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## Collaboration or self-preservation: the military Code of Conduct

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COLLABORATION OR SELF-PRESERVATION:  
THE MILITARY CODE OF CONDUCT

A Thesis

Submitted to the Graduate Faculty of the  
Louisiana State University and  
Agriculture and Mechanical College  
in partial fulfillment of the  
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in Liberal Arts

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## ABSTRACT

In 1955, Secretary of Defense Charles Wilson established a special committee to investigate allegations of misconduct by American POW's during the Korean War. The Communists had used the prisoners for propaganda purposes and extended the battlefield into the POW camp as never before. The committee proposed the Code of Conduct as a means of preventing similar occurrences in future conflicts.

The Code of Conduct puts into words, for the first time, concepts which had evolved from the experiences of American POW's in the almost 200 years of combat preceding its development. Americans who became POW's during conflicts after the implementation of the Code have identified its strengths and weaknesses. One of the strengths of the Code is its plain wording. It was put into language that all soldiers could understand. One of the great weaknesses of the Code is the lack of training given to most soldiers, yet the committee that drafted the Code identified training as an essential element to its success.

Another serious weakness is the failure of the military to adapt the Code to the current world situation where mid- and high-intensity conflict are less probable than low-intensity conflict or operations other than war. Because of the inherently different enemies faced in those situations, the training should be changed to reflect the differences.

The Code of Conduct was drafted in order to benefit soldiers. Accordingly, Code of Conduct training should be revamped to accurately reflect the potential POW scenarios facing America's fighting men and women.

## INTRODUCTION

The fate of unborn millions will now depend, under God, on the courage and conduct of this army. Our cruel and unrelenting enemy leaves us only the choice of brave resistance or the most abject submission. We have, therefore, to resolve to conquer or die.<sup>1</sup>

General George Washington spoke these words to members of the Continental Army on August 27, 1776, prior to the Battle of Long Island. He undoubtedly was referring to dependence on the courage and conduct of the army while engaged in combat with the enemy. These same traits were just as essential for those soldiers taken prisoner by the British during that battle and the thousands of American servicemen captured during the more than 220 years of conflicts since Washington's address to his troops.

Since our country's struggle for independence, American fighting men, and more recently women, have become prisoners of war (POW's). Their treatment has varied widely. Some of the worst treatment occurred at the hands of other Americans during the American Civil War. In spite of the many conflicts in which Americans became POW's, there was no formal, standardized guidance on how captives should behave until *Executive Order 10631 – Code of Conduct for members of the Armed Forces of the United States* was signed by President Dwight Eisenhower on August 17, 1955. The Code of Conduct has been amended twice since its creation. Paragraph V was changed by Executive Order 12017, November 3, 1977, to require a POW to give name, rank, service number, and date of birth. The references to male gender in

<sup>1</sup> John Bartlett, *Bartlett's Familiar Quotations*, 336:14.

Paragraphs I, II, and VI were removed by Executive Order 12633, March 28, 1988. The Code's original purpose of providing guidance to POW's, however, has remained unchanged.

President Eisenhower directed the creation of the Code of Conduct, as it is commonly referred to, in response to the experience of American POW's during the Korean War. The Code of Conduct dictates that members of the armed forces will receive training to help them counter and withstand all enemy efforts to force them to collaborate or divulge information and instruction as to the behavior and obligations expected of them during combat or captivity. American soldiers have tested the Code of Conduct in many conflicts since its implementation, with differing degrees of success. Although the Code of Conduct is not perfect, it provides American POW's a touchstone by which they can live.

The first chapter of this thesis focuses on American POW's captured in conflicts prior to the Korean War. It discusses their experiences, many of the laws and regulations which governed their treatment, and the evolution of American policy that occurred with regards to POW's from the American Revolution through the Second World War.

Chapter 2 examines the POW situation during the Korean War. The Communist Chinese successfully used prisoners for propaganda purposes by eliciting statements from them. Because of these pro-communist statements by American servicemen, the Army began an investigation into the conduct of POW's before the end of the war. That investigation ultimately resulted in the creation of the Code of Conduct.

The implementation of the Code of Conduct in American hostilities since its creation is the subject of Chapter 3. By far the largest group of POW's resulted from America's involvement in the Vietnam War. However, Americans were captured in the Gulf War, Somalia, and the former Yugoslavia. The Code of Conduct training these POW's received varied widely and the success they had in adhering to the Code of Conduct has varied just as widely. To ensure better compliance with the Code of Conduct, the United States military must implement the more rigorous training program envisioned by the drafters of the Code.



## CHAPTER 1

### AMERICAN POW'S PRIOR TO THE KOREAN WAR

Until 1955, American servicemen received no uniform orders or training concerning their behavior if taken prisoner of war. The United States' attitude towards POW's, both how our POW's should act and how POW's captured by the United States' military should be treated, evolved during the many conflicts experienced by the country. The Civil War and both World Wars significantly contributed to development of a national and an international standard of treatment required with respect to POW's. However, American soldiers continued to become POW's with little preparation for the ordeal they were to face. This was due, in large part, to the fact that most nations of the world viewed POW's as non-combatants whose participation in the conflict was terminated. They would remain in captivity until the end of hostilities and then be repatriated to their homeland. The Chinese use of American POW's as propaganda objects during the Korean War changed this attitude forever.

The American POW experience began during the struggle for independence from Great Britain. The British treated the forces of the Continental Army and Navy as criminals rather than as POW's.<sup>2</sup> They imprisoned a majority of the Americans aboard prison ships, or hulks, in American harbors like Wallabout Bay, New York, or transported them to prisons in England or Ireland. The British government enacted Lord North's Act of 1777, which legalized the British view of the Americans as rebels on land and pirates on the sea, thereby giving the British judicial system jurisdiction over any Americans who were captured.<sup>3</sup> The conditions experienced in both the prison

<sup>2</sup> Robert C. Doyle, *A Prisoner's Duty, Great Escapes in U.S. Military History*, 34-35.

<sup>3</sup> Ibid., 32.

hulks and military prisons in England and Ireland were deplorable. An estimated 7,000 American POW's died in the British prison hulks.<sup>4</sup>

At one point, in January 1777, General George Washington, commander of the Continental Army, wrote to British General Sir William Howe to protest the treatment of American prisoners. Washington demanded to know if Howe was “determined to make captivity as distressing as possible, [if so] let me know it, that we may be upon equal terms, for your conduct must and shall mark mine.”<sup>5</sup> That spring, Washington refused to send back healthy British soldiers after the British released 2,200 American prisoners in such a pitiful state that many died and most others were hospitalized, unfit for any military duty.<sup>6</sup> Washington's capture of Cornwallis' army at Yorktown forced the British into an exchange of prisoners, saving many prisoners who had been taken to England and Ireland.<sup>7</sup>

During the Revolutionary War, generally speaking, once taken prisoner by either side, a prisoner could expect release only as a result of a prisoner exchange. A limited exception to this rule was that of “parole.” Both sides recognized the granting of parole to POW's, normally officers. Parole was a military custom of giving one's word of honor to abide by certain conditions in exchange for some degree of freedom from confinement.<sup>8</sup> Because the parole system depended upon enforcing the word of the individual officer, General Washington mandated strict compliance by any officer

<sup>4</sup> Henry Steele Commager and Richard B. Morris, eds., *The Spirit of Seventy Six*, 845.

<sup>5</sup> Lynn Montross, *Rag, Tag and Bobtail*, 183.

<sup>6</sup> *Ibid.*, 252.

<sup>7</sup> *Ibid.*, 437.

<sup>8</sup> Richard K. Showman, ed., *The Papers of General Nathanael Greene*, 185.

accepting parole. The Code of Conduct now specifically prohibits members of the armed forces from accepting parole or special favors from the enemy.

During the War of 1812, American soldiers and sailors again fell into British hands. However, this time the British recognized American sovereignty and treated most of the 14,000 captives as POW's, designating as traitors only individuals who had emigrated from Britain to the United States.<sup>9</sup> Once again, both sides allowed officers to accept parole. Because of disputes such as the British claims that British prisoners who were put on a neutral vessel or dropped at a neutral port by American captors were not on parole but had been released outright, both countries negotiated a series of conventions in 1812 and 1813 that bound them to treat prisoners "with humanity, conformable to the usage and practice of the most civilized nations during war."<sup>10</sup> Although never ratified by Britain, both countries generally adhered to the conventions.

Despite the 1812 and 1813 conventions, not all the Americans were well treated. At the end of the war, descriptions of mistreatment experienced by Americans in Britain fueled feeling of anglophobia.<sup>11</sup> Many American POW's were taken to Dartmoor Prison, at Princetown, Devonshire, England. Although the War of 1812 officially ended on February 17, 1815, with the ratification of the treaty of Ghent, many Americans remained in Dartmoor Prison because the United States was unable to agree with the British about who should transport the prisoners back to the United States. On April 6, 1815, almost two months after the end of hostilities, five Americans were killed and thirty-four wounded at Dartmoor when they rebelled at being held after the end of the

<sup>9</sup> Doyle, *A Prisoner's Duty*, 42.

<sup>10</sup> Donald R. Hickey, *The War of 1812, A Forgotten Conflict*, 177.

<sup>11</sup> *Ibid.*, 306.

War.<sup>12</sup> The hatred felt by Americans toward Britain because of the treatment of American POW's lasted for many years.

More than thirty years later, America was at war with Mexico. The Mexicans treated most of the American fighting men from Regular Army and volunteer units as POW's. They were kept in Mexico City and many accepted parole.<sup>13</sup> The Texans who were captured, however, were not treated as well. Because of the hatred between the Mexicans and Texans caused by more than ten years of conflict, Mexican General Santa Anna had directed that the Texans be executed shortly after capture. This was an extension of his policy during the War of Texas Independence. Santa Anna had persuaded the Mexican Congress to pass a decree in December 1835 announcing that all foreigners taken in armed conflict against the Mexican government would be treated as pirates and shot.<sup>14</sup> Santa Anna proceeded to order the execution of the survivors of the Alamo in March 1836, and 390 soldiers under Colonel James Fannin only weeks later at Goliad.<sup>15</sup> Fannin negotiated his surrender at Goliad with Mexican General Jose´ de Urrea, one of Santa Anna's subordinates. Urrea told Fannin that there was no known instance of a soldier who trusted the clemency of the Mexican government losing his life and that he would recommend to Santa Anna that Fannin and his soldiers be treated as prisoners of war. Fannin surrendered his command based on Urrea's assurances, but Santa Anna refused to treat the Americans at Goliad as POW's and ordered Urrea to comply with the December 30 decree. Except for twenty-eight escapees, Fannin's men faced firing squads on Palm Sunday, March 27, 1836.

<sup>12</sup> Willis J. Abbot, *Blue Jackets of 1812*, 407.

<sup>13</sup> Doyle, *A Prisoner's Duty*, 62.

<sup>14</sup> <http://www.tsha.utexas.edu/handbook/online/articles/view/GG/qeg2.html>, visited 20 May 2001.

<sup>15</sup> *Ibid.*, pps. 52-53.

Americans next became POW's to other Americans. The Union and Confederate Armies both took large numbers of POW's, but neither side was adequately prepared to take care of them. Although estimates vary, approximately 215,000 Confederates and 194,000 Federals fell prisoner. Of these numbers, approximately 12 percent of Confederates and 15.5 percent of Federals died while being held.<sup>16</sup>

The fact that the United States government did not recognize the Confederacy as a legal entity, but only the result of an armed insurrection, raised questions about the status of captured Confederate soldiers. If the United States were to treat them as POW's, it might be seen as an acknowledgement of the Confederacy as a legal government and encourage other countries to do the same. However, if the United States did not treat Confederate captives as POW's, it could not expect the Confederacy to extend prisoner of war status to Union captives. Even prior to the Geneva Conventions, the customs of war recognized at the time afforded to POW's rights that criminals, as the Confederate soldiers would otherwise be considered, would not enjoy. The United States faced the dilemma of obtaining POW status for its soldiers while not recognizing the Confederate insurrection. Army Regulation Article XXXVI, which was in effect at the beginning of the war, ultimately resolved the issue.<sup>17</sup> It provided for the taking of prisoners, the treatment of prisoners' private property, and the exchange and parole policies of the United States Government. Article XXXVI extended POW status to Confederate soldiers while not legitimizing the Confederacy. More importantly, through the use of Article XXXVI, the Union was able to obtain POW treatment for its

<sup>16</sup> Robert E. Denney, *Civil War Prisons and Escapes*, 12.

<sup>17</sup> *Ibid.*, 379.

soldiers in that the Confederate Army adopted similar provisions soon after the start of the war.

Many of the United State's concepts regarding the treatment of POW's were the result of the work of Francis Lieber. President Lincoln asked Lieber, a German-born law professor at Columbia College in New York, to draft a code governing the Union Army's conduct in the field.<sup>18</sup> The result was Lieber's April 1863, Instructions for the Government of Armies of the United States, sometimes referred to as the Lieber Code.<sup>19</sup>

The Lieber Code defined POW's as "a public enemy armed or attached to the hostile army for active aid, who has fallen into the hands of the captor, either fighting or wounded, on the field or in the hospital, by individual surrender or by capitulation (Article 49).<sup>20</sup> Lieber also extended POW status to citizens accompanying the army, such as sutlers, reporters of journals or contractors and the monarchs and members of a hostile reigning family and chief officers of a hostile government and its diplomatic agents, if captured on belligerent ground and if not provided with safe conduct granted by the captor's government (Article 50).<sup>21</sup>

Once the United States began to recognize Confederates as POW's, the next issue was how to treat Confederate POW's properly and how to repatriate Union prisoners. On July 22, 1862, the two governments entered into a Prisoner Exchange Cartel which defined the basis for exchange of POW's.<sup>22</sup> Although the Cartel was in effect from its signing until the end of the war, except for a brief period in 1863 and

<sup>18</sup> A.J. Barker, *POW's*, 13.

<sup>19</sup> Ibid.

<sup>20</sup> <http://www.fletcher.tufts.edu/multi/texts/historical/LIEBER-CODE.txt>, visited 19 April 2001.

<sup>21</sup> Ibid.

<sup>22</sup> Denney, *Civil War Prisons*, 375.

1864, it was not the sole means of exchanging prisoners. Local commanders had great discretion to enter into exchanges with enemy counterparts and exercised that option immediately following battles.

The American Civil War was the last conflict in which American POW's were paroled in large numbers. Just as during the Revolutionary war, parole was another means by which captors released prisoners. The Union and Confederacy exercised various classifications of parole, some of which international law did not recognize. The United States Army even published General Order No. 207 to prevent commanders from confusing a "military parole" with a "parole of honor."<sup>23</sup> A military parole was, in essence, only a simple one-for-one exchange of prisoners, which required a soldier not to serve until exchanged for another prisoner; but a parole of honor required the prisoner's oath to do or not do something, usually to not bear arms against the enemy for the remainder of the conflict. The Code of Conduct, which directs American servicemen to accept neither parole nor special favors from the enemy, rendered that distinction moot.

The Lieber Code defined parole as "the pledge of individual good faith and honor to do, or to omit doing, certain acts after he who gives his parole shall have been dismissed, wholly or partially, from the power of the captor."<sup>24</sup> At the beginning of the conflict, General Winfield Scott directed the parole oath to be used when Confederate officers were given parole.<sup>25</sup> Although often used at the beginning of the war, paroles became less common as the war continued. In 1863, the United States policy of

<sup>23</sup> William E.S. Flory, *POW's, A Study in the Development of International War*, 121.

<sup>24</sup> <http://www.fletcher.tufts.edu/multi/texts/historical/LIEBER-CODE.txt>, visited 19 April 2001.

<sup>25</sup> Denney, *Civil War Prisons*, 380.

paroling prisoners gradually changed. Recognizing that the war had become one of attrition, federal authorities stopped exchanging and paroling Confederate POW's in order to deprive the Confederate Army of services of the soldiers.<sup>26</sup> The unintended result of this policy change was the retaliatory termination of exchanges and paroles by the Confederate government, which precluded the release of many Union POW's from Confederate prisons. This undoubtedly resulted in the deaths of an unknown number of Union prisoners, based upon the approximately 15 percent mortality rate experienced by Union prisoners in Confederate prisons.<sup>27</sup>

Another reason the Union halted the parole exchanges was because Union soldiers were using the system to their advantage. A number of Union conscripts allegedly surrendered at the first opportunity. They would then give their parole and evade further military service.<sup>28</sup> Parole has not played a significant factor for American POW's in any conflict since the American Civil War.

American soldiers next fell prisoner to soldiers of Kaiser Wilhelm II of Germany. America entered the war on April 6, 1917, almost three years after the conflict had begun. In the nineteen months the American Expeditionary Force fought, 4,480 doughboys were taken prisoner of war.<sup>29</sup> The attitude of America, and the world, with respect to POW's had changed drastically in the fifty years since the end of the Civil War. The Hague Conventions of 1899 and 1907 had provided rules for the treatment of POW's. It was the first written document to detail an internationally recognized standard regarding the treatment of POW's, many of which are still in place

<sup>26</sup> Lonnie R. Speer, *Portals to Hell*, xix.

<sup>27</sup> <http://www.tsha.utexas.edu/handbook/online/articles/view/GG/qeg2.html>, visited 20 May 2001.

<sup>28</sup> Barker, *POW's*, 13.

<sup>29</sup> James H. Hallas, *Doughboy War, The American Expeditionary Force in World War I*, 189.



today. It required captured soldiers to be paid for their labor (Article 6), to give their true name and rank (Article 9), and to enjoy complete liberty in the exercise of their religion (Article 18).<sup>30</sup> The United States was a signatory to the Hague Convention of 1907. In 1914, the American military formally adopted the Hague rules and incorporated them into the 1914 version of the Rules of Land Warfare.<sup>31</sup> Encompassed in the 1914 rules was a major modification of American policy regarding parole. Policy had often changed in the past, mainly with the level of command at which parole could be granted. The matter was settled by taking the power to parole away from local commanders and retaining it at the highest levels of command. This policy is still in place today.

Although the United States military had no Code of Conduct at that time, American soldiers often received guidance on how to act if captured. Instructions from the 37<sup>th</sup> Division advised soldiers that it was only necessary to give their name and rank.<sup>32</sup> If they must talk, they should act as if they knew nothing specific about the tactical situation. But the Division Instruction clearly emphasized that remaining silent was best. “Refuse to talk,” it admonished. “If you do talk, and give the enemy information, you are traitors to your country and worse than all, traitors to your own pals.”<sup>33</sup>

The Germans generally treated American POW’s in a manner consistent with the laws of war. Two hundred soldiers of the 27<sup>th</sup> Division, a New York National

<sup>30</sup> <http://www.yale.edu/lawweb/avalon/lawofwar/hague04.htm>, visited 1 May 2001.

<sup>31</sup> Doyle, *A Prisoner’s Duty*, 118.

<sup>32</sup> Hallas, *Doughboy War*, 190.

<sup>33</sup> Ibid.

Guard unit called to active service for the war, were taken prisoner.<sup>34</sup> They reported that the Germans treated them as well as could be expected; considering the situation in Germany at the end of the war. However, the soldiers who became prisoner from the 107<sup>th</sup> Infantry Regiment, part of the 27<sup>th</sup> Division, recorded their hatred for those Germans who had lived in the United States and who constantly attempted to converse with them about places and events in the United States.<sup>35</sup> It is possible the Germans chose these individuals as guards because of their knowledge of the English language and they expected those guards would be able to gain more information from the prisoners because of their shared experience of living in America. Whatever the reasoning, the tactic did not work.

Less than thirty years later, American troops were again fighting in another world war. Germans took over 93,000 Americans captive during World War II<sup>36</sup> and the Japanese captured approximately 25,000.<sup>37</sup> All of the belligerents, except the Soviet Union and Japan, had signed the Geneva Convention of 1929, which further regulated the treatment of POW's.<sup>38</sup> Among other things, it stipulated that prisoners who attempted to escape would not be severely punished.

The Germans endeavored to gain information from their prisoners through various interrogation techniques. They often used solitary confinement to break down a prisoner physically and emotionally.<sup>39</sup> They also used the "good cop, bad cop" technique. A fanatical Nazi would begin the interrogation and would be interrupted by

<sup>34</sup> Major General John F. O'Ryan, *The Story of the 27<sup>th</sup> Division*, 489.

<sup>35</sup> Gerald F. Jacobson, *History of the 107<sup>th</sup> Infantry U.S. A.*, 271.

<sup>36</sup> Doyle, *A Prisoner's Duty*, 143.

<sup>37</sup> Lee Kennett, *G.I., the American Soldier in World War II*, 184.

<sup>38</sup> Doyle, *A Prisoner's Duty*, 144.

<sup>39</sup> David A. Foy, *For You the War is Over*, 56.

a meek interrogator, who would try to befriend the prisoner. The Germans also used a "false escape" scheme.<sup>40</sup> They would strip a prisoner of all identification and arrange a situation, which allowed the prisoner to escape. They would follow him for a period of time and then recapture him. Because he had no paperwork or identification, he would be treated as a spy and threatened with being shot unless he gave the Germans the information they desired.

On the whole, German soldiers again treated American POW's humanely, as they had in World War I, in accordance with the Geneva and Hague Conventions. This was a result of not only the application of the Conventions, which Red Cross inspectors monitored, but also of letters from German POW's in the United States who wrote home about the good treatment they were receiving. However, the Germans did treat different classes of prisoners differently.

As a general rule, officers, both commissioned and non-commissioned, usually fared better in German hands than did other American prisoners because the Germans had a high regard for those they considered professional soldiers. This was borne out by the usually good treatment experienced by Army Air Corps prisoners, most of whom were officers<sup>41</sup>

Many prisoners of actual or believed Jewish descent faced harsher conditions. Although the Germans had originally treated the Jewish prisoners the same as they had treated all others, this changed towards the end of the war. In January 1945, the Germans transferred approximately 350 American prisoners from a POW camp named

<sup>40</sup> Ibid., 57.

<sup>41</sup> Tom Bird, *American POW's of World War II*, 93.

Bad Orb to the death camp Berga-Elster.<sup>42</sup> Of these prisoners, only 150 were Jewish; the other 200 had Jewish names, were troublemakers, or were circumcised, which the Germans thought was the mark of a Jew.<sup>43</sup>

The varying treatment of POW's based on different classification of prisoners illustrates one of the difficulties of enacting a single code that all POW's must obey. Their captors may treat prisoners of different ranks, ethnic backgrounds or sex differently. A Japanese-American soldier captured by the Japanese could probably expect to receive even harsher treatment from his captors than his fellow Caucasian captive. Communists targeted black POW's in both the Korean and Vietnamese wars for special, preferential treatment. They attempted to convince the black prisoners that they were being used by a racist, white American society to kill Asians who were fighting for their freedom and that of other oppressed people of the world.<sup>44</sup>

Just as they had in World War I, American POW's in World War II felt a special hatred for German guards who had lived in the United States before the war. The Green Hornet, a German guard at Stalag Number 4, boasted that he owned land in Wyoming and that he had once lived there. Although he was an easygoing guard, he was a target of special antagonism because the prisoners felt they were, "... defending that land for him, so he has no goddam business being in the kraut army."<sup>45</sup> The German ploy of gaining the friendship of American prisoners through the use of German-American guards again failed.

<sup>42</sup> Ibid, 85.

<sup>43</sup> Ibid., 120.

<sup>44</sup> Winston Groom and Duncan Spencer, *Conversations with the Enemy*, 226-227.

<sup>45</sup> Edward A. Dobran, *P.O.W. The Story of an American Prisoner of War During World War II*, 64.

Americans captured by the Japanese in the Pacific Theater were not so fortunate. The Japanese were extremely abusive in their treatment of Allied POW's. Executions, beatings, and starvation were commonplace. Held accountable for these atrocities after the war, a number of Japanese military personnel, including eighteen in the Philippines, received death sentences.

The Japanese had not always had that attitude toward POW's. Army Instruction No. 22 of the Japanese Army Regulation for Handling POW's, dated February 1904, had stated that, "POW's shall be treated with a spirit of goodwill and shall never be subjected to cruelties or humiliation."<sup>46</sup> However, this attitude began to change after World War I when the Japanese officer corps began to assert its control over the Japanese government and implement the spirit of traditional Bushido, the distinctive mark of honor among the Samurai.<sup>47</sup> The Japanese military turned from following Army Instruction No. 22 and adopted the Military Field Code in 1941, which required absolute obedience to superiors, complete acceptance of Japan's military and moral superiority, and suicide in place of an honorable surrender.<sup>48</sup> The Japanese feeling of superiority and contempt for those who had surrendered led to their abuses of the Allied POW's.

The Japanese also used Koreans as guards for the Americans. The Japanese conscripted the Koreans into the army but never considered them as equals.<sup>49</sup> Although some of the Korean guards treated the American prisoners leniently because of their

<sup>46</sup> Doyle., *A Prisoner's Duty*, 174-175.

<sup>47</sup> Ibid., 178.

<sup>48</sup> Ibid.

<sup>49</sup> Gavan Daws, *Prisoners of the Japanese*, 104.

shared hatred for the Japanese, many took out their anger at the Japanese on the only ones they could - the Allied prisoners.

James Clavell, the writer-director-producer who spent three years as a prisoner of war in various Japanese prisoner camps in the Far East, details the interaction of Allied prisoners with their Korean guards in his novel *King Rat*.<sup>50</sup> The novel also describes the "survival of the fittest" attitude adopted by the most successful prisoners.

Modern portrayals of American POW's in many of America's conflicts also emphasize that theme. In the television mini-series *Andersonville* (1996), Union prisoners tried, convicted and subsequently hanged some of their fellow prisoners. The condemned prisoners had banded together and began abusing other prisoners, robbing them of their food, shelter, and generally taking advantage of those weaker than themselves or individuals who could not overcome their superior numbers. In *Stalag 17* (1953), a movie about American POW's in Germany during World War II, William Holden portrayed an American prisoner of war who does business with the German guards in order to make his own life easier. His trades with the guards provided him with better food, clothing, and cigarettes than that of his fellow prisoners. When it became apparent that someone within the camp was supplying the Germans with information, he became the likely suspect. The movie ended with Holden having to find the true spy, a German who had earlier lived in the United States and was posing as a prisoner. The films suggested that the GI who did whatever it took to survive but did not totally break faith with his fellow prisoners was engaged in acceptable behavior. Hollywood's depiction of American prisoners is the only exposure to the POW issue the

<sup>50</sup> James Clavell, *King Rat*.

majority of the American public ever had. It is likely that when *Stalag 17* was released in 1953, almost simultaneously with the release of the majority of the POW's of the Korean War, many Americans identified the returning POW's with the character played by William Holden; i.e., they were just normal Americans who had done their best as POW's to survive a terrible ordeal.

Following World War II, the representatives of various nations of the world met to draft international conventions to regulate the conduct of warfare. This was in response to the horrific loss of life, of both combatants and non-combatants, experienced during the war. The Geneva Conventions of 1949 evolved from the Hague Conventions of 1899 and 1907 and the Convention Between the United States of America and Other Powers, Relating to Prisoners of War which was signed in Geneva on July 27, 1929 and ratified by the United States Congress on February 4, 1932.

The four Conventions, drafted in 1949, covered the treatment of the wounded and sick in armed forces in the field, the wounded, sick and shipwrecked members of armed forces at sea; prisoners of war, and civilian persons in time of war.<sup>51</sup> The Convention on the treatment of prisoners of war is the source of the requirement that prisoners provide their captors with name, rank, date of birth and service number (Article 17).<sup>52</sup> Although signed in 1949, the Conventions did not take effect until October 21, 1950.

The inherent flaw with the Conventions, as with all attempts to regulate behavior in times of war, was the ability to ensure compliance. There was no

<sup>51</sup> United States Department of the Army Field Manual 27-10, 18 July 1956, Chapter 1.

<sup>52</sup> <http://www.yale.edu/lawweb/avalon/lawofwar/geneva03.htm>, visited 2 April 2001.

mechanism to force a nation to adopt the Conventions and, if they were adopted, to force a signatory to comply with them. For example, North Korea violated the precept of international law of war regarding the initiation of hostilities by attacking South Korea with no prior warning.<sup>53</sup> It should not have been a surprise, therefore, that the North Koreans subsequently violated the international laws of war regarding POW's.

<sup>53</sup> *Hague III - Opening of Hostilities* (Article I), October 18, 1907.



## CHAPTER 2

### AMERICAN POW'S IN THE KOREAN WAR

The American military was totally unprepared for combat in Korea in June 1950. The great fighting force that had defeated the Axis powers had been decimated by the wholesale demobilization following World War II. The American troops in the Far East consisted mainly of occupation troops and conducted very little combat training. Those stationed in Korea were advisors to the Republic of Korea (ROK) military and were not assigned to American combat units. In July 1949, the United States Military Advisory Group to the Republic of Korea consisted of 472 personnel.<sup>54</sup>

General Douglas MacArthur had established American military control over all Korea south of the 38<sup>th</sup> Parallel by proclamation on September 7, 1945.<sup>55</sup> President Franklin Roosevelt and Joseph Stalin had agreed in principal to this division of the Korean peninsula at their conference in Yalta in February. Although many Koreans wanted reunification of their country, the emerging cold war between the United States and the Soviet Union prevented this. During the next four years, the United States began preparations for the withdrawal of American troops from South Korea. These preparations included the creation of a South Korean military and government, with the hope the country would be able to withstand North Korean aggression without American assistance.<sup>56</sup>

American troops deployed to South Korea from their occupation bases in Japan after the North Korean attack. They almost immediately had to conduct a fighting

<sup>54</sup> James F. Schnabel, *United States Army in Korea*, 34.

<sup>55</sup> *Ibid.*, 13.

<sup>56</sup> *Ibid.*, 29.

retreat. Task Force Smith, named for its thirty-four year old commander Charles Bradley Smith, was under-strength and poorly equipped. It was composed of 406 men of the 1<sup>st</sup> Battalion, 21<sup>st</sup> Infantry Regiment, 24<sup>th</sup> Infantry Division whose mission was to stop the advancing North Korean army in order to allow the South Korean army to regroup. Each man had only 120 rounds of .30-caliber rifle ammunition and two days of C-Rations. The Task Force had two 75mm recoilless guns, two 4.2-inch mortars and a number of 2.36-inch bazookas, which had already proved worthless against the Soviet tanks used by the North Koreans.<sup>57</sup> In less than one contact with the enemy, which lasted forty-eight hours, Task Force Smith was no longer an effective combat force. It did not take long for the effects of inadequate training to reveal themselves. On July 9, 1950, only days after American ground forces began engagements with the North Koreans, a captured American Army officer made a 900-word broadcast on the enemy's behalf over a Seoul radio station. "We did not know at all the cause of the war and the real state of affairs, and were compelled to fight against the people of Korea," he stated.<sup>58</sup> Although the statement was probably accurate; i.e., few soldiers knew why North Korea had invaded South Korea and they were compelled to fight against North Korea by the Army, the officer obviously was assisting the North Koreans, which was in clear violation of the military prohibition against giving aid and comfort to the enemy. This problem seemed to worsen in following days. According to a Pyongyang radio broadcast, 117 American POW's had declared that they had never wanted to fight

<sup>57</sup> John Toland, *In Mortal Combat- Korea, 1950-1953*, 77.

<sup>58</sup> Eugene Kinkead, *In Every War but One*, 19.

for South Korea and had done so only because "President Truman dreams of world domination."<sup>59</sup>

Approximately six weeks later, Soviet Deputy Foreign Minister and President of the United Nations Security Council, Jacob A. Malik, presented a message to the Security Council allegedly signed by thirty-eight American POW's. The message stated that the war had begun because of an "unprovoked and ill-advised invasion," by South Korean troops, that American aircraft were attacking "nonmilitary targets," and that the United States "should and must withdraw its forces from Korea."<sup>60</sup> The New York Times spoke for general public opinion when it immediately labeled Malik's "obviously fraudulent" communication "a new low even for Soviet tactics."<sup>61</sup>

Army leaders, perplexed by the signs of collaboration early in the conflict, ordered the collection of information on all American POW's. That process began late in the summer of 1950 and continued until the summer of 1955, almost two years after the last prisoners returned to the United States.<sup>62</sup> The military used the resultant information in what became an extensive debate regarding the conduct of POW's in Korea. The Army reported on May 5, 1953, that a small group of prisoners "who have shown symptoms of having succumbed to Communist indoctrination" would be taken to an Army hospital for "special consideration."<sup>63</sup> The investigation, which ultimately resulted in the appointment of a committee to develop a Code of Conduct for American troops, had the difficult tasks of determining what, if any, misconduct individual

<sup>59</sup> *New York Times*, (July 16, 1950), 3.

<sup>60</sup> *New York Times*, (August 30, 1950), 4.

<sup>61</sup> *Ibid.*, (August 31, 1950), 24.

<sup>62</sup> Kinkead, *In Every War*, 18.

<sup>63</sup> *New York Times*, (May 5, 1953), 28.

prisoners had committed during their captivity and then make recommendations as to how best handle those whose actions had failed to comply with an unwritten standard of conduct for POW's.

The military services disagreed about proper handling of the collaborators – and public opinion varied as well. Ultimately, the Army was the only service to court-martial any of its personnel for acts committed during captivity. The Navy found no evidence of wrongdoing on the part of its prisoners; the Air Force administratively separated seven and accepted the resignations of three, based on evidence of varying degrees of wrongdoing; and the Marine Corps reprimanded one and placed two on “restrictive assignments.”<sup>64</sup>

The American public was not sure what to do with the returning prisoners, either the so-called “reactionaries,” as the Communists labeled those who refused to bow to the pressure of their captors, or the “progressives,” those who were accused of collaborating with the Communists.<sup>65</sup> The Chinese Communists used skilled psychologists to choose prisoners who would be most susceptible to indoctrination. Most Americans seemed to conclude that the prisoners who had collaborated had done so because they wanted better treatment and not because Communist indoctrination had actually convinced them that Communism was a better system of governing than a democratic one. The military also received some of the blame for failing to prepare its soldiers for a possible POW experience. Many Americans believed that military authorities should have known that the Communists would not abide by the Geneva Conventions regarding POW's and should have provided a policy for service members

<sup>64</sup> *New York Times*, (August 18, 1955), 12.

<sup>65</sup> “The Prisoners Who Broke,” *U.S. News and World Report*, (August 21, 1953), 30.

to follow in case of capture. The media and public also disagreed with the military's decision, especially the Army's, to punish soldiers almost two years after the war without having put a policy into place to prevent such a situation from occurring during the next conflict.<sup>66</sup> Such criticisms helped to prompt the creation of the Code of Conduct.

The investigation of POW's in the Korean conflict pointed to a breakdown in the traditional system of Army command discipline, attributed to the Army's acceptance of the so-called Doolittle Report of 1945. That report had recommended fewer barriers between officers and enlisted men and withdrew much of the power of the noncommissioned officer. The Army instituted many of the reforms, which were oriented toward removing arbitrary distinctions in dress and privileges between officers and enlisted personnel, but failed to address the fundamental underlying issue of how to build mutual respect up and down the military hierarchy.<sup>67</sup> Unlike the Army POW's, the overall performance of Marine Corps POW's, according to investigators, was superior, a result in large part of the discipline, taut training methods, and higher morale found within the Marine Corps.<sup>68</sup>

Not all Americans were sympathetic toward those accused of being progressives. Senator Richard B. Russell, a Democrat from Georgia, felt the Department of Defense was not condemning collaboration in unequivocal terms. He blasted the Secretary of Defense, Charles Wilson, for a statement Wilson made

<sup>66</sup> William Lowe, "Justice, for a Tortured GI?" *Look*, (June 28, 1955), 32.

<sup>67</sup> <http://www.armymedicine.army.mil/history/borden/wp/Ch12.pdf>, 295.

<sup>68</sup> "Why GI's Folded," *Newsweek*, (January 26, 1959), 104.

concerning the prisoners who had collaborated. Said Wilson,

We do not as a general principle condone those who made false confessions contrary to the interests of their country, or whose actions caused their fellow prisoners added misery. Such cases will be carefully and sympathetically examined by the services concerned to ascertain whether in any of them there has been an unreasonable failure to measure up to the standard of individual conduct which is expected even of a prisoner of war or deviations from standards of behavior prescribed by law.<sup>69</sup>

Russell was upset because of a press report in which a U.N. Command spokesman had announced that "being a 'progressive' - Red sympathizer- is not considered a crime in the United States."<sup>70</sup> The senator suggested that if the Department of Defense did not distinguish between the soldiers who resisted and those who collaborated with the enemy, it would have a disastrous effect upon the will of American servicemen to fight and resist in future wars. Representative Robert L. Sikes, a Democrat from Florida, supported Senator Russell's views, calling for punishment of "turncoat G.I.s who played the Reds' tune while they were captives."<sup>71</sup>

Other Congressmen saw things differently. Representative Francis Bolton, a Republican from Ohio, was "deeply disturbed" when the Army preferred charges against Corporal Edward Dickenson. "Let's be human beings in these things," she pleaded. Another Republican Representative, William C. Wampler of Virginia, vowed to intercede with the Secretary of the Army, Robert T. Stevens, on Corporal

<sup>69</sup> "For the Prisoners Who Broke - Kindness or Punishment." *U.S. News and World Report*, (October 16, 1953), 52.

<sup>70</sup> Ibid.

<sup>71</sup> *New York Times*, (January 26, 1954), 1.

Dickenson's behalf. Wampler described him as a "mere country boy victimized by a shrewd propaganda technique" and he recommended that the Army "drop the matter."<sup>72</sup>

Whatever the opinions of other services or the American public, the Army proceeded in the court-martial of fourteen soldiers. The trials resulted in eleven convictions and three acquittals.<sup>73</sup> The charges against the fourteen included: informing on fellow prisoners, collaborating in some manner with the enemy, misconduct as a prisoner of war, assault on an officer, larceny, and murder. The Army charged some soldiers of only one of the above offenses and others with multiple offenses. The sentences imposed ranged from life imprisonment to a reprimand and being held at a current rank for two years. The Board of Review of the Judge Advocate General of the Army or the commanding officer who had directed the courts-martial later reduced five of the sentences.

One of the prisoners convicted was Sergeant James C. Gallagher. Among other charges, Sergeant Gallagher was found guilty of murdering three other captives by forcibly ejecting them from their place of shelter and leaving them to die of exposure. In another instance, he administered a severe beating to a fellow prisoner, whose identity remains unknown, suspended him from a hook on the wall for a while before shoving him into the freezing cold, resulting in his death.<sup>74</sup> "I made a promise to that kid [i.e., the unknown prisoner], to his God, to my God and to myself that the man who murdered him would be brought to justice," one of Sergeant Gallagher's accusers testified. "That is the man." Another witness testified that the sergeant had thrown

<sup>72</sup> Ibid.

<sup>73</sup> Kinkead, *In Every War*, 67.

<sup>74</sup> "Guilty," *Time*, (August 29, 1955), 17.

sick men into the subzero cold “like a bartender tossing a drunk.”<sup>75</sup> Gallagher received a life sentence for his crimes.

Another soldier initially sentenced to life in prison was Corporal Claude Batchelor, who was convicted of two charges of informing on fellow prisoner and three charges of collaborating with the enemy.<sup>76</sup> Batchelor’s sentence was much stiffer than that given to Corporal Edward Dickenson, who received a ten-year sentence, and that of Lieutenant Colonel Harry Fleming, who was ordered dismissed from the Army with forfeiture of his pay and allowances.<sup>77</sup> The chairman of the Big Spring, Texas, draft board resigned in protest when he learned of Batchelor’s sentence. “My conscience will not let me be a part of drafting young men who might later be subject to the severe punishment that was rendered Corporal Claude Batchelor,” he declared.<sup>78</sup> Negative public opinion led the Army to reduce Batchelor’s sentence to a maximum term of twenty years.

Although some Americans believed the trials were necessary to maintain good order and discipline in the military, the dominant opinion was that the returning prisoners, after suffering months or years in the hands of a cruel enemy, were being punished for doing only that which most people would have done. The American media predominately portrayed the soldiers in a sympathetic light. Each trial brought more negative publicity for the Army, which was characterized as an oppressive bully picking on pathetic former prisoners. This negative publicity was largely responsible for the decision to handle thirty-five cases administratively, rather than criminally, a

<sup>75</sup> “The Stern Lessons of History Help Draw a ‘Line of Resistance,’” *Life*, (August 29, 1955), 32.

<sup>76</sup> *New York Times*, (October 1, 1954), 8.

<sup>77</sup> *Ibid.*, (October 2, 1954), 8.

<sup>78</sup> *Ibid.*, (October 6, 1954), 13.



process much quicker and less public than a court-martial trial.<sup>79</sup> The Army eventually bowed to both public and political pressure and chose the administrative method rather than risk further criticism.

The American public did not sympathize with all of the former POW's, especially the twenty-one POW's who refused repatriation to the United States following the armistice. Initially, there had been twenty-three who refused but, Corporal Dickenson and Sergeant Batchelor, asked for repatriation within approximately three months of Operation Big Switch.<sup>80</sup> America wanted answers as to why young American men whose average age was just over twenty-three - the oldest was thirty-one and the youngest was twenty - would refuse to return to the United States. In the public's view, they were not only rejecting the United States, but were embracing America's global enemy. There were many easy answers which explained their conduct: they were afraid of prosecution for acts committed while in captivity; they had Communist leanings prior to going to Korea; they were weak-willed and defective in character; or the Communists had developed a "brainwashing" technique which prevented them from exercising free will.

The idea that American prisoners had been brutally treated and even brainwashed during the Korean War was the theme of several Hollywood movies, the most famous of which is *The Manchurian Candidate* (1962). Starring Frank Sinatra, it only added to the public's confusion about the brainwashing allegations. Based on Richard Condon's novel of the same name published in 1959, only five years after the majority of American prisoners had been released, the movie depicted the participation

<sup>79</sup> Kinkead, *In Every War*, 74.

<sup>80</sup> "Case Histories of Those 21: What Their Lives Show," *Newsweek*, (January 18, 1954), 52.

of Chinese and Soviet military officers and medical personnel in the brainwashing of a captured American patrol. One of the soldiers was “programmed” to follow the instructions of his captors at a later date. The soldier returned to the United States to receive the Medal of Honor and eventually received orders to kill a presidential nominee by his American handler, who was none other than his own mother. The message seemed to be clear: the Communists had diabolical techniques for transforming American soldiers into willing instruments of their nefarious plans. Sinatra purchased the rights to the film a year later when President John Kennedy was assassinated in order to remove it from circulation. Lee Harvey Oswald’s Communist ties were too similar to the movie’s plot for most Americans. However, the movie was re-released twenty-five years later to both critical and popular acclaim.

The arguments that the POW’s who refused repatriation had been Communist sympathizers, “bad” to begin with, or that they had been brainwashed, do not adequately answer all questions. If the Communists did develop a “brainwashing” technique, why did it succeed in convincing only twenty-one of the over 4,000 prisoners to remain in North Korea? There was no evidence that all twenty-one had left-wing sympathies prior to going to Korea. Although most had collaborated with the Communists during their captivity, their observations, both before and after capture, of life under a Communist regime should have enlightened them to the fact that the worst American military prison was better than the standard of living experienced by civilians in North Korea. None of the easy answers explain why the twenty-one arrived at the neutral zone where the repatriation process began, singing the “Internationale” and telling the press that they wanted to stay in North Korea where, “there is no

contradiction between what is preached and what is practiced – a society where there is freedom for our ideas,” and that “we know that our stand against America’s aggressive war policy is the real stand of the American people.”<sup>81</sup>

The United States continued to attempt to persuade the soldiers that repatriation was in their best interest. A team of U.S. “explainers” remained at the neutral zone until Christmas, 1953, waiting to have an opportunity to speak with the young Americans.<sup>82</sup> When the soldiers refused to leave the Communist barracks and speak with the Americans, the “explainers” provided Lieutenant General K. S. Thimayya of the Indian Army, the officer in charge of the repatriation station, a twelve-page letter to pass on to them.

*Newsweek* magazine contacted the family members of the twenty-one who stayed behind to ask questions prepared by “important neuropsychiatrists.”<sup>83</sup> The resultant article appeared in the “Medicine” portion of the magazine and purported to be a scientific study. The questions asked were:

What kind of community and culture does he come from?  
Race?  
Religion?  
Marital status of parents?  
Size of family?  
Is he eldest or youngest?  
Any unusual or prolonged illness in family?  
Any insanity?  
How far did he go in school?  
How did he get along with other people?

<sup>81</sup> “The Prisoners,” *The Commonwealth*, (October 16, 1953), 28. The “Internationale” was a socialist song written to celebrate the Paris Commune of March-May 1871.

<sup>82</sup> “Dark & Unrewarding Future,” *Time*, (December 28, 1953), 18.

<sup>83</sup> “Case Histories of Those 21: What Their Lives Show,” *Newsweek*, (January 18, 1954), 53.

Did he like sports? Girls?

Was he a happy child? Any unusual behavior? Was he easily led?

Some of the questions appear to have no relevance at all in providing answers as to why the soldier refused repatriation. The fact that a soldier did or did not like sports or girls seems irrelevant. The article made a point of illustrating that only three of the men were married, that only a few had steady girl friends, and that six of them had “virtually no interest in sports,” implying that they were not red-blooded American men. The investigation reflected the widespread public belief that there was something inherently wrong with the twenty-one POW’s rather than any shortcoming on the part of American society.

Some of the questions did seem to be relevant. Brigadier General R.E. Chambers, chief Army psychiatrist, gave his “personal viewpoint,” based on the answers provided for the questions:

If some of these boys are under-privileged, as some reports say, this might be a factor. A lack of purpose, and the failure of the family situation to develop good work habits, good social feeling, and a sense of responsibility to one’s social group can cause trouble, whatever the economic level. Such men’s evaluation of a situation would be based on what they are getting out of it compared to what they got out of their hometown. All this might render people vulnerable to propaganda approaches – even though experience has shown that many other under-privileged people are not vulnerable.

In any case, “What will be the military future of the soldiers who stayed behind with the Reds?”<sup>84</sup> Newsweek – and the nation – wondered. Secretary of Defense Wilson supplied the answer on January 25, 1954, when he ordered that all twenty-one be

<sup>84</sup> Ibid., 57.

dropped from the rolls with dishonorable discharges.<sup>85</sup> But that decision was contrary to military law. Under the Uniform Code of Military Justice, a soldier could receive a dishonorable discharge only as a part of a sentence received at a general court-martial. The first three of the twenty-one who returned to the United States brought suit against the United States for back pay. The United States Supreme Court agreed with the three ex-prisoners and awarded them over \$9,000.<sup>86</sup>

Although no single answer explains why twenty-one American POW's would choose to remain in a Communist country, their choice to do so contributed to the ever growing discussion in the United States regarding Army policy and the POW experience. The publication of Eugene Kinkead's book *In Every War But One* in 1959, after selections had appeared in The New Yorker magazine in 1957, fueled the debate. Kinkead originally asked the Army for permission to report on the official investigation into POW's in 1954, while the investigation was still ongoing, but the Army refused permission until the investigation was completed.<sup>87</sup> Kinkead reported that he had received extensive cooperation from the Army and that the Department of Defense approved his manuscript. His basic premise was that American POW's had performed admirably "in every war but one." During the Korean Conflict, he wrote, one out of every three POW's collaborated with the enemy, mostly the Chinese. The collaboration ranged from relatively minor offenses such as broadcasting Christmas greetings home that mentioned allegedly good treatment from captors to serious offenses, such as writing anti-American propaganda and informing on their comrades.<sup>88</sup>

<sup>85</sup> *New York Times*, (January 26, 1955), 1.

<sup>86</sup> "The Supreme Court – Back Pay for Turncoats," *Time*, (June 2, 1961), 18.

<sup>87</sup> Kinkead, *In Every War*, 11.

<sup>88</sup> *Ibid.*, 16.

Kinhead presented a detailed account of the Army's investigation from its inception before the end of hostilities through its conclusion, which resulted in the trial of fourteen servicemen. The investigation first began collecting tapes of the broadcasts made by American prisoners and the articles that they wrote. The Army, which was the lead agency for the investigation since the vast majority of the prisoners were soldiers, also collected information provided by South Korean intelligence agents working behind enemy lines and American prisoners who had received early release for propaganda purposes.<sup>89</sup> This information led to the creation of questionnaires given to every prisoner upon release.

A total of 7,190 American were captured during the Korean War. Of these, 6,656 were Army soldiers, 263 were from the Air Force, 213 were from the Marine Corps, and 40 were from the Navy.<sup>90</sup> A total of 4,435 prisoners had been released or made their way back to American lines within six months of the signing of the Armistice in July 1953. The number included 3,973 soldiers, 235 airmen, 196 marines, and thirty-one from the Navy.<sup>91</sup> The released prisoners were divided into three major groups. The first major group, numbering approximately 650 prisoners, was made up of three subgroups of soldiers: those prisoners who escaped after having been captured for only a short period of time; those who had been liberated by combat advances; and those who had been repatriated for propaganda proposed by the North Koreans. Of the

<sup>89</sup> Ibid., 37.

<sup>90</sup> "What Happened in the POW Camps?" *The Army Combat Forces Journal*, (October 1955), 32.

<sup>91</sup> Kinhead, *In Every War*, 39.

first major group, only those repatriated by the North Koreans had any relevant information to add to the investigation.

The bulk of the post-conflict investigation concentrated on the remaining two major groups of released prisoners. The second major group, numbering 149 prisoners, was released during Operation Little Switch in April 1953 and consisted of sick and wounded prisoners.<sup>92</sup> The final major group and last repatriation of prisoners, Operation Big Switch in August-September 1953, involved 3,629 prisoners.

The Army's procedure for handling the returning POW's prior to the Korean War had been to see that they bathed and received new uniforms and any necessary medical assistance before being debriefed by military intelligence. But the Korean War returnees underwent two new steps: they had to undergo a psychiatric examination and then intelligence questioning that focused on both counterintelligence and military information, rather than just the latter.<sup>93</sup> Major General Arthur G. Trudeau, who was at that time the Army Assistant Chief of Staff in charge of G-2 (Intelligence), directed the creation of the intelligence questionnaires.<sup>94</sup> This resulted in seventy multi-part counterintelligence questions, covering forty pages, and forty-four multi-part military information questions, covering thirty-seven pages.

The Army established ten teams to work with repatriated prisoners. Each team contained seventy-two specialists headed by a seven-member board that contained one member each from Army counterintelligence, Army military intelligence, Office of Naval Intelligence, Air Force Office of Special Investigation, Army Judge Advocate

<sup>92</sup> Ibid.

<sup>93</sup> Ibid., 40.

<sup>94</sup> Ibid., 36.

General's Corps, a psychiatrist, and a board chairman. The remainder of the team consisted of military intelligence specialists who administered the questionnaires, medical and psychiatric personnel to provide care and evaluate the prisoners' medical and mental condition, and administrative personnel to handle the vast amounts of paperwork generated by the investigation.<sup>95</sup>

Nine of the teams accompanied the returning prisoners on the transport ships that carried them back to the United States, while the tenth team went to Japan to work with those soldiers who had been evacuated there for urgent medical treatment. The Department of Defense explained that its decision to use sea transportation rather than air was because the time required for the trans-Pacific voyage would "assist, to a large extent, in the general rehabilitation and improvement" of the former captives.<sup>96</sup> The returnees answered the questionnaires during the three-week journey from Inchon to San Francisco. Although the interrogators had instructions to treat the prisoners with understanding and sympathy, they also advised each soldier of his Article 31 rights against self-incrimination under the Uniform Code of Military Justice.<sup>97</sup> The Article 31 advisements almost certainly had some chilling effect on the answers provided by the prisoners and forewarned them of possible criminal actions planned by the military for their conduct while in captivity. During the return voyage, the prisoners also received psychiatric counseling, both in individual and group settings, with a view not only to helping them adjust, but also to determine which of them had been "brainwashed" by the Chinese into believing Communist propaganda. These evaluations along with the

<sup>95</sup> Ibid., 41.

<sup>96</sup> *New York Times*, (June 16, 1953), 3.

<sup>97</sup> Kinkead, *In Every War*, 44.



other information would guide the Army in the task of identifying those POW's who warranted further investigation.

After the prisoners returned to the United States, the ones who remained in their respective services were assigned to the military installation nearest to their homes. The Army, meanwhile, began scrutinizing the data that investigators had gathered for evidence of collaboration. After determining who warranted further investigation by cross-referencing the names of those accused of collaborating from each of the questionnaires, Army specialists assessed each allegation for credibility. They discounted information that they could not substantiate or charges that appeared to be self-serving. When accused of collaboration by a number of credible fellow prisoners, a POW underwent further investigation.

Based on its preliminary investigation, the Army identified 215 soldiers as warranting further investigation. There was an average of 185 statements made against each of them; one of them had over 800 accusations.<sup>98</sup> The Army also referred the files of 210 soldiers who had been discharged from the service to the Federal Bureau of Investigation for further investigation. Because of the fear of the spread of communism in the United States during the 1950s, the government was concerned that some of the returning prisoners had been "brainwashed" by the Communists and therefore might pose security risks to the United States.

The Army eventually tentatively approved eighty-two of the 215 case files for court-martial and sent them to the Army Board on Prisoner of War Collaboration for a recommendation regarding court-martial. After review by the Assistant Chief of Staff

<sup>98</sup> Ibid., 64.

(G-1) and the Assistant Secretary of the Army, the Assistant Secretary of Defense made the final decision.<sup>99</sup> Forty-seven of the eighty-two cases were eventually approved for court-martial and twelve of them actually went to trial, along with two others tried before the screening process began.

Not all Americans agreed with Kinkead's negative characterization of the conduct of the American POW's in Korea. Albert Biderman, a senior research associate of the Bureau of Social Science Research, Washington, D.C., was a project scientist for the Air Force prisoner of war study conducted after the Korean War. He was also the Co-Chair of the Air Force Working Group on Survival Training and had carried out studies of behavior in captivity and other stressful situations. Biderman strongly disagreed with Kinkead's assertions that one-third of American POW's had collaborated, that the conduct of the prisoners in Korea was worse than that of American prisoners of other wars, and that a lack of discipline in the military, especially the Army, and a decadent American society had led to this poor performance by American troops.

In 1963, Biderman published a response to Kinkead's book under the title of *March to Calumny*.<sup>100</sup> His selection of the word calumny, defined as "the act of uttering false charges or misrepresentations maliciously calculated to damage another's reputation," summed up his opinion regarding the treatment of POW's by Kinkead and some American political and military leaders.<sup>101</sup>

<sup>99</sup> Ibid., 65.

<sup>100</sup> Albert D. Biderman, *March to Calumny*.

<sup>101</sup> "calumny." *Merriam-Webster OnLine: Collegiate Dictionary*. 2000. <http://www.merriam-webster.com/dictionary.htm> (January 27, 2001).

Kinhead, for example, discounted the significance of the disparity between Army and Marine survival rates in the prison camps, which were 44 percent and 13 percent, respectively.<sup>102</sup> Biderman, however, argued that the difference was more a result of when and where the prisoner had been captured than any other factor.<sup>103</sup> Most of the Army deaths, over 99 percent, occurred within the first year of the war.<sup>104</sup> The prisoners were in the hands of the North Koreans at the time and endured totally inadequate treatment, caused mainly by the inability or unwillingness of the North Koreans to provide food and shelter for the POW's. Later, after China had entered the war, the treatment of prisoners improved substantially. One-fifth of all Marine prisoners were captured during the first week of December 1951, during the brutal engagement against the Chinese, and subsequent withdrawal, at the Chosin Reservoir. They became part of a model indoctrination camp, which was known by the prisoners as "Peaceful Valley."<sup>105</sup> The mortality rate at "Peaceful Valley" was less than 10 percent, all deaths attributable to injuries existing at capture or suffered in evacuation. This was substantially less than the rate of 40 percent or more experienced at other major camps during the same time period.

Biderman also disputed Kinhead's classification of the Turkish POW's as a control group. He again pointed out that the time and location of the capture seemed to be the most critical factor affecting the mortality rate of prisoners. Approximately half of the Turks had been captured in April 1951 and the mortality rate for the 431 American soldiers captured that same month was only 13 percent a result, again, of the

<sup>102</sup> Kinhead, *In Every War*, 163.

<sup>103</sup> Biderman, *March to Calumny*, 156.

<sup>104</sup> Kinhead, *In Every War*, 141.

<sup>105</sup> Biderman, *March to Calumny*, 156.

improved conditions experienced by the prisoners after the end of the first year of the war.<sup>106</sup> Biderman also attributed the Chinese failure to indoctrinate Turks to the fact that the Chinese had no Turkish speakers.

Recent scholarship supports Biderman's conclusions. Raymond Lech's *Broken Soldiers*, published in November 2000, argues that almost every American POW performed as well as could be expected given the conditions found in the camps.<sup>107</sup> He examines closely the facts surrounding the captivity of the POW's, concentrating specifically on those who were later court-martialed, and underscores the terrible suffering experienced by the prisoners, occasionally at the hands of fellow POW's. Punishing those whose only crime consisted of making statements on behalf of the Communists, attending or proctoring indoctrination classes, or performing other propaganda tasks at the demand of the Communists, was patently unfair and unrealistic, Lech maintains. Some soldiers were court-martialed for committing such acts while others were not. There did not seem to be any consistency to the decisions. Lech also points out the disparate sentences received by those convicted of collaboration. Major Ronald Alley was convicted, among other things, of making a speech accusing the United States of having been the aggressor in Korea and justifying Communist policy.<sup>108</sup> However, several hundred prisoners signed similar statements without being brought to trial. Major Alley was sentenced to ten years at hard labor for his "crime." Lieutenant Colonel Paul Liles was found guilty of aiding, communicating with, and holding intercourse with the enemy. His sentence was a two-year suspension in rank

<sup>106</sup> Ibid., 159.

<sup>107</sup> Raymond Lech, *Broken Soldiers*.

<sup>108</sup> Ibid., 254.

and a reprimand. Although his reprimand was caustic, telling Liles that “[you} conducted yourself in a servile, craven, and unsoldierly manner for the obvious purpose of securing favored treatment for yourself while a prisoner of war,”<sup>109</sup> it does not compare to ten years at hard labor.

One result of the national debate over the conduct of POW’s in Korea was an effort by the military services individually to draft standards for their POW’s to follow. The services were unable to reach a consensus on the best course of action. The Army proposed the strictest rules of conduct: a prisoner should give only his name, rank, serial number and date of birth to his captors. The Air Force wanted a less restrictive policy that would allow airmen to provide the enemy with unimportant information, one piece at a time, in order to prevent physical abuse.

The Army felt that a prisoner who gave information beyond that permitted in its proposal was starting down a slippery slope over which he might have little control. For example, a prisoner who attempted to argue the advantages of a democracy over communism would be trying to succeed where highly trained negotiators had failed. Similarly, the Army judged the tactic of providing “unimportant” information was a dangerous one since the average soldier could not appreciate how the Communists might use seemingly harmless information for military and non-military reasons. The Army also discouraged the tactic of prisoners’ “deceiving their interrogators.” Any such attempt was unlikely to be successful because the prisoner would have to keep track of what he previously had told his captors, requiring him to remain mentally

<sup>109</sup> Ibid., 317.

sharp, a requirement few could meet under Korea-like conditions of internment. More importantly, the Chinese considered lying to be an offense punishable by death.<sup>110</sup>

This fundamental disagreement between the Army and Air Force is understandable. The typical Air Force prisoner of war was a carefully selected and highly trained officer, whereas the typical Army prisoner of war was a member of a combat arms unit.<sup>111</sup> The two were normally from widely divergent backgrounds and faced different treatment from their captors. The enemy would expect the Air Force prisoner to have information which was more sensitive, of greater tactical and strategic importance, and less likely to become obsolete. The Army ground combat troop was more likely to be enlisted and have little education or training and almost no information of either tactical or strategic importance. This understandably led the two services to different conclusions about proper POW conduct.

The Department of Defense, however, wanted a single policy for all services. Because of their failure to agree on a single code, Secretary of Defense Wilson on May 18, 1955, established the Secretary of Defense's Advisory Committee on Prisoners of War.<sup>112</sup> Committee membership consisted of five civilians and five retired flag officers, the latter chosen on the assumption that retired officers would be less partisan to any one particular service. Carter L. Burgess, Assistant Secretary of Defense for Manpower and Personnel, served as chairman of the group.

The Committee met for almost two months, reviewing all documents collected during the investigation of Korean POW's and consulting outside experts. The

<sup>110</sup> Ibid., 193.

<sup>111</sup> Harold L. Hitchens, "Factors Involved in a Review of the Code of Conduct for the Armed Forces," *Naval War College Review*, Winter (1978), 51.

<sup>112</sup> Kinkead, *In Every War*, 191.

Committee's report listed sixty-seven individuals whom it consulted, but many more actually appeared before the Committee.<sup>113</sup> Among those citizens, former POW's, and government representatives who appeared before the Committee were, Father Theodore Hesburgh, president of Notre Dame University, the noted military historian and editorial writer S.L.A. Marshall, William F. Dean, the Army general who had been a prisoner of war in Korea, and United States Attorney General Herbert Brownell, Jr.

The Committee was unique in that its task was to determine a code of conduct for American POW's. The vast majority of existing rules and regulations governed the conduct of the captors rather than of the captives. The Lieber Code, Hague Conventions, United States military regulations, and most international law of land warfare directives established standards of treatment and conduct with which a nation possessing POW's must comply. The regulations seldom addressed the behavior of the POW's themselves and, then usually only in the form of prohibited conduct. For example, the Uniform Code of Military Justice, enacted on May 31, 1951, during the midst of the Korean War, had criminalized aiding the enemy and misconduct as a prisoner.<sup>114</sup> The American POW thus knew how not to act, but had little guidance on how to act when captured. The Committee, however, found no criminal prosecutions in cases where there had been torture, either mental or physical.<sup>115</sup>

The Committee presented its findings to the Secretary of Defense in an eighty-page report. Out of 7,190 POW's in Korea, 2,730 had died in prison camps, a 38 percent death rate and the worst since the American Revolution. Kinkead attributed that

<sup>113</sup> *New York Times*, (August 18, 1955), 12.

<sup>114</sup> Articles 104 and 105, Uniform Code of Military Justice.

<sup>115</sup> *New York Times*, (August 18, 1955), 11.

attrition in large part to “give-up-itis,” an affliction that seemed to result in men willing themselves to die.<sup>116</sup> He bases that conclusion on his interviews with Major Clarence Anderson, an Army doctor captured by the North Koreans on November 3, 1950. Anderson provided medical care for the men in his prison camp and cited a lack of discipline as a primary cause of the problem. He also believed that a better developed sense of social responsibility and adherence to the “Golden Rule,” i.e. treating others as a person would like to be treated, would help prevent this high mortality rate from occurring in a similar situation.<sup>117</sup>

Biderman does not disagree that a lack of will to live led to many deaths during the Korean War. In any case, he points out the phenomenon was not new with regard to POW’s. The same affliction was known as “around-the-bends” at Andersonville, and “fatal surrender” or “bamboo disease” in the Philippines.<sup>118</sup> Biderman does disagree with Major Anderson’s assertion that social conscience and the Golden Rule are helpful in these situations. He alludes to a number of writers who found that, in concentration camps where people were dying of want or oppression, survival might depend on sharply curbing altruistic impulses or not having them in the first place.<sup>119</sup>

The Committee concluded that American leadership had broken down in the prison camps, resulting in an “every man for himself” situation that eroded discipline, allowing the strong to hoard food and persecute the sick and weak. It also permitted unsanitary conditions that led to disease and contagion. The Committee also found that Turkish POW’s had done much better than American POW’s. The Committee

<sup>116</sup> Kinkad, *In Every War*, 148.

<sup>117</sup> *Ibid.*, 149.

<sup>118</sup> Biderman, *March to Calumny*, 19.

<sup>119</sup> *Ibid.*



attributed this to the Turks' being a rugged race of people, the enforcement of strict discipline within their group, and the language barrier that hindered interrogation by the North Koreans.

One of the most interesting findings of the Committee was that a large number of American prisoners, because they understood little about either Communism or Americanism, had been at a disadvantage when debating with their Communist interrogators. Too many American soldiers did not understand the basic principles for which America stood, and correspondingly, which they represented. General John E. Hull, U.S. Army, (Retired), who had been the commander of forces in the Far East during the Korean War and served as an acting chairman of the Defense Committee that had written the Code of Conduct, gave particular emphasis to that point. "I feel strongly that we are derelict in our schools in teaching the youth of this nation enough about what we stand for and what communism stands for," he declared. "I have a very firm belief that the youth of this nation, if they fully understood the Communist system, would never question our system."<sup>120</sup> In the Committee's view, the government's failure to identify adequately its objective during the Korean War had exacerbated that lack of understanding. The Committee characterized the Korean War as having been (1) a civil war (2) an exercise in collective security, with the United Nations attempting to stop an aggressor and (3) a "Cold War" problem, with the Western powers blocking the expansion of Communist imperialism.<sup>121</sup> Because the American public and a majority of servicemen did not know why the United States intervened in Korea, there was no sense of duty to participate like that found during World War II. If the

<sup>120</sup> William P. Lyons, "POW's and the Code of Conduct," *Naval War College Review*, (Dec. 1967), 86.

<sup>121</sup> *New York Times*, (August 18, 1955), 10.

American public had better understood the importance of the Korean War in stopping the spread of communism, it might have provided stronger support for the soldiers fighting the war. The Committee urged that the Government, churches, schools, and families combine to build "spiritual and educational bulwarks against enemy political indoctrination."<sup>122</sup>

The Committee's culminating achievement was the development of the six-paragraph Code of Conduct for members of the Armed Forces of the United States, purposely drafted in simple language in order to be understood by all soldiers. The Committee believed that soldiers would perform better if they were aware of what was expected of them.

The Committee also provided explanatory notes, both before and after each paragraph of the Code, to explain its rationale. The notes, which normally do not accompany the Code when it is posted, are essential for understanding what the Committee expected of American service members. Both the original and current Code of Conduct, along with the explanatory notes, are included as Appendixes.

The Code of Conduct provides direction to the soldier who is captured. It informs the soldier, in specific terms, of the standard of behavior expected of all POW's. The choice of the word "will," used on multiple occasions in five of the six paragraphs, imposes a duty on POW's to do, or restricts them from doing, certain things. The duties and restrictions are generally tempered by language that allows the POW to decide when it is not necessary to adhere to the Code. For example, the Code imposes restrictions on commanders and soldiers concerning surrender. Both groups are prohibited from surrendering while they have the means to resist, "I will never

<sup>122</sup> *Washington Post and Times Herald*, (August 18, 1955), 6.

surrender of my own free will. If in command, I will never surrender my men while they still have the means to resist.”<sup>123</sup> The inclusion of the words “while they still have the means to resist” allows the commander to determine when surrender is authorized. The explanatory note to Paragraph II, however, extends this duty to not only “resist” but also to “evade,” and directs that a soldier who is no longer capable of inflicting casualties on the enemy has a duty to evade capture and rejoin the nearest friendly forces.<sup>124</sup>

The duties imposed by the Code also allow for some interpretation by the POW of what is required of him. Soldiers are required to provide his name, rank, service number and date of birth and to “evade answering further questions to the utmost of my ability.”<sup>125</sup> This allows for evaluation of each soldier’s situation and judgment based upon the merits of those specific facts.

A POW is expected to attempt to escape and assist in the escape attempts of others. “If I am captured, I will continue to resist by all means available. I will make every effort to escape and aid others to escape.”<sup>126</sup> The POW decides what means are available and which efforts are worthy. The Explanatory Note directs that resistance should continue. “The fight is everywhere. Even in the prison camp.”<sup>127</sup> This requirement is based on sound military strategy. The more soldiers the enemy must employ to guard POW’s, the fewer he will have available for other duties. In this way, POW’s can continue to contribute to the war effort.

<sup>123</sup> Paragraph II, Executive Order 10631, August 17, 1955.

<sup>124</sup> Explanatory Note to Paragraph II, Executive Order 10631.

<sup>125</sup> Paragraph V, Executive Order 10631, August 17, 1955.

<sup>126</sup> Paragraph III, Executive Order 10631, August 17, 1955.

<sup>127</sup> Explanatory Note to Paragraph III, Executive Order 10631.

Although entirely appropriate at the time of its creation, President Reagan amended Paragraphs I, II, and VI in 1988. The Code's gender-specific language, such as "I am an American fighting man,"<sup>128</sup> was changed to a gender-neutral description of the American soldier "I am an American, fighting in the forces which guard my country and our way of life," to reflect the change in demographics the American military experienced, beginning in the mid-1970s.

Nowhere in the Code itself does it purport to be a punitive document, that is, that violations of the Code are subject to punishment. However, the explanatory notes following Paragraph VI make it clear the military intends for the provisions of the Uniform Code of Military Justice, whenever appropriate, to continue to apply to members of the armed forces while they are POW's.

The Secretary of Defense quickly ordered the services to begin training their troops to live up to the new Code of Conduct. He also directed subordinates to seek to win "wide public support" for the Code and to enlist the aid of other Federal agencies, schools, churches, industry, labor and agriculture. In a second order, he directed that service members be educated in the basic advantages of democracy and the fallacies of communism.<sup>129</sup>

Within days of the release of the Code of Conduct, the American public, political figures and the media began evaluating it. A New York Times editorialist called it "thoughtful, literate, acute in observation and free from some of the 'officialese' that too often characterizes finding of this sort."<sup>130</sup> He noted with approval

<sup>128</sup> Paragraph I, Executive Order 10631, August 17, 1955, as amended by Executive Order 12633, March 28, 1988.

<sup>129</sup> *New York Times*, (August 20, 1955), 21.

<sup>130</sup> *New York Times*, (August 19, 1955), 18.

that the Code went beyond a set of rules for POW's to follow and projected a concept of citizenship for all Americans, which public and private institutions should seek systematically to inculcate in the nation's youth.

Colonel Carl E. Williamson of the Army Judge Advocate General's Corps supported the Code, but questioned whether the Secretary of Defense's mandate to coordinate with civilian institutions to provide better understanding of American ideals was possible, or even desirable.<sup>131</sup> The Army had the task of taking a recruit as it found him and turning him into a soldier, Williamson asserted, and it was too much to expect the services to assume the obligations of civilian institutions or venture too far into their domain, something the public would not support regardless.

Senator Estes Kefauver, a Democrat from Tennessee, was quick to criticize the Code. He thought it fine in principle but questioned its use in dire time. "It occurs to me that the Code of Conduct for the future proposed in this report is a fine patriotic set of principles, which are excellent and highly beneficial for club conditions," he said. "But I wonder how they would serve the man exhausted by battle, hungry, cold, facing hostile interrogators and the prospect of more suffering and unknown dangers." And what about young soldiers from rural communities who had little formal education and were therefore especially susceptible to Communist interrogation, Kefauver wondered. Should they be prosecuted? He suggested that the Communists surely had informed American POW's of the criticism of the Korean War by many people in America, including some members of the government. That criticism, such as characterizing the war as a "useless war" or "Truman's war," along with the disputes over America's

<sup>131</sup> Carl E. Williamson, "Name, Rank, and Service Number," *Military Review* 37 (August 1957), 30.

unclear objectives had surely reached the prisoners and affected their ability to resist Communist propaganda.<sup>132</sup>

A more extreme criticism came from the Very Reverend Francis J. Connell, dean of the School of Sacred Theology of the Catholic University of America, who objected that the Code and the report on which it was based “naively suppose the United States in war will always be on the right side.” Americans, he urged, should reject the axiom “My Country, Right or Wrong.”<sup>133</sup>

Regardless of how Americans felt, the new Code of Conduct set a standard that the military expected POW’s to live by. Although American POW’s had followed many of the rules for almost 200 years, this was the first time that the government had written the rules down. Many in the military community recognized the significance of that step. “The fact that it was necessary to spell out what had always been taken for granted by Americans as constituting the unquestioned duties and obligations of the fighting man indicated how greatly the Korean War differed from the seven major wars that this nation had previously fought.”<sup>134</sup> It would not take long to determine how well the Code of Conduct would serve POW’s. Less than ten years after President Eisenhower's Executive Order 10631, American servicemen would put it to the test in the jungles of Vietnam.

<sup>132</sup> *New York Times*, (August 21, 1955), 30.

<sup>133</sup> *New York Times*, (September 27, 1955), 31.

<sup>134</sup> Lyons, “POW’s and the Code of Conduct,” 66.

## CHAPTER 3

### AMERICAN POW'S IN VIETNAM

America began its longest war very slowly. The United States government considered South Vietnam a critical bastion against Communism in Asia. The Army initially deployed a limited number of American troops to the Southeast Asian country as advisors to the anti-communist government. This role gradually expanded until American ground troops were conducting the majority of the combat operations against the Communist forces. Before the end of the war, the Democratic Republic of Vietnam (North Vietnam) held over 500 American servicemen captive. Several remained POW's for over eight years and one endured more than nine years of captivity.<sup>135</sup> During these extended periods of confinement, the POW's learned that very few could rigidly follow the Code. Most adopted a flexible approach to the Code that allowed them to cooperate with the enemy when failure to do so would result in permanent, physical injury. This approach was more similar to that proposed by the Air Force during the development of the Code of Conduct. The fact that a majority of the POW's during the Vietnam War were Air Force and Naval aviators lends credence to the Air Force argument that a less rigid Code would work for the more educated, career members of its service. It does not, however, necessarily indicate that the same approach would have been as successful had the majority of POW's been young, enlisted soldiers or Marines.

The POW's captured during the Vietnam War were much different from their Korean War counterparts. The "typical" prisoner in Korea had been a private first class,

<sup>135</sup> Robert J. Naughton, "Motivational Factors of American POW's Held by the Democratic Republic of Vietnam," *Naval War College Review*, 27:4 (Jan-Feb 1975), 2.

less than twenty-three years old, with a median education of less than nine years. The average score on the Army General Classification Test had been 89, far below the average for the Army as a whole. Of the POW's in Korea, 98 percent had been captured in the initial six months of the fighting and most had gone to Korea from postwar occupation force duty in Japan.<sup>136</sup>

By contrast, 493 of the 564 military POW's repatriated at the conclusion of the American involvement in Vietnam were officers. Their average age at the time of capture was almost thirty, they typically had completed college and were career-oriented aviators.<sup>137</sup>

Most of the Americans captured by the Vietnamese understood, in varying degrees, what the Code of Conduct required of them. But they did not necessarily comply with it. The North Vietnamese relied much more on physical torture to gain what they wanted than the Chinese had during the Korean War. Consequently, almost all of the prisoners held by the North Vietnamese gave more information than name, rank, service number and date of birth. One of the important things revealed by Vietnam-era assessment of the Code was that the North Vietnamese knew it as well, or even better, than the soldiers they were interrogating. When Army Special Forces First Lieutenant Nick Rowe escaped in 1968 from his North Vietnamese captors, he took several enemy documents with him. Some were lessons that the North Vietnamese

<sup>136</sup> J. Howard Dunn and W. Hays Parks, "If I Become a Prisoner of War ...," *U.S. Naval Institute Proceedings*, (August 1976), 20.

<sup>137</sup> Ibid.



cadre used to teach English, and the last lesson in the series used the Code of Conduct as a learning device.<sup>138</sup>

The knowledge the North Vietnamese had of the Code of Conduct was invaluable to their efforts to break the will of American POW's. Because they knew how the American prisoners were supposed to act in all situations, the North Vietnamese were able to use the prisoner's own Code of Conduct to point out his "failures," those occasions on which he apparently had violated it. They would then try to convince the prisoner that, because he had violated the Code once, he would do little harm in continuing to do so in order to make things better for himself. This led many prisoners to adopt a "flexible" interpretation of the Code. They reasoned that, although they could not always uphold its letter, they were upholding its spirit. This allowed them to avoid some of the guilt the North Vietnamese attempted to use to break a prisoner's will to resist. Many POW's convinced themselves that this flexible interpretation was the only way to provide the Vietnamese with enough information to prevent punishment and at the same time not harm the American war effort or other prisoners.

Many prisoners anguished over how to handle interrogations within the framework of the Code. Some recommended a strict interpretation and believed they should hang on as long as physically and mentally possible. Others advocated a policy of deceit and misinformation. Commander Jeremiah A. Denton, Jr., the senior ranking officer in one subdivision of the Hanoi Hilton gave simple instructions to his subordinates. "No writing. No taping. Die before giving classified information," he

<sup>138</sup> Charles E. Marean, "Questions Facing the Code of Conduct," *Marine Corps Gazette*, 56: 7 (July 1972), 40.

admonished. “Take torture until in danger of losing mental faculties, and then give a phony story. Keep it simple and easy to remember.”<sup>139</sup>

Prisoners also faced the dilemma that occurred when obeying one provision of the Code of Conduct meant disobeying another provision. The requirements of Paragraph III of the Code to continue to resist by all means available, make every effort to escape, aid others to escape, and accept neither parole nor special favors from the enemy often presented problems for the prisoners. Escape for the prisoners being held in Hanoi was a virtual impossibility. Getting out of the prison itself would be only the first of many obstacles the prisoner would have to accomplish. As Caucasians, they would be unable to blend into the civilian population. They would have to make their way hundreds of miles to South Vietnam or travel down the Red River to the coast. Notwithstanding the dismal chances of success, some did try to escape, citing Paragraph III as requiring the effort.

On May 10, 1969, two Air Force officers, John A. Dramesi and Edwin L. Atterberry, escaped from the so-called Hanoi Hilton, the site where the majority of Americans were held.<sup>140</sup> Their escape was the subject of discussion among the other prisoners prior to the attempt. Some believed they should attempt the escape because the Code of Conduct called for it and also because they would be able to expose the substandard treatment prisoners were receiving if they succeeded in rejoining friendly forces. Other prisoners thought the risks of recapture and possibly death, and of possible retribution against those who remained behind far outweighed the chances of the escapees’ reaching friendly lines.

<sup>139</sup> John G. Hubbell, Andrew Jones, and Kenneth Y. Tomlinson, *P.O.W.*, 154-155.

<sup>140</sup> Hubbell, *P.O.W.*, 491.

Dramesi and Atterberry succeeded in slipping out of the prison but they were captured the next morning at first light – and the fears of those who had opposed the attempt soon proved justified. Dramesi and Atterberry were immediately isolated and a month of intense torture began. Dramesi was able later to recount the terrible ordeal, but Atterberry did not survive the punishment. And the Vietnamese did not stop their torture with Dramesi and Atterberry. They took twenty-six other prisoners, accused them of assisting in the escape, and began months of intense torture.<sup>141</sup> The mistreatment was so fierce that many prisoners who had never before collaborated now wrote autobiographies, letters to people such as Senator William Fulbright commending his opposition to the war, letters to Ho Chi Minh pleading for amnesty, and tape-recorded denunciations of the American intervention in an internal Vietnamese conflict.<sup>142</sup>

The lessons learned from this escape attempt created a conflict between the requirement to make every effort to escape and several other provisions of the Code. Following the massive reprisal conducted by the Vietnamese, senior officers began to discourage or absolutely prohibit escape attempts. This created a predicament for the prisoner because the Code directed him to “make every effort to escape,” but Paragraph IV also required he “obey the lawful orders” of his superiors and “back them up in every way.” Several senior-ranking officers directed that escape attempts be curtailed or totally halted because of fear of what the Vietnamese would do in retaliation. That paragraph also required a POW not to “take part in any action which might be harmful

<sup>141</sup> Ibid., 495.

<sup>142</sup> Ibid., 501.

to my comrades.” As the Dramesi – Atterberry episode showed, an escape attempt could indeed prove “harmful” to fellow prisoners.

Seaman Doug Hegdahl faced another conflicting requirement in August, 1969. Hegdahl had been captured in April 1967 after falling overboard from the U.S.S. *Canberra* as it shelled the Vietnamese coast.<sup>143</sup> When the North Vietnamese offered Hegdahl parole, Lieutenant Commander Richard Stratton ordered him to accept the early release. Stratton did this partly because Hegdahl had memorized the names of 260 American prisoners of war in North Vietnam. When Hegdahl protested against early release, Stratton did not mince words. “I am giving you a direct order,” he told the seaman. “You will go home and you will take this information out of here if you get the opportunity to go home with honor.”<sup>144</sup>

The Vietnamese put immense pressure on the American POW’s to make statements for their cause. The statements were usually confessions of crimes against the Vietnamese people, or appeals for American soldiers to refuse to fight against the Vietnamese people, or expressions of thanks for alleged humane treatment. The Vietnamese promised the ultimate reward for those soldiers who were “re-educated” and provided the statements: they would be released so they could return to the United States and spread this message. Those who refused “re-education” by failing to write acceptable statements were deprived of the basic necessities for survival and told they would remain in captivity until they accepted the truth. First Lieutenant Rowe experienced five years of this “re-education.” His refusal to accept the Communist propaganda and write the desired statements resulted in his continued confinement. In

<sup>143</sup> Scott Blakey, *Prisoner at War, The Survival of Commander Richard A. Stratton*, 163.

<sup>144</sup> *Ibid.*, 187.

1967, after Rowe had spent four years in captivity, the three other American POW's who shared his jungle prison were released, leaving him alone. He wrote that he was terrified of staying in captivity until he died, a fear reinforced by a cadre who told him, "Do not think that merely because the war ends that you will go home. You can rest here after the war."<sup>145</sup> Rowe eventually did write a statement, agreeing with the cadre that if the war was progressing as he was told, the U.S. position in South Vietnam was weaker than he had ever thought possible and the National Liberation Front was on the path to victory.<sup>146</sup> He wrote after three nights of sleeping in the open, without shirt, pants or mosquito netting. Once he made the statement, his captors immediately returned his clothing, blanket and mosquito netting. This was a common tactic of the Vietnamese, using the "carrot and stick" to get what they wanted.

Lieutenant Rowe was an example of the POW who could not articulate well the principles underlying the American system. When faced with Communist propaganda against the United States, he found himself unable to define clearly the concepts of liberty, equality and justice and their basis for the American form of government.<sup>147</sup> This became even more difficult when interrogators confronted him with statements condemning the war from prominent Americans, such as Senators J. William Fulbright and Mike Mansfield.<sup>148</sup>

Although his captors never used physical torture to force Nick Rowe to collaborate, other POW's were not so fortunate. Lieutenant Commander John McCain III was beaten for four days before confessing, "I am a black criminal and I have

<sup>145</sup> James N. Rowe, *Five Years to Freedom*, 272.

<sup>146</sup> *Ibid.*, 361.

<sup>147</sup> *Ibid.*, 162.

<sup>148</sup> *Ibid.*, 307, 311.

performed the deeds of an air pirate. I almost died and the Vietnamese people saved my life. The doctors gave me an operation that I did not deserve.”<sup>149</sup> He later described the two weeks following his forced confession as the worst period of his life. His despair was intense and he recalled worrying about whether or not his father had heard of his “disgrace.”<sup>150</sup>

McCain, the son of Admiral John McCain Jr., who became the Commander in Chief of U.S. Forces in the Pacific while his son was in captivity, had refused early release in order to deprive the enemy of the propaganda value of releasing an admiral’s son. The Vietnamese wanted to demonstrate to the other POW’s and the world that the Code of Conduct, and its restrictions, did not apply to all American prisoners.

American POW’s were not the only ones who made untruthful statements. In January 1968, North Korean authorities seized the United States Navy intelligence ship *Pueblo* in the waters off the North Korean coast. The United States Government made a fictitious confession about the *Pueblo's* mission and actions, and then repudiated it (as tacitly arranged with the North Koreans) after the *Pueblo* crewmembers had returned.<sup>151</sup> The Government's actions during the *Pueblo* incident, it can be argued, compromised the credibility of the Code of Conduct by giving the appearance that the Code of Conduct required standards from service members that the Government did not have to meet. "It would be unjust to expect an American PW [sic] to rigidly adhere to the Spartan Code of Conduct when the United States abandoned it in dealing with the North

<sup>149</sup> John McCain with Mark Salter, *Faith of My Fathers*, 243-244.

<sup>150</sup> *Ibid.*, 245.

<sup>151</sup> Harold L. Hitchens, "Factors Involved in a Review of the Code of Conduct for the Armed Forces," *Naval War College Review*, Winter (1978), 53.

Koreans,” one critic wrote. “To expect a soldier to conform to a higher standard of conduct than his country would not only be unrealistic but also unreasonable.”<sup>152</sup>

Not all American POW’s gave statements to the Vietnamese. Air Force Captain Lance Sijan refused to bow to the Vietnamese or compromise his strict interpretation of the Code of Conduct. He evaded capture for six weeks after being shot down in November 1967 and, once he fell captive, attempted to escape. Despite repeated torture sessions, he refused to make statements of any kind. Other prisoners heard him tell his interrogators, “Don’t you understand? I’m not going to tell you anything. I can’t talk to you. It’s against the Code.”<sup>153</sup> He died without ever providing any information other than the bare essentials allowed by the Code of Conduct.

Captain Sijan wasn’t the only American prisoner of war to die for his strict adherence to Code of Conduct. Army Captain Humbert “Rocky” Versace was captured with First Lieutenant Nick Rowe while serving as an advisor to the South Vietnamese Army in 1963. Versace spoke both Vietnamese and French and would argue with the cadre in all three languages. Rowe once heard Versace tell a cadre member during a “re-education” session, “I’m an officer in the United States Army. You can force me to come here, you can make me sit and listen, but I don’t believe a damn word of what you say.” On September 26, 1965, the Vietnamese executed Versace, along with Sergeant Kenneth M. Roraback ostensibly in retaliation for the execution of three Vietcong “patriots” in Danang.<sup>154</sup> Captain Versace continued to refuse to make statements until his murder, strictly adhering to his understanding of the Code of Conduct.

<sup>152</sup> John E. Wehrum, Jr., "The Status of United States POW's under the Code of Conduct by the Armed Forces," *Catholic University Law Review*, Fall (1978), 146-147.

<sup>153</sup> McCain, *Faith of My Fathers*, 251.

<sup>154</sup> Rowe, *Five Years*, 100, 115, 206.

Some American prisoners did go beyond only making statements under the duress of torture. Some began actively collaborating with the Vietnamese in return for better treatment. They received better food than the other prisoners and enjoyed more freedom of movement. Some collaborated because of fear of torture or death at the hands of the Vietnamese. Whatever their motivation, their conduct went beyond that of only giving in when personal collapse seemed imminent. These prisoners adopted a policy of active collaboration, doing anything that their Vietnamese captors demanded.

Some of the collaborators informed on fellow prisoners. When Lieutenant Commander John McCain attempted to introduce himself to two of them, in violation of the camp commander's "no communication" policy, they immediately summoned the guard, who struck McCain for his disobedience.<sup>155</sup> The "Peace Clowns", the name given to the eight American prisoners who collaborated at the Plantation Camp of the Hanoi Hilton, also responded by informing the guards when Captain Ed Leonard ordered them to stop collaborating with the enemy. Within an hour of his having given them the order, guards took Leonard from his cell and placed him in leg stocks in solitary confinement, where he spent the next eight months.<sup>156</sup>

Military authorities were unsure how to deal with returning prisoners. In 1968, First Lieutenant Nick Rowe was read his rights under Article 31, Uniform Code of Military Justice, before he was debriefed less than twenty-four hours after his escape.

<sup>155</sup> McCain, *Faith of My Fathers*, 311.

<sup>156</sup> Ernest C. Brace, *A Code to Keep*, 240.



Article 31 affords members of the military the right to remain silent during official questioning and is similar to the rights afforded civilians by the Miranda warning.

Rowe later stated that the sense of freedom disappeared with that warning: he was once again alone with his interrogators.<sup>157</sup>

The attitude of the military had changed by the time the Vietnamese released all known prisoners in 1973. No action had been taken against any who had accepted early release, although the Code of Conduct prohibited acceptance of parole. Secretary of Defense Melvin R. Laird had decreed that any alleged offenses by any prisoner of war during the time of his captivity were to be forgiven.<sup>158</sup> But that did not prevent individual prisoners from making their own charges against prisoners they felt had collaborated. Air Force Colonel Theodore W. Guy preferred charges against the eight Peace Clowns from the Plantation Camp for aiding the enemy, disrespect to a superior officer, disobeying a superior officer, conspiracy and carrying out a conspiracy. After one of them committed suicide, Secretary of the Army Howard H. Callaway dismissed the charges against the five who were members of the Army. “We must not overlook the good behavior of these men during the two to three years each spent under brutal conditions in South Vietnam, before they were moved to the north...,” he explained. “[T]hey had a very hard time, and they behaved admirably during this period.”<sup>159</sup> The Secretary of the Navy, John W. Warner, then dismissed the charges against the remaining two, who were Marines. His justification was that they had suffered “deprivations and maltreatment.”<sup>160</sup>

<sup>157</sup> Rowe, *Five Years*, 441.

<sup>158</sup> Hubbell, *P.O.W.*, 601.

<sup>159</sup> *Ibid.*, 602.

<sup>160</sup> *Ibid.*

The senior Navy returnee, Rear Admiral James B. Stockdale, preferred charges against Navy Captain Walter E. Wilber and Marine Colonel Edison W. Miller for mutiny, aiding the enemy, conspiracy, soliciting other prisoners to violate the Code of Conduct, and causing or attempting to cause insubordination and disloyalty. After a three-month investigation, Secretary Warner dismissed the charges, although he found merit in them. His justification was that the ensuing court-martial trials would be unduly disruptive to the lives of the other returnees who would have to testify and the lives of their families. Both officers received letters of censure for failing to meet the standards of officers of the Armed Forces of the United States and were forced to retire.<sup>161</sup> Although the two men were the prisoners who had informed on John McCain's attempt to communicate with them, McCain was not disappointed by the decision to drop the charges against them. The memory of their treachery, he thought, would be punishment enough.<sup>162</sup>

Although the Code of Conduct did not prove to be a panacea for all issues faced by POW's in Vietnam, it did provide the majority of those held captive with guidelines by which to conduct themselves. The POW's learned to adapt the Code to fit the reality with which they were faced. The lengthy periods of confinement many of the POW's remained prisoners also proved to be a challenge. Strictly adhering to the Code during the years of torture and deprivation was more than most could achieve.

The experiences of American POW's in Vietnam afforded the military a valuable opportunity to evaluate the effectiveness of the Code of Conduct under the conditions for which it was created. The POW's, most college educated officers, had

<sup>161</sup> Ibid., 601.

<sup>162</sup> McCain, *Faith of My Fathers*, 312.

learned first-hand those parts of the Code which were contradictory or impractical. The information they possessed could have been used to change to the Code in order to make it more useful to future POW's. The military did not take advantage of the opportunity, though. The war in Vietnam had taken a heavy toll on all of the services. The challenge of simply fielding a force that was capable of defending the United States was such that many of the lessons of Vietnam were not immediately exploited. The American public and military wanted to forget about Vietnam and turn its attention on other issues such as the Cold War. It would be years before the military would utilize the lessons learned in Vietnam.

In the early 1980's, the Army addressed the need for an intensive training program for those soldiers whose military specialty increased their chance of becoming a POW. The military identified pilots, aviation crewmembers, and those assigned to special operations units as examples of those who should receive the specialized training. During planning of the course, the Army chose to make the most of lessons learned in Vietnam by selecting Lieutenant Colonel Nick Rowe to establish the entire training regime. Although he had left the Army in 1974, Rowe was recalled to active duty in 1981 specifically for this task. The result was the United States Army Survival, Evasion, Resistance, and Escape (SERE) School. The school, which continues to train soldiers from all branches of the military, provides instruction generally on a variety of topics faced by servicemen behind enemy lines and specifically on the Code of Conduct and how the Code can provide support to POW's. The Air Force and Navy also have established SERE schools to train its members in aspects that are more relevant to their mission. Although the SERE school provides excellent training, its availability to only

a select few leaves a majority of the military without the advanced training necessary to achieve the full benefit of the Code of Conduct.

## CONCLUSION

In the forty-six years since the Code of Conduct for the Armed Forces of the United States appeared, the global political climate has changed dramatically. The collapse of the Soviet Union in the 1990's virtually eliminated the threat of world domination by the Communists. The Code, created in response to perceived failures of American POW's when confronted with Communist indoctrination, must now provide direction and inspiration to service members faced with very different threats.

American service members have experienced captivity on a limited scale since the Vietnam War. One major difference is that their length of captivity is significantly shorter than that experienced by POW's of all of America's major conflicts. As such, their experiences have differed somewhat from those POW's. Many of the more recent POW's did not face issues addressed by earlier POW's such as escape, parole, and the necessity of taking command because of the short duration of their imprisonment.

Army Major Rhonda Cornum was one of, if not the, first American female service member to be shot down and captured while flying on a combat mission. She was a flight surgeon on a combat search-and-rescue mission during the Gulf War when Iraqi fire brought down the Utility Helicopter (UH) – 60 Blackhawk in which she was flying. She remained a prisoner of war for eight days. Although she had arrived in Saudi Arabia on August 25, 1990, and was not shot down until February 27, 1991, she had received no Code of Conduct training beyond that given thirteen years earlier during her officer basic training course.<sup>163</sup> The only thing she remembered from that training was that she should not accept favors from the enemy and she should not do

<sup>163</sup> Rhonda Cornum with Peter Copeland, *She Went to War: The Rhonda Cornum Story*, 48.

anything to hurt her fellow prisoners or her mission. Although she was never tortured or beaten, an Iraqi guard sexually assaulted her. She was released at the end of the Gulf War.

Army Chief Warrant Officer Three Michael Durant used the Code to sustain him during his captivity by a Somali warlord in October 1993. He suffered a broken back, a compound fracture of his right leg and a broken cheekbone during a firefight that cost the lives of eighteen American soldiers. Chief Durant said of the Code of Conduct, "It's important to know what's in it and what you should and should not do, and to live by it -- and up to it."<sup>164</sup>

Air Force Captain Scott O'Grady said the Code of Conduct gave him the will to survive and evade capture for six days following the downing of his F-16 fighter by a surface-to-air missile over Bosnia in 1995. O'Grady found that the Code a constant reminder that, although he was alone behind enemy lines, he "was still part of a team working to get me out, and I had to do my part."<sup>165</sup>

On March 31, 1999, members of the Serbian armed forces captured three American soldiers patrolling in Macedonia near the border of the former Yugoslavia.<sup>166</sup> Specialist Steven Gonzales, Staff Sergeant Christopher Stone, and Staff Sergeant Andrew Ramirez remained in custody for more than a month and Stone left his captors a note thanking them for the treatment he received.<sup>167</sup> Arguably, this was a violation of the Code prohibition to make no statements disloyal to his country or its allies or

<sup>164</sup> [http://www.dcmilitary.com/marines/hendersonhall/archives/apr30/hh\\_b43099.html](http://www.dcmilitary.com/marines/hendersonhall/archives/apr30/hh_b43099.html), visited 13 April 2001.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid.

<sup>167</sup> <http://robots.cnn.com/US/9905/04/prisoners.note/>, visited 13 April 2001.

harmful to their cause. If the Army ever disciplined Stone for this violation, its action was not made public. All three soldiers subsequently chose to leave the military.

Because of the short durations of captivity American POW's have endured since the Vietnam War, their experiences are of limited use in evaluating the Code of Conduct. A strict prohibition on divulging any information other than the basics might be realistic for a soldier who is held for only a few days or week, but the same guidelines will not prove as successful for a soldier who is held for captive for years. The brief incidents of captivity of POW's since Vietnam have not produced any conclusive lessons learned, subsequently, most of the current instruction involving the Code of Conduct is based on experiences from Vietnam.

Army Regulation 350-30 regulates Code of Conduct training in the United States Army.<sup>168</sup> The regulation requires that study of the Code of Conduct be included in the program of instruction at the entry-level, i.e., basic training and all courses of instruction designed to produce officers.<sup>169</sup> Subsequent training of the Code is broken down into three levels: Levels A, B, and C. The appropriate level of training should be determined for each soldier. Considerations include: risk of capture, risk of exploitation for information of intelligence value and propaganda purposes, the captor's or detaining power's assessment of the captive's usefulness and value, military occupational specialty, unit assignment, rank, or security clearance level.<sup>170</sup>

The three levels of training are based upon the considerations above. Level A training is initial entry-level training included in the program of instruction at basic

<sup>168</sup> Army Regulation 350-30, December 10, 1985.

<sup>169</sup> Ibid., paragraph 2.1.

<sup>170</sup> Ibid., paragraph 3.1.B.

training and at all courses of instruction designed for officers. Level B training is for officer and enlisted personnel or anyone whose duties require them to operate (or are anticipated to operate) forward of the division rear boundary and up to the forward line of own troops (FLOT). Level C training is for soldiers whose wartime position, duties, or assignment has a high risk of capture and whose position, rank, or seniority makes them vulnerable to greater than average exploitation efforts by a captor. Examples include personnel who operate forward of the FLOT such as special forces, pathfinders, selected aviators, flying crew members, and members of ranger battalions.<sup>171</sup>

One of the problems with the Army's current Code of Conduct training is that the modern battlefield makes almost all soldiers potential POW's. Even during instances of conventional warfare, the ability of armor units to move over 100 miles a day and airborne and air assault units even further has extended the depth of the battlefield as never before. Because of this, it would be prudent that all soldiers receive at least Level B training after being assigned to their first unit.

A greater shortcoming concerns the threat of being taken prisoner during peacekeeping operations or by terrorists when there is no ongoing operation. This scenario puts all soldiers at risk and often the importance placed on security is lessened during these times. The belief that the threat is low and a high operational tempo contribute to Code of Conduct training being placed low on the list of the many priorities units and soldiers must accomplish. This is especially true for non-combat soldiers and soldiers assigned to non-combat units. The belief that they will never be taken prisoner is hard to overcome.

<sup>171</sup> Ibid., paragraph 3.1.A.



Even in times of war, refresher training on the Code is not guaranteed, as MAJ Cornum found out during Operation Desert Storm. As a flight surgeon, she met a majority of the considerations to receive Level C training. However, she received no additional training during the six months between the time she arrived in Saudi Arabia and the day she was shot down.<sup>172</sup>

Military leaders still wrestle with many of the issues addressed by the committee that drafted the Code. In March 1998, General Hugh Shelton, the Chairman of the Joint Chiefs of Staff, commented on the Code of Conduct and a service members' obligations under it. He made his remarks in discussing a possible military confrontation with Iraq and the possibility that the Iraqis might torture American service members into collaborating. Shelton said he opposed liberalizing the Code of Conduct. He explained his rationale by saying,

“Let’s say this is going to be a week or 10-day or 14-day campaign and he goes down the first day, and he tells everything he knows about it, and he knew an awful lot about it that could result in a heck of a lot of casualties far above him. So I think the principle up front ought to be name, rank, serial number et cetera and not divulge the mission and not divulge the concept of operations and hold out on that for as long as you possibly can.”<sup>173</sup>

His opinion is consistent with that of Army leaders in 1955 and one that demonstrates the continuing difference with the Air Force, which still insists on a POW’s right to do and say almost anything to avoid permanent physical injury.

<sup>172</sup> Cornum, *She Went to War*, 48.

<sup>173</sup> “Shelton wants Code of Conduct kept to minimum information,” *Army Times*, (March 9, 1998), 5.

American forces are now more likely to conduct peace operations and military operations other than war than they are to engage in mid-to-high intensity conflicts. In other words, the United States typically will deploy troops in situations where there has been no declaration of war and Washington has not officially designated any forces as hostile. This means that the enemy may consist of individuals or groups who are not the regular military of any legitimate government and who are unlikely to observe the laws of war, including those applicable to the treatment of POW's. This makes it essential that American service members have a Code of Conduct that addresses this scenario and that they also receive training to prepare them to meet the challenges they may face if they become POW's.

When the adversary is an ill-trained, poorly disciplined irregular force, American troops can almost certainly expect to experience physical torture if captured. The lessons from Vietnam illustrate that almost every prisoner, regardless of his desire or determination, can be forced to comply with his captor's demands through the use of physical torture. The response adopted by most prisoners in Vietnam, which was to give only name, rank, service number, and date of birth unless faced with torture that endangered life or might cause serious injury, should be the standard taught to all service members. While giving the prisoner a bright line rule outlining the information he should attempt to limit himself to divulging, it allows each individual to determine when this is no longer possible without risking either death or serious bodily injury. Stephen S. Jackson, assistant general counsel of the Defense Department when the Code of Conduct was drafted, compared the Code to the Ten Commandments. "The Ten

Commandments set high standards,” he pondered. “At times they are violated, but no one would suggest that we abandon or change them.”<sup>174</sup>

The threat of coordinated mental or psychological torture is less likely than physical mistreatment when dealing with an irregular opponent. However, American forces must receive training in dealing with the mental and emotional trauma inherent in any prisoner of war situation. They must understand there are many ways to ensure their success while in captivity. One is that an in-place, functioning chain of command is an absolute necessity. The lack of a chain of command during the Korea War contributed significantly to the incidence of collaboration with the enemy. This is in stark contrast to the experiences of American POW's in Vietnam. The existence of a command structure at the Hanoi Hilton was a major factor in the success of the POW's, some of whom were held as long as eight years. The chain of command provides POW's with an infrastructure with which they are familiar. It forces senior personnel to provide for the welfare of their subordinates and provides a mechanism for the enforcement of discipline. It also provides the psychological advantage of making prisoners feel that they are still a part of a unit that faces a collective challenge.

The Code of Conduct is not a solution for all the woes of POW's. Those unfortunate enough to be captured have always, and will always, face the necessity of making decisions that would be unthinkable under any other circumstances. The Code of Conduct provides a standard of behavior for American service members to strive to uphold. It also imposes duties and responsibilities on them during their captivity.

In order to be effective, however, service members must receive realistic, mission-specific Code of Conduct training. This training must be more than simply

<sup>174</sup> *New York Times*, (September 27, 1955), 31.

reading the six paragraphs to them and expecting each of them to determine individually what he must do to comply with the Code. Service members should undergo training as units with vignettes used to compel individuals to respond to the different situations they may experience in captivity. These exercises should be conducted periodically, at least twice a year, to maintain readiness and integrate newly assigned soldiers. Military authorities should constantly modify the training to reflect the current threats against American servicemen wherever they are operating. The instructors should include the chain of command along with members of the Judge Advocate General's Corps, military attorneys who understand the Code of Conduct and how it relates to international laws, treaties, and rules of war. Individuals who provide the training should themselves receive specialized instruction to ensure that they understand how to communicate the principles of the Code of Conduct. They should also be able to articulate to service personnel how specific situations affect their responsibilities under the Code of Conduct. Only then can the Code of Conduct fulfill its obligation to prepare and assist American service members who find themselves as POW's.

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## APPENDIX I

EXECUTIVE ORDER 10631, AUGUST 17, 1955<sup>175</sup>

### Paragraph I

The United States serviceman, by his service is protecting his nation. Any shirking of this responsibility or unwillingness to do his full part weakens this defense and invites disaster.

*I am an American fighting man. I serve in the forces which guard my country and our way of life. I am prepared to give my life in their defense.*

A member of the armed forces is always a fighting man. As such, it is his duty to oppose the enemies of the United States regardless of the circumstances in which he may find himself, whether in active combat, or as a prisoner of war.

### Paragraph II

If individuals and commanders were permitted to surrender whenever a situation seems to be desperate it would become an open invitation to all weak of will or depressed in spirit.

*I will never surrender of my own free will. If in command, I will never surrender my men while they still have the means to resist.*

As an individual, a member of the armed forces can never voluntarily surrender himself. When isolated and he can no longer inflict casualties on the enemy, it is his duty to evade capture and rejoin the nearest friendly forces.

The responsibility and authority of a commander never extends to the surrender of his command to the enemy while it has power to resist or evade. When isolated, cut off or surrounded, a unit must continue to fight until relieved, or able to rejoin friendly forces by breaking out or by evading the enemy.

### Paragraph III

The fight is everywhere. Even in the prison camp. When the use of physical weapons is denied, the mental and moral "will to resist" must be kept alive in every prisoner.

<sup>175</sup> Code of Conduct for Members of the Armed Forces of the United States, with explanatory notes.

*If I am captured, I will continue to resist by all means available. I will make every effort to escape and aid others to escape. I will accept neither parole nor special favors from the enemy.*

The duty of a member of the armed forces to continue resistance by all means at his disposal is not lessened by the misfortune of capture. Article 82 of the Geneva Conventions Relative to the Treatment of Prisoners of War of Aug. 12, 1949, pertains, must be explained, and is covered in the training programs to be carried out by the Services.

Article 82 provides as follows: "A prisoner of war shall be subject to the law, regulations, and orders in force in the armed forces of the Detaining Power; the Detaining Power shall be justified in taking judicial or disciplinary measures in respect of any offence committed by a prisoner of war against such law, regulations or orders. However, no proceedings or punishments contrary to the provisions of this chapter shall be allowed.

If any law, regulation or order of the Detaining Power shall declare acts committed by a prisoner of war to be punishable, whereas the same acts would not be punishable if committed by a member of the forces of the Detaining Powers, such acts shall entail disciplinary punishment only.

He will escape if able to do so, and will assist others to escape. Parole agreements are promises given the captor by a prisoner of war upon his faith and honor, to fulfill stated conditions, such as not to bear arms or not to escape, in consideration of special privileges – usually release from captivity or lessened restraint. He will never sign or enter into a parole agreement.

#### Paragraph IV

The most despicable act an American can commit is to give aid and comfort to the enemy by informing or otherwise harming fellow prisoners. Failure to assume responsibilities commensurate with rank is equally reprehensible.

*If I become a prisoner of war, I will keep faith with my fellow prisoners. I will give no information or take part in any action which might be harmful to my comrades. If I am senior, I will take command. If not, I will obey the lawful orders of those appointed over me and will back them up in every way.*

Informing, or any other action to the detriment of a fellow prisoner, is despicable and is expressly forbidden. POW's must avoid helping the enemy identify fellow prisoners who may have

knowledge of particular value to the enemy, and may therefore be made to suffer coercive interrogation.

Strong leadership is essential to discipline. Without discipline, camp organization, resistance and even survival may be impossible. Personal hygiene, camp sanitation, and care of sick and wounded are imperative. Officers and noncommissioned officers of the United States will continue to carry out their responsibilities and exercise their authority subsequent to capture. The senior line officer or noncommissioned officer within the prisoner of war camp or group of prisoners will assume command according to rank (or precedence) without regard to service. This responsibility and accountability may not be evaded. If the senior officer or noncommissioned officer is incapacitated or unable to act for any reason, command will be assumed by the next senior. If the foregoing organization cannot be effected, an organization of elected representatives as provided for in Articles 79-81, Geneva Convention Relative to Treatment of Prisoners of War, or a clandestine organization or both, will be formed.

#### Paragraph V

Every service man possesses some important military information of value to the enemy. By revealing it they may cause the death of comrades or disaster to their unit, or even the defeat of major forces of the nation.

*When questioned, should I become a prisoner of war, I am bound to give only name, rank, service number, and date of birth. I will evade answering further questions to the utmost of my ability. I will make no oral or written statements disloyal to my country and its allies or harmful to their cause.*

When questioned, a prisoner of war is required by the Geneva Conventions and permitted by this code to disclose his name, rank, service number and date of birth. A prisoner of war may also communicate with the enemy regarding his individual health or welfare as a prisoner of war and, when appropriate, on routine matters of camp administration. Oral or written confessions, true or false, questionnaires, personal history statements, propaganda recordings and broadcasts, appeals to other POW's, signatures to peace or surrender appeals, self criticisms or any other oral or written communication on behalf of the enemy or critical or harmful to the United States, its allies, the armed forces or other prisoners are forbidden.

It is a violation of the Geneva Conventions to place a prisoner of war under physical or mental torture or any other form of coercion to secure from him information of any kind. If,

however, a prisoner is subjected to such treatment, he will endeavor to avoid by every means, the disclosure of any information, or the making of any statement or the performance of any action harmful to the interests of the United States or its allies or which will provide aid or comfort to the enemy.

Russia and the Communist bloc nations have made a significant reservation to Article 85 of the Geneva Convention of 1949. Under this reservation a prisoner of war who may be convicted of an alleged war crime under the laws of the captors, loses the protection afforded a prisoner of war by these conventions. Therefore the signing of a confession or the making of a statement by a prisoner is likely to be used to convict him as a “war criminal” and thus, according to this Communist bloc device, deny to him any protection under the terms of the Geneva Conventions, including repatriation until his sentence is served.

#### Paragraph VI

An American is responsible and accountable for his actions. Prisoner of war status doesn’t change this nor does it change the obligation to remain faithful to the United States and to the principles for which it stands. Throughout his captivity, a prisoner should look to his God for strength to endure whatever may befall. He should remember that the United States of America will neither forget, nor forsake him, and that it will win the ultimate victory.

*I will never forget that I am an American fighting man, responsible for my action, and dedicated to the principles which made my country free. I will trust in my God and in the United States of America.*

The provisions of the Uniform Code of Military Justice, whenever appropriate, continue to apply to members of the armed forces while they are POW’s. The conduct of prisoners is subject to examination as to the circumstances of capture and through the period of detention with due regard for the rights of the individual and consideration for the conditions of captivity.

A member of the armed forces who becomes a prisoner of war has a continuing obligation to remain loyal to his country, his service and his unit. The life of a prisoner of war is hard. He must never give up hope. He must resist enemy indoctrination. POW’s who stand firm and united against the enemy will aid one another in surviving this ordeal.

## APPENDIX II

### EXECUTIVE ORDER 12633, MARCH 28, 1988<sup>176</sup>

#### Paragraph I

*I am an American, fighting in the forces which guard my country and our way of life. I am prepared to give my life in their defense.*

#### Paragraph II

*I will never surrender of my own free will. If in command, I will never surrender the members of my command while they still have the means to resist.*

#### Paragraph III

*If I am captured, I will continue to resist by all means available. I will make every effort to escape and aid others to escape. I will accept neither parole nor special favors from the enemy.*

#### Paragraph IV

*If I become a prisoner of war, I will keep faith with my fellow prisoners. I will give no information or take part in any action which might be harmful to my comrades. If I am senior, I will take command. If not, I will obey the lawful orders of those appointed over me and will back them up in every way.*

#### Paragraph V

*When questioned, should I become a prisoner of war, I am required to give name, rank, service number, and date of birth. I will evade answering further questions to the utmost of my ability. I will make no oral or written statements disloyal to my country and its allies or harmful to their cause.*

#### Paragraph VI

*I will never forget that I am an American, fighting for freedom, responsible for my actions, and dedicated to the principles which made my country free. I will trust in my God and in the United States of America.*

<sup>176</sup> Code of Conduct for Members of the Armed Forces of the United States.

## VITA

Rodney R. LeMay is a native of Stamps, Arkansas. He received his bachelor of science degree in history from Southern Arkansas University at Magnolia in May 1993. He received his juris doctorate from the University of Arkansas at Little Rock School of Law in May 1996. Prior to receiving his bachelor degree, he was an enlisted infantryman assigned to the 2d Ranger Battalion, Fort Lewis, Washington. He parachuted into Panama during Operation Just Cause in 1989, serving as an infantry fire team leader. After receiving his juris doctorate, he was commissioned as a first lieutenant in the United States Army Judge Advocate General's Corps and has served as an administrative law attorney and trial counsel. He enrolled at Louisiana State University while serving as an observer/controller at the Joint Readiness Training Center at Fort Polk, Louisiana. He is married to the former Janene DeJong from Montana and has three daughters; Olivia, Natalie, and Miriam. He currently holds the rank of captain. The degree of Master of Arts in Liberal Arts will be awarded in December 2002.