

GENERAL CLEARED OF MYLAI CHARGES

Army Rules Koster Did Not
Abrogate Responsibility—
Panel Lawyer 'Shocked'

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WASHINGTON, Jan. 29 —

The Army dismissed all court-martial charges today against Maj. Gen. Samuel W. Koster, the division commander of the troops who were at the hamlet of Mylai 4 at the time of the alleged mass killings of South Vietnamese civilians there on March 16, 1968.

General Koster, a former superintendent of the United States Military Academy at West Point, had been accused of attempting to cover up the incident.

The Pentagon announced that Lieut. Gen. Jonathan O. Seaman, commanding general of the First Army at Fort Meade, Md., had dropped all seven charges "in the interest of justice." It said that General Seaman had found "some evidence" that General Koster had heard that about 20 civilians had been killed during a battle and that he failed to investigate it, but concluded that he was not guilty of any "intentional abrogation of responsibilities."

The dismissal of charges was called "a serious disservice to the Army" by Robert MacCrate, a Wall Street lawyer who served as special counsel to the inquiry panel under Lieut. Gen. William R. Peers that investigated the incident.

"I am shocked by the action of the commanding general in dismissing at this time the charges against General Koster, because charges are still pending against men who were within his command" at the time of the alleged massacre, Mr. MacCrate said in New York.

Mr. MacCrate, a partner in the law firm of Sullivan & Cromwell, charged that Gen-

Continued From Page 1, Col. 2

eral Seaman "has effectively cut off the orderly progress of the inquiry of the chain of command." Before today's action, Mr. MacCrate said, the Army had proceeded properly to establish responsibility for "this tragedy of major proportions" by trying the men in the platoon involved, while deferring action on pending charges against the company, brigade and division commanders.

General Seaman's action in clearing the division commander, he said "is a failure to recognize the Army's responsibility to the public at large" and to assure the public that the Army is capable of a proper review of the incident.

Termed 'Grave Miscarriage'

In Washington, Representative Samuel S. Stratton, an upstate New York Democrat who was a member of a four-member Armed Services subcommittee that investigated the Mylai incident, termed the Army's action "a grave miscarriage of military justice." He said that if the Army "is either unwilling or unable to produce the facts and to punish the guilty in this case, then I am inclined to feel that we need some tribunal which will be higher and separate from the ordinary military-controlled court-martial proceeding."

Last March 17 General Koster and 13 other officers were charged with various court-martial offenses as part of an alleged attempt to cover up the Mylai affair. The charges followed a finding by General Peers's panel that "certain officials" in the Americal Division, which General Koster commanded, "did not, after information came to their attention, take appropriate action to investigate or report" the killings.

General Koster was charged with failure to obey lawful regulations and dereliction of duty in failing to follow rules that require commanders to report any possible atrocities up the chain of command.

Most Sent to Fort

Most of the accused officers were officially assigned to the First Army at Fort Meade so that a comprehensive "Article 32" investigation, similar to a grand jury inquiry under civilian law, could be conducted. The other officers remained at other duty stations, but General Koster stepped down as superintendent at West Point and went to Fort Meade, where he served as a deputy commanding general to General Seaman while that officer was investigating him.

Prior to today's announcement, General Seaman had dropped all charges against nine of the other officers. Cover-up charges against a tenth officer were dropped at Fort McPherson, Ga., and three of the accused officers' cases are still pending.

The announcement today said that General Seaman had dropped five of the specifications against General Koster because "they were not supported by the available evidence." The remaining two specifications charged him with not reporting the civilian deaths. General Seaman found that "General Koster's knowledge was limited to credible information of about 20 civilians killed as an unfortunate incident in a contested combat action with the enemy."

Career Considered

Although there was evidence that General Koster did not properly investigate this, General Seaman "considered the long and honorable career of General Koster" and the reported lack of evidence of intentional lapses by him and decided to dismiss all the charges, the Pentagon statement said.

In New York today, a group that has publicized the requests of 11 active duty officers for an official war crimes inquiry by the military termed the dismissal of the charges a "travest." The National Committee for a Citizens' Commission of Inquiry reported that it had received testimony in its "hearings" from former servicemen who said troops under the command of General Seaman had committed atrocities in Vietnam.

General Seaman commanded troop units in Vietnam from October, 1965, to March, 1967. The group alleged that former servicemen had testified that civilians were tortured and murdered by troops during Operation Johnson City and Operation Cedar Fall, which were carried out under General Seaman's command.

They asserted that "a man directly implicated" in alleged war crimes had dropped charges "against a fellow general who is likewise deeply implicated."

Continued on Page 7, Column 1