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Navy Narrows Grounds for Possible Pueblo Trial

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CORONADO, Calif., Jan. 14—The United States Navy has quietly made a legal decision that blunts several possible charges of wrong-doing against Cmdr. Lloyd M. Bucher and the crewmen of the intelligence ship Pueblo.

The decision was made by the Judge Advocate General of the Navy in Washington. One portion specified that the Pueblo's crewmen, who "confessed" to espionage in North Korean waters, were "illegal detainees" and not prisoners of war.

This sharply limits possible courts-martial against crewmen because regulations involving the conduct of American servicemen in enemy jails deal in large part with prisoners of war.

A related decision by the Navy also limits the charges that could be leveled against Commander Bucher, who surrendered the Pueblo, apparently without a fight, to North Korean gunboats in the Sea of Japan on Jan. 23. The Navy has ruled that North Korea may not be considered an "enemy" because the United States and North Koreans have ended hostilities.

This places major naval regulations involving "capture by the enemy" and "misbehavior before the enemy" in doubt in the event of courts-martial against members of the Pueblo crew.

The Navy decision was first disclosed yesterday by Capt. William R. Newsome, a lawyer and Navy veteran of 26 years who will serve as the counsel for the Pueblo's court of inquiry starting next Monday at the big naval base here. The decision was clarified today by other Navy lawyers.

"We have had an opinion that the crew members of the Pueblo were not prisoners of war, they were illegally detained," said Captain Newsome. "We are not in a state of hostility at the present time with the North Koreans—consequently they are not the enemy."

Captain Newsome said that the Code of Conduct, which was expected to play a possible legal if not moral role in the case, would be "inapplicable" in the

court of inquiry, to be conducted by five admirals.

The code was issued by President Eisenhower as an Executive Order in 1955 after the numerous "confessions" of American prisoners during the Korean War. Every American serviceman is now given instructions in the code, which deals mostly with correct behavior as a prisoner.

"The code says: '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 harmful to their cause.'"

Captain Newsome said: "Since they [the North Koreans] are not the enemy we don't have prisoners of war. And when we don't have prisoners of war we don't have the application of the code of conduct."

Discussing the reasons why North Korea was not now considered an "enemy," Captain Newsome said:

"President Truman's proclamation in 1950 declared a national emergency.

"To my knowledge that proclamation has never been rescinded and for some intents and purposes we are still in a state of national emergency.

"However, at the end of the Korean War there was a cessation of hostilities between North Korea and the United States and our international

law people inform me that the cessation of these hostilities terminated the status of North Korea as an enemy."

Captain Newsome was then asked whether one could "surrender" to a non-enemy. He paused a moment. "Well, I don't know, I honestly don't know," he said.

Captain Newsome said that the legal opinion had been made by the Office of the Judge Advocate General of the Navy.

Today, a Navy lawyer said that this opinion appeared to limit at least two key military regulations that could be used

against Commander Bucher and his crew in the event of a court-martial.

One is Article 1223 of the Navy Regulations, which deals with the serviceman "who is captured by the enemy" and says that each man can only disclose his name, rank, service number and date of birth. This regulation is similar to the Code of Conduct.

The other is Article 99 of the Uniformed Code of Military Justice, which concerns any member of the Armed Forces "who before or in the presence of the enemy runs away . . . or shamefully abandons, sur-

renders or delivers up any command, unit, place or military property which it is his duty to defend."

Navy lawyers said, however, that one order unaffected by the Judge Advocate General's move was Navy Regulation 0730. This states: "The commanding officer shall not permit his command to be searched by any person representing a foreign state nor permit any of the personnel under his command to be removed from the command by such persons so long as he has the power to resist."