

Levy, Antiwar Army Physician, Wins a Reversal of Conviction

REACTION

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PHILADELPHIA, April 18—The United States Court of Appeals for the Third Circuit declared today that two key provisions of the Uniform Code of Military Justice that led to the court-martial conviction of an anti-war Army doctor, Capt. Howard B. Levy, six years ago were so vague as to be unconstitutional.

The court also ruled that the conviction of Captain Levy on a charge of disobeying an order violated Constitutional guarantees of due process, and it ordered a new trial within 90 days on that charge.

Dr. Levy has been free on bond since August, 1969, pending the outcome of the legal action on his behalf. Bail was granted by Supreme Court Justice William O. Douglas after the former Army captain had served 26 months of a three-

year sentence imposed by the court-martial at Fort Jackson, S. C.

In its rulings, a three-judge panel here declared Mr. Levy's conviction on five counts of violation of the military code invalid because of unconstitutionality.

Four of the counts were brought under two articles of the Uniform Code of Military Justice dealing with conduct unbecoming an officer. The fifth charge was based on an article on willfully disobeying an order.

In reversing the decision of a Federal District Court that had denied a petition of habeas corpus for Mr. Levy, the Appeals judges here declared that the two articles on unbecoming conduct failed to adequately define what conduct is un-

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coming for an officer and gentleman.

The two provisions, Articles 133 and 134, have been used in numerous military courts-martial.

There was no immediate reaction from the military on the decision, which could have men charged and convicted under the provisions of the military code that deal with unbecoming conduct.

According to David F. Adlestone of the Military Rights Project of the American Civil Liberties Union in Washington, an estimated 100,000 military personnel have been convicted under those provisions since 1951.

Until recently, Mr. Adlestone said, soldiers court-martialed for drug violations were charged under the provision.

'50 Different Offenses'

The court noted in its majority opinion that "the manual for courts-martial interprets Article 134 to include more than 50 different offenses ranging from abusing public animals to wearing unauthorized insignia."

"The history of prosecutions under the article," the court said, "says that it has served as an unwritten criminal code, a catch-all receptacle designed as a statutory basis for prosecutions that run the gamut from impersonating an officer to gambling with a subordinate, or straggling."

Noting what it called the "boundless, open-ended, all-encompassing quality" of the article, the court concluded that both provisions under which Captain Levy was convicted for ungentlemanly conduct "are void for vagueness."

Captain Levy had been convicted by the court-martial of violating the code of unbecoming conduct by making public statements "designed to promote disloyalty and disaffection among the troops" and of "wrongfully and dishonorably making intemperate, defamatory, provoking, contemptuous and disloyal statements to enlisted men."

The court-martial cited among other statements — never denied by Captain Levy — one in which he told enlisted men that "Special Forces personnel are liars and thieves and killers of peasants and murderers of women and children."

Evidence also cited in the court-martial included statements by Captain Levy attacking racial bias in the Army in letters urging black soldiers not to fight in Vietnam.

Captain Levy was also convicted in the court-martial of willful disobedience of the law-

ful command of his superior officer, a charge stemming from his refusal to provide medical training to Special Forces troops bound for Vietnam.

The court here did not specifically rule unconstitutional the provision of the military code dealing with refusal to obey an officer. In its majority opinion however — with Chief Appeals Judge Collins J. Seitz dissenting — the court ruled that because the court-martial joined all the charges together, it had in effect prejudiced the decision against Captain Levy in the courts that cited him for disobeying an officer.

The court specifically noted that it "did not speculate on the outcome" of a court-martial had Captain Levy been charged solely with violation of Article 90 of the military code, the one that deals with disobeying an officer.

Left open was the question whether new court-martial proceedings can be brought

against Mr. Levy now that he has civilian status.

A similar court decision finding the so-called "general article" in the military code unconstitutional was handed down March 20 by the United States Court of Appeals for the District of Columbia. In a unanimous decision a three-man panel found that the article had come to cover a "crazy-quilt of offenses" with "no fair warning of the conduct it proscribes."

The decision was handed down in the case of a Marine Corps private, Mark Avrech, who had been convicted by a court-martial for attempting to publish a statement while he was in Vietnam in 1969 that questioned American involvement there.

Dr. Levy, since his release on bond in 1969, has worked with the Health PAC Organization in New York and has recently taken on part-time staff duties at Lincoln Hospital in the South Bronx. He has also worked as a medical volunteer at the Tombs, a New York prison.