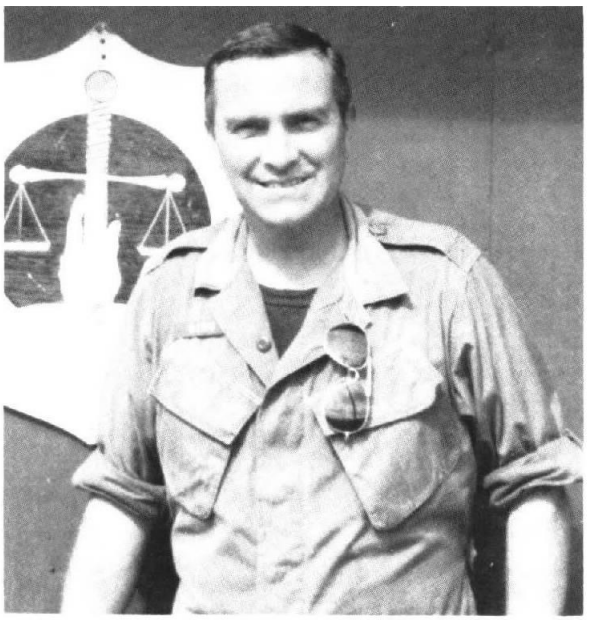
headquarters for trial, and the unit practically shut down. A commander in that situation must wonder if military justice is worth it."[34]

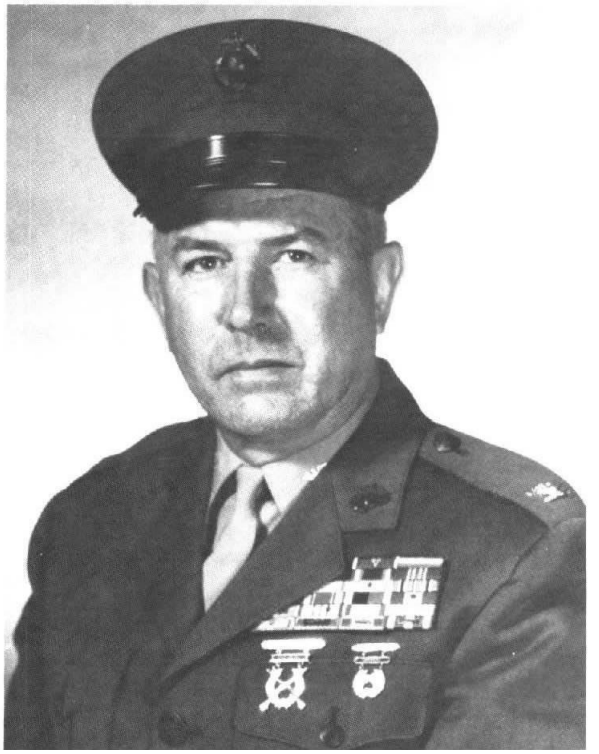
"Arranging trials so as to accommodate the command," Captain Granger noted, "is quite simply, sound management, ensuring that the military justice tail does not wag the dog."[35] Former Judge Advocate General of the Army, Major General George S. Prugh, agreed that military operations and courts-martial did not always mix smoothly:

> Many commanders found the procedures less than satisfactory because of the difficulties in performing their operational tasks and at the same time meeting the time restrictions imposed by the military justice system. Many deserving cases simply were not referred to trial, with consequences on discipline impossible to calculate but obviously deleterious . . . . Statistics do not reflect these serious problems.[36]

During this period Captains Franz P. Jevne and Charles E. Brown, prosecutors in the Son Thang (4) cases, were awarded the Navy Achievement Medal and the Navy Commendation Medal, respectively. On the defense side, Captains Daniel H. LeGear, Jr., and John J. Hargrove received Navy Commendation Medals, while Captain Michael P. Merrill was awarded the Navy Achievement Medal. The awards were only in part based on the Son Thang (4) trials.[37].

The deputy SJA of the 1st Marine Division was LtCol James P. King. On his second tour of duty in Vietnam, he recalled six-and-a-half-day workweeks.
Photo courtesy of BGen James P. King, USMC (Ret.)





Department of Defense Photo (USMC) A705288
Col Donald E. Holben became the SJA of the 1st Marine Division in July 1970. Under his direction the 1st Division left Vietnam with virtually no cases pending.

In mid-year Colonel Lucy was succeeded by Colonel Donald E. Holben, a 1945 Naval Academy graduate with two years prior service as an enlisted Marine. Colonel Holben had served as a company commander in North China under Colonel Samuel B. Griffith II, a renowned World War II combat leader, and was later assigned to the light cruiser *Worcester* (CL 144). After graduating from law school in 1954, Colonel Holben commanded a company at Parris Island's Recruit Training Battalion. Following that he served as an instructor at Quantico's Junior School, a Marine Corps career officer's school. By 1967, when he became the second law officer (military judge) assigned to the Navy-Marine Corps Judiciary Activity office in Da Nang, he had served in a wide variety of legal billets. As the only in-country law officer from mid-1967 to mid-1968, he heard over 160 general courts-martial and established a reputation as a demanding jurist. Judge advocates appearing before him soon learned that his gruff exterior actually was bone deep.

On 22 June Colonel Holben assumed the duties of staff judge advocate of the division. Lieutenant Colonel Pete Kress was his deputy, relieving Lieutenant

Photo courtesy of Maj Mario A. Gomez, USMC

Cpl Mario A. Gomez was an experienced court reporter. 1st Marine Division reporters transcribed cases virtually until the day they left Vietnam. Their role was a critical one.

Colonel Jim King.* Five years before, then-Major King had relieved then-Captain Kress as legal officer of 9th MEB/III MAF. By the date of Colonel Holben's arrival the Grey Audiograph recording machines were replaced by IBM equipment and the division was flush with lawyers. Colonel Holben was unimpressed: "There was a backlog of cases to be tried and a backlog of cases to get off the tapes and on to paper . . . . Not as bad as FLC. The problems in FLC were a result of bad management. [They] didn't know how to run a legal office." Colonel Holben vowed "that was the problem at FLC that I wasn't going to let develop in the 1st Division."[38] He believed that it was counterproductive to attempt to try every case that was referred to trial. If a reasonable plea bargain could be reached, all parties gained, and he was willing to recommend that the convening authority accept the agreement between the accused and the lawyers assigned to the case. He also knew that the Marines would soon be leaving Vietnam. He did not intend to have cases left untried when that date arrived, and he took steps to ensure there were none:

> As soon as I got there and my predecessor had left, I got [the chief defense counsel] in and I said, "We're going to do it differently, now. You're well aware of what the 'Fleet Of Foot Doctrine' is; and that's if you have some defense counsel that want to come in and talk about pleading guilty and getting a good deal, get 'em in here fast, because the longer you hang on, the less likely I'm going to recommend something that's advantageous to you and to the general [the court-martial convening authority]." As a result, we cleared up the backlog of cases fairly early.[39]

The reporters were key personnel in moving cases through the system. "There was always a shortage of good court reporters," Colonel Holben noted. "and the conditions under which they worked in the 1st Division were atrocious . . . . The office spaces they had, had bad lighting."[40] In 1970, Corporal Mario A. Gomez was one of the 1st Division general court-martial court reporters. He recalled the manual typewriters as the most frustrating aspect of his job. The lack of copying machines forced the use of the manifold system—

*Lieutenant Colonel King was commissioned in 1952. He twice served as a weapons platoon leader, then an infantry company executive officer. After obtaining a law degree in 1959 he was honor student at the Army's Civil Affairs School and later, chief trial counsel, 3d Marine Division, then division Civil Affairs Officer in Vietnam. He later was SJA of Marine Corps Air Station, Cherry Point, North Carolina, senior Marine Corps instructor at the Naval Justice School, and, again in Vietnam, deputy SJA, 1st Marine Division. Following that he was SJA FMFPac, then earned an LL.M degree with highest honors. After serving as Deputy Director of the Judge Advocate Division he was advanced to the grade of brigadier general on 27 February 1978, becoming seventh Director of the Division.

an original page bonded to a series of multi-hued flimsies with carbon paper between each page. Corrections were a lengthy process of separate erasures on each page. "Sometimes we'd run out of a simple thing like ribbon, typewriter ribbon, and we'd have to use the cloth-type ribbon that you had to replace frequently in order to have legible copies," Corporal Gomez commented. "As far as the equipment we used—I wouldn't wish that on anybody. But I can't say that it didn't get the job done. It did."[41]

To reduce the backlog of untyped cases, 1st Division reporters, like those at FLC, went to day and night shifts to wring maximum use from the available equipment. When Brigadier General Duane L. Faw, Director of the Judge Advocate Division, made the first of his two 1970 visits to Vietnam, he asked Colonel Holben if he needed anything. "I said, 'Yes!' " Holben recalled. "Send me 10 court reporters."[42] Shortly, 10 court reporters, assembled from legal offices on Okinawa and in the United States, arrived with six-week temporary duty orders to assist in reducing the accumulation of untyped cases. "We ended up with about four or five good ones," Colonel Holben noted. "The rest we terminated their orders and returned them to the United States as soon as we found out who was capable and who wasn't."[43]

Colonel Holben saw to the air conditioning of the reporters' work space, and he did not object when they moved into the office permanently. He reported:

> Production went up, to the point where we would get a judge from the Philippines and [the reporters] would hand him the record of trial for correction before he left Vietnam. They prided themselves on doing that. Staff Sergeant [William L.] Rose was our chief reporter at that time. So any time they got off, I would have a truck take them to the beach, and just gave them a break from their work. And it paid off.[44]

Upon arrival at Da Nang Colonel Holben also assessed the lawyers assigned to the office:

> If there was anything I didn't need, it was more lawyers! I had more lawyers than I needed. Some quality was lacking in some of them, but we assigned them to jobs that were appropriate to their skills. One . . . was the "property officer." I always found that was an adequate job for him. And when he left, I assigned another officer . . . to handling typewriters. The proper assignment of officers was probably more important than the numbers we had . . . . We ended up, after a few moves and a few transfers, with a very capable staff.[45]

Colonel Holben's concern with the operation of the military justice system extended to all facets of the court-martial process. When a sentence imposed by a military judge was conspicuously less than he considered appropriate, Colonel Holben, himself a former judge, summoned the military judge to his office to

The court reporters of the 1st Marine Division SJA's office relaxing at China Beach, near Da Nang. Afternoons off resulted in improved morale and greater office productivity.

Photo courtesy of Maj Mario A. Gomez, USMC

air his opinion of the judge's sentence. " 'If we want sentences like that, we'll keep these cases at office hours!' is a line I particularly recall," said Captain Stephen C. Berg, remembering the incident.[46] The military judge involved, Navy Commander Keith B. Lawrence, noted that he was extensively questioned by the counsels involved in his next few courts-martial. Having learned of his conversation with Colonel Holben, they were concerned that Commander Lawrence might be influenced, one way or another, in his disposition of their cases. He assured them that he would not be, and later wrote that "the defense counsel were reasonable and professional lawyers and after about three trials . . . the matter was dropped."[47]

Colonel Holben instilled in his legal personnel that their mission was to serve, and not impair, the command. Not to the prejudice of fairness or ethical conduct, but to the limits that their roles in the military justice system allowed. If some 1st Division lawyers viewed being urged to serve the command as only a step from overbearing influence on their professional discretion, no one could dispute the results the SJA's office produced. 1st Marine Division cases moved, and as in any civilian jurisdiction, "deals" were available to the accuseds who sought them. Those who contested their cases had a prompt day in court.

The perspective of most Reserve captain-lawyers differed from that of the SJA and the few career judge advocates. These reservists were the backbone of the Marine Corps' legal effort in Vietnam. One such was Captain Philip C. Tower, who served four years' active duty. As he recalled:

> While in law school I was aware that I was facing the possibility of being drafted once my student deferment ran out at the end of law school . . . . To be perfectly frank, my main reason for joining the Marine Corps was that, by that time, I was rather tired of school, and was not looking forward to proceeding on to work in a Phoenix law firm. In short, I was looking for something different.[48]

He came on active duty, attended The Basic School, then Naval Justice School, and was ordered to Vietnam. "I had no desire to go to Vietnam . . . . Arriving was, for me, a truly overwhelming experience, because it was something that I felt would never actually happen to me. I certainly had concerns for my personal safety, and was not particularly happy," he admitted. "Moreover, as I began my work, my main revelation was realizing how inadequate I felt to handle real cases. However, as time went on, the overall experience of Vietnam expanded into one of the most incredible experiences of my life." Continuing, he recalled:

> While we were certainly part of the war, and while I made it a practice to get out in the field as much as I could . . . and while our office hootch was right above a medical landing port where the body bags of the dead were brought in each evening, there was still a true sense of unreality to the position we occupied. While our accommodations were rustic at best, they were nothing compared to the adverse conditions under which most Marines in the field lived . . . While there were a number of occasions when I felt that my life might be in some danger, I did not have to live with the constant threat of death, day after day, day in and day out, as most Marines in Vietnam did.[49]

In addition to their legal work, Captain Tower and Captain Tone N. Grant, another defense counsel, taught English to local Vietnamese school children. At the conclusion of his Vietnam tour Captain Tower was awarded the Navy Commendation Medal for his work as a defense counsel.

Additionally, the lawyers were allowed the opportunity to temporarily escape Da Nang entirely. Following a particularly heavy rocket attack on the Da Nang Airbase, the 1st Marine Aircraft Wing decided to fly its multi-million dollar C-130 cargo aircraft to Ubon, Thailand, each night, since enemy attacks were almost always in darkness. Flight time to Ubon was barely an hour. Colonel Holben received permission to send legal section personnel to Thailand on board the otherwise empty flights and he allowed them to stay for up to three days. The flights were "for anybody that wanted to go, anybody that could get away," Colonel Holben said. "And we used them!"[50] Similarly, he routinely allowed the officers and enlisted men to catch the weekly flight to the Philippines for informal R & R. China Beach, a broad beach with white sand and no women, remained popular and more readily available a few miles from division headquarters. Colonel Holben regularly sent lawyers and clerks alike to China Beach. Morale improved in the SJA's office.

The monsoon season was particularly harsh in 1970. Four typhoons passed through I Corps in October. The last two brought more than 17 inches of rain in eight days and halted virtually all military activity.[51] Trials, however, continued uninterrupted. Major James H. Granger, a special court-martial judge during that time, recalled that no day was necessarily a free day:

> Holidays were business as usual, and I sat as military judge on two cases [on Christmas] day. Defense counsels Jack Lynch and Phil Tower requested the unusual trial date, no doubt hoping that the occasion might stir some vestigial trace of beneficence in the judge. The trial counsel, [James W.]

Marine Corps Historical Collection

The monsoon rains were particularly harsh and heavy in 1970. A Force Logistic Command bulldozer clears a drainage path to allow accumulated rainwater to drain.

"Killer" Carroll, took perverse delight in the idea of Christmas trials, savoring the expectation that the two accuseds' first meal in the brig would be Christmas dinner . . . [and] both accused did dine in confinement.[52]

Colonel Holben added: "I *insisted* that all accused tried on Sunday be given the opportunity to attend the church service of their choice."[53]

As 1970 drew to a rainy close, Jim Granger, promoted to the grade of major a short time before, planned a wetting down party, to celebrate his advancement.* The event was to be held in the lawyers' hooch ("a majestic structure"), which reportedly had originally housed the Seabees who constructed the encampment. That rumor was fueled by the fact that the unique, double-sized SEAhut contained, along with several individual rooms and a bar, two smaller rooms that harbored the cantonment's only flush toilets outside the commanding general's quarters. Major Granger decided that nurses from the hospital ship *Sanctuary* (AH 17) would add to the celebration. Indeed, the wetting down was later described by the Deputy SJA, Lieutenant Colonel Kress, as "truly one of the highlights of the Vietnam legal experience."[54] But as Major Granger recalled:

> It was not an easy thing to get approval . . . . Colonel Holben, his gruff manner hardly concealing his enthusiasm for the idea, gave me permission to approach the division chief of staff, Colonel [Don H.] "Doc" Blanchard. The chief of staff was gravely concerned that women in the cantonment was a recipe for catastrophe, and agreed to permit such an event only if the function was chaperoned by stern, high-ranking, mature leaders. He reckoned as how he fit that bill, and he was promptly invited. Then it looked doubtful that helicopters could be diverted from their combat roles to transport the nurses to and from the hospital ship, but after invitations were extended to the operations officer and an aviator or two, the mission was approved. The motor transport officer graciously accepted my invitation and promptly approved my request for ground transportation. Thus it was that a brave contingent of greatly outnumbered nurses was entertained by the lawyers of the 1st Marine Division. It was a splendid affair.[55]

*The term "wetting down" originated in the British Army with the now forgotten custom of the promoted person placing his new grade insignia at the bottom of a large glass filled with beer, then drinking it dry without stopping.

Trying Cases

Tactically, American units no longer conducted operations on their own, but supported and assisted South Vietnamese forces in their operations. For the

judge advocates of the 1st Marine Division, circumstances were changing as well. For the first time in several years case loads were declining as Marines continued to leave Vietnam. In January 1971, 48 cases were tried; in February, 43; and in March, 27.[56]

Although the number of cases dwindled, the bleak disciplinary picture that continued into 1971 was not brightened by the large number of Mental Category IVs still mandated by Project 100,000. In 1970 seven percent of Marine Corps enlisted strength were Cat IVs. A comparison of their service with that of other Marines showed their recruit attrition rates and desertion rates were twice as high, their promotion rates significantly lower, and their nonjudicial disciplinary rate significantly higher. Surprisingly, though, the Cat IV's court-martial rate remained less than that of other Marines.[57] The Commandant of the Marine Corps, General Leonard F. Chapman, Jr., declared:

> We're going to fight to the highest levels of government projects like Project 100,000 . . . . They've got a lot of merit in the social sense, but they don't contribute a single thing to the readiness of the Marine Corps, to the combat capability of the Marine Corps . . . . We're going to do everything possible to get rid of them.[58]

The Military Justice Act of 1968 took effect in August 1969. By 1970 it was already clear that its implementation had brought about significant improvement in the court-martial system. Lawyers were now involved in the trial of special courts-martial, as well as general courts, and the process was centralized in SJA offices. Lieutenant Colonel Carl E. Buchmann, FLC's deputy SJA, noted that "errors in the records of trial were less severe . . . and we had less errors in drafting charges that, in the past, had been left up to the local legal offices in the battalions . . . . And we speeded up the process all the way around."[59] A 1st Marine Division study found that 37 percent of the cases in which bad conduct discharges were adjudged were disapproved due to legal error before the act was implemented. After it became effective, only five percent "bounced."[60]

Worldwide the number of general court-martial military judges in the Navy-Marine Corps Trial Judiciary decreased by two in 1970 to 21, even though

Officers' call was sometimes held in the double-sized lawyers' hooch. 1st Division lawyers present were, from left, Capt William J. O'Byrne (hidden); Capt Lawrence W. Secrest (partially hidden); 1stLt Roland K. Iverson, Jr. (glasses); Lt Allen C. Rudy, Jr., JAGC, USN; 1stLt Joel Levine (sunglasses); Maj James H. Granger (seated); legal administrative officer, 1stLt Armand H. Desjardin (glasses); unidentified nonlawyer; Col Donald E. Holben; Capt Dirk T. Metzger; Capt Otis F. Cochran (hat); and Capt E. Randall Ricketts.

Photo courtesy of Col James H. Granger, USMC

Photo courtesy of LtCol Richard A. Muench, USMCR

Capt James D. Stokes, left, Capt Richard A. Muench, center, and Lt Richard Blume, JAGC, USN, shown on a river patrol boat (RPB). Captains Stokes and Muench assisted Lt Blume in investigating Cambodia's capture of a RPB that had strayed into Cambodian waters.

general courts-martial increased 42 percent that year; in 1971 there was a further decrease of one, while the number of general courts-martial declined roughly 25 percent.[61] The 1970 decrease in judges, in the face of a rising workload, may have anticipated post-Vietnam manpower reductions.

In Vietnam those figures translated, for example, to 160 general courts-martial tried by Lieutenant Colonel Henry Hoppe during one year in Vietnam, a very heavy docket, and no different from that of the other general court judges in Vietnam. The good news for military judges was that, since implementation of the Military Justice Act, the number of members courts—jury trials—had declined dramatically.* A members court-martial is complicated and lengthy, compared to a "judge alone" trial. A members trial requires selection of panel members (voir dire), opening instruction of the members, instructions on findings (guilt or innocence), followed by sentencing instructions if the accused is found guilty. In a "judge alone" case those phases are dispensed with. Moreover, there tends to be less repetition by the trial and defense counsels, because there are no members to impress and the military judge usually recognizes and recalls critical evidence without having to be reminded. Thus, a "judge alone" case is tried much more quickly. As Lieutenant Colonel Buchmann recalled, "instead of two cases in a day's time . . . we could try four or five with 'judge alone.' Much quicker, same safeguards, but you didn't have all this business of going back and forth with the members . . . . Ninety-nine percent of our special courts are now 'judge alone.' We are not enjoying this same rate at general courts."[62] General courts-martial, at which the more serious offenses were tried, still tended to "go members," sometimes because the matter at issue was thought too weighty to ask one person, the military judge, to decide; sometimes in the defense counsel's hope that he could convince members of that which a military judge would not accept. Also, a military judge tends to know what a case is worth. That is, after long courtroom experience a judge knows the range of punishments that an offense merits. Members, on the other hand, having found an accused guilty, have no bench

*Either the accused or the government may request trial by members, rather than by judge alone. In practice the option is exercised by the accused in virtually all cases where members are requested.

mark by which to fashion an appropriate sentence.

A number of general court-martial military judges heard cases in Vietnam in 1970 and 1971. Besides those stationed in the Da Nang office of the Trial Judiciary Activity, other senior Navy and Marine Corps judge advocates from Okinawa, Japan, the Philippines, and, on occasion, from Washington, D.C., heard cases.

To ensure their independence and freedom from command pressure, all general court-martial military judges were assigned to the Navy-Marine Corps Trial Judiciary Activity, based in Washington, D.C. Their fitness reports were completed by the Chief Judge of that organization and they were exempt from local watch duties, or additional duty assignments. In the rare case of a general court-martial judge's substandard performance, either in personal conduct or in court, there was nothing to be done in the field, other than to notify the Chief Judge in Washington, either directly or through one's superiors, and await a response. Similarly, meritorious service could not be locally recognized.

In 1970 Colonel Petersen, SJA of FLC, became concerned at what he considered the continuing deficient performance of a particular general court-martial judge. He twice advised Brigadier General Faw, Director of the Judge Advocate Division, of the officer's conduct on the bench, once attaching the verbatim record of the murder trial concerned. In his initial letter to General Faw, Colonel Petersen noted that "he has antagonized the court, counsel, and witnesses with displays of impatience, omnipotence and almost contempt." In a subsequent letter Colonel Petersen pointed out that the judge had "refused" to instruct the members on an essential matter, despite the trial counsel's request, which refusal all but mandated a not guilty finding. Colonel Petersen continued, "It is another instance of what is likely to occur when judicial inexperience, compounded with an abrasive personality becomes the third-party litigant . . . . I would like [him] advised of my observations in this matter, for his own benefit and for the fact that we have officially expressed concern."[63] Eventually, the military judge was transferred to other duties outside the courtroom.

Another general court-martial judge had an ill-concealed drinking problem. In response to discreet inquiry from the Chief Judge of the Judiciary Activity, Colonel Lucy, then-SJA of the 1st Marine Division replied, "We all know that he drinks too much. This is obvious even to those who meet him for the first time."[64] Colonel Petersen, not one to equivocate, responded to the chief judge about the same officer: "So long as I am here, I will not permit [him] to be appointed to a general court-martial convened by this command . . . . His alcoholic intake was such as to be a matter of note by the commanding general, the chief of staff, and all counsel practicing before him."[65] (Colonel Holben, referring to the same military judge, later remarked that "he was a better judge drunk than some of the others I could mention.")[66]

In an era before "alcohol abuse" was a fashionable phrase, a number of officers in rear echelons of the combat zone over-indulged occasionally, some with regularity. Judge advocates were among them. In all but a few cases, however, military judges, staff judge advocates, and judge advocates remained above reproach.

Major General Charles F. Widdecke, Commanding General of the 1st Marine Division for most of 1970, wrote to the Judge Advocate General of the Navy concerning general court-martial military judge Lieutenant Colonel Henry Hoppe:

> [He] has been the military judge in over 63 1st Marine Division general courts-martial . . . . I would like to report to you on the high esteem in which he is held . . . . The many difficulties of presiding over courts-martial in a combat environment, such as the numerous unavoidable trial delays, frequent losses of electrical power . . . interruption of court proceedings by enemy fire . . . have not deterred him from maintaining a dignified, judicial atmosphere in his court . . . . I have refrained from conveying any comment on Lieutenant Colonel Hoppe's performance of duty until the end of his tour to avoid any hint of influence on his decisions. It seems appropriate at this time, however, to inform you of his unusually fine record of service.[67]

Lieutenant Colonel Hoppe was awarded the Legion of Merit for his Vietnam service.[68]

Special courts-martial were usually heard by "ad hoc" military judges. Since few senior, experienced judge advocates were designated military judges, they were employed almost exclusively in general courts-martial. For the more numerous special courts, captains and majors with courtroom experience were designated by the Judge Advocate General of the Navy, ad hoc, to be special courts-martial military judges. Their designation was based upon the recommendation of the Director of the Judge Advocate Division.* "Ad hoc" judges were a makeshift response to the staggering caseload that confronted the few military judges of the period. The "ad hoc" judges could

*A separate Marine Corps Special Court-Martial Judiciary was established in 1974.

sit only in special courts. Unlike the general court-martial judges, they were not selected and interviewed by the Judge Advocate General of the Navy, nor did they always receive special schooling as judges before assuming their judging duties. Often they were lawyers still on their initial period of commissioned service who had shown skill and promise as courtroom advocates. Their workload in Vietnam was high. Major Robert J. Blum, for example, tried 210 special courts-martial in one year.[69] Worldwide, in both the Navy and Marine Corps, approximately 500 "ad hoc" special court-martial military judges were appointed in 1969, and 673 more in 1970. General court-martial military judges, on the other hand, never numbered more than 23.[70]

In 1970 a common special court-martial offense was sleeping on post. As Captain George H. O'Kelley, an FLC defense counsel, recalled:

> It was so common that the standard sentence was two months brig time. It was also the practice that anyone that got two months or less did not go to the brig. The sentence was automatically suspended. If the person got in more trouble, then the suspension was revoked and he served the two months and also faced any other sentence from the new . . . charges.*[71]

Although a common offense, obtaining a conviction for sleeping on post was not an easy matter. Captain W. Hays Parks recalled that "at night, in the dark, it is very hard to catch a Marine in such a way that you can convince a court beyond a reasonable doubt (in the face of denials) that he was sleeping on post."[72]

Petty black marketeering offenses were also in vogue. The profits were tempting: A box of laundry soap that cost 40 cents in the PX was worth $1.75 on the black market. A $3 bottle of whiskey brought between $10 and $14 from unauthorized Vietnamese purchasers. In October 1970 the legal rate of exchange was 118 piasters to one U.S. dollar, while on the currency black market the rate was 220 to 1.[73] Unless the charges involved significant figures, however, few convicted Marines were jailed for black marketeering, either.

After he left Vietnam, Colonel Lucy reported that "the III MAF brig is not adequate. It never has been . . . . It should not be used other than just as a detention facility. We've been recommending this for some time, but it stays at capacity, at over capacity."[74] Colonel John R. DeBarr, concluding a year as a general court-martial military judge, agreed: "I suggest we get the brig out of there just as fast as we possibly can—out of country."[75] Colonel Petersen urged that there was no place in a combat zone for "honest to goodness criminals," and he would "strongly recommend serious rethinking of our solution to that problem."[76] The brig passed to U.S. Army control in 1970, and was finally closed in June 1971.[77]

As far as case preparation was concerned, transportation remained a sometimes thing for Marine Corps lawyers, as Captain Paul J. Laveroni, a 1st Marine Division defense counsel, recalled:

> There were a lot of ways to get around Vietnam, and during the course of our tour we used them all . . . . The preferred mode of travel was by helicopter . . . . Most of my helicopter jaunts were in Mission 10 birds, the daily milk run . . . . The typical aircraft used was the CH-46, usually in pairs, but sometimes a CH-53 was used . . . . To catch Mission 10 you had to be at the helipad [below the division's legal offices] about 0730-0800 . . . . Recon teams, loaded up and heavily camouflaged, waited for their lift, along with dog handlers and their dogs, troops who had come to the rear on some boondoggle or other, lawyers trying to get somewhere.[78]

One always had to confirm the helicopter's destination with the crew chief, as itineraries frequently changed and one had to be prepared to leap from the helicopter at the spot closest to one's destination. Captain Laveroni continued:

> Mission 10 wasn't very glamorous nor usually very exciting, but it was a tremendous asset for us . . . . We sent one of our sergeants to Hill 10 to bring back a Vietnamese woman who was going to be a witness. He got her and himself on board a '46 . . . . Someone must have miscalculated the lift because the '46 barely cleared the ground, then slowly tipped to one side and rolled down the hill. Miraculously, no one was killed, but the experience so unnerved our sergeant that . . . he would never step on board a chopper again. That's the problem with mass transit. You just can't please everyone.[79]

On a professional level, lawyers in Vietnam continued to attend meetings of the Federal Bar Association, the I Corps Bar Association, and even continuing legal education (CLE) classes for which various state bar associations granted credit. The classes and meetings were often held in Saigon.[80]

A three-man civilian law office, funded by the Lawyers' Military Defense Committee, of Cambridge, Massachusetts, was also located in Saigon. The antimilitary attorneys provided free civilian legal services to servicemen—Army personnel, almost exclusively—facing courts-martial.[81]

In October 1970 Captain Eileen M. Albertson be-

*First Marine Division prisoners sentenced to more than two months confinement were transferred to the brig at Camp Pendleton as soon as possible. (Cmd Information Notebook, 1st MarDiv, RVN, 10Apr71, p. 9.)

Photo courtesy of Col Eileen M. Albertson, USMC

Capt Eileen M. Albertson poses at Camp Tien Sha, NSA. She was the only woman Marine Corps lawyer to reach Vietnam in relation to a court-martial.

came the second woman Marine Corps judge advocate to reach Vietnam and the only one to do so in connection with a court-martial. (Captain Patricia A. Murphy attended a Da Nang legal conference in September 1969.) Captain Albertson was a trial counsel assigned to the joint law center on Okinawa. In the prosecution of a three-month unauthorized absence case defense witnesses and documents supporting the accused's claim of innocence were located in Da Nang, where the absence had begun. With the exception of a small number assigned to the joint-service staff of MACV in Saigon, woman Marines were not normally permitted to enter Vietnam.* With the approval of her SJA and the convening authority, Captain Albertson received area clearance from FMFPac, and her name was added to the manifest of a Vietnam flight. The Camp Butler, Okinawa, G-1, Colonel Valeria F. Hilgart, a woman Marine, ensured that neither the area clearance request nor the flight manifest included the "W" that normally preceded women Marines' service numbers. On the flight to Vietnam, Captain Albertson was listed merely as "E. M. Albertson," in the usual manner of manifest lists. Accompanied by defense counsel, Captain Robert A. Preate, Captain Albertson arrived at Camp Tien Sha, the Naval Support Activity camp in east Da Nang. Because woman Marines did not wear the utility uniform in that era, she wore the smallest men's utilities she could borrow, and size 8 1/2 combat boots worn with multiple pairs of socks.

Just after her arrival all hands were restricted to base for five days because of Vietnamese presidential elections. Captain Albertson was billeted in the Tien Sha BOQ with special hours arranged for the head and shower facilities. During the restriction to base she accepted an invitation to accompany a night patrol of Da Nang Bay on a U.S. Navy Swift boat.

After restrictions were lifted, five day's investigation confirmed the accused's innocence and Captain Albertson returned to Okinawa. Having been in Vietnam for 10 days, the last few days of October and the first few of November, she received two months combat pay at $65 per month.[82]

Occasionally in the trial of courts-martial, judge advocates encountered cases more notable for their actors than for their facts. Captain George H. O'Kelley was an FLC defense counsel who represented Private Curtis Crawford, originally charged with sleeping on post. Against the advice of Captain Tommy Jarrett, his initial defense counsel, Crawford went to trial and was found guilty and received the usual two months confinement from the court and the usual suspended sentence from his commander. Three nights later Crawford was again found asleep on post in the 3d MP Battalion guard tower. He swore to the officer of the day who had discovered his offense that it would never happen again. But as Captain O'Kelley recounted:

> About two hours later, the O.D. made the rounds. Curtis had moved his sleeping area on top of the trap door [into the guard tower enclosure] so no one could catch him sleeping. The O.D. couldn't arouse him, so he stepped down and fired his .45. Curtis jumped up and yelled, "Halt! Who goes there?" He went to the brig, this time.[83]

His previously suspended sentence was vacated and Crawford was jailed. He became ill while in the brig and was given a mild narcotic medicine. Later, when the Navy doctor declined to continue the narcotic treatment, Crawford badly beat the doctor. "Curtis was placed in solitary confinement, awaiting disposition. I was appointed to represent Curtis, this time," Captain O'Kelley recalled. " He faced 37 years as a possi-

*Throughout the war, only 36 women Marines were stationed in Vietnam. (Col Mary V. Stremlow, USMCR, *A History of the Women Marines, 1946-1977* [Washington: Hist&MusDiv, HQMC, 1986, p. 82.])

ble sentence on all charges. I was then approached by the SJA, Colonel Petersen, about Curtis getting an admin discharge. Well, I jumped on that." Crawford, meanwhile, was seen by FLC's commanding general at request mast, with a complaint of mistreatment in the brig. The commanding general, too, decided that an administrative discharge would best serve the interests of all parties. In light of Crawford's past disciplinary record an undesirable discharge (U.D.) would be administratively imposed. As Captain O'Kelley recalled:

> I took the U.D. package . . . to the brig and saw Crawford in his cell. I explained the U.D. to him. He said, "Wait a minute, lawyer. The general said I was gonna get an administrative discharge." And so you are, I explained to him. I couldn't make him understand that a U.D. was the type of admin he was getting. The tops of the cells at the III MAF brig were covered with bars, so other prisoners in solitary confinement could hear us. Other prisoners started yelling, "Don't sign it, Doodle!" "That lawyer's lying, Doodle!" "Generals don't make mistakes, man!"

The commanding general made a special trip to the brig to assure "Doodle" that the discharge he was getting was, in fact, the one they had agreed upon. That was not the end of the case. Curtis Crawford was released from the brig and ordered to the Da Nang Airbase to board his flight to the United States, and discharge. Captain O'Kelley reported what followed:

> Some MPs spotted Curtis going towards his plane with a large brown box under his arm. They knew Curtis, of course, because he had been in their outfit. "What's in the box, Curtis?" . . . They took the box. It was full of marijuana, a little going away present from Curtis to himself. These two young MPs would have made sergeant major, if they stayed in the Corps. They exercised remarkable initiative. They confiscated the marijuana, snatched Curtis up by the scruff of the neck and showed him to his seat aboard the plane. They saved the government a sack full of money in legal problems.

Last Call For Combat

Throughout the war Marine Corps judge advocates took every opportunity to assume command billets in combat units. Except in the 3d Marine Division in 1968, when all incoming officers were assigned to infantry units for three months, the infantry billet usually available to lawyers was that of reaction platoon or reaction company commander. Lawyers sought that additional duty and excelled. Although the war was coming to a close for the Marine Corps and enemy activity grew less frequent, judge advocates still sought assignment to infantry commands.* While he was the 1st Marine Division SJA, Colonel Bob Lucy, in a letter to the assistant division commander noted, "A lawyer from this office has consistently been C.O. of the Bravo Reaction Company . . . . I have always had more volunteers for this type of duty than I could fill. I might also add that every officer who has filled this billet has been commended highly."[84]

During the 1969 Tet offensive, as executive officer (second in command) of a provisional rifle company, Captain W. Hays Parks, 1st Marine Division chief trial counsel, led two rifle platoons in the defense of the division command post, an action resulting in seven enemy dead. He received the Navy Commendation Medal.[85] Captain Robert M. MacConnell received the same award in recognition of his service as Sub-Team Commander, 13th Interrogation-Translation Team.[86] Captain Raymond T. Bonner was awarded the Navy Achievement Medal for his performance of duty as the regimental S-5 (Civil Affairs Officer) for the 5th Marines.[87] Numerous other Marine Corps lawyers were recognized for their performance outside the legal field, as well, demonstrating the utility of maintaining lawyers' status as unrestricted officers.

Closing Cases Versus Best Defense

In 1977 Major Stephen C. Berg, a former 1st Marine Division judge advocate, wrote: "Any official history will, I expect, place Marine military justice in a most favorable light because, superficially, the system ran smoothly . . . . But, from an insider's point of view, no history will be complete unless the impact of personality on the system, and those executing the system, is discussed."[88] As a captain, Berg had served under Colonel Donald E. Holben, certainly a strong personality, during the trial of the Aragon/Anderson cases.

Sergeant Adrian Aragon was a 60mm mortar squad leader in Company M, 3d Battalion, 7th Marines. His assistant squad leader was Corporal Joseph W. "Thumper" Anderson, Jr., who was particularly noted for his skill as a mortar gunner. The squad, as a whole, was respected within the company for its ability and performance in combat. At 1425 on 17 August 1970, as Company M prepared to return to LZ Ross, the company commander directed his mortar squad to fire 20 rounds on a distant tree line from which sniper fire

*In 1969 the Marine Corps suffered 2,258 battle deaths, compared to 529 in 1970. In 1971 only 20 Marines were killed in action. (Casualty file, RefSec, MCHC.)

Photo courtesy of Mr. Philip C. Tower

Capts Tone N. Grant, left, and Stephen C. Berg in the field during an investigation. Capt Grant was a reaction force company commander, in addition to being a defense counsel.

had earlier been received. Witnesses later testified that from nine to 12 rounds impacted in the tree line. According to the investigation, the remaining eight to 11 mortar rounds landed at the base of the hill occupied by Company M and inexorably marched back up the hill into Company M's own position. Three Marines and a female Vietnamese prisoner were killed while 30 Marines were wounded, including the acting company commander. One of the injured Marines died of his wounds a few days later.[89] Mortar fin assemblies of detonated rounds found in Company M's position carried lot numbers that were traced to rounds issued to an unrecorded unit at LZ Ross, Company M's base. In a message to the commanding general, FMFPac, the commanding general of the 1st Marine Division reported that "cursory examination indicates an extremely high angle of impact," suggesting that the mortar rounds had been fired straight up and fallen back into the company's own position.[90] The mortar squad, concluded the initial investigation, had fired more rounds than necessary in order to avoid having to carry them back to LZ Ross and had simply been careless in the control of its fire. A later message from the division commander to the commanding general, FMFPac, reported that there was "abundant supporting evidence that the incident was caused by misapplication of friendly fire."[91]

Sergeant Aragon and Corporal Anderson were charged with five specifications of negligent homicide. Aragon was also charged with negligence in instructing and supervising his mortar squad.[92] The second gunner was initially charged, as well, but he accepted immunity in return for his testimony in the other two cases. Captain Tone N. Grant represented Aragon and Captain Paul J. Laveroni was Anderson's counsel. The trial counsel in both cases was Captain Edwin W. Welch, assisted by Captain James W. Carroll.

Captain Grant had already been a reaction force company commander for several months and, to the degree that his defense counsel duties allowed, sought other opportunities to participate in combat action. His and Captain Laveroni's extensive trial preparation included several days in the field with Company M, during which they located Marine witnesses who thought the fatal mortar rounds were actually fired by Vietnamese mortars. Reportedly, the enemy occasionally retrieved lost or dropped American mortar rounds and, under cover of U.S. artillery or mortar fire, would fire them at American positions from their own 61mm mortar tubes. The noise of the U.S. fire masked

that of the enemy rounds, preventing counter-fire. (Earlier, in yet another message, the commanding general of the division noted that such an occurrence could only be the "result of a series of highly improbable coincident actions.")[93] The defense counsels also found physical evidence indicating that most, if not all, of the 20 rounds may have impacted in the target tree line. Additionally, numerous members of Company M were willing to testify to the exceptional expertise of Sergeant Aragon and his mortar squad. As the trial date approached, messages began to arrive at 1st Marine Division Headquarters reflecting Congressional interest in the case.

Believing they had an effective defense to the charges, Captains Laveroni and Grant conferred with the SJA, Colonel Holben, in an attempt to persuade him that the cases should not go to trial. Captain Laveroni recalled that "as we described how expensive these trials would be and how many witnesses, including civilians, we would seek from the U.S., he blew up . . . . He decided in his own mind that we were 'threatening' him with huge costs if the command persisted in going ahead. He said he would not recommend dismissal."[94] Nor was that the first time a disagreement regarding witness requests had arisen between Colonel Holben and Captain Laveroni. Of this case Colonel Holben recalled:

> We knew we were going to come back to the States; we didn't know when, and we had to get the work done. You cannot have these trials dragged out forever by requests for numerous witnesses from the United States. And they were all in mitigation and extenuation. We offered to stipulate [to their testimony]. We offered everything we could to mitigate this process. He [Captain Laveroni] was adamant. I was willing, on occasion, and did on occasion, bring over two or three key witnesses in mitigation. So . . . I didn't say no in every event. But I did say no, this time.[95]

The question of which witnesses the government will secure for the defense (at government expense, of course) may be informally decided between the defense counsel and the government prior to trial. Lacking such agreement, it is an issue argued in open court, on the record, and decided by the military judge. The government must comply with the judge's decision or the judge may ultimately dismiss the charges. As Major General George S. Prugh, former Judge Advocate General of the Army, wrote:

> The opportunity to delay proceedings pending the location of a departed witness was and remains substantial. The expense, delay, and difficulty of returning witnesses to the theater could dissuade a convening authority from pursuing the prosecution any further. And where the witness was no longer in the service the power to require the witness to appear was severely circumscribed.[96]

In this case the military judge later ordered production of some, but not all of the witnesses requested

Capt Paul J. Laveroni, left, congratulates Cpl Joseph W. Anderson, Jr., shortly after Cpl Anderson's general court-martial for negligent homicide had ended in acquittal.

Photo courtesy of Philip C. Tower

by the defense. Among those ordered to be made available were half a dozen from the United States.

On 6 December 1970 Corporal Anderson went to trial before Lieutenant Colonel John E. Crandell and a panel of five officers.* The court-martial lasted 10 days. Defense counsel Laveroni recalled the result: "The court was out for five minutes. The verdict was 'not guilty' on all counts. Afterwards, the members said the defense didn't have to put on a case. The government had nothing."

Sergeant Aragon was tried two days later, again before Lieutenant Colonel Crandell and members. Captain Grant conducted the defense, assisted by Mr. Alan Kyman, a civilian defense counsel from Phoenix, Arizona, hired by Aragon's parents. After a five-day trial, Aragon, too, was acquitted.

The events that followed the two courts-martial distinguish them from others of a similar nature and, besides illustrating the impact of personality, reveal a tension in the military justice system: the staff judge advocate as both staff officer and judge advocate. What if delay is an effective defense tactic? What if a motion for witnesses can "price" a case beyond prosecution? Should a staff judge advocate exert personal influence or authority over subordinates, each of whom he is required to rate in comparison to the other, to prod a case to resolution? Or should the prosecution of cases be the duty of the trial counsel alone? Does the SJA's responsibility as a docket manager conflict with his duty to make available the most effective counsel? Does the defense counsel have a responsibility to assist, or at least not impede, the justice system? Many years later, Brigadier General James P. King, after retiring as Director of the Judge Advocate Division, said about such issues in general: "Had the defense counsel really wanted to play a bad game, they could have probably stopped the system."[97]

Captain Grant recalled that "the afternoon of the 'not guilty' verdict . . . Colonel Holben asked to see me. He told me that I was going to be transferred officially out of the legal division . . . . I would be working with a group which would be spending full-time coordinating the 1st Division's . . . leaving Vietnam." Colonel Holben's recollection is that, in light of the declining caseload and his desire to serve in a nonlegal capacity in the combat zone, Captain Grant requested reassignment.[98] In either event, after his eventual transfer back to the United States, Captain Grant recalled: "I began to hear from other Marine officers that . . . Paul [Laveroni] and I had been transferred because of our performances in the Aragon and Anderson cases, as well as other cases." Still, two months later, Colonel Holben wrote a laudatory official letter describing Captain Grant's "consistently thorough preparation," "outstanding reputation," and "dignity and respect for the law, the legal profession, and the Marine Corps."[99]

Several weeks later Captain Laveroni, too, was summoned before Colonel Holben. In a proceeding unrelated to the Anderson/Aragon cases, Captain Laveroni, exercising tactics not usually condoned, had written a letter to the senator of a lance corporal, relaying complaints about the propriety of the lance corporal's administrative discharge. He had also written a letter to the commanding general of III MAF, outside the chain of command. Colonel Holben had learned of this through Congressional inquiries just then reaching the division and by the return of Captain Laveroni's letter to the III MAF commanding general, which had been intercepted before reaching the general. Captain Laveroni recalled his subsequent meeting with Colonel Holben: "I was relieved as defense counsel, fired, kicked out . . . . I was immediately transferred to the Division Inspector's office . . . . It occurred to me that Colonel Holben had relieved me for my actions as a defense counsel in representing a Marine, and that was a violation of [the UCMJ]." Additionally, Captain Laveroni was given a damning fitness report.[100] Colonel Holben later said that "they were reassigned out of the legal office. I made their names available to the assistant chief of staff, G-1, personnel, and they were reassigned." It was again Colonel Holben's recollection that Captain Laveroni had requested a reassignment.[101]

From Vietnam Captain Laveroni secured the assistance of Brendan V. Sullivan, Jr., a Washington attorney and former law schoolmate who, 17 years later, would represent Marine Lieutenant Colonel Oliver P. North. Mr. Sullivan contacted the Director of the Judge Advocate Division, Brigadier General Faw, and discussed the issues. That was followed by senatorial and Congressional involvement. Few civilians in Washington, however, were likely to fully appreciate the impact of the parties' actions or their personalities. Eventually, a formal opinion was issued by the General Counsel of the Department of Defense that Captain Laveroni had not acted improperly and the

*Lieutenant Colonel Crandell, not a regularly appointed military judge, was authorized to sit for the Anderson and Aragon cases, only. (Col Daniel F. McConnell ltr to author, dtd 25Jan89, McConnell folder, Marines and Military Law in Vietnam file, MCHC.)

Department of Defense Photo (USMC) A373860

The Assistant Commandant of the Marine Corps visited the newly established 3d Marine Amphibious Brigade in April 1971. Gen Raymond G. Davis, center, formerly the commanding general of the 3d Marine Division, poses with MajGen Alan J. Armstrong, left, the MAB commander, and BGen Edwin H. Simmons, the MAB deputy commander.

negative fitness report was later removed from his record.[102]

The Last Marine Lawyer Out

In Vietnam, despite greatly reduced troop strength, 93 general courts-martial were tried in 1970, compared with 123 in 1969. Seven hundred and ninety-six special courts were tried, compared to 1,023 in the preceding year.[103]

As 1971 began, there was little change in the war. The enemy avoided Marine units and concentrated instead on South Vietnamese targets while the Marines continued their redeployment. During March and April the flow of departing Marine Corps units became a torrent.[104]

On 13 April III MAF turned over its tactical responsibilities to the U.S. Army's Americal Division, and the next day a new unit, the 3d Marine Amphibious Brigade (3d MAB), was activated. The brigade, which replaced III MAF, was commanded by Major General Alan J. Armstrong. The SJA's office remained at its long-time location on Hill 327.[105] On the same day that 3d MAB was activated, what remained of III MAF Headquarters redeployed to Okinawa. The III MAF units still in Vietnam, portions of the 1st Marine Division and Force Logistic Command, were included in 3d MAB, with a strength of 1,446 officers and 14,070 enlisted men. The MAB never functioned as an operational command. Rather, its task was to redeploy its subordinate units out of Vietnam.[106]

On 14 April the office of the SJA, 1st Marine Aircraft Wing, led by Major Curt Olson, and only several lawyers strong, redeployed to Iwakuni, Japan, along with the remainder of the 1st Marine Aircraft Wing. Its few remaining cases were either disposed of before redeployment or returned to Japan for disposition. At Iwakuni the judge advocates joined those of the 1st Marine Aircraft Wing (Rear), forming a single SJA's office under Lieutenant Colonel St.Amour, lately the general court-martial military judge in Da Nang. For the first time since the 1st Marine Aircraft Wing (Rear)

was formed in November 1969, the wing's judge advocates were in a single office.[107]

Colonel Holben and Lieutenant Colonel Kress remained on Hill 327 as the 3d MAB's SJA and deputy. Their office was manned with judge advocates, enlisted clerks, and reporters who volunteered to stay in Vietnam. They inherited two general courts-martial, 17 specials, and two administrative discharge cases from the 1st Marine Division and FLC as both of those commands prepared to redeploy. Colonel Holben continued to press his lawyers to complete the reviews of the cases recently tried, even as the office began to pack for its own departure.[108] Of that chaotic period Major General Armstrong recalled:

> They were, for all practical purposes, military nomads . . . one grandiose transient camp. As each outfit left, the castoffs would spill downhill . . . . An awful lot of loss of records and things like this, because we were operating under a situation in which people were thrown together at the last minute who didn't know what was going on . . . and didn't know each other. And it didn't work very well, in my opinion.[109]

FLC's Staff Judge Advocate, Colonel Daniel F. McConnell, left Vietnam on 21 April 1971, his office closed and its few remaining cases, all of them recent offenses, passed to the 3d MAB.[110] FLC's judge advocates redeployed to commands in Japan, Okinawa, and the United States. Force Logistic Command, created in Vietnam in 1966 from the Force Logistic Support Group, which in turn had been created from elements of the 1st and 3d Force Service Regiments, was deactivated on 27 June 1971.[111]

On 26 April the North Vietnamese and the Viet Cong opened another offensive in the Da Nang area. U.S. Army troops met that surge while the enemy continued to avoid contact with Marines. Two Marines were killed in action in April. The enemy campaign continued into May with occasional rocket attacks on the 3d MAB compound.[112]

The units of the 1st Marine Division to leave Vietnam departed on 14 April. Airlift of the remaining portions of the division from Da Nang to Camp Pendleton began on 14 June.[113] Colonel Holben's earlier determination that the division leave Vietnam with a clean docket had paid off. The few unresolved cases remained with Colonel Holben at the 3d MAB, where they were tried with the same attention to fairness and justice that cases in less hectic periods had always received. The records of trial of every 1st Marine Divi-

The judge advocates of the 3d Marine Division sit for a formal photograph in November 1970. Their number had been significantly reduced as Marine Corps forces in Vietnam redeployed. Col Holben and LtCol Kress are front row, fifth and fourth from left.

Photo courtesy of Col Donald E. Holben, USMC (Ret.)

sion case were completed, as well as the reviews and preliminary convening authority actions for each.[114] "And we did not whitewash a bunch of cases in order to get rid of them, when we left," Lieutenant Colonel Kress added. "We were caught up."[115]

The 3d MAB's trial of courts-martial continued, as well. In April 21 cases were tried and in May, 14.[116] With most of the court-martial convening authorities now out of Vietnam, new administrative hurdles arose. Lieutenant Colonel Kress recalled his efforts to amend the composition of a general court-martial members panel, a change that could only be authorized by the court's convening authority. "I had to call the commanding general at Pendleton . . . and get one guy excused and another court member appointed."[117] Major James H. Granger added, "Everything became hard to do. The network of people we regularly dealt with was gone . . . . Support and supplies became hard to get. The law center became a prime source of manpower for the many working parties engendered by the deployment."[118] But the work continued.

On 3 June Colonel Holben and Lieutenant Colonel Kress left Vietnam. The new 3d MAB SJA, who had been in the office since July of 1970, was Major Granger, who was supported by eight judge advocates and 14 enlisted men, again all volunteers. "As was his practice, Colonel Holben left a 'clean house,' " Major Granger remembered. "We had only 1 special court-martial pending, and 3 administrative discharge cases in process."[119] One other case came up the day before Colonel Holben departed. "A rape case that arose in FLC, that obviously could not be tried [before departure]," Colonel Holben recalled. "This was a young man that decided to rape his 'house mouse' the day he left . . . . And that was it."[120] The case was eventually tried in Vietnam by a trial team from Okinawa's 3d Marine Division, the accused's parent command.

A week later, on 10 June, the packing of equipment was completed, and half the legal clerks and court reporters left country.[121] MAB "legal" then consisted of four officers and seven enlisted Marines. The remaining judge advocates were Major Granger; Lieutenant Allen C. Rudy, Jr., JAGC, USN; Captain Lawrence W. Secrest; and Captain Roland K. Iverson, Jr. Major Granger recalled the last few, hectic days in Vietnam:

> We only tried 5 courts-martial, after Colonel Holben's departure, but we completed review of 18. Finding convening authorities became difficult, and finding transportation was even harder. Those involved in the court-martial process . . . became fanatics about speed. Staff Sergeant [Lonnie J.] Bradford and Sergeant [William L.] Rose were preparing records of trial before the trial, then making necessary changes afterward.* Cases were reviewed and convening authority's action taken overnight . . . . The real difficulties we had were not related to courts-martial and administrative separations. Retrograde movements generate an inordinate number of nonjudicial punishment appeals, requests for legal assistance, [and] investigations, all at a time when reference material is unavailable. To this day I have no idea whether the action we took in some of these matters, particularly in one unusually complex . . . investigation, was in accordance with law and regulation, but each matter was well-considered, and I am convinced they were handled in accordance with what the law should be . . . . I was satisfied we had left no work undone, and I knew we had not burdened the command.[122]

A few more of the remaining legal personnel drifted out of Vietnam between the twelfth and twentieth of June. Finally, on 24 June 1971 the last of the SJA's contingent moved to the Da Nang runway to board aircraft taking them out of country. The judge advocates were among the last of 3d MAB personnel to leave Vietnam. Major Granger, senior officer on the flight, shepherded the lawyers and others on board the plane:

> I was at the rear of the formation . . . . Finally [Captain Lawrence W.] Larry Secrest and I were the only Marines left on the runway. After some jockeying around, I acquiesced and moved on up the ladder, leaving Larry as the last deployed Marine lawyer on Vietnam soil.[123]

No roster was maintained, but in the six years and three months between Captain Kress' arrival and Major Granger's departure, about 400 Marine Corps lawyers were assigned to Vietnam. Thirteen of that number had two tours. Twenty-seven U.S. Navy lawyers served with the Marines. There would be other Marine Corps lawyers in Vietnam for brief periods, but none for a full tour of duty.

Two days after Major Granger's departure the last 64 Marines of the 3d MAB left Vietnam for Hawaii's Camp Smith (named after lawyer-turned-Marine, General Holland M. Smith). The Marine Corps' operational history for 1970-1971 noted:

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*Although unorthodox, completing a record of trial before trial is easily done. Because most 3d MAB courts-martial were guilty-plea special courts, only a summarized record of trial was necessary, if a punitive discharge was not imposed. (Verbatim records are required only when a punitive discharge—bad conduct discharge [BCD] or dishonorable discharge—is imposed, or when confinement exceeds one year.) Experienced legal personnel can anticipate a sentence with fair accuracy, and the scenario of a "non-BCD special" is easily anticipated, allowing the pre-formatted, non-BCD, summarized record of trial to be completed before trial.

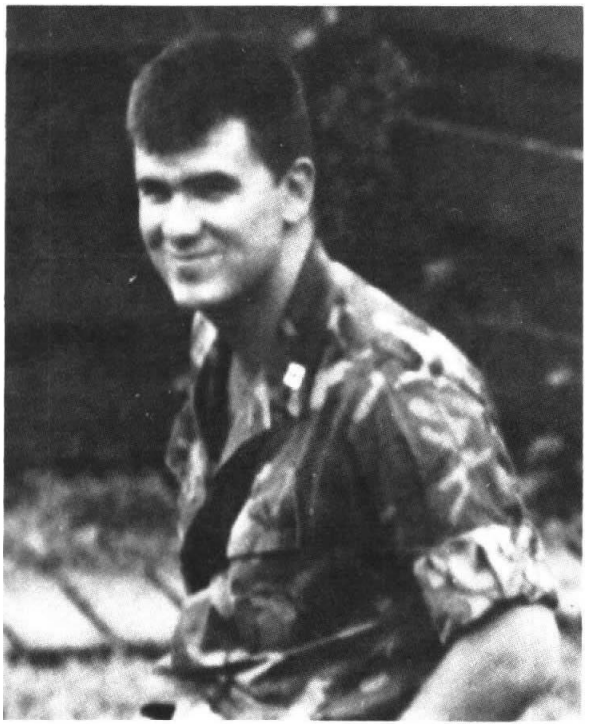

Photo courtesy of Mr. Philip C. Tower

Capt Philip C. Tower was a 1st Division lawyer in 1971. He said: "I am not sure that I have ever come to terms with how I feel about my experience in Vietnam."

> In spite of racial tension, drug abuse, occasional fraggings, and general dissension, III MAF, until the final redeployments, continued to carry out daily operations . . . . Nevertheless, the fact that the question of troop reliability even arose demonstrated the severity of the internal problem . . . [but] thousands of Marines continued to do their duty to the end.[124]

In a sense, the war was not over for Marine Corps judge advocates. Formally, the Vietnam conflict continued until 27 January 1973, when cease-fire agreements were signed in Paris. But, as Professor Guenter Lewy pointed out in his history of the war: "The crisis in military discipline, it should be stressed, was worldwide and not limited to Vietnam."[125] Marine Corps lawyers still faced the courts-martial of accuseds whose offenses had arisen in Vietnam but were tried elsewhere; of prisoners of war charged with crimes while in enemy hands; of malcontents who caused trouble in the combat zone and in the future would cause trouble at posts and stations throughout the Marine Corps.

Captain Philip Tower, among the last of the lawyers to leave, said of his duty in Vietnam:

> I am not sure that I have ever come to terms with how I feel about my experience in Vietnam, and I often wonder how many other Marine lawyers, as well as servicemen in general, have coped with that experience . . . . The intense

As the Marines left Vietnam discipline and crime remained major concerns for Marine Corps judge advocates. Here, Marines depart Da Nang for White Beach, Okinawa.

Department of Defense Photo (USMC) A800444

> friendships . . . the excitement of beginning my practice as an attorney, the wild and totally carefree times, the fear, the intense pressures of defending capital murder cases . . . listening to New Year's Day bowl games over Armed Services radio in the midst of intense monsoon rain, the laughter and wild parties, the depths of depression and fear, the sight of death on a daily basis . . . and the general recollections of a beautiful yet sad country, are all parts of an experience, the breadth and intensity of which have never been repeated in my life.[126]

On 27 June 1971 the 3d MAB, the last Vietnam-based command to which Marine Corps judge advocates were assigned, was deactivated.

Perspective

Whether the Marine Corps needed its own lawyers, and whether they should serve solely in legal billets were no longer issues. If it had not been so before, the disciplinary issue made it clear that Marine Corps lawyers were best suited to act in cases involving Marines, and that the need for lawyers precluded their routine assignment outside the legal field.

In 1971, 339 judge advocates were on active duty. Brigadier General Faw continued as Director of the Judge Advocate Division, and Brigadier General Lawrence, recalled to active duty, continued as Deputy Assistant to the Secretary (Legislative Affairs), Department of Defense. Twenty judge advocates were colonels, 21 were lieutenant colonels, and a mere 18 were majors, evidence that the retention of captain lawyers continued to be a problem. Two hundred seventy-three captains, and only five first lieutenants were on active duty. Virtually all of the captains and lieutenants were Reserve officers.[127]

Thirty-eight career officers had been selected to attend law school through the Excess Leave Program (Law) in 1972; another 16 were selected for the following year.[128] Their return to active duty upon attainment of their law degrees would go far to fill the middle management gap in the grades of major and lieutenant colonel, although they would lack experience as advocates. In that regard, the Court of Military Appeals reported that, for all the Armed Services, the court "remained concerned over the shortage of experienced military lawyers." The court pointed out that "competition with private firms and other Government agencies, and the end of the draft, and the close of the Vietnam conflict have caused a steady decrease in applications for career positions as judge advocates . . . . The outlook for improved retention is uncertain."[129]

In post-Vietnam years the Marine Corps on a few occasions turned to direct commissions to ease the shortage of experienced lawyers. That program provided for appointment of lawyers with specialized or lengthy experience to be commissioned, usually as majors, for a contractual period of three or four years. Although not widely used, the direct commission program did meet immediate short-term needs for seasoned lawyer personnel.

As the Marines left Vietnam, discipline and crime were still major concerns. Experienced advocates were needed, but those who were not experienced soon would be. The Commandant of the Marine Corps, General Paul X. Kelley, later recalled: "In the '71 period, it was as bad as I could ever recall."[130]