

THE CURIOUS CASE OF Private McKinley Nolan

How an American deserter's murder may lead to war crimes convictions for former Khmer Rouge leaders

BY RICHARD LINNETT

Michael Nolan will not give up the ghost. In 2008 and 2009, he spent many agonizing weeks in Vietnam and Cambodia with a film crew and myself searching for his missing brother McKinley Nolan. He came very close but didn't find him, and it doesn't look promising that he will ever find him. Yet he "keeps on keeping on," as

his sister-in-law Mary, first wife of McKinley, would put it.

"I want to get back to Cambodia," says Michael, who lives in Texas. "I want to get ready for the trial. I've lost it all, but I still have that. I still have the trial."

He refers to the historic United Nations-backed Khmer Rouge tribunals. The first installment concluded last year with the trial of Kaing Guek Eav, known as Duch (pronounced *Doik*), who ran the notorious S-21 prison where approximately 15,000 people were tortured and killed during the reign of the Khmer Rouge. Duch was found guilty and sentenced to 30 years in prison. The second trial—considered the most important—is against four high-ranking Khmer Rouge leaders: Nuon Chea, who was second in command to Pol Pot; former head of state Khieu Samphan; former Foreign Affairs Minister Ieng Sary; and Ieng Thirith, the former social affairs minister. This gang of four—all of them now in their late 70s and 80s—is charged with war crimes, crimes against humanity and genocide in connection with the deaths of up to 2 million people between 1975 and 1979. They are to face the tribunal's panel of international judges and their accusers—now including Michael Nolan—sometime this year.

That puts Michael Nolan in select company as he is one of a handful of Westerners who have been accepted as civil parties in the second trial. On September 7, 2010, the Extraordinary Chambers in the Courts of Cambodia (ECCC), the tribunal's ruling body, officially named Michael a plaintiff based on his claim that his brother McKinley Nolan, an American soldier during the Vietnam War, was captured by the Khmer Rouge and brutally murdered by them in 1977. Michael Nolan and his Cambodian lawyers submitted a substantial file of evi-



BETTER DAYS Private McKinley Nolan, shortly after volunteering for the U.S. Army in 1965.

dence. It contains classified and unclassified documents and photographs that I have gathered over the course of more than a decade of research in preparation for a book about McKinley Nolan. Helen Jarvis, the former head of the court's Victims Support Section, told the *Phnom Penh Post* that Michael Nolan's submission was "particularly extensive in terms of the prior research that has been done."

Also included as evidence was a copy of the award-winning documentary film we made about the search, *The Disappearance of McKinley Nolan*, directed by Henry Corra and produced by actor Danny Glover, which follows Michael and I as we track down McKinley from Vietnam to Cambodia with the help of retired U.S. Army Lieutenant Dan Smith, a Vietnam War veteran who thought he had seen McKinley alive in Tay Ninh during a visit to Vietnam in 2005.

According to the U.S. military, McKinley Nolan, an infantryman, was one of only two officially recognized traitors of the Vietnam War. The other was Marine Private Bobby Garwood, the subject of the bestselling book *Conversations with the Enemy* by Winston Grooms. Official records indicate McKinley willingly joined the enemy, crossing to the other side on November 12, 1967, throwing his lot in with the Viet Cong. One version of the story is that McKinley had become disillusioned with the war and with racism in his platoon, and he defiantly defected, becoming a prolific author of Viet Cong propaganda leaflets and radio addresses that urged soldiers to drop their weapons and join the revolution.

"In our country our colored people are oppressed and exploited," McKinley said in one radio address. "That's why our colored people can't vote for our own equality and freedom. The Vietnamese people are struggling for peace and independent freedom. They are doing what Americans did in the 18th century. Liberty and freedom for all."

Another version of the story is that McKinley was a bad soldier, a troublemaker who sold stolen military supplies on the black market, got caught and deserted his platoon in order to avoid punishment. It is a puzzling case, one that has dogged his brother Michael for more than 40 years.

"Something happened out there," says Michael. "I don't know what it was, but



UNLESS OTHERWISE NOTED, ALL PHOTOS COURTESY OF RICHARD LINNETT

NEW LIFE In a 1967 photograph, Nolan appears happy alongside his Vietnamese wife Thatch Thi Khen, who is holding her daughter, and her son, Quang.

something happened that made him go into the jungles and do what he did, joining those people. I just need to know what happened. I just need to see where his head was at."

Michael and McKinley were close. They came from a family of 11 children sired by three fathers. McKinley, the oldest, would be 66 years old this year; Michael, the third child, is 62. They were both raised by their grandparents in Washington, Texas, a rural town two hours north of Houston on the Brazos River. Though they had different fathers, they took the last name of their grandparents, Phyllis and Isaac Nolan.

McKinley was a simple Texas sharecropper with wanderlust. He was married with a 1-year-old boy named Rodger when he volunteered for a two-year stint with the U.S. Army on December 20, 1965, to see the world. He was sent to Fort Polk, La., for basic training and was transferred after three months to Fort Gordon, Ga., where he received advanced individual training. He arrived in Vietnam in July 1966 as an assistant gunner and rifleman with the 2nd Battalion, 16th Infantry of the 1st Infantry Division, stationed around Long Binh, just east of Saigon. McKinley's detachment was a "search and destroy" fighting force that was constantly in the field, rooting out entrenched Viet Cong guerrillas, destroying their supply lines and manpower in some of the toughest conditions known to an infantryman. They frequently operated almost 70 miles from their base camp in impenetrable jungles on the Cambodian frontier, around the "Iron Triangle" near Lai Khe and northeast of Bia Gia toward the South China Sea.

Private McKinley saw a lot of action during his first tour of duty. He was awarded a Combat Infantry Badge for participating in

ground combat and moved up rank to specialist 4. After several months, according to letters he wrote to his grandmother, he realized that he was in a world that looked very much like the one he came from. The countryside was damp and lush, just like the hills surrounding the muddy Brazos River. The Vietnamese were similar to his own people back home. They were modest, hard working, and he was growing to like them.

McKinley's second tour of duty rolled him into 1967, an eventful year for his battalion. The 16th Infantry participated in Operation Cedar Falls, involving some 30,000 U.S. and South Vietnamese troops. His unit also fought in Operation Tucson, and in June the 16th engaged the Viet Cong's merciless 271st Regiment and North Vietnamese Army (NVA) troops in Operation Billings. Before the campaign ended, McKinley went AWOL for the first time, on September 7. More than a month later, on November 19, he went over the hill entirely.

According to Michael, who read his brother's war letters before they were lost in a house fire a few years ago, McKinley was wounded, perhaps during Operation Billings, while hunkering down in a trench, hit in the hand and arm, surrounded by the dead bodies of fellow soldiers. The Army issued him a Purple Heart, handed him his gun and sent him back to his unit. Michael believes that is what pushed McKinley over the edge.

After he was wounded, Defense Intelligence Agency (DIA) records show that McKinley became insubordinate and went AWOL for almost two months, from September 7 to November 6. He either turned himself back in or was caught; he was busted in rank to private, fined and tossed into the notorious Long Binh jail where, according to the DIA records, he was "confined" for two



KHMER CRIMES Skulls found stacked in Takeo Province provide silent testimony to the Pol Pot regime's reign of terror.

'POW Mark Smith saw Nolan holding a gun alongside prison commander Hun Sen, leader of Cambodia today'

days and then reported as AWOL on November 9, this time for good. Later, his wife back in Texas, Mary, received a letter from the Army informing her that McKinley was taken off the rolls, and listed as a deserter on November 14. He was only a few weeks away from ending his tour in Vietnam.

"The evidence is clear that Nolan willingly left the Army and elected to live in enemy-held territory," Maj. Gen. Verne L. Bowers wrote to Mary. "While staying in Saigon he became intimately involved with a Cambodian female who became his 'common-law' wife. Nolan decided that he wanted to live in Cambodia with this woman and her two children and said that he would help the National Liberation Front if he were allowed to live there. Nolan's 'wife' contacted a friend, who arranged a meeting between him and local Viet Cong officials."

McKinley's common-law wife, who was an ethnic Khmer but Vietnamese national, was later identified as Thach Thi Khen, or Mrs. Tu. She was the mother of two children, one from a previous marriage to a Filipino who abandoned the family. She had her oldest child, a boy named Quang, with a Khmer man. Described by several sources as a prostitute, she raised the children on her own.

In declassified U.S. military intelligence documents, there are allegations from witnesses that McKinley went AWOL from his unit after he and Mrs. Tu had been caught fencing stolen military supplies on the black market. One source claimed that McKinley killed two Saigon policemen who tried to arrest him. Another source, interviewed by POW/MIA investigators, said that McKinley had killed one of his guards in the Long Binh stockade in order to escape. It is odd that McKinley was only confined to the jail for two days after going AWOL for two months, so escape seems likely. McKinley's personal Army service records could shed light on this issue, but the military refuses to release them because, they say, "there has been no legal determination of Private Nolan's death" and they refuse to provide them to his wife or next of kin.

In a 2002 letter to Mary Nolan, the Army engaged in a typical Catch 22 runaround, insisting that McKinley "has not been separated from the Army," and Army regulations and the privacy act require the soldier's permission to release his documents to a third party: "We cannot release copies of your husband's personnel file unless we have a signed request from your husband." A follow-up letter indicated that even though Nolan was "administratively dropped off the rolls of his unit on November 14, 1967, this did not result in his discharge and separation from the United States Army. He remains actively listed as a deserter." This limbo status has fueled speculation that McKinley is still alive, and for years kept Michael's hopes up that eventually he might find him.

Mckinley's life in the liberation zone was far from liberating. Recognizing his aptitude for farming, the Viet Cong put McKinley to work in the fields, tending cattle and pigs and planting and maintaining gardens. It was heavy work that eventually became more like forced labor. He and his new family were also shuffled back and forth across the border,



GENOCIDE DEFENDANTS Nolan's murder is part of the upcoming trial of, clockwise from top, Nuon Chea, Ieng Sary, Khieu Samphan and Ieng Thirith. Legal scholars have described the case as "more complex than Nuremberg."

always moving with the guerrilla units and mobile POW camps, deep in the forests of Vietnam and Cambodia.

Major Mark "Zippo" Smith, an outspoken former POW, claims to have run into McKinley twice in a POW camp in Kratie Province, Cambodia, in 1971. Smith was a prisoner and McKinley walked around the camp a free man. Hun Sen, who is now the prime minister of Cambodia, was allegedly the camp commander, according to Smith, and was a friend of McKinley's. Smith recalled seeing McKinley in Hun Sen's company, at times carrying a gun.

"The first time I ran into Nolan, he was wearing his North Vietnamese uniform and he was cocky. He tried to pull rank on me," Smith told me from his home in Thailand several years ago. "He said to me, 'I'm a mother fucking major.' And I looked at him and said, 'No, you're a fucking private.' That surprised him. All the other POWs treated him like he was someone important."

Smith spent seven years in prison camps throughout Southeast Asia. He earned his nickname for surviving various forms of torture at the hands of his Viet Cong captors, including being burned by cigarette lighters. He never cracked while in captivity, one of the few who held their own against the enemy.

The second encounter between Smith and McKinley took place across the razor-wire divide. Smith was behind the compound fence and McKinley walked freely on the outside. "You know how you have this thing where you can feel people," said Smith. "I was a recon man. You learn to sense the presence of other people. So I began to feel uneasy and I just looked over my shoulder and he was staring at me over the fence. He wasn't cocky this time. He wasn't with any of the NVA soldiers. He was all alone. He was just star-

WALLY MCNAMEE/CORBIS



TRAITOROUS TALK In a Viet Cong photo released in 1967, Nolan allegedly composes one of his propaganda messages he directed at American troops.

ing at me. I turned around and looked at him and he turned around and walked away.” Smith eventually was transferred from the camp and was released in 1973 when direct American involvement in the war officially ended.

Garnett “Bill” Bell, a former master sergeant in the Army and the U.S. government’s senior field investigator for the first POW/MIA search and recovery operations undertaken in postwar Vietnam, led an investigation in McKinley’s case in 1992. He tracked down and interviewed Viet Cong officers who were instrumental in McKinley’s defection, and he also discovered the whereabouts of Mrs. Tu’s surviving son, Quang, who lived with McKinley and his mother during their time with the VC. Bell speculated that it was likely McKinley told the Viet Cong about killing MPs in order to establish his anti-U.S. bonafides with the guerrillas.

With the unprecedented assistance of the Vietnamese Ministry of Culture, in November 2008 our film crew also was able to track down these men, mostly members of VC proselytizing units that were attached to POW camps in what was called the B2 Front, the headquarters of the Viet Cong. These cadres were responsible for convincing captured South Vietnamese soldiers and Americans to switch sides. They confirmed the story that Mrs. Tu encouraged McKinley to steal from the U.S. Army storage depot in Long Binh so she could sell the goods on the black market. And, according to them, they were told McKinley had been surprised by two military policemen during a theft in 1967 and in the subsequent struggle killed them both. They also said they believed McKinley did not

‘Viet Cong cadre suggest if Nolan had stayed in Vietnam he would be alive today and revered as a citizen-hero’

defect because he was against the war, but because he was in trouble with the U.S. military and might be tried for murder back in the States if he was caught.

These VC cadre also suggested that if McKinley had stayed in Vietnam and not slipped off into Cambodia he would still be alive today and would be a revered citizen-hero in their country. All of them agreed there was little to no chance that McKinley had survived captivity under the Khmer Rouge. They explained to Michael that the Khmer Rouge conducted brutal purges and massacres in the eastern zone of Cambodia at the time; few survived. They also said it was unlikely that McKinley was living secretly in Vietnam. It would be impossible for a black American with little command of the language to live anonymously among the people—the government would know about it; and besides they all would have heard something—Quang at the very least would have gotten word from his mother that she and McKinley were alive and well. They all feared the worst.

We also were able to locate Quang, who lived with McKinley and his mother for six or seven years. Quang never knew his biological father—a Cambodian—and considered McKinley, who raised him from the age of 10 to about 16, as his real father. He claimed McKinley left the Army because he had been injured in battle and was fed up with the war. McKinley told Quang he killed two American guards in order to escape from Long Binh prison. After many years with the Viet Cong, Quang said his mother convinced McKinley to go to Cambodia to search for her mother in Battambang. Quang stayed behind and joined the VC. After the war, Quang tried to find McKinley and his mother, but was unsuccessful. He wasn’t sure if they were dead or alive.

Accompanied by Mrs. Tu, her daughter and their own newborn son whom he sentimentally named Roger, McKinley went AWOL from the Viet Cong. They were in Vietnam at the time, so it was necessary for them to make the dangerous journey across the border, which they did in the fall of 1973, near Loc Ninh where at that time the Vietnamese were releasing the first American POWs during “Operation Homecoming.” The war was already winding down and at the Paris Peace Talks the Vietnamese had agreed to exchange prisoners with the United States. McKinley was an exception.

According to former U.S. Deputy Assistant Secretary of Defense Roger Shields, who managed Operation Homecoming, McKinley was offered the opportunity to repatriate and be part of the homecoming, but he refused. “We heard about him, we knew he was around,” said Shields. “The Vietnamese told us he didn’t want to come back. We’d never leave a man behind.” Allegedly, Nolan even told returning B2 Front POWs that he preferred to stay behind than travel with them to the release point at Loc Ninh. “Nolan just never showed up,” said Shields.

McKinley and his family entered the Eastern Zone of Cambodia, previously the home of Viet Cong sanctuaries. As the Viet Cong pulled out, the area was left to the control of Cambodia’s home-grown communists, the Khmer Rouge. McKinley and his family



BROTHERS STILL Michael Nolan’s quest to come to terms with his brother McKinley’s actions in life and his mysterious demise take him to an excavation site at Chamkar Cafe in 2009.

fell into Khmer Rouge hands shortly after crossing the border. One eyewitness, a VC rallier, or defector, told investigators that McKinley and his family were captured by the Khmer Rouge and held near the town of Memot in Kampong Cham Province. Another Viet Cong rallier told investigators that McKinley and his family lived freely among the Cambodians. Eventually they were taken to a prison at Chamkar Cafe, an isolated village deep in the rubber plantations.

In April 2008, Michael Nolan, Quang, Dan Smith and our film crew traveled to Cambodia and interviewed surviving Cambodians who knew McKinley. The sources confirmed prior reporting by the U.S. military’s POW/MIA teams that McKinley Nolan and his family were taken prisoner by the Khmer Rouge and were executed by them at Chamkar Cafe around 1977, 10 years after McKinley disappeared. A jungle burial site was identified by Cambodian sources, and, following pressure from Texas Congresswoman Sheila Jackson Lee, Joint POW/MIA Accounting Command (JPAC) excavated the site. It did not find any remains, however.

Last year, I returned to Cambodia and engaged a Cambodian legal team, Lyra Nguyen and Ny Chandy, to take on Michael’s case. He is determined to press charges against the Khmer Rouge leaders for the murder of his brother. Although Michael has left open a tiny sliver of hope that his brother might be alive as there were no definitive remains found, he is largely resigned to the fact that his brother was killed.

During a visit to the Documentation Center of Cambodia, which has been supplying the tribunal with most of the evidence against the defendants, Youk Chhang, the Documentation Center’s director, made a dramatic and convincing argument to Michael: “Your

brother was taken prisoner in the Eastern Zone, where the Khmer Rouge killed thousands of people. You haven’t heard from him in 40 years. Believe me, he did not survive.”

More than 4,000 civil parties applied to participate in what is being called Case 002 of the Khmer Rouge tribunal, and about 250 had been accepted by the end of December 2009, compared with just 90 who participated in the first trial against Duch. Because of this overwhelming number of cases, the ECCC decided to limit the scope of their investigation in the second trial to very specific criminal acts such as Khmer Rouge crimes that were committed at specific cooperatives and work sites and acts directed against a specific population or group, such as the Muslim Cham and the Vietnamese.

Following the Khmer Rouge’s successful overthrow of Lon Nol in 1975, their relationship with Vietnam steadily deteriorated, and Vietnam was increasingly viewed as the enemy. This coincided with a belief that Vietnamese spies were seeking to overthrow the new Cambodian regime. By mid- to late-1977, the policy evolved into one of eliminating anyone who had a connection to Vietnam.

The Khmer Rouge tribunal’s new court criteria made hundreds of civil party applicant cases suddenly inadmissible. At first, they also appeared to exclude Michael’s case; McKinley Nolan’s alleged murder did not appear to fit into any of the specified categories. Michael’s legal team initially believed the case might fall under the category of the Eastern Zone purges.

However, the case was finally admitted under acts perpetrated against *the Vietnamese*. As a result, paradoxically, an American soldier is being classified by the court as a Vietnamese victim of the Khmer Rouge. Obviously, this is a result of McKinley’s close association with the Viet Cong and the fact that his common-law wife and children were Vietnamese nationals.

Michael’s lawyers are now busy trying to get him into the courtroom to testify when the Case 002 trial begins sometime later this year. He hopes to make a “victims impact statement” describing how the loss of his brother affected him emotionally. As his lawyers so aptly and poetically worded it in a legal précis:

“Michael’s victim impact testimony would highlight the anxiety and difficulties associated with having a loved one disappear, and how in many ways this uncertainty is worse than knowing a loved one was killed because the hope that loved ones are still alive persists, as do the horrors associated with their final moments alive.”

In the meantime, Michael is making plans to return later this year to Cambodia, a country he has grown fond of. He often talks of opening a soul food restaurant in Phnom Penh. But most of all, he grew to love the people, just as his brother had, especially the villagers who knew his brother.

“This trial will not bring McKinley back,” Michael says. “But it will shed some light on what he went through, and what his friends went through. I’m doing it for him, and for the Cambodians.” ☆

Journalist Richard Linnett has done extensive research on the McKinley Nolan case and was the consulting producer on the 2010 documentary The Disappearance of McKinley Nolan. He is the co-author of The Eagle Mutiny. His website is richardlinnett.net.