

POW Charges Dropped

Army, Navy Say Evidence Is Insufficient

By William Claiborne
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Charges that seven former U.S. prisoners of war in North Vietnam collaborated with the enemy have been dropped, the Pentagon announced yesterday.

The Secretaries of the Army and the Navy said there was too little evidence against the five Army enlisted men and two Marines to warrant court-martial proceedings. Moreover, the Pentagon said, the charges filed by Air Force Col. Theodore W. Guy violated the military's policy against "holding trials for alleged propaganda statements."

Military sources said the bulk of evidence offered against the accused men is hearsay and circumstantial because for most of the time the prisoners were in isolation.

The Pentagon's ruling came too late for Marine Sgt. Abel Larry Kavanaugh, another former POW, who was found dead Wednesday in what police said was an apparent suicide.

Pentagon sources said the charges against Kavanaugh were voided when he died, but that his record would now be formally cleared.

Kavanaugh's widow, Sandra, 22, said in a telephone interview from Commerce City, Colo., that she thought the Pentagon's decision to drop the charges against the ex-POWs was a result of her husband's apparent suicide.

"I'm really happy that the charges have been dropped against the other men. I'm only sorry it didn't happen before Larry died," said Mrs. Kavanaugh.

Guy, the former Hanoi prison camp senior officer who filed the allegations of aiding the enemy and collaborating, said he still feels there is "sufficient evidence" to prosecute the seven enlisted men.

In a telephone interview

from Chicago, Guy said he would abide by the Pentagon's decision but had no regrets for having made the charges.

"I felt I had an obligation as a commander and an officer to report all violations of the military code of conduct that were observed in the camp," Guy said.

The decision yesterday by

See POWs, A12, Col. 6

POWS, From A1

Army Secretary Howard H. Callaway and Navy Secretary John W. Warner left open the charges of mutiny and aiding the enemy pending against two former officer POWs, Navy Capt. Walter E. Wilber, 43, and Marine Lt. Col. Edison W. Miller, 41.

Charges against the two pilots were filed last week by Rear Adm. James B. Stockdale, who was a senior POW commander for five years in the "Hanoi Hilton" prison camp.

Guy, who was a senior officer for five years of a Hanoi prison compound called The Plantation, filed his charges on May 29. He alleged then that the eight enlisted men voluntarily made antiwar statements, received favorable treatment and openly collaborated with their captors to the point of wearing North Vietnamese uniforms and seeking permission to join the North Vietnamese Army.

The enlisted men who have been cleared are:

Marine Sgt. Alphonso E. Riate, 28, of Santa Rosa, Calif.; Marine Pvt. Frederick L. Elbert, 25, of Brentwood, N.Y.; Army Sp. 4 Michael P. Branch, of Newport, Ky.; and Staff Sgts. Robert P. Chenoweth, of Portland, Ore., James A. Daly, of New York City, John A. Young, of Grayslake, Ill., and King D. Rayford, of Chicago.

Despite the decision to drop charges, officials said that a review of the men's overall service records—including the time they spent in prison camps—found that they do not

meet "current qualitative standards" for the all-volunteer Army and, therefore, will be ineligible for re-enlistment.

The Navy Department said the two Marines would be considered for re-enlistment if they ask for it.

Most of the accused ex-POWs have indicated they want to return to civilian life.

In dismissing the charges, Callaway said, "We must not overlook the good behavior of these men during the two to three years each spent under brutal prison conditions in South Vietnam, before they were moved to the North—the lack of food and medical care, the sub-primitive living conditions and the physical torture.

"They had a very hard time and they behaved admirably during this period," Callaway said.

He said the dismissal of charges was recommended "because of the lack of legally sufficient evidence and because of the policy of the Department of Defense against holding trials for alleged propaganda statements."

Former Defense Secretary Melvin R. Laird decided the Pentagon would not initiate charges of prison camp misconduct but would permit any former POWs to make such allegations on their own.

Navy Secretary Warner said his own "personal review" of the charges against Kavanaugh, Elbert and Riate showed "mitigating factors," which, he said, included "severe deprivations and maltreatment at the hands of their captors."

Guy said yesterday he is convinced the Pentagon made

an "extensive investigation" of his charges and that he is satisfied with the results.

"I felt there was sufficient evidence. I felt I had an obligation to my men. I made promises to them that I would see this through, and I did to the best of my ability," the colonel said.

Referring to the accused POWs and their attitude toward the POWs' code of conduct, Guy said, "They could break it, but, dammit, when they get back they should get back on our side."

Guy said he learned of Kavanaugh's death listening to his car radio while returning to his home in Tucson, Ariz., from a cross-country vacation.

"I was very sorry to hear it. I felt a lot of sympathy," he said.

Guy said he feels the two officers, Wilber and Miller, should be prosecuted, "considering my knowledge of the changes and my knowledge of Adm. Stockdale." When asked to speculate on the likelihood of dismissal, Guy said, "I hope it does not happen."

Of his own feelings about yesterday's Pentagon decision, Guy said, "I was surprised, because I felt there was evidence against these men. But I'm not bitter. I have never been bitter about anything in my life before, and I'm not bitter now."

Mrs. Kavanaugh, who is pregnant with her second child, said she was thinking of taking legal action against Guy, but she said she will await the outcome of the coroner's inquest on her husband's death.