

ARMY DROPS BERETS' CASE AS CIA BARS ITS AGENTS FROM TESTIFYING AT TRIAL

ARMY DROPS BERETS' CASE AS C.I.A. BARS IT FROM TESTIFYING

RESOR TAKES STEP

He Says the Agency's Stand Has Ruled Out Fair Courts-Martial

Text of Resor statement will be found on Page 3.

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Special to The New York Times

WASHINGTON, Sept. 29—The Army, conceding that it was helpless to enlist the cooperation of the Central Intelligence Agency, today abruptly dropped its case against six Special Forces soldiers who were arrested in July in connection with the alleged murder of a Vietnamese agent.

In a statement issued by the Pentagon without further elaboration, Secretary of the Army Stanley R. Resor said that the intelligence agency had refused to provide any of its personnel as witnesses for the courts-martial, which had been scheduled for October. This made a fair trial of the Green Berets impossible, he said.

Unhappiness Implied

Mr. Resor's statement implied unhappiness with the intelligence agency's decision, but he took pains to say that the agency was "not directly involved in the alleged incident." This has been the agency's contention all along, even though some persons connected with the case, including one of the defense counsels, have charged

that the agency played a major role in the incident.

Mr. Resor said he had been told that the agency had refused to provide witnesses "in the interest of national security." He added:

"It is my judgment that under these circumstances the defendants cannot receive a fair trial. Accordingly, I have directed today that all charges be dismissed immediately."

New Assignments Planned

Mr. Resor said that the men would be assigned to duties "outside of Vietnam."

The Secretary's statement surprised officials in Washington and added a new element of confusion to a case that has been shrouded in mystery and gripped by controversy from the beginning.

Only 11 days ago, for example, Mr. Resor said that he had resisted heavy pressure to remove the case from military jurisdiction in Saigon and had resisted as well pressure to dismiss charges of murder and conspiracy against the men.

To have acceded to these pleas, he declared in a statement Sept. 18, would have been "unwise and unfair."

Ronald L. Ziegler, the White House press secretary, said this afternoon that President Nixon had not involved himself either in the original decision to prosecute the men or in the decision

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to drop the charges against them.

"This matter has remained within the jurisdiction of the Department of the Army," he said. Mr. Ziegler was then asked whether this answer meant that the President had not involved himself in the case.

"Yes," he replied.

Pentagon sources reported that Mr. Resor had acted on his own and informed Secretary of Defense Melvin R. Laird of his decision this morning. At the same time, Daniel Z. Henkin, a Pentagon spokesman, said that Mr. Laird supported the Secretary's decision.

The source of the C.I.A.'s authority to withhold witnesses in a case of this kind could not immediately be determined. In the one major case in which the agency became involved in public litigation—a libel case—a Federal judge in Baltimore ruled that C.I.A. agents could invoke "executive privilege" and refuse to testify on sensitive matters involving the agency's operations.

Presumably, however, the President could order any member of the Executive Department not to invoke executive privilege. Once they appeared in court, individual agents could refuse to testify under the Fifth Amendment, but in the view of some legal experts here the President could at least require the agency itself to furnish witnesses, even though such witnesses might claim immunity once the trial had begun.

Reluctance Indicated

Mr. Resor's statement indicated some reluctance on his part to abandon the proceedings. He said:

"While it is not possible to proceed with the trials, I want to make it clear that the acts which were charged, but not proven, represent a violation

of Army regulations, orders and principles.

"The Army will not and cannot condone unlawful acts of the kind alleged. Except in the rare case where considerations of national security and the right to a fair trial cannot be reconciled, proceedings under the Uniform Code of Military Justice must take their normal course."

Mr. Resor had been under considerable pressure from some members of Congress to stop the case. They contended that the six men were in danger of being presumed guilty before trial and were the unwitting victims of rivalry between the Army and the intelligence agency.

The case involved the alleged murder of Thai Khac Chuyen, believed to have been an enemy agent while working for the Special Forces, or Green Berets, in covert operations in Laos. He was said to have been killed June 30.

His body was said to have been weighted and dropped in the South China Sea off Nhatrang, the site of the Special Forces headquarters in Vietnam. The body was not found despite an intensive search.

The six men were to have been tried in two trials. In one, the defendants would have been Col. Robert B. Rheault, commander of the Special Forces, or Green Berets, in Vietnam at the time of the alleged murder; Maj. David E. Crew, and Maj. Thomas C. Middleton Jr. They were said to have been aware of the alleged plan to dispose of the suspended agent.

The other case would have involved Capt. Leland J. Brumley, Capt. Robert F. Marasco and Capt. Budge E. Williams.

In specifications made public Friday, the Army charged that Captain Marasco, 27 years old, had fired the pistol that killed the agent. The specification further said that Captain Brumley, also 27, obtained a boat to carry the victim from Special Forces headquarters at Nha-

trang, and administered an injection of morphine before the shooting.

8 Men Originally Involved

Originally, eight men were implicated in the alleged killing, but charges against two of them, Chief Warrant Officer Edward M. Boyle and Sgt. Alvin L. Smith Jr., were held "in abeyance" pending the other trials.

The courts-martial would have been treated as "not capital," meaning that the death penalty would have been ruled out and life in prison would have been the maximum possible punishment.

Sergeant Smith touched off the investigation, according to reports, when he went to agents of the Central Intelligence Agency in Nhatrang in late June, telling of the alleged killing and asking for protection against possible retribution. Chief Warrant Officer Boyle, the first of the men taken into custody in the ensuing Army trial, was said to

have cooperated with the investigation.

Among the mysteries in the case has been the role of the Central Intelligence Agency. One of the civilian defense lawyers—George W. Gregory of South Carolina — has charged that the agency ordered the killing of the alleged agent and then rescinded its order after the execution.

Early accounts of the incident from Saigon also implicated the C.I.A. Reports from Vietnam in mid-August, for example, quoted sources "close to the case"—widely suspected to have been Special Forces

personnel—as having said that the C.I.A. ordered the killing.

In late August, the agency counterattacked, furnishing detailed information purporting to show that its agents in South Vietnam had repeatedly warned the Special Forces not to take the life of the suspected double agent. At the same time, the agency also complained privately that Mr. Resor and Gen. Creighton W. Abrams, the United States commander in South Vietnam, had made no effort to clear the agency of complicity.

Today's statement by Mr. Resor that the C.I.A. was not

"directly involved" represented the first major effort by the Army to clear the agency of direct participation in the alleged slaying.

There was some speculation that this phrase in Mr. Resor's statement might have been the agency's price for refusing to allow its agents to testify. Under one theory, the C.I.A.'s refusal to testify would provide the Administration with a convenient excuse to drop a potentially embarrassing case, and the agency—according to this theory — extracted Mr. Resor's denial of direct involvement in exchange.

Text of Resor's Statement

WASHINGTON, Sept. 29 (UPI)—Following is the text of a statement today by Stanley R. Resor, Secretary of the Army, announcing the dismissal of charges against Green Berets:

I have been advised today that the Central Intelligence Agency, though not directly involved in the alleged incident, has determined that in the interest of national security it will not make available any of its personnel as witnesses in connection with the pending trials in Vietnam of Army personnel assigned to the Fifth Special Forces Group.

It is my judgment that under these circumstances the defendants cannot receive a fair trial. Accordingly, I have directed today that all charges be dismissed immediately. The men will be assigned to duties outside of Vietnam.

While it is not possible to proceed with the trials, I want to make it clear that the acts which were charged, but not proved, represent a fundamental violation of

Army regulations, orders and principles.

The Army will not and cannot condone unlawful acts of the kind alleged. Except in the rare case where considerations of national security and the right to a fair trial cannot be reconciled, proceedings under the Uniform Code of Military Justice must take their normal course.

It would be unjust to assess the culpability of any individual involved in this matter without affording him an opportunity to present his defense in a full and fair trial. Under our system of jurisprudence, every man accused of wrongdoing is presumed to be innocent until he is proved guilty. The determination of guilt may be made only by a court which has access to all information with respect to the alleged offense.