

Report of

0

DEFENSE REVIEW COMMITTEE for the CONDUCT

AD-A133234



DTIC
ELECTE
SEP 26 1983
S B

DISTRIBUTION STATEMENT A
Approved for public release /
Distribution Unlimited

83 08 26 502

REPORT
OF
DEFENSE REVIEW COMMITTEE
FOR THE
CODE OF CONDUCT
1976

DTIC
ELECTE
SEP 26 1983
S B

DISTRIBUTION STATEMENT A
Approved for public release
Distribution Unlimited

TABLE OF CONTENTS

SUMMARY OF BACKGROUND AND ISSUES	PAGE 1
METHODOLOGY	PAGE 4
MAJOR CONCLUSIONS AND RECOMMENDATIONS	PAGE 6
Revalidation of the Code of Conduct	PAGE 6
Training	9
Command in PW Organizations	13
Investigation of Violations of the UCMJ	15
The Legal Status of the Code of Conduct	18
Consistency of the Code of Conduct with the Geneva Conventions	19
Clarification of Policy Concerning Surrender	22
Escape	23
Disclosure of Information	25
Periodic Review of the Code	28
APPENDIX: Charter	PAGE 30

Accession For	
NTIS GRACI	<input checked="" type="checkbox"/>
DTIC TAB	<input type="checkbox"/>
Unannounced	<input type="checkbox"/>
Justification	
PER LETTER	
By _____	
Distribution/	
Availability Codes	
Dist	Avail and/or Special
A	



A HISTORICAL SUMMARY OF THE BACKGROUND AND ISSUES
OF THE
CODE OF CONDUCT

The Code of Conduct was established on 17 August 1955, when President Dwight D. Eisenhower signed Executive Order 10631. The Code of Conduct stemmed from public response to the experiences of PW's incarcerated during the Korean Conflict, prompting Defense Secretary Charles E. Wilson on 17 May 1955 to appoint a Defense Advisory Committee on Prisoners of War. The advisory committee was formed to 'deliberate toward the development of suitable recommendations for a Code of Conduct and indoctrination of training on preparation for future conflict.' Included in its report was a proposed Code of Conduct. Varying captivity experiences under the Code of Conduct by more than a dozen Americans who returned from Cambodia, the 82 repatriated crewmen of the USS PUEBLO from North Korea, the more than 500 men, military and civilian, who returned from North Vietnam, and over 200 who returned from South Vietnam, Laos, and the People's Republic of China created speculation and controversy concerning the validity of the Code of Conduct.

The Defense Advisory Committee formulated the Code of Conduct to provide a clear and concise guide to behavior for all servicemen. In the words of Executive Order 10631, "each member of the Armed Forces liable to capture shall be provided with specific training and instructions designed to better equip him to counter and withstand all enemy efforts against him, and shall be fully instructed as to the behavior and obligations expected of him during combat or captivity."

The Defense Advisory Committee on Prisoners of War continued to meet periodically for several years following the signing of Executive Order 10631 to gather information and issue progress reports on Code of Conduct training. From 1955 to 1958, the Services instituted their own training programs for the Code based on the guidance provided in a Sec Def Memorandum of 18 August 1955. The final meeting of the Committee took place in August 1958.

However, in 1959 a new Code of Conduct pamphlet contained language clearly emphasizing that the PW should provide the interrogator with only name, rank, service number, and date of birth--the "big four." For the next fifteen years, the Services differed philosophically about the proper Code training with the Army, Navy, and Marine Corps advocating the "big four", and the Air Force advocating a more sophisticated approach involving ruses and stratagems.

From 1965 to 1967, the American involvement in Vietnam escalated, and Code of Conduct training in some instances was necessarily subordinated to more urgently required combat training. After the North Koreans captured the USS PUEBLO in March of 1968, interest in the efficacy of training in the Code climbed sharply. A House Subcommittee chaired by Congressman Otis Pike examined Naval security, communications, and Code training in connection with the PUEBLO's capture, and recommended that the DoD give deeper consideration to Code training which prepared servicemen for unique situations typified by the PUEBLO incident.

Subsequent to the release of the SEA PW's in early 1973, DoD prepared a plan to conduct a two-phase review of the Code. 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. 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. 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.

In September 1975, the Deputy Secretary of Defense approved an Action Memorandum which contained a recommended plan for the makeup of the Defense Review Committee, a plan which was finally approved in a Decision Memorandum dated 8 March 1976. On 26 March 1976, the Deputy Secretary implemented the plan in his Charter of that date:

"In order to formally review the Code of Conduct for members of the Armed Forces of the United States and to reaffirm the validity of the Code of Conduct for its intended purposes or to recommend such changes as necessary, the Defense Review Committee is hereby established."

METHODOLOGY

The composition of the Defense Review Committee for the Code of Conduct was intended to parallel the 1955 Defense Advisory Committee on Prisoners of War as closely as possible. Under the flexibility provided in its Charter, the Committee consisted of eleven members and was chaired by Mr. John F. Ahearne, Acting ASD(M&RA). The Committee members were:

Mr. John F. Ahearne, Acting ASD(M&RA);
Lt. Gen. A. P. Clark, USAF (Ret);
Mr. Vernon McKenzie, Acting ASD(HA);
Hon. Richard A. Wiley, General Counsel, DoD;
Dr. Roger E. Shields, DASD(IEA);
Maj. Gen. Travis R. McNeil, USAF;
Rear Adm. W. P. Lawrence, USN;
Brig. Gen R. C. Schulze, USMC, replaced by
Brig. Gen. Joseph V. McLernan, USMC, on 25 May 1976;
Brig. Gen. C. E. Canedy, USA;
Colonel George Day, USAF; and
CWO2 Donald J. Rander, USA.

The Committee held its first session on 4 May 1976. The full Committee met twice weekly for two months and held additional meetings, as required, during a third month. The committee established four permanent working groups from its membership to prepare positions on specific issues under consideration.

The Committee devoted its first four meetings to administrative matters and background presentations, the next ten meetings to interviewing individuals, and the last seven to formulating its report. In addition to the full Committee meetings, the working groups met on numerous occasions throughout the period to prepare positions on various issues.

An ad hoc working group drawn from Committee membership selected the individuals to be interviewed from a list of Service and OSD nominees. This working group ensured that the Committee was exposed to a broad spectrum of opinions on, and personal responses to, the Code of Conduct. The 50 individuals interviewed included ex-prisoners of war and hostile peace-time detainees, experts in PW behavior, representatives of organizations concerned with PW's, and members of the 1955 Advisory Committee. Five individuals and two organizations invited to appear before the Committee declined their invitations.

These interviews enabled the Committee to hear comments on the value of, and guidance provided by, the Code of Conduct. 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. It provided each interviewee with a copy of the Committee's ground rules and general topics prior to his appearance. The Committee attempted to maintain confidentiality to assure a frank exchange of ideas. The Committee's members were also

free to question each interviewee in order to clarify his positions following his initial statement in response to Committee guidelines.

MAJOR CONCLUSIONS AND RECOMMENDATIONS

By its ~~deliberation~~ ^{deliberations} of issues, the Committee arrived at a number of conclusions and recommendations. The most important of these appear in this report, with brief statements of Committee deliberations.

These deliberations, conclusions, and recommendations are organized to present the two most important issues, revalidation of the Code of Conduct and change of specific words of the Code, and training required to support the Code, first. These issues are interrelated, and their resolution was closely tied to detailed consideration of other Code issues: Command in PW Organizations; Investigation of Violations of the UCMJ; The Legal Status of the Code of Conduct; Consistency of the Code of Conduct with the Geneva Conventions; Clarification of Policy Concerning Surrender; Escape; Disclosure of Information; and, Periodic Review of the Code.

REVALIDATION OF THE CODE OF CONDUCT

There was consistent agreement throughout Committee proceedings that the Code of Conduct has served as a useful guide to the American

Serviceman through a wide spectrum of circumstances during normal service, on the battlefield and in captivity. It represents the high standard of behavior which is expected of the individual and which he may expect of all other members of the Armed Forces. There was never any question that the Code is needed, and some PW returnees attributed their very survival to the inspiration provided by the Code of Conduct.

The Committee deliberated extensively regarding the issue of changing the Code's words. The overriding reason presented for changing the words was to clarify the meaning of the articles. Despite years of training in the Code, many feel that confusion in its precise meaning still exists among instructors as well as trainees. The time available to train large numbers of inductees in the Code of Conduct has often been limited. Competing priorities of other training events have in some instances reduced Code training to a few hours of platform instruction before a large body of personnel with emphasis necessarily directed at the words in the Code. Although DoD explanatory guidance was designed to overcome ambiguities in interpretation, Army and Marine Corps experience indicates that many trainees quickly forget the explanations and the most that is recalled is a portion of the wording from the Code itself. Ambiguities are resurrected; and, under stress, the words of the Code become dogma. Although the framers of the Code felt that any misinterpretations could be corrected in training, efforts to prevent training variations have been largely unsuccessful.

Opponents of word changes argue that changing the Code is tantamount to weakening the Code because change would diminish the Code's command-like nature. Many PW's endured great torture and abuse; some lost their lives in upholding the Code as currently worded; and a change could be construed as a breach of faith with those men. Changes might be perceived by the public as an admission that the Code failed to accomplish its goal during the Vietnam conflict. A change might establish a precedent opening a floodgate with no good control for limiting the number of changes. They contended that training is the proper method to convey meaning. The six articles of the Code will never stand alone without supportive training, no matter how well they are worded.

Conclusion: 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 could not accomplish this task. The proposed word changes clarify and restore the original intended meaning.

Present: 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.

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

Recommendation: The Committee recommends that an Executive Order changing Article V of the Code of Conduct be forwarded for signature by the President. Section I of the Report Supplement contains a proposed Executive Order. Training recommendations appear later in the report.

TRAINING

The Committee devoted much of its discussion to the issue of the Code of Conduct and related training. Most of the testimony indicated that Code of Conduct and related training has never been standardized among, or uniformly applied by, the Services. Even though interpretive guidance accompanied the Code when it was prescribed in 1955, the Services have tended to read the Code variously, often misinterpreting it and the intentions of its authors. Interviewees stated that they encountered difficulties in reconciling the Service's varying interpretations of the Code when captured or detained.

These difficulties were compounded by significant differences in the amount and quality of Code of Conduct and related training among confined personnel. Some PW's and detainees had completed sophisticated survival, evasion, resistance, and escape (SERE) training which enabled them to understand their situation and to cope with it more effectively; whereas others might only have been exposed to a poor quality tape recording of a lecture on the Code to "fill a square." Because of the wide disparity in training, personnel did not always view their obligations under the Code the same way, and these differences often caused friction within a group of prisoners.

The time at which an individual received Code of Conduct and related training also created problems. Because Service interpretations of the Code changed several times since its promulgation, training offered by the Services also changed. Therefore, an individual who received Code and related training in 1958 would probably have learned a different interpretation of the Code than an individual who received his training in 1964. These differences were even apparent within a single Service. Personnel who had completed SERE training also had differing views of the Code depending upon their Service's philosophy at the time they received training.

An analysis of the history of training indicated that the absence of a single agency to monitor all Service training caused many training deficiencies. Committee members felt that the OSD must monitor all Code of Conduct and related training in order to prevent inconsistencies

and to ensure standardization among the Services. Discussion indicated that a single Service, i.e., the Air Force, should serve as the OSD's executive agent.

Committee members also felt the need for an office within OSD to serve as an institutional memory. The OSD's executive agent would then be able to draw upon this memory to ensure that the Services would neither lose sight of the Code's intentions nor impose unrealistic training upon their personnel.

To regulate the amount and quality of an individual's Code and related training, the Committee discussed establishing guidance for all of the Services which would assure a minimum level of training to be given to each serviceman, including those in Reserve components. Servicemembers would then receive additional, more detailed instruction as their responsibilities, ranks, and/or risk of capture increase. Committee members felt continuation training is required to update information regarding the type of treatment a servicemember might receive at the hands of a potential adversary. Discussion indicated that this type of training guidance, coupled with a single executive agent responsible for training standardization, would enable resistance training to be tailored to address specifically a potential adversary's treatment of PW's so that this training could be more realistic and useful.

The Committee also discussed the need for informing a servicemember of the assistance the Armed Forces will render his family should he become

a prisoner or detainee. This type of training might well serve to alleviate some of a servicemembers's concern about his family while he is separated from them.

Examination of the 1955 Code and supporting training guidance, testimony of expert witnesses, and study of Code of Conduct training manuals indicates that a small group of individuals were able to reverse those portions of the 1955 training guidance dealing with interrogator-captive communication by rewriting training manuals and by issuing DoD Directive 1300.7, 8 July 1964. Committee members felt that these changes weakened supervision of the Services' Code of Conduct training, prevented the perpetuation of uniform, updated training, and violated the original spirit of the Code.

Even though Code of Conduct and related training by all of the Services has experienced shortfalls, the performance of most returned prisoners and detainees demonstrated compliance with the Code's high standards of behavior. The Committee also believed that all identified training problems are capable of resolution through improved guidance and supervision, and that improved training will remedy most deficiencies.

Conclusions: The Committee concluded that Code of Conduct and related training has been inadequate and inconsistent among the Services. Without adequate, realistic training, the Code of Conduct may become only an antiquated statement of ideals. The Committee decided that

revision of the current DoD training directive is required. This revision should include training levels for all servicemembers, continuation training in the Code of Conduct and related topics, and training to inform all servicemembers of the Armed Forces' responsibilities to their families. The Committee concluded that training of all instructors for the Code of Conduct and Code of Conduct-related training should be centralized under the OSD with a single Service acting as the OSD's executive agent. Finally, the Committee concluded that the OSD should be responsible for ensuring that the lessons learned from previous USPW experiences should not be forgotten and that the intent of the framers of the Code of Conduct should not be lost or be allowed to disappear from institutional memory.

Recommendations: The Committee recommends revision of DoD Directive 1300.7, 8 July 1964, to correct identified shortfalls in training.

COMMAND IN PW ORGANIZATIONS

Much of the discussion of the issue of command in PW Organizations centered on the authority of the senior ranking officer (SRO). The Code of Conduct clearly states the authority and obligation of the SRO to

assume command along with the duty of subordinates to obey lawful orders. Testimony indicated that the authority of the SRO may not be upheld in a legal test because of a limitation within the Manual for Courts-Martial (MCM). The MCM states that a commissioned officer of one armed force who is duly placed in the chain of command over a member of another armed force is "his superior commissioned officer." The arguments that develop against the authority of the SRO allege that the concepts of "chain of command" and "duly appointed" are questionable in a PW organization. The PW organization itself could be argued to be a nebulous organization, and therefore the orders given by a member of one armed force to a member of another armed force are not based on clearly established authority supported by law.

The Committee learned from testimony of the need for active PW participation in covert organizations, even at the risk of punishment by the captor. DoD Directive 1300.7 does not explain this need.

Conclusions: The Committee concluded that the implied authority of the SRO in the Code of Conduct is not clearly supported by Law because of contradictory wording in the MCM. DoD Directive 1300.7 should be expanded to include required PW participation in PW organizations.

Recommendations: The Committee recommends that an Executive Order which changes the MCM to provide legal support to the concept of an SRO in PW organizations be forwarded for signature by the President. Section I of the Report Supplement contains the proposed Executive Order. The proposed DoD Directive 1300.7 (Revised) incorporating PW organization requirements, along with other training requirements, should be approved.

INVESTIGATION OF VIOLATIONS OF THE UCMJ

The Committee learned that there had been no department initiated investigation to determine if there had been any violations of the UCMJ by PWs during captivity in Vietnam. Not until charges were made by senior PW returnees against subordinates were investigations into the charges conducted. This situation contrasted markedly with events that followed the Korean conflict. At that time, a separate debriefing was given to each returnee for the expressed purpose of determining any violations of the UCMJ by PWs during captivity. Subsequent legal processes followed from such debriefings eventually leading to trials and some convictions.

Following the return of PWs from Vietnam, careful instructions were given to debriefing personnel to limit the scope of questioning to intelligence information only. Information alleging violations of the UCMJ was to be avoided, and PW returnees were to be so instructed. As a result, the search for conduct in violation of the law was passive. The responsibility to uncover any violations was left entirely to the PW returnees. The Committee recognized that in those cases in which charges were dismissed, dismissal was accomplished by proper authority and the legal process was exercised. However, the investigations were minimal, and the rationale supporting dismissal was very weak.

The Committee recognized that certain events created an emotional climate in which a strong disinclination to prosecute any Vietnam PW returnee existed. A DoD public statement was issued at a responsible

level that there would be no prosecution of a returnee based solely on the making of propaganda statements. It was apparently believed that public exposure of the reprehensible behavior of some returnees would inevitably detract from the nearly heroic image of the entire returnee group and lengthy trials would probably result in adverse publicity.

The Committee, however, was struck by the strength of bitterness of most PW returnees interviewed over the failure to take disciplinary action against those former PWs whose conduct was considered to be in gross violation of the UCMJ. The consensus of returnees was that those who violated the UCMJ were not required to account for their actions; they were put to no test of justice; and their apparent immunity would serve to undermine the command authority in any future PW organizations.

Conclusion: A careful investigation of possible UCMJ violations by PWs during captivity in Vietnam did not occur. The Committee concluded that the nation owed a great debt to those PWs who tried to adhere to the Code. 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. During deliberations in its 22nd session, the Committee reconsidered the issue of mandating investigations.

The Committee concluded:

1. A strong statement which reflects the above concern should be placed

in the report.

2. Procedures should be implemented which require that thorough debriefings of all future repatriated PWs be conducted and include, as a minimum, the following elements:

a. Intelligence information concerning the enemy.

b. Description of captivity, e.g., for the purpose of considering any possible modifications in the Code, its interpretation or its training implementation.

c. Instructions that any individual having any information concerning possible violations of law, regulation or policy shall be required to report this information to the proper authorities.

3. The Executive Order which the Committee originally proposed to require mandatory review of PW conduct should not be forwarded for implementation.

RECOMMENDATION: The Committee recommends that the Secretary of Defense should direct the appropriate staff element to initiate action which will structure mandatory debriefing requirements as outlined in Conclusion 2, above.

THE LEGAL STATUS OF THE CODE OF CONDUCT

The Services all agreed that the Code of Conduct should not be converted to statutory law and the majority of the experts testifying before the Committee recommended that the Code remain a standard of general behavior. The standard is high, and an individual must strive to achieve it. The Committee recognized that circumstances exist in which an individual's effort may fall short, but he is expected to continue attempting to live up to the original standard. Behavior cannot be effectively legislated, but it can be affected by training and leadership. United States law, particularly the UCMJ, is appropriate for punishing all illegal PW activity. Some interviewees were not clear about the legal status of the Code; some felt it was statutory, while others felt it represented little or no legal authority. Some PW's apparently felt that they were not being held liable for their actions while in PW status. The suggestion that PW's might conduct their own court-martial while in captivity was not favored because of the impossibility of providing the accused a proper defense and otherwise complying with the requirements of the UCMJ in the PW environment.

Conclusion: The Committee concluded that the Code should not be made into a code of law; the Code was intended as a standard of conduct applicable when normal processes of command and discipline are inhibited due to lack of communications or conditions of confinement. In those cases meriting punishment for illegal acts committed by PW's, United States law, including the UCMJ, remains applicable. PW's should not

conduct their own court-martials or other para-legal activities; formal disciplinary action must be deferred until after repatriation occurs.

Recommendations: The Committee recommends 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. Further, Committee recommends that misconduct in such status should be the subject of disciplinary proceedings upon the return to United States control of PW's who are believed to have violated the UCMJ.

CONSISTENCY OF THE CODE OF CONDUCT WITH THE GENEVA CONVENTIONS

One of the most important issues raised during the Committees deliberations concerned the Code's consistency with the Geneva Conventions. Both expert testimony and research indicated that the Code of Conduct did not contravene the Geneva Conventions. The injunction contained in Article III to resist "by all means available" is consistent with the conventions because an individual has a legal right to resist, actively and directly, by all means necessary when action is required for self-defense or self-protection from injury or serious harm, arising from attacks or assaults by the authorities or personnel of the Detaining Power. He also has the legal right to engage in passive resistance to oppose physical neglect or abuse, to refuse to participate in indoctrination sessions, or to engage in hunger strikes to oppose unlawful orders or requirements which the Detaining Power might seek to impose. The legal right to resist, whether actively or passively, requires reasonableness in its execution.

Article III of the Code states that the PW "will make every effort to escape and aid others to escape," and the Geneva Convention recognizes that a PW's country may impose upon him a duty to attempt to escape. Article 9 states that offenses committed during escape "with the sole intention of facilitating escape and which do not entail any violence against life or limb, such as offenses against public property, theft without intention of self-enrichment, the drawing up or use of false papers, or the wearing of civilian clothing, shall occasion disciplinary punishment only." This applies whether an escape attempt is successful or if the PW attempts numerous escapes. The PW must be aware that resistance to his captor, if carried beyond this point, may subject him to disciplinary measures under the Geneva Convention and may subject him to punishment under some other code of law.

Some questions also arose concerning the status of medical personnel and chaplains under the Code of Conduct and the Geneva Convention. Article 33 of the Geneva Convention Relative to the Treatment of Prisoners of War specifically provides that these two categories of personnel shall not be considered PWs, but as a minimum they shall be entitled to the benefits and protection afforded by the Convention to PWs generally. The privileged status of these retained personnel under the Convention might be considered as giving them latitude which could be viewed as being contrary to the Code of Conduct. However, the character of the Code as moral guide is very important when considering this apparent conflict. As members of the Armed Forces, medical personnel and chaplains are subject to the Code and are responsible for their actions even when performing their roles as retained personnel.

However, the Code and Geneva Conventions allow retained personnel flexibility to perform their medical and spiritual duties without the restrictions which might be placed upon PW's. While performing their duties, retained personnel may encounter competing priorities. For example, a physician, moving freely among PW's, may have many opportunities to escape. However, he may determine that he has an obligation to continue treating the sick and wounded and not capitalize on these opportunities. This is not a conflict between the Code of Conduct and the Geneva Conventions because recognition of the moral duty of retained personnel to minister to the needs of PW's can be inferred from the Code. The Code of Conduct was written by reasonable men with reasonable intentions, fully aware that mature judgment must be used in its application. All personnel should be aware of the special status of medical personnel and chaplains. The foregoing discussions are, of course, based on the premise that any future Detaining Power will adhere to the Geneva Conventions. However, recent USPW experiences indicate that the possibility of a Detaining Power's living up to the Conventions is very slight.

Conclusions: The Code of Conduct is consistent with the Geneva Conventions. Every member of the Armed Forces is expected to measure up to the standards embodied in the Code of Conduct while in combat or captivity. However, if medical personnel and chaplains are permitted to perform their professional duties, they must be allowed added flexibility in their behavior, which does not violate the intent and spirit of the Code.

Recommendations: The Committee recommends that servicemen should become familiar with the general requirements of the Geneva Conventions as they pertain to the Code of Conduct. They should be taught the relationship of the Code and Convention requirements, particularly as they pertain to parole, PW discipline, prisoner organization, authorized/releasable information, and assistance to enemy effort. Chaplains and medical personnel should be fully briefed on their special status under the Geneva Conventions.

CLARIFICATION OF POLICY CONCERNING SURRENDER

As a result of some questions about the apparently restrictive nature of Article II of the Code of Conduct regarding surrender, the Committee deliberated this issue in order to determine what latitude existed under this article. The bulk of the expert testimony before the Committee indicated that very few ex-PW's felt that there was any substantive difficulty in understanding this article. The intent of the Code is one of reasonableness, and any interpretation or training vagaries resulting from a misunderstanding of these articles have been unusual. The Code was never intended to exhort suicidal resistance as a means of avoiding capture or surrender. Rather, the Code was intended to convey the understanding that resistance to the point at which further fighting would only lead to death without significant loss to the enemy constitutes exhaustion of the means to resist or evade. Since very few people had trouble understanding the intent of Article II, the Committee felt no need to reword the article.

Conclusion: The Committee concluded that Article II of the Code of Conduct is stated clearly enough that no need exists to alter this article.

Recommendations: The Review Committee recommends that DoD Directive 1300.7 contain an explanation clarifying the intent of this article. All members of the Armed Forces should understand that resistance to capture or surrender need not be carried to suicidal lengths.

ESCAPE

During its deliberations, the Committee discussed at length the question of a prisoner's obligation to escape. Article III of the Code of Conduct states that a prisoner of war "will make every effort to escape and aid others to escape." The Geneva Convention on PW (GPW) recognizes that the prisoner's country may impose upon him a duty to attempt to escape and that prisoners make such attempts. A USPW does have, under the Code of Conduct, an obligation to escape and to aid others to escape. Because the GPW recognizes such a duty, no conflict exists between the Code of Conduct and the Geneva Conventions on this point.

Some testimony raised the question of coordination of escape attempts with the command authorities of prisoner of war organizations. Additional testimony indicated that escape attempts should be coordinated through PW organization command authority and that these attempts should not override duly established command authority. Further, some interviewees stated that impulsive or ill-planned escape attempts which are conducted outside of the prisoners' chain of command may endanger or

cancel well-planned escape attempts which have been properly coordinated. Additionally, irrational escape attempts may also serve as an excuse for a captor to impose harsh or abusive treatment on all prisoners in an attempt to preclude any further escape attempts. This same sort of punishment may result from well-planned, coordinated escape attempts, but it will not have the same detrimental effect on prisoner morale as punishment resulting from one individual's capricious act.

The Committee also heard testimony recommending that the senior member of the Armed Forces in captivity not have final override authority for any planned escape attempt. However, the bulk of testimony indicated that the SRO should have this authority as part of his overall authority for PW organizations, and it includes his right to issue specific guidance concerning escapes of opportunity.

Conclusions: 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.

Recommendations: The Committee recommends that training directives should emphasize that desperate and ill-planned escape attempts are neither required nor desirable under the Code of Conduct. Training should also emphasize that any escape attempt must be approved by PW command authority.

DISCLOSURE OF INFORMATION

The Review Committee found that Article V of the Code of Conduct has been subjected to various interpretations in training practice. The Committee discussed at length the question of how much information a prisoner may give to his captors. The framers of the Code of Conduct clearly intended to provide a realistic, usable guide on this question. The implementing guidance for Code of Conduct training clearly stated that training would prepare members of the Armed Forces to resist enemy interrogation by using various means. Experience of PW's in hands of Communist captors during the Korean War made it clear that a skilled and determined interrogator could extract virtually any information he wanted from a prisoner. The 1955 Advisory Committee designed guidance to ensure that our servicemen understood this fact and to assist them in resisting such interrogation realistically rather than dogmatically.

Article 17 of the Geneva Conventions Relative to the Treatment of Prisoners of War requires a PW to give his captor his name, rank, service number, and date of birth (NRSB). If a prisoner fails to provide this information, the captor may choose to deny a prisoner his rights as a prisoner of war. These four items of information are also required in order to provide positive prisoner identification. Acknowledging this requirement, the Committee then deliberated the amount of information, beyond NRSB, that an individual might be allowed to provide his captor.

The authors of the Code recognized that an interrogator is capable of coercing more than NRSB from a PW. This recognition led specifically

to the second sentence in Article V which charges the serviceman to "evade answering further questions to the utmost of my ability." Notwithstanding, some Services have interpreted Article V as limiting a serviceman to giving only NRSD, and they have conducted their training on this basis. Some ex-PW's stated that this training did not prepare them adequately for their ordeal and left them with a feeling of guilt when, under extreme duress, they divulged more than NRSD to their captors.

Most interviewees rejected the restrictive interpretation of Article V and urged that the teaching of the article be standardized and brought back into line with its original intent. Further, they recommended that interrogation resistance training should be based on successive lines of resistance and a "rebound" philosophy, e.g., a PW who is coerced into giving more information than he feels he should must not allow himself to feel "broken," but must "bounce back," continue to resist, and provide as little information as possible during subsequent interrogations. This approach seemed to have been the most successful technique in dealing with interrogation.

The Committee addressed at length the advisability of rewording the basic Code of Conduct. Opponents of any wording change whatsoever advanced strong arguments.

The Committee recognized that the present wording of Article V has been a major cause for varying interpretations by different Services and individuals. The Committee had no desire to change the words of the

Code, but it felt the need to clarify Article V's meaning. Many, but not all, members felt that the word "bound" was an archaic word not easily understood by members of the Armed Forces who might have limited educations. Other Committee members felt that the word "only" was also a cause for confusion. Their view was that the word "only" was the basis for the belief that the PW was restricted to giving only NRSD. Testimony also indicated that if "bound" and "only" remained in the Code training inconsistencies would undoubtedly continue, in spite of extensive efforts to improve and clarify training guidance through a revision of DoD Directive 1300.7. Those Committee members favoring this change felt that clarifying word changes in Article V would not lessen the command-like nature of the Code, would not weaken an affirmative attitude toward the Code, and would restore the originally intended meaning of Article V, thereby strengthening the Code.

Conclusions: The Committee concluded that Code of Conduct and related training must become more realistic concerning a PW's disclosure of information. The Committee concluded that to the extent set forth above the wording of Article V of the Code of Conduct should be clarified.

Recommendations: The Committee recommends that DoD Directive 1300.7 be revised to stress successive resistance and the rebound philosophy. The Committee also recommends adopting wording changes to Article V, as presented under Revalidation of the Code of Conduct, to correct possible misinterpretations concerning disclosure of information.

PERIODIC REVIEW OF THE CODE

Past reviews of the Code exist in the 1956-58 Progress Reports compiled by the Defense Advisory Committee on Prisoners of War. After that Committee disbanded in 1958, major variations in the philosophy of Code training began to appear. Since 1958, Service-initiated actions have addressed specific issues within the Code, but not the Code itself. Most of the Services have either stated, or alluded to, the importance of maintaining the Code and have argued against any action viewed as diminishing its value. Other views have proposed changes in the Code for clarity and ease of training.

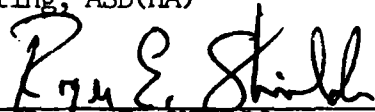
Changing world conditions could well require future periodic reviews of the Code. United States and International Law may change significantly potential adversaries may introduce radically new methods of captor behavior and new concepts of neutral power detention may evolve. Each of these developments could require changes in the Code.

Conclusions: The Committee concluded that frequent reviews of the Code of Conduct itself would serve as an unnecessary challenge to the validity of the Code. However, some periodic review of the Code itself is essential to insure timely response to major changes in PW treatment by potential adversaries.


Recommendations: The Committee recommends that the Secretary of Defense convene a Defense Review Committee, similar in charter and membership to that of the 1976 Defense Review Committee for the Code of Conduct, to review the Code of Conduct when changing circumstances warrant.

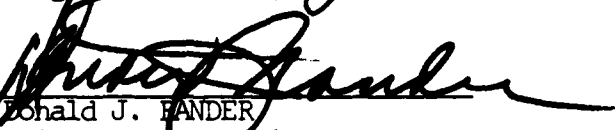
Respectfully submitted,

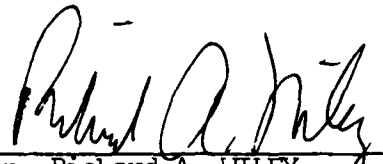

Mr. Vernon MCKENZIE
Acting, ASD(HA)


Dr. Roger E. SHIELDS
DASD(IEA)



William P. LAWRENCE
Rear Admiral, USN

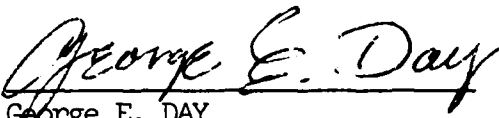

Charles E. CANEDY
Brigadier General, USA



Ronald J. BANDER
Chief Warrant Officer 2, USA



Hon. Richard A. WILEY
General Counsel DoD


Travis McNEIL
Major General, USAF


Richard C. SCHULZE
Brigadier General, USMC


George E. DAY
Colonel, USAF


A. P. CLARK
Lieutenant General, USAF (Ret)
Vice Chairman


Mr. John F. AHEARNE
Acting, ASD(M&RA)
Chairman

MAR 26 1976

APPENDIX

CHARTER

In order to formally review the Code of Conduct for members of the Armed Forces of the United States and to reaffirm the validity of the Code of Conduct for its intended purposes or to recommend such changes as necessary, the Defense Review Committee is hereby established. This Committee will consist of a Chairman, a Vice Chairman and seven other members. The Chairman will be the Assistant Secretary of Defense for Manpower and Reserve Affairs. The Vice Chairman will be a three or four-star retired officer. The other members will be the Chairman, Department of Defense Prisoners of War Policy Committee, Assistant Secretary of Defense (Health Affairs), General Counsel of the Department of Defense and an active duty officer of General/Flag rank from each of the four Services, selected by the Secretary of each Department.

The Defense Review Committee will meet at the call of the Chairman, to review the Code of Conduct, its supporting training programs, and the experiences of detainees and POWs with the Code in order to report to the Secretary of Defense its findings and recommendations as considered appropriate.

Administrative support will be provided by a Secretariat consisting of an officer from each of the Services and clerical assistance as required.

It is expected that the Committee's report will be forwarded to the Secretary of Defense as soon as possible and not later than July 1976.

H. P. Clement
Membership to also include two POW's.