

THE LAW

Tough Test for Military Justice

ONLY the Army knows why it is so determined to prosecute six of its own officers in Viet Nam for executing an alleged double agent named Thai Khac Chuyen. Whatever the reasons, the murder trials of the Green Beret officers that are supposed to begin later this month could turn into the most sensational courts-martial in U.S. history. The result may be the severest test to date of the judicial system that has governed the military for almost 20 years—the Uniform Code of Military Justice (U.C.M.J.).

The code has been tested in the high-

yers in all general courts-martial but not necessarily in special courts-martial (which outnumber general courts-martial by more than 20 to 1) unless the prosecutor was a lawyer. Because of a scarcity of military lawyers, most defendants at special courts-martial were represented by officers without law degrees. The U.C.M.J. also set up the U.S. Court of Military Appeals in Washington, which has decreed that men in uniform are protected by a number of the safeguards in the Bill of Rights.

But civilian rules do not always work within the autocratic framework of the



ROTHBLATT WITH GREEN BERETS*
The miraculous always happens.

est civilian and military courts this year by dissenting servicemen at home who complain of biased courts-martial, harsh sentences, prolonged pretrial imprisonment without bail and military efforts to stifle free speech. In a decision last summer that restricts the military's authority to prosecute servicemen for off-base crimes, the U.S. Supreme Court questioned whether a court-martial is really a fair trial or just another means of enforcing discipline. "A civilian trial is held in an atmosphere conducive to the protection of individual rights," wrote Justice William O. Douglas for the court, "while a military trial is marked by the age-old manifest destiny of retributive justice."

Civilian Rights. Enacted by Congress in 1950, the U.C.M.J. set up three categories of military trial: 1) *summary courts-martial*, which try only enlisted men for minor offenses that have a maximum sentence of one month in prison or 45 days at hard labor; 2) *special courts-martial*, which mainly try enlisted men for crimes that carry a bad-conduct discharge and up to six months in prison; and 3) *general courts-martial*, which handle serious crimes that can lead to life imprisonment and even the death penalty.

The code entitled servicemen to law-

military. Under the U.C.M.J., the C.O. not only convened a general court-martial but appointed the prosecutor, law officer (judge) and veniremen for the court-martial board (jury); he even selected the defense counsel, though the accused could ask for another one. Thus the code did not eliminate the phenomenon known as "command control." Looking back on his experience as a Marine legal officer during the Korean War, Boston Trial Lawyer Joseph Oteri describes the C.O.'s influence on military courts this way: "The word always filtered down that the Old Man wanted such and such to happen. And, miracle of miracles, it always did." Within this system, a career officer assigned as defense counsel often helps the miracle along by pleading his client guilty. "There is no such thing as a truly vigorous attempt to defend your client in the military," complains a military lawyer in California, "except for those few willing to be branded as renegades."

Important reforms went into effect in August. The Military Justice Act passed by Congress last year entitles the accused to a military lawyer (plus

* From left: Major David Crew, Captain Leiland J. Brumley, Captain Robert F. Marasco (behind Rothblatt), Major Martin Linsky (defense attorney) and Colonel Robert B. Rheault.

a civilian lawyer at his expense) in special courts-martial for crimes that have a bad-conduct discharge as one possible penalty. The law attempts further to limit the influence of the C.O. For example, C.O.s are expressly barred from giving an unfavorable rating to a legal staff member simply because of the zeal with which he represents his clients. More important, the act established an independent judiciary within the armed services for general and most special courts-martial. The new "military judges" are responsible to the Judge Advocate General for each service—and not to their C.O.s as in the past. Also for the first time, the accused may elect to have the judge and not the court-martial board decide his case.

Big Influence. Despite the recent reforms, one of the civilian lawyers for the Green Berets argues that the C.O. has already had a big influence on the case. Manhattan Attorney Henry Rothblatt claims that the charges were brought at the insistence of the U.S. commander in Viet Nam, General Creighton Abrams. Rothblatt believes that the general was piqued because Colonel Robert Rheault, one of the defendants and at the time commander of the Green Berets, did not tell the truth at first about the death of Agent Chuyen. His theory is that the assassination was ordered by the CIA, which denies it, and that Abrams resented the agency's use of his men.

All six Green Beret officers are accused of murder and conspiracy to murder, but the Army has ruled out capital punishment. If convicted, the men thus face dismissal from the service and a maximum term of life imprisonment, with no possibility of release unless the Secretary of the Army changes their sentences. Three captains will be brought to trial first, including Robert F. Marasco, 27, whom the Army specifically named as the triggerman last week. Two majors and Colonel Rheault will be tried later. Charges against two enlisted men, whom the Army apparently hopes will testify against the officers, have been held "in abeyance."

Crime or Duty? Like other notorious cases, the trial of the Green Berets has attracted some of the nation's best criminal lawyers. At week's end, Washington's Edward Bennett Williams was on his way to Saigon as counsel to Colonel Rheault. Boston's F. Lee Bailey will soon join the defense team, which includes not only Rothblatt and South Carolina's George W. Gregory but nine military lawyers. Opposing them will be two young Army lawyers who have never argued in a civilian court.

Rothblatt is confident. If his clients killed Chuyen, he asks, was their act a crime or a patriotic duty? Says he: "We can call literally 250 witnesses who will testify that this was a normal military operation."

Employing a favorite tactic of criminal lawyers, Rothblatt & Co. will no doubt attempt to try the victim instead of the defendants; they will insist that

Chuyen aided the Communists. They are bound to make capital out of the fact that the Army has yet to produce a corpse. Other areas ripe for exploitation include the possibility that the CIA might order its agents not to testify, providing a defense claim that the charges should be dismissed.

If the Army does go through with the trials, Rothblatt will probably demand a change of venue to Washington or Hawaii. He claims that the men cannot get a fair trial in the war zone. Even if the Green Berets lose at first, the defense lawyers are likely to take full advantage of a lenient appeal procedure. After automatic review by the convening authority and an Army court of review, they can take the case to the Court of Military Appeals and then try to shift it to the federal courts. The Army, which likes to prosecute its law violators in private, is not likely to appreciate all the notoriety. The savvy lawyers on the defense team could easily bend the system to turn the accused into heroes.