

CHAPTER 8

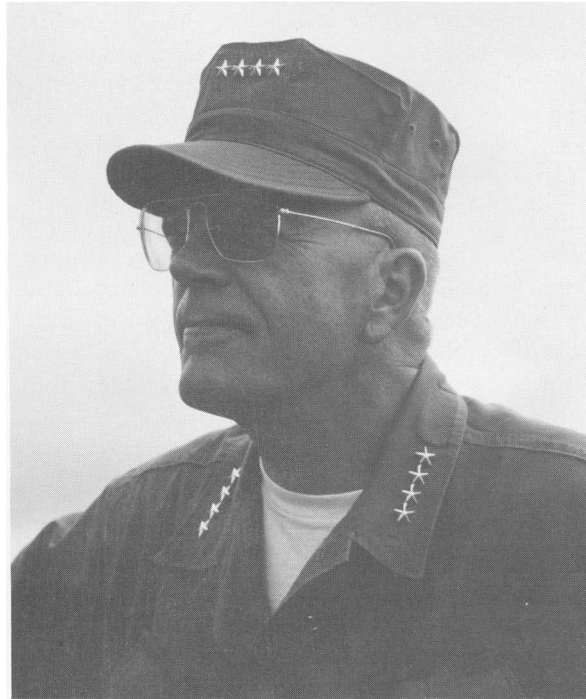
1970-71 Preamble: Discipline in Disarray

*Civilians at Courts-martial: Latney Reversed—Fragging: Killers in Our Midst
From a Lawyer's Case File: Criminal-Criminologist—Drugs: Marijuana and More—Racial Conflict: High Tension
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In July 1970 General Leonard F. Chapman, Jr., Commandant of the Marine Corps, opened the annual General Officers Symposium. In remarks to the assembled generals he said: "In preparing for this talk this morning, I looked back over the notes I've used for last year and the year before, and I was impressed with the fact that so many of the problems I spoke about are still with us."¹ Elsewhere, Major General William K. Jones, ending his tour as commanding general of the 3d Marine Division in Vietnam, recalled: "I was absolutely astounded and horrified by the breakdown of discipline that I witnessed."²

In 1970 the Armed Forces continued to confront a deterioration of discipline. The unrest reflected the divisions within American society as a whole and their effects on the Services, which were engaged in a long and unpopular conflict. The prospect of redeployment actually weakened discipline, as servicemen found it difficult to maintain a sense of purpose in a war that was ending without decisive results.³ Rapid manpower turnover, a decline in training standards and personnel quality, and boredom as combat action diminished, added to the undermining of discipline and morale. All of the Armed Services were affected. In July 1970 there was a major riot in the Marine Corps brig at Iwakuni, Japan.⁴ The superintendent of the U.S. Military Academy, Lieutenant General David Palmer, later recalled: "The Army was hollow at the gut. It nearly disintegrated."⁵ In May the Navy's *Richard B. Anderson* (DD 786), on her way to a western Pacific deployment, was the first reported victim of Vietnam-era ship sabotage and was forced to return to port with major engine damage.⁶ For four days in May the Air Force suffered large-scale riots at Travis Air Force Base, California, a primary Vietnam air embarkation point.⁷ Colonel Paul X. Kelley, on his second Vietnam tour of duty in 1970, commanded the 1st Marines. Years later, after retiring as Commandant of the Marine Corps, he said of that period:

We had a new Marine Corps By 1970 . . . we had basically "fillers," people who hadn't come over [to Vietnam] with units The average age of a squad leader in the 1st Marines was 18 and a half [and] we had all the cultural problems of the United States There was a very dra-



Department of Defense Photo (USMC) A419099
Gen Leonard F. Chapman, Jr., was Commandant of the Marine Corps as the Vietnam War neared end. He told a gathering of generals: "I was impressed with the fact that so many of the problems . . . are still with us."

matic difference in the Marine Corps between the time we went in, in '65, and the time we went out in '71. A very, very dramatic difference in the Corps When I arrived on the scene [in 1970] I was somewhat appalled⁸

The difficulties of preceding years had not lessened, and solutions were yet to be found.

Civilians at Courts-martial: Latney Reversed

James Latney, the civilian seaman convicted of murder in a 1968 general court-martial, set the precedent that military courts had jurisdiction over civilians who committed crimes in the combat zone. Latney had appealed. Sixteen months after his court-martial the Court of Appeals for the District of Columbia overturned his conviction. The appellate court held that the UCMJ could not reach a civilian seaman who lived on his ship, and who had not assimilated with mili-

tary personnel in terms of living quarters or conditions.⁹

The Marine Corps considered urging an appeal of the appellate court's decision, but Brigadier General Faw, Director of the Judge Advocate Division, explained: "This [opinion] wasn't binding on even another Federal District Court If we sent it up . . . we might get a loser, so let him go, because . . . our disciplinary needs are met when he's convicted."¹⁰ Nine months later, even this limited victory of conviction was negated by the Court of Military Appeals' decision in another case, *United States v. Averette*.

In Vietnam civilians continued to commit crimes, most often black marketeering and currency violations. The State Department considered administrative measures, such as withdrawal of military privileges and loss of employment, to be sufficient punishment. Courts-martial should be reserved for only the most serious cases. MACV, on the other hand, urged courts-martial in all cases. While that disagreement continued, only 16 civilian cases entered the military justice system through 1968. No military charges were brought in 10 of those cases, two more were dropped after charges were preferred, and four civilians were tried by courts-martial.¹¹ One of the four was Latney. Another was Mr. Raymond G. Averette.

Averette, a civilian employee of an Army contractor, was convicted by an Army general court-martial of conspiracy to commit larceny and attempted larceny of 36,000 batteries. He appealed his conviction and sentence to confinement at hard labor for one year and a \$500 fine. In April 1970 the Court of Military Appeals reversed the conviction and dismissed the case. The Court noted that, unlike Latney, Averette was assigned to an Army post in Vietnam and enjoyed full military privileges. Moreover, his offenses could be tried in a United States District Court. The rationale of the decision, however, was that the article of the UCMJ upon which jurisdiction was based required that the civilian's offense be committed in time of war. "We conclude," the Court wrote, "that the words 'in time of war' mean . . . a war formally declared by Congress." Because there was never a declaration of war against North Vietnam, the UCMJ could not apply to civilians accompanying U.S. Armed Forces in the field, or so the military appellate court reasoned. (In the same opinion the court held that the lack of a declaration of war was not a bar to invoking the "in time of war" provision of the unauthorized absence article.)¹² The

question of criminal jurisdiction over American civilians in Vietnam, not addressed by the 1950 Pentilateral Agreement, was resolved. As a matter of law, civilians in Vietnam could not be court-martialed.

The Averette decision created a significant problem. The South Vietnamese Government routinely declined to exercise jurisdiction in cases involving Americans who committed crimes against other Americans or American law. Moreover, American civilian laws against most criminal acts, including murder, manslaughter, assault, blackmarketing and currency violations, had no extraterritorial application and could not be tried by any Federal District Court. As a result, in a later case involving a civilian and a soldier in a bribery-blackmarket scheme, the soldier was convicted by court-martial and the civilian was set free. The Averette case created a group of U.S. civilians, contractor employees, that was not subject to prosecution for crimes committed in Vietnam.¹³

After the Averette decision, administrative debarment was the sanction applied in most cases of civilian wrongdoing. That involved a bar to the wrongdoer's employment by any U.S. contractor in Vietnam and the firing of the wrongdoer. As an indication of the level of civilian misconduct in Vietnam, by the end of the war 943 contractor employees had been debarred.¹⁴

Fragging: Killers in our Midst

The Marine Corps did not record the number of fraggings that occurred during the war. In 1970, however, the principal infantry command remaining in Vietnam, the 1st Marine Division, did: One Marine was killed and 43 were wounded in 47 fragging incidents.^{*15} As experience was gained in dealing with fragging incidents, apprehension of those responsible became more frequent. That was largely attributable to "Operation Freeze," a III MAF Order based on Major General William K. Jones' similar 3d Marine Division order of the preceding year. Operation Freeze provided for swift isolation of any unit in which an act of violence occurred, followed by immediate investigation. Additionally, an order directing the pro-

*In comparison, the U.S. Army, which during the same period had eight times as many men in Vietnam (an average of 274,100 soldiers to the Marines' 32,500), suffered six times as many (271) fragging incidents. Thirty-four soldiers were killed. (Guenter Lewy, *America In Vietnam* [New York: Oxford University Press, 1978], p. 156; and DOD, Selected Manpower Statistics, Fiscal Year 1982 [Washington, 1982], p. 129).



Photo courtesy of Mr. P. C. Tower

The bunker in which Sgt Richard L. Tate died. Fragging, the murder of one Marine by another with a fragmentation hand grenade, occurred throughout the Vietnam War.

tection of informants resulted in greater cooperation from those with knowledge of the incidents. Still, only 22 of the 1st Division's 47 fraggings resulted in apprehensions. Of the 37 Marines apprehended, 21 were court-martialed and five received administrative discharges. The remaining cases were dropped for lack of evidence.¹⁶ No fraggings occurred in Marine Corps units in 1971, the year in which all remaining Marine combat units redeployed from Vietnam.¹⁷

From a Lawyer's Case File: Criminal-Criminologist

On 23 October 1970 the 1st Marine Division's only death by fragging occurred on Hill 190, west of Da Nang. That evening, Private Gary A. Hendricks of Company L, 3d Battalion, 1st Marines, was one of two Marines found sleeping on post by their platoon sergeant, Sergeant Richard L. Tate. Tate reprimanded the two in strong words, but took no further action. At 0110 the next morning Private Hendricks dropped a fragmentation grenade down the air vent of the bunker in which Sergeant Tate and two others were sleeping. The grenade landed on Sergeant Tate's stomach. Reflexively, the sergeant brought his legs up to his chest, cradling the grenade in his lap, where it exploded. His legs torn from his body, Sergeant Tate died several minutes later. He had been due to return to the United States and his wife and child in three

weeks. The explosion also wounded the other two sergeants occupying the bunker.¹⁸

Hendricks' regimental commander was Colonel Paul X. Kelley, who clearly recalled the case years later. "Why would a kid like that, a farm boy from Ohio, brought up very decently, why would [he] frag and murder a very fine noncommissioned officer?"¹⁸

Captain Philip C. Tower was assigned to defend Hendricks, who was charged with aggravated assault and premeditated murder, which carried a possible sentence of death. Hendricks, who was apprehended after admitting his act to other Marines, said he hoped he "had gotten one [sergeant], at least." Besides his admissions and physical evidence placing him at the scene, Hendricks had signed a written confession. With few avenues available to the defense, Captain Tower sought psychiatric evaluations in Vietnam and on Okinawa, neither of which raised a basis for an insanity defense. Captain Tower remembered:

It was clear to me that the command did not wish to negotiate in this case, and that they very much wanted to see the defendant receive the death penalty. I was informed that no one had been executed in the naval services for almost a century, but I was extremely concerned that this case might end up being the first one. At trial I had very little to present in the way of a defense.

Hendricks was convicted and sentenced to death. The convening authority, however, mitigated the sen-

tence to confinement at hard labor for life and a dishonorable discharge. While in military confinement Hendricks pursued an unsuccessful appeal in the U.S. Court of Claims, based upon an asserted inadequacy of counsel.* He was paroled from the Federal Corrections Institute at Ashland, Kentucky, in November 1980, having served eight years and nine months confinement. He went on to obtain college and post-graduate degrees. His major was criminology.

Drugs: Marijuana and More

"The Vietnam drug situation is extremely serious," read the *New York Times*.²⁰ Drug abuse had reached "crisis proportions." Major General Alan J. Armstrong, 1st Marine Aircraft Wing commander, told an audience at Hawaii's FMFPac Headquarters in 1971: "Those of you that think you know a lot about the drug problem, if you were not out there in the last year, you need to reappraise your thoughts."²¹ Drug abuse in Vietnam reflected the drug problem in American society, except drugs were cheaper and more easily available in Vietnam. According to the Security Company commander at Force Logistic Command's (FLC) Camp Books, "The kids would come up and toss the marijuana over the wire to sentries, day and night."²² Marines in rear areas who sent their utility uniforms to Vietnamese laundries often found several marijuana "joints" in their shirt pockets upon return of the uniforms—a form of business solicitation. The abundance of cheap, pure quality drugs, coupled with lax Vietnamese enforcement of its own narcotics control laws, made it easy for Marines with drug habits to continue and facilitated experimentation by the uninitiated. "We found," Lieutenant General William K. Jones said, "that 48 percent, or nearly half of the Marines, indicated a use of drugs at one time or another."²³

Heroin was rare until late 1970, when cheap and plentiful quantities of the narcotic, long available further south, reached northern I Corps.²⁴ Major General Armstrong noted that "[drugs] really began to take their toll on our Marine population in Vietnam at about the 1970-71 period, and particularly in 1971, when the tempo of operations had slacked down."²⁵ The increase in drug use was reflected in the number of apprehensions for drug abuse. MACV, which included all American troops in Vietnam, reported that

in 1965 there had been 47 apprehensions; there were 344 in 1966; 1,722 in the next year; 4,352 in 1968; and 8,446 in 1969. In 1970 the number was 11,058, despite rapidly dropping troop strength. MACV's command history noted that "it became apparent apprehensions were not an accurate measure of the magnitude of the problem."²⁶ Department of Defense and Congressional drug and narcotics committees which came to Vietnam for firsthand views of the issue were told that drug use was even greater than the numbers indicated.²⁷ In 1970, in the 1st Marine Division alone, there were 142 courts-martial for drug abuse and 211 drug-related administrative discharges.²⁸

The Army also used administrative discharges for drug abuse as a relief valve. As Major General George S. Prugh, Judge Advocate General of the Army, wrote:

It became increasingly clear that trial by court-martial was an awkward, ineffective, and expensive means of attempting to cope with a large-scale [drug] problem . . . Soldiers whose behavior indicated that they lacked the desire or ability to rehabilitate themselves were eliminated through administrative channels.²⁹

FLC, like other Marine Corps and Army commands, employed admin discharges to clear the decks of drug users and marijuana smokers. As Lieutenant Colonel Carl Buchmann, FLC's Deputy SJA, said:

We had used administrative discharges for marijuana smokers, extensively . . . When I arrived [in 1969] we had something like 85 or 95 general courts that . . . hadn't been tried yet. So we let it be known [to defense counsel] that we [the commanding general, with the SJA's advice] would entertain some admin discharges to avoid trial, and in one period, I remember giving out 25 in a very short period of time; approving them after they requested—for pot . . . Some we did, some we didn't give admins to. So, if you say a solution has been arrived at, no, it hasn't. We're still guessing.³⁰

The flow of drugs was unabated. Retired Marine Colonel Robert D. Heinl reported in a magazine article that: "In March [1971], Navy Secretary John H. Chafee . . . said bluntly that drug abuse in both the Navy and Marines is out of control."³¹ Lieutenant General Leo J. Dulacki recalled that "just about the time the last Marines were leaving, the countryside suddenly appeared flooded with hard drugs, available anywhere and everywhere."³² In January 1971 Brigadier General Edwin H. Simmons, Assistant Division Commander of the 1st Marine Division, pointed out that "you can go down to Freedom Hill recreation area and you can find a mama-san who will sell you a cap of pure heroin for from three to five dollars. It's a bargain! The same cap would cost you

*An appeal of a court-martial conviction via the Court of Claims is very unusual. Presumably the appeal was collateral to a claim for back pay.

50 dollars in [the U.S.].”³³ Major General Armstrong reported that one air group “had a heroin problem that I viewed as an operational problem, no longer an administrative problem.”³⁴

The Marine Corps took action to fight marijuana and drugs in Vietnam, which relied heavily on troop education. A platoon leaders’ antidrug pamphlet was issued. Special drug education teams were employed, and drug abuse councils were formed.³⁵ Finally, lawyers of the various SJA offices tried abusers, or processed their administrative discharges. Throughout that period the Marine Corps took an adamant stand against amnesty programs. As the Commandant said: “The Marine Corps cannot tolerate drug use within its ranks. Those who experiment with drugs can expect to be punished. Those who become addicted will be separated.”³⁶ Until the Department of Defense required all Armed Services to initiate amnesty programs, the Marine Corps maintained its resistance to them.³⁷ Meanwhile, drug use increased.

The lawyers’ involvement with drug users was not always a matter of charge sheets and analysis. Captain Tommy W. Jarrett, an FLC defense counsel, was interviewing a client when he became suspicious of his state of sobriety. Captain Jarrett paused in his questioning and asked the young Marine: “Tell me something. Just between you and me, have you had a little pot today?” His client replied: “Sir, just between you and me, I have a little pot every day.”³⁸

Racial Conflict: High Tension

According to MACV’s 1971 Command History for Vietnam:

Many black soldiers in RVN, increasingly more articulate, better educated, and more impatient than their predecessors, continued to view the military establishment as a racist institution, within which little redress was possible. To many of them, the war in Vietnam was viewed, rightly or wrongly, as a white man’s war in which they had no vested interest.³⁹

Major General Edwin B. Wheeler, Headquarters Marine Corps’ G-1, noted:

There can be little doubt . . . that the most insidious obstacle to manpower readiness is that of racial unrest and violence. It strikes at the heart of two essential principles upon which our Corps is built: good order and discipline And it is especially unsettling when it results in Marines killing each other.”⁴⁰

Another Marine Corps general, questioned by newsmen after a racial incident, reportedly said: “We’re not having a racial problem; we’re having a criminal problem.”⁴¹ That hard line was mixed with Marine

Corps efforts to ease racial friction and to take action against those who participated in racially inspired offenses, regardless of their race. During this period blacks constituted about 13 percent of Marine Corps strength, but were the accused in an estimated 50 percent of Vietnam courts-martial.⁴² In FLC monthly Subversive Activities Reports, actually racial disturbance reports, were a continuing requirement for all subordinate commands.⁴³ In the 1st Marine Division leadership councils (“just a euphemism for race relations,” admitted Brigadier General Simmons, the assistant division commander) were conducted at company, battalion, regimental, and division levels each month.⁴⁴ Keeping in mind that, as General Simmons noted, “the aggravation doesn’t always come from the black side, it’s very often prompted by the white side,” human relations seminars, workshops, and black studies programs were efforts made to improve relations between races.⁴⁵

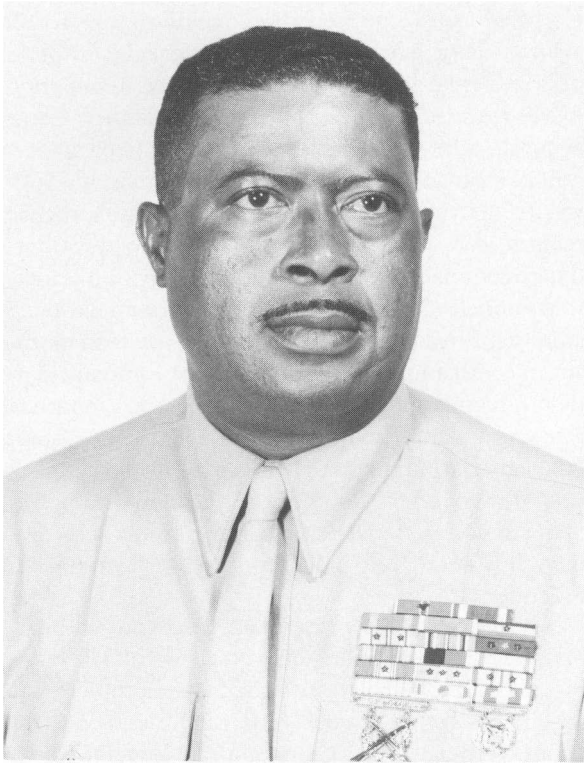
The “Green Marine” approach (there are no black Marines or white Marines, only green Marines) was being recognized as ineffective. Not every problem was solvable through traditional leadership methods. Lieutenant General Jones, Commanding General of the 3d Marine Division in early 1970, and then Commanding General of the Fleet Marine Force, Pacific, said: “I think that ‘all Marines are green’ is an oversimplification of the very basic psychological quivers that are going through our society. And I think that it is wrong.”⁴⁶ In 1970, despite changing attitudes and the Marine Corps’ best efforts, 1,060 violent racial incidents occurred throughout the Corps, resulting in 79 Marines being seriously injured and two killed.⁴⁷ As redeployments from Vietnam continued into 1970, far fewer such incidents occurred in the war zone, and in 1971 there were none.⁴⁸

Administrative Discharge: The Marines Clean House

The Marine Corps was having serious disciplinary problems among its junior personnel. III MAF’s sergeant major in 1971 was Sergeant Major Edgar R. Huff. He noted:

There is an element of men in the Corps today who have gotten past the recruiters This element has managed to fool, momentarily, the leadership of our Corps, just enough to get by for the time being . . . bent on ruining the proud record of the Corps. This element seems to make up less than one percent of the Corps’ strength An element of hate, discontent, and even subversion, aimed at terrorizing They must be found out, punished, and expelled from our Corps.⁴⁹

Besides malcontents, the Marines were troubled by



Department of Defense Photo (USMC) A419515
SgtMaj Edgar R. Huff was III MAF's sergeant major in 1971. He was troubled by the poor quality of Marine recruits that he saw in Vietnam. "They must be found out, punished, and expelled from our Corps."

the highest desertion rate in modern Marine Corps history—twice the rate of the Korean War's peak and nearly four times that of World War II.⁵⁰ The U.S. Army's desertion rate was even higher than that of the Marine Corps.⁵¹ Often both soldiers and Marines deserted while on R & R in the country they were visiting.* Another 2,500 military men deserted and remained in hiding in Vietnam, most of them in Saigon.⁵²

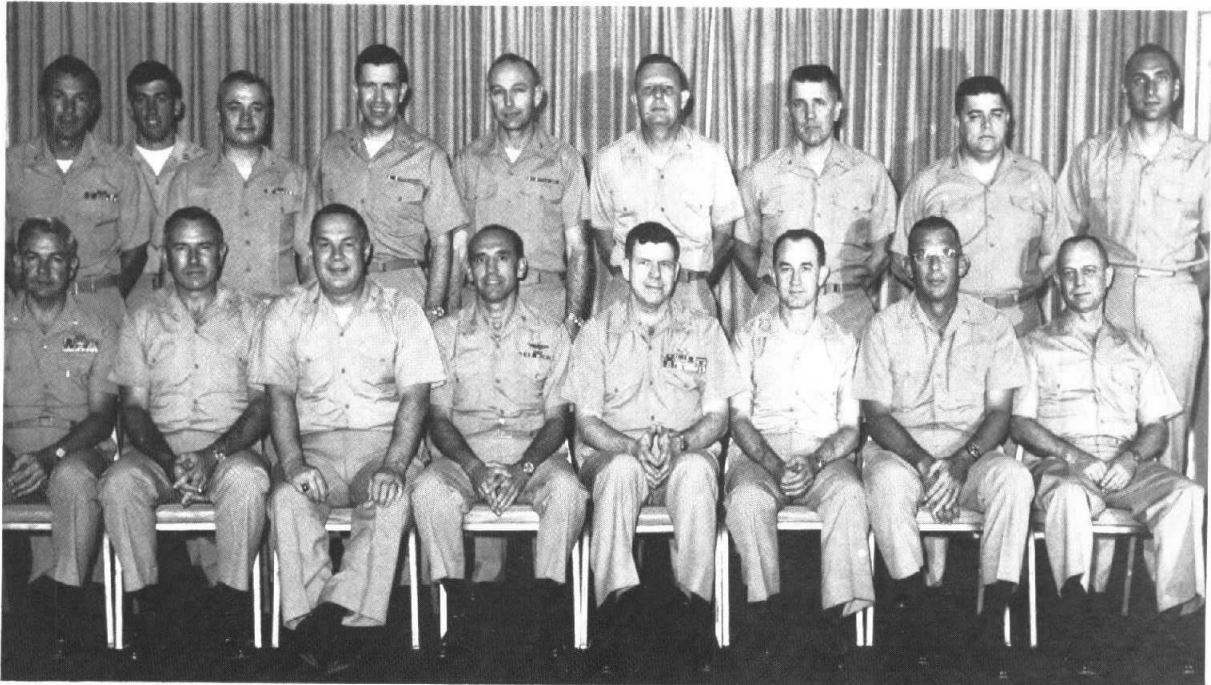
*In a variation on this theme, Marine PFC Douglas Beane deserted on 28 February 1970 while awaiting a general court-martial for black marketeering and threatening a witness. He made his way to Australia, a popular R & R spot, and remained there until he voluntarily returned to the United States in June 1987 and was apprehended by the Marine Corps. Newspaper reports quoted Beane as saying, "I went AWOL after one year of fighting in Vietnam, because I had enough of the war." He had been a cook, assigned to the 1st Force Service Regiment in Da Nang. In a controversial decision, the Marine Corps gave Beane an other-than-honorable administrative discharge, and dropped all charges against him. (*Navy Times*, 22Jun87, and 6Jul87, p. 11; *Washington Post*, 18Dec86, p. A59.)

Administrative discharge was the quick fix for dealing with malcontents, returned deserters, and drug abusers, all of whom, by their sheer number, threatened to overwhelm the military justice system. Colonel Robert M. Lucy, 1st Marine Division SJA, reflected: "If he appears to be a troublemaker . . . we just can't afford to keep him around. We just need to go ahead and get him out [through administrative discharge] because it's too dangerous, in a combat area, to keep that individual around."⁵³ Lieutenant General Jones spoke to the Commandant, General Chapman, about the need to act:

I used the administrative discharge before Chappy said do it. I told him I was doing it, and I said, "I know Senator Ervin's given us hell for 20 years on it, but," I said, "we've got to do it. I'm administratively getting rid of these bums!" and Chappy said, "Go ahead."⁵⁴

As the Marines left Southeast Asia, General Chapman anticipated post-Vietnam manpower reductions and initiated a "house cleaning" to separate those who didn't measure up. "Instead of moving in the direction of what is the mood of society in relaxing discipline," General Chapman told his generals, "what we must do is move in the other direction and tighten it up."⁵⁵ In Vietnam, commanders took full advantage of that policy. The 1st Marine Division, for example, ordered only 121 admin discharges in 1969, but issued over 800 in 1970.⁵⁶ In the first six months of 1970 III MAF issued 199 admin discharges for drug abuse alone.⁵⁷ As Brigadier General Simmons noted: "The greatest boon to our efforts at solving the marginal Marine problem has been the liberalized use of administrative discharges."⁵⁸

Brigadier General William H. J. Tiernan, a former Director of the Judge Advocate Division, recalled the role that the administrative discharge (to escape trial by court-martial, a specific type of admin discharge) played, particularly in major U.S. commands: "It's amazing that we survived that era," he said, "and I think the reason we did survive it was because we developed the discharge . . . in lieu of court-martial."⁵⁹ Often referred to as a "good of the service" discharge, or "GOS," this variety of administrative discharge required only that the defense counsel prepare a statement in which his client admitted his desertion, for example, and requested an administrative undesirable discharge in lieu of court-martial. Almost always approved by the commanders involved, by 1971 the process took only a day or two to complete. It allowed both the Marine Corps and the accused Marine to close the books on offenses without a costly court-martial,



Department of Defense Photo (USMC) CS-0213-11

The 1970 FMFPac meeting of senior judge advocates took place at Camp Smith, Hawaii. Present were, front, from left, Col Robert M. Lucy; Col Donald E. Holben; Col Verne L. Oliver; Col Robert C. Lehnert; BGen Duane L. Faw; Col Marion G. Truesdale; Col Nalton M. Bennett; Col Arthur R. Petersen. Rear, LtCol William H. J. Tiernan; unidentified; LtCol Brian B. Kent; LtCol Robert J. Chadwick; Col Charles E. Spence, Jr.; Col Benjamin B. Ferrell; LtCol Henry Hoppe III; LtCol Joseph A. Mallery, Jr.; and Maj Curtis W. Olson.

on the Marine Corps' part, or a sentence to the brig, on the accused's part. Few deserters were concerned that the discharge was characterized as undesirable. "While the discharge to escape trial definitely did play a role in . . . Vietnam," Brigadier General Tiernan continued, "its use was insignificant in comparison with its use [in the U.S.] as the war wound down."⁶⁰ "We were, frankly, going under, and we could not have survived if we hadn't come up with the . . . discharge to escape trial . . . It was a difficult and very painful evolution because it was contrary to all previous Marine Corps disciplinary standards."⁶¹ While commanders only reluctantly authorized admin discharges in lieu of court-martial for absentees, many of whom had deserted to avoid service in Vietnam, they had little choice. As Brigadier General Tiernan recalled:

The base legal office [in the U.S.] could not have processed this group of malingerers if trial . . . was required in every case . . . It would take literally years to complete the process, even with the maximum utilization of assets, i.e., trying cases both nights and weekends . . . On any given day during this period, members of this group [of unauthorized absen-

tees] could be seen arriving on foot at the gate, some with lengthy beards, headbands, ponytails, earrings, etc When it was recognized that extraordinary methods were required to process these unauthorized absentees, the "GOS" provided a solution.⁶²

Each administrative discharge was processed by lawyers, whether in the U.S. or in Vietnam. Besides assigning a judge advocate to represent the individual, the SJA prepared a recommendation for the commanding general's consideration. In Vietnam in late 1970 Major James H. Granger was a lawyer in the 1st Division's SJA office. He recalled that "administrative discharges peaked in December [1970] when we processed 69 new cases, although we had another big month in March, as the Division prepared to withdraw."⁶³

Upon learning of the increased number of admin discharges, then-retired Lieutenant General Victor H. Krulak said: "I applaud them, because it's wise . . . They're culling out the Project 100,000s, and the dissidents, and recalcitrants . . . the guys who don't belong in the Marine Corps."⁶⁴

From a Lawyer's Case File: Homicide on Patrol

"This is an initial report of possible serious incident involving . . . Vietnamese civilians of Thang Tay (1) hamlet," read the message to the commanding general of III MAF. It continued:

Civilians allege U.S. Marine unit entered hamlet on 19 Feb 1970 and killed women and children. Patrol sent to check allegation found the bodies of approximately 16 women and children recently slain . . . M-16 and .45 cal cartridge cases were noted in the immediate area. Earlier a patrol . . . reported a contact . . . in the same area with an estimated 25 VC resulting in 6 enemy kills. There are some indications that this report is inaccurate. Full scale inquiry commencing immediately.⁶⁵

The hamlet designated Thang Tay (1) on American maps and the events that transpired there were soon known to Marine Corps lawyers by the hamlet's Vietnamese name: Son Thang (4).

Later, during his debriefing at FMFPac Headquarters in Hawaii, Colonel Robert M. Lucy, recently the SJA of the 1st Marine Division, noted:

The fella who really gets out there and meets the [Vietnamese] civilians so frequently is a 19-year-old lance corporal who has very little maturity. It's a tremendous amount of responsibility. He's got all that firepower, and it's not a great surprise that every once in a while one out of many goes astray . . . It's really, really serious business . . . The great majority of them are doing a great job . . . They're bearing such a tremendous burden and load in the war. Still . . .⁶⁶

Colonel Robert C. Lehnert, the SJA for Headquarters, FMFPac, agreed, saying that "the 19-year-old lance corporal is the same one that couldn't be driving the family car, at home, yet is placed in a position of tremendous pressure and responsibility . . . It's a wonder that he functions as well as he does, under the circumstances that we place him in."⁶⁷

Of the hundreds of thousands of Marine patrols conducted in Vietnam, only a very few resulted in improper or illegal acts. The Son Thang (4) case was one of those few. It remains a sad and tragic illustration of misused authority.

The 1st Battalion, 7th Marines operated from Landing Zone (LZ) Ross in southern Quang Nam Province. Lieutenant Colonel Charles G. Cooper, the battalion commander, described the area as "mostly uncultivated rice paddies, tree lines and . . . ruined villages, thinly populated, now. This area is honeycombed with bunkers, trench lines, spider holes, a million and one places a unit could be ambushed."⁶⁸

Complicating the commander's execution of tacti-

cal responsibilities in that hostile environment was the impact of "Mixmaster." In September 1965 the Marine Corps ended its peacetime intertheater battalion rotation between the Eastern Pacific and Western Pacific and moved to an individual replacement system, codenamed Operation Mixmaster.⁶⁹ Lieutenant Colonel Cooper noted that Mixmaster involved not only replacements from the United States, but transfers of Marines within Vietnam, where the tactical situation in the south of III MAF's area of operations differed dramatically from that in the north, along the demilitarized zone (DMZ). "The DMZ was like World War I," Lieutenant Colonel Cooper said. "If it moved, blow it away."⁷⁰ In the more heavily populated south, however, greater restraint was required in combat operations, to preclude or at least minimize civilian casualties. Lieutenant Colonel Cooper recalled the effort to educate new arrivals to the southern portion of the III MAF battle area:

Our approach to the constant influx of new people, both experienced and newly arrived, was to put them through a three- to four-day orientation period, and specific instructions on the rules of engagement . . . It concerned me no end that the mystery of identifying who the enemy was, never was resolved, nor could it have been. Basically you responded to fire, and often that was too late.⁷¹

Despite training in the local rules of engagement, Lieutenant Colonel Cooper contended that "the trooper rightly never understood why we could order an air strike on a village that was the source of [enemy] fire, but a more definitive rule of conduct applied to the man with the rifle."⁷² Cooper believed that Mixmaster played an unnoted but important role in the Son Thang (4) incident.

On 19 February 1970 Company B, 1st Battalion, 7th Marines, commanded by First Lieutenant Lewis R. Ambort, an experienced combat leader, was in a night defensive perimeter on Hill 50, southwest of LZ Ross. The company had been in heavy combat over the past few months and had suffered 14 Marines killed in action and 85 wounded since November. Two weeks before, while pursuing several suspicious Vietnamese women later determined to be enemy nurses, a Company B patrol was led into a booby trap which wounded several Marines.⁷³ A week before a patrol had encountered three Vietnamese boys, estimated to be

⁶⁵Lieutenant Colonel Cooper's recollection is that the patrol was led into an ambush that resulted in heavy casualties and a two-day battalion-level engagement. (LtGen C. G. Cooper ltr to author, dtd 23Jan89, Comment folder, Marines and Military Law in Vietnam file, MCHC.)

9 to 12 years old, carrying automatic weapons. In the ensuing firefight, one of the youths was killed.

That same day, on 19 February, before occupying their night defensive position on Hill 50, Company B had observed five or six Vietnamese boys, between 9 and 13 years old, in a nearby treeline, just before the company was taken under heavy automatic weapons fire. In yet another incident that day a member of the company had been shot and killed in an ambush. Company B had learned that the enemy could be a woman as well as a man and that youth did not preclude a deadly intent.

Late that afternoon the battalion operations officer, Major Richard E. Theer, had radioed Lieutenant Ambort and asked what patrols he planned for the night. "He told me his company was pretty well bushed He only intended to send out local security and one short patrol."⁷⁴ As dusk fell, Lieutenant Ambort ordered a "killer team" formed. At a later court-martial a corporal from Company B (who had not been involved in the events being tried) described a killer team's purpose: "A killer team is to go out and rove around and try to catch the enemy off guard, trying to hit quick and fast and try to get out of the area as quickly as possible without getting any casualties Any movement after dark was considered fair game, because they're [the Vietnamese] supposed to be in their hooches sleeping."⁷⁵

Usually such teams were led by noncommissioned officers, but that night Lance Corporal Randell D. "Randy" Herrod, recently transferred from the 3d Marine Division in the northern part of the III MAF, was in charge. Lieutenant Colonel Cooper recalled that Herrod "was considered bush wise and more mature than most of his comrades."⁷⁶ He was also a proficient map reader, a valuable skill on night missions beyond friendly lines. Further, Herrod was awaiting presentation of the Silver Star Medal, having been recom-

*The same corporal was asked to describe a killer team mission he had been on: "Answer: Yes, sir. Like, let's see There were five of us and we went into a ville area. There was some movement and talking in this one hooch This man from another bunker starts hollering He's got a rifle, or something, so I went over and fragged him. Then, when I did that, all of the women started to run for the hooch—went around back. So my men opened up on the three mamasans. And, the next morning we came back, we found one man and one mamasan dead.

"Trial counsel [to military judge]: Colonel, the government requests that this witness be warned of his rights under Article 31 [against self-incrimination].

"Military judge: It's a bit late in the day, isn't it, Captain?"

mended for the award by his previous platoon commander, First Lieutenant Oliver L. North.⁷⁷

Herrod had been convicted of unauthorized absence at a recent special court-martial. As a result he would be reduced to the grade of private within a few days, when the sentence of the court was approved. On the evening of 19 November he was still a lance corporal.

All of the members of the killer team were volunteers. Herrod was armed with a .45-caliber pistol and an M79 grenade launcher with buckshot rounds. There were four others in the killer team: Lance Corporal Michael S. Krichten, Private First Class Thomas R. Boyd, Private First Class Samuel G. Green, Jr. (on his first patrol, having arrived in Vietnam only 12 days before), and Private Michael A. Schwarz (transferred to the unit from the 1st Reconnaissance Battalion in the northern portion of III MAF just six days before). Lieutenant Colonel Cooper noted that during that period, "this type of small unit jury-rigging was unfortunately not unusual, and the high level of personnel turbulence added to the reduced professionalism."⁷⁸

Shortly before the killer team departed, Lieutenant Ambort spoke to them:

I gave them a pep talk I was talking to Herrod. I told him . . . I didn't want any casualties I emphasized the fact to him not to take any chances, to shoot first and ask questions later. I reminded him of the nine people that we had killed on the twelfth of February, and I reminded him of Whitmore, who had died that day. I said, "Don't let them get us any more. I want you to pay these little bastards back!" That's about it.⁷⁹

At the Article 32 investigation the platoon sergeant, Sergeant Harvey E. Meyers, testified:

I heard this rumor that the killer team was supposed to kill anything that moved, so I asked Private Herrod about it; exactly what he was told to do. And he said that the skipper [the company commander] told him to kill anything that moves. And I told him not to do it. I said, "Don't do anything stupid. Just go out and do your job and get some."⁸⁰

Asked what the term "get some" meant, Sergeant Meyers replied, "It means going and getting as many kills as possible; make contact with VC or NVA; kill as many as possible."⁸¹

**An Article 32 investigation is a pretrial investigation, required before a general court-martial may be convened. It is conducted by an impartial officer, usually a senior lawyer in the SJA's office, to determine if there is reason to believe an offense has been committed, and that the individual charged is the one who committed it. It is similar to a civilian preliminary hearing. The accused's counsel rights are fully applicable at an Article 32, but the rules of evidence are relaxed. Often, evidence comes to light that will not be admissible in a subsequent court-martial, with its more stringent application of evidentiary rules.



Department of Defense Photo (USMC) A371757

"I don't know who shot first, but I think it was a '79 that went off first and then Herrod said to kill them all." Here a Marine fires an M79 grenade launcher.

As darkness fell the killer team moved out. There was a bright moon as they approached the hamlet of Son Thang (4), only 500 yards from Company B's position on Hill 50, but a considerable distance in the area's harsh terrain.⁸² Approaching a Vietnamese hooch, Herrod directed Schwarz to enter and inspect its interior. The six Vietnamese occupants were gathered at the front of the hooch on what was subsequently referred to as the "patio."

Later, testifying under a grant of immunity, Krichten recalled the sudden and unexpected events of the next few minutes:

Herrod gave the order to kill the . . . people, and I told him not to do it . . . Then he says, "Well, I have orders to do this by the company commander, and I want it done," and he said it again, "I want these people killed!" And I turned to PFC Boyd, and I said to PFC Boyd, "Is he crazy, or what?" And Boyd said, "I don't know, he must be." . . . And then everybody started opening up on the people.⁸³

The range was estimated to be 10 to 15 feet. Schwarz, testifying in his own court-martial, said:

A. . . . All of a sudden, Herrod started yelling, "Shoot them, shoot them all, kill them."

Q. What was in your mind at that time?

A. To "get some" . . . I grabbed my rifle, started firing, got with them in the direction they were firing and fired the same way . . .

Q. And what was in your mind at this minute?

A. That we had some gooks in the bushes firing at us.

Q. What about the people [on the patio]?

A. I didn't even see the people. I didn't even remember. I had forgotten completely about the people.

Q. And how did the firing stop?

A. Someone yelled, "Cease fire," . . . Then it dawned

on me that these people, a bunch of people were lying there in front of me.⁸⁴

According to later trial testimony, the killer team then formed in a column and, without discussion, walked towards another hooch. They left behind a Vietnamese woman of 20, three boys aged 13, 8, and 6, and two 13-year-old girls, all dead.

At the second hooch, much the same events occurred. As Krichten testified: "Schwarz was just coming out of the hooch, and Boyd and myself were just coming up on line, when Private Herrod gave the order to kill them all. And everybody hesitated. Then again he hollered at us, and said, 'I want these people killed immediately!' And then everybody started firing."⁸⁵

Schwarz testified concerning the same event:

A. Herrod yelled, "Open up, shoot them, kill them all."

Q. What was in your mind at that time?

A. The gooks had come back; we had more gooks . . . Then I was firing and it dawned on me the women and people were right there in front of me . . .⁸⁶

Again, according to trial testimony, the team turned and, with no discussion, moved on toward a nearby tree line. This time they left behind two women (one of them blind), and two girls, aged eight and six, all dead in front of their thatched-roof dwelling.

At a third hooch the scene was repeated. Schwarz entered to ensure the hooch was empty. Outside, Herrod yelled: "There's a mamasan reaching for something!" and as Krichten later testified:

I don't know who shot first, but I think it was a '79 [M79 grenade launcher] that went off first, and then Herrod said to kill them all, and everybody hesitated again, and he hollered at us again, "I told you that I want these people killed, and I mean it!" By that time everybody started opening up on the people.⁸⁷

Schwarz testified:

Herrod said, "Open up, kill them all, kill all of them!" . . . He fired his '79, then he reloaded, and all this time he was reloading he was yelling, "Shoot them, kill them all, kill all of them bitches!"

Q: Did you ever fire your .45?

A. Yes, sir, I did . . . All of a sudden I started catching these flashes . . . so I started firing through there . . . I thought they were muzzle flashes . . .

Q. What about these people [in front of the hooch]? Did you shoot at these people?

A. I shot towards the people, but I didn't shoot at the people.

Q. You shot between them?

A. Yes, sir. I was trying to put my rounds between them, sir. . . . Then someone yelled, "Cease fire," sir.

Q. What happened after that?

A. I was standing there. I heard a baby cry and Herrod said, "[Schwarz], go shoot the baby and shut it up. . . ."



Marine Corps Historical Collection

This was investigative exhibit number 23 from the Article 32 investigation of events that occurred in Son Thang (4). Huts 1, 2, and 3 mark where the Vietnamese victims died.

I put my .45 down and fired two rounds over the right shoulder [of the baby].

Q. You didn't hit anybody?

A. No, sir. I know definitely I didn't hit anyone.⁸⁸

Krichten then testified: "I heard Private Herrod, I heard Private Herrod tell Private Schwarz to go shoot the baby that was crying, but I don't know if he did. I don't know if he did. All I heard was a .45 go off."⁸⁹ (At the Article 32 investigation, the officer who first viewed the bodies the next day reported that a dead woman at the third hooch was clutching a baby, "about 5 or 6 years old, at the most," who was also dead. "Its head had just been blown apart, and its grey matter was laying on the ground," he testified.)⁹⁰ At the third hooch the killer team left four females, aged 40, 35, 13, and 8, and two boys, 10 and 6, all dead.

Back at Hill 50 the firing was heard, raising concern for the killer team. The platoon sergeant testified: "We called them in and told them to return immediately to the pos [position], and then they told me that they had six confirms [confirmed enemy killed]."⁹¹ Private Herrod and Lieutenant Ambort conferred to formulate the required spot report. Herrod told the lieutenant that there could have been as many as 12 to 16 enemy confirmed killed. Lieutenant Ambort called for an enemy rifle that had been captured several days before. He directed that it now be sent to battalion headquarters with the Son Thang (4) spot report, to add veracity to the claim of six enemy killed.

The report was logged in the battalion operations journal at 1950 that evening: "Spotted 15-20 VC, some carrying arms, with no packs, moving southwest along



Photo courtesy of LtCol Richard E. Theer, USMC (Ret.)
Maj Richard E. Theer, operations officer of 1st Battalion, 7th Marines, shown as a captain during a previous tour of duty in Vietnam. He conducted the initial investigation of the events of 19 February 1970.

trail. Set up hasty ambush, killed 6 NVA and 1 female. Patrol withdrew to Co. CP with 1 SKS.”⁹² The next morning, the battalion intelligence officer led a patrol in the vicinity of Son Thang (4) to check motion sensors that had been planted in the area. He was approached by a Vietnamese woman who indicated that the night before Marines had killed inhabitants of her hamlet. He radioed that information to the battalion command post, where it was received by Major Theer. Theer recalled that “I had switched the radio off the squawk box in the combat operations center to receive [his] message, because he indicated he did not want anyone to hear our conversation.”⁹³ Directed by Major Theer, the lieutenant detoured to investigate and discovered the bodies of 16 women and children laying before three different hooches, along with a number of spent M16, .45-caliber, and M79 cartridge casings. He radioed his discovery to the battalion command post.

The report was again received by the operations officer, Major Theer. Theer, on his third tour of duty in Vietnam, was a highly experienced combat veteran who had operated in the same area as a company commander in 1965-66.⁹⁴ He knew there had been an enemy contact reported in that location the night before by a patrol from Company B and suspected that something was amiss. After approval by the battalion commander, Lieutenant Colonel Cooper, Major Theer recalled all of Company B to the battalion headquarters at LZ Ross to determine what might have happened. Later in court, Major Theer was asked:

Q. When he mentioned that 16 women and children [were dead], this raised no suspicion in your mind?

A. No, because it was in the hamlet where they had a contact on the nineteenth, and I had no reason to doubt that those people might have died as a result of fire between the Marines and the enemy, in that contact. That happens, you know, in war.

Q. Did you find it unusual that there were no men mentioned?

A. Not at all. That area, there are very few men out there. The men that you see out there are usually past the age of 70 or below the age of 10.

To determine if there had been any Marine involvement in the deaths, Lieutenant Colonel Cooper immediately ordered Major Theer to conduct an investigation.* The major interviewed the company commander, Lieutenant Ambort, who admitted that his spot report was false, and that the enemy rifle had not been recovered by the previous night’s patrol. Next, the major interviewed each member of the patrol after warning them, in writing, of their rights to counsel and against self-incrimination. Each of the

*After the war, Lieutenant Colonel Cooper remembered the events somewhat differently. His recollection is that the first report of the incident was overheard on a battalion tactical radio net by himself, sometime after midnight. He recalls that soon afterward he asked for more information and upon learning that only one enemy weapon had been recovered, “I began to smell a rat.” The next morning he recalls flying to Company B’s position by helicopter, and thinking, “something just didn’t add up.” He recalls that he then sent the patrol to Son Thang (4) to investigate his suspicions. He further recalls that before Major Theer later interviewed the patrol, he, Lieutenant Colonel Cooper, had first warned them of their rights and interviewed them, only to stop them when they began to admit the truth. (LtGen Charles G. Cooper intvw, 14Aug, Session 10, Oral HistColl, MCHC; and Cooper ltr to author, dtd 12Sep88). Major Theer, on the other hand, recalls that he and Lieutenant Colonel Cooper had agreed that only he, Major Theer, should question Lieutenant Ambort and the patrol members because of Lieutenant Colonel Cooper’s potential conflicting role as a court-martial convening authority. (Maj Theer ltr to author, dtd 24Feb89, Theer folder, Marines and Military Law in Vietnam file, MCHC.)

five readily agreed to an interview, and each declined legal counsel. All five gave written, sworn statements similar to the oral reports they had given Lieutenant Ambort upon their return from Son Thang (4) the night before: As they approached the hamlet they heard men's voices from a large group gathered on a patio. Thinking they had stumbled onto a meeting of VC, they stealthily approached, only to find the males gone. As they were detaining the remaining women and children they received enemy small arms fire. They returned the fire. Then, hearing noises in a previously cleared hooch, they returned to it and forced the occupants outside, whereupon the patrol was again taken under fire. Again, they returned fire. Implicit in their recitations describing the two instances was that the women and children had been caught in a crossfire. At the Article 32 investigation, Major Theer testified: "In each case their statements were almost identical, with a few discrepancies. And . . . I know that no five people could see the same thing."⁹⁵

The next morning, accompanied by a patrol, an interpreter, and a scout dog, Major Theer made his own examination of Son Thang (4). He later testified:

I went to each of these places that the men had described that they had taken fire from, and I put myself where I would have believed a sniper would have been hidden, or enemy soldier, or soldiers . . . and in every case it was impossible for me to see the patio in front of each house where these people were located.

Additionally, Major Theer looked for signs of the enemy:

There were numerous freshly expended M79, M-16, and .45 caliber casings lying on the patio . . . The patrol probed the entire scene in a 180 degree fan . . . without finding any expended enemy brass . . . or any sign of blood, drag marks, footprints, or broken vegetation . . . At that point I seriously began to doubt the statements the patrol had given me.⁹⁶

Upon returning to LZ Ross the major learned that after Company B had been called back to the battalion headquarters, and before he had conducted his interviews, Lieutenant Ambort apparently had second thoughts about the patrol report. Ambort had gathered the patrol members and told them that events were taking a very serious turn, that it would be best to simply tell the truth, and that he intended to do so himself, starting with revealing his own false spot report.

Major Theer was concerned that the statements he had taken might have been subtly coerced without his having known so. He testified:

I felt that perhaps each of these men might have been under some duress, and I could recall the Colonel [Cooper, the battalion commander] had told me that we must insure that each man's rights were preserved . . . Having been a company commander myself once before, you have a family relationship, the company commander being the father. The platoon commander, the platoon sergeants are the brothers, and all the men are the teenagers of the family . . . There are very tight bonds. If the commanding officer said something, I'm sure that the men would feel like that might be what—they would take it as authoritative. Like your father speaking to you.⁹⁷

Major Theer approached Lieutenant Colonel Cooper and told him that he needed legal advice. He suggested that division legal be consulted and Lieutenant Colonel Cooper immediately contacted division headquarters.

That evening Colonel Bob Lucy, the 1st Marine Division SJA, arrived by helicopter at LZ Ross. For two hours Lieutenant Colonel Cooper, Major Theer, and he discussed the cases in general terms, because it appeared that Colonel Lucy would soon be involved in the processing of the cases. Major Theer asked Colonel Lucy if he should keep, or disregard as improperly obtained, the statements he already had. "He said that was my decision, since I was the investigating officer."⁹⁸

After Colonel Lucy's departure Major Theer decided to again interview each of the patrol members. This time he advised each of them in a typewritten preamble on a blank page: "I should not be influenced into making a statement merely because my commanding officer, First Lieutenant Ambort, told me to tell the truth and tell the whole story." Additionally, "I do desire/do not desire to withdraw my statement which was made on 21 February," was added to the written advice. Each of the five were to be given the option of withdrawing their previous statement, and would have to line out and initial his choice on the new form Major Theer would give each of them. One by one, he called the patrol members to his hooch for a second interview.

Lance Corporal Herrod said he would stand by the statement he had already given. Next, Private First Class Green, after being advised that he could withdraw his first statement and that, if he did so, it could not be used against him, said he too would stand by his original statement, but that he would orally respond to new questions. As Major Theer later testified:

I asked Green to go over the circumstances again . . . and he began to tell me this in his narrative, and then he mentioned sniper fire. When he said that I said, "Now wait a



Marine Corps Historical Collection

A member of the patrol from 1st Battalion, 7th Marines which investigated allegations of murder in Son Thang (4). He stands on the "patio" where six women and children died.



Marine Corps Historical Collection

This photograph was Article 32 investigative exhibit 15. Marine investigators examine the Son Thang (4) hut where four Vietnamese women and children were murdered.

"Open up! Kill them all, kill all of them!" Six women and children died in front of this hut.

Marine Corps Historical Collection





Photo courtesy of Col Robert J. Blum, USMC (Ret.)

Maj Robert J. Blum conducted the joint Article 32 investigation that resulted in charges of murder against the Son Thang (4) "killer team" members. In later years he became one of the Marine Corps' most experienced general court-martial military judges.

minute, Sam. You know and I know that there wasn't any sniper fire." And he became very hostile at that point and turned towards me with fire in his eyes, and said, "What do I care about a gook woman or child? It's them or me! If they get in my way, that's too bad!" And then I asked him to go on, and mentioned, he mentioned the next house, and also taking sniper fire from it. And I told him, I said, "I've been out there. The area that you are describing was impossible for anyone to see where you were, if you were standing on the patio." And, with that, he turned around and said that he wasn't going to answer any more questions . . . that he had been in jail for some 23 months prior to coming in the Marine Corps, and that he wasn't going back. And I said, "Okay, Sam. The interview is terminated. You may return to your post."⁹⁹

Next, Private Schwarz entered and, like the others, was again advised of his right against self-incrimination, to have legal counsel present, to decline a further interview, and to retract his statement of the day before. As Major Theer recalled:

When Schwarz came into my quarters that night, he had a very bold approach. Very confident air about him . . . While we were going over this narrative . . . he became nervous, and continued to smoke cigarettes one after another, and I, I felt that he was under some pressure. And I asked him . . . if what he had been telling me was the truth? And he indicated that it had not been the truth . . . I asked if he was willing to make another written statement, or modify the one that he had already presented me. He said that he would . . . I gave him a pad and a pen. He went in to the desk and commenced writing another

statement . . . During the course of the time he was writing this statement I could hear him sobbing in there, crying in the office.¹⁰⁰

Schwarz was a 21-year-old ninth grade dropout. (He had scored a notably low 79 on the Armed Forces General Classification Test—GCT—a test akin to the civilian IQ test.) In his seven-page, handwritten statement he wrote: "When I realised what was happening I got scared and sick but was ordered to shoot the people and knew if I did not obey the order I could get court mariald. From the time we started shooting I regretted ever going with this team . . . The patrol recieved no sniper fire."¹⁰¹

Within four days of the incident, despite the patrol members' attempt to conceal their crime, it had been discovered, investigated, and revealed by the command. The five suspects were placed in pretrial confinement. The commanding general of the division, who had been kept informed of the progress of Major Theer's investigation, initiated daily message reports to the Commandant of the Marine Corps, as was usual in any major event. The press was advised of the case, and two helicopters flew 11 reporters to LZ Ross, where they were briefed for an hour by Lieutenant Colonel Cooper.¹⁰² Newspaper reports quoted him: "You've got to realize the tremendous mental pressure these men are under . . . Just because they are charged doesn't



Photo courtesy of LtCol Paul J. Laveroni, USMCR
Capt Robert C. Williams was Pvt Randell D. Herrod's military defense counsel. His statements to the media resulted in a warning letter from the SJA.

at all mean they are guilty.”¹⁰³ On 4 March the division SJA, Colonel Lucy, briefed seven newsmen regarding the legal events in progress. Afterwards he reported:

We've been hit with more reporters than Carter has pills We've tried to give the press as much information as possible on these investigations, and on the trials. Of course, we've had [civilian] reporters attend all of our trials Our biggest problem has been how much information to give them in the investigative stage So far we haven't had . . . any real conflicts that couldn't be resolved At the general's direction [I] try to cut them in, informally, on what is going on in the case.¹⁰⁴

Additionally, newsmen were permitted to accompany patrols that passed through or near Son Thang (4).¹⁰⁵ No aspect of the case was hidden.

Press reports of the charges provoked numerous letters to Headquarters Marine Corps objecting to what some perceived as the prosecution of young men for doing the killing they had been trained for. Many of the letters stressed the emotional toll of counterguer-

rilla operations as a mitigating factor. In replying to such letters on the Commandant's behalf, the Judge Advocate Division avoided comment on the pending cases, but noted:

There is no denying that the ordeal of combat puts extreme pressures on the Marines fighting in Vietnam. However, the Marine Corps is fighting in Vietnam in the name of a nation which requires certain standards of civilized conduct to be maintained even under the trying circumstances of combat. Those standards do not permit the intentional killing of persons, such as civilians or prisoners of war, who are not actually participating in combat. When there is an allegation that such an event has occurred appropriate action must be taken in accordance with the law.¹⁰⁶

Seventeen days after Schwarz' admissions a joint Article 32 investigation, at which the government had to present its evidence against all five accuseds, was convened. The investigating officer, Major Robert J. Blum, found it a demanding task to control the inquiry, with its five accuseds and five lawyers. Captain Robert C. Williams, defending newly demoted Private Herrod, was particularly aggressive in his representation: "Sir, are you aware of the fact that I was ordered into this courtroom, today?" He repeatedly moved to have Captain Cecil Forster allowed to join in defending Herrod, despite repeated denials of that request. He questioned the investigating officer's activities outside the hearing and his conversations with the SJA when the investigation was not in session: "During the course of the recess, Mr. Investigating Officer, where did you go? . . . Did you have a conversation with the Staff Judge Advocate?" Captain Williams correctly pointed out that the investigating officer was the same Major Blum who had presided at Private Herrod's special court-martial a few months before. Although Herrod had pleaded guilty then, and Major Blum had recommended clemency by reviewing authorities, Captain Williams made repeated, unsuccessful demands that Major Blum not be allowed to conduct the investigation of Herrod's involvement: "On the start along the long row of motions I have here today, it's requested, first, that a separate Article 32 investigation be held for Private Herrod. . . ."

After eleven days the Article 32 investigation was completed. Acting on Major Blum's recommendations, the commanding general referred Herrod and Schwarz to general courts-martial, in which they were charged with 16 specifications (counts) of premeditated murder. Both cases were referred to trial with instructions that they were to be tried as noncapital. Boyd and Green were referred to general courts, in which they were charged with 16 specifications of unpremeditated

ed murder. Krichen's un rebutted testimony had been that he never fired at any of the civilians. Lieutenant Colonel Cooper recommended that he not be charged at all.¹⁰⁷ Krichen was granted immunity in return for his promise to testify in the trials of the other four.

First Lieutenant Ambort, the company commander, was defended by Captain Frank G. Roux, Jr., at his separate Article 32 investigation. The investigating officer, Lieutenant Colonel James P. King, the 1st Marine Division deputy SJA, ultimately recommended that Lieutenant Ambort receive nonjudicial punishment. At that proceeding, held by the 1st Marine Division's commanding general, Major General Charles F. Widdecke, Lieutenant Ambort received a letter of reprimand and forfeitures of \$250 per month for two months for having made a false report. That was the maximum punishment imposable.¹⁰⁸

Shortly before the first of the courts-martial began, Herrod's military lawyer, Captain Williams, was quoted in the *Pacific Stars and Stripes*:

[Captain Williams] said the case was "political" in nature and controlled by headquarters to make sure that "the Marine Corps is not going to get caught up like the Army did, covering up at My Lai . . . Everybody [is] scared . . . The Marine Corps just wants to wash its dirty linen in public."

Finally, Captain Williams argued that, "evidence presented against the men at a pretrial hearing was not sufficient to warrant a court-martial, but that one was ordered by 'authorities higher than the 1st Marine Division.'" ¹⁰⁹ His remarks were also carried on Armed Forces Vietnam radio. Five days later the SJA, Colonel Lucy, gave Captain Williams a letter citing Canon 7 of the American Bar Association's Code of Professional Responsibility. The letter read, in part:

Disciplinary Rule 7-107 . . . cautions all lawyers in a criminal matter against expressing publicly opinions "as to the guilt or innocence of the accused, the evidence or the merits of the case." I do not intend to take any further action in relation to the statement attributed to you . . . however . . . any further public communications of this type will be closely examined and may require the trial counsel to request official consideration of them prior to trial, by the . . . military judge.¹¹⁰

Private Herrod arranged for civilian counsel shortly after this, and Captain Williams played a minor role at trial.

Private Schwarz' court-martial began on 15 June 1970. The military judge was Lieutenant Colonel Paul A. A. St. Amour. Captains Franz P. Jevne and Charles E. Brown represented the United States. Captain Daniel H. LeGear, Jr., who had represented Schwarz

from the outset, was defense counsel. Seven officer members heard the case, which lasted six days.* During the trial the defense counsel emphasized the danger of the area in which the 1st Battalion, 7th Marines operated. On cross-examination the defense counsel asked the lieutenant who discovered the bodies, "Would you consider the areas surrounding that ville to be 'indian country?'" The lieutenant replied: "I'd say it definitely wasn't pacified, sir."¹¹¹ Lieutenant Colonel Cooper, in a newspaper interview conducted about the time of the trial, said: "That's a big fort, out there," and described the area as one fighting trench and bunker after another. He went on to detail the many instances where Vietnamese children and women had proven to be the enemy.¹¹² (Major Blum later wrote of Lieutenant Colonel Cooper: "He could never quite accept as true that his Marines could commit murder.")¹¹³ Confirming the hostile nature of the area's inhabitants, the Vietnamese district chief reported that the husbands of three of the dead women were confirmed to be Viet Cong, and that the inhabitants of Son Thang (4) had refused resettlement.¹¹⁴

Much of the court-martial was spent in an unsuccessful defense effort to keep Schwarz' damning written statement from being admitted into evidence. When defense motions and objections were overruled, and it was admitted and shown to the members, the defense shifted to an attempt to demonstrate that Schwarz had only acted in obedience to the direct orders of Herrod to shoot the victims.

In the end, Private Schwarz was convicted of 12 of the 16 specifications of premeditated murder. The members apparently accepted Schwarz' testimony that, at the hooch where four victims had been killed, he fired only when he thought he was himself being fired upon by an enemy. They found him not guilty of those four murders. The military judge's lengthy instructions to the members included: "I repeat, the accused committed no crime unless he knew that the enemy forces were not attacking him and his teammates at the time the alleged victims were allegedly shot."¹¹⁵ The later

*There is no prescribed maximum number for a court-martial panel. The minimum number for general courts is five, and three for special courts. Any number above the minimum may be initially appointed, often 8 to 12 for general courts. That number may be reduced by an unlimited number of challenges for cause available to both sides. Each side also has one preemptory challenge. As long as the minimum number remains on the panel after challenges are exercised, the trial proceeds. If challenges reduce the membership below quorum, the court is recessed for as long as it takes to appoint new members and secure their attendance.



UPI/Bettmann Newsphotos

Pvt Michael A. Schwarz with his lawyer, Capt Daniel H. LeGear, Jr., in the second day of Schwarz' trial. In his fourth court-martial, Schwarz was sentenced to confinement at hard labor for life for the premeditated murder of 12 Vietnamese women and children.

appellate opinion in Schwarz' case held that "by their conviction of the accused, the court members necessarily found as a matter of fact that the accused could not have honestly and reasonably believed that Herrod's order to kill the apparently unarmed women and children was legal."¹¹⁶ Outside the courtroom, Boyd heard of the verdict and cried: "They're a bunch of pigs, man. A bunch of . . . pigs."¹¹⁷

After determining Schwarz' guilt, the members were required to determine an appropriate sentence. During that phase of the trial they learned that, in just over three years, Schwarz had compiled a disciplinary record of five nonjudicial punishments, a prior summary court-martial, two special court-martial convictions, and now a general court-martial conviction. The members sentenced him to be confined at hard labor for life, to forfeit all pay and allowances, and to be dishonorably discharged from the Marine Corps.

The day after Schwarz was convicted, the court-martial of Private First Class Boyd, who already had one special court-martial conviction, was convened. As in the Schwarz case, Lieutenant Colonel St. Amour was

the military judge. Captain Charlie Brown was trial counsel. In addition to his military defense counsel, Captain Michael P. Merrill, Boyd was defended by Mr. Howard P. Trockman of Evansville, Indiana. Mr. Trockman was reportedly paid through donations from the citizens of Evansville, Boyd's home town.¹¹⁸ The 19-year-old Boyd and his lawyers opted to be tried by the military judge alone, perhaps out of concern for the heavy sentence the members had imposed in the Schwarz case. Even though Boyd would have had an entirely new panel of members, Boyd and his lawyers went "judge alone." It could not be any worse and it might be better.

Lance Corporal Krichten, again testifying for the government, swore that Boyd "fired well over their [the victims'] heads when they were already on the deck He was aiming over the people by about five feet and was the last to fire in all three shootings."¹¹⁹ Krichten had not mentioned those facts in Schwarz' trial, but that testimony from the principal prosecution witness made Boyd's defense considerably easier. (Krichten's grant of immunity required him only to



Photo courtesy of Col Robert J. Blum, USMC (Ret.)

Capt Franz P. Jevne, left, prosecuted two of the four Son Thang (4) cases. Capt Daniel H. LeGear, right, defended one. They sit outside the 1st Marine Division Officers' Club on Hill 327 with Capt Theodore J. Padden after the courts-martial had ended.

PFC Thomas R. Boyd, right, and his defense counsel, Capt Michael P. Merrill, on their way to court on 22 June 1970. PFC Boyd was acquitted of all charges against him.

Associated Press



testify truthfully in the trials of the other four; it could not require that he testify "against" the other four.) Boyd was found not guilty a few hours later.

Private First Class Samuel G. Green, Jr.'s trial began shortly thereafter. Again, the military judge was Lieutenant Colonel St. Amour. Again, the trial counsels were Captains Jevne and Brown. Captain John J. Hargrove defended the 18-year-old Green. The case was heard by three officer and two enlisted members. Several pretrial motions had been denied, including a change of venue motion. Once more, the government's principal witness was Krichten, who testified that Green had fired his weapon in each instance where the victims had been killed, but that he did not see Green personally shoot any one of the 16. The government, however, did not proceed on the theory that Green had personally killed anyone. Rather, it urged that he was guilty as a principal to the murders, for having aided and abetted those who actually shot the victims—Herrod and Schwarz.

As in the Schwarz trial, the defense argued that whatever Green had done was only in obedience to Herrod's orders and stressed Herrod's command of the patrol and his combat experience, as opposed to Green's youth, his 12 days in Vietnam, and five and a half months total Marine Corps service. After the close of evidence, and arguments by counsels, the military judge's instructions to the members included:

If you find beyond a reasonable doubt that the accused, under circumstances of his age, and military experience, could not have honestly believed the orders issued by his team leader to be legal under the law and usages of war, then the killing of the alleged victims was without justification. A Marine is a reasoning agent who is under a duty to exercise judgment in obeying orders.¹²⁰

As in Schwarz' case, the members apparently believed that Green could not have honestly and reasonably believed an order to kill unarmed women and children was legal. He was convicted of 15 specifications of unpremeditated murder. He was acquitted of one specification in which testimony indicated Herrod alone had shot one woman, and Schwarz had followed Herrod's order to finish her off. Apparently giving Green the benefit of his youth and inexperience, the members sentenced him to confinement at hard labor for five years, reduction to private, forfeiture of all pay and allowances, and a dishonorable discharge.

A week after Green's conviction, 21-year-old Private Randell D. Herrod went to trial.¹²¹ The military judge was Commander Keith B. Lawrence, JAGC, USN. Trial counsels were Captains Charlie Brown, Gary E.

Bushell, and J. Len Skiles. Defending Herrod were Mr. Gene Stipe, assisted by Mr. Denzil D. Garrison, both Oklahoma state senators who had agreed to defend one of their constituents. They were assisted by civilian attorneys Richard Miller and Harry Palmer and military counsel, Captain Williams. As in the Boyd case, reports arose that Herrod's defense costs were paid through donations from the citizens of Oklahoma. In fact, State Senators Stipe and Garrison received no payment for their services and incurred considerable out-of-pocket expenses as a result of their representation of Herrod. "We did not ask for a fee, nor did we expect one," Senator Garrison later wrote.¹²² Captain Williams' services, of course, were free. One hundred and sixty thousand Oklahomans did sign a petition to the Commandant of the Marine Corps urging the release of the five "unjustly confined" men.¹²³ All civilian defense counsels were flown to Vietnam at Marine Corps expense.¹²⁴

The courtroom was small and filled by the various counsels and media representatives. Although all of the judge advocates assigned to the defense section had become part of the defense effort, there was little room for them to view the proceedings.¹²⁵

The defense's pretrial motions were numerous and aggressively presented, supported by witnesses and legal authority. The government vigorously met each defense gambit with its own witnesses and citations. The defense raised motions for a new Article 32 in-
Capt John J. Hargrove defended PFC Samuel G. Green, Jr. Green was convicted of the unpremeditated murder of 15 Vietnamese women and children.

Photo courtesy of Col Robert J. Blum, USMC (Ret.)





Photo courtesy of Mr. Denzil D. Garrison

The 1st Marine Division courtroom where the Son Thang (4) defendants were tried. The members' box spans the far side of the room. The witness stand is to the left. The reporter's table is partially visible at right. The military judge's bench is out of the photo to the right.

vestigation (denied), a change of venue (denied), production of the service records and billeting assignments of everyone involved in the case (records denied/billeting granted), all messages mentioning the case, including classified message traffic (granted), suppression of photographs of the dead victims (granted—a significant defense victory), release of Herrod from confinement (denied), autopsies of the victims (withdrawn), “relief from all of the other oppressive procedures of the UCMJ” (denied), for the Marine Corps to pay for the hire and attendance of a civilian psychiatrist (granted), for an entirely enlisted members panel (denied), and numerous other motions, as well. Disposing of motions took five days.

The maximum penalty for premeditated murder was death, but the commanding general had direct-

ed that Herrod's case be considered noncapital. Six months after the Son Thang (4) incident, the presentation of evidence in the court-martial of the team leader began. (The government now referred to the patrol as a “mobile night ambush,” rather than a “killer team.”) The prosecution took less than eight hours to present its case. The defense took less than three days, including presentation of testimony from Lieutenant Colonel Cooper, who returned to Vietnam for the sole purpose of testifying on Herrod's behalf. He returned only four days after reaching the United States, following his own Vietnam tour.¹²⁶ In addition, Senators Stipe and Garrison presented evidence of an American M60 machine gun that had been captured in the vicinity of Son Thang (4) shortly after the incident. That supported other testimony that a machine

gun was heard by Company B personnel, firing while the killer team was in Son Thang (4), and buttressed the contention that the team had been returning fire when the victims were killed. Senator Garrison noted: "In my judgement, this was a very important facet of evidence. Schwarz and Green did not have that testimony to corroborate their story."¹²⁷

Major Theer's tour of duty was also completed before the courts-martial began. He twice returned to Vietnam to testify, first against Schwarz, then Herrod. He later wrote that he had been "very disturbed" upon learning that Lieutenant Colonel Cooper had testified for the defense.¹²⁸ Additionally, although Major Theer was a government witness in the Herrod trial, he had been unaware of the testimony regarding the captured machine gun. Years later, when he learned of it Major Theer wrote:

I very clearly recall that M-60 capture. I frequently spoke by radio with the S-3 [operations officer] of 3d Battalion,

21st Infantry, 196th [U.S. Army] Brigade . . . I remember him telling me about one of his units capturing an M-60 machine gun after an engagement with a VC unit south and west of Hiep Duc. That location was over 15 miles southwest of Son Thang (4) . . . Further, there was never any mention of a machine gun being fired by any of the patrol members in the alleged enemy contact on the evening of 19 February.¹²⁹

As the trial continued, Herrod's platoon commander, Second Lieutenant Robert B. Carney, also testified in his behalf, as did his past platoon commander, First Lieutenant Oliver L. North. Through Lieutenant North's testimony the members learned of Herrod's pending Silver Star Medal, direct evidence of which had been ruled inadmissible. A distinguished Oklahoma psychiatrist, Dr. Hayden Donahue, testified as to the conditioned response that Marine training ingrained in infantrymen like Herrod. Finally, Herrod took the stand in his own defense and repeated that the victims had been killed in cross-

The Herrod defense team poses with some of the defense witnesses. From left: State Senator Gene Stipe, partially hidden; attorney Mr. Richard Miller; Capt Robert C. Williams; Pvt Randell D. Herrod; 1stLt Lloyd S. Grant; 1stLt Oliver L. North; attorney Mr. Harry Palmer; 1stLt Lewis Ronald Ambort; and State Senator Denzil D. Garrison.

Photo courtesy of Mr. Denzil D. Garrison



fires between his team and enemy forces. He told the members: "I do not now, and I did not then, feel that I had killed anyone it wasn't necessary to kill."¹³⁰

Before resting, the defense made several motions for a mistrial based upon purported misconduct by government counsels. All were denied. After resting, there were further defense motions for mistrial, renewal of motions previously denied, motions to dismiss, and motions for a finding of not guilty, one based on Herrod's asserted lack of mental responsibility. All were denied.

After 12 days in court, the members were instructed, and retired to deliberate. They returned with their verdict after three hours. The members found Herrod not guilty of all charges and specifications. "We walked the patrol leader," defense counsel Garrison later said, seemingly still amazed.¹³¹

Captain Paul J. Laveroni, a 1st Marine Division defense counsel, recalled that the outcome "raised all the usual questions in the minds of laymen, who couldn't understand how Herrod had walked, when two of his subordinates ended in the slammer."¹³² They were not unreasonable questions.

Private Herrod was released from confinement. Soon thereafter, the deputy SJA, Lieutenant Colonel Peter N. Kress, escorted him to division headquarters, where he received the Silver Star Medal for his combat actions before Son Thang (4). It was a muted award presentation, conducted by the division personnel officer, Colonel Hugh S. Aitken.¹³³ Within days, Private Herrod returned to the United States and was discharged, having served his enlistment.¹³⁴

The commanding general of the 1st Marine Division reduced Private Schwarz' confinement from life to one year. His dishonorable discharge was left undisturbed. With credit for "good time" and for pretrial confinement, Schwarz was eligible for release in January 1971, less than a year after the murders of which he stood convicted.

On appeal, Schwarz' lawyers argued that the acquittal of Herrod required disapproval of Schwarz' conviction. The appellate court did not dispute Herrod's role. ("The record . . . shows beyond any doubt that Herrod's orders to kill the unarmed women and children were patently illegal.") It noted, however, that Schwarz' conviction was based upon the theory that he either did the actual killing, or aided and abetted the actual killing. Under the latter theory, the court held that, "the acquittal of the principal [Herrod]



Photo courtesy of Mr. Denzil D. Garrison
The accused and witnesses for the defense await the trial's outcome. Pvt Herrod is flanked by his company commander, 1stLt Lewis R. Ambort, left, and his former platoon commander, 1stLt Oliver L. North, who had recommended Herrod for the Silver Star Medal.

presents no impediment to the trial and conviction of a person charged with aiding and abetting the commission of the crime. This is because one who aids or abets . . . is guilty as a principal of a substantive, independent offense." The appellate court denied Schwarz' appeal.¹³⁵

Private Green's five years confinement was similarly reduced by the commanding general to one year. His dishonorable discharge, too, remained undisturbed. On appeal, his argument that Herrod's acquittal required disapproval of his own conviction met the same result as Schwarz' similar argument.¹³⁶

Future Secretary of the Navy James H. Webb served as a Marine Corps platoon commander and company commander in the Son Thang (4) area.* He found unfairness in the conviction of Private Green and later wrote a law review article urging that "justice was not served."¹³⁷ He suggested several bases upon which the

*Webb earned the Navy Cross, Silver Star Medal, two Bronze Star Medals, and two Purple Hearts. In 1972 he was medically retired from the Marine Corps as a captain, and in 1975 attained a law degree.

conviction should be set aside, including Green's belief that Herrod's orders to kill the civilians were justified, and that Green had a duty to obey the orders of his team leader. Captain Webb, an infantry officer, also pointed out that none of the members who heard Green's case had infantry backgrounds. While still in law school, Webb aided a civilian attorney, Mr. James Chiera, in an unsuccessful attempt to have the courts of Ohio, which had jurisdiction over then-civilian Green, set aside the court-martial conviction. Although the civilian judge dismissed the collateral attack on the military conviction he was sufficiently impressed with Green's case to himself write the Secre-

tary of the Navy urging clemency. The Secretary declined to act.¹³⁸

In 1977, at Webb's urging, Green's dishonorable discharge was upgraded to a general discharge.¹³⁹ But in July 1975, before Webb's intervention, former Private Green had shot and killed himself.

While awaiting a general court-martial for his part in the coverup of the My Lai incident, Army Colonel Oran K. Henderson charged that every large American combat unit in Vietnam had its own My Lai.¹⁴⁰ If there was anything positive in the Son Thang (4) cases, it was that no thought was ever given to a My Lai-type coverup at any point, at any level.

CHAPTER 9

1970-1971: Redeployment

Force Logistic Command: Playing Catch-Up—From a Lawyer's Case File: The Defense Wins Four 1st Marine Aircraft Wing: Prepared for Takeoff—1st Marine Division: New Broom—Trying Cases Last Call for Combat—Closing Cases Versus Best Defense—The Last Marine Lawyer Out—Perspective

By early 1970 the timetable for Marine Corps withdrawal from Vietnam had taken form. U.S. Army units in the I Corps area were assuming Marine Corps tactical responsibilities. During March, in an exchange of roles, the Army's XXIV Corps took command of all remaining United States forces in the I Corps area. The reduced III MAF Headquarters, now under Army operational control, continued to command the 1st Marine Division, squadrons of the 1st Marine Aircraft Wing, and elements of Force Logistic Command. The Army's XXIV Corps took over the III MAF compound east of Da Nang. The Marine headquarters moved to Camp Haskins, Red Beach, near FLC's cantonment at Camp Books. By 9 March, the date of the official change of command, III MAF Headquarters was reduced in strength to 105 Marine Corps and six Navy officers. Under it were 40,000 Marines, down 15,000 from just two months before.¹

Colonel Marion G. Truesdale continued as III MAF Headquarters staff judge advocate (SJA) until the end of February 1970. Upon his departure, III MAF SJA responsibilities were assumed by the SJA of FLC, Colonel Arthur R. Petersen, who had been promoted to that grade in October 1969.² Three Marine Corps SJA offices remained in Vietnam: those of the 1st Marine Division, 1st Marine Aircraft Wing, and FLC/III MAF Headquarters.

Force Logistic Command: Playing Catch-up

In July 1969 when Colonel Petersen first became FLC's staff judge advocate, he found an "appalling" backlog of untranscribed cases, a shortage of both judge advocates and court reporters, and equipment deficiencies.³ "It was in a hell of a mess," recalled Captain W. Mark Wood, one of his trial counsels.⁴ The tapes of 34 general courts-martial awaited transcription, an alarmingly high number, and there was no accurate count of the special courts awaiting typing.⁵ If a court-martial is not tried within a reasonable period, or if a conviction is not reviewed for legal sufficiency and correctness in timely fashion a conviction may be set aside and the charges are subject to dismissal. FLC's backlog was affecting the review of cases at the appellate level.

FLC's SJA office was a very active trial shop. In 1969, with roughly 23 percent of the Marines in Vietnam assigned to it, its 12 judge advocates (the average number in 1969) tried 55 percent of all general courts-martial and 46 percent of all special courts tried by Marines in Vietnam.*

The assignment of lawyers to Vietnam did not recognize FLC's disproportionate case load. As 1970 began, 17 judge advocates were assigned to FLC, 26 to the 1st Marine Division, and 14 to the 1st Marine Aircraft Wing. That distribution was consonant with the number of Marines assigned those commands. However, it did not take into account that aircraft wings historically had fewer courts-martial than other similarly sized commands. Additionally, units engaged in combat operations also had a lower disciplinary rate when compared to rear-echelon units like FLC.

Headquarters Marine Corps and FMFPac responded to Colonel Petersen's urgent requests and the number of judge advocates assigned to FLC began to increase from 13 in September 1969 to 15 in November, then 17 in January, and eventually a peak of 22 in late 1970. Throughout 1970 the number averaged an adequate 15.⁶

When lawyer strength was still low, Colonel Petersen, his deputy, Lieutenant Colonel Carl E. Buchmann, and the legal administrative officer, Chief Warrant Officer 2 Len E. Pierce, redoubled their efforts to reduce the transcription backlog. Captain Wood recalled, "Those guys worked themselves from morning till night, and everybody else, too."⁷ Reporters and typists were assigned to shifts and the typing of backlogged court-martial tapes progressed around the clock. One judge advocate was assigned to do nothing but write reviews of those records—seven days a week. Trips to Da Nang were curtailed, liberty runs to China Beach were cancelled, and leave was delayed.

*In January 1970, FLC personnel totalled approximately 11,550; the 1st Marine Division, 24,000; the 1st Marine Aircraft Wing, 12,050; Headquarters III MAF, 3,050 (Cosmas and Murray, *Vietnamization and Redeployment*, App. F, pp. 457-461). In 1969, FLC tried 68 of 123 GCMs and 472 of 1023 specials (Navy JAG, Code 64.2; and FLC ComdC, Jan-Dec69, MCHC.)



Photo courtesy of Capt G. H. O'Kelley, USMCR

Judge advocates seen at Camp Books. Kneeling, Capt Reynold L. Galeen, Jr. Standing, from left, Capt Richard L. Franks; Capt Stephen H. Vengrow; Capt Tommy W. Jarrett; Capt John S. Papa; Capt W. Mark Wood; Capt Jacob R. Henderson, Jr. (raised fist); Capt Richard S. Towers; Capt Terrance B. Rodsky; and Lt Kenneth Rothmeier, Medical Corps, USN.

Reducing the backlog overrode all considerations except prosecuting current cases.

Since the movement of the courtroom to the air conditioned, former computer building in late 1969, courts-martial proceeded smoothly. But more court reporters and typists were needed to attack the backlog and to maintain the flow of current trials. Because typists were not arriving from stateside schools or commands, Colonel Petersen sought them from local FLC personnel officers. Unlike the response to the reporter shortage in 1966, commanders were unwilling to give up personnel for an in-house reporter school since the trial and processing of courts-martial was now solely the SJA's responsibility. As Colonel Petersen noted, "No general officer who is already understrength in personnel . . . wants to surrender even more billets to bring up to [strength] the office . . . that deals exclusively with his 5 to 10 percent 'bad asses.'"⁸ But recognizing the reluctance to meet the problem did not ease it. "My patience with personnel types is growing thin," Colonel Petersen wrote, "poor planning, or guessing, as to an adequate [SJA office] table of organization initially, and ever-increasing requirements

under the law, have placed FLC in the position it presently finds itself."⁹

The enlisted tide began to turn when Brigadier General Mauro J. Paladino, FLC's new commanding general, ignored manning levels and tables of organization and ordered 10 clerk-typists transferred from various other FLC units to the SJA's office for training as legal clerks. Gunnery Sergeant John Casey, the reporter chief, soon had them typing excellent records of trial. By mid-1970 the accumulation of untyped trial records was shrinking and lawyer assignments were increasing.¹⁰

During 1970 the number of special court-martial convening authorities dropped from 16 to 11 as units departed Vietnam.¹¹ That, too, helped the lawyers reduce backlogs. In the months remaining before FLC was itself deactivated, the caseload wound down with the decreasing number of personnel—only 3,800 by year's end.¹² From July 1970 through March 1971 eight general and 144 special courts-martial were tried. It was a large but manageable caseload.¹³

Colonel Petersen was relieved by Colonel Daniel F.

McConnell on 1 July 1970. Colonel McConnell had enlisted in the Marine Corps during World War II and served in the Marshall Islands and on Okinawa. After the war he was a first sergeant when selected for commissioning. He commanded a Marine aircraft group headquarters squadron in Korea during that conflict and obtained his law degree in 1954. Now on his second tour in Vietnam, he inherited 44 previously tried cases that remained to be cleared. Although there were sufficient captain judge advocates, Colonel McConnell was essentially without a deputy and not a single major was assigned to his office. FLC's personnel situation, so recently corrected, was again skewed in anticipation of deactivation and withdrawal from Vietnam. Colonel McConnell recalled that working hours for legal personnel were from 0700 to 2100. "Fortunately, I had some fine captains," he said.¹⁴ Nevertheless, FLC's last two years in Vietnam were difficult ones.

From a Lawyer's Case File: The Defense Wins Four

On 5 February 1970 The Chiffons, a three-girl Australian singing group backed by a three-man combo,

The new SJA of FLC, Col Daniel F. McConnell, found many backlogged cases, as had his predecessor.

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



was performing at "Andy's Pub," the Maintenance Battalion enlisted men's club at FLC's Camp Books. Initially the USO group had been asked to cancel their show because of simmering racial discontent among the battalion's Marines, but recognizing that cancellation could cause more problems than it might avoid, the show went on. About 400 Marines crowded into the 50-by-30-yard patio outside the club, which was surrounded by a seven-foot-high wooden fence.

At 2045, as the girls sang one of their last numbers, a band member saw an object tossed over the fence. A few seconds later, a second object was thrown over. The first hand grenade had failed to detonate. The second exploded.¹⁵ "Suddenly there was an explosion," a band member later said, "and sand, stones, and bits of wood, and metal from tables and chairs came flying up on the stage."¹⁶ Corporal Ronald A. Pate, who had been standing by the patio fence watching the show, was killed. Sixty-two other Marines were injured, 52 of them requiring hospitalization.¹⁷

A few hours before the explosion, there had been a gathering of 20 to 30 black Marines assigned to Maintenance Battalion. In the past, many similar meetings took place on the battalion basketball court. Grievances were aired and responses discussed. The most frequent complaints were seemingly minor issues—haircut regulations and the lack of soul music in the enlisted club's jukebox. The battalion commander later testified he had been aware of the meetings for five months, but had taken no action either to address the men's concerns or to end the gatherings.¹⁸ At the meeting on 5 February Lance Corporal Joseph L. Jones told the assembly, "we're going to 'do' some beasts [white Marines] tonight," and those present were warned not to go to the enlisted men's club.

In a written statement he later provided investigators, Corporal Ronald E. Gales admitted breaking into an ammunition storage locker, assisted by Lance Corporals Jones and James B. Addison. They stole 12 M26 fragmentation hand grenades and placed them in an empty sandbag.¹⁹ The three were then joined by Lance Corporal Andrew M. Harris, Jr. All four had been at the earlier meeting on the basketball court.²⁰ Asked if the only motivation for the attack had been racial, trial counsel Captain Mark Wood opined: "Definitely . . . This was a deliberate, carefully thought out attempt to kill a hell of a lot of people . . . strictly because of racial problems. That was the only motivation."

In the early evening darkness Gales, Harris, Jones,



Marine Corps Historical Collection

The scene in "Andy's Pub" shortly after an M26 fragmentation hand grenade was detonated near the fence, at right. One Marine was killed and 62 others were injured.

and Addison walked to the enlisted men's club where The Chiffons were performing. Jones entered to warn blacks inside to leave, but because of the crowd, reached only a few. Those he did reach left without question. According to Gales, when Jones rejoined the other three outside the club, Harris exclaimed, "I'm going to fire a whole bunch of these beasts up!" and lobbed a grenade over the fence. According to Gales, Harris had pulled the grenade's pin, but neglected to remove the tape that secured the spoon to the striker, preventing detonation. When it failed to detonate, again according to Gales, Harris tossed the second grenade over the fence.* Blacks and whites alike were wounded in the explosion that followed.²¹

Sirens blared as reaction platoons rushed to their assigned areas, assuming that enemy infiltrators were inside the wire. Minutes later, when the first, unex-

ploded grenade was found in the debris, investigators realized what had happened. After several days of intense investigation Jones was identified as the Marine who had warned blacks to leave the club. He was apprehended, and the other three were soon identified. Harris, two days from his discharge, was returned from Camp Pendleton to Vietnam to stand trial.

The trial counsel for all four cases was Captain Wood, who was assisted by Captain John A. Bergen. Although investigators had been able to identify the accuseds by piecing together numerous statements, there were no witnesses to the act who could provide testimony against the four, other than the conspirators themselves. The investigators did, however, have the detailed written, sworn statement of Gales, which appeared sufficient to convict him, at least. He might then be used as a witness against the other three. Still, when Gales' defense counsel, Captain Stephen H. Vengrow, offered his client's testimony in the other three cases in return for immunity, the command, for reasons not recorded, accepted the offer. Captain Wood

*Other evidence indicated that Gales threw the grenade that had not detonated, and that Harris threw the one that did detonate. It was never proven who threw which grenade, however.

was not consulted, although defense counsel Captain George H. O'Kelley recalled that "the government was sucking wind for any strong proof, without Gales." Later events demonstrated that Gales was not the government's best choice for immunity.

Gales was transferred to the brig at Iwakuni, Japan, out of fear for his safety in the III MAF brig, where anyone testifying for the government faced physical harm by other prisoners. Several other Maintenance Battalion personnel who provided statements incriminating the four accused were transferred to Okinawa "for their own safety. It was feared that reprisals would be taken against them by unknown persons."²²

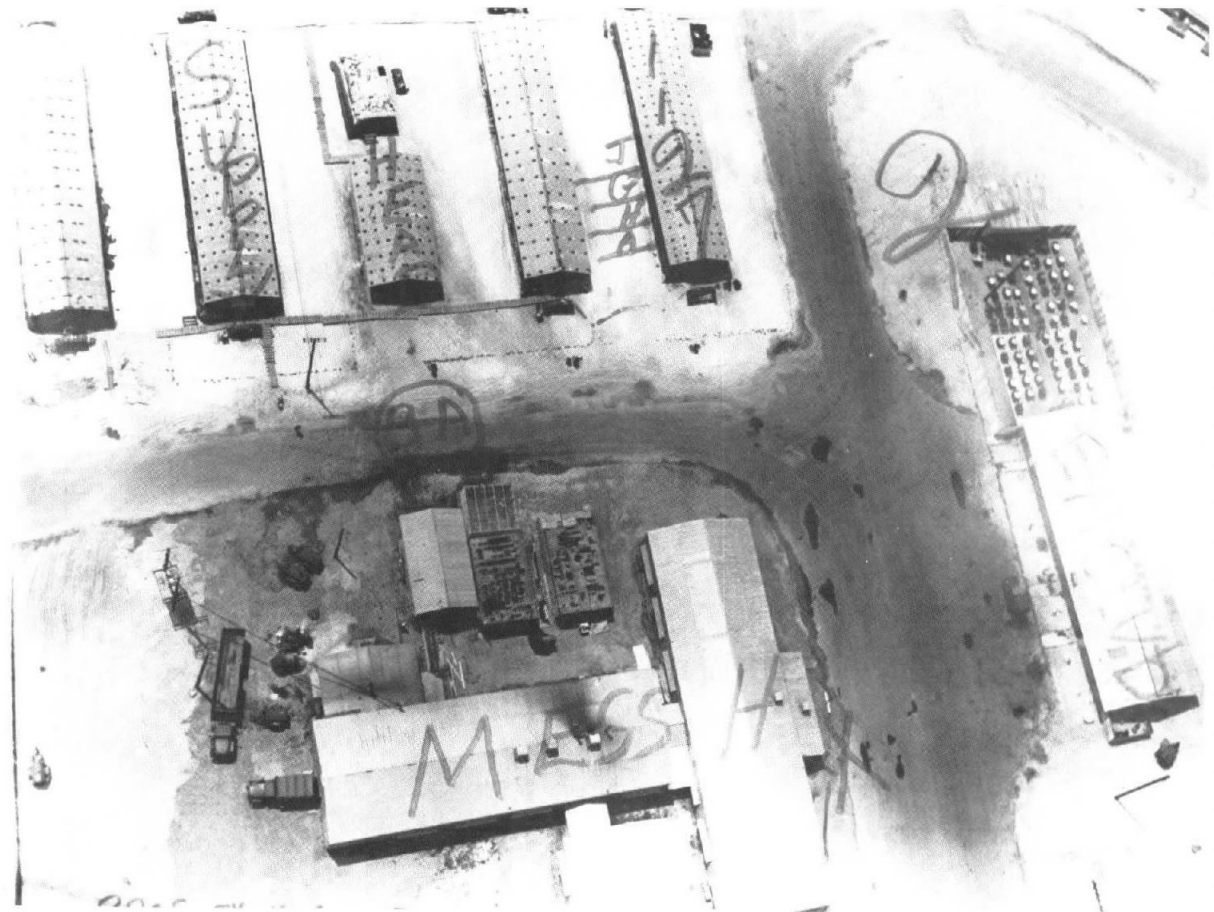
On 1 June 1970 Lance Corporal Andrew M. Harris went on trial before Lieutenant Colonel Paul A. A. St. Amour and a panel of officer members, charged

with premeditated murder, conspiracy to commit murder, and 62 specifications of assault with intent to commit murder. He was defended by a seasoned civilian counsel, Mr. Reuben A. Garland of Atlanta, Georgia, and by his military defense counsel, Captain O'Kelley. Later, Captain Wood ruefully said: "I can tell you, I learned a lot about the practice of law from that civilian counsel."²³

Testifying under his grant of immunity, Gales described the events of 5 February and identified Harris as having thrown both grenades. Taking the stand in his own defense, Harris swore it was Gales who threw both grenades. In this "swearing contest," the prosecution had the problem of employing one "bad guy" to point the finger at another. Unfortunately, the prosecution's "bad guy" had a poor disciplinary record, while the accused had a clean record. That fact was spotlighted for the court by Mr. Garland.

This was prosecution exhibit 4 from U.S. v Harris. The enlisted men's club is at right. The messhall where the accused conspirators worked is bottom center. The area between the barracks where they gathered before walking to the enlisted men's club is upper center.

Marine Corps Historical Collection





Marine Corps Historical Collection

This was the first fragmentation hand grenade that was tossed over the fence of the enlisted men's club. The conspirators pulled the pin but neglected to remove the tape that allowed the striker to operate.

After a six-day trial, the members found Lance Corporal Harris not guilty of all charges. His enlistment having been served, he was honorably discharged.

Next to be tried was Lance Corporal James B. Addison. All parties agreed that he had not thrown the grenades, but he was to be tried as a principal to the act. Defended by Captains William A. Price and Reynold L. Caleen, Jr., Addison's case, too, was heard by Lieutenant Colonel St. Amour and a second panel of officer members. After Gales testified against him, Addison swore that on 5 February he had turned and ran when he realized what was about to happen. Choosing, as in the first trial, to believe the accused and to disbelieve the government's witness, Gales, the members found Addison not guilty of all charges.

The Marine Corps was unwilling to meet the expense and effort of another trial in what appeared to be a losing cause. Rather than try Jones, the remaining accused, he was administratively discharged for unrelated drug involvement which predated the murder-assault charges.

Although the overwhelming percentage of courts-martial that go to trial end in conviction, in the cases of Harris, Addison and Jones, no one was convicted of the murder and 62 assaults. Later, Captain Wood pondered what might have happened if the four had been tried in a different order, or if someone other than Gales had been granted immunity. If tried first, Captain Wood wondered, how would Jones have explained his entry into the club to warn away black patrons, other than as a prelude to the fatal attack? If convicted, would he have been willing to testify against

the others in return for sentence reduction?²⁴ Like all post-trial second guessing, Captain Wood knew they were questions without answers.

1st Marine Aircraft Wing: Prepared for Takeoff

In 1969 two fixed-wing and two helicopter squadrons together with support personnel left Vietnam. In March 1970 the 1st Marine Aircraft Wing's strength in Vietnam was down to 10,243. In August and September additional squadrons of the wing redeployed to Hawaii and El Toro, California. By the end of 1970 the wing, with 6,100 Marines remaining in Vietnam, was working out final standdown and redeployment schedules.²⁵

In September 1970 Colonel Nalton M. Bennett, SJA since September 1969, was succeeded by Major Curtis W. Olson, a former helicopter pilot and the deputy SJA for the preceding three months. Having completed a previous tour in the office of the SJA of the 1st Marine Division, Major Curt Olson served slightly more than two years in Vietnam, longer than any other Marine Corps judge advocate in the Vietnam war.* Of his two tours he recalled:

There was a considerable difference between my two tours in Vietnam. In my first tour I do not recall any drug cases . . . nor do I recall any black market or currency exchange cases. Upon my return . . . those types of cases were a large share of the case load My second tour also covered racial incidents and murderous assaults on officers and NCOs, both categories of which were absent on my first tour. On the brighter side, living conditions were vastly improved. We had better food, the amenities such as clubs, movies, television . . . floor shows, the USO, libraries . . . and large, well-stocked PXs.²⁶

Major Olson recalled of his eight-month tenure as the wing's last SJA in Vietnam: "Not much of interest happened The wing never did have much military justice action, and by that time, things had begun to wind down. Except for the big increase in drug activity . . . there just wasn't much remarkable."²⁷

1st Marine Division: New Broom

In early 1970 the 1st Marine Division's four infantry regiments were deployed in concentric belts around Da Nang in defense of the city.²⁸ Picking up many of the small units left behind when the 3d Marine Division left Vietnam the year before, the division strength

*Second Lieutenant, later Captain, Edward F. Kelly served in the office of the 1st Marine Division SJA from 30 September 1967 to 7 June 1969—over 20 months—the longest continuous period served in Vietnam by a Marine Corps judge advocate.



Photo courtesy of Col Robert J. Blum, USMC (Ret.)

The 1st Marine Division SJA buildings were located near the eastern base of Hill 327. Maj Robert J. Blum sent this captioned photograph to show his wife where he worked.

grew to 24,000 personnel. Before, Colonel Robert M. Lucy, division SJA, believed that the 33 judge advocates called for by the division table of organization were about seven too many. Now, however, the 25 judge advocates he actually had were pressed to keep up with the increase in cases. Moreover, division "legal" had only 27 of the 43 legal clerks it rated. Like FLC, Colonel Lucy had acquired unschooled typists from other division units and was training them to be legal clerks. That took time.²⁹ Lieutenant Colonel James P. King, deputy SJA, recalled "six and-a-half-day workweeks, and working at night were routine We handled a tremendous volume of cases."³⁰ Colonel Lucy, noting the number of general courts-martial scheduled for trial, wrote a friend, "Our work load is out of this world, and rising every day, it seems."³¹ During the first four months of 1970, 30 general and 225 special courts-martial were tried in the division, a notable total, even for 25 judge advo-

cates. In June the division's offense reports reflected three new murders and 52 new drug offenses.³² Captain James H. Granger remembered:

Business was booming, and the work load was staggering. "Case load" is a poor measurement of work load in a combat environment, in any event, because the administrative and logistical problems thoroughly distort case time. And, of course, ours was a seven-day-per-week job, although Sunday usually began late, ended early, and was used for catching up on paperwork and research, with occasional forays to China Beach.³³

While most 1st Marine Division courts-martial were conducted at the division headquarters, trial teams were still frequently dispatched to outlying units. Unlike FLC, whose constituent commands were either located at the Red Beach cantonment or nearby, division units were distributed throughout a large area. "But when there were several cases from the same unit," Captain Granger noted, "all those involved were required to leave their positions and report to division