

Lore of the Corps

Crime in Germany “Back in the Day”:

The Four Courts-Martial of Private Patrick F. Brennan

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Fifty years ago, judge advocates (JAs) stationed in Germany participated in more than a few courts-martial involving undisciplined Soldiers. But military justice “back in the day” was quite different from what one would see today because, under the Uniform Code of Military Justice (UCMJ) as it then existed, there was no JA participation at special courts-martial.¹ Rather, line officers served as trial and defense counsel and, as there also was no military judge or other similar judicial official at special courts, every court-martial was heard by a panel and the senior officer on the panel ran the court.² More than anything else, special courts were courts of discipline (although justice certainly was done) but sometimes a Soldier’s inability to adhere to the Army’s standards could not be solved with a special court-martial—as illustrated by the case of nineteen-year-old Private (PVT) Patrick F. Brennan. The story that follows is that of a teenaged GI who managed to accumulate five convictions by three special courts-martial in just ninety days—topped off by a trial by general court-martial.

Private Brennan’s troubles began late in 1962 when he was convicted at a special court-martial of disrespect to a non-commissioned officer (NCO) and disorderly conduct in the barracks. The panel members sentenced him to thirty days hard labor without confinement, which was an authorized sentence under the UCMJ at the time and usually involved manual labor on some menial project. As a consequence of this court-martial conviction, Brennan’s commander revoked his pass privileges. Unmarried junior enlisted Soldiers in this era lived in the barracks on post and could not leave their installation without having in their possession a card showing that they were authorized to go off post.³

¹ MANUAL FOR COURTS-MARTIAL, UNITED STATES ch. III, ¶ 6c (1951) [hereinafter 1951 MCM], available at http://www.loc.gov/rr/frd/Military_Law/CM-manuals.html (requiring that the appointment orders for trial and defense counsel to address whether counsel are “legally qualified lawyers” or not and, if a trial counsel is a qualified attorney, the defense counsel be a qualified attorney as well).

² There was no requirement for legally trained counsel at special courts until the enactment of the Military Justice Act in 1968, when an accused for the first time was “afforded the opportunity to be represented” at a special court by a lawyer. Consequently, absent extraordinary circumstances, convening authorities convened special courts, selected panels, appointed line officers as trial and defense counsel, and took action on findings and sentence without any JA participation. For more on the changes resulting from the Military Justice Act of 1968, see JUDGE ADVOCATE GENERAL’S CORPS, U.S. ARMY, *THE ARMY LAWYER: A HISTORY OF THE JUDGE ADVOCATE GENERAL’S CORPS, 1775–1975*, at 243–51 (1975).

³ *GI Discharged; Slugged Guard*, STARS & STRIPES, Aug. 1963.

To Brennan’s dismay, his commander failed to restore his pass privilege at the end of his thirty-day hard labor sentence. A month later, with his “pass” still “under lock and key,” PVT Brennan absented himself without leave (AWOL).⁴ As he later explained, “I don’t think the Army’s pass policy is right. A pass is a right, not a privilege—except when it’s withdrawn for disciplinary reasons.” As Brennan saw it, since he had completed his sentence, he should have his pass card returned to him. The special court panel hearing the evidence, however, disagreed. It found him guilty and sentenced PVT Brennan to another stint in the stockade.

Shortly after completing this punishment for his AWOL, PVT Brennan was court-martialed the third time for “assaulting a SP5 [Specialist Five/E-5] and disobeying an order.” According to a newspaper report in the European edition of *Stars and Stripes*, PVT Brennan served his sentence for this third court-martial at the stockade located at William O. Darby Kaserne, Fürth, Germany.⁵

Just two weeks before nineteen-year-old Brennan was scheduled to be discharged from the Army with a general discharge under honorable conditions, he committed yet another act of indiscipline. Sergeant (SGT) Sylvester J. Williams, then serving as guard commander, was marching a group of prisoners, including PVT Brennan, to eat “chow.” As SGT Williams talked to the prisoners, PVT Brennan evidenced a lack of interest, and told Williams “to shut [his] damn mouth.” Then, when SGT Williams directed Brennan “to step out of the ranks,” an angry PVT Brennan not only stepped over to Williams but “poked the sergeant in the face without any preliminaries.”⁶ The “astonished prisoners looked on” while other guards “rushed into the fray to help Williams.” Specialist Four William S. Minnich, who weighed over 200 lbs., quickly took charge of Brennan. Brennan not only went along quietly, but asked Minnich to “lock him up so he couldn’t hurt anyone else.”⁷

Private Brennan’s chain-of-command had had enough of him. His upcoming separation from active duty was cancelled and PVT Brennan instead found himself before a

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

general court-martial convened by the VII Corps commander. The trial was held in Nurnberg. The trial counsel was Captain Quinlan J. Shea Jr. and the defense counsel was Captain Harry F. Goldberg. Both were fairly recent members of the Corps and were on their first tours as JAs. Shea was a Rhode Island attorney who had graduated in May 1961 from the 34th Special Class (as the Judge Advocate Officer Basic Course was then called). Goldberg was a Massachusetts lawyer who had graduated from the 36th Special Class in early 1962.

Brennan was charged with one specification under Article 91—striking an NCO while that NCO was in the execution of his office. At the time, the authorized maximum penalty for this offense was one year confinement at hard labor, forfeiture of all pay and allowances, reduction to the lowest enlisted grade, and a dishonorable discharge (DD).⁸ Brennan testified at his own trial, and admitted that he had struck SGT Williams. He “confessed” that he “wasn’t rational at all.” Not surprisingly, Brennan was convicted by the VII Corps panel of the specification and the charge.⁹

On sentencing, CPT Goldberg tried to put the best possible spin on his client’s situation. “If what Private Brennan did was a senseless act, we feel it was an emotional outburst.” Goldberg then quoted Supreme Court Justice Oliver Wendell Holmes’s famous quip that “even a dog distinguishes between being kicked and stumbled upon.” Goldberg added: “We feel this was more a case of being stumbled upon.”¹⁰

Trial counsel CPT Shea responded when it was his turn to argue: “I believe this adds up to five convictions prior to this general court-martial.” Continued Shea: “Sometimes we feel that deterrence is a dirty word. But the evidence presented by the defense asks you almost to reward Brennan for his offense. The Government is confident that you are not going to reward him.” Captain Shea then asked the panel to impose the maximum sentence. As the *Stars and Stripes* reported, the nine member panel “went along with everything but the discharge, substituting a BCD [Bad Conduct Discharge] for the DD.”¹¹

United States v. Brennan is not reported as a case considered by the Army Board of Review. The Court of Military Appeals also did not hear an appeal. Consequently, it seems likely that Brennan simply served his confinement and then returned to civilian life. Today, this teenaged Soldier would be nearly seventy years of age. One wonders what, if anything, he learned from his time as a Soldier in Germany “back in the day.”

As for Captains Shea and Goldberg? Goldman was released from active duty in December 1964. Captain Shea remained on active duty for another ten years; his last known assignment was in the Military Justice Division, Office of the Judge Advocate General. Then Major Shea left active duty in 1972.¹²

More historical information can be found at

The Judge Advocate General’s Corps
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<https://www.jagcnet.army.mil/History>

⁸ 1951 MCM, *supra* note 1, ch. XXV, ¶ 127c, tbl., at 221.

⁹ *GI Discharged; Slugged Guard*, *supra* note 3.

¹⁰ *Id.*

¹¹ *Id.*

¹² OFFICE OF THE JUDGE ADVOCATE GENERAL, JAGC PERSONNEL AND ACTIVITY DIRECTORY (Aug. 1963); OFFICE OF THE JUDGE ADVOCATE GENERAL, JAGC PERSONNEL AND ACTIVITY DIRECTORY (Sept. 1973).