

## A Lore of the Corps

### Lawyering in the Empire of the Shah—"The Rest of the Story"<sup>1</sup>

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In April 2012, *The Army Lawyer* published a *Lore of the Corps* about judge advocates who had served in Iran in the 1960s and 1970s. That article ended by stating that the assignment of Army lawyers "to Iran apparently ended in the mid-1970s."<sup>2</sup> This was incorrect. The truth is that military attorneys continued to be stationed in Tehran until 1979; the last judge advocate in-country departed on July 15, 1979, only months before a group of Iranian students seized the U.S. Embassy and took fifty-two Americans hostage for 444 days. What follows is the 'rest of the story' about lawyering in the Empire of the Shah. It focuses on three of the last Army attorneys in Tehran: Captains (CPTs) Kenneth J. "Ken" Densmore, Theodore F.M. "Ted" Cathey, and Thomas G. "Tom" Fierke.<sup>3</sup>

From the mid-1970s until late January 1979, when the Shah fled Iran and large-scale evacuations of U.S. personnel began, there were roughly 45,000 Americans living in Iran. Most were military and civilian technicians and their dependents.<sup>4</sup> Of these, about 1,500 were Department of Defense personnel assigned to the U.S. Embassy, the U.S. Military Mission with the Iranian Army, or the U.S. Military Assistance Advisory Group to Iran (MAAG).<sup>5</sup> Most of these U.S. military and civilian personnel were involved in training Imperial Iranian forces on the aircraft, warships and other military hardware sold to Iran by the United States

under the Foreign Military Sales program.<sup>6</sup> This was a lucrative arrangement for the United States in the 1970s, since Iran "paid cash for its arms purchases and covered the expenses" of American technical advisors "indispensable for weapons operations and maintenance."<sup>7</sup>

There were a variety of legal issues arising out of these foreign military sales contracts and the "down country" technical assistance field teams associated with them.<sup>8</sup> This explains why judge advocates serving in Tehran during this period were heavily involved in contract matters—in addition to the various administrative and civil law, claims, and legal assistance issues that naturally arose in a military and civilian community of 5,000.<sup>9</sup> Since courts-martial could not be convened in Iran, there was little in the way of a criminal law practice.<sup>10</sup>

This was certainly the case with CPT Densmore, who was stationed in Iran from April 1976 to July 1978. Densmore was intimately familiar with Armed Services

<sup>1</sup> With a 'tip of the hat' to conservative talk show host Paul Harvey, whose "The Rest of the Story" was a Monday-through-Friday radio program that aired from 1976 until Harvey's death in 2009. *Paul Harvey, Talk-Radio Pioneer, Dead at 90*, [http://www.nytimes.com/2009/03/01/nyregion/01harvey.html?\\_r=0](http://www.nytimes.com/2009/03/01/nyregion/01harvey.html?_r=0) (last visited Oct. 27, 2014) Each broadcast ended with the phrase, "And now you know the rest of the story." PAUL HARVEY, <http://www.paulharvey.com/> (last visited Oct. 27, 2014).

<sup>2</sup> Fred L. Borch, *Lawyering in the Empire of the Shah*, ARMY LAW., Apr. 2012, at 3.

<sup>3</sup> In addition to Densmore, Cathey and Fierke, the following judge advocates served in Tehran between 1975 and 1979: Majors (MAJ) Holman J. "Jim" Barnes, Jr. and Warren Taylor (who replaced Barnes), and Captain's Stanley T. "Stan" Cichowski, John E. Dorsey, Charles L. Duke, Stephen Moore and Mark H. Rutter. Rutter was the last judge advocate to arrive in country. OFFICE OF THE JUDGE ADVOCATE GENERAL, PERSONNEL DIRECTORY (1975); Telephone Interview with Theodore F. M. Cathey (Oct. 27, 2014) (on file with author).

<sup>4</sup> <http://www.country-data.com/cgi-bin/query/r-6526.html> (last visited Oct. 28, 2014).

<sup>5</sup> *Id.* In addition to these 1,500 personnel, there were another roughly 3,500 family members, for a total official community of about 5,000 individuals. In 1978, the U.S. military mission in Iran was the largest in the world.

<sup>6</sup> The Foreign Military Sales (FMS) program is a form of security assistance authorized by the Arms Export Control Act (AECA) and a fundamental tool of U.S. foreign policy. Defense Security Cooperation Agency, Foreign Military Sales, <http://www.dsca.mil/programs/foreign-military-sales-fms> (last visited Oct. 30, 2014) [hereinafter FMS]; Arms Export Control Act, 22 U.S.C. ch. 39 (2012). Under the Act, the U.S. may sell defense articles and services to foreign countries and international organizations when the President formally finds that to do so will strengthen the security of the U.S. and promote world peace. FMS, *supra*. Under FMS the U.S. Government and a foreign government enter into a government-to-government sales agreement. The State Department determines which country will have a FMS program while the Defense Department executes the program. *Id.*

<sup>7</sup> FMS, *supra* note 6. Iran could pay cash because of moneys it earned from the export of oil. The Shah's government bought F-4 "Phantom" fighter bombers, C-130 "Hercules" cargo airplanes, M-60 "Patton" main battle tanks, AH-1 "Cobra" helicopters, radar equipment, mortars and machine guns.

<sup>8</sup> The term "down country" referred to geographic location of these technical teams; they were located south of Tehran or 'down' on a map of Iran.

<sup>9</sup> Although judge advocates in Iran supported the mission of the U.S. Military Assistance Advisory Group to Iran (MAAG), they were not a part of it. Rather, they were assigned to the U.S. Support Activity-Iran (USSA-I), a part of U.S. Army, Europe.

<sup>10</sup> As explained in *Lawyering in the Empire of the Shah*, the United States was prevented by its agreements with Iran from holding any judicial proceedings on Iranian soil. Judge advocates in Tehran did, however, advise commanders on the imposition of non-judicial punishment under Article 15, Uniform Code of Military Justice. Most of these Article 15s were for blackmarketing, i.e., the improper sale (or transfer) to Iranians of goods purchased through the Army and Air Force Exchange Service. See Borch, *supra* note 2, at 1.

Procurement regulations and Army implementing regulations, as he had prior experience in procurement law at the Army Missile Command, Redstone, Alabama.<sup>11</sup> This no doubt explains why, shortly after arriving in Tehran, Densmore was informed by Colonel (COL) Milton Sullivan, Commander, U.S. Support Activity-Iran (USSA-I), that he was the new Contracting Officer (KO) for the command. Since the mission of the USSA-I was to support the MAAG and its down country teams, this meant that CPT Densmore would not only do a legal review of contract solicitations and awards but, as the KO, would also be administering (and interpreting) the many contracts already in place. Since USSA-I also ran the club system, the Morale, Welfare and Recreation program, the commissary and the hospital, Densmore also was involved with contracts for these operations. His KO warrant was for \$100,000 and, while this does not seem like much money today, it was adequate to do most of the work of the USAA-I. As Densmore remembers, most of the contracts he awarded “were for minor construction projects in and around the military facilities in Tehran,” such as plumbing, electrical and carpentry work.<sup>12</sup> Densmore took a special interest in the hospital, which was located on the U.S. Embassy compound, especially after his youngest son was born there in 1978. As for his two years in Tehran, Densmore remembers that “my KO duties quickly overwhelmed me and I was not of much further utility in the JAG office.”<sup>13</sup> At least, that is, for non-contract issues.



Army Colonel Keith Barlow presents Captain Ken Densmore with the Meritorious Service Medal, Tehran, Iran, 1977

In July 1978, as CPT Densmore was leaving after slightly more than two years in Iran,<sup>14</sup> CPT Ted Cathey was

just arriving—to replace Major Warren H. Taylor and assume duties as the Staff Judge Advocate (SJA) for the MAAG. As Cathey remembers, he and his youngest son arrived on a Pan American flight at the Mehrabad airport near Tehran. But it was “not a good sign because tires were burning on the runway” and Iranians in the streets were shouting “Death to the Shah” and “Yonky [sic] go Home.”<sup>15</sup> Prior to volunteering for duty in Tehran, Cathey had been an instructor in contract law at The Judge Advocate General’s School, U.S. Army. Just as CPT Densmore had discovered, CPT Cathey also quickly learned that the many issues arising from the sale of American military equipment to the Shah’s armed forces meant that procurement law was an important component of the delivery of legal services to the MAAG.

While Cathey was the senior military lawyer in Iran, he had a Deputy SJA, CPT Charles L. Duke, and two more judge advocates on his staff: CPTs Tom Fierke and Mark H. Rutter. Rounding out his legal office were two legal clerks, Sergeant First Class Bobby Saucier and Specialist Six Paul Burch. There also were two Iranian advisors, two local national drivers, and a translator who ensured accurate transcription of Farsi and English language documents, especially private residential leases.

But ‘legal business as usual’ was short-lived. The Shah’s government had imposed martial law (which included a curfew) on 7 September 1978 and by November 1978, with insurgent activity putting Americans and their families in danger, the MAAG began preparing evacuation plans for family members.<sup>16</sup> After military personnel in Iran began receiving hostile fire pay in early December 1978, it was only a matter of time before evacuations would begin.<sup>17</sup>

Captain Cathey and his office prepared a legal annex to the MAAG’s evacuation plan, and did periodic briefings to family members on the legal aspects of evacuation. These briefings occurred in the auditorium on the “Gulf District” compound upon which USSA-I was located. Cathey remembers that the briefings advised family members that

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assumed command of the 2d Legal Services Organization, New Orleans, Louisiana. Coincidentally, CPT Fierke, discussed *infra*, had previously commanded this same unit. Densmore relinquished command in 2001 and retired from the Army Reserve in 2002. Today, Densmore serves as Counsel, Naval Education and Training Command, Pensacola, Florida (the Navy’s close equivalent to Army Training and Doctrine Command). He has 44 years of civilian and military service.

<sup>11</sup> E-mail from Kenneth J. Densmore, to author (Oct. 30, 2014, 4:46 PM) (on file with author).

<sup>12</sup> *Id.*

<sup>13</sup> E-mail from Kenneth J. Densmore, to author (Sept. 25, 2012, 8:47PM) (on file with author).

<sup>14</sup> After departing from Iran, Densmore left active duty and transferred to the Army Reserve. He subsequently served with the 350th Civil Affairs Brigade, and deployed with it to Bosnia-Herzegovina in 1996 as part of Operation Joint Endeavor/Constant Guard. In 1998, now COL Densmore

<sup>15</sup> Interview with Cathey, *supra* note 3.

<sup>16</sup> *Id.*

<sup>17</sup> Colonel Thomas G. Fierke, *Recollections (of the Last JAG in Tehran 1978–1979)*, at 52 (1999) (unpublished thesis, U.S. Army War College Strategy Research Project) (on file with author). All military personnel received hostile fire pay in December 1978 and January and February 1979. The evacuations of Defense Department and State Department family members and other U.S. civilians ultimately occurred in December 1978, and January and February 1979.

they were being evacuated to a 'safe haven' for thirty to sixty days, with return to Tehran to occur as soon as the situation had stabilized. But they were advised to have up-to-date wills and powers of attorney, and to make a complete inventory of their household goods. At the time, the Army paid no more than \$15,000 for any claim for missing or damaged household goods, which meant that Americans in Iran were advised to consult their insurance companies to see if they could obtain additional coverage.<sup>18</sup>

Some Americans, recognizing that they might depart Iran and never return, began mailing personal items (photographs, papers) and high value items (jewelry, antiques, collectibles) to the United States through the Army Post Office system. Some of these mailings were successful; others were not. Cathey's wife had left Iran in December; she never returned because of the increasing instability. The following month, CPT Cathey and his three children boarded a C-141 and flew from Tehran to Athens, Greece, to Rhein Main, Germany. They then flew on a civilian charter to McGuire Air Force Base, New Jersey, and, after landing there, CPT Cathey took his children to Charlottesville for a rendezvous with his wife. Cathey then returned to Tehran.<sup>19</sup>

Near the end of his tour of duty in Tehran, CPT Cathey was heavily involved in arranging for "termination for the convenience" or "T4C" of the U.S. Government contracts with the Iranian government. The Pentagon's 'czar' for military assistance, Erich von Morbod,<sup>20</sup> flew to Iran and sat down with CPT Cathey to T4C a whole host of contracts for equipment that had been sold to the Iranians.<sup>21</sup> Much of the hardware—artillery, tanks, ships—had been paid for and these terminated contracts were later the subject of much litigation involving the United States and the new Iranian government that emerged after the Shah fled Iran in January 1979.<sup>22</sup> In addition to these contracts, CPT Cathey also was involved in the termination of rental leases—as the American tenants had been evacuated and would not be returning. When CPT Cathey left Tehran in February 1979, it was "pandemonium" and Cathey thought he would be the

last judge advocate out of Iran; after all, CPTs Mark Rutter and Tom Fierke had already departed.<sup>23</sup>

But he was not: CPT Fierke, who had been the Chief of Administrative Law and Claims, had volunteered to return to Iran on temporary duty. Fierke had previously been in Iran from June 1978 until 19 February 1979, when he and CPT Rutter boarded a Pan Am Boeing 747 and flew to Frankfurt. Now, on 18 March 1979, he returned to Tehran because the MAAG and USSA-I commanders needed an experienced claims judge advocate to help wind down the American military presence in Iran.<sup>24</sup>

Initially, Fierke was one of roughly fifteen American military and State Department personnel during this twilight of the U.S. presence in the Shah's empire. In the following days and weeks however, the numbers of Americans in Iran did increase until there were more than fifty.<sup>25</sup>



An Iranian national (left) with then Captain Tom Fierke (right), in front of the U.S. Embassy gate, Tehran, 1979.

After arriving in Tehran—carrying a "black" diplomatic passport and immediately hearing the sound of gunfire and revolutionary fervor—Fierke lived on the fifteenth floor of the Royal Tehran Hilton. This was considered to be the safest location for the American military personnel still in-country because its height offered the best protection from sniper fire.<sup>26</sup>

<sup>18</sup> The statutory aggregate maximum for the loss of household goods was \$15,000. No private insurance company, however, would pay claims for household goods lost in the Iranian Revolution of 1979. The event was considered to be a 'war' or 'civil disturbance' excluded from policy coverage.

<sup>19</sup> Cathey e-mail, *supra* note 3.

<sup>20</sup> From 1978 to 1981, von Marbod was the Deputy Director, Defense Security Assistance Administration. In this position, he was the senior U.S. Defense Department representative to Iran, and was a key player in the Shah's purchase of American weaponry. JOSEPH J. TRENTO, *PRELUDE TO TERROR: EDWIN P. WILSON AND THE LEGACY OF AMERICA'S PRIVATE INTELLIGENCE NETWORK* 262 (2005).

<sup>21</sup> Cathey e-mail, *supra* note 3.

<sup>22</sup> *Id.*

<sup>23</sup> For their work in support of the December 1978 evacuations, CPTs Cathey, Duke, Fierke and Rutter were awarded the Humanitarian Service Medal.

<sup>24</sup> Fierke, *supra* note 17, at 61.

<sup>25</sup> Letter from Captain Thomas G. Fierke, U.S. Defense Representatives IRAN, to Colonel Wayne E. Alley, Judge Advocate, Headquarters, U.S. Army-Europe & 7th Army, APO N.Y. 09403 and Colonel James A. Mounts, Chief, USA Claims Service, Fort Meade, Md. 20755 (June 11, 1979) (The subject of the letter was Iran Judge Advocate update).

<sup>26</sup> Letter from Captain Thomas G. Fierke, U.S. Dep't of Army, Office of the Staff Judge Advocate, Fort Devens, Mass., to Headquarters, U.S. Dep't of the Army, ATTN: DAJA-PT (LTC Barry P. Steinberg), subj: Iranian Adventure: FIERKE, Thomas G., CPT JAGC, at 4 (3 Apr.1980).

Within days of his arrival in Tehran, Fierke was the “Staff Judge Advocate, USSA-I.” But he also had the title of “Chief Legal Counsel, MAAG/U.S. Embassy.” His mission was to “insure proper conclusion of all lease and procurement contracts” with the Iranians. This included the settlement of private leases between Americans and their Iranian landlords. As the Defense Department saw it, these leases could not be terminated until household goods were removed from the premises and any damages to the premises could be assessed. Consequently, CPT Fierke became the USSA-I “operations” and “transportation” officer who, with a small staff, arranged for the packing and pick-up of household goods and their movement to U.S. custody. In June 1979, for example, Fierke was arranging for the pick-up of six sets of household goods a day, six days a week. In the ever present turmoil on the streets of Tehran, this was a difficult mission to accomplish: there were no street maps of Tehran, which made it difficult to locate the apartments and houses that had been rented by American personnel. Additionally, the Revolutionary Guards, landlords, and movers were tempted to steal the household goods of the now departed U.S. personnel if they had the opportunity. Fierke also had much difficulty in negotiating for the lease terminations with the Iranian landlords, as many were not inclined to be reasonable in their dealings with the U.S. Government.<sup>27</sup>

In addition to these landlord-tenant and household goods issues, Fierke had to ‘close-out’ a variety of contracts between the Iranians and the American government. He had an unlimited warrant as a Termination Contracting Officer (TCO) for the Department of Defense, Department of State, and several agencies conducting classified intelligence work. As a result, it was CPT Fierke who terminated the multi-million dollar contract that the Imperial Armed Forces had with the Bell helicopter subsidiary in Iran.<sup>28</sup>

Fierke also had a smaller dollar warrant as a TCO for lower dollar value contracts involving Iranian nationals. A major problem with terminating these contracts for the convenience of the government was that many local nationals were unable to gain access to him and other U.S. Embassy personnel in the “Gulf District” (where the procurement office was located) in order to demand payment.<sup>29</sup>

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<sup>27</sup> Fierke, *supra* note 17, at 77.

<sup>28</sup> E-mail from Thomas G. Fierke, to author (Nov. 9, 2014, 7:29 PM) (on file with author).

<sup>29</sup> *Id.*

Captain Fierke worked long days; his typical workday was 6:00 A.M. to 7:00 P.M., seven days a week.<sup>30</sup> Additionally, as the only American government attorney in post-Revolutionary Iran, Fierke advised not only Defense Department personnel, but also the U.S. ambassador to Iran and his staff.

Fierke also faced considerable personal danger. He was arrested four times. On one occasion, he was stopped while driving a pick-up truck, pulled from the vehicle at gunpoint, and then handcuffed and blindfolded. Three hours later, he was released. Apparently his offense had been driving the truck without license plates.<sup>31</sup> Fierke also heard gunfire on a routine basis while in Tehran, and some of the bullets came very close to him.

Tom Fierke left Tehran on 15 July 1979; he flew “first class” on a Swiss Air airliner to Frankfurt, Germany. As Air Force Major General Philip C. Gast,<sup>32</sup> the Chief, MAAG-Iran, put it, CPT Fierke had “braved the hostility in Iran after the Revolution with calm and resolution” and was a “man of unflinching devotion to duty.”<sup>33</sup>

With CPT Fierke’s departure, the judge advocate presence in Iran ceased. Timing is everything; Fierke made it out. The fifty-plus Americans in the U.S. Embassy were not so lucky: After being taken captive by Iranian students in November, they did not see freedom for another 444 days.<sup>34</sup>

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<sup>30</sup> Fierke, *supra* note 17, at 81.

<sup>31</sup> *Id.* at 5.

<sup>32</sup> Philip C. Gast retired as a lieutenant general in 1987. He had a long and distinguished career as an airman, including a Silver Star for downing a North Vietnamese MiG fighter during the war in Southeast Asia.

<sup>33</sup> U.S. Dep’t of Army, DA Form 67-7, Officer Evaluation Report, FIERKE, Thomas G., pt. VII.b (Indorser) (15 Jan. 1980). After earning an engineering degree and a regular Army commission through Reserve Officer Training Corps at Iowa State University in 1971, Fierke received a J.D. from the University of Minnesota in 1974 and a LL.M. (tax) from Boston University in 1978. Initially, CPT Fierke served as a trial counsel and administrative law officer in the Office of the Staff Judge Advocate, Fort Devens, Massachusetts. At the same time, he was the Group Judge Advocate, 10th Special Forces Group (Airborne). Fierke was one of the first judge advocates to complete the resident Special Forces (SF) Officers Course, earning the SF “long tab” in 1978. In 1980, he left active duty and transferred to the Army Reserve. In 1991, Fierke deployed to Saudi Arabia with the Third U. S. Army; he subsequently served with U.S. Army Forces, U.S. Central Command during the first Gulf War. When COL Fierke retired in 2002, he had more than thirty years of active and Reserve service and had been the SJA, 377th Theater Support Command, New Orleans, for four years. He recently retired as the General Counsel, Lockheed Martin Manned Space Systems, where he was involved with America’s space program for twenty-eight years.

<sup>34</sup> For more on the take over of the U.S. Embassy in Tehran, see MARK BOWDEN, GUESTS OF THE AYATOLLAH (2006).

Regimental History Announcement: World War II-era Boards of Review Holdings and Opinions are now available on-line. From 1942 to 1946, Boards of Review (the forerunner of today's Army Court of Criminal Appeals) operated in the European Theater of Operations. They also operated in the Mediterranean Theater of Operations (MTO) and the North African Theater of Operations (NATO) from 1943 to 1945. The decisions of these Boards have been digitized and added to the LCS Library's Military Legal Resources Web site at the Library of Congress ([http://www.loc.gov/rr/frd/Military\\_Law/military-legal-resources-home.html](http://www.loc.gov/rr/frd/Military_Law/military-legal-resources-home.html)). Board of Review decisions from the India-Burma Theater (originally China-Burma-India Theater), the South West Pacific Area Theater, the Pacific Ocean Areas Theater, and the Pacific Theater are scheduled to be digitized and added to the Military Legal Resources site in the future.

*More historical information can be found at*

The Judge Advocate General's Corps  
Regimental History Website

*Dedicated to the brave men and women who have served our Corps with honor, dedication, and distinction.*

<https://www.jagcnet.army.mil/8525736A005BE1BE>