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Beret Captain's Murder Conviction Is Overturned

Special to The New York Times

WASHINGTON, Oct. 29—The 1968 murder conviction and sentence of a Green Beret captain involved in clandestine missions into Cambodia were set aside today by the three-judge Army Court of Military Review.

Two judges said newly discovered evidence and the trial record led them to conclude that "an injustice resulted from the findings of guilty and the sentence" of 24 years imprisonment. But they said the Army could order a new trial.

The third judge dissented only in stating that he would have denied the petition for a new trial and dismissed all charges against Capt. John J. McCarthy of the Special Forces.

Called a Double Agent

Captain McCarthy was convicted at a security-shrouded trial at Longbinh, South Vietnam, of murdering a Cambodian who had been working with the Special Forces on top-secret missions outside South Vietnam.

The prosecution maintained at the trial that the captain had been informed by an American intelligence agent that the

Cambodian was a double agent working for the Communists and had killed him to protect secret operations of Detachment B57, Fifth Special Forces.

Although they found him guilty of murder, the court-martial panel took the rare step of keeping the captain at full rank with full pay. And shortly after his conviction, the Green Beret officer received a medal of commendation from a right-wing secret society to which the murdered Cambodian had belonged.

Doctor Admits Doubt

Because the United States was denying operations into Cambodia in 1967 and the captain refused to appeal outside army channels, the case remained hidden from public view until August, 1969, when eight Green Berets from the same Special Forces group were charged with murdering a Vietnamese double agent.

The eight men were never tried because of Central Intelligence Agency involvement in the case, but their arrest raised the question in Washington of whether Army men should be placed in secret operations

while still subject to military law.

Captain McCarthy was released from confinement at the disciplinary barracks of Fort Leavenworth last October at the same time that Col. Robert B. Rheault, the Special Forces commander charged in the second case, resigned from the Army.

The court indicated that the key factor in today's decision was a statement by the examining medical officer that he might have been wrong in his testimony at the original trial.

Although Captain McCarthy refused to comment on today's developments, his American Civil Liberties Union lawyer, Charles Morgan Jr., said, "We are pleased that justice has been served. And we hope the Army goes no further with a new trial."

An Army spokesman said a decision on whether to seek a new trial would be reached later. Army sources indicated the case would probably be allowed to rest at this point, since the prosecution case was not perfect and a new trial would reopen the issue of American activities in Cambodia in 1967.