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ARTICLE V OF THE CODE OF CONDUCT--RETAIN, DISCARD OR REVISE?(U)
APR 74 J A WATKINS

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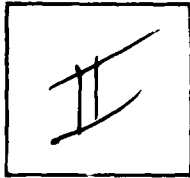
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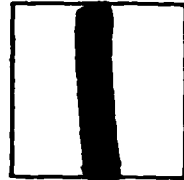
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STAFF STUDY

Article V of the Code of Conduct--Retain,
Discard or Revise?

MAJ J. A. ^{John}Watkins, USA 1939- 2 Apr 1970

ABSTAINER

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ARTICLE V OF THE CODE OF CONDUCT--RETAIN,
DISCARD, OR REVISE?

THE PROBLEM

1. To determine the relevancy of Article V of the Code of Conduct 1
in view of lessons learned by POWs in Vietnam. 2

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 statement disloyal to my country and its allies or their cause.

FACTS BEARING ON THE PROBLEM

2. The U.S. Defense Advisory Committee on Prisoners of War 3
developed the Code of Conduct as a result of their investigation of 4
conduct of U.S. POWs during the Korean conflict.* 5
3. The Code of Conduct is current U.S. Government policy as 6
promulgated in EXEC Order 10631, dtd 17 Apr 1955, and as im- 7
plemented by each of the Armed Forces.** 8
4. The Code of Conduct, either as a whole or in part, carries no 9
punitive authority, and in fact such authority is vested in the UCMJ.*** 10
5. The Geneva Convention allows a prisoner of war to discuss far 11
more with his captors than does the Code of Conduct.**** 12

*U.S. Defense Advisory Committee on Prisoners of War, POW, The Fight Continues After The Battle. Report (Washington, D.C.: Government Printing Office, 1955), p. 21.

**Ibid., p. 37.

***G. S. Prugh, Jr., "Code of Conduct For Armed Forces," Columbia Law Review, Vol. 56 (New York, N.Y.: May, 1956), p.676.

****Elizabeth R. Smith, "The Code of Conduct in Relation to International Law," Military Law Review, Vol. 31 (January, 1966), p. 119.

6. The majority of our Vietnam POWs were not treated in accordance with the provisions of the Geneva Convention.* 1
2
7. The majority of our POWs in Vietnam divulged more to their captors than is allowed by Article V of the Code of Conduct.** 3
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DISCUSSION

8. Historically the treatment or disposition of POWs by an enemy has varied from a policy of "take no prisoners", to one of exploitation for military intelligence or political purposes. It was not until the Korean War that we received a firsthand look at a system for treating POWs that had political exploitation as its primary purpose. It was also as a result of the Korean War that U.S. policy was revised to preclude (hopefully) a reoccurrence of the unacceptable behavior that was demonstrated by many U.S. POWs.*** There is strong evidence to indicate that the drafters of the Code of Conduct believed that in the next conflict in which the U.S. might participate, the enemy would not be as barbaric as the North Koreans.**** As we know now, nothing could have been further from the truth. 5
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9. Statements given by former Vietnam POWs to the House subcommittee conducting inquiries into the treatment and conduct of our POWs in Vietnam are more than conclusive in confirming the cruel and unusual treatment of our POWs, by both the North 17
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*U.S. Congress, House, Hearings before the Subcommittee on National Security Policy and Scientific Development of the Committee on Foreign Affairs, American POW's & MIA's in Sea, 1973, Part 4 (May 23, 30, & 31, 1973), pp. 3, 6.

**Ibid., p. 197.

***See Detailed Discussion at Enclosure B.

****"Measuring Up to the Code of Conduct," Army Magazine, Vol. 23 (August, 1973), p. 4.

Vietnamese and by the Viet Cong.* Major James Rowe revealed 1
that the longer he remained in captivity, the more it became 2
obvious to him that he was a political prisoner as much as, if not 3
more than, he was a POW in the eyes of the Viet Cong.** In most 4
cases the U.S. POWs in Vietnam were exploited initially for their 5
military intelligence knowledge, but after a relatively brief period 6
of time (two to four weeks), the communists acknowledged that the 7
value of military intelligence available from a POW was minimal 8
because of the rapid obsolescence of tactical military information. 9
This premise has long been acknowledged by DOD and is recognized 10
in the survival training given its personnel.*** 11

10. If we accept the testimony of the returned POWs who suffered 12
long and hard at the hands of their communist captors, then a major 13
issue that must be dealt with is the purpose of Article V of the 14
Code and whether or not that purpose was achieved. The question 15
that must be answered is whether or not it is the language or the 16
"spirit" of Article V that is important, and whether or not it is 17
vague as written. 18

11. Interpreting the Code, its meaning to former POWs, the 19
intent of the drafters of the Code, and the interpretation by DOD, 20
vis-a-vis American POWs (i. e., that there were no "criminal 21
offenses" on the part of the POWs in Vietnam) will lead to several 22
observations. These observations are discussed in depth at 23
Enclosure B, which is a detailed discussion of the meaning and 24
intent of Article V, along with the results of personal interviews 25
of POWs. A synopsis of the observations obtained from Enclosure 26
B are: 27

*Ibid., p. 3.

**Major James N. Rowe, Five Years to Freedom (Boston: Little and Brown, 1971), p. 117.

***RADM Jeremiah A. Denton, Jr., Commandant, Armed Forces Staff College, Norfolk, Virginia, Interview, March 18, 1974.

a. That the intent of the drafters of the Code was not to devise a legal document capable of withstanding any type of judicial test, rather to provide a document that is sufficiently easy to understand by all Service men and that is to be used (referring now specifically to Article V) as a "moral crutch" to be leaned on by a POW, especially during his initial days of captivity.

b. That the wording of Article V is ambiguous when a POW, faced with political exploitation, tries to distinguish the parameters that guide him--especially, he is bound to give only..., but he will evade answering further questions to the best of his ability.

c. That when faced with the problem of survival, more beatings and extreme torture, versus making statements that would be easily recognized as derived from coercion or threat, what should be the choice available to a POW?

d. That when presented with the knowledge that the Geneva Convention allows a POW to write letters home that will contain more information than, name, rank, etc., and yet equally aware that the Communist bloc nations took exception to Article 85 of the Geneva Convention, and in so doing allowed themselves the "right" to treat certain captives as "war criminals" as opposed to POWs, the POW is faced with a paradoxical situation in which he can be "wrong" regardless of what he does or does not do.*

12. The previous observations leads to the belief that it is the intent of Article V that is important, however; the process of preparing a soldier for the circumstances that he will face as a POW is a difficult one, and should not be complicated by a vaguely worded "guiding document". Further, as discussed in detail in Enclosure B, the realities of being a POW with respect to what our suspected enemy knows about our training, leads to a conclusion that most

*Defense Advisory Committee on POWs, op. cit., p. 22.

POWs would need a "moral guide". The only question is what kind of guide? 1
2

CONCLUSIONS

13. The intent of Article V of the Code is relevant, but the wording is too restrictive and vague. 3
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14. Guidance provided to our soldiers should be in consonance with legal provisions governing our military forces (both the UCMJ and the Geneva Convention). 5
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RECOMMENDATIONS

15. It is recommended that: 8

a. Article V of the Code be revised as follows: 9

When questioned, should I become a prisoner of war, I will inform my captors that I am to be treated in accordance with the provisions of the Geneva Convention, and that if I am subjected to torture or other unjust punishment I will not be held accountable by my peers or my superiors for any information obtained by such methods.

b. That training of our soldiers stress not only the expectations of our government, but that all issues, from expected treatment to possible views of the American people vis-a-vis the war must be provided, so that each soldier will be aware of the political aspects of war. 10
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c. The memorandum attached as Enclosure A be forwarded to the Secretary of Defense. 15
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JOHN A. WATKINS
MAJOR, USA

ENCLOSURES:

- A - Proposed Memorandum for the Secretary of Defense
- B - Detailed Discussion

ENCLOSURE A

(Date)

MEMORANDUM FOR: THE SECRETARY OF DEFENSE

SUBJECT: The Relevancy of Article V of the Code of Conduct

1. The attached staff study recommends a change in the wording of Article V of the Code of Conduct that will bring it in line with the provisions of the Geneva Convention as well as the UCMJ.

2. Recommend that the Code of Conduct be revised as follows:

When questioned, should I become a prisoner of war, I will inform my captors that I am to be treated in accordance with the provisions of the Geneva Convention, and that if I am subjected to torture or other unjust punishment I will not be held accountable by my peers or my superiors for any information obtained by such methods.

1 Incl
as

Action Officer

Concurrence - Assistance Secretary of Defense for Manpower and Reserve Affairs.

(Date)

ENCLOSURE B

DETAILED DISCUSSION

1. To determine the relevancy of one Article of the Code independent from all others, first required making a determination of the interdependency of the six articles. It is my opinion that there is a degree of independency as opposed to interdependency, especially as pertains to Article V, and I will support that opinion as I develop this enclosure to my study.
2. One of the first and most essential tasks in this effort was to try to determine the intent of the drafters of the Code so that each part, as well as the entire Code, could be evaluated. To do this I followed a two pronged attack plan. The first prong consisted of reading what had been written about the Code, its drafters, and the environment in which it was couched. The second was to obtain first hand information from those people who had been POWs to determine if they had some thoughts about the intent of the drafters, given the fact that they, as former POWs had lived under the Code, both as non-POWs and as POWs. It is from that vantage point that this detailed discussion must be viewed, especially when reference is made to interviews with ex-POWs.
3. Immediately after the Korean War there was a cry of disbelief that went up from the American people as a whole, when it was learned that 192 POWs had aided the enemy in order to "gain favor". A further cry was released when 21 POWs refused repatriation. What were the causes for such "un-American" actions, and what could be done to preclude a reoccurrence in future wars? These were the questions that were asked. The ex-soldier Eisenhower, then President, directed DOD to evaluate the problem and provide him with recommendations. This then was the basic charter that the Defense Advisory Committee was established with, and in view of public sentiment at that time and the fact that the President was an ex-soldier, it is therefore my belief that the results of the committees efforts were predestined, only the form was uncertain. The form, as we now know, became the Code. The committee found that many of the POWs were uncertain as to our purpose in Korea, a statement that is equally true of Vietnam. The committee also found that the American POW was unable to cope with the physical and mental abuses of their captors. After excessive "cruel and unusual" punishment many of the Korean POWs succumbed to the

demands of their captors and made statements that discredited this country and in some instances "gained favor" for the POW. Almost 20 years later a second look at the record, especially in view of Vietnam, is enlightening.

4. There were 4,428 prisoners that were returned after the Korean Conflict ended. Of these, 192 were found chargeable of criminal offenses. These 192 equal 4% of the POW total population, while at the same time almost double that figure (7%) of the total U.S. population had been charged with a criminal offense. Further, when compared by age groups, it was determined that more than 3 times (12.8%) of the total U.S. population between the ages of 18-26 had been charged with criminal offenses.* Contrast this with our Vietnam experience, where most of the POWs were career officers, as opposed to first term enlisted personnel and the fact that over 80% of these men (473) made some statement (i. e., committed a criminal offense) to the enemy--473 in Vietnam vs 192 in Korea. None of these 473 were charged by DOD with criminal offenses in marked contrast with Korea. The point of this discussion is to try to establish a framework for believing that the American people and the President, and all others connected with the creation of the Code in 1955, may have over reacted. As a minimum I would like to create the idea that possibly the entire Code of Conduct was created as a panacea for all soldiers to use for model conduct in any situation and that Article V particularly was written with the thought that it was "immoral" for U.S. POWs to "crack"!

5. General S. L. A. Marshall in an open letter to the New York Times following the Times' criticism of the Code (immediately after the U.S.S. Pueblo incident) stated that the Times, and in fact the Military Services, did not understand the Code, and that if they did they (all) would realize that it was more than adequate. On August 19, 1973 in an address to the Advanced Course students at the U.S. Army Ordnance Center and School, General Marshall reversed that position, stating that the Code did need revision, particularly that portion that pertains to escape after capture, and Article V. He did not detail the revisions needed, but it was strongly implied that the Code asked more than was realistic, especially in view of our Vietnam experiences.

*Defense Advisory Committee on POWs, op. cit., p. 11.

6. On the 18th of March, 1974, I had the privilege of interviewing RADM Denton regarding his experiences as a POW in North Vietnam. I asked him, and three former POWs the following six questions:

1. In view of your experiences, do we need a Code of Conduct?

2. Does Article V of the Code present a paradoxical situation to the POW in view of its contravention to the Geneva Convention?

3. Can future POWs expect "cruel and unusual" treatment from captors given our assessment of the future enemy?

4. James Rowe indicated that lying to the enemy was dangerous and to be avoided at all costs. Do you agree and if so (not) why?

5. In your opinion, is the training now given to our soldiers to prepare them for their roles as POWs (and to implement Article V) adequate?

6. Why do you think the Code was written, and would you comment on the situation of the times as it affected the drafters of the Code?

7. The answers received from the four POWs (2 officers--1 Army and one Navy--and 2 E. M.--both Army) had an extremely high correlation coefficient (.875--this correlation was attempted even though it is recognized that the material is extremely subjective and subject to a high degree of interpretation on the part of the author). The results are as follows:

1. We need a Code that will provide positive, concise and definable/defendable logic to the soldier. (Unanimous concurrence of all POWs.)

2. Article V is paradoxical and vague especially as it related to the Geneva Convention. (Split--3 yes and 1 no.)

3. Unanimous yes.

4. Subjective question with subjective answers. Three of the POWs suggested some form of falsification in order to

get the enemy off ones back, while one maintained that it was too hard to keep track of lies, hence lying was to be avoided. As an aside, James Rowe, even though he disavowed lying, did maintain that it was perfectly proper to try and confuse the enemy, especially in response to their indoctrination classes.

5. One yes and three no.

6. Subjective question with subjective answers, however; all of the interviewees felt that the Code was a political document in nature, whose intent was to provide the soldier with a "guiding light" to follow, especially in time of combat, and more particularly if captured.

6. The Code, it appears has a place in the soldiers portfolio, and in fact, can be classified as a "guiding light". What is necessary is to separate the guidance, especially as it relates to when and where the soldier finds himself. For to be told that, "I am an American fighting man, dedicated to the principles....", and presented to a soldier under conditions of peace with the intent of strengthening his dedication to his country is, in my opinion, quite a different set of circumstances than those presented by Article V when one is a POW. I feel it unnecessary to debate the patriotism of the "average G.I.", as that in itself would be the subject of a separate thesis, however; I feel it is imperative to state without equivocation, that the American fighting man is a U.S. citizen first, entitled to all the privileges thereto endowed, and that he should not be expected to endure, for political propaganda purposes, any cruel and/or unusual punishment. Further, it is my opinion, that Article V can only be relevant if it takes away from the enemy the ability to exploit a POW for political propaganda purposes, and leaves a POW with the certain knowledge that his only value to the enemy would be that of military intelligence. To achieve such a position requires that we proclaim to any potential enemy that we as a government, a people, and as a military body will not accept cruel and unusual punishment of our POWs, and that we do not expect POWs to be supermen for a purpose that we already know and understand (i. e., that a fighting man is an instrument of the executive branch of the government, and that he will go where told to go, and that it is not within his charter to address the political ramifications of any conflict). I recognize that this is no small order, however; if we are going to treat our fighting men IAW the legal provisions that we have agreed to be governed by (i. e., the Constitution, the UCMJ, and the Geneva Convention), then I feel that Article V must be changed.

DATE
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