

MURDER VERDICT EASED IN VIETNAM

Army Court Finds Officer
Guilty of Lesser Charge
in Slaying of Civilian

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LONGBINH, South Vietnam, March 30—A military court revoked today a conviction for premeditated murder it pronounced yesterday on First Lieut. James B. Duffy, who had been charged with ordering the slaying of an unarmed Vietnamese civilian.

The court instead found Lieut. Duffy guilty of a lesser charge, involuntary manslaughter, for his role in allowing one of his subordinates to shoot Do Van Man, a South Vietnamese farmer, last Sept. 5.

The conviction for premeditated murder would have meant a mandatory sentence of life imprisonment for Lieut. Duffy. The maximum sentence for involuntary manslaughter is much lighter, and the actual sentence will be left to the discretion of the court.

The court is expected to pronounce sentence tomorrow.

Verdict Called "Exoneration"

The civilian defense lawyer, Henry B. Rosenblatt, said after the verdict that the instructions of the military judge had given the court "no choice but to bring in a verdict of guilty."

He added that the finding of a lesser charge by the court "really was an exoneration of Jim Duffy."

"But we are not satisfied with the verdict," he added.

"There was negligent homicide but it was on the part of the Army and not by Jim Duffy," the New York Criminal lawyer said to newsmen gathered in the darkness outside the small courthouse at this giant military base.

Mr. Rothblatt noted that the military judge has denied his defense argument, which insisted that the Army's policy of using the "body count" as the measure of military effi-

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ciency in Vietnam is what caused the death of Do Van Man.

"There is no question that the Army was determined to bring in some verdict of guilty," Mr. Rothblatt asserted. He recalled that the President of the military court, Col. Robert W. Selton, said yesterday that the court had considered "the ramifications to the Army" of the defense.

The civilian lawyer said that the verdict would appear to make the Duffy case a test case for the forthcoming trial of soldiers accused of the massacre of Vietnamese civilians at Songmy in 1968. He noted that Lieutenant Duffy had been charged with deliberate and willful killing but had been found guilty of a lesser offense.

Pressure on Army Cited

Several military lawyers attending the court-martial as spectators said privately that a full acquittal of Lieutenant Duffy would have been damaging to the Army. The Army, they said, already was under heavy pressure because of the publicity about the alleged Songmy massacre and other suspected war crimes.

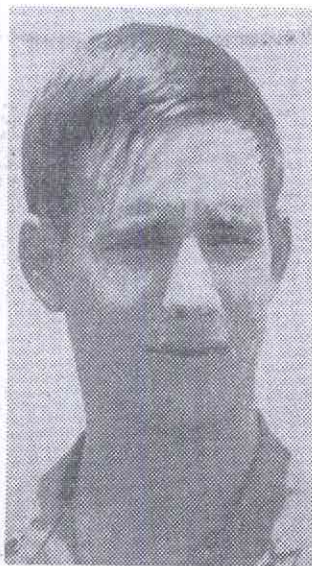
"But the court didn't want to make Duffy suffer that badly to get the Army off the hook," said one young law officer. "To a lot of us it looks like another example of the 'M.G.R.—the mere gook rule'—being applied," he asserted.

He explained that the expression had been adopted facetiously by some Army legal officers who believed that military courts were lenient to Americans who killed Vietnamese civilians, because the Vietnamese were regarded as somehow second-class human beings or "mere gooks."

The eight-man court had asked to reconsider its verdict yesterday after it found Lieutenant Duffy guilty of premeditated murder and then was instructed by the military judge that such a conviction carried a mandatory sentence of life imprisonment.

Alternative Suggested

The judge, Col. Peter S. Wondolowski, then told the court that it could find the accused guilty of a lesser verdict of unpremeditated murder.



United Press International

First Lieut. James B. Duffy during his trial in Longbinh.

ing in good faith when he ordered the death of the unarmed Vietnamese prisoner because the Army's stress on counts of enemy dead had persuaded him that the killing was his duty as an officer.

In denying this defense to Lieutenant Duffy, some of the observers asserted, the military judge was in effect clearing the Army of responsibility for the murder of the farmer.

Some of the observers felt that Mr. Rothblatt's argument had been a revival of the "Nuremberg defense"—a reference to the unsuccessful attempt to defend Nazi war criminals in the post-World War II war crimes trials in Nuremberg on the grounds that they had been obeying orders of a superior.

Colonel Wondolowski, in rejecting this, appeared to reaffirm the principle of individual responsibility for war crimes. The judge noted that the law called for disobedience by servicemen to manifestly illegal orders.

Another issue raised in evidence presented during the trial was the possibility that American soldiers sent to Vietnam were not receiving sufficient instruction on the humane treatment of prisoners of war. Lieutenant Duffy and several other witnesses indicated in their testimony that they were not thoroughly familiar with the Geneva Convention on war prisoners and other pertinent rules.