

## Lore of the Corps

### “I Want That Man Shot”: A War Crime in Vietnam?

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On 22 September 1968, a wounded and unarmed Vietnamese man who had been captured by a patrol of troopers from the 82d Airborne Division, and was thought to be a Viet Cong (VC) guerrilla, was shot and killed. The shooting occurred after the company commander, Captain (CPT) John Kapranopoulos, made this radio transmission to the Soldiers holding the man: “Damn it, I don’t care about prisoners; I want a body count. I want that man shot.”<sup>1</sup>

About the same time, Kapranopoulos sent out a second patrol to intercept another suspected VC insurgent. When asked by one Soldier in that patrol what he wanted them to do if the Vietnamese man did not have identification papers proving that he was an innocent civilian, Kapranopoulos replied: “Are you sh[\*\*\*\*\*] me?” As a result, after capturing this suspected VC and apparently failing to find proof that their prisoner was a civilian, the American Soldiers shot and killed him too.<sup>2</sup>

What follows is the story of CPT Kapranopoulos’s general court-martial for the premeditated murder of these two Vietnamese civilians, a two-day affair that occurred shortly after Thanksgiving 1968 at the “Plantation” compound located east of Long Binh, Vietnam.<sup>3</sup>

The accused, twenty-seven year old CPT John Kapranopoulos, was described in a contemporary newspaper as “short” and “bespectacled.”<sup>4</sup> He was called “Captain K” by his men, as they apparently found his Greek surname too complicated to pronounce. At the time of the killings, Kapranopoulos was in command of Company A, 2d Battalion, 505th Infantry, 82d Airborne Division, and had a reputation as a “gung ho infantry commander [who was] loved by his men and admired by his superiors.”<sup>5</sup> This was his second tour in Vietnam; Kapranopoulos had previously served with the 173d Airborne Brigade in 1966, and been awarded the Purple Heart after being wounded in action.<sup>6</sup>

The facts presented at trial, which began on Friday, 29 November, and finished the following day, were that on 22 September 1968, A Company troopers “spotted four Vietnamese with packs on their backs entering a woodline in the vicinity of Pho Loc.”<sup>7</sup> Since the four men had backpacks and since Pho Loc was “in Charlie-infested country”<sup>8</sup> near the city of Hue, CPT Kapranopoulos ordered artillery fire into the woods. Moments later, the four Vietnamese emerged from the woods. They no longer were carrying their packs, and they started running from the artillery.

First Lieutenant (1LT) Ralph Loomis, a platoon leader in the company, was ordered by CPT Kapranopoulos to pursue the fleeing Vietnamese with a squad of men. Two escaped. The third man, however, fell back “and tried to cut across behind” Loomis and his Soldiers while the fourth Vietnamese, who was faster, tried to make his getaway by outrunning the Americans chasing him.

Kapranopoulos, who was observing the pursuit from the top of a nearby hill, ordered 1LT Loomis to leave two of his Soldiers behind to capture the straggler while the rest of the squad chased the faster man. In pursuing the faster man, the Americans fired several rounds from their M-16 rifles, wounding the fleeing Vietnamese in the left hand. First Lieutenant Loomis testified at trial that “the injured man dived behind a bush,” but as the GIs got closer, “he came out with his hands up.”<sup>9</sup>

As Loomis related under oath, he then radioed Kapranopoulos “and told the captain that we had the man captured, that he was wounded and unarmed.” As Loomis testified, Kapranopoulos replied as follows: “Damn it. I don’t care about prisoners. I want a body count. I want that man shot.”<sup>10</sup> Since the troopers in A Company wore buttons on their jungle fatigues emblazoned with the slogan “Wine,

<sup>1</sup> *Looies Claim CO Ordered Unarmed Men Killed—I Want That Man Shot*, OVERSEAS WKLY. (PAC. EDITION), Dec. 21, 1968, at 3. [hereinafter *Looies Claim*].

<sup>2</sup> *Id.*

<sup>3</sup> Telephone Interview with Colonel (Retired) Herbert J. Green (July 10, 2014).

<sup>4</sup> *Looies Claim*, *supra* note 1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* Kapranopoulos had enlisted in the Army and was subsequently commissioned in the Infantry after graduating from Officer Candidate School at Fort Benning, Georgia.

<sup>7</sup> *Id.*

<sup>8</sup> “Charlie” was a moniker attached by U.S. troops to the Viet Cong guerrillas—the “Charlie” originating from the radio alphabet as in “Victor Charlie.”

<sup>9</sup> *Looies Claim*, *supra* note 1.

<sup>10</sup> At this time during the Vietnam war, the Army was pursuing an attrition strategy—the theory being that the enemy could be defeated if sufficient numbers of his personnel were wounded or killed. This led to battlefield success being measured in terms of “body count,” i.e. the higher the number of enemy bodies, the more successful a fight with the enemy was considered to have been. For more on the attrition strategy, see JOHN PRADOS, VIETNAM 181–82 (2009).

Women, Body Count,”<sup>11</sup> one might think that CPT Kapranopoulos’ order was simply a reflection of the mindset in his unit.

Despite CPT Kapranopoulos’ order to kill the unarmed prisoner, 1LT Loomis instructed his men not to fire. But Private First Class Joseph Mattaliano, who was serving as the radio-telephone operator or “RTO” and had heard Kapranopoulos’ order, began firing his weapon. As Loomis remembered: “The first couple [of rounds] missed. The others hit the man in the neck and rib cage.”<sup>12</sup>

As for the second Vietnamese, who had fallen back and attempted to evade 1LT Loomis and his men, he was captured not by the two men that Loomis had left behind but by a squad led by Sergeant Teofilo Colon. Captain Kapranopoulos had sent Colon and his men to intercept this second man who, Kapranopoulos thought, might succeed in evading Loomis’ men.<sup>13</sup>

At trial, 1LT Joe E. Harris, an artillery forward observer assigned to Kapranopoulos’ company, testified that he had been standing next to CPT Kapranopoulos and had heard all the radio transmissions from Kapranopoulos to 1LT Loomis; Harris’ in court testimony consequently corroborated what Loomis told the panel. Additionally, 1LT Harris testified that he used a pair of binoculars to watch Colon’s squad in action. According to Harris, he saw that Colon’s men had captured the suspected VC guerrilla, and that the man was on his knees on the ground with his hands tied behind his back. As Harris watched, “a GI in the squad fired a short execution burst, followed a few seconds later by another. The Vietnamese fell dead.”<sup>14</sup>

As Harris put it, he put down the binoculars, turned to CPT Kapranopoulos, and said: “If I were you, I’d untie him.” Captain Kapranopoulos then “radioed instructions to Colon that the ropes should be removed from the corpse’s wrists.”<sup>15</sup>

After the trial counsel, Captain Herbert J. Green, presented the testimony of 1LT Loomis and 1LT Harris, the defense counsel, Major Jon N. Kulish, presented his case.



CPT Herbert J. Green

Specialist Five John Thielemann, a medic who had been with 1LT Loomis’ men when they captured the wounded and unarmed Vietnamese man, testified that he had slipped while jumping a gully and dropped his weapon. Private First Class Mattaliano then testified that after Thielemann had dropped his rifle, the Vietnamese in their custody “made a suspicious move toward [the weapon], so he opened fire to protect his buddy.” In any event, Mattaliano said, there had been no radio transmission from CPT Kapranopoulos; there had been no orders to kill any prisoner.<sup>16</sup>

As for the Vietnamese captured by Colon’s squad? Sergeant Colon testified that this man had been killed during the chase and that there had never been any order from CPT Kapranopoulos that prisoners were not to be taken in combat. Several other men who had participated in the capture of the two suspected VC insurgents also testified that “they didn’t hear any orders to kill [prisoners].”<sup>17</sup>

Lieutenant Colonel Robert Hurley, CPT Kapranopoulos’ battalion commander, testified that Kapranopoulos was “the best company leader I’ve seen in my 19 ½ years of military service.”<sup>18</sup> Hurley also undercut 1LT Loomis’ credibility with the panel hearing the case when he testified that Loomis once told him “he wasn’t sure he could kill anyone or have anyone killed.” This statement, said Hurley, “was a real shock to me.” It likely was somewhat surprising to the panel members as well, given their professions and current location. Hurley’s good character evidence was buttressed by the testimony of Brigadier General Alexander R. “Bud” Bolling, the commander of the 82d Airborne Division’s 3d Brigade. Bolling, who testified before Hurley took the stand, told the panel that Kapranopoulos “was one of the most outstanding company commanders I’ve ever had in my command.”<sup>19</sup>

<sup>11</sup> Telephone Interview with Colonel Green, *supra* note 3.

<sup>12</sup> *Looies Claim*, *supra* note 1.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

Not surprisingly, Major Kulish called CPT Kapranopoulos to the stand to testify on his own behalf. After swearing to tell the whole truth and nothing but the truth, Kapranopoulos “told the court that he never said a word to Loomis or Colon about killing the prisoners.” As for 1LT Loomis, CPT Kapranopoulos said that he “was a lousy platoon leader” and had fabricated the story of a radio transmission. Since a number of Soldiers, in addition to LTC Hurley, testified that “Loomis had a mighty funny attitude toward combat because he didn’t like to kill people,” this probably undercut 1LT Loomis’ credibility with the panel.<sup>20</sup> There was, however, no attack on 1LT Harris’ veracity, and his testimony about the substance of CPT Kapranopoulos’s radio transmissions was un rebutted.

After Colonel Jack Crouchet, the law officer assigned to the court-martial, instructed the panel, the court closed for deliberation. The eight officer members spent just thirty minutes before returning with their verdict: not guilty of the charge and its two specifications of premeditated murder. Kapranopoulos, who would have been sentenced to life imprisonment if he had been convicted as charged, walked out of the small, air-conditioned courtroom as a free man.<sup>21</sup>

Had CPT Kapranopoulos been found guilty, the government intended to try PFC Mattaliano for his part in the shooting. After the acquittal, however, the case against Mattaliano was dropped.

What explains the result in *United States v. Kapranopoulos*? Did a war crime occur? Was the evidence sufficient for a finder of fact to conclude—beyond a reasonable doubt—that the accused was guilty of ordering the unlawful killing of two prisoners? If so, why would the panel of officers acquit him?

The evidence—testimony from two lieutenants who had no motivation to lie or concoct a story incriminating CPT Kapranopoulos—was overwhelming. But from the outset, the senior Army lawyer involved in the case knew a successful prosecution would be problematic. The Tet Offensive of January 1968—in which vicious, coordinated VC and North Vietnamese attacks had been defeated but with heavy U.S. and Army of Vietnam (ARVN) losses—was still fresh in everyone’s mind and attitudes toward the enemy had hardened.<sup>22</sup> Additionally, at this time, all courts-martial

were heard by panels (there was no option for trial by military judge until 1969) and, for trials held in Vietnam, this meant panels consisting, at least in part, of combat commanders—men who had seen hard fighting and consequently not only would be sympathetic to CPT Kapranopoulos’s predicament but would be loathe to find him guilty of war-related misconduct.



Major General Kenneth J. Hodson and Major Barney L. Brannen, Jr.

This explains, at least in part, why Major (MAJ) Barney L. Brannen, Jr., the Staff Judge Advocate at II Field Force, told the convening authority, Lieutenant General Walter T. “Dutch” Kerwin that, although he (Brannen) believed Kapranopoulos would be found not guilty, “we had no choice but to try him anyway.”<sup>23</sup> In Brannen’s view, there was no question that CPT Kapranopoulos had ordered the killings and was guilty; this alone was sufficient reason to try him by general court-martial. But an additional reason for prosecuting him was that Captain Kapranopoulos’s “we don’t take prisoners in combat” order was now common knowledge, and failing to prosecute him would send the message that such an attitude was acceptable in the II Field Force. General Kerwin saw it the same way, and so the case went to trial.<sup>24</sup>

Later, after the acquittal of CPT Kapranopoulos, the president of the court-martial told MAJ Brannen that “we [the panel] thought CPT Kapranopoulos was guilty, but we just couldn’t find him guilty.” Just why this officer told

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* Jack Crouchet, the judge advocate who served as law officer in the trial (the law officer was the forerunner of today’s military judge), later included the *Kapranopoulos* court-martial in a book he authored about his experiences in Vietnam. According to Crouchet, “there was great rejoicing” in CPT Kapranopoulos’s unit when news of his acquittal reached the Soldiers. JACK CROUCHET, *VIETNAM STORIES* 134 (1997). Since Crouchet changed the names of the participants in his book, his re-telling of the event is somewhat different from the version reported in *Overseas Weekly*.

<sup>22</sup> On 30 January 1968, the beginning of the lunar New Year (or Tet), VC and their North Vietnamese allies launched a series of coordinated attacks

designed to destroy the ARVN and encourage the civilian population to rise up against the South Vietnamese government. The VC and North Vietnamese struck five major cities, thirty-six provincial capitals, sixty-four district capitals, and fifty villages. They also attacked Ton Son Nhut Air Base outside Saigon and successfully penetrated the U.S. Embassy grounds in Saigon. Although the enemy forces were decisively defeated (more than 50,000 VC and North Vietnamese were killed or wounded), U.S. and ARVN losses were heavy (20,000 killed or wounded in action). For more on Tet, see ERIC M. HAMMEL, *FIRE IN THE STREETS* (1991).

<sup>23</sup> E-mail from Colonel (Retired) Barney L. Brannen, Jr., to author (July 23, 2014, 5:53 PM (on file with author)).

<sup>24</sup> *Id.*

Brannen that the panel had engaged in an act of jury nullification is an open question, but the man apparently felt comfortable in sharing this information.<sup>25</sup>

*Time* magazine later pointed to the result in *Kapranopoulos* as proof that “military courts sometimes follow the unofficial ‘mere gook’ rule, which devalues Vietnamese lives.”<sup>26</sup> According to *Time*, “atrocities” like the killings in the CPT Kapranopoulos court-martial occurred because “the tension of being feared and hated in a remote, racially different Asian country . . . pushed many Americans toward a tribalistic logic—all “gooks” are enemies and therefore killable.”<sup>27</sup>

What became of some of the players in this event? Walter T. “Dutch” Kerwin, Jr. reached four star rank and was the Army Vice Chief of Staff before retiring in 1978. He died in 2008. Alexander R. “Bud” Bolling finished his distinguished career as a major general. He retired in 1973 and died in 2011. The II Field Force Staff Judge Advocate,

MAJ Barney Brannen, retired as a colonel in 1979; he finished his career in our Corps as the Commandant of The Judge Advocate General’s School. The trial counsel, Captain Herbert “Herb” Green, is perhaps best remembered for his many years as a trial judge. He retired as a colonel in 1994 and now works as an administrative law judge for the Social Security Administration. As for then CPT Kapranopoulos? A quick Internet search shows that he apparently retired as a lieutenant colonel and today lives in Arizona.

*More historical information can be found at*

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<sup>25</sup> *Id.*

<sup>26</sup> *Legal Orders*, TIME, Apr. 12, 1971, at 18.

<sup>27</sup> *Id.* “Gook” was a pejorative moniker for all Vietnamese (and Asians) used by GIs during the war in Southeast Asia. The derogatory term originated during the Spanish-American War, when U.S. troops in the Philippines began using it to refer to Filipinos. PAUL DICKSON, WAR SLANG 29 (2007).