

1978

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Harold L. Hitchens

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Recommended Citation

Hitchens, Harold L. (1978) "Factors Involved in a Review of the Code of Conduct for the Armed Forces," *Naval War College Review*: Vol. 31 : No. 2 , Article 7.
Available at: <https://digital-commons.usnwc.edu/nwc-review/vol31/iss2/7>

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After the release of U.S. PWs in early 1973, the Department of Defense prepared a plan to review the Code of Conduct. In this article, a slightly revised version of a paper prepared originally for presentation at the March 1977 meeting of the International Studies Association, Dr. Hitchens discusses some of the factors which should be considered in a review of the Code, examines some of the experiences with the Code which underlie these factors, and comments on the findings and recommendations of the DOD Review Committee.

FACTORS INVOLVED IN A REVIEW OF THE CODE OF CONDUCT FOR THE ARMED FORCES

by

Harold L. Hitchens

Background. The Code of Conduct was developed in 1955 following the Korean War. It was felt that American troops needed guidelines to cope with interrogation and indoctrination techniques used by the enemy during that conflict, and to reduce the incidence of what was considered as misconduct in captivity by some American prisoners of war (PWs). The Code included six Articles and an "explanation" of each. Following is the text of the Articles. The explanations are omitted here but may be found in the cited reference.

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

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."

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."

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

48 NAVAL WAR COLLEGE REVIEW

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."

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."

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 in the United States of America."¹

From the very beginning, operation of the Code led to considerable controversy and calls for its review or revision. Four of the Articles—I, II, IV, and VI—are all platitudinous in tone and were not the sources of any great discussion. Article III, with its call on PWs to "continue to resist by all means available" and to "make every effort" to escape did lead to some questioning, but it was Article V which created the most difficulty. It attempted to spell out restrictions on the information a PW could provide while in the captor's control.

Calls for a revision of this Article and the Code as a whole became increasingly frequent after the beginning of large-scale American participation in the war in Southeast Asia. What were the factors seen as important elements in such a review?

Certainly, the passage of time since 1955 is a primary factor. There was the accumulation of experience in application of the Code of Conduct in Southeast Asia and in other circumstances. There was also the realization that the

Code had been based primarily on the Korean experience; it was therefore natural that there should be an inquiry concerning its application to other experiences. This was reinforced by the fact that the interpretation of the experience of American PWs in Korea which prevailed in the United States in 1955—and which influenced the decision to promulgate a Code—was modified to a considerable extent by research done in the following years. Finally, there was the likelihood that the United States might have to prepare for what was likely to take place in the next 10 or 15 years—another in the periodic international reviews of the laws of warfare. In such a review, America's experience with its Code of Conduct would play a primary part.

There have been questions about the feasibility of changing the Code of Conduct. Some persons are doubtful that the Code could or should be substantially changed. Circumstances would never be the same in any future war. Just as an honor code going beyond "... will not lie, cheat, or steal" is practically impossible to further define—so it is, say such observers, with the Code of Conduct. This, of course, can be countered by the argument that there are many variations in honor codes and codes of ethics, and that we know they have changed over the years. The argument that changes would be infeasible is therefore not valid. There might, of course, be other reasons why a review would not result in any substantial changes—any public mystique the Code of Conduct might have acquired, partly as a result of media and other public discussion; the natural inertia that operates to impede change; and possible technical and legal problems in service disciplinary codes should the Code of Conduct be substantially changed or abolished. The last might be pertinent even if it is recalled that U.S. military services had operated without such a Code for 180 years before 1955.

A final fact to be considered in evaluating the need for a review is the imperative for change many see reflected in the revised expectations regarding fighting men held in captivity by an unscrupulous foe. These expectations often took on the character of obligations under the Code of Conduct but also were influenced by the evolution of various practices—resistance as well as some accommodation—during the time prisoners were in the captor's control. The strength of feelings involved led to the emergence of interests which varied considerably in their conclusions about the captivity experience and hence in their recommendations for any change (or opposition to change) in the policies involved. Some have felt it is impossible to come up with anything more tangible than a wide span of findings about behavior in captivity.

Utility of a Code of Conduct. A critical element in any review or evaluation of the Code of Conduct is undoubtedly an assessment of its "utility," vague as such a term is, qualified by how and whether "utility" can be measured, and influenced by the political and psychological considerations alluded to above.

"What was the Code intended to do?" might be a starting point for any attempt to assess its "utility." One author (Kinkead) has stated categorically that it was promulgated as an attempt to prevent repetition of the type of American PW behavior which took place during the Korean War. He called the Code of Conduct the most significant result of the Army study of the behavior of its PWs in North Korea. Issuance of the principles of the Code meant, he said, that the Government of the United States "... because of what happened in the prison camps of the Korean War, is prepared to try to mold a new set of fundamental attitudes in its citizens in the armed forces. . . ." He

noted then that the report of the committee which issued the Code concluded with the statement, "The Korean story must never be permitted to happen again."²

The validity of the assessment of the American PW experience in North Korea underlying such a position has been seriously questioned in much post-1955 research, but will not be looked at here. Instead, we will ask whether the Code has demonstrated utility as measured either against the perceived nature of the Korean experience or the letter and intent of its Articles.

The first (some say superficial) answer is that it has not. Nearly every American military man detained or held as a PW in the years since 1955—in "cold war" incidents, the capture of the U.S.S. *Pueblo*, the war in Southeast Asia—was unable to abide by the letter of the Code as interpreted in the Department of Defense (DoD) publications dealing with it. The Pike subcommittee report on the *Pueblo* hearings, e.g., said that the committee was "unaware" of any member of the crew who did not in some degree violate the Code of Conduct.³ Virtually every American prisoner in Southeast Asia confessed to providing the enemy with more information than that authorized by the strict interpretation of the Code—name, rank, serial number, and date of birth. If there ever was a myth that the American fighting man could withstand torture and abide by the Code, it was shattered in the Vietnam War, said a writer in the *Armed Forces Journal*.⁴ The interrogation techniques of the North Vietnamese—especially torture and harassment—were the principal reason for this (plus to some extent the enemy's concentration on extracting media propaganda rather than military intelligence). Experts on PW experiences since World War II have stated that there is no such thing as resisting determined combat interrogation. We might add here the comment of the commanding officer of the *Pueblo*, "When and if

50 NAVAL WAR COLLEGE REVIEW

ever I get the chance, I would inform my superiors that the Code of Conduct was unenforceable and impractical and unrealistic in a case such as ours, when an entire ship's company with some documents falls into the hands of a ruthless enemy who doesn't shrink from applying torture methods to extract what they [sic] want."⁵

Thus, looked at literally, the Code apparently did not serve the purposes held out for it. It has been argued that the Code still has a basic spiritual utility—that it serves as a benchmark, sets forth principles an American fighting man should look on as guidelines, and is a moral guide akin to the Ten Commandments (no matter how often broken).

Data from the Returnees. In any discussion of the "utility" of the Code of Conduct, the testimony of men who actually had to apply it as prisoners—and who have returned—will have to play a role. The specific observations of Southeast Asia returned PWs will not be discussed here, but it can be said that returnees differ greatly on particular aspects of the Code. Classified data is available, and surveys and studies of the views of the returnees have provided a great deal of information. The weight to be assigned to their opinions will, of necessity, be a policy decision, since a great deal of emotion is involved. It is natural to listen carefully to the returnees' views. On the other hand, there are significant variations within their attitudes toward the Code of Conduct and possible changes to it; there is the question whether some of their views may have changed in the period since their release; the views of a sizable number of American PWs will never be known (those who were killed or died in captivity); and finally, the returnees' views must be considered in the context of the broader effects of actions with respect to the Code of Conduct. The last is especially significant when we

realize the future conflicts will not replicate the conditions of the Southeast Asian war.

Particular Factors and Problems.

Guidance and Training. Implementation of the Code of Conduct in the guidance and training programs of the services has resulted in identification of a number of substantive problems. In the discussions leading to the Code of Conduct, as Biderman states, there was continual stress that any "solution" must be in the form of a simple rule that troops could easily comprehend and follow. But, as he pointed out, complex problems don't necessarily have simple solutions. There were clearly conflicting positions on what an American PW could or should do in captivity. The final form of the Code, says Biderman, reflected the [Defense Advisory] Committee's "ingenious" satisfaction of these conflicting positions, "... while at the same time it adhered to the political requirement that final policy on a matter of such great public interest must be uniform for the Services."⁶

Nevertheless, there were differences almost from the beginning. While the report of the Defense Advisory Committee setting forth the Code of Conduct authorized American PWs to fall back, under pressure, to successive lines of resistance to interrogation (as far as information divulged to the enemy), DoD pamphlet 1-16 implementing the Code required a PW to stand fast on one line—name, rank, serial number, date of birth.⁷ And, as late as 5 June 1967 in DoD GEN-28 (after years of experience had demonstrated that American prisoners and detainees had almost universally departed from such a rigid practice), the American PW's guidance was expressed in the following language:

The prisoner of war may be subjected to an extreme of coercion. Still, he must resist to the limit of

his ability. He can't expect to fall back to successive lines of resistance. Once he has gone beyond the first—name, rank, serial number and date of birth—in almost any respect whatever, he has taken the first step leading to collaboration. On the first line he must endeavor to stand to the end.⁸

What was the basic difficulty? It was the undeniable fact that the problems and personnel of the various services were different. Many observers have noted, for example, the great contrast between an officer of the Strategic Air Command, carefully selected and highly trained in sophisticated tactics and missions, and the average member of an Army rifle company. The backgrounds of the two were totally different, the treatment they would be given as PWs would undoubtedly vary considerably, and the former, in view of their background and training, could be given a latitude in resistance techniques that might not be necessary or desirable in the case of the latter.

The Air Force position on guidance and training on the Code of Conduct has generally (except when interdicted by the Office of the Secretary of Defense (OSD)) taken off from such an assumption. Flying personnel differ from ground force personnel in that they are higher in rank, possess information which is more important and less likely to become obsolete, are less likely to have had a choice between capture and continued resistance, and historically were subjected to more intensive exploitation attempts. All are volunteers for hazardous service to their country. These are the kind of "troops" Air Force generals have in mind when they consider training for the event of capture or when they think about the motivational aspects of Code of Conduct training.⁹

The Army problem is considerably different. The bulk of its troops liable

to capture are enlisted men, often with little education and training. These real differences in combat manpower, Biderman notes, have affected perceptions of the PW problem held by the Army and Air Force staffs, and, presumably, prisoner behavior. While the Air Force has insisted on a policy that could fully utilize the intelligence, dedication, and resourcefulness expected of its combat crews, Army spokesmen have argued for a "simple policy that every soldier could understand."¹⁰

OSD strove valiantly to encourage a common approach to the Code of Conduct. In testifying before the Pike subcommittee investigating the capture of the *Pueblo*, Brigadier General Benade, of the OSD office responsible for the monitoring of the Code, argued that the services tried to have uniform regulations to implement it. He said that he wasn't aware of a factual basis for the belief that the Air Force interpretation of the Code was more liberal, and that in cases since 1955 there was no difference in the way the various services applied the Code.¹¹

The fact is, however, that the differences were real, and they marked the services' presentations to the original Defense Code of Conduct committee. After the promulgation of the Code, the Air Force, anticipating that the problems of its crew members in captivity would be different from those of other members of the armed services, placed great emphasis on resistance techniques. All these take more time, however, so it was necessary to accept avowed differences in training requirements among the services and apparently slight Army and enlisted personnel, for whom it proved difficult and impractical to allow so much time on resistance techniques.

The Army, and for a time the other services besides the Air Force, felt that training troops for fallback positions under severe interrogation would weaken their will to resist and lead to other dangers. This was scoffed at by

52 NAVAL WAR COLLEGE REVIEW

Brig. Gen. S.L.A. Marshall, who had worked with the committee which promulgated the Code. His assessment, as given in *The New Leader* of April 1969, was that:

Far from limiting the American POW to name, rank, serial number, and age under interrogation, the Code frees him to resist by discussing almost anything... provided he does not betray the interests of the U.S. to its allies, or do anything to hurt his fellow prisoners... It was written in 1955 specifically to give the POW this much freedom of action and to cut away from the former demanding requirement that was both unworkable and contrary to nature. But minds great and small have become confused by one article of the Code that contains an ambiguity. "I am bound to give only name, rank, and service number." This has been mistaken as meaning that the POW may recite only these things and then must clam up. What it means is that he is compelled to give this much information... The next sentence (says)... "I will evade answering further questions to the utmost of my ability." The key word here is "evade," which is quite different from "avoid" or "refuse." Its sense is that a PW may fence with his captors... There is nothing wrong with the Code. The fault is that the Services, with the exception of the Air Force, did not try to make it work.¹²

The basic issue remains, as Lt. Col. Michael P. Murray noted in 1973, "... how can we develop a single set of prescriptions that will assure survival as well as resistance..." and phrase the prescriptions in "unequivocal language" that will suffice to meet the needs and

understanding of individuals with low levels of intelligence, education, and experience, as well as the educated, superior ones.¹³

Modifications in the Code of Conduct (as actually practiced) since 1955. As noted above, virtually no American PW or detainee from the date the Code was promulgated was able to abide by it strictly, as it was interpreted in the implementing directives. Classified sources, particularly the reports of the returnees, are full of the details of the numerous, and in many cases ingenious, ways in which the PWs modified the Code to cope with the circumstances imposed on them by unscrupulous enemies. Data from classified sources will not be used in this paper; there is sufficient information in published sources to indicate the general kinds of modifications made by the prisoners. They consisted basically in the provision to the enemy, under duress, of varying types of information beyond name, rank, serial number, and date of birth, and in making of propaganda statements for enemy use. The modifications were, of course, far more intricate than such a simple statement can convey. In addition, the injunction of the Code to attempt escape and resist the enemy activity were, to a great extent, disregarded, or at least interpreted in a far more shaded fashion than permitted by a literal reading of the words of the Code. It is apparent in what the returnees have said publicly that the policies they developed in captivity, particularly those of forgiveness to the men they felt had gone too far in bending to the enemy, and the tacit understanding that "intelligence" should be used in resisting enemy pressures, were carefully considered modifications of the Code.

Modifications to the Code of Conduct emerged early. As William L. White describes their story, the RB-47 crewmembers shot down and taken prisoner

by the Russians in 1960 decided that to "clam up" in a Soviet prison was hardly sensible, for unless they answered certain questions, how could they prove they really had not crossed the Soviet border? They also decided it was stupid to give "silly lies" in answer to questions concerning their classified equipment; for the Russians already knew much and had excellent intelligence sources for checking. Outside of "hot" areas "it did not harm, and probably helped your case, if you admitted facts which (the Russian interrogator) already knew or could easily find out."¹⁴

The capture of the U.S.S. *Pueblo* led to the positive proof, soon after the repatriation of its crewmembers, that U.S. servicemen in the hands of the Communists were continuing to make modifications to strict adherence to the Code of Conduct—a conclusion that the Vietnam experience was already beginning to point to. In books written soon after their return, both the executive officer and the operations officer of the *Pueblo* revealed that they had found the Code impossible to uphold, and had deviated from it—in some cases to safeguard classified information, but also, as the operations officer, Lieutenant Schumacher, wrote, because the North Korean interrogator "... had all the weapons he needed to break me: terror, psychological shock treatment, and hard information, which made the Code of Conduct a mockery of the true situation..." Asked why he had broken the Code of Conduct, Schumacher said that "... it becomes a matter of how much you can take before you find a way around the torture." He said it seemed far more sensible to maintain his wits for frustrating the captors than let himself be beaten into uncontrollable senselessness.¹⁵

There was a further and—at the time—stronger blow to the Code of Conduct when the U.S. Government made a fictitious confession about the

Pueblo's mission and actions, and then repudiated it (as tacitly arranged with the North Koreans) after the *Pueblo* crewmembers returned. As a writer in the *Catholic University Law Review* said, the effect upon the Code of Conduct (of the United States' coerced confession) "would appear to be a natural consequence. It would be unjust to expect an American PW to rigidly adhere to the Spartan Code of Conduct when the United States [Government] abandoned it in dealings with the North Koreans. To expect a soldier to conform to a higher standard of conduct than his country would not only be unrealistic, but also unreasonable."¹⁶

The Navy court of inquiry held after the return of the *Pueblo's* crew did little to alter this viewpoint, according to the Pike subcommittee hearings. As the subcommittee's conclusion stated,

The purpose of reviewing in some specific detail the apparently ambivalent views of the Navy on the Code of Conduct was to emphasize the infinitely greater difficulty that must have been experienced by the men of the USS *Pueblo* in trying to resolve for themselves these same questions. If the Navy captain who was counsel to the Naval Court of Inquiry, with all of the books and information, and consultants officially available to him, could come up with an erroneous opinion as to the applicability of the Code, and if the highest legal officer in the Navy found it necessary to change his own testimony before the subcommittee as to the effect of violating the Code, it is certainly impossible to expect that 82 lonely, untrained, and abandoned men suffering imprisonment and torture by the North Koreans could come up with any clear and proper adherence to it.¹⁷

54 NAVAL WAR COLLEGE REVIEW

Flexibility of the Code of Conduct. As indicated above, there was a developing and continuing realization that the Code of Conduct, as interpreted in DoD directives, was hardly ever adhered to. (Here, as throughout this paper, comments of this nature refer to the actual working out of the Code—its operational character—which is a very different thing from assessing its value as declaratory policy.)

The difficulty American PWs found was that the Code, as stated above, appeared to permit very little laxity; in Article V, for example, the emphasis was on not providing *any* information past name, rank, serial number, and date of birth.

A number of writers have challenged such a strict interpretation. One of the most influential is Brig. Gen. S.L.A. Marshall, who was a staff member of the committee which drafted the Code. As noted previously, General Marshall stressed that the drafters of the Code intended that it should be interpreted with flexibility. Furthermore, he said, the committee members understood clearly that a PW could be tricked or coerced into going far beyond the Geneva Convention requirement. Article V was therefore intended to give breadth to the new training, instead of permitting it to be constricted by "traditional but futile limitations."

A similar, flexible view of the Code had been given in 1965 by Maj. Gen. D.T. Spivey who earlier, as a colonel in World War II, had been the senior U.S. PW in a German prison camp where 9,000 captured Allied airmen were held. By indicating that he believed "wholeheartedly" in training and indoctrination for the eventuality of possible capture, General Spivey implied that a simple adherence to name, rank, serial number, date of birth only would not meet the needs of many PWs. He was more explicit on the Code of Conduct's Article III which, he said, "is good if not interpreted literally." (Article III

enjoins prisoners to resist their captors at every opportunity.) General Spivey went on to say,

I believe it is foolish and unrealistic to expect a prisoner or group of prisoners to resist by all means available. . . . If taken to the letter this would amount to suicide in many instances. I have seen individual prisoners resist reasonable orders just for the sake of being contrary and thus bring great discomfort and distress to their fellow prisoners with profit to none. Completely senseless.¹⁸

General Spivey had equally strong words about the guidance for prisoners in other portions of Article III. With reference to its injunction that prisoners should attempt escape at every opportunity, he said that if taken literally and not tempered by "common sense and group direction," this was equally unreal. He had given orders not to attempt escape without specific permission, and had the admiration and approbation of 95 percent of those in the compound for having given this order. Article III also tells U.S. prisoners not to give parole. General Spivey said that instruction was "neither desirable nor practical." He had given parole for good reasons on a number of occasions. His commonsense, said General Spivey, told him he was right in these actions, and he added that ". . . I could not have used common sense had I been tied literally to the Code."¹⁹

Writing in the *Marine Corps Gazette* 7 years later, Lt. Col. Charles E. Marean mentioned one of the developments American authorities already knew of by 1972 about PW circumstances in Southeast Asia—that the enemy was familiar with the Code, gave American PWs the hard-line interpretation, and told them that if they had given a single piece of information past name, rank, serial number, and date of birth, that they had already violated the Code (and that they might as well go on to further

"cooperation" with their captors).²⁰

As a counter to this tactic, Lieutenant Colonel Marean stressed the flexibility of the Code of Conduct. It was not an arbitrary document, he said; it was "non-punitive . . . a creed. As a statement of belief, it leaves room for maneuver." Marean went on to argue that since, as a creed, the Code of Conduct was inherently flexible, it should be modified with increasing rank and responsibility. This meant two things: that a major or lieutenant colonel should be given greater latitude (than lower ranking personnel) to interpret the Code according to the situation he might find himself in; and, as Marean recommends, training in the Code of Conduct should be continued throughout a military man's career.²¹

The Special Character of the Vietnam Experience. In any assessment of the factors which should be considered in a review of the Code of Conduct, the special character of the Vietnam experience should correctly be assigned a paramount place. The Vietnam War lasted longer than any other defined war in our history (in such a categorization Indian wars, of which there were several lengthy series, are excluded); for the period of time involved, American PWs in the Vietnam conflict constituted a relatively small group; they also drew more intensive attention by their captors than U.S. prisoners in previous wars; and the enemy effort with respect to the American PWs assumed a character markedly different from that to which they were exposed in previous wars.

In the most recent previous significant conflict, the Korean War, which had brought on the Code of Conduct, the major enemy effort appeared to be ideological. The Koreans and Chinese placed great emphasis on trying to get American prisoners to change their minds about the United States and the war (hence the emergence of the term,

"brainwashing"). In the Vietnam War, on the other hand, there was a remarkable focus by the North Vietnamese on obtaining propaganda statements from the American prisoners, and less attempt, apparently, to weaken their allegiance to U.S. and Western ideals.

Psychiatrists looking at the Korean War experience had noted (in testimony in 1956 before the Senate Government Operations committee) "weaknesses" in American prisoners which had, they claimed, made them succumb (high death rate, high degree of collaboration or cooperation with the enemy) to pressures in the prison camps applied by the North Koreans and Chinese. They came up with a number of explanations for this circumstance, even "weaknesses" in American society as a whole. Their prescriptions for remedying the situation took on an emotional tone, emphasizing hard-line resistance to the captor, "continuation of the battle" in the PW camps, etc. They also noted that once the Chinese took over prisoner handling from the North Koreans, there was generally little use of physical torture per se.²²

The Vietnam War demonstrated significant differences—in the type of enemy (one not adverse at all to torture and, in fact, which relied heavily on it), in the type of PWs (not raw troops just coming off occupation duty and with little sense of unit or national identity, but for the most part highly trained, well-educated officers), and in the new emphasis on obtaining propaganda statements from the prisoners. (The last, discussed at more length below, is somewhat to be remarked, since it could be thought that 15 years later the world audience for propaganda statements would be supposedly more sophisticated and should be more likely to discount them.)

The emergence of so many differences—even from the previously most recent U.S. PW experience—means that any review of the Code of Conduct

56 NAVAL WAR COLLEGE REVIEW

should take into careful account the peculiar circumstances of the Vietnam War, and its special character from the PW standpoint. Such a conclusion does not mean, of course, that the Vietnam experience is likely to be replicated; in other words, we should not plan for the future solely on the basis of the last war. It does mean that the evidence from that war has to be given a great deal of weight. This will be true even after we filter out the emotional aspects involved and the obsessive nature of media preoccupation with various aspects of the conflict, including the prisoner situation.

Propaganda Statements. As we have seen, the war in Southeast Asia revealed a number of features which gave it a character considerably different from previous wars involving the United States. The enemy's attention to what he saw as possible propaganda value in the prisoners was probably the most distinctive. Becoming, as they did, victims of an unscrupulous enemy in an age of mass media, the American PWs become the objects of manipulation for propaganda purposes to a degree never foreseen. They were forced to write confessions of conduct violating international law, to write statements criticizing their country and the war, to participate in interviews with selected antiwar correspondents and make comments derogatory to the American cause, and to appear in video-tape or motion picture productions intended for propaganda purposes.

The effectiveness of such tactics on the part of the North Vietnamese has been debated. At least one American military observer has indicated his feeling that this aspect of our experience in Southeast Asia has undoubtedly become an unfortunate precedent for future captors who would incline to hold PWs hostage to world public opinion (for the purpose of achieving a political settlement) or in other ways exploit them to

over the legitimacy of the captor's cause. On the other hand, despite the public's addiction to mass media, particularly TV, there is some evidence that, in public opinion polls, it is assessed as not being especially reliable; and certainly there was early on a feeling, at least in the United States, that the "confessions" and similar statements were probably forced. The North Vietnamese claims were, of course, accepted in the other Communist countries, but this was no great propaganda advantage. In countries not close to either of the major participants in the war, the effect of the propaganda effort is more in question, and probably a great deal of research will have to be done to evaluate it with any confidence. North Vietnam's most ambitious effort to exploit the American prisoners for propaganda purposes was the film, "Pilots in Pajamas." There is some evidence that, in Western Europe at least, it was recognized as propaganda pure and simple, and not a portrayal of the true situation.

As is well known, North Vietnamese treatment of the American prisoners took a definite turn for the better in 1969. Some observers, including some of the returned PWs, have connected it with the new Administration's decision to begin an active campaign to publicize the enemy's disregard of all international law bearing on prisoner status and treatment. The improved treatment included a lessening of the efforts to get the prisoners to provide grist for the enemy's propaganda mill.

The general devaluation of propaganda statements was given great emphasis when, as mentioned above, the U.S. Government made a fictitious confession about the mission and actions of the U.S.S. *Pueblo* and then (as the North Koreans had been previously notified) repudiated it after the *Pueblo* crewmembers returned. If Governments could engage in such an elaborate and transparent minuet of mutual collabo-

ration in declaratory self-serving, then it was not unreasonable that a poor prisoner, to bring an end to harassment and torture, should agree to write or say something apparently in the enemy's interest.

With the *Pueblo* agreement in the headlines, Rear Adm. Daniel V. Gallery, USN (Ret.) revived as the logical next step for prisoners a course of action he had proposed several years before. The President, suggested Admiral Gallery, should announce that, in view of "modern" interrogation methods, U.S. PWs could sign any paper, or make any statement. The United Nations would also be informed that all confessions of U.S. PWs were considered to have been obtained under duress, hence were invalid. Gallery's entire theory is predicated, said a writer in the *Catholic University Law Review*, on the assumption that "... the life and health of an American prisoner of war is a greater value to be protected than a Code which has been rendered obsolete by the Cold War." Gallery felt that his policy should not be construed as denigration of the integrity of American prisoners of war but as an attempt to prevent deception. Further, he felt, there was a very small chance of a PW's information giving the enemy a tactical advantage.²³

The proposal by Admiral Gallery would seem to require at least cursory examination in any review of the Code of Conduct. It has an undeniable logic, but certainly a number of other factors must be considered before the United States authorizes its prisoners to make any statement they feel impelled to make. There are legal aspects involved, e.g., the possibility of a prisoner's confessing to acts which are in clear violation of international law or the law of the country in which he is held prisoner. Such confessions, even though forced, might place a prisoner in greater jeopardy than that in which he already finds himself. Another important consideration is that the boundary line

between what is information harmful to the military aspects of the war effort, and what can be assessed in all likelihood as information intended for political and propaganda aims is certainly not clear; and the United States must consider whether the resulting ambiguity is likely to further its interests or not. The whole concept of martyrdom is wrapped up in the actions which Admiral Gallery's suggestion would eliminate, and along with it the moral and other intangible benefits that accrue from a prisoner's resistance to the captor. Certainly the captor has available the physical means to bring about compliance or death. There is some evidence that resisting as long as possible built up esprit de corps and solidarity among the prisoners, and that there was benefit to be derived in the longrun from making the enemy work for every bit of information or cooperation he could elicit.

Command Relationships in the Prison Camps. When prisoners of various services are held by an enemy, who shall command? The Geneva Convention has some provisions bearing on this situation, but in the Vietnam War the United States was confronted with an enemy which had refused to subscribe completely to the Convention. In most previous wars, the captor power had an interest in seeing that the prisoners it had taken formed some sort of organization, for it facilitated management and logistics problems on both sides. But the Communists, especially in the Vietnam War, subordinated all these considerations to propaganda and political purposes, and until 1969, tried to root out any organization of U.S. prisoners. A military organization developed, of course, with regulations and standard operating procedures and it became particularly effective after 1969.

Traditionally, the senior officer, regardless of service, held command authority among prisoners; and this

58 NAVAL WAR COLLEGE REVIEW

practice obtained as much sanction as most practices recognized under international law. It was brought into question after the return of the prisoners in 1973, and there were further problems. What about civilians, either employees of the Government or under some sort of other relationship to it? In nearly every previous conflict of recent times, these had been repatriated or interned, but the North Vietnamese and their associates disregarded this rule and held them as captives. Should a high-ranking civilian, say a GS-16, automatically assume command because of his senior rank in the normal Government rank-ordering? Or should a prisoner-of-war situation be considered as primarily military, akin to a ship at sea or an aircraft in flight, and should the senior qualified military officer be considered in command? As the Code of Conduct calls for obedience to the orders of those who are senior, these are questions which must be examined in any review of the Code. The legitimacy of a PW command structure needs to be clarified, and a senior officer's authority made clear. "If a commander ever needs authority, it is in prison," said a returned U.S. PW, Lt. Col. Richard E. Bolstad, as quoted in the *Armed Forces Journal* in May 1974. Problems of the commander of a PW organization are especially onerous, said Lieutenant Colonel Bolstad, for he has to deal with an environment in which pressures of one kind or another are always present. Some returned PWs have recommended that the commander or senior officer of a PW organization in a prison camp should have disciplinary authority, be authorized to make awards and promotions, and be given full court-martial authority.²⁴

In the Vietnam War problems of prisoner command assumed a paramount place. For some prisoners, the evolution of a PW organization became symbolic of authoritarian strictures (even though the prisoners had volun-

tarily or under other legal means become members of a military organization). Even in the generally agreed-upon values of communication with fellow captives, as an essential ingredient for PW morale and organization and in countering the enemy, there existed the detractions of misperception and misuse. The problem of civilians' status is particularly troublesome. Some civilians returned from captivity by the North Vietnamese or their allies have urged that civilians in a combat zone and liable to capture be clearly placed under the Code of Conduct. This question and the other problems mentioned above will require a great deal of careful study.

Relationship of the Code of Conduct to the Geneva Convention. The language of Article V of the Code of Conduct indicated that the committee which drafted the Code was fully aware of the Geneva Convention of 1949, the most recent of the great international efforts to induce nations to ameliorate the cruelties inflicted by war on individuals, especially members of the uniformed services. During the Korean War, the Communists announced their adherence to the Geneva Convention, but with reservations to Article 85. The reservations provided the basis for their threat to treat American prisoners as war criminals. During the Southeast Asia war, the North Vietnamese made similar threats, but never carried them to the extent of formally trying American prisoners. The combination of discussions about the Geneva Convention, along with prolonged experience by the United States with its own relatively new Code for prisoners, inevitably brought up comparisons of the Convention and the Code. Specifically, the question was raised as to whether the two were in conflict. The Pike subcommittee which investigated the *Pueblo* incident noted a number of specific points on which there might be such conflicts between the Code

of Conduct and the Geneva Convention:

1. Between the Code's injunction to American prisoners for "continued resistance by all means available" as against the expectation expressed in the Geneva Convention that the captives would receive "humane treatment."

2. The Code of Conduct requires everyone to make an effort to escape; should this apply to medical and religious personnel, whose presence in a PW compound is of great value to other PWs?

3. The Code of Conduct forbids parole; the Geneva Convention allows it under certain conditions.

4. There is a discrepancy between the Code of Conduct's injunction to U.S. PWs to furnish the captor with name, rank, serial number, and date of birth only, and the 13 items of the capture card of the Geneva Convention.

5. The Code of Conduct has no guidance concerning private correspondence of PWs; the Geneva Convention says such correspondence is subject to censorship by the detaining power, and thus provides the enemy with names and addresses of family and friends and other information of possible intelligence value.

6. The Committee felt it was unrealistic for the Code of Conduct to forbid PWs to sign confessions or statements to avoid torture, when the United States as a nation did it in the case of the *Pueblo*. Under Communist bloc reservations to the Geneva Convention, signing a confession removes a prisoner from PW status and protection under the Convention, and he becomes a "war criminal."

7. Most important, the Committee felt, was the fact that the Geneva Convention applies only to PWs; North Korea maintained that since we were not at war, the Geneva Convention did not apply to the *Pueblo* crew. Since in absence of armed conflict or a state of war, the *Pueblo* crew was not afforded protection under the Geneva Conven-

tion, should they have been expected to comply with the Code of Conduct as interpreted by General Order 4 of the Navy?²⁵

The requirements of the Code of Conduct, particularly those urging continued efforts to resist and escape, have been looked at by Robert Walzer in a book which examines a broader context—the extent of an individual citizen's responsibility to his country. The analysis revealed to him some fundamental conflicts between the position of the Code of Conduct and the practices which have emerged over the centuries among nations at war—and which, to the extent feasible at the time, were embodied in the Geneva Convention. The very act of surrender, says Walzer, constitutes an agreement to give up fighting in return for life itself and then "benevolent quarantine" in a PW camp. The essence of surrender is the agreement not to fight (although Walzer neglects any examination of what might be a time element in the PW's surrender; does his surrender imply that he will never, no matter how long he is held, attempt escape?).²⁶

The Code of Conduct's approach is an alternative view, as Walzer notes; it extends a state's claim over its citizens to include an official view of captivity and the status of PWs. A PW must refuse cooperation with captors, "... seek continually to escape, organize resistance networks, sabotage behind-line operations, require as many guards as possible." According to Walzer, "It is a little hard to see why any state at war would maintain prisoners who actually did or tried to do all these things, and insofar as the Code requires them, it is not entirely consistent with the idea of benevolent quarantine."²⁷ This view of the Code's requirements sees them as an extension of a nation's sovereignty but possibly neglects the fact that the Code was a reaction to North Korean and Chinese captors who paid little attention to "benevolent quarantine" in their

60 NAVAL WAR COLLEGE REVIEW

treatment of Allied, chiefly U.S., prisoners.

Walzer pays particular attention to the Code's requirement in Article III to resist by all means available. Assistant Secretary of Defense Carter Burgess said later that physical resistance was not required but only mental resistance to political indoctrination. That, says Walzer, "... is hardly made clear by the Code itself, and the lack of clarity was presumably intentional..." A new kind of war had developed in the Korean PW camps, Walzer notes, and quotes Gen. Mark Clark's comments on the Koje Island mutiny (by enemy prisoners of the United States). This new kind of war was one in which prisoners remained combatants and carried out orders smuggled to them from their own high command. Walzer suggests, on the basis of these circumstances, that the Code "... not only intended to provide moral basis for resistance to political indoctrination but to encourage action..." on the scale of the Koje mutiny.²⁸

In looking at the behavior of PWs, Walzer comes up with an analysis of a prisoner's obligations (which, although Walzer doesn't say so specifically, certainly underlie some of the concepts of the Geneva Convention). He notes "negative" obligations: not to "sell out," or to betray his country or comrades; and "positive" obligations: to harass and attempt to escape. Walzer agrees that there must be some degree of resistance to collaboration if the PW regards himself as a citizen, but, he argues, no PW has a positive obligation—either to his country or his service—to work and take risks to further his own escape or that of other PWs, or to harass the enemy. "Benevolent quarantine" will break down if a whole PW camp is organized for escape. Its costs to the captor will be too high (and, although Walzer doesn't make the point, the captors are likely to retaliate strongly).²⁹

Walzer then placed the PWs' situation in the context of a citizen's responsibility to his government. Attempts to specify obligations going beyond those which are "negative" are impositions on the freedom of the men concerned, he says, and sometimes a cruel threat to their security. "That is why they are largely ignored by the prisoners." We may hope that some can be heroes, but that is also a denial of captivity, perhaps a refusal of benevolent quarantine, and a potent threat to prisoners who choose not to be heroes. Walzer concludes that, contrary to the injunction in the report proposing a Code of Conduct, "the fight does not continue after the battle. . . . It is the responsibility of civilized men to insist that (benevolent quarantine) always be offered and to repudiate decisively and without compromise the very idea of a 'total war' to be fought within as well as without the bounds of the prison camp."³⁰

In a more pragmatic manner, Major General Spivey, as noted above, expressed a similar position when he argued that "common sense" indicated that it was "foolish and unrealistic" to expect a prisoner or group of prisoners to resist by all means available, or to attempt to escape at every opportunity. On the other hand, we have also noted the values, admittedly subjective, of a resistance posture on the part of prisoners—values in the area of morale, esprit de corps, and probably a reduction in the total amount of propaganda statements and other tangible acts of collaboration extracted by the enemy. The resistance of American prisoners in the Vietnam War was in particular not in conflict with the spirit of the Geneva Convention (if we read it as assuming that essentially the PW has been put in quarantine), according to some observers. Neither, they recognize, was it a manifestation of the Code of Conduct's emphasis on continued resistance. Instead, prolonged resistance developed in so many cases because the captor was

not approaching anything like adherence to the spirit or letter of the Convention. We may also note a related factor—alluded to above—that the North Vietnamese announced reservations to Article 85 of the Geneva Convention. Readiness to cooperate, especially in the matter of “confessions,” might, under such an enemy’s interpretation of international law, including the Convention, subject the prisoner to trial for “war crimes” or violation of the internal law of the enemy state. This consideration, along with the other discussed in this section, should certainly be included in any review of the Code of Conduct. In particular, the whole argument based on the “quarantine theory” of PWs must be examined carefully. If it is determined that such a reading of the spirit of the Geneva Convention is correct, then we will have to see if other values of the Code of Conduct are such that they might outweigh any tacit or explicit recognition of the “quarantine theory” as being inherent in the Geneva Convention.

Relation of the Code of Conduct to the Uniform Code of Military Justice. Is the Code of Conduct binding to the extent that a violator of the Code can be punished for an infraction of military law under the Uniform Code of Military Justice? This sounds academic now, since every returned prisoner from the Southeast Asian war admitted to some violation of the Code, and only a few had charges preferred against them. Nevertheless, confusion reigned concerning the relation of the Code and the UCMJ as late as 1969, when the Navy’s court of inquiry met after the return of the *Pueblo* crew and during the Pike subcommittee’s investigation of the *Pueblo* incident. To a superficial observer, it seems that it need not have, since the Army Judge Advocate General declared as early as 1960 that

Conduct in contravention of the Code of Conduct can only be

punished if the conduct also violates some provisions of the UCMJ. The Code of Conduct is not intended to be a penal code. It is, rather, a moral guide for conduct while a PW. The Code of Conduct does not direct the members of the armed forces to measure up to the standards of the Code of Conduct, and it contains no language indicating punitive consequences for its disregard.

Three unpublished opinions of the Judge Advocate General were cited to this effect.³¹ Further, in 1968 the Air Force JAG declared officially that the Code was not a vehicle for enforcement of a PW’s obligations, and the Vice Chief of Staff established this as Air Force policy in early 1969.

A good many members of the armed services, including some who became prisoners during the Southeast Asian conflict, nevertheless were under the impression that the Code was penal in nature. To them a violation of the Code of Conduct was punishable, either by virtue of the Code itself, or because it was a part of military law. The confusion over this point did not appear only at the lower levels. The Navy captain who was counsel to the court of inquiry held after the return of the *Pueblo*’s crew came up initially with an opinion that the Code of Conduct was applicable in the case, and the confusion extended even higher during the Pike subcommittee hearings on the *Pueblo* capture. On 28 April 1969, Rear Admiral McDevitt, the Navy Judge Advocate General, said violation of the Code of Conduct could be charged as a violation of the Uniform Code of Military Justice, since Navy General Order 4 promulgated the whole Code of Conduct and the Executive Order issuing it, as a General Order of the Navy. A violation of the Code of Conduct was therefore a violation of a Navy General Order and hence was chargeable under the UCMJ. Two days later, on 30 April, 15

62 NAVAL WAR COLLEGE REVIEW

Admiral McDevitt had apparently undergone a change of mind. In a letter to Congressman Pike, he said the additional language in the Code was instructional in nature and not penal, so General Order 4 of the Navy did not operate as a General Order within the meaning of Article 92 of the UCMJ.³²

In fairness to Admiral McDevitt, it should be added that during his testimony before the subcommittee he pointed out that the specific language of the Code of Conduct "... is not always duplicated in the Uniform Code... [the latter type] enters into the picture only when the conduct of the individual to the extent that it is not in compliance with the Code of Conduct is also judged to be something for which he should be tried and possibly punished." Admiral McDevitt added that "... we don't need to disregard the factor of duress when we apply the Uniform Code of Military Justice only in assessing a particular individual's conduct to determine whether or not he should be tried for that conduct." He then agreed with a committee member that "... if there is an infraction of the Code of Military Justice, this infraction could be ameliorated or nullified under proven conditions of duress..." The subcommittee's conclusions in its report incorporate this view.³³

Views of the returnees themselves varied. Some, as apparent in unclassified sources, considered the Code of Conduct as primarily a guide and training device and saw no need to make it a specific part of military law; others felt it should be incorporated into the UCMJ as military law, and pointed out that a good many of the U.S. prisoners in Vietnam assumed that the Code did constitute a valid standing order.

For the time being, the resolution of this question is embodied in the Report of the Defense Review Committee for the Code of Conduct (see below). The committee recommended "... that the Services continue to employ the Code as

a general standard of conduct. It should not be converted into a statute. All servicemen should learn that their behavior in captivity or detention is fully accountable under U.S. law." Undoubtedly, this recommendation by the committee was affected by its consideration of some of the other problems and factors we have discussed. Certainly it was related to a positive decision with respect to the utility of the Code, not only *whether* it should be looked at as a useful instrument but *how* it provides, or can provide assistance to, prisoners of war. Accepting the risk of possible future, further confusion on the legal status of the injunction expressed in the Code, the committee apparently concluded that its principal value was moral and spiritual. The standard is high, the committee commented, and "... an individual must strive to achieve it." There was clear understanding that conduct of a prisoner which violated a provision of the UCMJ could be punished under that body of military law. As testimony and experience have shown, the factor of duress is likely to be considered, and the committee recognized that under certain circumstances an individual's efforts might fall short.³⁴ It is a conclusion which fails to remove completely the ambiguity in the minds of prisoners of war or in persons concerned about them. Such ambiguity might have merit in view of our uncertainty as to the nature of the next conflict in which American military men are likely to be subject to capture.

Report of the Defense Review Committee for the Code of Conduct. After the release of U.S. PWs in early 1973, the Department of Defense prepared a plan to review the Code of Conduct. Phase one of the plan, individual Service Analysis and Evaluation of PW Experiences, was completed in August 1974, when the services forwarded their positions on Code of Conduct training to DoD. The Army

recommended changes to interpretive material and to training programs. In addition, the Army also recommended word changes to the Code itself to support their suggestions. The Navy recommended changes to the supporting training programs to solve problems of misinterpretation of the Code, and proposed an Executive Order to clearly establish the role and authority of the Senior Officer present. The Navy also recommended that the Code not be changed, either in language or intent, because it would weaken the value of the Code and because changes would cause new problems of interpretation disproportionate to the intended gain. The Air Force recommended a revision of current directives and training policies in support of the Code. The Air Force found that the language of the Code was generally clear and recommended it not be changed. However, if interpretive difficulties existed, Articles III (Parole) and V (Resistance and Disclosure) could be reviewed in depth for possible change.³⁵

Phase two of the Defense Department's review was carried out by the Defense Review Committee for the Code of Conduct.³⁶ Much of the committee's work involved interviews with "... ex-prisoners of war and hostile peace-time detainees, experts in PW behavior, representatives of organizations concerned with PWs, and members of the 1955 Advisory Committee." The committee desired to compare individual PW responses to the Code with the ideas of the Code's original framers. The committee clearly specified that it did not intend to obtain evidence of alleged misconduct or to hear accusations from the interviewees.³⁷ Following is a summary of the committee's major conclusions and recommendations.³⁸

Revalidation of the Code of Conduct. The committee concluded that the Code of Conduct is a valid and

necessary instrument which establishes high standards of behavior for all members of the armed services. Misunderstandings of Articles I, II, III, IV, and VI should be corrected through training improvements. Article V requires word changes to bring better understanding; training alone would not accomplish this task. The proposed word changes clarify and restore the original intended meaning. Here the committee quoted the present Article V (as it appears in this paper on page 48). The proposed change would substitute for the phrase "... bound to give only name, rank, service number, and date of birth," a similar phrase but one which changes the word "bound" to "required" and eliminates the word "only." The proposed Article V would therefore read, "When questioned, should I become a prisoner of war, I am required to give name, rank, service number, and date of birth. I will evade answering further questions to the utmost of my ability. I will make no oral or written statements disloyal to my country and its allies or harmful to their cause." This was the only wording change in the Code recommended by the committee. As mentioned above, "misunderstandings" of the other Articles were to be corrected through training.

Training. The committee concluded that "... revision of the current DoD training directive is required." Such a revision should include training levels for all service members and centralize Code of Conduct training under the Office of the Secretary of Defense and that a single service should act as OSD's executive agent.

Command in PW Organizations. "The Committee concluded that the implied authority of the SRO [Senior Ranking Officer] in the Code of Conduct is not clearly supported by Law because of contradictory wording in the MCM [Manual for Courts-Martial]. DoD

64 NAVAL WAR COLLEGE REVIEW

Directive 1300.7 should be expanded to include required PW participation in PW organizations."

Investigations of Violations of the UCMJ. On this point, which attracted considerable attention in the American press, the committee concluded that a careful investigation of possible UCMJ violations by PWs during captivity in Vietnam did not occur. In the future, appropriate investigations should be made in full accordance with the UCMJ and usual regulations in the interests of justice and in support of command authority during captivity. Such investigations could recognize honorable performance as well as identify any allegations of misconduct. The committee recommended that the Secretary of Defense take appropriate action to ensure that future interviews of returned prisoners of war should include reports on possible violations of law, regulation, or policy.

The Legal Status of the Code of Conduct. Some particular points under this heading have been discussed above. The committee concluded that the Code of Conduct was "consistent" with the Geneva Conventions and recommended that in their training "... servicemen should become familiar with the general requirements of the Geneva Conventions as they pertain to the Code of Conduct."

Clarification of Policy Concerning Surrender. The committee concluded that Article II of the Code of Conduct is stated clearly enough so that no need existed to alter it. (There had been a few questions—nothing like the number raised concerning Articles III and V—about Article II's phrase, "I will never surrender of my own free will.") The Review Committee recommended that the appropriate DoD directive contain explanations of this Article so that all members of the Armed Forces

should understand that resistance to capture or surrender need not be carried to suicidal lengths."

Escape. The committee concluded that "... the Code of Conduct intends to require only reasonable attempts to escape. The senior member of the armed forces in captivity must have complete authority over all escape attempts. This authority includes his right to issue specific guidance concerning escapes of opportunity." The committee recommended that "... training directives should emphasize that desperate and ill-planned escape attempts are neither required nor desirable under the Code of Conduct."

Disclosure of Information. Here the committee concluded that Code of Conduct and related training should become more realistic concerning a PW's disclosure of information. The committee therefore suggested the revised wording of Article V of the Code of Conduct as above. The committee also recommended that the DoD training directive which deals with the Code be revised to stress successive [lines of] resistance and the rebound philosophy. The latter was intended to diminish incidence of what was often remarked on during the Southeast Asian war—a prisoner's feeling that because he had violated the Code of Conduct (as he regarded it) to a limited extent that it was useless for him to look on it as a guide in the future. This attitude, encouraged strongly by the enemy, stemmed from the erroneous hard-line interpretation of the Code. Actually, during their ordeal in the prison camps, the senior officers recognized that under torture and harassment, a man might go beyond what he thought were the limits permitted by the Code: They encouraged such men not to feel dominated by a sense of guilt but to try to "rebound" and in the future live up to the terms of the Code to the extent that they could.

Periodic Review of the Code. The committee concluded that frequent reviews of the Code of Conduct itself would serve as an unnecessary challenge to the validity of the Code. They recognized, however, that some periodic review of the Code was essential to ensure "... timely response to major changes in PW treatment by potential adversaries." It therefore recommended that, when "changing circumstances warranted, the Secretary of Defense should convene another Review Committee."

Further Lines of Research on the Code of Conduct. In the preceding pages, some of the factors which should be considered in a review of the Code of Conduct were discussed. Also examined were some of the experiences with the Code which underlay identification of these factors. Finally, note was taken of the formal review recently completed by the Department of Defense.

Certainly any further lines of research will be affected by the Defense Review Committee's conclusions and recommendations. But the action taken by the committee on the Code of Conduct does not and cannot set limits to research on a document of such significance in the history of our armed forces. The Code does have intrinsic historical significance. In addition, there will inevitably be circumstances in which some member of the armed services will be detained or held prisoner whether it is in a "neat" declared war or, which appears to be more likely, one which erupts suddenly or accidentally and might not appear to be covered by the established laws of warfare. (The latter of course are not accepted completely by all nations, in some cases for ideological reasons, in others because they have not acquired experience in the Western traditions which underlie the codified laws of warfare.) In such conflicts we might find the workings of the Code of Conduct to differ from its

operation during the Southeast Asian war or in other incidents which took place after the promulgation of the Code.

Further research, based to a considerable extent on returned PWs' experiences with the Code of Conduct, should therefore presumably include some or all of the following.

1. Data on how the standards of the Code of Conduct actually worked; this would include information on the utility of the tactic of successive lines of resistance. Here, a careful analysis of data from the returnees will, of course, be significant. Over the years, questionnaires and surveys have produced or will elicit a great deal of information on aspects of the Code's operation and effects. We can hope that this will include data on the tactic of successive lines of resistance as employed by military personnel of different grades and responsibilities.

2. Relationships between the various types of resistance training and reactions by captives to pressures for information more than name, rank, serial number, and date of birth. Here it would be especially useful to find out what was actually taught at the survival schools over the years, about the requirements of the Code of Conduct, and compare this with the reactions in captivity of the successive groups of students during these years. Admittedly this will be difficult, but in the case of the Air Force survival schools, which taught the bulk of the officers who fell captive to the North Vietnamese, there are fairly detailed records of the guidance on the Code of Conduct given to their instructors at various periods. This is a factor which has not been adequately considered in the Report of the Defense Review Committee.

3. Analysis of factors entering into effective resistance to severe interrogation (and how these can be transmitted in training programs). Psychiatrists and psychologists who have studied the

66 NAVAL WAR COLLEGE REVIEW

experiences of persons under duress, especially prisoners of war, are generally convinced that there are some techniques—which can be taught—that will make a prisoner's resistance more effective yet not necessarily subject him to increased, or even severe, punishment. Several problems are involved, of course, although we will not deal with them at length here. In the first place, the psychiatrist or psychologist examining a survivor or returnee usually has available only the latter's recollections of what took place, or what he did; he does not normally have available data on the captor's particular intentions at the time or the rationale for his actions. Further, the circumstances of future captivity will never repeat those of the past, and the techniques thought to be effective in situations examined thus far may not be so effective in the future. There is also a great gap in the data for the social scientists examining resistance experiences; they have no way of taking into account the experiences of those prisoners who were killed or died in captivity, possibly while employing resistance techniques thought to be effective by some of the survivors, or on the basis of experiences in other circumstances. The specialized nature of the training required to master more effective resistance techniques also brings up the question of standardization of training, mentioned below.

4. Standardization of training. The very concept of standardization sounds "good"; it rings of our American feeling that everyone should be treated equally. It seems only "right" that there should be standardization in the preparation for all Americans subject to possible captivity, regardless of service, rank, or military specialty. This would include standardization of equipment, training objectives, training methods, and the content of training—from the standpoint of this analysis, the training and responsibilities required under the Code of Conduct. As we have seen, such

standardization was never achieved, although efforts to that effect were instituted in many offices and over various periods of time. The practical experience of almost 20 years thus raises the questions of how feasible it is to aim for standardization of training and to what areas should it apply. There are undeniable special requirements for "high risk" personnel, i.e., those who have a high risk of capture and for whom captivity involves extra risk from the standpoint of the skills and information they possess and the particular benefits the captor hopes to derive from his acquisition of them. Therefore research is required into the possibility and means of reconciling the political and policy considerations that would argue for at least a declaratory gesture toward standardization with the actual, pragmatic recognition that American fighting men should not all be given the same preparation for possible captivity, that in fact it can be rather cursory for some but should be careful and intensive for others, and planned to extend through their careers, at least to flag rank.

The report of the Defense Review Committee of 1976 is at its weakest here. It concluded that the training had been inadequate and inconsistent, an easy ex post facto judgment to make (its only suggestion was that revision of the DoD training directive concerning the Code of Conduct "... should include training levels for all service members"). The Report therefore failed to "bite the bullet" and recognize, clearly and explicitly, the realities: service members who are officers, and particularly those of higher rank, are more important to the enemy than enlisted men; and that, as mentioned above, the resistance training for officers should be more intensive and should formally allow more latitude than for lower ranking personnel. (Like many articles written from an academic background, this one thus suggests what may be,

from a narrower political or military standpoint, undesirable or difficult to set forth publicly before the American people; very likely a declaratory policy should be phrased in more moderate, "democratic" terms.)

5. The Code of Conduct as an instrument of harassment. The North Koreans and North Vietnamese were thoroughly conversant with the provisions of the Code of Conduct. As we have seen, when a prisoner of war, under duress or by inadvertence, provided them with information beyond name, rank, serial number, and date of birth, they would point out that he had already violated the Code, and hence might as well provide additional information. This sort of harassment, stemming from what they perceived as requirements of the Code, keenly affected many of the PWs. Factors in preventing such harassment in the future might include the total elimination of the Code or its modification to allow specifically the flexibility with which it has actually been interpreted by most U.S. PWs. At any rate, clear understanding of the requirements of the Code, if requirements under it are continued, would seem to be a factor which might reduce its utilization as an instrument of harassment by the captor.

Use of the Code for harassment in another manner has been alluded to, though rarely; classified information may provide more information on this type of development. There was harassment of one prisoner of war by another PW. This occurred when PWs were unsure about the requirements of the Code, differed among themselves with respect to the extent and techniques of resistance called for under it, or differed with respect to the basic policies to be followed toward the captor. To justify their positions, prisoners frequently invoked particular interpretations of the Code of Conduct, and attempted to enforce them on other PWs, sometimes through the mechanism of a PW organization. To prisoners holding varying

views of the Code, this frequently appeared to be a device under which they could be harassed, possibly as a means primarily of securing unqualified adherence to a particular PW command organization and its interpretation of the Code of Conduct, as well as international law with respect to prisoners of war generally. To prisoners holding variant views, the Code thus frequently appeared to be an instrument of harassment. This aspect of PW experiences with the Code was hardly dealt with by the Defense Review Committee. There should be further research on the extent and frequency of incidents of this sort, as well as analysis of the part the Code played in the captors' tactics with respect to the prisoners.

6. Effectiveness of the Code of Conduct in preventing or reducing the occurrence of certain types of conduct by U.S. servicemen in captivity. Such types of conduct were cited in the initial call by the Department of Defense after the Southeast Asian war for the services to review the Code of Conduct. They were listed as: "collaboration, acceptance of parole, 'ratting' on fellow prisoners, failure to organize or to adhere to POW organizations, failure to render mutual support, and failure to attempt escape." The same forms of behavior were to be assessed in relation to the U.S.S. *Pueblo* incident.

These are very specific terms under which to review the Code of Conduct. They describe types of behavior which have occurred in prisoner camps since time immemorial, and their listing here should be evaluated in light of further research or the PW condition in modern terms of captivity. To examine properly all the types of conduct listed would require a long, careful, and detailed analysis of all available evidence on the prisoner-of-war experience since 1955.

Conclusion. Any review of the Code of Conduct should start with the most basic question: "Is the Code of Conduct

68 NAVAL WAR COLLEGE REVIEW

required at all?" The Defense Review Committee has given us an answer in 1976, but the historians among us know that on any important question each generation is likely to provide a new answer. The "facts" are not so likely to change as our perceptions of their relative importance. The "ultimate" answer to this question must involve all sorts of political, emotional, and moral considerations as well as so-called pragmatic, and utilitarian factors. It should also take into account, of course, some of the considerations and factors discussed in the preceding pages of this paper.

There is another factor which is relatively new but possibly it is too difficult to assess its effect at this time. That is the pervasive influence of the American media. During and after the Korean War, the media—at that time mainly the press—tenaciously scrutinized combat units of all arms, and upon return of the prisoners, magnified pejorative interpretations of their experiences. Later, civilian and military sociological studies of the U.S. PW experiences in North Korea found that the differences between PW performance there did not—except that ideologically oriented Asiatic captors were involved, and that the sensational aspects were magnified by the press—vary greatly from that in previous wars. During the Vietnam War the principal media was television, which had available and used fully, reports of American PW conduct released by the North Vietnamese. Television is such an easy, comfortable, readily available medium for Americans to use that its existence

cannot be ignored in any practical implementation of the Code of Conduct regardless of what our declaratory policy should be.

Finally, if a further review confirmed a continuing need for a Code of Conduct, the Code should be looked at not as a sacred, inviolable whole, but article by article, to establish where requirements are imprecise or otherwise impractical, whether some should be eliminated entirely, and to what extent we should emphasize the declaratory aspect of the Code, i.e., its role as an ethical and moral guide. If the latter category is to rule, a future Code of Conduct should be regarded as the distillation at any given moment of the American people's supreme expectations regarding their men taken captive in the service of their country.

BIOGRAPHIC SUMMARY



Harold L. Hitchens is a Senior Research Associate in the University Center for International Studies and the Office of Research, and a member of the faculty of the Center for Arms Control and International

Security Studies of the University of Pittsburgh. Prior to 1974, he served in the U.S. Air Force, in various combat, operational and staff assignments. Dr. Hitchens recently edited an eight-volume series presenting hitherto unpublished transcripts of selected executive session hearings of the Committee on Foreign Affairs (now the Committee on International Relations), U.S. House of Representatives.

NOTES

1. The Code of Conduct was put into effect on 17 August 1955, when **President** Dwight D. Eisenhower signed Executive Order 10631. The text here is taken from *Air Force Manual 50-34*, 5 June 1976. The Code is, of course, reproduced in many other sources.

2. Eugene Kinkead, *In Every War But One* (New York: Norton, 1959), pp. 19-21, 23.

3. U.S. Congress, House of Representatives, Committee on Armed Services, *Inquiry into U.S.S. Pueblo and EC-121 Plane Incidents*. Report of special subcommittee on U.S.S. **Pueblo**, 23: https://digitalcommons.usg.edu/nwc-review/vol4/issue17/ U.S. Govt. Print. Off., 1969), p. 1694.

CODE OF CONDUCT 69

4. Ray E. Butler, "POW Code Due for Revision," *Armed Forces Journal*, November 1973.
5. Lloyd M. Bucher, as quoted in John E. Wehrum, Jr., "The Status of United States Prisoners of War under the Code of Conduct by the Armed Forces," *Catholic University Law Review*, Fall 1971, p. 148.
6. Albert D. Biderman, *March to Columby, The Story of American POWs in the Korean War* (New York: Macmillan, 1963), pp. 240-242.
7. U.S. Department of Defense pamphlet 1-16, "The Code of Conduct," numerous editions. The final one, dated 6 August 1959, was replaced by Department of Defense GEN-28, referred to below.
8. U.S. Department of Defense, *The U.S. Fighting Man's Code*. Department of Defense GEN-28, also published as Department of the Army pamphlet 360-522, 5 June 1967.
9. Biderman, p. 240.
10. *Ibid.*, p. 242.
11. U.S. Congress, House of Representatives, Committee on Armed Services, *Inquiry into the U.S.S. Pueblo and EC-121 Plane Incidents*. Hearings before special subcommittee on U.S.S. Pueblo, 4 March-28 April 1969. 91st Congress, 1st sess. (Washington: U.S. Govt. Print. Off., 1969), pp. 953-954.
12. S.L.A. Marshall, "The Code and the Pueblo—Some Questions and Answers," *The New Leader*, 14 April 1969, pp. 10-11.
13. Michael P. Murray, "Historical Analysis and Critical Appraisal of the Code of Conduct for Members of the Armed Forces of the United States." Unpublished Thesis, U.S. Naval War College, Newport, R.I.: 1973, p. 308.
14. William L. White, *The Little Toy Dog; The Story of the Two RB-47 Flyers, Capt. John R. McKone and Capt. Freeman B. Olmstead* (New York: Dutton, 1962), pp. 84-85.
15. Frederick Carl Schumacher, *Bridge of No Return; The Ordeal of the U.S.S. Pueblo* (New York: Harcourt Brace Jovanovich, 1971), pp. 125-223.
16. Wehrum, pp. 146-147.
17. Pike subcommittee report, as cited in Note 3 above, pp. 1693-1694.
18. Delmar D. Spivey in "The John A. LeJeune Forum: The Soldier and the Prisoner," *Marine Corps Gazette*, May 1965, p. 43.
19. *Ibid.*
20. Charles E. Marean, "Questions Facing the Code of Conduct," *Marine Corps Gazette*, July 1972, p. 40.
21. *Ibid.*, p. 43.
22. U.S. Congress, Senate, Committee on Government Relations. Hearings before the permanent subcommittee on investigations, on "Communist Interrogation, Indoctrination, and Exploitation of American Military and Civilian Prisoners," 84th Congress, 2nd sess. (Washington: U.S. Govt. Print. Off., 1956), *passim*. See especially the testimony of Dr. Segal, p. 105.
23. Daniel V. Gallery, as quoted in Wehrum, p. 150.
24. *Armed Forces Journal*, May 1974, p. 19. Normally military seniority is determined by date of rank. During the war in Southeast Asia, when some men were prisoners for 7 years or more, seniority was sometimes difficult to determine. For example, a captain shot down in 1965 could be superseded by a major shot down in 1972, although at the earlier date, the major might have been a first lieutenant. Generally in Southeast Asia, seniority was determined by the date of rank at the time of capture of the earliest prisoner. This problem is discussed in more detail in "If I become a POW . . ." by J. Dunn and W. Hays Parks in *U.S. Naval Institute Proceedings*, August 1976. The article is otherwise relatively superficial.
25. Pike subcommittee report, as cited in Note 3 above, pp. 1694-1696.
26. Michael Walzer, *Obligations: Essays on Disobedience, War, and Citizenship* (Cambridge, Mass.: Harvard University Press, 1970), p. 151.
27. *Ibid.*, p. 153.
28. *Ibid.*, pp. 154-155.
29. *Ibid.*, pp. 156-161.
30. *Ibid.*, pp. 165-166.
31. Elizabeth R. Smith, Jr., "The Code of Conduct in Relation to International Law," *Military Law Review*, January 1966, p. 89.
32. Pike subcommittee hearings, as cited in Note 11, pp. 953-954.
33. *Ibid.*, pp. 1069-1070; Pike subcommittee report, as cited in Note 3, p. 1696.
34. U.S. Department of Defense, "Report of Defense Review Committee for the Code of Conduct 1976," pp. 18-19. The report carried no exact date but was released in the middle of February 1977, as submitted to the Secretary of Defense for his approval. As established under a ~~published from the Navy Deputy Secretary of Defense dated~~ 26 March 1976, the committee included a

70 NAVAL WAR COLLEGE REVIEW

chairman, vice chairman, and nine other members, including two returned Southeast Asian prisoners of war. The members are listed on page 4 of the report.

35. *Ibid.*, p. 3.

36. See Note 34 above.

37. "Report of the Defense Review Committee for the Code of Conduct 1976," p. 5.

38. *Ibid.*, pp. 6-29.

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