

PRISONERS OF WAR AND THE CODE OF CONDUCT

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"The true test of civilization is, not the census, nor the size of cities, nor the crops — no, but the kind of man the country turns out." (Ralph Waldo Emerson, Society and Solitude¹)

INTRODUCTION

War is like a game of chess. It is a contention between two or more States, through their armed forces, for the purposes of overpowering each other and imposing such conditions of peace as the victor pleases. War is a fact recognized, and with regard to many points regulated, but not established by international law. Its purpose is to destroy or remove the enemy's will or means to fight. In chess we render impotent or capture sufficient of the opponent's pieces to force his king into a position from which the only escape is capture. In war we follow the same pattern; we destroy or capture his means to fight, his men and material, and force his leaders into a position from which the only outlets are death or surrender. Our opponent is, of course, striving to do the same.

"If there be war, let it be in my time, that my children may have peace."² These words by Thomas Paine

should be the slogan of every adult American male today. We do not want war, but war is as old as the world, and records of it are found throughout the human race. It will never cease to demand consideration if we draw our conclusions from past events and the unsettled conditions at present. The nuclear age and wars of national liberation have in themselves added a new perspective to armed conflict.

During the hysteria of war there is no more helpless and appealing figure than that of a prisoner of war. Fighting men speak of "the fortunes of war" and declare that it is neither dishonorable nor heroic to be taken prisoner. In combat, luck cannot smile on all participants, and some are bound to lose. The man taken captive is one of the unlucky—a soldier of misfortune.

Because he is at the mercy of the detaining belligerent, the prisoner is subjected to many deprivations and hardships. Often he is treated cruelly, sometimes by physical means and at other times by more subtle psychological techniques. One thing is clear, however; cruelty is no monopoly of the past. The 20th century has borne witness to such treatment of the helpless prisoner as would have made many older barbarisms appear mild by com-

parison. Atrocities have not been intermittent and casual, as they spring both from the sadism of individuals and from a conscious group system which actively rejects, subverts, and destroys standards of conduct and aims at degrading human values. In hardly any war has the lot of the prisoner of war been a happy one. In almost every war, criminal individuals and cruel governments have added to the misery of helpless people who are at their mercy.

Let no one be misled. As it so aptly put in the ninth verse of the fourth chapter of Lamentations, "They that be slain by the sword are better off than they that be slain with hunger." Death on the battlefield is far better than the slow death of an enemy prison camp.

Americans have participated in many wars, and many American have become prisoners of war. Most have survived — and most have survived with honor. With very few exceptions the standards of the American fighting man have remained unchallenged.

This paper proposes to investigate thoroughly the Code of Conduct for the U.S. Armed Forces and its relation to prisoners of war. It is hoped that through this research, answers to the following questions can be formulated: Does a need exist for a Code? And if so, does the present Code fulfill that need?

It has been over 11 years since President Eisenhower issued his Executive Order prescribing the Code of Conduct for all members of the Armed Forces. Since that time there has been little cause or little opportunity to consider the effect of the Code within the military establishment. Today, in view of the United States involvement in Southeast Asia, it seems timely to examine the Code in light of its intentions and its accomplishments.

I — STANDARDS OF CONDUCT FOR THE FIGHTING MAN

Background. In time of peace the rights of belligerents should be secured by such agreements as are likely to be followed in time of war. As such, military conventions are efficient, human ways of introducing in the midst of war as much humanness as possible in the relations of two or more belligerents. They in themselves do not furnish all the answers, but they serve as logical guides for those seeking further solutions to the age-old problem of human rights and suffering during periods of turmoil. The sentiments of humanity have also found a place in the relationship of belligerents with each other in the form of these international agreements and have had a wholesome effect on the care and treatment of prisoners of war.

In 1907 the Hague Regulations established rules pertaining to captivity in war. These regulations led to the Geneva Conventions of 1929 and 1919 which set forth in detail the rights and protections which should be afforded prisoners. They do not specifically prescribe the conduct which a nation may require of its personnel who may become prisoners, however, as this is rightfully left to the discretion of the sovereign power.

To discourage desertion during the Revolution, the United States established the death penalty for those prisoners who, after capture, took up arms in the service of the enemy. Duress or coercion was recognized as mitigating only in event of threatened immediate death. This was the first American definition of required prisoner conduct.¹ In the Treaty of 1785 between the United States and Prussia, article XXIV provides further evidence of a growing concern for prisoners of

war.² No standard of conduct was prescribed, but conditions of confinement, care, and parole were outlined.

During the Civil War about 3,170 Federals held by the South joined the Southern Armies and 5,452 prisoners from the South joined the Federal Army.³

Prisoner conduct after capture was mentioned in War Department General Order No. 207, 3 July 1863, which provided, among other things, that it was the duty of a prisoner of war to escape. Prosecution for misconduct was based on three criteria:⁴

- misconduct where there is no duress or coercion.
- active participation in combat against Federal forces.
- failure to return voluntarily.

Nine years after the Civil War, a declaration establishing the rights of prisoners was drafted by the Congress of Brussels (1874). It was signed by 15 nations, none of which ratified it.⁵

The vast number of persons who are taken prisoners of war makes the matter of handling them properly a matter of great importance. More than 300,000 were captured during the war of 1870-71; about 100,000 during the Turco-Prussian struggles and Russo-Japanese War. During World War I the United States captured 48,976 Germans while 4,120 American soldiers were captured.⁶ In World War II the United States was opposed by Japan, a nation which had not been a signatory to the Geneva Conventions. While the Japanese made a token show of following the accepted Conventions, the figures show the grim results. Of some 17,000 Americans who surrendered on Bataan and Corregidor, only a mere 5,000 lived through the 3½ years of captivity.⁷ A total of 129,701 Americans were captured by the Axis enemy, and of these 14,090 died in the enemy's prison camps.⁸

The Combatant and the Captive. One of the major worries plaguing military personnel, should they become prisoners of war, is that of the relationship between military responsibility and personal survival. Survival in prisoner-of-war camps may involve instinctual rather than rational behavior. There is no other situation in the world where human association produces a greater possibility of inhumane treatment of man by his fellow-man.⁹ Regardless of the circumstances, upon military personnel, the defenders of order, rests a heavy responsibility. The greatest service they can render as prisoners is to remain true to themselves and to serve with silence and courage in the military way.

The services may have the cream of American manhood, but, at best, this is a cross section of the communities of the nation. The services can only hope to inculcate and renew in the American fighting man the desire to live his life on the battlefield and in the prison camps, if necessary, in such a way that whatever happens he can be self-respecting and free of guilt.

When an individual accepts the duty to be a member of the Armed Forces of the United States, he also accepts the possibility that at some indeterminate date he may lose his life while defending the interests of the American people. This is aptly apparent in the Oath taken by officers of the United States Armed Forces, enacted by Congress on 13 May 1884, as follows in part:

"I, A.B., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same. . . . So help me God".¹⁰

What seems to be forgotten, in some cases, is that the Oath of Allegiance

does not have any blank spaces for the individual to fill in stating his preferences as to when, where, how, or if he prefers to die. It has been said that the taking of this oath is the pivotal fact which changes the individual's status from that of civilian to that of soldier.¹¹

It is a general rule of law, long recognized, that a soldier taken prisoner remains a member of the service, entitled to all rights and privileges, and responsible for all obligations to his country except those rendered impossible or illegal. In the first place, don't get captured, or at least don't surrender while there is any possible means of resistance. However, if overcome by superior force, you are still a soldier. If a soldier is captured despite his efforts to resist, he must give no more than his name, rank, serial number, and date of birth. To give any other information than what is authorized might well jeopardize the life of comrades. Conceivably this can mushroom into the actual losing of the war. It can well be the modern version of Franklin's adage: "For want of a nail the shoe was lost. . . ."

The prisoner-of-war stockade is only an extension of the battlefield where the prisoner must be taught to carry on the struggle with the only weapons remaining — faith and courage. He has an obligation to continue to help his nation in any way possible, and that nation has a right to expect a soldier to give his life for his country, and it matters not where the call comes to him — on the battlefield or in a foul prisoner-of-war compound in some strange land.

Although a prisoner is temporarily removed from direct contact with his own command during internment, he is, upon return to his own army, subject to trial by court-martial "for offenses as criminal acts or injurious

conduct committed during his captivity against others of his comrades in the same status."¹² As Abraham Lincoln counseled, men should utter or do nothing for which they would not willingly be held responsible through time and in eternity.

In short, the prisoner is always a soldier and the ethical behavior of personnel in the hands of the enemy is a grave responsibility which no American can ignore. Past and future conduct of captured personnel must be analyzed exclusively on the basis of national interest and security and not on personal survival considerations. Human sympathy must not be allowed to pervert principle nor excuse weakness or bad judgment. But it is, of course, to be remembered that the survival of prisoners of war is assumed to be within the realm of national interest and security. More important is the fact that the prisoners are still citizens of their country, and as they are presumably coming back, their well-being and morale must be of importance.¹³

That a prisoner-of-war camp is a safe place to relax and "sweat out the war" is a myth. The majority of those who are fortunate enough to be alive at the conclusion of the war will have external or internal scars that they will carry to their graves. Life in a prisoner-of-war camp offers many means for continuing the struggle. Ingenuity, cleverness, resourcefulness, patience, and courage are the weapons. Defeats and retreats will occur, but the important thing is that the struggle be continued by whatever means are feasible at the moment and under the given conditions. It must be the duty of those who are captured to attempt to escape at the first opportunity. There are few places where even the strongest men disintegrate physically, mentally, and morally as rapidly as in a prisoner-of-war camp.¹⁴

Korea Prompts Code. During World War II the United States, the United Kingdom, and China pledged their determination in the Cairo Declaration of December 1943 that Korea would, "in due course" become free and independent. This pledge was subscribed to by the Soviet Union when it declared war against Japan on 8 August 1945.¹⁵

Following the Japanese surrender, the Soviet forces entering Korea on 12 August 1945 accepted the surrender of Japanese forces north of the 38th parallel. American troops landed on 8 September and accepted the surrender of the Japanese troops in the southern part of the peninsula on the following day. The United States did not contemplate a lasting division of Korea along this line, which was an accidental line resulting from the exigencies of the war. However, this arrangement quietly became a barrier, severing 1,300 years of normal interchange between all parts of Korea, until 25 June 1950 when the Soviet-equipped, trained, and directed North Korean Armies struck the Republic of Korea without warning, crossing the 38th parallel in full force.

After the United Nations forces had destroyed the North Korean Armies and decimated the Chinese forces, which had entered the war from Red China, the Soviet Union on 23 June 1951 proposed a truce.¹⁶ At 1000 hours, 27 July 1953, after 2 years and 17 days, the Korean Armistice Agreement was signed at Panmunjom.¹⁷ The guns were silenced and the fighting ceased, but a clear-cut victory had not been won by either side.

Every war has its disturbing aftermath, and there is always another side to the coin of victory. If the victory is not clearly imprinted and the war has ended in what seems like a stalemate, the coin becomes suspect. In any event,

there is usually a postwar inventory.¹⁸

One and a half million Americans went to Korea to fight and 7,190 were captured by the enemy. Of this number 6,556 were Army, 263 were Air Force, 231 were Marine Corps and 40 were Navy personnel.¹⁹

Following the Korean Armistice Agreement, the program of repatriation of prisoners of war began with Operation Little Switch, wherein 127 soldiers (and 22 other Americans) were returned to U.S. control during the period 19-25 April 1953. In Big Switch the Communists returned to our side the remaining American surviving prisoners of war during the period 5 August to 6 September 1953.²⁰

During the war, 4,428 American servicemen survived the hell of Communist prisoner-of-war compounds. Of these, 3,973 were members of the Army, 224 of the Air Force, 200 of the Marine Corps, and 31 of the Navy.²¹ A total of 2,730 Americans did not return.²²

The real and terrible story is told in the contrast between our struggle with the Germans in World War II and our struggle with the Communists in Korea:

In World War II, of the total reported missing in action by the American Army, 18 percent got back safely to our lines, 79 percent were later returned alive as prisoners of war, and only 3 percent died.

But in Korea, of those reported missing in action by the American Army, 12 percent got back to their units, only 30 percent lived to be exchanged as prisoners of war; and an almost unbelievable 38 percent died behind Communist lines.²³

This is a higher prisoner death rate than that of any of our previous wars, including the Revolution, in which it is estimated that about 33 percent of the prisoners died.²⁴

What was even more shocking was the fact that almost one out of every

three American prisoners in Korea was guilty of some sort of collaboration with the enemy.²⁵ The degree of collaboration ranged from such serious offenses as writing anti-American propaganda and informing on comrades to the relatively innocuous offense of broadcasting Christmas greetings home and thereby putting the Communists in a favorable light. Furthermore, during the entire Korean conflict, not one U.S. serviceman escaped from a permanent enemy prison camp and successfully made his way back to friendly lines.²⁶

Troubled by the problem of collaboration, the Defense Department began studies on 3,300 returned American prisoners to find out who had done what and why. By joint action of the services, all of the prisoners recovered were screened by military intelligence agencies. Of the 565 whose conduct was questioned, 373 were cleared or the charges dropped after investigation. Of the remaining 192 suspects, 68 were separated from the services, 3 resigned, one received reprimand, 2 were given restricted assignments, and 11 were convicted by court-martial.²⁷ No case was brought for court-martial action in which there was evidence of duress, brainwashing, or any other type of coercion. There were also 21 men who chose to stay with the Communists. Adding these to the 11 convicted men makes a total of at least 32 Americans who did not measure up. Army figures indicated that 15 percent of the Americans had actively collaborated with the Communists, and only 5 percent had vigorously resisted.²⁸

All in all, sinister and regrettable things happened in the prison camps of Korea. Evidence indicated that the high death rate was not due primarily to Communist maltreatment, that it could be accounted for largely by the ignorance or the callousness of the prisoners themselves.²⁹

In every war but one in which the

United States has participated, the conduct and personal behavior of its servicemen who became prisoners of war presented no unforeseen problems and gave rise to no particular concern in the country as a whole. In none of them was there such a large breakdown of morale or widespread collaboration with the captors. Moreover, regardless of the rigors of the camps, in every war but one, some of the prisoners managed through ingenuity, daring, and plain good luck to escape. That one war was the Korean war.³⁰

Accordingly, the Army soon began collecting data for a formal study of the behavior of its personnel taken as prisoners of war in Korea. A major result of this study was the promulgation on 17 August 1955, by President Eisenhower, of the new Code of Conduct for members of the Armed Forces of the United States.

The Code of Conduct was — like the events in Korea that inspired it — completely unprecedented. Never before had a President found it necessary to clarify or restate the principles of conduct for military personnel. 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.

II — THE CODE OF CONDUCT

Purpose. The majority of honorable professions have some form of creed or code of conduct. More times than not it is an unwritten creed, being based primarily on mutual understanding and professional pride. Some professions, however, have formal creeds or oaths of long standing such as the

Hippocratic oath of the medical profession which dates from about 400 B.C.¹

On 7 August 1954 Secretary of Defense Charles E. Wilson created an ad hoc committee under the chairmanship of Mr. Carter L. Burgess, Assistant Secretary of Defense, to study the conduct of military personnel during combat — particularly while in a prisoner-of-war status.² After intensive study and consultation with some 68 civic leaders, former prisoners of war, and Government representatives, the committee issued its 82-page report.³

On the basis of this report Secretary Wilson, on 17 May 1955, appointed the Defense Advisory Committee on Prisoners of War. The main purpose of this group, which was composed of ten members — five civilians and five military, from all services, with Secretary Burgess as Chairman — was to provide members of the Armed Forces with a simple, easily understood code to govern their conduct as American fighting men.⁴

The committee met frequently for over 2 months, and on 29 July 1955 it presented to the Secretary a proposed code of conduct.⁵ Nineteen days later, on 17 August 1955, President Eisenhower promulgated Executive Order Number 10631 wherein he described for the Armed Forces of the United States a six-point Code of Conduct.

This Code of Conduct was the first clearly defined standard of action applicable to American prisoners after capture. This set of principles was designed to mold a new set of fundamental attitudes for U.S. service personnel with a view to helping them and their country, as well, survive any future conflict. The Advisory Committee which drew up the Code offered the following in support of their proposition when it was forwarded for the President's signature: "We can find

no basis for making recommendations other than on the principles and foundations which have made America free and strong, and on the qualities which we associate with men of character and integrity."⁶

The United States had finished a war with an enemy who had fought not only on the battlefield, but in the prison camps as well, by manipulating the minds of its captives. The Communists had looked upon a prisoner of war as an asset of the military machine without respect or regard for his rights as a human being.⁷ The whole prisoner-of-war question was changed completely by their insidious and inhumane methods. Our Government and the military services realized that our fighting man not only had to be taught how to fight physically, but he must know how to fight back mentally and morally as well.

While stern, the Code of Conduct is tempered by a recognition of the possibility of enemy depravity and by assurances of justice for those prisoners who break under torture. It consists of six articles in simple language that any American can understand. It starts with the sentence, "I am an American fighting man"; and concludes with the sentence, "I will trust in my God and in the United States of America." In between these two doctrines the serviceman will pledge that he will never surrender of his own free will, that he will endeavor to escape if caught, that as a prisoner he will not betray his fellow prisoners, and that he will refuse to give any information beyond his name, rank, service number, and date of birth.

By the adoption of the Code, unified guidance and a basic philosophy were provided for all the services — guidance to be utilized as an instructional vehicle to aid future prisoners of war in their fight against an enemy who

may not only seek their land but their lives, minds, loyalty, and allegiance. The acquired mutual respect can develop the interreliance and unity of purpose which is essential to victory in battle and to resistance and survival in a POW camp. In essence, the Code does more than epitomize the moral guidelines that can sustain a soldier through many trials and tribulations; it also sets forth the basic rules that hopefully will enable him to survive until the day when adversity gives way to vindication and final victory.⁸

The purpose of the Armed Forces Code of Conduct can be summed up as twofold: To protect, at whatever cost, the cause for which this country stands, and at the same time ensure the greatest hope and survival for the men who serve that cause.⁹

The Articles.

Article I — "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."

Intent. A member of the Armed Forces is always a fighting man. As such, it is his sworn duty to oppose the enemies of the United States, regardless of the circumstances or hardships encountered, whether on the battlefield or in a prisoner-of-war camp. This article could be said to express the true feelings of each American serviceman who has fought, suffered, or died in battle. The words themselves not only describe the spirit of the past, but of the future as well. Each, from the most senior to the most junior, must have sincere pride in his country and in the uniform he wears. He must fulfill his pledged and moral military obligations with conscientiousness and with honor.

A point in article I which deserves special attention is the phrase, "*I am prepared to give my life . . .*" The true and final test of an individual's "preparedness" is that he is willing to risk death in carrying out his duties. When an American says he is prepared to give his life in defense of his country, it should not only encompass death in battle, but death at whatever place the situation dictates whether in or out of service.¹⁰

Basic attitudes and everyday routines go a long way toward this end. The men who do their best with every assignment; who look for what needs to be done, and do it; who find ways to improve themselves and their work; who do all that is required and then some — these are the men who are prepared to give their lives. They are already doing so!

Article I offers no difficulty in its interpretation of what is implied and what is expected of the military man or woman. The Officer and Enlistment Oath, the Constitution, and the basic principles upon which our country was founded offer adequate understanding.

The President made it clear in his Executive Order that the words, "I am an American fighting man," apply to every member of the Armed Forces. Department of Defense Directive 1300.7, par. II, declares that the Code is applicable to all members of the Armed Forces at all times. The use of the phrase is clearly a dramatic device used to emphasize that the reason for the existence of soldiers is to fight the country's enemies rather than limit the application of the Code to combat men only.

Article II — "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."

Intent. As an individual, a member of the Armed Forces may never voluntarily surrender himself. When he is isolated and 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 the 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.¹¹

This is one of the most controversial articles in that it implies "a lost, last stand," "fight to the last man," etc. Most military men will argue that if the situation so dictates and the odds are stacked so overwhelmingly against you, then it is better to live to fight another day than to commit obvious suicide.

Among the many hazards of the military profession, the risk of capture by the enemy is just as much a possibility as death or injury. The fighting man accepts these risks each and every time he enters combat in order to carry out his assigned mission. He should never sell himself short, however, by meekly surrendering just because the situation looks hopeless.

There is a great difference between surrender and being captured. To be captured is to be taken prisoner; surrender means to give up. Under certain circumstances, an initial impression might indicate that surrender would appear to be the proper course of action. However, from the standpoint of pure self-interest, the man who willfully surrenders to the enemy is not only selling himself short, but his country as well. It was pointed out by the Advisory Committee which drafted the Code of Conduct that, "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 of spirit." We cannot deny that some men — the "weak of will" — must be frequently reminded of their obligations and compelled to do what is right and proper, even though to do so is in their best interests. Just as training drills are repeated until men respond to emergencies almost instinctively and do the right things despite confusion, the guidelines in article II can remind a fighting man not to give up when for the moment his situation seems hopeless.

Article 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."

Intent. 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 Convention pertains and must be explained. Article 82 provides as follows:

A prisoner of war shall be subject to the laws, 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 offense committed by a prisoner of war against such laws, regulations or orders. However, no proceedings or punishments contrary to the provisions of this Charter shall be allowed.

If any law, regulation or order of the Detaining Power shall declare acts committed by a prisoner to be punishable, whereas the same acts would not be punishable if committed by a member of the forces of the Detaining Power, such acts shall entail disciplinary punishments only.¹²

He will escape if able to do so and will assist others to escape. Parole agree-

ments 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 releases from captivity or lessened restraint. He will never sign or enter into a parole agreement.¹³

No matter how hard he may have fought to prevent it, there is always the chance that a fighting man may be captured by the enemy. This in itself is no disgrace, so long as he extends the fight from the battlefield into the prisoner-of-war compound. Using the only weapons still available to him — his wits and his will — he can continue to fight. Courage, determination, patience, and faith — especially faith in one's self, one's country, and one's God — are the primary means to resist when other weapons are gone.

Today and in the foreseeable future our enemies are, and most likely will remain. Communists. Communists attempt all sorts of trickery, force, or other unorthodox methods to induce a prisoner to obligate himself. One of their more subtle methods is the offer of parole.

The primary reason that the United States prohibits agreements is because the enemy never offers parole unless it is to his advantage. Secondly, the POW who enters into a parole agreement with the enemy cannot be trusted by his fellow prisoners, and mutual trust is most important in the battle to survive.

Article IV — "If I become a prisoner of war, I will keep faith with my fellow prisoners. I will give no information nor 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."

-Intent. Informing, or any other action to the detriment of a fellow prisoner, is despicable and is expressly forbidden. Prisoners of war must avoid helping 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 (a 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 covert organization, or both, will be formed.¹⁴

The conditions of life as a POW under the Communists emphasize the need for leadership development predicated upon the ability to acquire and hold the support of subordinates on the basis of an individual leader's character, emotional personality, judgment, and powers of persuasion.

There are three general types of offenses which are of basic interest to the services.¹⁵ One type arises when a prisoner seeks to take advantage of his fellow prisoners' misery. In the service view, a prisoner who informs to the enemy on other POW's, who steals

from his sick buddies, who robs the dead, who obtains extra benefits from the captors in exchange for monitoring or collaborating for his captors merits punishment.

Then there is the type of crime committed by a few officers and noncommissioned officers — abuse of their position by misguiding or failing to lead when it was in their power to do so. This, too, merits punishment.

The third type of crime is the treason type, which is committed when a military man voluntarily furnishes intelligence or propaganda materials to the enemy.

Article V — “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.”

Intent. When questioned, a prisoner of war is required by the Geneva Convention 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, whether true or false, questionnaires, personal history statements, propaganda recordings and broadcasts, appeals to other prisoners of war, 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 Convention 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.

In view of a U.S.S.R. reservation to article 85 of the Geneva Convention, 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 under the laws of his captors. This conviction has the effect of removing him from the prisoner-of-war status and, according to the reservation, denies him any protection under terms of the Geneva Convention and repatriation until a prison sentence is served. The reservation is as follows:

The Union of Soviet Socialist Republics does not consider itself bound by the obligation which follows Article 85, to extend the application of the Convention to the prisoners of war who have been convicted under the law of the Detaining Power, in accordance with the principles of the Nuremberg trial, for war crimes and crimes against humanity, it being understood that persons convicted of such crimes must be subjected to the conditions obtaining in the country in question for those who undergo their punishment.¹⁶

The American serviceman is instructed to give to the enemy upon capture, only his name, rank, service number, and date of birth. Anything that he thereafter gives the enemy, he gives upon his own responsibility. But it is ridiculous to suppose that a prisoner is not permitted to say anything more to his captors, and this is well understood by each of the services. A man held in the helpless situation in which a POW finds himself must cooperate with

his captors by getting in line when required, by falling out of formations, and by obeying the other routine POW camp orders.

The framers of the Code agreed that a line of resistance must be drawn somewhere and accepted the name, rank, and service number provision of the Geneva Conventions as the line of resistance. In the face of experience, however, the Committee recognized that a POW may be subjected to an extreme of coercion beyond his ability to resist. In this battle with the interrogator the prisoner is driven from his first line of resistance and must be trained for resistance in successive positions. It was the Committee's conclusion that the individual must make a final stand. He must not disclose vital military information and above all may not display, in word or deed, disloyalty to his country, his service, or his comrades.¹⁷

Article VI — "I will never forget that I am an American Fighting Man, responsible for my actions and dedicated to the principles which made my country free. I will trust in my God and the United States of America."

Intent. The provisions of the Uniform Code of Military Justice, whenever appropriate, continue to apply to members of the Armed Forces while prisoners of war. Upon repatriation the conduct of prisoners will be examined 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. Prisoners

of war who stand firm and united against the enemy will aid one another in surviving this ordeal.¹⁸

The enemy will respect an individual only as far as he respects himself. Peace of mind and degree of success will be directly proportional to the strength of moral principles. The POW must establish the level of his moral integrity in the eyes of his captors. In doing so it may be of a small consequence, but he will have won respect for himself, his service, and his country. A fundamental requirement of simple virtue which provides a firm foundation for patriotism and may become the fount of courage is: "A man has honor if he holds himself to a course of conduct, because of a conviction that it is in the general interest, even though he is well aware that it may lead to inconvenience, personal loss, humiliation or grave physical risk."¹⁹

The Korean conflict clearly revealed that captured troops serve the Communists as a powerful instrument for furthering psychological warfare goals. The enemy attempted, with some success, to use prisoners of war in Korea in an organized propaganda campaign to discredit the United States and United Nations in the Far East. The seriousness of this threat cannot be measured merely in terms of the number of troops likely to be taken prisoner, or even of the smaller number who would actually contribute significantly to enemy psychological warfare activities. In Communist hands all POW's are potential idea-weapons, and the successful exploitation of any one man may damage a nation's cause.²⁰

The Committee, in drafting the Code, was working on the premise that in the future U.S. military personnel who fall into Communist control will be subjected to similar intensive indoctrination of the so-called brainwashing category and that more needs to be done to

prepare soldiers, sailors, airmen, and marines for such treatment.²¹

III — THE CODE AND INTERNATIONAL LAW

International law has been defined as those rules for international conduct which have met general acceptance among the community of nations.¹ It reflects and records those accommodations which, over centuries, states have found it in their interest to make. It rests upon the common consent of civilized communities. It is made up of precedents, judicial decisions, treaties, arbitrations, international conventions, the opinions of learned writers in the field, and a host of other acts which represent in the aggregate those rules which enlightened nations and their people accept as being appropriate to govern international conduct.

That there is such a law of war as part of the law of the community of nations is expressly stated by the Nuremberg Tribunal in its judgment in the following passage:

The very essence of the London Agreement of August 1945 is that individuals have international duties which transcend the national obligations of obedience imposed by the individual state. He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the state if the state in authorizing action moves outside its competence under international law.²

We, as citizens of a democracy, do not need to be reminded that no law is better than the people who make it. Our own legal code is the expression of our social consciousness and the outgrowth of an enlightened and aroused public opinion. The body of international law relating to the victims of war is the expression of a code of social justice on which people of many different races, tongues, and political beliefs have agreed in the name of their common humanity.

During the ancient period of history, prisoners of war could be killed, and they were very often at once actually butchered or offered as sacrifices to the gods.³ If they were spared they were, as a rule, made slaves, but belligerents also on occasion exchanged their prisoners or liberated them for ransom. This procedure continued through the Middle Ages, but under the influence of Christianity a prisoner's fate was mitigated, and by the time modern international law gradually came into existence killing and enslaving prisoners of war had all but disappeared.

The rules of international law have undergone a considerable development since the middle of the 17th century. At that time the law, as mentioned above, did little more than forbid the enslavement and indiscriminate killing of captives. In comparison with the state of these rules, the customary law of the 20th century seems to involve a complex and comprehensive body of rights and duties for any state which engages in war.

Today, as we speak of international law, those of us in the military tend to think principally of the Hague and Geneva Conventions. It should be noted and understood, however, that a distinction is made between Geneva Law and the Hague Law, resulting from the two Peace Conferences held in that city in 1899 and 1907, which codifies the rules of war in all matters outside the scope of the Geneva Conventions. The Hague Law relates in particular to the choice of weapons and of warfare.⁴

Though both the Geneva and Hague Laws are based on humanitarian principles and aim at restraining violence, the Geneva Conventions more especially concern the protection of the individual against the abuse of force, while the Hague Conventions enforce interstate rules on its actual employment.

Further improvement of humanitar-

ian treatment of prisoners of war occurred during the War of Secession when the American Government promulgated in 1864 certain humane regulations drawn up by the legal expert Lieber. The "Lieber Laws," as they were called, laid down that prisoners of war, as belligerents, are prisoners of the Government and not of the captor. They moreover stipulated that prisoners of war shall be given good food in abundance, as far as possible, and shall be treated humanely.⁵ It was logical then that the protection which the Geneva Conventions of 22 August 1864 had just conferred on the wounded and sick of the Armed Forces in the field was also made applicable to prisoners of war.

It was in keeping with these ideas that the prisoner-of-war question was raised at The Hague in 1899 at the First Peace Conference, and an international convention of this subject was established for the first time. This convention was then amended following World War I to become the Geneva Convention of 27 July 1929 establishing the status of prisoners of war.⁶

As a result of the experience of the Second World War, this convention was revised to become the Third Geneva Convention of 12 August 1949. This Convention contains 143 articles, besides the annexes, as compared to 97 articles in the corresponding 1929 Convention and only 17 in the chapter on prisoners of war in the Hague Convention.⁷ This increase is no doubt due to the fact that in modern warfare prisoners are held in larger numbers, but it also characterizes the desire of the 1949 Convention, representing all nations, to submit all aspects of captivity to humane regulations of international law. One of the essential difficulties in any effort to ameliorate the conditions of prisoners of war is the necessity of reconciling military and political inter-

ests with purely humanitarian ideas.⁸ It appears, however, that some progress was made toward this end as the 19th century saw new concepts of natural law and a new humanitarian movement. The civilized world finally accepted the fact that the prisoner of war was not a criminal but merely an enemy no longer able to bear arms who should be liberated at the close of the hostilities and be respected and humanely treated while in captivity. Far-seeing and broadminded legal and diplomatic action has since translated concept into practice through a series of codifications accepted as binding by states and successively extended or amplified when experience showed them to be inadequate. The Brussels Draft of 1874, the Hague Conventions of 1899 and 1907, the special agreements made between belligerents in Berne in 1917 and 1918, and the Geneva Conventions of 1929, which devote all or part of their clauses to prisoners of war, represent the principal stages of evolution.

The third Geneva Conference was convened by the Swiss Federal Council at Geneva and deliberated from 21 April to 12 August 1949 for the purpose of revising, among others, the Geneva Convention of 27 July 1929 relative to the Treatment of Prisoners of War. The Conference established the texts of four Conventions of which the third Convention, "Geneva Convention Relative To The Treatment of Prisoners of War," is applicable to this paper.

These Conventions, the text of which has been established in the English and French languages, are attached to the present act. The original and the documents accompanying it were deposited in the archives of the Swiss Confederation.⁹

The Geneva Conventions of 1949 apply to all cases of declared war or any other armed conflict which may

arise between two or more of the parties to the Convention, even if the state of war is not recognized by them.¹⁰

Members of the U.S. Armed Forces who fall into the power of the enemy in the course of a war are declared prisoners of war and are entitled to the protection accorded by the Convention. It should be noted at this time that none of the major parties of the Korean war (United States, Communist China, North and South Korea) had ratified the Convention at the outbreak of the war. All announced an intention to adhere to it, however, and the North Korean Minister of Foreign Affairs, Pak Hun Yong, sent a message to the Secretary General of the United Nations on 13 July 1950 in which he stated that his country agreed to abide by the 1929 and 1949 Geneva Conventions.¹¹

The major participants have ratified the Convention of 1919 and thus are parties to it as are North and South Vietnam, Cambodia, Thailand, Laos, and Soviet Russia.¹²

The remaining portion of this chapter will consider the Code of Conduct for the Armed Forces in view of the Geneva Conventions of 1949 and attempt to determine their compatibility and to note any areas of conflict which might prove harmful to a prisoner of war, both from the standpoint of survival and from a legal point of view.

Article I and VI of the Code of Conduct are important in that they emphasize that the American soldier is a fighting man responsible for his actions and dedicated to guarding his country and to the principles and way of life for which his country stands. This indicates, first, the military personnel to whom the Code applies and, secondly, that they are accountable for failure to adhere to the Code.

The Code's charge to members of the Armed Forces of the United States that

they are responsible for their actions and the clear warning contained in Department of Defense Directive 1300.7 of 8 July 1964 (that the provisions of the Uniform Code of Military Justice apply at all times) are not compatible with the declaration of the Geneva Convention that prisoners of war are subject to the laws, regulations, and orders of the detaining power while in captivity.

Although the legislation of the Detaining Power is applicable to him during his captivity, he remains subject to the military laws of his State of origin, as a member of its armed forces. He may therefore be made answerable before the courts of his country for his acts, and cannot plead in defense that national legislation is inapplicable because it is suspended by Article 82.¹³

This was borne out when the Army Board of Review in the Batchelor case (19 C.M.R. 452 of 1955) rejected the accused's argument that the Geneva Convention Relative to the Treatment of Prisoners of War (1929) placed all authority over POW's in the captor power and withdrew such power from the United States so that a general court-martial is without jurisdiction to try a repatriated POW for POW camp misconduct. The Board noted that the Geneva Conventions of 1949 were also adopted for application by the opposing forces in the Korean war, but this did not alter its rejection of the asserted defense.¹⁴

The Geneva Convention does not contain any provision attempting to prohibit a party to the conflict from applying its domestic law to a repatriated prisoner of war for misconduct during captivity. It is simply that in the prison camp only the discipline of the detaining power may be enforced, while domestic law enforcement of the prisoner's country must await his return to its control. It is not the duty of the detaining power to enforce the

laws of the nation of its prisoners. They must be self-enforced.

Article II of the Code of Conduct will not be considered in the light of Convention compatibility in that it does not concern prisoners of war but relates to surrender.

Article III of the Code deals with three important aspects of a prisoner's detainment — resistance, escape, and parole — and each will be discussed separately.

Resistance. Mental and moral resistance to the detaining power's efforts to "brainwash," indoctrinate, and demoralize in order to win converts, obtain intelligence, or exploit the prisoners of war for propaganda purposes is necessary and certainly does not conflict with the purpose or intent of the Geneva Convention. However, the provision of the Code to "resist by all means available" requires American prisoners of war to extend the battlefield into the prison camp and defeat the captors, not only mentally but physically, even in captivity. This requirement seems to conflict with the spirit and purpose of the Convention.

Article 13 of the Geneva Convention of 1949 states in part "that prisoners of war must at all times be humanely treated."¹⁵ With regard to the concept of humanity, the purpose of the Convention is none other than to define the correct way to behave toward a human being; each individual is desirous of the treatment corresponding to his status and can therefore judge how he should, in turn, treat his fellow human beings. It does not seem consistent for a country which has signed and ratified a treaty providing for the humane treatment of its military personnel who may become prisoners of war to promulgate subsequent instructions to its military personnel that, while expecting humane treatment from their cap-

tors, they must convert the prisoner-of-war camp into a battlefield. This action could, if carried to extremes, diminish or eliminate completely the prospects of humane treatment contemplated by the Convention. As quoted in part from the U.S. Department of the Army, Pamphlet No. 27-161-2, 2 *International Law* 93-95 (1962), p. 95, par. E.:

A new and disturbing aspect of the handling of prisoners of war was encountered in that the Communist soldiers, even after capture, continued by intrigue and open violence to fight against their captors. International law, as represented by the 1949 Geneva Convention, did not contemplate an openly hostile contest between the captor and the captive. If such practice should continue in future wars, many of the humanitarian provisions of the 1949 Convention would become difficult to implement.

Escape. Escape, in international law, is the state of a prisoner's having placed himself beyond the immediate control of the public authorities of the previously detaining state without their consent. This status is terminated by recapture or death or by leaving the territory occupied by the enemy, at which time the escape becomes successful.¹⁶

The requirement that an American serviceman make every effort to escape if captured is an accepted military tradition, neither contrary to military honor nor to moral law and is even regarded as the accomplishment of a patriotic duty. Therefore, its inclusion in the Code of Conduct is highly appropriate. The same application to medical personnel and chaplains, however, conflicts with the special status accorded them under Article 33 of the 1949 Geneva Convention, which in part says:

Members of the medical personnel and chaplains while retained by the detaining power with a view to assisting prisoners of war, shall not be considered as prisoners of war. They

shall, however, receive as a minimum, the benefits and protection of the present Convention, and shall also be granted all facilities necessary to provide for the medical care of, and religious ministrations to prisoners of war.

The only reason for retention of such personnel is to utilize their medical and religious services in the care of the physical and religious needs of the prisoners of war. It is inconsistent and improper for this country to agree that such personnel may be retained in order that their professional services may be utilized for the benefit of the prisoners of war and then require them to make every effort to escape and thus "desert" those who need them.

With the exception of the application of the escape requirement to medical personnel and chaplains as noted above, the requirement that American service personnel make every effort to escape and aid others to escape is compatible with the Geneva Convention.

Parole. Article 21 (2) of the Convention provides: "Prisoners of war may be partially or wholly released on parole or promise, insofar as is allowed by the laws of the Power on which they depend. Such measure shall be taken particularly in cases where this may contribute to the improvement of their state of health. No prisoner of war shall be compelled to accept liberty on parole or promise." Article 21 (3) provides: "Upon the outbreak of hostilities, each Party to the conflict shall notify the adverse Party of the laws and regulations allowing or forbidding its own national to accept liberty on parole or promise."¹⁷

In essence, the prisoner himself should know and understand whether or not his own country approves or disapproves of his accepting parole. If he does not, then the detaining power may not offer release on parole to a prisoner

if the laws and regulations of the power on which he depends forbid him to accept. Such is the case of the American serviceman, as stated in the Code of Conduct.

There is no direct conflict between the Code's prohibition of acceptance of parole and special favors and the 1949 Geneva Convention. As previously noted, the parole laws of the power in whose service the prisoner of war was at the time of capture must be observed by the detaining power.

Hence, while no direct conflict exists between the Code and the provisions of the Convention on the point of no parole, it does seem to conflict with the spirit and purpose of the provisions for retaining medical personnel and chaplains in that they may be prevented from fully performing in some situations where, without parole, the camp commander would not permit them to leave the camp to minister to prisoners of war in other hospitals, camps, and labor detachments and in the case of sick or wounded prisoners when, as the Convention stipulates, "it may contribute to the improvement of their state of health."

Article IV of the Code of Conduct deals with the areas — keep faith, take command and obey lawful orders.

Keep Faith. There does not seem to be any conflict between the Code's requirement that American prisoners of war keep faith with each other and neither do nor say anything harmful to each other and the provisions of the 1949 Geneva Convention.

Take Command. Article 79 of the Geneva Convention provides for recognition or election of a Prisoner of War Representative in all places where there are POW's. In officer camps and in mixed camps (officers and other ranks) the senior officer will be recognized as

the POW Representative; in nonofficer camps the prisoners shall elect by secret ballot a POW Representative every 6 months from among themselves. An officer will be stationed in each labor camp for the purpose of carrying out the camp administration duties for which the POW's are responsible. The POW's in the labor camps may elect the officer as their POW Representative but are not required to do so.¹⁸

There appears to exist some conflict between the Code and the Geneva Convention in situations whereby in non-officer and labor camps the same prisoner of war *may* occupy the two positions of POW Representative and Senior in Command. In officer and mixed camps the two positions will be occupied by the same individual.

The problem which could exist in the former situation, and does exist in the latter, occurs when under the Code and its implementing regulations his command responsibilities — enforcement of the Code and the duty to defeat the enemy — are paramount at all times; yet, under the Geneva Convention his responsibility to further the welfare of his fellow prisoners of war is paramount. Which duty shall prevail? In that the President of the United States, who promulgated the Code of Conduct, is limited in his "ordinance-making" power by the restriction that his rules and regulations must not contravene a statute created by Congress or the provisions of the Constitution, the Treaty (Geneva Convention) must take precedence. The President's Executive Order is subordinate to the Geneva Convention requirements when there is a conflict.¹⁹

In their regulations implementing the Code of Conduct and describing the nature of the training which should be given military personnel in the Code, both the Secretaries of Defense and Army have indicated that the

elected POW Representative system as provided for in Articles 79-81 of the Convention would be formed only if the Senior in Command organization (under Article IV, Code of Conduct) cannot be effected. This is in conflict with the Geneva Convention. Perhaps it is intended by the Department of Defense to impose a *duty* on military personnel to elect the senior POW as the POW Representative in nonofficer camps, since in officer and mixed camps the senior officer *will* be the POW Representative in accordance with Article 78 of the Convention. If this is the case it would seem to conflict with the requirement for a free, secret election required by Article 79 (1) of the Geneva Convention.

Obeys Lawful Orders. There does not seem to be conflict between the Code and the Geneva Convention on the point of obedience to orders. There is no means for the senior to punish prisoners of war who refuse to obey his lawful orders; punishment, if appropriate, must await repatriation.

Article V of the Code of Conduct. Article 17 of the Geneva Convention requires that, when questioned, every prisoner of war must give only his name, rank, service number, and date of birth; or failing that, equivalent information. No physical or mental torture or any other form of coercion may be used against the POW's to secure from them any additional information.

Article 70 of the Convention requires that every prisoner of war be permitted, immediately upon capture or at least within 1 week after arrival at the POW camp, to send a Capture Card to his family and to the Central Prisoner of War Agency. The suggested form of the Capture Card is prescribed in Annex IV to the Convention and

provides for giving 13 items of information: name, power on which the POW depends, first name of father, date of birth, place of birth, rank, service number, address of next of kin, when taken prisoner, health status, present address, and date. Prisoners of war may, if they so choose, complete only the name, rank, service number, and date of birth portion of the card.

Beyond name, rank, service number, and date of birth, the prisoners go on at risk of future court-martial upon repatriation. The words, "to the utmost of my ability," indicate the limit to which he must go before he may avoid criminal liability for giving information helpful to the enemy. He will have to show that any harmful or useful information he gave, allegedly involuntarily, was caused by a well-grounded apprehension of immediate and impending death or of immediate, serious, bodily harm in order to defend successfully his actions on the ground of coercion or duress.

There is nothing in the Geneva Convention designed to promote disloyalty among the prisoners of war or to require a prisoner to be disloyal to the country in whose armed forces he was serving at the time of capture.

The requirements of the Code that answers to questions put to a prisoner by the detaining power must be limited to name, rank, service number, and date of birth, that the POW must evade answering further questions to the utmost of his ability, and that the POW must not make oral or written statements disloyal or harmful to his country, its allies, or his comrades need not conflict with the provisions of the Geneva Convention.

Some conflict may arise from the application of the Code restraints to use of the Capture Card and personal correspondence of the captive to the outside. Conflict may arise from omission

of clarifying remarks specifically exempting the Capture Card from Article V restrictions or permitting its partial completion and failure to discuss personal correspondence. When restricted to the four permissible items of name, rank, service number, and date of birth, the POW is in effect denied use of the Capture Card—for he must address it for mailing.

A similar conflict arises concerning the private correspondence the POW is privileged to engage in under Article 71 of the Convention. Such correspondence is subject to censorship by the detaining power, thus providing the enemy with names and addresses of family and friends, personal information, etc. Neither the Code itself nor the Department of Defense and individual Service Instructions promulgating the Code provide guidance in this area.

The conflicts between the Code of Conduct and the Geneva Convention of 1949 which have been discussed arise essentially from the humanitarian pur-

pose of the Convention and the assumption therein that the prisoner of war is no longer a danger to the enemy because he is removed from the fight, and the directly contrary instructions contained in the Department of Defense Directive 1300.7 of 8 July 1964 implementing the Code that directs the American soldier to continue the battle in the prisoner-of-war camp and physically defeat the enemy even there. The Code of Conduct need not be and should not be interpreted in a manner inconsistent with the Geneva Convention, as is stated in JAGW 1961/1140, 23 June 1961: "It was not intended that the Code of Conduct contravene the provisions of the Geneva Conventions." The conflicts, such as they are, can be removed easily by issuing certain qualifications to a few absolute instructions contained in the implementing departmental regulations.

IV — THE CODE AND THE MAN

It has been said that "the misconduct of a minority in Korea, made it necessary to set down in specific words a Code of Conduct which had theretofore been traditional with most United States military men."¹ Many of the lesser failures of American captives occurred because they didn't know what was really expected of them in the prison camp environment. To face the enemy on the battlefield was one thing, but to meet him face to face in an interrogation room was something else.

The Korean war had three aspects. There was the civil war aspect — North Koreans fighting South Koreans for control of a divided country. There was the collective aspect — the first United Nations attempt to stop a treaty-breaking aggressor. And finally, there was the cold war aspect — the Western Powers blocking the expansion of Communist imperialism.² This was the first war in which America as a whole met its enemy — totalitarian communism. For it was not just young soldiers who faced the antagonist, but the entire cultural pattern from which they had come.

The causes of the war, United Nations objectives, and the need for American response were not clearly delineated in the public mind. This lack of understanding prevailed among the civilian populace as well as within military ranks. It might be that there existed a need for better coordination between the military, civilian educational institutions, churches, and patriotic organizations to provide U.S. service personnel with a better understanding of the American ideals. The young man who, upon entry into the military service, has not been taught pride in country and self and a sense of honor and duty must be accepted on those

terms. The man cannot be completely made over, even if the services had the time.

As everyone knows, 21 of the Americans captured during the Korean war decided to remain with the enemy — the only time in history that American captives have chosen not to return home because they preferred the enemy's form of government to their own.³ This action, of course, was all the more astonishing because the enemy's form of government was so unlike our own. Could it have been that they really didn't know enough about their own government? Possibly somewhere in the past someone failed them by not adequately instilling within them that pride of country for which, in the past, so many have died.

The Code of Conduct's high standards were set forth as guides for Americans in uniform. Backed by adequate training and education, they are to support the assurance of Armed Forces leaders that American fighting men will be fully prepared to meet the enemy on any front and under any conditions.

In Korea the United States had finished a war with an enemy who fought not only on the battlefield but in prison camps as well by manipulating the minds of the prisoners. The U.S. Government and military establishment had come to see that U.S. servicemen not only had to be trained how to fight physically, but they had to know how to fight back mentally and morally as well.

The Communists looked upon a prisoner in their hands as slave labor and as a tool of propaganda warfare.⁴ One verification is the following, which was presented by William E. Mayer, a U.S. Army psychiatrist, in a speech reproduced by Baylor University, Waco, Texas, in 1957. The document, obviously communistic, is not presented here

as an endorsement but merely for consideration and the fact that it contributes to the understanding of the approaches that the Communists used in their handling of the American prisoners in Korea. It comes from a message written by the Chief of Intelligence of the Chinese Peoples Volunteers in North Korea to Chief of Intelligence of Chinese Peoples Republic in Peiping, and the message — the original one that was intercepted was entitled, "An Evaluation of the American Soldiers"—literally translated, reads as follows:

Based upon our observations of the American soldiers and their officers captured in this war for the liberation of Korea from the capitalist-imperialist aggression, some facts are evident. The American soldier has weak loyalties — to his family, his community, his country, his religion, and to his fellow soldier. His concept of right and wrong is hazy. He is basically materialistic, and he is an opportunist. By himself he feels insecure and frightened. He underestimates his own work and his strength and his ability to survive. He is ignorant of social values, social conflicts, and tensions. There is little or no knowledge or understanding even among American university graduates of U.S. political history and philosophy; the federal, state, and community organization; states and civil rights, freedom safeguards; and how these allegedly operate within his own decadent system.

He is exceedingly insular and provincial with little or no idea of the problems and the aims of what he contemptuously describes as foreigners and their countries. He has an unrealistic concept of America's external and inherent, rather than earned or proved, superiority and absolute military invincibility. He fails to appreciate the meaning of and the necessity for military organization or any form of discipline. Most often he appears to feel that his military service is a hateful, unavoidable servitude to be tolerated as briefly as possible and then escaped from as rapidly as possible or he is what they themselves call a "peacetime soldier" who sees it only as a soft and a safe

job. Both of those types resent hardship and sacrifice of any description as if these things were unreasonable and unfair to them personally.

Based upon the above facts about the imperialist United States aggressors, the reeducation and indoctrination program for American prisoners proceeds as planned.⁵

This was the enemy we were fighting in Korea; this is the enemy we are fighting in Southeast Asia; and this, in all probability, will be our enemy in future conflicts. It is a truism that no nation can expect to survive unless it knows the nature of its enemy and unless it maintains both the moral and physical strength to defend itself against him. We know our Communist enemy and we will not be caught short.

A nation cannot guarantee survival to members of her Armed Forces, either in combat or captivity, and American fighting men don't ask for such a guarantee — they ask only for a fighting chance. The Armed Forces Code of Conduct was written for men of conscience and good faith — to help give them that fighting chance.⁶

Secretary Wilson's Advisory Committee on Prisoners of War, drafters of the Code, unanimously agreed that the military services should institute a two-fold training program to insure its maximum dissemination and to assist in preparing our fighting men for any contingency.⁷ The President of the United States contributed further when he stated in promulgating the Code of Conduct:

No American prisoner of war will be forgotten by the United States. Every available means will be employed by our Government to establish contact with, to support and to obtain the release of all our prisoners of war. Furthermore, the laws of the United States provide for the support and care of dependents of members of the armed forces including those who become prisoners of war. I assure dependents of such prisoners that these laws will continue to provide for their welfare.⁸

Thus we have seen evidence that indoctrination and training in the Code of Conduct for all military personnel is considered an important and valuable phase. The Committee made such a recommendation to the President, who in turn in his Executive Order stated in part,

. . . that every member of the Armed Forces is expected to measure up to the standards embodied in the Code and that in order to achieve these standards, each member of the Armed Forces liable to capture should be provided with specific training and instructions designed to better equip him to counter and understand all enemy efforts against him, and should be fully instructed as to the behavior and obligations expected of him during combat or captivity.⁹

The Secretary of Defense, in turn, promulgated a memorandum to the Secretaries of the Military Departments, dated 18 August 1955, to provide them with further guidance. This memorandum was cancelled by DOD Directive No. 1300.7, dated 8 July 1964, which establishes current policies and procedures and provides basic guidance for the development and execution of training, including instructional material, in furtherance of the aims and objectives of the Code of Conduct for members of the Armed Forces.¹⁰ Further, the objectives of the Directive were to insure that:

A. The Military Departments maintain energetic, uniform, and continuing training programs in behalf of the Code of Conduct, including training whereby individuals are taught to resist under the varying degrees of hostile interrogation.

B. All training programs in support of the Code of Conduct inculcate in each member of the Armed Forces:

1. A clear and uniform understanding of his obligations, responsibilities, and the behavior expected of him in combat or captivity.

2. A positive and unswerving belief in and devotion to the spirit and letter of the Code of Conduct, and the recognition that the Code is a binding military obligation.

3. An unqualified determination and belief in his ability to oppose and defeat physically, mentally, and morally all enemy efforts against him, his fellow servicemen, and his country during peacetime, combat, or captivity.

4. A confidence in his ability to deny information and to resist enemy interrogation, exploitation and indoctrination.

C. There is a consistency in all Department of Defense Code of Conduct training programs and training materials.¹¹

Upon receipt of this guidance, each of the military secretaries then promulgated instructions to their respective services. It is my intention to cover briefly and in part, only the Air Force and the Navy action along with several recommendations provided for Army aviation personnel. In this manner full duplication will be avoided, yet some idea as to the practices and procedures of the services will be presented.

Air Force. All commands instituted a three phase training plan to include at least 10 hours of training a year in support of the Code.¹² All members receive a general briefing on the Code and national policies under phase one which covers five major areas:

1. The Code and its purpose and meaning.

2. Resistance to enemy political and economic indoctrination. This calls for training in "basic truths and advantages of our democratic institutions as opposed to the fallacies of communism."

3. National, service, and unit histories and traditions.

4. Motivations of individuals toward

national aims "as opposed to those of the enemy."

5. Character guidance and encouragement of religious beliefs.

Phase two, a more specific form of survival and prisoner indoctrination, is given mainly to crewmen vulnerable to capture. It is patterned along the lines of the survival school at Stead AFB, Nevada, where fighting men get the unvarnished truth about POW treatment from those who know — the ex-POW's themselves.¹³ The third phase of training is for specialized personnel and includes classified intelligence subjects.

Of the minimum 10 hours of annual Code training, 2 hours should be dedicated to the Code itself, its purpose and meaning, with other sessions devoted to other subjects.

Navy. Bureau of Naval Personnel Instruction 1610.9C of 22 September 1964, *Bureau of Naval Personnel Manual*, NAVPERS 15791A, revised 1959, and *United States Navy Regulations*. 1918 provide the current guidance, relative to the Code of Conduct, for the naval service.

The Bureau of Naval Personnel Manual states in part that "... the training and education program of each command shall include instruction in the Code of Conduct and shall be designed to present a clear realization to the serviceman that the full and loyal observance of the spirit and letter of the Code is in the best interest of the Nation, the Naval Service, his shipmates, and himself."

For enlisted personnel, when the Code has been explained for the first time, an appropriate entry shall be made on the Administrative Remarks page of the Enlisted Service Record.¹⁴

Navy Regulations states in part that "the Code of Conduct shall be carefully explained to each Navy enlisted person":

1. Within 6 days of his initial enlistment.

2. After completion of 6 months' active service.

3. Upon the occasion of each reenlistment.

Instruction in the Code shall be included in the training and educational program of the command, and a text of the Code of Conduct shall be posted in a conspicuous place, or places, readily accessible to the personnel of the command.¹⁵

Bureau of Personnel Instruction 1610.9C's purpose is to insure that training programs incorporate policies and procedures for training in the Code of Conduct. Paraphrased, it states in part that commanding officers will provide education and training in the Code to conform with guidance provided by the Department of Defense. Instruction and application of the Code will be effectively included as an integral part of a Command Leadership Training Program. That for technical training, two hours outside the normal work week shall be devoted to material presentation. During recruit training this instruction shall be given during normal instruction time.¹⁶

The following recommendations are those given to assist Army aviation personnel to withstand encroachment of Communist psychology. They were made in November 1948, several months before the outbreak of hostilities in Korea, and are based upon personal experiences of a field grade officer in a Japanese prisoner-of-war compound and are still considered valid.¹⁷ In part, they are:

1. POW survival should be studied just as thoroughly as arctic and jungle survival.

2. Physical training of the combat troops should be greatly intensified — the soldier should be at his best, mentally and physically, at time of capture.

3. The education and indoctrination program should give a *true* picture of the enemy's treatment of prisoners; "to be forewarned is to be forearmed."

4. A study of the psychology of the enemy's treatment of POW's should be kept up-to-date through all intelligence sources.

5. Discipline of the mind, physical adaptability, and flexible behavior patterns should be strongly stressed in training periods.

6. Ex-POW's could assist in briefings before missions by presenting helpful hints from personal experiences such as proper clothing, food, how to avoid breaking security, and importance of a hobby.

As a part of a resistance training program, troops should be taught the specific ways in which acts of participation aid the enemy's propagandistic cause and endanger the security of the United States. Enemy psychological warfare tactics should be understood by our soldiers in the context of the Communists' broad strategy of external warfare. Finally, the POW should be taught the skills required to activate and operate covert resistance organizations in internment and how to escape the captor and survive under difficult conditions.¹⁸

V — COUNTERCHARGE

In the years following the American Revolution vast confusion of thought as to what was required to insure the survival of the American way of life existed. Some argued that the military should be eliminated altogether, while others such as Thomas Jefferson, one of the great architects of democracy, warned: "We must train and classify the whole of our male citizens and make military instruction a regular part of collegiate education. We can never be safe until this is done."¹

The military way is a long, hard road requiring the maximum from each individual — in times of war the demands are even higher. If nothing but fear of punishment was depended upon to hold men to the line during extreme trial, the results in all probability would be wholesale mutiny and a situation well beyond the control of adequate and qualified leadership. Self-sacrifice and a supreme devotion to duty are the prime ingredients of the dedicated professional.

Much controversy and much debate have been generated regarding the conduct of the American fighting man in Korea. When the first prisoners of war were taken by the Communist forces, they immediately became the subject of an intensive Communist propaganda campaign. During the war itself the controversy increased in intensity, until, eventually, prisoner issues became the professed "stumbling blocks" in the long-drawn-out truce talks, delaying its termination.²

Upon repatriation, the 4,428 Americans who survived the enemy prison camps became the subjects of another type of propaganda — propaganda by Americans, about Americans, directed to Americans.³ Reports were circulated, as has been previously noted in this paper, that as many as one of seven American prisoners collaborated with the enemy, betrayed their buddies, signed self-incriminating statements or statements that incriminated their Government. The widespread publicity given to reports of this nature and the wide dissemination of the view that the Korean events are conclusive demonstrations of social decay in American society have not gone completely unchallenged. It is intended that this chapter will present a portion of those challenges as the challengers in turn make their countercharge. In doing so they face no simple task, as those who

attempted to correct disorted interpretations of the events in Korea encountered a number of great difficulties, particularly when they wished to do so within the format allowed by mass-circulation media.⁴ No scholarly history of the events of the Korean episode was prepared. Government security regulations prevented access to the basic sources by non-government scholars and by many within the government who are interested but did not possess a "need to know."

An examination will be made of the general characteristics of those who were classified upon repatriation as either resisters, collaborators or middle ground personnel in an attempt to discover a common denominator. Finally, the ideas of some as to why our personnel in Communist prison camps performed as they did will be viewed in a constructive and extenuating manner.

Well over a hundred separate scientific studies of prisoner behavior in those camps have been conducted, and it can be definitely stated that U.S. personnel in Korean prison camps behaved as well as military men have acted in any war in which this country has engaged — despite the fact that they were subjected to treatment never experienced in any other war.⁵ Of the 7,190 Americans taken prisoner over 90 percent were taken during the first 12 months of the conflict, and most of those remained until hostilities ceased about 3 years later.⁶ No one will deny that 3 years should be more than adequate to separate the men from the boys. By any yardstick, in the Korean struggle — the first armed clash with communism — U.S. prisoners were treated in a manner heretofore unknown. More than a fifth of returnees were, in spite of the fattening period just prior to repatriation, diagnosed as suffering from malnutrition. The average weight loss in captivity was 21

pounds, and some 257 of them had lost 40 pounds or more.⁷ Malnutrition posed a greater threat than starvation. Most POW deaths were caused by lack of proteins, minerals, or vitamins rather than by caloric deficiencies.⁸

The first ordeal a prisoner had to suffer — and perhaps the worst — was the march from the place of capture to one of the prison camps. The marching prisoners were beaten and kicked. A number of the North Korean officers were bullwhip barbarians, products of a semiprimitive environment. On one of the so-called death marches, 700 men were headed north, but before the camp was reached 500 men had perished.⁹ Upon arriving at the prisoner-of-war camp the survivors were put through a starvation period designed to kill the weak and the wounded. It isn't true that the Communists want to convert the weakest men. They want only those of the strongest will, believing they will make the best Communists.¹⁰

The Communist captors viewed the prisoner primarily as a rich source of potent propaganda material. By means of a heavy barrage of indoctrination, they attempted to convert American prisoners of war to communism. This is borne out by these facts: 97 percent of the returned POW's were subjected to enemy indoctrination during internment, and virtually all received some form of an indoctrination lecture; 83 percent were required to attend group study periods; 43 percent attended smaller discussion groups and conferences while 27 percent attended public gatherings called by the captor.¹¹ The overriding theme stressed in indoctrination was the social and economic merits of communism as against the "sins" of American capitalism.

To carry out this program of POW exploitation the Communists used three major techniques:¹²

Rewards and Punishments — a system which played upon the natural tendency to seek pleasures and avoid pain.

Divide and Conquer — a system which denied the prisoners normal sources of leadership and encouraged divisiveness and suspicion among them.

Idea Environment — a strictly controlled environment with no friendly news sources (radios, newspapers, letters) coupled with a heavy diet of Communist news.

Interrogation was both verbal and written, with approximately 60 percent being verbal.¹³ Autobiographies were required and completed by 91 percent of all the POW's in Korea. Thirty nine percent admitted signing propaganda petitions.¹⁴ As one POW stated in part upon repatriation:

I discovered how easy it was to come out on the losing end of a battle of wits with the interrogator. They had all the advantages, plus being highly trained in the art of interrogation, and I had only been given a few hours training in how to resist . . . I was reasonably sure my interrogator already knew the answers to most of the questions which I refused to answer, but this was part of their technique to further confuse and baffle me.¹⁵

This POW was forced to stand continuously for 154 hours, more than 6½ days, and was under interrogation for over 60 hours, having slept less than 1 hour in almost a week.¹⁶ He had spent 222 days in solitary confinement.¹⁷

The real tragedy of the American prisoners in Korea who gave comfort to the enemy is not what they did under pressure but the fact that they were totally unprepared for that pressure. The best prepared, frontline soldier is helpless unless he knows what he is fighting for. The most vulnerable prisoners lacked moral convictions and a sense of their own inherent dignity. They had gone to war without realizing

the importance of the conflict and had marched off to prison without knowing they were still at war. An Air Force-established board of general officers who reviewed the case of 83 officers and airmen who had made false confessions or who were accused of collaboration stated: "that the briefing and indoctrination given U.S. combat personnel as to their conduct as prisoners of war was inadequate and confusing."¹⁸

Gen. John E. Hull, U.S. Army, (Ret.), commander of the forces in the Far East during the Korean war and an acting Chairman of the Defense Committee which wrote the Code, stated further:

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. I have a very firm belief that the youth of this nation, if they fully understood the Communist system, would never question our system. But I do think that Communist soldiers are much more fully indoctrinated than ours are. The schools have a responsibility here. When an American youth enters the military service he should know what his country stands for. The services should not be called upon to teach it to him.¹⁹

The Senate Permanent Investigating Subcommittee, which had been studying Communist interrogation, indoctrination, and exploitation of American military and civilian prisoners, stated that: "the military Services are to be criticized for not having fully adapted their training programs to prepare troops for the problems encountered in Chinese Communist prison camps during the Korean war."²⁰ The Committee noted, however, that the Chinese Communists and North Koreans violated numerous articles of the Geneva Conventions by "their use of isolation techniques, their shackling of prisoners, their exposure of prisoners to the curiosity of the local populace, their inadequate medical attention, poor

clothing, gross inadequacy of foods, improper hospital facilities, the inadequacy of Chinese doctors, and physical mistreatment of American prisoners."²¹

The resistance of the American prisoner of war to Communist methods of indoctrination is disclosed in one captured Chinese document which states: "It will take more than indoctrination schools to persuade most Americans that their way of life is not better than any other."²² The variation in response to Communist pressure and indoctrination was extreme. The ground force, captured early in the conflict, who seemed to come from units that had not developed high social cohesion and who suffered extensive mistreatment after capture apparently supplied most of the collaborators. The Korean conflict would indicate that the troops were not prepared or trained for the type of POW situation to which they were exposed.²³

The Korean war was the first war in American history, except perhaps for the Indian struggles, which was not a crusade.²⁴ At the beginning of the war the U.S. Army was inexperienced. The units pulled suddenly out of the soft life of occupied Japan and thrown into a fight against a more numerous foe found the going tough. The first U.S. troops to reach Korea were the 406 men of Task Force Smith, approximately half a battalion of the 21st Infantry Regiment (two infantry companies and one battery of artillery) of the 24th U.S. Infantry Division, which arrived on 1 July 1950.²⁵ Elements of the 34th Infantry arrived at Pusan on 2 July 1950 with a continued increase in the U.S. personnel commitments thereafter.²⁶ By the spring of 1951 the 8th Army had been rebuilt into a tough, battle-experienced fighting force.²⁷

The rotation policy of the Korean

conflict contributed to the poor acceptance of the war by the U.S. troops. In World War II soldiers were in for the duration; they could only achieve their personal goal of getting home when the Government achieved its political goal of military victory. Rotation in Korea divorced these two areas in that the aim of the majority was merely to endure 9 months at the front and then get out. For the first time in American history a major war was being fought without adequate motivation both in Korea and the United States. In May 1952, during the Korean war, 83 percent of a cross section sample of 2,975 university students were found by Cornell University social scientists to be essentially negative toward their military service obligations.²⁸

There has been almost unending criticism of Korean prisoners of war because they supposedly did not escape from their Communist captors. This "no escape" charge is qualified by critics with the statement that there were no escapes from "permanent prison camps." The use of this distinction is important in that 647 men did escape after being captured by the Communists, but before they were interned in the maximum security camps.²⁹ The escape record of American prisoners in Korea has never been told in full and probably never will be. The escape record maintained during the hostilities, the identities of escapees, and any details of their exploits were kept secret.

Even greater obscurity surrounds unsuccessful escapes. About 4 percent of all Army repatriates and 15 percent of the Air Force returnees told corroborated stories of having broken out of the places at which they were held by the Communists.³⁰

The experience and behavior of the U.S. troops captured in Korea revealed

a need for measures designed to offset the enemy's planned program of prisoner exploitation. In preparing a program of indoctrination and training which would provide an adequate defense against the Communists, in the event of capture, an attempt was made to determine the differences between performances from the various services. Military figures indicate that U.S. military personnel with comparable backgrounds and in comparable situations reacted almost identically regardless of branch of service.³¹

Upon repatriation the 3,323 Army prisoners of war were placed into one of three groups by Army researchers who studied their personal histories and camp conduct. The breakdown was as follows:³²

Participants (15 percent) — Court-martial and dishonorable discharge cases plus those who would have fallen in that category had they not been discharged from the military service.

Middle (80 percent)—POW's about whom the Army had compiled little or no derogatory information or conflicting information.

Resisters (50 percent) — POW's decorated or recommended for decorations as a result of their meritorious behavior in captivity plus those who had committed at least two distinct acts of resistance in internment and against whom there was no derogatory information.

Of this group 579 middlemen and 138 resisters were screened in an attempt to determine common factors which differentiated those POW's who resisted exploitation from those who participated in the enemy's program. A sample was selected to reflect the same proportion of ranks, races, months of military service, months in captivity, and principal places of internment. The following is a random sampling of

some differences between the three classified groups:³³

1. Few significant differences in background were found between the participators and the resisters. The participators were of lower intelligence than the resisters, and a higher proportion of the resisters had been decorated prior to Korea.

2. Resisters, because they yielded less readily, were interrogated more extensively and intensively than were participators.

3. The participators received virtually all the preferential treatment given by the captor.

4. The resisters received most of the pressure, including threats and abuses, meted out by the enemy.

5. Participators received more indoctrination than resisters.

6. The resisters showed more concern and compassion for their fellow POW's than did participators.

7. The participators came back from Korea in better physical health than resisters; psychologically, however, a greater number of the participators came back with neurotic symptoms.

8. Middlemen were less educated, less intelligent, and "greener" soldiers than either participators or resisters.

9. A smaller proportion of middlemen were married and they came into the Army less frequently than their fellow POW's with backgrounds in the entertainment or athletic field.

10. Middlemen got less of the captor's rewards.

The Army POW's in Korea showed a marked lack of esprit de corps, cohesiveness, and mutual concern.³⁴

1. Ten percent of the POW's informed on a fellow POW at least once during internment.

2. Over a third of the POW's showed little or no concern and com-

passion for their fellow POW's in internment and only 13 percent showed a strong concern.

3. Half of the POW's never encouraged another POW to resist, and only 10 percent gave a great deal of such encouragement.

4. One-fourth of the returning POW's report being aware of the outright mistreatment of prisoners by their fellow POW's, including beatings resulting in death.

5. Only 16 percent of all POW's were affiliated with a prisoner camp organization of any type during captivity.

The following are some of the characteristics of the Army POW's who returned from Korea.³⁵

1. Their average age at capture was 21 years.

2. The average POW had a ninth grade education.

3. Five percent were officers, 38 percent were noncommissioned officers, and 57 percent were enlisted men below the rank of sergeant.

4. Seventy-five percent were members of the Regular Army, 10 percent were from the Enlisted Reserve and National Guard, and 15 percent were draftees.

5. Eighty-five percent had over 3 years of military service.

6. Fifty percent had less than 1 month of foreign service prior to Korea.

7. Eighty-four percent had no combat service prior to Korea.

8. One percent had been POW's before.

In summary, Army figures indicate that there were 5 percent resisters, 80 percent middle ground and 15 percent collaborators. Among officers they found the middle ground shrunken below its 80 percent norm; most officers, as would be expected in a leadership

group, vigorously took sides.³⁶ Among men of long Army service, the middle ground was low as more took active sides — either to resist or to collaborate.

The record of Negro prisoners in Korea indicated that 2.5 percent resisted, while 21 percent collaborated.³⁷ Other prisoners pointed out the fact that the Chinese spent far more time working on the Negroes, since Communists spent much time fomenting race hatred in non-Communist lands.

According to the figures of an Army psychiatrist, two officers actively resisted for each who collaborated, and among regular Army enlisted men, one collaborated for every resister, with few in the middle-ground group.³⁸

Most significant were the differences in physical condition. The resisters had received a higher number of battle wounds while few of the collaborators had been wounded.³⁹

As to the overall conduct of prisoners of war in Korea, a major finding of the Bendetsen Committee in its report to the Secretary of Defense was that the average serviceman shares the general attitudes and values of the American public of which he is a part. There is little evidence to support the view expressed in some quarters that the serviceman lacks an awareness of the Communist threat. It was further stated that the Committee subscribed in full to the Report of the Defense Advisory Committee on Prisoners of War which found that, "with notorious exceptions, the prisoner of war performed in a manner which did credit to his Service and his country."⁴⁰

Over 87,000 U.S. officers and men received combat decorations for performance of duty above and beyond the call of duty; 79, or about two and a half times as many as those proven traitor, were awarded the highest

honor the United States can bestow, the Congressional Medal of Honor.⁴¹

The following tribute was paid by Navy Secretary Robert B. Anderson to five Marines decorated at a Pentagon ceremony on 11 January 1954 for heroism in resisting tortures at the hands of the Communists while held prisoners of war when he stated in part:

They returned as victors of one of the strangest and most unequal encounters of the Korean conflict. As prisoners of war, physically at the mercy of their captors, they successfully frustrated the enemy's concerted attempts to obtain their collaboration for his evil purposes. Although tortured, starved, and threatened with death, they refused to participate . . . In doing so, they won a shining moral victory.⁴²

Questionnaires to determine the attitude of military professionals toward the Code of Conduct were completed by student members of the Naval Warfare and Command and Staff Classes of 1967, Naval War College, Newport R.I. These students represent each of the military services, comprise the top 25 percent in promotion potential of their respective year groups, possess outstanding leadership qualities, and represent a vast range of experience. They include many former commanding officers.

Of 143 completed questionnaires, 125 students indicated that a need exists for a Code of Conduct; 91 believed that the present Code of Conduct fulfills that need, while 12 definitely stated it did not; 83 stated that the present Code leaves no doubt in their mind as to what is expected of them should they become prisoners of war, and 32 indicated some doubt. A significant factor is that 49 of the 143 indicated that a need for improved training or instruction in the Code exists.

VI — CONCLUSIONS AND RECOMMENDATIONS

The Code of Conduct grew out of the Korean war. Prisoner-of-war performance was the subject of much controversy, both during the fighting and following the cease-fire agreement. Numerous newspapers, magazines, books, and official studies contributed to the discussions in which such charges as "one of three collaborated" to the conclusion "that of 4,428 returnees, only 425 — about six percent of the total prisoner population of 7,190 — could be suspected of misbehavior and of which only 11 were convicted by court-martial." The tragedy of the American prisoner in Korea is not that he gave comfort to the enemy under pressure but that he was totally unprepared for what he had to endure.

It is impossible to establish and corroborate the true account of North Korean prison camp happenings. However, considering the nature of the war and the unprecedented tactics employed by the Communist captors, Korean prisoners of war behaved no worse than those in previous wars.

A Code of Conduct, properly instituted, can be a useful and worthwhile controlling device. Functioning as an instructional vehicle, it can form the focal point of a program designed to "stress the importance of avoiding capture while outlining expected behavior if it occurs." Further, it can provide helpful guidance during periods of extreme trial when the body is weak and the mind falters.

The present Code of Conduct, as promulgated by Executive Order Number 10631 on 17 August 1955, fulfills the requirements and is the workable tool necessary to provide these services. The Code was not intended to replace the Geneva Conventions Rela-

tive to the Treatment of Prisoners of War of August 12, 1949, but to render additional support and to meet necessities when a detaining power, in fact, does not accept the Geneva Conventions. In this light, however, the Code and the Convention are incompatible and inconsistent in certain areas. These areas are as follows:

1. Resistance — in that the Code stresses “continued resistance by all means available” while the Convention provides “humane treatment at all times.” Carry the fight to the camp but expect humane treatment in return?

2. Escape — as related to medical personnel and chaplains, the Code’s requirement that they make every effort to escape and thus “desert” those who need their medical and religious services.

3. Parole — same application toward medical personnel and chaplains “when necessary to attend POW’s in other hospitals, camps and labor detachments or when it contributes to the health and well-being of a sick or wounded prisoner” or to sick prisoners who might be repatriated.

4. Take Command — situation whereby one man acting as POW Representative and as Senior in Command “is faced with separate requirements of action originating from the Code and the Convention.”

5. Name, Rank, Service Number, Date of Birth — conflicts with

the Convention’s “Capture Card and personal correspondence” privileges.

To better prepare the American serviceman for the conflict now existing in Southeast Asia and for future Communist challenges, the following is strongly recommended:

1. Increased efforts in military training, discipline, and esprit de corps.

2. Adequate and thorough indoctrination of all individuals in the proper methods and techniques to resist capture, evade, escape, and survive if captured.

3. Increase the will to resist of every individual through an intensive study of American democracy as compared to Communist ideologies. Insure that the fighting man understands his proud heritage.

4. An intensification in the inculcating of religious motivations to provide the necessary weapons of faith and courage.

5. Intensive training to improve and maintain physical and mental endurance.

6. Insure an adequate understanding of individual rights and privileges as a captive, as pertains to international and military law.

7. That the Code of Conduct or its amplifying directives/instructions be revised to correct the incompatibilities and inconsistencies with the Geneva Conventions of 1949.

8. That a renewed effort be made to insure that Code of Conduct instruction and training programs are established and are being properly administered by well-qualified personnel on a continuing basis.

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APPENDIX — QUESTIONNAIRES CODE OF CONDUCT

From 143 questionnaires completed by Naval War College students of the Naval Warfare and School of Command and Staff Classes of 1967, three of the questions immediately pertinent to the conclusions of this paper are presented. The numbers in parenthesis indicate total checking that particular answer.

1. Do you believe that a need exists for a Code of Conduct? (125) Yes, (18) No.
2. Do you believe that the *present* Code of Conduct fulfills that need? (102) Yes, (18) No, (15) N.A. (Not Applicable) (4) Partially, (4) Not Answered.
3. Does the present Code of Conduct leave any doubt in your mind as to what is expected of you, should you become a prisoner of war? (36) Yes, (103) No, (4) Not Answered.

The following is a random sampling of some of the answers received from those who believe that there is *no* need for a Code of Conduct:

"The essence of the Code is inherent in basic Marine training with emphasis on the individual Marine's responsibility to his fellow Marine . . ."

"Not for the purpose and in the sense it now exists. Currently it is nothing more than quasi-criminal statute originated for the purpose of prosecution . . ." "It is a redundant Code that merely mouths in a general way oaths of office and pledges of allegiance that have existed for some time . . ." "The present Code is an inadequate attempt to correct a basic fault in American education . . ." "Loyalty to one's country is built through an understanding and appreciation of the basic principles of that country, not simply signing a pledge . . ." "A man's conduct is a result of his character; written words will not supply the deficiencies . . ." "Those who lack loyalty, patriotism, or responsibility will not achieve these qualities by signing a piece of paper that they have read and understood a Code . . ." "The present Code is humiliating to the professional by its very existence . . ." "It is a collection of platitudes which a military fighting man should not have to carry around on a card as a hip pocket reminder . . ."