

POW Colonel Files Charges Accusing 8 of Misconduct

By Michael Getler
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An Air Force colonel—the senior officer in a prisoner of war camp outside Hanoi—filed formal charges yesterday against five Army and three Marine Corps enlisted men for “alleged misconduct while in a North Vietnamese prison camp.”

The charges, brought by 44-year old Col. Theodore W. Guy, who spent 4½ years in a POW camp known as “The Plantation,” marked the first such move against any of the 566 Americans who have returned home from Communist prisons.

The charges include alleged violations of several articles of the Uniform Code of Mil-

tary Justice (UCMJ), including “aiding the enemy” and in some cases “seeking political asylum from officials of the North Vietnamese Army.” Two of the five Army men charged are accused of “constructing model aircraft for use by the North Vietnamese Army in conducting target practice for their soldiers at the camp.”

The charges preferred by Col. Guy are court-martial offenses. They have been referred to the Secretaries of the Army and Navy who must decide whether to convene courts-martial for the men.

The eight enlisted men, according to military sources, were allegedly part of what came to be known as a “Peace Committee” formed in the North Vietnamese prison

camp by men who supposedly rejected U.S. war policy and the orders of senior U.S. officers while in captivity.

This first action to bring formal charges against some former POWs carries with it a cross-current of potentially explosive issues.

For one thing, Guy is an Air Force officer bringing charges against Army and Marine Corps personnel. For another all of the men charged by Guy are enlisted. A number of POWs have privately expressed concern that charges have not been brought by other senior POW base commanders against two or three U.S. officers who, in their opinion, allegedly also vio-

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POW, From A1

lated portions of the military code.

There was also discussion within the Pentagon and military services about the wisdom of bringing charges against the eight men, but defense officials deny, emphatically that there was any pressure placed on Col. Guy not to make the charges.

Officials concede, however, that there is a difference of opinion among military lawyers as to whether the case against the men can be successfully proved.

At the same time, military officers say the act of filing the charges and identifying those accused of alleged misconduct by itself serves to “protect the reputation of the men in the camp” who were viewed by their seniors as conducting themselves properly.

The Marine Corps, after notifying the individuals involved, late yesterday revealed the names of the three men and the charges against them.

Sgt. Able L. Kavanaugh, 24, of Denver; Staff Sgt. Alphonso E. Riate, 28, of Santa Rosa, Calif.; and Pvt. Frederick L. Elbert, 25, of Brentwood, N.Y., were each charged by Guy with violating Articles 81, 92 104 and 134 of the UCMJ.

Those articles, respectively, involve: conspiracy to undermine discipline and loyalty; failure to obey a lawful order or regulation; aiding the enemy and the so-called “general article ‘134’ which covers various forms of unbecoming conduct.

Kavanaugh and Riate were also charged with violation of Article 89, involving disrespect toward a superior commissioned officer. Riate also had an assault charge included in the complaints filed against him.

The three Marines are all

on convalescent leave from naval hospitals in California and New York, and attempts to reach them yesterday were unsuccessful. The Pentagon provided only hometowns of record for the men and would not supply a home telephone numbers.

The Army identified the five other men charged early yesterday evening. These include: Sp. 4 Michael P. Branch, Staff Sgt. Robert P. Chenoweth; Staff Sgt. James A. Daly Jr.; Staff Sgt. King D. Rayford Jr.; and Staff Sgt. John A. Young. All five men were also on convalescent

leave from military hospitals.

Each of the five is charged with violation of Article 92 for alleged failure to obey an order to stop all collaboration with the enemy, and of Article 104 which involves complaints of collaboration, accepting preferential treatment, and seeking political asylum.

Sgts. Young and Chenoweth are charged with the model-airplane target construction and Sp. 4 Branch is tagged with an additional charge of disrespect to an officer.

Before the service secretaries decide to court-martial the men, it is probable that a full

investigation of Guy's charges will be made. After such an investigation, the secretaries could move to dismiss the charges, take administrative action against the accused men, recommend non-judicial punishment or order a court-martial.

Guy, who was the senior officer of a camp about 15 miles southwest of Hanoi where 108 U.S. prisoners were detained, said in a radio interview yesterday that he had “stayed awake many nights” wrestling with his conscience over whether to file the charges. He said he was con-

vinced that it was necessary to keep Communists in future wars from using prisoners for propaganda purposes.

Guy said he was not pressured by the Pentagon to file the charges.

In January, the Pentagon announced it would not file charges against POWs for statements made in captivity. But that did not rule out individual men filing charges, or the prospect of charges for other alleged offenses.

Pentagon spokesman Jerry W. Friedheim said yesterday that “a few other” former POWs had talked to legal of-

ficers about the prospects of filing charges against other POWs, both officers and enlisted.

Friedheim said, however, that no other formal charges were pending at this point, and other officials rated the chances as less than 50-50 that additional charges would be forthcoming.

From the outset of POW release in February, the administration in general has hoped to smooth over the harsh feelings of some of the returning prisoners.

“There was reluctance all around to get involved with

this,” said one officer close to the situation. “But it also mattered that as commander of that base, Guy had to protect the reputation of all the (other) men in that camp. He probably realized that, that it had to be exposed. He had a dual duty both to enforce discipline and reward proper behavior. You can advise this guy all you want, but none of those advising him went through what he did.”

Guy, in an interview with Associated Press last month, said he was “turned in” to the enemy by some fellow prisoners and tortured because of

his efforts to set up a communications code and discipline among the POWs.



COL. THEODORE W. GUY
... files first charges