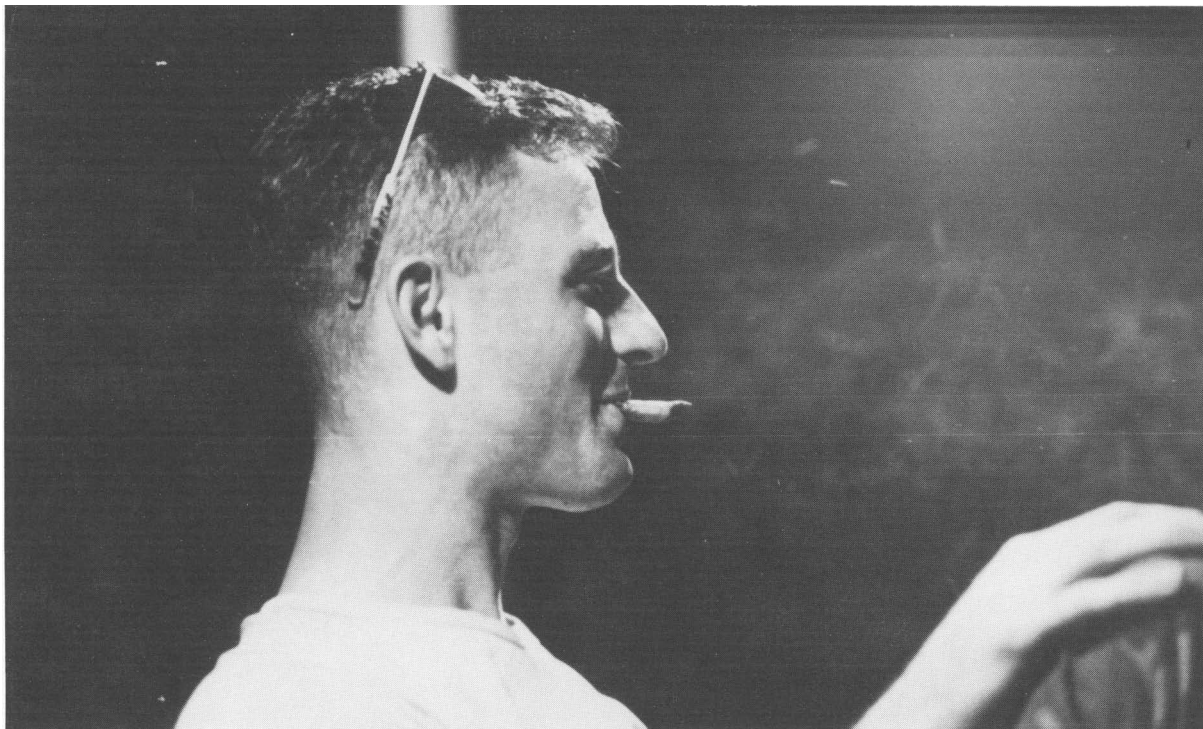
Difficulties with translators remained unresolved. The case of *United States v Hodge* illustrated the problems encountered when local Vietnamese acted as translators. All of the witnesses in that murder trial were Vietnamese. The trial counsel was Captain Richard A. Muench. Wary of the interpreter's reliability, he conferred with him before trial. As he later recalled:

I totally lost confidence in him when he asked me, "What do you want the witnesses to say?" . . . The last thing I needed was a double credibility problem created by an interpreter of questionable integrity. (It was tough enough to get a conviction where Vietnamese witnesses were involved.) I got real lucky. I went to the Army's Americal Division in Chu Lai and found a Spec-5 interrogator/translator . . . . Fortunately the Army made him available. He did a fantastic job, and we got our murder conviction.<sup>46</sup>

Caseloads were not heavy in wing legal. The few cases allowed, for example, Captain Michael G. McCollum to spend successive weeks with friends at Fire Support Base Vandegrift; 1st Battalion, 5th Marines in "the Arizona;" and 3d Combined Action Group, south of

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\*As a first lieutenant Major Brahms was deputy SLO of Marine Corps forces during the 1965 Dominican Crisis. Just before his duty in Vietnam he was the distinguished graduate of the Army Judge Advocate General's School career course. After Vietnam, he was the SJA at Albany, Georgia, then Head, Research & Policy Branch of the Judge Advocate Division. After receiving a master of laws degree with highest honors from George Washington University, he again was Head, Research & Policy Branch, then SJA of the 3d Marine Division, and Head, Research & Policy Branch a third time. As a colonel he was Deputy Director of the Judge Advocate Division, followed by duty as Chief of Staff of Camp Pendleton, California. On 25 July 1985 he was promoted to the grade of brigadier general and a month later became the tenth Director of the Judge Advocate Division.



*Maj David M. Brahms was Deputy SJA of the 1st Marine Aircraft Wing during 1969. He and the SJA, Col Halliday, hired five female Vietnamese to type records of trial.*

*Personnel of the Staff Judge Advocate's office, 1st Marine Aircraft Wing, pose at Da Nang in 1969. Front, from left, Capt Michael J. Hoblock, Jr.; Capt Richard A. Muench; Capt G. David Carlock III; and Capt Carey H. Johnson. Rear, Lt Frank A. Wohl, JAGC, USN; Capt John C. Reynolds; legal administrative officer, CWO 2 Len E. Pierce; Maj David M. Brahms; MSgt Ronald L. Green; Capt Thomas J. Glenn, Jr.; and Capt James D. Stokes.*

Marine Corps Historical Collection





Photo courtesy of Mr. Nathaniel F. Emmons

*A special court-martial is shown in progress at the 1st Marine Aircraft Wing. The court reporter, right, talks into a closed microphone recording mask. The accused, left, sits beside his counsel, Capt Michael M. Anello. Trial counsel is Capt Anthony L. Hodge.*



Photo courtesy of Mr. Nathaniel F. Emmons

*Maj David M. Brahms gave Christmas presents to the legal office's Vietnamese employees. Sunday brunch in the 1st Marine Aircraft Wing messhall was always enjoyable. From left, Lt John G. Niles, JAGC, USN; Capt G. David Carlock III; and Capt Nathaniel F. Emmons finish dessert and coffee. Uniformed Vietnamese waitresses stand in the background.*

Photo courtesy of Col Michael G. McCollum, USMCR





Photo courtesy of Mr. Nathaniel F. Emmons  
*Capt Nathaniel F. Emmons at work in the office of the Staff Judge Advocate, 1st Marine Aircraft Wing. The arrow on the map reads, "Shea stadium 8,975 miles."*

Phu Bai.<sup>47</sup> Similarly, Major Brahms, in conversation at the officers' club with a Navy pilot, learned of long delays in trying cases on board the pilot's ship, the aircraft carrier *Ranger* (CV-61). Navy trial teams, rather than making the trip from Subic Bay to ships underway off the coast of Vietnam, usually waited for the ship to return to Subic Bay before trying her courts-martial. Major Brahms offered to solve the *Ranger's* military justice problems on the spot. Within two days a Marine Corps trial team was at sea disposing of cases, to the delight of the aircraft carrier's captain and the Marine Corps lawyers, who rarely had an opportunity to go on board ship.<sup>48</sup>

When wing cases were to be tried, the lawyers were equally aggressive. One trial team, headed by Major Brahms, tried seven special courts in two days. The team hitched helicopter rides from wing headquarters, where they tried the first three cases, to Quang Tri Combat Base, where they tried two more cases, then to Phu Bai for the final two trials. Customarily, on such trial teams the lawyers would alternate, acting first as trial counsel then as defense counsel.<sup>49</sup> Only the military judge's role remained constant, because he was required to be certified to act in that capacity.

If more than one trial team member was certified, the judge's role, too, would rotate.

Like the 1st Marine Division, the 1st Marine Aircraft Wing had its indispensable legal administrative officer to act as office manager. Chief Warrant Officer 2 Len E. Pierce had been a master sergeant when selected for commissioning in 1966. Little went on in the office of the SJA that escaped his scrutiny. The Gunner's room in the BOQ area, unaccountably known as "The Beaver Den," was a popular gathering place.<sup>50</sup>

The legal chief, Master Sergeant Noah Green, was accomplished in locating supplies and material for the legal section's operation. Warrant Officer Pierce recalled that "his uncanny ability . . . was a large boost to morale and efficiency of the law center . . . His favorite saying was, 'How can I tell you what I need until I see what you've got?'"<sup>51</sup>

As in the 1st Marine Division, the wing considered the III MAF brig so filled with dangerous individuals that it was used only for prisoners sentenced to more than two months confinement, and an unsuspended bad conduct discharge. No Marine from the wing went to the brig for pretrial confinement unless awaiting court-martial for a crime of violence.<sup>52</sup> The other Da Nang-based command, Force Logistic Command (FLC), took a similar approach. The SJA of FLC, Lieutenant Colonel Frederick M. Haden, noted that "the worst bunch of people I've ever seen are in that brig," and he urged that no FLC personnel be held there, unless sentenced to confinement for more than two months.<sup>53</sup>

In July 1969, shortly before the Military Justice Act made it unnecessary that lawyers be appointed to the position, Captain Nathaniel F. Emmons was the senior

*CWO 2 Len E. Pierce was the legal administrative officer of the 1st Marine Aircraft Wing. He is shown at a farewell party for a departing judge advocate.*

Photo courtesy of BGen David M. Brahms, USMC (Ret.)





member at the special court-martial of Private First Class Willie Harrison. Captain Emmons was usually a 1st Wing defense counsel. He recalled that at Chu Lai, at 2200 on an evening a month or two earlier, Harrison and four friends were wending their way back to their unit when they were passed by a jeep from the U.S. Army's nearby Americal Division. The jeep skidded to a stop. One of its three Army officer occupants barked, "You soldiers better square away!" One of the Marines replied, "We ain't soldiers, m-----, we're Marines!" The Army lieutenants dismounted for further discussion of the matter. The ensuing fight ended only after one of the officers pulled his pistol and fired a round into the air. Two of the officers were briefly hospitalized. The third, First Lieutenant William L. Calley, was merely beaten up. The four Marines pleaded guilty at special courts-martial, in each of which it was stipulated they had not known the soldiers had been officers. Captain Emmons' panel reduced Harrison to the grade of private and imposed forfeitures. Harrison's accuser, Lieutenant Calley, was himself tried a year and a half later for the murder of 107 Vietnamese noncombatants at My Lai.<sup>54</sup>

Captain Mike McCollum, a defense counsel in the wing legal office, joined the Platoon Leader's Class (Law) program in 1966, while in law school. After obtaining his law degree he came on active duty, hoping to be an infantry officer. Instead he was assigned a legal MOS. He arrived at the 1st Marine Aircraft Wing's legal office in Da Nang in June 1969, a second lieutenant hoping to avoid receiving constructive service credit for his time in law school. He knew that with constructive service he would immediately be promoted to the grade of captain, which would preclude a later transfer to an infantry unit as a platoon commander, which was his goal. But, unable to affect inexorable administrative process, he was promoted to captain anyway. As his Vietnam tour of duty neared its end, Captain McCollum submitted a request to Headquarters Marine Corps. He asked to revert to the grade of first lieutenant (although he had never been one), remain in Vietnam, and be assigned to an infantry command or, failing that, to attend the air observer's (AO) school near Marble Mountain and remain in Vietnam as an AO. Instead, with a newly awarded Navy Commendation Medal, he was transferred to Camp Lejeune, North Carolina, as a reluctant legal assistance officer. With the blessing of former 3d Marine Division chief of staff and SJA, Colonel Motelewski, who was by then the Camp Lejeune SJA, Captain McCollum attended AO school



Photo courtesy of Capt G. H. O'Kelley, USMCR  
*Army 1stLt William L. Calley as he appeared the day after an encounter with several Marines. This photograph was admitted into evidence in the court-martial of PFC Willie Harrison to show Calley's injuries.*

at Camp Lejeune and wrangled an extraordinarily quick transfer to Okinawa. Once there, through a series of probably unenforceable promises, he managed an assignment trade and six months after he had left, was again in Vietnam. Over the next half year Mike McCollum became the chief air observer of the 1st Marine Division, flew 217 missions and earned the Bronze Star Medal and 19 Air Medals.<sup>55</sup>

Colonel Nalton M. Bennett replaced Colonel Haliday as the wing SJA on 7 September, and in November Rear Admiral Joseph B. McDevitt was the first Judge Advocate General of the Navy to come to Vietnam. He visited Marine Corps and Navy legal offices in the Da Nang area, where he had informal discussions with many of the younger Marine judge advocates.<sup>56</sup>

#### *Force Logistic Command: Approaching Breakdown*

The year began with Lieutenant Colonel Frederick M. Haden continuing as SJA. His relief, in May, was Lieutenant Colonel William M. "Ace" Cummings, who was followed only three months later by Lieutenant Colonel Arthur R. Petersen. Throughout the year FLC's lawyer strength hovered around 15: the SJA, deputy SJA, five trial counsels, six defense counsels, and two review officers. A legal clerk, Lance Corporal Thomas



Photo courtesy of Col Michael G. McCollum, USMCR

*Capt Michael G. McCollum flew 217 missions as an air observer after his tour as a judge advocate was completed. He stands, left, with other Marines in his air observer unit.*

*"As solid a bunch as I've ever seen in a shop," the command staff judge advocate said. Personnel of FLC's defense section are shown, from left, kneeling, Capt Jack C. Provine, LtCol Carl E. Buchmann, PFC Wong, Capt Richard D. Lane, Capt John J. Reilly. Standing, Capt Rex L. Jones III, unidentified, GYSgt Jones, unidentified, Vietnamese interpreter, Maj Charles A. Cushman, MSgt Bruno B. Bucknas, and unidentified.*

Photo courtesy of BGen Charles A. Cushman, USMC (Ret.)



McGrath, was also a law school graduate, and he served as a legal assistance officer as well as a clerk.<sup>57</sup>

Legal assistance was a secondary duty shared by Lance Corporal McGrath and all the other attorneys. It had become a widely employed service. In March, for example, 119 legal assistance cases were handled, with other monthly legal assistance totals ranging from 52 to 105 cases.

Lieutenant Colonel Cummings described his FLC lawyers: "As solid a bunch as I've ever seen in a shop. No wise asses, no obstructionists, all candid, responsible and honorable advocates."<sup>58</sup> The FLC lawyers were trying more cases than ever before, despite having no more, and sometimes fewer, judge advocates to meet the caseload. And they were falling behind. In February, they tried nine general courts-martial and 22 specials. In April, 15 generals and 53 specials were disposed of. In June, six and 44 were tried.<sup>59</sup> The disciplinary breakdown was being felt with full force at Camp Books, and it was badly straining FLC legal facilities at the same time the 1st Marine Aircraft Wing lawyers were experiencing slack periods.

Upon his arrival, Colonel Petersen was greatly concerned with the situation that greeted him. "I found one hell of a mess."<sup>60</sup> "I immediately became aware of a then-current posture of the staff judge advocate's office of complete helplessness to cope with disciplinary problems of any magnitude . . . . No one had any real hope of ever catching up."<sup>61</sup> The problem had arisen in part, because of the unusually high number of Marines, roughly 18,000, in the 16 different commands that FLC's legal office serviced. Additionally, the rear echelon Marines tended to have a higher disciplinary rate than the combat troops who made up the bulk of the 1st and 3d Marine Divisions. When the Military Justice Act took effect in 1969, the requirement for a greater number of lawyers to try all special courts-martial began to overburden the Red Beach SJA's office. Case backlogs quickly reached a serious, then a critical, level.<sup>62</sup>

A growing number of court-wise accuseds only added to the difficulty. Every accused had the right to retain civilian counsel to represent him at trial, even in Vietnam. Prosecution evidence often consisted of the testimony of Marines who were subject to transfer from Vietnam. In 1969 canny defendants were more often exercising their right to civilian representation simply as a tactic to postpone the trial date. They hoped that the convening authority, who might be unwilling to keep witnesses on legal hold for the possible conviction of a single wrongdoer, would release the



Marine Corps Historical Collection  
*LtCol Arthur R. Petersen, shown as a colonel, was FLC's SJA from July 1969 to June 1970. He inherited a nearly unmanageable backlog of untranscribed cases.*

witnesses and drop the case. Trial counsels and military judges soon realized that some requests for civilian lawyers were often no more than a ruse to be raised on the day of trial for purposes of delay. Major Charles A. Cushman recalled how the accused would stand and tell the court:

[He] recently had mailed a letter requesting representation to a civilian attorney in the States but had not received a reply. The issue for the military judge was whether to grant a continuance knowing that the witnesses may or may not be available at a later date, or note the objection on the record and proceed with the trial of the case. More often than not the objections were noted and the trial continued.<sup>63</sup>

Legitimate requests for civilian counsel, initiated a reasonable time prior to the date of trial, were always sufficient cause for a continuance, witness problems or not.

With the centralization of legal assets in SJA offices, courts-martial, other than summary courts, were tried at the headquarters location, rather than throughout the command. An unanticipated bonus was that the need for lawyer travel was greatly reduced. Now trial participants came to the lawyers, rather than vice versa. Pretrial interviews and convening authority conferences still required the judge advocate to go on the road, however. Fortunate FLC lawyers hardly traveled at all, because their command was largely self-



Photo courtesy of Mr. R. W. Wachsmuth  
*Mai worked in FLC's civil affairs section. Marine Corps legal offices in the Da Nang and Red Beach areas were often able to hire Vietnamese to act as interpreters.*

contained at Red Beach. Conditions for the trial of courts-martial were poor at FLC, though the courtroom and office spaces were standard SEAhuts with screened sides and tin roofs and were subject to the noise and the dust clouds raised by constantly passing trucks. In an effort to keep up, cases were tried in those SEAhuts seven days a week, from seven in the morning, often until nine at night, with an hour and a half off for lunch and for dinner. During the hottest months, August and September, courtroom and office temperatures usually exceeded 100 degrees and often rose as high as 117 degrees.<sup>64</sup> Finally, in the fall of 1969, the courtroom was moved to FLC's former computer building, a windowless, air conditioned, dust-free structure across the road from the camp's donut shop (referred to by one officer as "The War-Is-Hell Donut Shop"). Conditions there were ideal for courts-martial, and, as Major Cushman recalled, "that is when we started getting good records of trial."<sup>65\*</sup> The lawyers' offices remained in SEAhuts.

Although located in the largest and busiest supply

\*After Vietnam, Major Cushman was SJA of the 1st Marine Aircraft Wing (Rear), then the 1st Marine Brigade, the 1st Marine Aircraft Wing, and the Marine Corps Development & Education Command. He also was a branch head in HQMC's Judge Advocate Division, and graduated from the Naval War College. In 1984 he became Assistant JAG of the Navy for Military Law and Officer in Charge of the Navy and Marine Corps Appellate Review Activity. On 1 July 1987 he was advanced to the grade of brigadier general and retired from active duty.

depot in the I Corps area, the SJA's office was burdened with a shortage of the most mundane supply items. Lieutenant Colonel Carl E. Buchmann, the deputy SJA, noted with irritation:

Recording belts, typewriter ribbons, paper, pencils, a great number of just plain ol' office supplies! And the only real feasible solution we came up with was to have people from the States send us some of theirs. I never experienced a supply system . . . as bad as it appears to be over here. So we used to write away for CARE packages from friends of ours in other legal offices.<sup>66</sup>

He went on to detail FLC's version of the familiar unavailable-repair refrain:

We bought a number of IBM machines and . . . there was to be a service contract with this. We bought a great number of them—reproducers and typewriters. Well, they never did finish getting that service contract negotiated. [IBM] said it was too expensive to have a guy in Da Nang. Now they have a man in Saigon, but the cost of having that repairman come here is confiscatory. He charges \$27 an hour, portal to portal, so you pay him for flying up here, sleeping, flying back, et cetera.<sup>67</sup>

Nor was FLC immune from the problem of inadequately trained reporters. Lieutenant Colonel Buchmann noted: "We have been plagued with this . . . . We're not getting any assistance from Headquarters Marine Corps or FMFPac . . . . It can't be solved here at this level."<sup>68</sup>

Even with manpower and equipment difficulties, FLC remained the most active trial activity in III MAF in 1969. Still, case loads steadily rose as the number of personnel available to meet the load diminished. A shortage of court reporters, when they were most needed, contributed to the mounting backlog of untranscribed cases, leading FLC into the next year with serious handicaps.

#### *Trying Cases*

"The Marines," wrote author Richard Gabriel, "seem to have maintained . . . a rapid and efficient prosecutorial system for containing and dealing with disciplinary problems."<sup>69</sup> Perhaps so, but Marine Corps lawyers in Vietnam in 1969 were unaware of their institutional superiority. They found it to be plain, hard, often frustrating, work. Travel was as difficult as it had been in previous years. Captain Daniel H. LeGear recalled: "It seems as though I was always getting on a helicopter to go to one unit or the other to interview witnesses and clients."<sup>70</sup> FLC's Lieutenant Colonel Buchmann said: "We were losing a lot of lawyer time by travelling to the far reaches of I Corps." Captain Mike McCollum, of the 1st Marine Aircraft Wing,

remembered a brig prisoner whom he had signed for and taken to a distant medical facility for psychiatric evaluation. Unable to locate a ride when the evaluation concluded, Captain McCollum and his client began hitchhiking back. Jaded brig personnel took little notice when the lawyer arrived at the gate, briefcase in hand, prisoner in tow, riding the front bumper of a 50-ton Bay City crane!<sup>71</sup>

Early in 1969 the general court-martial military judge for all of III MAF and the naval commands was Colonel John R. DeBarr, who in 12 months presided in 195 cases, including 15 murder trials.<sup>72</sup> In mid-year Colonel DeBarr was succeeded by Lieutenant Colonels Henry "Hank" Hoppe III, then Lieutenant Colonel Paul A. A. St. Amour. Lieutenant Colonel Hoppe recalled one of his first Vietnam trials, which began around 0930 in the 1st Marine Aircraft Wing courtroom. Shortly thereafter, "there was a tremendous detonation, the building rattled, and I, having been in-country only a few days, recessed the court on my way to the bunker. About 4 or 5 steps out, I realized nobody else was moving and [the counsels and members] were just cracking up laughing." At that point the judge learned that at precisely 1000 each morning the South Vietnamese were authorized to detonate

their damaged ammunition stockpiles in a quarry just outside the airbase. "Shamefacedly," Colonel Hoppe recalled, "I returned to the bench and we resumed the trial."<sup>73</sup>

In December Colonel DeBarr returned to Da Nang from Camp Pendleton to attempt to salvage several Vietnam records of trials at which he had presided. Undiscovered equipment failures had rendered the records so deficient that they could not pass appellate muster, unless they could be reconstructed.<sup>74</sup>

In order to implement the provisions of the Military Justice Act that required military judges in special courts-martial, the Judge Advocate General of the Navy certified approximately 500 Navy and Marine Corps judge advocates as special court-martial judges. The number of Navy and Marine Corps general court-martial military judges was also expanded from 12 to 23.<sup>75</sup>

The judges found no lack of cases in Vietnam. "It is fair to say that blackmarketing and currency violations literally went out of control," wrote Major General George S. Prugh, former Judge Advocate General of the Army. "By 1969 [they] were beyond the capabilities of the law enforcement agencies until the draw-down of troops changed the situation."<sup>76</sup>

*"It seems as though I was always getting on a helicopter to go to one unit or another to interview witnesses and clients." A CH-46 of HMM-161 about to lift off from a 3d Marine Division landing zone while several Marines wait for the next available helicopter.*

Marine Corps Historical Collection





Photo courtesy of BGen John R. DeBarr, USMC (Ret.)  
*Col John R. DeBarr was a general court-martial military judge assigned to III MAF in 1969. He tried 185 courts-martial, including 15 murders, in one year.*

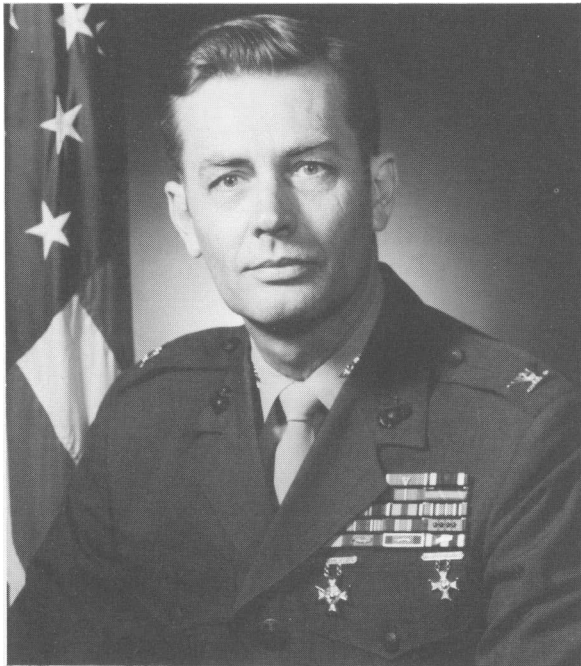
A case of currency violation that was not beyond the capabilities of law enforcement was that of Private Jimmie Dunbar, tried by general court-martial on 5 January 1969. He and two other Marines had deserted from Khe Sanh. While hiding out in Da Nang, they sold stolen items on the black market and, with cash in hand, typed bogus orders that allowed them to fly to Saigon. Once there they joined a ring of 47 U.S. Army deserters in a postal money order scheme. Using bad checks, the ring purchased numerous money orders at various military post offices. They often bribed postal clerks to leave the payee line blank, which was in violation of regulations then in effect. Each day the money orders were sold at a premium on the Vietnamese black market, sometimes to a single buyer. The proceeds of the sales were used to cover that day's checks, which had financed the money orders, and the sales profits were split among those involved. By such apparently modest means, the group garnered hundreds of thousands of dollars each month, which allowed them to rent Saigon apartments, pay cash for American automobiles to be delivered in the United States, and bribe military police for advance word of random raids.

Eventually, military authorities apprehended the members of the ring. Dunbar and the ring's two other

Marines were escorted from Saigon to the III MAF brig by Captains W. Hays Parks and Patrick H. Mathews, and Navy Lieutenant William J. Cosgriff, the 1st Marine Division lawyers who were to try the apprehended Marines. Captain Parks signed for \$990 in military payment certificates and \$2,800 in U.S. postal money orders that had been in Private Dunbar's pockets when he was apprehended. "As I had no handcuffs," Captain Parks recounted, "I made each Marine remove his boot laces and belt, and loosen his trousers to the point that they would fall down unless he held them up." For the trip back to Da Nang Captain Parks emphasized his seriousness with a loaded shotgun.<sup>77</sup>

Dunbar pleaded guilty to desertion, currency violations, and possession of marijuana, and was sentenced to confinement at hard labor for 10 years, forfeiture of all pay, and a dishonorable discharge. In accordance with a pretrial agreement, his confinement was reduced to two years. The fate of the others is unremembered.

While few courts-martial had the visibility of the Dunbar case, the sad, the bizarre, and the uplifting were often encountered at trial. In the latter category was the case of the *United States v Private First Class Eugene R. Hofstetler*. Captain Clarke C. Barnes defended Hofstetler, who was charged with sleeping on post twice in one week. The charge sheet did not indicate that during that week, his first in Vietnam, Hofstetler had been engaged in Operation Dewey Canyon and constant patrolling. After the operation ended and by the time of trial Hofstetler had become a mainstay of his platoon. Although his platoon commander now urged that the charges be dropped, the convening authority, the battalion commander, believed them too serious to disregard. He did, however, refer the case to a special, rather than a general court-martial. At trial Captain Barnes introduced the brief, handwritten statements of 12 Marines from Hofstetler's platoon. Although some were barely legible and some not particularly articulate, their sincerity was unquestionable: "He has lots of guts and he does his share," wrote one Marine. Another wrote, "During Operation Dewey Canyon . . . Huff was equal in everything including the risk of death. He fast thinking and action saved the lives of his buddies and mine." A fellow private first class simply wrote: "In the bush, I would trust my back to him." Hofstetler pleaded guilty to the charges. The maximum permissible punishment was the jurisdictional maximum of a special court, which included six months confinement at hard labor and a bad conduct discharge. Instead, the members



Marine Corps Historical Collection  
*Col Max G. Halliday, 1st Marine Aircraft Wing SJA, in a 1972 photograph. After the war he became Assistant Judge Advocate General of the Navy for Military Law.*

sentenced him to 45 days hard labor without confinement. Hofstetler happily returned to his platoon, where every day was hard labor without confinement.<sup>78</sup>

Another court-martial, tried at Cua Viet, had a more serious outcome. On the night of 10 April 1969 a staff sergeant walked out of his hooch and froze, staring at the hand grenade taped beside the doorway inches away from him. Dangling from the string that he had just pulled by opening the door was the pin from the grenade. But there was no explosion. Instead, the now-assembled hooch occupants read a typewritten note tucked behind the deactivated grenade: "Dear Lifers, I'm tired of this peddy bullshit. If it keeps up, I'm sorry to say that I'll have to do you a *JOB*. This little frag is just a warning . . . Maybe I won't get all of yous, but *who* will I get? You, you, or you." It was signed "Your Friendly famthom frager." The staff noncommissioned officers were not amused.

At his special court-martial the "famthom frager," Lance Corporal Richard E. Eicholtz, pleaded guilty to assault and was sentenced to a bad conduct discharge, reduction to private, and confinement at hard labor for four months.<sup>79</sup> No one took such cases lightly.

*Exits: Marine Corps Draw Downs*

On 8 June 1969 President Nixon announced his de-

cision to withdraw U.S. troops from South Vietnam. Redeployments were to take place in increments; a total of 45,000 troops, including 18,483 Marines were scheduled to leave South Vietnam by year's end. The 3d Marine Division was to redeploy to Okinawa and Camp Pendleton, California, and portions of the 1st Marine Aircraft Wing to Iwakuni, Japan.<sup>80</sup>

The Commanding General, 3d Marine Division, left for Okinawa on 7 November, having been preceded two days earlier by Colonel Ben Ferrell and his legal staff of 21 officers and 25 enlisted Marines.<sup>81</sup> Colonel Ferrell said of the redeployment:

Leaving Vietnam was the most difficult job I had in the Marine Corps. [The commanding general] ordered me to have all cases tried before leaving country. We did our best and did get nearly every case tried . . . What kept us from completing all cases was the fact that we had to pack and crate all equipment and move it to the dock about 10 days before we left . . . We packed our [gear] in wooden boxes and banded them. They were all crated and in rows outside the legal office and then it poured rain for about five days and nights. That did not make much difference, however. Before the crates were loaded aboard ship, high-pressure hoses were turned on them to kill bugs, etc. When we got back to Okinawa everything, including books, were water soaked.<sup>82</sup>

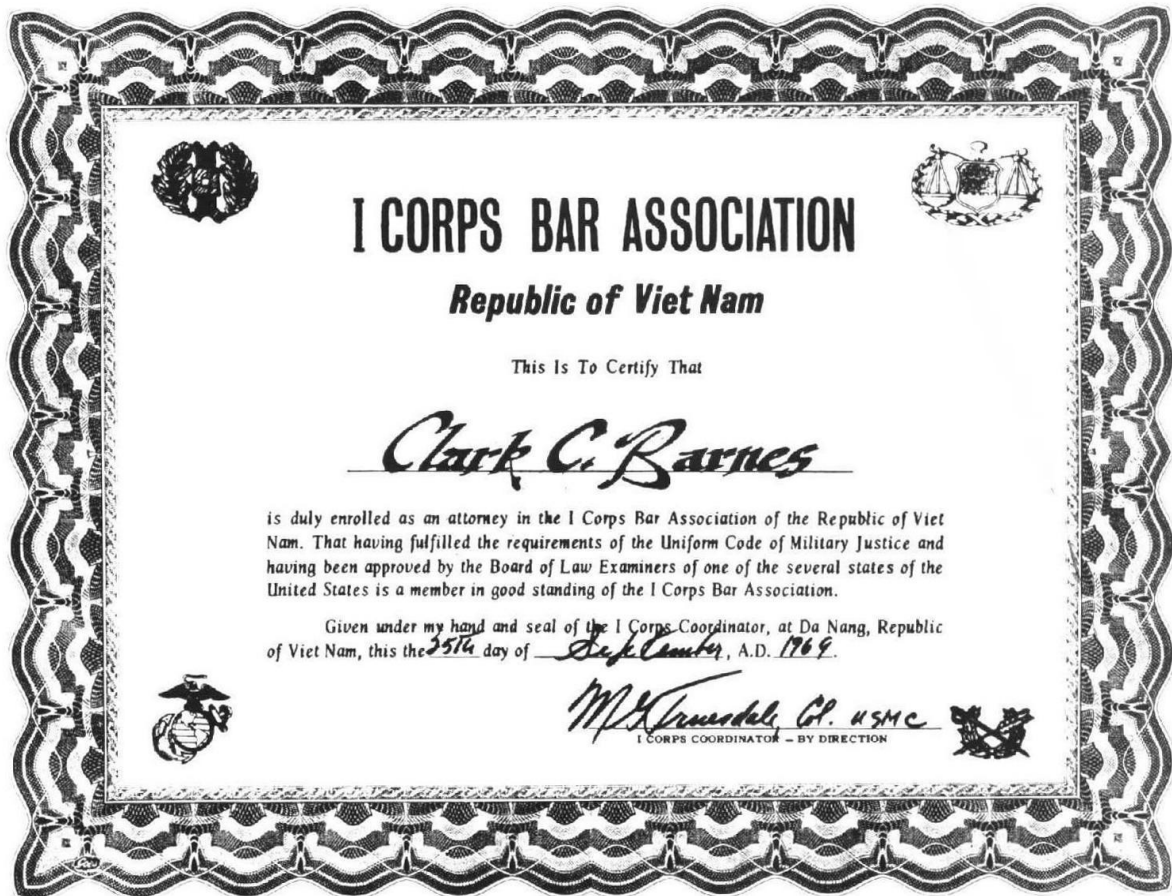
The lawyers boarded Navy landing craft and followed the Cua Viet river to the sea, where they embarked on board the LPD-8, *Dubuque*, for the trip to Okinawa.<sup>83</sup>

Shortly before the Marines of the 3d Marine Divi-

*Col Max G. Halliday seen at his June 1969 wetting-down party upon promotion to colonel. His escorts are Maj David M. Brahms, left, and CWO 2 Len E. Pierce.*

Photo courtesy of BGen Max G. Halliday, USMCR (Ret.)





Certificate courtesy of Col Clarke C. Barnes, USMCR

*The I Corps Bar Association flourished throughout the war. The certificates were designed and printed by the mother of a Vietnam-stationed Marine Corps judge advocate.*

sion embarked for Okinawa, Major General William K. Jones, the commanding general, asked his SJA if he could order all troop baggage searched for weapons. Lieutenant Colonel Ferrell replied: "General, before I answer that question let me ask you, do you want weapons, or do you want convictions?" General Jones wanted to ensure weapons were not smuggled to Okinawa, so blanket searches were conducted knowing that, lacking probable cause, convictions could not follow.<sup>84</sup>

Lieutenant Colonel Max Halliday, SJA of the 1st Marine Aircraft Wing, was promoted to colonel in July. Two months later, Colonel Nalton M. Bennett relieved him. Before departing, Colonel Halliday designated three judge advocates to move to Iwakuni to establish a legal office at the wing's rear headquarters.<sup>85</sup> Captain Alan R. Wolfert was the first (Acting) SJA (Rear). He opened shop on 10 November. On 24 November Lieutenant Colonel Joseph A. Mallery succeeded him.<sup>86</sup> Elements of the wing withdrew from Vietnam from August through the end of the year (going to

Iwakuni, Futema, Okinawa, and MCAS El Toro, California), but most of Colonel Bennett's judge advocates remained at Da Nang.

The principal wing unit leaving Vietnam for Iwakuni was Marine Aircraft Group (MAG) 12. At Iwakuni the wing headquarters (rear) and Colonel Mallery's few lawyers were in for a surprise. As Major Brahms recalled: "We loaded up MAG-12 with every bandit we could find, on the theory that we would make the combat zone less of a problem and they could probably deal with these things a lot better in Iwakuni. MAG-12 became a very big group."<sup>87</sup>

If the wing sent its disciplinary problems to Iwakuni, there was a measure of justice in the wing SJA becoming responsible for most of the 3d Marine Division's small units that were left in Vietnam. "We took over all the cat and dog outfits, up and down I Corps," recalled Major Brahms. These included the 3d Reconnaissance Battalion, four Combined Action Platoon units, an engineer battalion, and a bridge



company, among others.<sup>\*88</sup> What units the wing did not take over, the 1st Marine Division fell heir to, as it too prepared to leave Vietnam.

The 1st Marine Division and Force Logistic Command continued to march. The year began with 79,844 Marines, 3,378 sailors, and 59,403 soldiers in III MAF. It ended with 54,541 Marines, 2,144 sailors, and 61,792 soldiers.<sup>89</sup>

#### *Perspective*

On 7 August 1969 at Headquarters Marine Corps, Colonel Duane L. Faw was promoted to the grade of brigadier general and assumed the directorship of the Judge Advocate Division, the first general officer to hold the billet.<sup>90</sup> He succeeded Colonel Truesdale, who had previously replaced Colonel Sevier.

General Faw immediately set to work to cure several ills affecting the Marine Corps' legal community. In a letter to Colonel Bob Lucy, the 1st Marine Division SJA, he wrote: "Turning first to the lawyer problem: it is worse than I imagined . . . . My top priority project is to *obtain* and *retain* qualified lawyer assistance for you . . . . Our poor lawyer retention record in the past is really the result of many factors," and he specified uncaring personnel assignment policies and lack of professional recognition. He detailed his efforts at Headquarters to cure those situations: More attention would be given to the wishes and needs of lawyers when assignments were considered; at the Congressional level he was seeking approval for lawyer "incentive retention pay," and he assigned Lieutenant Colonel Charles E. "Chuck" Spence responsibility for procurement of legal personnel. Lieutenant Colonel Spence's efforts soon produced excellent results.<sup>91</sup>

General Faw was also concerned that senior officers have the career incentive that a frequently available brigadier general's billet would provide. Because there was only one general's billet for lawyers, that of Director, Judge Advocate Division, he obtained the Commandant's approval for selection of a new director every two years. "It is my intention," General Faw wrote, "to set the pace by taking whatever measures are necessary to precipitate the selection of a Marine Corps lawyer as a brigadier general at a rate of one every two years."<sup>92</sup> In other words, after two years in office he would either retire or move to a billet outside the Judge Advocate Division (as Brigadier General

Lawrence did) to make the general's star available to another lawyer. That was a significant and selfless decision because, by statute, General Faw could remain on active duty in the director's billet for several years. He chose not to, recognizing that otherwise no colonel would have further promotion opportunity. Lacking that incentive, many senior judge advocates would retire as quickly as they became eligible to do so. That "gentleman's agreement," as it was often referred to, whereby the director retired after two years in office continued to be honored by the next four directors.

General Faw closed his letter to Colonel Lucy by saying: "We have a hard job ahead of us to make the career of a Marine Corps judge advocate sufficiently attractive to retain the number and quality of lawyers needed. I am convinced the career is actually more rewarding than it appears to junior officers."<sup>93</sup> At that time 359 Marine Corps judge advocates were on active duty, a 20 percent increase in one year.<sup>\*\*94</sup> Compared to their authorized strength the Marines were still short 95 field grade lawyers—majors and above—and short 14 lawyers overall. As General Faw noted, the retention rate for first-term judge advocates was bad. In Vietnam Lieutenant Colonel Carl Buchmann highlighted the retention issue when he said:

Of the 22 lawyers on the Office of the Staff Judge Advocate at FLC right at the moment, there are three regulars [regular officers, as opposed to reservists]: a colonel, a lieutenant colonel, and a major. Now, none of the remaining 19 . . . have any intention of staying in the Marine Corps. What is hurting us is the fact that we have no depth in the legal office . . . . You have some senior people who've been around anywhere from 12 to 28 years, and then you have the next group down, in the service less than a year.<sup>95</sup>

Colonel John R. DeBarr said of the one-term judge advocate: "He's dedicated, he's professional, he's eager, he works—he's working hard! But he goes home."<sup>96</sup> At the 1969 General Officers Symposium, held at Headquarters Marine Corps, the assembled generals heard Brigadier General Homer S. Hill, Assistant Commanding General, 1st Marine Aircraft Wing, say: "We cannot afford to lose our Marine lawyer capability. All-out efforts in retention and procurement must now be made."<sup>97</sup>

General Hill's view was in keeping with a major internal study, completed only a few days before his statement.<sup>98</sup> The Commandant had directed the study

\*Combined Action Platoons were small units based in Vietnamese villages that, along with Vietnamese forces, provided security for the area.

\*\*Besides General Faw and General Lawrence, who continued in his legislative billet in a retired, but on-active-duty status, there were 25 colonels, 26 lieutenant colonels, 17 majors, 257 captains, and 32 first and second lieutenants.

to recommend "the most practicable procedures for providing future legal services to the Marine Corps." Chaired by the Director of Personnel, Lieutenant General Louis B. Robertshaw, and without judge advocate membership, the panel also examined whether it was practical to even compete for lawyer entrants into the Marine Corps or whether it would be preferable to simply go to "blue suiters," that is, to ask the Navy to fill Marine Corps legal needs. In its wide-ranging report the panel made several suggestions that were to shape the Judge Advocate Division for many years to come.

Among its 18 recommendations the panel concluded that the system then in place best answered Marine Corps needs. ("Marine commanders will be better able to accomplish [their function with] advice from Marine lawyers who think, are trained, have experienced field hardships . . . the same as their Commanders.") The panel also recommended that nonlawyers, such as legal administrative officers, take a greater role in the legal process; that more women Marines be employed as judge advocates; that, because over 10 percent of Marine Corps judge advocate strength was assigned to Navy JAG billets, the Secretary of the Navy be asked to assign a Marine Corps lawyer on a continuing basis as Deputy Judge Advocate General of the Navy (another brigadier general's billet); and that judge advocates be allowed to attend graduate legal school at Marine Corps expense. The panel essentially threw up its hands over the retention issue, reporting that "this problem has not been satisfactorily resolved during the past 18 years by the Marine Corps (or any of the Armed Services)." They did, however, predict that with the end of the war in Vietnam and its associated unaccompanied tours, sufficient lawyers would become available to meet Marine Corps needs. Finally, the panel noted: "Judge Advocates who choose the Marine Corps for a career definitely want to be recognized as Marine officers and part of the Marine Corps team; not as a group of specialists outside the regular officer corps."

The Commandant, General Leonard F. Chapman, Jr., penned on the panel's report: "This is one of the best staff studies I have ever read. It has removed all my doubts, and I now unequivocally, without reservation, endorse and support our present system, with noted improvements. Let's go all-out to effect those approved improvements."<sup>99</sup>

The next issue of *The Reserve Marine*, the newsletter sent to all inactive reservists, was headlined: "Serv-

ices of Experienced Lawyer Officers Needed," followed by a story detailing the situation ("There is an urgent need . . .") with instructions as to how inactive reserve Marines could volunteer to return to active duty.<sup>100</sup> Recruitment of law students was intensified, and soon PLC (Law) programs for law students graduating in 1971 and 1972 were over-subscribed by 50 percent.<sup>101</sup>

Colonel James H. Granger, a reservist infantry officer who had gone to law school following active duty, was one of those who returned:

I was practicing law in Austin, Texas, in 1969 when the Marine Corps initiated its full-court press to recall experienced lawyers. Brigadier General Faw, himself, had called me, as well as Lieutenant Colonel [Rollin Q.] Blakeslee, and as enticement to returning to active duty, I was given my first two preferences [for duty and location].<sup>102</sup>

A closely watched and much discussed aspect of lawyer retention was commonly referred to by judge advocates as "pro pay." The Department of Defense proposed to Congress that the lawyer retention issue could be solved by paying attorneys a monthly premium and a bonus upon extending their period of obligated service. Higher ranking lawyers would receive a higher monthly premium, to encourage majors, lieutenant colonels, and colonels to remain on active duty. The lump sum paid for continuing one's initial period of active duty would encourage captains to remain. These bonuses in recognition of professional training—pro pay—would be similar to those long paid to doctors, dentists, and veterinarians in the Army, Navy, and Air Force. On 12 December 1969 Senator Daniel K. Inouye addressed the Senate on the subject of a bill he had introduced on 22 July:

The problem of keeping competent, experienced judge advocates has become acute . . . . The number of experienced lawyers relative to the total on board will be as follows: Army, 29 percent; Navy, 36 percent; Marine Corps, 16 percent; and Air Force, 42 percent . . . . This is not a safe balance between experienced and inexperienced lawyers . . . . S. 2674 will meet this problem of retention by providing increased compensation for military lawyers. First, there will be special pay each month, ranging from \$50 for a second lieutenant to captain to \$200 for colonels and above. Second, the judge advocate who agrees to extend for at least 3 years will receive continuation pay at a rate equal to 2 months' basic pay per additional year he agrees to remain on active duty . . . . The time has come to recognize the critical dimensions of the problem.<sup>103</sup>

A similar bill had already passed the House of Representatives, and service lawyers anticipated a significant raise in pay. Instead, the legislative session ended without the Inouye bill coming to a vote. Reintroduced the next year, the bill again failed to come



Photo courtesy of Col Clarke C. Barnes, USMCR

*Capt Clarke C. Barnes, left, poses with Capt Michael J. Levin outside a 3d Marine Division legal office at Phu Bai. Capt Barnes said: "The professional experience was fantastic. But even more important was the urgency of it all, the team work, the camaraderie."*

to a vote. That pattern continued for several years, until finally, pro pay expired along with the crisis in discipline. Military lawyers receive no special pay and never have.

In Vietnam, largely unaware of the events in Washington, Marine Corps judge advocates continued to try cases: 123 general and 1,023 special courts-martial in 1969, declines from the preceding year of 18 and 20 percent, respectively. (Troop strength, late in the year, had dropped 32 percent.)<sup>104</sup>

In Vietnam, the I Corps Bar Association held a "ball." With the commanding general's permission the III MAF officers' club was reserved and excess quarters were acquired for attendees who were not billeted

in Da Nang. Musically trained Marines were hired as a band. Colonel Truesdale recalled: "We sent out invitations to all members . . . All Army, Navy, and Air Force nurses in the area received invitations. The ball was held on a Sunday evening [14 September 1969] and was a great success."<sup>105</sup> Nurses from the German hospital ship, the *Helgoland*, were also invited.

While Marine Corps judge advocates may have sponsored a dance, that was an anomaly; creative whimsy near the field of battle. Close by, the war continued. Captain Clarke C. Barnes reminisced: "The professional experience was fantastic. But even more important was the urgency of it all, the team work, the camaraderie . . . My experience in the combat zone was invaluable."<sup>106</sup>