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MARINES AND MILITARY LAW IN VIETNAM

1969 PREAMBLE: DISCIPLINE IN DISARRAY

... military judges strained legal office manpower because the newly created posts were filled from complement of judge advocates then present to compensating replacement lawyers.²³

... 30 on 1 August 1969 five 1st Marine Division advocates were sworn in by the division's commanding general as special court-martial military judges. Because of time zone differences, it was still in the United States. Promptly at 0800, Vietnam, as planned by the division's lawyers, Lieutenant Colonel William R. Eleazer opened the first court-martial anywhere to employ the 1968 act's new judge provision.²⁴

Marijuana: Persons of Ill Repute

... ly half the cases tried in Vietnam in 1969 in possession or use of marijuana. MACV's 1969 Annual Report and History reported:

... marijuana was sold by taxi drivers, prostitutes, street urinals, and other persons of ill repute. The enforcement effort directed toward the elimination of the source of marijuana was hampered by the lack of interest by government of Vietnam authorities.²⁵

... na cost ten cents a stick at virtually any store or light.²⁶ (A "stick" of marijuana, as the name implied, was a slim wooden stick, around which were wrapped strands of the marijuana leaf.) In a postwar interview, Army General William C. Westmoreland was asked about accounts of Vietnam drug use and fragility. He replied: "I was aghast when they had soldiers smoking other soldiers, smoking pot in their bunkers. It happens If it happened, it was very exceptional."²⁷ But judge advocates knew that those who were all too unexceptional.

... 59 Marine Corps leaders faced an epidemic of marijuana use and the breakdown of authority that accompanied it. Major Ives W. Neely, commanding officer of Maintenance Company, Force Logistic Support-Bravo, said with resignation:

... he company at least 70 to 80 percent—a very high percentage of people—were using marijuana. People who were using the marijuana had put fear into the personnel using it, to the point that no one down in the troops' ranks, from private through sergeant, would put a man on a court-martial even when he knew he was smoking marijuana, because of the strong union of marijuana smokers.

... ting the pernicious effect that marijuana had on military discipline, Major Neely continued.

... would catch a new man as he reported into the unit. I would tell him that if he was going to buy marijuana he would



Photo courtesy of:

At 0730 on 1 August 1969, the day the Military Justice Act became law, five special court-martial military judges took their oaths at the Headquarters in Da Nang from Assistant Division Commander, Brigadier General The new judges were, from left, Capt Martin G. McGuinn, Jr.; Capt Jr.; LtCol James P. King; LtCol William R. Eleazer; and Capt

buy it from them, and if anyone told, turned in any of their names, there were ways to do these people in. Usually it was with the threat of a hand grenade.²⁸



A new Marine drug rehabilitation center located at Cua Viet was available to drug users from nearby infantry battalions.³⁰ Still, marijuana use increased. Its burden on the military justice system was reflected in the changing approach to penalties. In 1968, FLC sent 100 cases involving use of marijuana to general courts-martial; by 1969 such cases were tried at special courts-martial, and, for first offenders, at summary courts.³¹ Only marijuana dealers and those involved with hard drugs faced

general courts-martial were no longer restricted to . . .

As Lieutenant Colonel . . . deputy SJA, observed: "The situation is. It's a problem that has existed for a long time, the way it appears at the moment is hell we're going to do"

Racial Conflict:

"Tensions of Black P . . . a *New York Times* headline any doubt that the blacks have come to the United States The racial problem is caused by a hard core of military personnel at 1 percent or less."³²

Approximately 41,000

³⁰A not-unusual case was tried in the 1st Marine Service Regiment. On 25 October 1968, a court-martial of possession of marijuana was sentenced to a bad conduct discharge for 18 months, and forfeiture of pay and allowances. Results of trial by general court-martial are in the Records Center folder, Marine Corps (MCHC.)

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... military law in Vietnam



Marine Corps Historical Collection

The III MAF brig, shown in 1969. The brig buildings, right center, adjoin the POW compound, which still housed 19 North Vietnamese sailors, the compound's only occupants during the war. Many buildings show the effects of the explosion of Ammunition Supply Point 1 shortly before this photograph was taken. The top of one guard tower is destroyed.

Captain Daniel H. LeGear, Jr., a 1st Marine Division defense counsel recalled: "We did have sandbag bunkers for such attacks, but after the first few attacks they were rarely used. We would either sleep through them or awake and watch the action down around the airfield."¹³

The 1st Division SJA's manning level was 23 judge advocates, 1 legal administration officer, and 38 enlisted men.¹⁴ During 1969 the actual number of lawyers varied from 18 to 33, with the average being somewhere between 20 and 25. The quality of the officer lawyers was termed "excellent" by the SJA, although three out of four arriving lawyers came straight from Naval Justice School (now expanded from 7 to 10 weeks in length) and had never tried a case before.¹⁵ "That's a very bad policy," Colonel Lucy said. "We're in the big leagues, now." The return to Vietnam of seasoned officers such as Lieutenant Colonel James P. King, on his second Vietnam tour, was an important addition to office effectiveness.

One of those assigned to the 1st Marine Division's SJA office was 1st Lieutenant James M. Schermerhorn, a law school graduate who had not yet passed a bar examination. Because he was not a member of any state's bar, he could not be designated a judge advocate and could not be a defense counsel. He could be employed as a nonlawyer trial counsel (prosecutor). Any mistake he might make would affect the govern-

ment rather than the accused. For six months before joining the SJA's office, Lieutenant Schermerhorn had been a platoon commander with the 7th Marines, where he served with distinction and was awarded the Silver Star and Navy Commendation Medals for combat bravery.¹⁶

The caseload in the 1st Division remained low, although its nature had changed. Each judge advocate carried about one general court-martial and eight to 10 specials.¹⁷ The overall decline in discipline was bringing more significant cases. "Sixty percent of all our crimes are crimes of violence—and they're serious," Colonel Lucy reported.¹⁸ The trial of several murder cases in a single month was no longer unusual. During 1969 1st Division personnel were charged with 13 murders, 32 aggravated assaults, 41 simple assaults, 2 rapes, and 490 marijuana/narcotics offenses.¹⁹

By 1969 those convicted and sent to the brig were usually such poor quality personnel that commanders hesitated to allow any but their worst men to be incarcerated there. They believed that conditions in the brig offered no hope of rehabilitation. As First Lieutenant Warren S. Mathey, FLSG-A's group legal officer, reported:

Any time we have a man that goes before a special court that we feel is a good man and has learned his lesson from a court alone, we do not confine him at the brig. Borderline cases that received six months from a court, six

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4-27-97



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

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

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

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

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

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

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



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