

## Lore of the Corps

### Ranger Cleary and the Law

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On May 23, 1962, First Lieutenant (1LT) John Joseph Cleary, Judge Advocate General's Corps, U.S. Army, made history as the first Army lawyer in history to graduate from Ranger training at Fort Benning, Georgia, and earn the black and yellow "Ranger Tab."<sup>1</sup>

The following year, then Captain (CPT) Cleary became the first Judge Advocate to be assigned to the U.S. Army Special Warfare Center (SWC) at Fort Bragg, North Carolina, where he served as its Staff Judge Advocate.<sup>2</sup> In early 1964, Cleary made history a third time when he became the first Army lawyer graduate of SWC's High-Altitude-Low-Opening or "HALO" Parachute course. This is his story.



Captain John Cleary during High Altitude, Low Opening (HALO) parachute jump, 1964

After graduating from high school, Cleary entered Loyola University in Chicago, where he joined the Army Reserve Officer Training Corps. He was commissioned as a Second Lieutenant (2LT) in the MP Corps in June 1958.

At the time of his commissioning, Cleary had finished his first year of law school at Loyola (he had completed the course work for his undergraduate degree in 1957). He now joined the Army Reserve's 302d Special Forces Group in Cicero, Illinois, and in July 1958, 2LT Cleary completed basic parachutist school at Fort Benning, Georgia. His first jump was his second time in an airplane.<sup>5</sup>

Born in Illinois in 1936, John Cleary was very much a child of the World War II era. In January 1952, while he was in his second year of high school, then fifteen-year-old Cleary lied about his age (he claimed that he was eighteen years old) and enlisted in the Illinois National Guard. Cleary did so at the urging of his police officer father, who had been told by a colleague that with the Korean War now in full swing, the Army National Guard needed motivated young men as never before. Cleary subsequently qualified as an assistant gunner on a quad .50 Browning machine gun.<sup>3</sup> After a summer camp with his unit at Camp Ripley, Minnesota; however, then Specialist Cleary decided that he preferred another military occupation and so he became a military policeman (MP).<sup>4</sup>

After graduating from law school and passing the District of Columbia and Illinois bar examinations in 1960, 2LT Cleary began a tour of active duty as a MP. In late 1960, deciding that he preferred to serve the Army as a lawyer, Cleary applied for a commission in the Judge Advocate General's (JAG) Corps. On the last day of 1960, he took his oath as a 1LT and Judge Advocate. While waiting for the Judge Advocate Officer Basic Course to begin in Charlottesville, 1LT Cleary was temporarily assigned to the 82d Airborne Division, Fort Bragg, North Carolina. His mentor was then Major Reid Kennedy, who would later achieve a measure of fame as the trial judge in *United States v. Calley*.<sup>6</sup> Kennedy, who had been the first Judge Advocate to qualify as a Jumpmaster, arranged for 1LT Cleary to attend

\* The author thanks Mr. John Cleary for his help in preparing this Lore of the Corps.

<sup>1</sup> The cloth ranger tab was introduced for wear on the upper left sleeve in January 1953. This was the only authorized insignia for those who had successfully completed Ranger training until November 1984, when the Army Chief of Staff approved a small metal and enamel version for wear on the pocket flaps of the blue and white uniforms. WILLIAM K. EMERSON, UNITED STATES ARMY BADGES, 1921-2006, at 82 (2006).

<sup>2</sup> The U.S. Army Special Warfare Center (SWC) started at Fort Riley, Kansas, as the U.S. Army Psychological Warfare Center and School. It moved to Fort Bragg in 1952 and was renamed the U.S. Army Center for Special Warfare in 1956. After President John F. Kennedy's assassination, SWC became the U.S. Army John F. Kennedy Special Warfare Center and School (USAJFKSWCS). Today, USAJFKSWCS or SWC is part of U.S. Army Special Operations Command. U.S. ARMY SPECIAL OPERATIONS CTR. FOR EXCELLENCE, <http://www.soc.mil/swcs/about.html> (last visited June 20, 2017).

<sup>3</sup> The "quad .50 caliber" (nicknamed the "meat chopper") was a weapon mounting on the back of a half track. The word "quad" comes from "M45 quadmount"—which consisted of four heavy barrel .50 caliber Browning machine guns mounted on sides of an electrically-powered turret. It was used throughout World War II and Korea. See M45 "Quadmount," ROBERTS ARMORY, <http://www.robertsarmory.com/quad.htm> (last visited June 26, 2017).

<sup>4</sup> E-mail from John Cleary to author, subject: Your history (June 2, 2017, 2:52 PM) (on file with author).

<sup>5</sup> E-mail from John Cleary to author, subject: National Guard question (June 14, 2017, 10:53 AM) (on file with author).

<sup>6</sup> The trial of First Lieutenant (1LT) William L. "Rusty" Calley was the most high-profile court-martial of the Vietnam War. Calley and his men were accused of murdering more than 350 Vietnamese civilians at the hamlet of My Lai. Calley was prosecuted for premeditated murder at Fort Benning in 1971; then Colonel Reid Kennedy was the trial judge at the general court-martial. A panel found Calley guilty as charged and sentenced him to confinement at hard labor for life. For more on the Calley

the division's one-week-long course, from which Cleary graduated in early 1961.<sup>7</sup>

While at Fort Bragg, 1LT Cleary also had his first experience with military justice. An officer, who was married but had several girlfriends, wanted a vasectomy so that there would be no possibility of any unwanted pregnancy. He asked a sergeant medic to perform the vasectomy on him; apparently the officer was convinced that this was a simple medical procedure and that the medic was capable of doing it safely. The chain-of-command, however, was unhappy when it learned of this unauthorized medical event and the sergeant who had performed the vasectomy was prosecuted at a court-martial. At trial, the accused remained silent, and the officer refused to answer any questions. When the only other witness to the event—another medic—claimed to have seen nothing, the court acquitted the accused. Now very unhappy with the entire episode, the command preferred a charge of perjury against the medic who had testified previously that he had seen nothing. First Lieutenant Cleary was the prosecutor. The court convicted the accused of perjury. Looking back, John Cleary felt the entire proceeding had been unfair. The sergeant who had performed the operation had been found not guilty, and the officer involved had been administratively discharged. The by-stander medic, however, who had foolishly lied under oath, now paid a heavy price with a court-martial conviction.<sup>8</sup>

After completing the 34th Judge Advocate Officer Basic Course (then called the Special Course) in May 1961, 1LT Cleary reported for duty at Fort Campbell, Kentucky. During this period, the 101st (along with the 82d), was on airborne status. Consequently, Cleary continued to jump and qualified as a senior parachutist in January 1962.

While at the 101st, 1LT Cleary wrote a letter to The Judge Advocate General, Major General Charles E. "Ted" Decker,<sup>9</sup> requesting that Decker permit him to attend the Army's Ranger School. Cleary believed that he would be a better officer—and a better judge advocate—if he took part in this rigorous combat arms training. A short time later, Cleary got a notification that he had a slot for the school. As he remembers it:

Ranger School was and is a real personal challenge. With [my] active duty experience, I was better prepared, but still underestimated the rigorous demands. Sleep deprivation made

you punchy and cranky and tested your endurance.

The motto of the class was 'cooperate and graduate,' for you had to work well with others. Once on an all-night patrol in a swamp during the Florida phase, I fell asleep standing up resting on a BAR [Browning Automatic Rifle]. I did not know I slept, for I thought I only blinked. In that instant in the darkness of the early morning, I noticed a sharp increase in the beginning of daylight. I checked my watch. An hour had elapsed, and the 24-man patrol was gone. If you got lost in Ranger School, you were out. I ran as fast as I could and caught up with the patrol. My buddy told the instructor I was somewhere on the flank when he noticed I was missing.

The instructor immediately made me the patrol leader, and I did not have a clue of where we were going or what the plan of assault was for our objective. The two student squad leaders covered for me by making it appear that the instructions they gave in the instructor's presence came from me. They must have liked me.<sup>10</sup>

On May 24, 1962, 1LT Cleary pinned the yellow and black Ranger tab on the sleeve of his shirt. About forty-five students finished with him in Ranger Class No. 7; he was the first Army lawyer in history to become Ranger-qualified. Many of this fellow graduates would later serve in Vietnam; more than a few were killed or wounded in action.<sup>11</sup>

Cleary returned to Fort Campbell and the 101st Airborne Division. In the days before the Vietnam War, there were few overseas deployments, but 1LT Cleary did serve overseas as a Judge Advocate in brigade exercises in Okinawa and the Philippines. During training in the Philippines, a nineteen-year-old Soldier was shot by another Soldier. Apparently, the victim was on duty as the charge of quarters when he learned that the shooter had brought a privately-owned .22 caliber pistol with him. As Soldiers had been told that privately-owned weapons could not be brought on the deployment, the charge of quarters demanded that the Soldier turn over the pistol to him. What happened next was very much in dispute. The shooter claimed that, when he pulled the pistol out of his uniform pocket, it had accidentally fired. The victim, however, insisted that the shooter had taken "it out of his pocket, aimed

trial, see *United States v. Calley*, 46 C.M.R. 1131 (A.C.M.R. 1973), *aff'd* 48 C.M.R. 19 (C.M.A. 1973). See also *Calley v. Calloway*, 382 F. Supp. 650 (1974); *Calley v. Hoffman*, 510 F. 2d 814 (1975), *cert. denied*, 425 U.S. 911 (1976). For a good narrative of the event, see RICHARD HAMMER, *THE COURT MARTIAL OF LT. CALLEY* (1971).

<sup>7</sup> E-mail, John Cleary to author, *supra* note 4.

<sup>8</sup> E-mail, John Cleary to author, subject: Revision of article (June 15, 2017, 10:38 AM) (on file with author).

<sup>9</sup> Charles E. Decker served as The Judge Advocate General (TJAG) from 1961 to 1963. He had previously been a key player in the decision to establish The Judge Advocate General's School in Charlottesville in 1951. For more on General Decker, see *THE JUDGE ADVOCATE GENERAL'S CORPS, THE ARMY LAWYER* 233-35 (1975).

<sup>10</sup> E-mail, John Cleary to author, subject: Ranger School (May 18, 2017, 3:21 PM) (on file with author).

<sup>11</sup> *Id.*



*Captain John Cleary, 101st Airborne Division, on maneuvers with his division in South Carolina, summer 1962*

it, and deliberately fired it at him.” The bullet had struck the charge of quarters in the spleen and, while 1LT Cleary thought that the man might die from this serious wound, Cleary was assured by the treating physician that “it was a clean wound” and that the victim would recover.<sup>12</sup>

Cleary was not so sure. Consequently, he interviewed the wounded Soldier and took a statement from him. At the time, 1LT Cleary realized that this interview might qualify as a “dying declaration” and an exception to the hearsay rule if the victim acknowledged that he was making his statement in the belief that he might die of his wound. But Cleary was uncomfortable about asking the victim if he would acknowledge that he might die of the gunshot wound, chiefly because he felt that if he “advised him, even in a subtle way of the chance of death, I might be taking away from him his will to live.” Cleary never asked the nineteen-year-old Soldier if he thought he might die and, as a result, the statement was not used at a later time—when the victim died of his wound. As Cleary remembers, the shooter “got off” with a very light punishment.<sup>13</sup>

In 1963, CPT Cleary became the first Staff Judge Advocate at the SWC at Fort Bragg, North Carolina (it would not be known as the John F. Kennedy SWC until after President Kennedy’s death). Then Brigadier General William P. Yarborough, the unit’s commander, assigned him to the 6th Special Forces Group so that he could remain on jump status. In early 1964, CPT Cleary made history yet again when he graduated from SWC’s High Altitude, Low Opening or HALO course of instruction. As the accompanying certificate

shows, he completed “14 free fall jumps, reaching a maximum of 95 seconds.” His highest jump was from 20,000 feet.



*High Altitude, Low Opening (HALO) Parachute Certificate awarded to CPT John Cleary, 1964*

After leaving active duty for the Army Reserve in 1964, Cleary remained active in sport parachuting clubs. He also made over 600 descents by parachute, of which more than 550 were free-fall jumps. In March 1966, he managed to spend two weeks active duty for training with the U.S. Army Sport Parachute Team, the “Golden Knights” at Fort Bragg.<sup>14</sup>

<sup>12</sup> E-mail, John Cleary to author, *supra* note 4.

<sup>13</sup> *Id.* For the current rule on statements made under belief of impending death, see MANUAL FOR COURTS-MARTIAL, UNITED STATES, MIL. R. EVID. 804(b)(2).

<sup>14</sup> E-mail, John Cleary to author, *supra* note 4.

After taking off his Army uniform, John Cleary first worked as the deputy director of the National Defender Project. The goal of the project, which was underwritten by the Ford Foundation, was to implement the Supreme Court's 1963 decision in *Gideon v. Wainwright*. General Decker, who had recently retired as The Judge Advocate General (TJAG), was the director of the National Defender Project, and he hired Cleary as his deputy. Cleary later went into private practice as a defense attorney in San Diego. Today, at eighty-one years of age, he works at San Diego State University (SDSU) organizing trips to China for SDSU students and bringing Chinese students to SDSU for training in basic trial advocacy.

John Cleary's story is worth telling for several reasons. First, it shows that even before the Corps' institutional development of operational law in the 1980s and 1990s—our *raison d'être* today—there were individual Judge Advocates who were looking for ways to better serve commanders. Cleary's successful completion of Ranger and HALO training opened the door for him to join the special warfare community as a lawyer, thereby ensuring that these operators had the services of a judge advocate. Second, John Cleary's life experiences after the Army demonstrate that his historical "firsts" as a judge advocate were not a fluke, as his continued to lead a full and rewarding life as a civilian.

A final note. Shortly after Cleary completed Ranger training, a second judge advocate, CPT Hunter Clarke, who had served with Cleary at the 101st Airborne Division, also completed the Ranger course and earned the Ranger tab.<sup>15</sup> Over the years, other Army lawyers have also completed Ranger training. In the early 1980s, Captain Philip Lindley and Martin Healy, both assigned to the Office of the Staff Judge Advocate, Fort Benning, Georgia, earned the Ranger tab. Other Judge Advocates who have successfully completed Ranger training while members of the Corps include Colonel George Smawley and Major John Doyle.

*More historical information can be found at*

The Judge Advocate General's Corps  
Regimental History Website  
<https://www.jagcnet.army.mil/8525736A005BE1BE>

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

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<sup>15</sup> E-mail, John Cleary to author, *supra* note 10.