

Code Is 'Illegal'

Army Boss Bucks POW Tradition

Washington

Army Secretary Howard H. Callaway, clashing with military tradition, said yesterday there is no legal requirement that an Army enlisted man obey an Air Force officer in a prisoner-of-war camp.

Callaway cited this as a key reason why he dismissed prison camp misconduct charges against five GIs early this month. He said the chain of command set up by American POWs in North Vietnam "was not a legal command structure."

Callaway's explanation of how he disposed of the first legal test of the fighting man's Code of Conduct since the code was established in the wake of the Korean War stirred a storm of controversy among military men.

"He is wrong. Just plain wrong," one senior officer said.

In his first Pentagon news conference, Callaway indicated he would probably also throw out new mutiny charges filed against the men this week if the renewed accusations were based on failure to follow the orders of officers in the POW camp.

"My lawyers tell me that an Air Force captain has no authority in a prison camp over an Army sergeant," Callaway said.

He said this same lack of authority applied to Air Force Colonel Theodore Guy, the senior officer in the camp where the five enlisted men were held, who filed the first charges accusing the GIs, among other things, of disobeying lawful orders from then Air Force Captain Edward W. Leonard.

Leonard, now a major, filed the second set of charges Monday because he was dissatisfied with the way Guy's charges had been handled.

The Army secretary, a West Point graduate, directly challenged a cherished

military notion that the prison camp command structure, which the code requires to be established, is legal and embraces all services.

The Code of Conduct was issued in 1955 by an executive order from President Eisenhower. It was never formally incorporated into military law, however, existing only as a set of guidelines.

At one point the code says: "The senior line officer or noncommissioned officer within the prisoner-of-war camp or group of prisoners will assume command according to rank without regard to service. This responsibility and accountability may not be evaded."

Leonard, angered because none of the witnesses named by Guy had been interviewed by the Army, filed new charges of mutiny against the seven.

Guy filed his charges May 29 against the five Army enlisted men and three enlisted Marines. Callaway and Navy Secretary John Warner dismissed the charges against seven of these men July 3, shortly after one of the accused Marines committed suicide. *United Press*