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CCT/Part 1

Marine Corps' Rebel Lawyers Plan Brief Military Careers

By JAMES S. GRANELLI, Times Staff Writer

Taking complaints outside the system is not always good for a military career. Defense lawyers at the Marine Corps Air Station in El Toro acknowledged Tuesday.

But "it had to be done," said Capt. Kevin B. McDermott, who helped defend pilot John Moultak, an officer who was drummed out of the corps in July for fraternizing with an enlisted woman he said he intends to marry.

McDermott was one of the military defense lawyers stationed at El Toro who complained that the Marine Corps legal system, which puts defense and prosecuting attorneys under the same commanding officer, was hindering their efforts to defend Marines accused of crimes or violations of military law. Their complaints, revealed in the aftermath of the Moultak case, sparked an internal study of the

Marine Corps law structure and an investigation of the El Toro law center.

Both the investigation and the study found that military lawyers could indeed be unlawfully pressured by commanding officers. On Monday, the corps announced that it will align itself more with other branches of the armed forces by putting the careers of Marine defense attorneys in the hands of someone other than the officers who oversee military prosecutions.

"It's been well worth it," McDermott said. "In the long run, if we have provided any legacy, the next batch of lawyers can avoid the problems we had."

In interviews Tuesday, McDermott and two other military lawyers, Capt. Daniel A. McNulty and Major Williams, said their military futures look bleak.

Last winter, Capt. Daniel Marigliano, a

defense lawyer, charged in letters to five members of Congress that El Toro's law center director, since removed, improperly pressured defense attorneys, and argued that the structure of the military justice system in the Marine Corps allowed such pressure.

At the same time, McDermott and a civilian lawyer, Charles G. Caudill of Orange, sent letters to Marine headquarters in Washington, D.C.

Though they would do it over again, the complaining lawyers saw "the handwriting on the wall" and knew that changes were in store for them, McDermott said. Since the investigation and the study were completed in July and August, respectively:

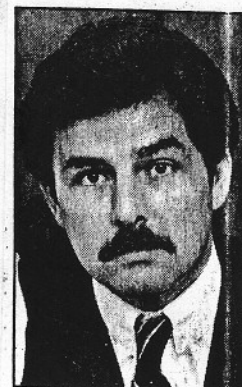
—McDermott, with nearly four years in the corps, has submitted his resignation,

which will likely be effective next August.

—McNulty, who said his enthusiasm for his assignment was chilled by heavy-handed actions he saw in his first four months on the job, has decided against accepting a regular commission and will leave the corps in January, 1986. He is a reserve officer serving three years on active duty.

—Williams, a nine-year veteran who was a commanding officer of his artillery unit before becoming a lawyer in 1982, will get out of the corps if a promotion board passes him over next spring, as he expects.

—Marigliano will stay in the corps. McDermott said Marigliano would like to leave but that he owes the corps five more years of duty as payment for his law education. He has served nearly one year already. Marigliano is on vacation and was



GARY AMBROSE

Kevin McDermott

Preparing the defense in the Moultak case was "a year and a half of pure hell."

In 1983, Kevin McDermott, a newly minted Captain in the United States Marine Corps, took over as Chief Defense Counsel for Marine Corps Air Station El Toro. He had completed a successful stint as Chief Trial Counsel at the same base that included meritorious awards and augmentation in the Regular Corps.

His stint as Chief Defense Counsel was selected to promote McDermott and to prepare him for advancement up the ranks. However, within several weeks of taking over the billet, McDermott realized that the ethical performance of his job was anathema to a Marine Corps career.

In July 1984, CNN aired a nationally circulated news story chronicling the abuses of power at Marine Corps Air Station El Toro as it related to the delivery of defense services. It culminated a year long struggle by McDermott and other defense counsel at that base to bring the abuses to light and to get changes instituted within the system. Because of the efforts of McDermott and his co-horts, the Marine Corps was compelled to institute an independent defense command. No longer would defense counsel have their fitness reports authored by the Staff Judge Advocate. Furthermore, additional resources would be provided to the defense counsel that would make their task of defending Marines less burdensome.

McDermott left active duty in August 1985. Since his departure, he has successfully completed a career in the Reserves and has undertaken military cases as civilian counsel throughout the world. He has successfully defended scores of active duty and reserve personnel over the past fifteen years to include suspects involved in the Tailhook investigation, the Lonetree investigation and numerous Staff NCO and officer cases. In addition to military courts, McDermott has represented well over 200 service personnel and their dependents in civilian criminal and civil matters, to include Federal Tort Claims Act cases. He has earned for his clients in excess of three million dollars in awards and settlements.

McDermott has his practice in Tustin, California. He can be reached through his toll free number 888-762-3529 or at his e-mail address - warlawyer@aol.com. All consultations are free to any service member or their dependents. McDermott, in addition to being licensed to practice before the Court of Appeals for the Armed Forces, is licensed to practice before the United States Supreme Court and all state and Federal courts for California and Florida.