

7 FORMER P.O.W.'S FREED OF CHARGES OF AIDING ENEMY

Army and Navy Dismiss Air Force Colonel's Allegations Against Enlisted Men

EVIDENCE HELD LACKING

Ruling Follows the Burial of an Eighth Accused Man, Who Committed Suicide

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Special to The New York Times

WASHINGTON, July 3—The Army and the Navy dismissed charges today against seven enlisted men accused by an Air Force colonel of misconduct and collaborating with the enemy while they were held as prisoners of war by North Vietnam.

In announcing their separate but concurring decisions, both Army Secretary Howard H. Callaway and Navy Secretary W. Warner said the charges had been dismissed because of lack of sufficient evidence.

In addition, the two secretaries cited as mitigating circumstances the long hardship the enlisted men had suffered during imprisonment and a Defense Department policy against prosecuting any of the prisoners of war for propaganda statements made while in prison.

Varieties of Misconduct

The decision resolved a moral problem that has been besetting high-ranking Pentagon officials since Air Force Col. Theodore W. Guy filed misconduct charges in late May against five Army and three Marine Corps enlisted men who were confined with him in a North Vietnamese prison camp near Hanoi known as "the plantation." One of the accused men committed suicide after the charges were filed.

As the senior officer in the prison camp, Colonel Guy accused the enlisted men of various acts of misconduct, such as failure to adhere to the post-Korean war code of conduct drafted for prisoners of war, undermining discipline and authority in the prison camp, disobeying orders of an officer, cooperating with the enemy to obtain favorable treatment and building model airplanes that could be used as targets by the North Vietnamese guards.

Some Resented Action

Defense Department officials who had adopted a general policy of honor-and-forgive for the returning prisoners of war initially tried to persuade Colonel Guy not to bring the charges. There was also some resentment in Army and Navy ranks that an Air Force officer should choose to bring charges against enlisted men in two other services.

When Colonel Guy insisted upon bringing the charges, the Army and Navy were obliged under the Uniform Code of Military Justice to conduct a review to determine whether a courtmartial was warranted.

The responsibility for the review was assumed by the Secretaries of the Army and Navy,

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Seven Former P.O.W.'s Freed Of Charges of Aiding the Enemy

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who in turn were supported in their decisions by the military leaders of the two services — Gen. Creighton W. Abrams, the Army Chief of Staff, and Gen. Robert E. Cushman Jr., Commandant of the Marine Corps.

Last Wednesday, Marine Sgt. Abel Larry Kavanaugh shot himself in his father-in-law's suburban Denver home.

Sergeant Kavanaugh's 22-year-old widow, pregnant with their second child, has blamed Colonel Guy and the Pentagon for her husband's death.

According to officials who follow prisoner of war matters, Sergeant Kavanaugh, whose enlistment had expired and who was anxious to leave the service, had become depressed after he was informed he would have to remain in the Marines until the review of the charges was completed.

Unknown to Sergeant Kavanaugh, according to these officials, was the fact that early last week General Cushman told aides that "I am not about to have any charges brought against any of my Marines."

At the Kavanaugh funeral yesterday, the pallbearers included six of the men accused by Colonel Guy. They were Staff Sgt. Robert P. Chenoweth of Portland, Ore., Staff Sgt. James A. Daly Jr. of Brooklyn, Staff Sgt. King D. Rayford Jr. of Chicago, Staff Sgt. John A. Young of Grays Lake, Ill., all of the Army, and Staff Sgt. Alfanso R. Riate of Santa Rosa, Calif., and Pvt. Frederick L. Elbert of Brentwood, N. Y., both of the Marine Corps. Not present was Specialist 4 Michael P. Branch of Newport, Ky.

No Action on Kavanaugh

The Navy explained that formal dismissal of the charges against Sergeant Kavanaugh was not required since "they became a nullity" upon his death.

Among the "mitigating factors" that entered into his decision to dismiss the charges against the two Marines, Mr. Warner said, was "the fact that each of the returnees had suffered a long period of confinement during which they each suffered severe deprivations and maltreatment at the hands of their captors."

Similarly, in announcing the decisions to drop the charges against the five Army men, Mr. 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."

While no administrative action will be taken against the five Army men, Mr. Callaway said they would not be permitted to re-enlist because they did not meet "the current qualitative standards for he volunteer Army." Among the considerations entering this determination, according to the Army spokesman, was the conduct of the five men after they were

transferred to the prison camp in North Vietnam.

The Marine Corps said it would consider any re-enlistment application of its two men "on a case-by-case basis." Sergeant Riate has expressed a desire to leave the service, and private Elbert has not committed himself.

Still under review by the Navy are misconduct charges filed 10 days ago by Rear Adm. James V. Stockdale against two fellow officers who were held with him in a North Vietnamese prison camp—Marine Lieut. Col. Edison Wainright Miller of Tustin, Calif., and Navy Capt. Walter E. Wilber of Columbia Cross Roads, Pa.

Based on the precedent established with the enlisted men, it would appear likely that the Navy would dismiss the charges against the two officers. But some officials pointed out that there was an important distinction in the Stockdale charges in that they were brought by an admiral against fellow officers in his service, a factor that may make it more difficult for the Navy to dismiss the charges than in the case of enlisted men being accused by an officer in another service.

Widow Blames Government

DENVER, July 3 (AP)—The widow of Sergeant Kavanaugh said today that the Government had admitted responsibility for her husband's death by dropping charges against the other P.O.W.'s.

"The dismissal of these charges make it clear the Government realizes it is responsible for Larry's death," said Sandra Kavanaugh, 22. "In bringing these charges the Government murdered my husband and caused indescribable hardship in the lives of other P.O.W.'s."

Mrs. Kavanaugh sat in a lawn chair under a tree at her sister-in-law's home as she read from a prepared statement and then answered reporters' questions.

She said the decision to drop the charges had left two questions in her mind:

"Had they already decided to drop the charges before my husband's death? Or is it a direct result of my husband's death that the decision was made?"

Mrs. Kavanaugh said last week that she planned to sue the Pentagon and Colonel Guy.

"I intend to pursue the matter with legal action after the coroner's inquest is complete," she said today.

Elbert Wants Discharge

BRENTWOOD, L. I., July 3 (UPI)—Private Elbert, one of those accused by Colonel Guy, said today after the announcement of the dropping of charges that he now feels "like getting out of the military."

"I was angry this whole situation came up," he said. "I felt it was unnecessary because of all of us had been through the same thing. I felt there was no basis for the charges because I haven't done anything wrong."

Private Elbert said, "At first I did want to stay in. But now, decisions have been a little difficult as to what to do. Now I just feel like getting out of the military and continuing my education."