

Kotouc Is Acquitted of Maiming A Vietnamese Prisoner at Mylai

By JON NORDHEIMER APR 30 1971
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ATLANTA, April 29—An Army court-martial jury cleared Capt. Eugene M. Kotouc of guilt today in the maiming of a Vietnamese prisoner three years ago at Mylai 4, an act the officer said he had committed by accident.

Seven career officers on the jury deliberated less than 60 minutes before freeing the defendant, who was one of the planners of the Army's assault on the South Vietnamese hamlet on March 16, 1968. The maiming occurred a few hours after the assault.

"How about it!" Captain Kotouc shouted with delight as the verdict was read and he turned to embrace his wife and three children, who had sat behind him throughout the four-day trial. His friends from his

home in Nebraska and Army officers who had served with the stocky 37-year-old officer roared their approval.

Later, at a brief news conference outside the Fort McPherson courtroom, Captain Kotouc was flushed with excitement and said he would remain in the service. "Who would want to get out of a system like this?" he asked.

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"It's the best damn Army in the world I'll tell you."

His daughter, Jonell, an 18-year-old redhead, hooked her arms around her father's neck. "Oh, Daddy. Oh, Daddy," she cried softly as they walked away together.

Four men have now been tried on different charges growing out of the Army's investigation into the events at Mylai. Only one of these, First Lieut. William L. Calley Jr., has been convicted. Two other officers, Capt. Ernest Medina and Lieut. Col. Oran Henderson, must still face trial. Charges against 19 others have been dismissed.

Captain Kotouc testified that he only intended to frighten the civilian prisoner when he thrust a knife at him during an interrogation. He testified that his hand had slipped and the knife cut off part of one finger on the prisoner's right hand.

Charge to the Jury

In his charge to the jury, Col. Madison Wright 2d, the trial judge, said that Army regulations in effect at the time might have led Captain Kotouc to believe that it was lawful to threaten a prisoner with violence, and his action therefore could be legally justified.

Although the Uniform Military Code of Justice protects unarmed civilians and prisoners from acts of violence, insults and even public curiosity, the defense produced a Department of Army field manual dealing with intelligence operations that stated that an interrogator could "threaten violence."

Captain Kotouc, who was the intelligence officer of Task Force Barker, insisted he employed terror only to intimidate uncooperative prisoners and gather information that might help save American lives. He said he had no intention of hurting the prisoner when he had the man spread his fingers on a board and made several swiping motions at them with a long knife.

Prosecution's Questions

Prosecution lawyers tried to prove that the captain had demonstrated little concern for the fate of the prisoner and of two others who had been rounded up in the vicinity of Mylai that day. If the maiming was accidental, Maj. William Eckhardt, the chief trial counsel, wanted to know, why was not the victim given first aid?

And if the prisoners were members of the Vietcong infrastructure and possessed information that was valuable to the Americans, he asked, who were not they taken to brigade headquarters for further questioning instead of being shot and killed by the Vietnamese after only 30 minutes of interrogation by Captain Kotouc?

Captain Kotouc had originally been accused of murder, but the charge was dropped before it reached trial.

Robert C. Crosby, a former Governor of Nebraska who served as civilian defense counsel, said he intended to conduct a personal inquiry into why the Government persisted in the prosecution of Captain Kotouc.

Throughout the trial Mr. Crosby implied that "command influence" had forced the case to be brought to trial despite what he called the Government's "flimsy evidence" against the officer.

HOUSE PANEL BACKS