

Port Chicago Task Force Contra Costa County Bar Association

September 8, 2022

Senator Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, DC 20510

Senator Alex Padilla
United States Senate
112 Hart Senate Office Building
Washington, DC 20510

Re: Support for Exoneration of the Port Chicago 50

Dear Senators Feinstein and Padilla:

With the understanding that there are ongoing negotiations regarding the National Defense Authorization Act (NDAA), we write to urge you to include provision for the exoneration of the Port Chicago 50 within the Senate's version of the Act and press for its passage. We are aware that the House's version of the NDAA included exoneration for the Port Chicago 50. Thus, time is of the essence. The time has come for the federal government to remove this stain on our nation's history – the unjust conviction of the Port Chicago 50 for mutiny for their refusal to return to the dangerous work of loading ammunition on vessels after the massive explosion on July 17, 1944, that killed 320 sailors, 202 of whom were African-American. We believe that the proper remedy is exoneration of the Port Chicago 50, a long overdue correction of history that will strengthen the rule of law in this nation.

By way of background, let us explain the basis for our support. The Contra Costa County Bar Association (CCCBA) recently formed the Port Chicago Task Force. The task force is comprised of members of the CCCBA, many of whom are attorneys, as well as members of the community with an interest in the Port Chicago 50. The task force was formed after the CCCBA DEI Committee presented a November 2021 program about the Port Chicago Disaster and the historical injustice of the mutiny trial of the Port Chicago 50. This presentation is at <https://www.youtube.com/watch?v=Y2cnrkDzaWU>.

The Port Chicago Task Force was formed with two goals: (1) seek to raise awareness of this injustice in the legal and broader community and (2) advocate for the setting aside of the mutiny convictions of the Port Chicago 50. The task force is actively engaged in meeting both of these goals.

As to the first goal, here is a capsule summary of the information we shared in the November 2021 program and continue to share with members of our communities.

Background: The Port Chicago disaster occurred in July 1944, at a critical juncture of World War II. Port Chicago at that time was a large munitions depot, where U.S. warships bound for the Pacific Theater were loaded with armaments. The Navy used sailors as stevedores, loading the ships around the clock. The pace was hectic, the work was arduous, and the working conditions were abysmal. The seamen were mostly

young adults and African-American. The officers were Caucasian. The Navy did not train the seamen in how to handle or load the munitions, and yet the officers demanded speed, pitting crews against one another in competitions, with officers placing wagers on the outcome.

On July 17, 1944, a massive explosion obliterated the loading docks as well as much of the town of Port Chicago. Residents across the entire Bay Area felt the explosion, which at the time were the largest man-made explosion in recorded history. 320 sailors were killed and hundreds more were injured. Two thirds of the dead were African-American. The surviving seamen were ordered to clean up the disaster site. This was gruesome and dispiriting work due to the close proximity of the explosion and victims.

The Mutiny Trial: After the cleanup, the Navy ordered the surviving sailors to return to the work of loading the munitions in the hulls of warships. Approximately 300 men refused to return to this work. They were afraid to load munitions under the same officers and conditions as those that preceded the explosion. The Navy threatened mutiny charges. A group of about 200 men continued on active duty following all orders given to them, and the Navy assigned them to menial tasks around the Pacific Theater, before giving them bad conduct discharges. The remaining fifty men, who came to be known as the Port Chicago 50, were tried in courts martial at Yerba Buena Island in September and October 1944. The defendants were convicted of mutiny and sentenced to terms of between eight and fifteen years of hard labor followed by a dishonorable discharge. Most of the sailors served 2-3 years of their sentences, before the Navy later commuted the initial sentences.

The Aftermath: NAACP Legal Counsel Thurgood Marshall traveled to the Bay Area to observe the trial. Marshall held a press conference and announced to the press that the defendants were deprived of basic due process. As an example, each of five defense lawyers represented ten defendants, a stark limitation on the right of individual representation. Marshall also pointed to evidentiary rulings that tilted the trial proceedings unfairly in favor of the prosecution. One example of such a ruling was the decision to exclude evidence of the working conditions leading up to the explosion, which of course was probative of the reasons why the Port Chicago 50 refused to return to work. The court's deliberation over the evidence was so brief that by itself this raised concern about the fairness of the proceeding. Thurgood Marshall told the press that all of American society was on trial. Marshall held a second press conference to announce that the NAACP was requesting a government investigation into the working conditions at Port Chicago. A public outcry followed. First Lady Eleanor Roosevelt was among those who called attention to the unfairness and harshness of the trial outcome. The Navy commuted the sentences in response to this public campaign, but the convictions stood. Congress created a compensation scheme for the surviving civilian victims. The compensation provided was only \$3,000 versus the claimed amount of \$5,000 due to Mississippi Rep. John Rankin's overt racism. Military survivors were simply ordered back to work and as military members would not be entitled to any compensation except that which was sought through the VA after their service.

The public awareness of the fate of the Port Chicago 50 increased pressure on the government to desegregate the military. Finally, after 170 years of express racial discrimination and inequality in the military, President Truman issued an executive order in 1948 desegregating the armed services. There is a direct connection between the moral courage of the Port Chicago 50 and this executive order, issued at the dawning of the modern civil rights movement in this nation.

Through the years, the subject of presidential pardons for the Port Chicago 50 periodically arose. Many of them refused to seek a pardon, reasoning that they had done nothing wrong for which they could be pardoned. Only one of them sought and received a pardon, from President Clinton. All of the Port Chicago 50 are now deceased. Their families and community continue to experience the painful memories of the convictions and the years of living with that stain as the men attempted to live in a nation that failed to recognize the value and commitment each had made to serve in the military.

With this background in mind, we will turn to our Task Force's second objective – to advocate for the exoneration of the Port Chicago 50 to erase the stain of their mutiny convictions from our nation's history. Taking this step will address several aspects of historical inequity:

- racial discrimination and systems that construct and reinforce inequality:

The Navy and other branches of the service were formally segregated. Whites could be officers; African-Americans worked in menial or undesirable assignments only. The men who created the conditions for the Port Chicago Disaster – the admirals and other officers in charge of the Navy – were not held to account for it. In addition to the Port Chicago 50's mutiny convictions, the other sailors who originally refused to return to loading ships received summary court-martials, bad conduct discharges, and forfeiture of three months' pay. Although the sentences imposed on the Port Chicago 50 were commuted after the end of the war, the convictions remained, casting a pall over their service and our nation's history.

Although nearly eighty years have passed since the Port Chicago Disaster, that is – unfortunately - a brief passage in the struggle for civil rights. Generations of Americans have called on the nation to do better, and the nation has been slow to act. Many did not live to see change – Dr. Martin Luther King, Medgar Evers, and Emmett Till to name a few, but they and their fellow Americans entrusted these issues to the succeeding generations to get it right. We as a task force believe that now is that time.

- the absence of due process of law:

The mutiny trial was fundamentally flawed. Five lawyers represented fifty sailors. Evidentiary rulings permitted testimony of allegedly conspiratorial statements without attribution, while excluding evidence of the conditions facing the sailors as they lived and worked at Port Chicago. It is inconceivable to think that these rulings governed proceedings in 1944, whether in a military court or elsewhere, or at any time since the trial. These are representative examples of how the trial proceedings were tilted in favor of the prosecution, depriving the accused sailors of due process of law. There are strong national interests in preserving, advancing or restoring the rule of law to one grounded in impartial and even-handed justice. Exoneration will reassert the importance of due process of law by emphasizing that we as a nation are willing to correct historical injustices where our justice system fell short of our national values. Legislative action by Congress to exonerate the Port Chicago 50 is the proper and necessary, and only adequate, remedy for the Port Chicago 50.

By contrast, a presidential pardon – an expression of forgiveness granted after an applicant demonstrates acceptance of responsibility and good conduct – is inadequate in the case of the Port Chicago 50 because the men did nothing wrong. Instead, it is incumbent on us as a nation to accept

the responsibility for their unjust conviction and make it right – at long last – through exoneration. We are aware of precedent supporting our request. In 1945, then-Captain Charles McVay was the commanding officer of the USS Indianapolis, which was torpedoed by a Japanese submarine and sank, with tragic loss of life. Only 315 sailors survived out of a crew of over 1,100. A General Court Martial convicted Captain McVay of negligently failing to steer the ship on a zig-zag course. In 2001, Congress exonerated Captain McVay, by including in the NDAA a provision directing the Secretary of the Navy to place a statement in Captain McVay’s military record that recognized his lack of culpability and exonerated him for the loss of the USS Indianapolis and its crew. We are calling on the Senate to follow this precedent by exonerating the Port Chicago 50 through the statutory vehicle of the NDAA currently under consideration.

- protests against lawful authority as distinguished from an armed uprising:

Our nation has a long history of protecting lawful protest. We are currently examining the contours of those issues with the hundreds of prosecutions arising from the January 6 Capitol riot. The current proceedings against the January 6 defendants are noteworthy for their individualized assessments of each participant, from charging decisions that track culpability of conduct, bail decisions that consider individualized risk of danger or flight, and sentencing outcomes that weigh each individual’s conduct as well as any mitigation. By contrast, the Port Chicago 50 mutiny trial proceedings treated the sailors as a unitary subject. Moreover, there was no allegation that any of the Port Chicago 50 ever took up arms or was even impolite to the command, and yet they were convicted of mutiny. The Port Chicago 50 refused to return to work under the unsafe conditions that led to the deaths of 320 sailors, but they expressed readiness to work if the conditions could be made safe. This conduct highlighted dangerous conditions imposed on the sailors and would be considered protected whistleblowing by today’s standards. Exoneration will recognize that the Port Chicago 50 deserved due process, acted reasonably, and called attention to unsafe conditions created by their commanding officers. There are strong national interests in each of these outcomes.

- inequity in judicial proceedings due to overcharging allegedly criminal conduct:

We are engaged in a national conversation about whether certain forms of conduct should continue to be viewed as criminal offense, or whether prosecutors are overcharging certain forms of conduct generally or members of different groups in society. This, too, is an aspect of the Port Chicago 50 chapter of history. There are those who argue that the charge, if any, should have been disobedience of an order, not mutiny. There are others who argue that there should have been no charge against the Port Chicago 50 because what they disobeyed was an order that lacked moral authority. Instead, the Port Chicago 50 received the stiff penalty of a mutiny conviction, staining their time of service, their lives after the war, and their legacies to their family members. Exoneration will bring healing to those directly affected by the mutiny convictions of their father, uncle, grandfather, and so on, and it would begin to repair the damage done to the impartial rule of law. The restorative benefits of exoneration – to the Port Chicago 50 and their descendants, as well as millions of Americans who want to see our nation live up to its stated values and creeds – are an important outcome of our request.

- lawful dissent against an unlawful or immoral order:

The Port Chicago 50 refused to return to work loading ammunition in the unsafe conditions that preceded the explosion. The orders given to them to load the ammunition violated safety standards and the government's regulations for the handling of ammunition generally. Ordering the sailors to work in these conditions was thus unlawful. Additionally, the orders placed the sailors in a position of risk that no sailor should experience, then or now. The orders imposed that heightened risk only on the sailors, who had earlier cited the dangerous conditions to their commanding officers. The commanding officers nevertheless pressed the sailors to return to work in those same conditions. We as a nation want to encourage members of the military to question or resist unlawful orders or orders that lack morality. The photos of soldiers torturing prisoners at Abu Ghraib prison or the accounts of the massacre of villagers at My Lai during Vietnam are but two examples of historical precedents in which we would as a society want our service members to dissent from commands. This same reasoning applies to the Port Chicago 50. They refused to return to work loading munitions in the dangerous conditions imposed by their command, shortly after cleaning up the remains of their fellow sailors killed in the explosion, while their white counterparts were given approved survivors leave to cope with the disaster while at home with family and friends. The decision of the Port Chicago 50 to refuse to return to work loading ships was entirely reasonable. By contrast, we prosecuted Nazi generals and soldiers at Nuremberg because they carried out wartime orders that represented crimes against humanity, rejecting arguments by the defendants that they were simply carrying out orders from a superior officer. We must recognize the cruel irony of our treatment of the Port Chicago 50, as we prosecuted them for mutiny – a crime punishable by death – because they disobeyed an order that lacked moral authority. The exoneration of the Port Chicago 50 would serve the important societal purpose favoring the lawfulness of military orders and the peaceful dissent against such orders.

Finally, there is much in our public discourse about the essential role of the rule of law in our society. But the rule of law settles our expectations as a society only when it is just. Our notion of what is just evolves with our national experience. A century ago, we were a nation living under a regime of race relations validated by the Supreme Court's Plessy v. Ferguson decision. Brown v. Board of Education established a new rule of law, just a decade after the mutiny convictions of the Port Chicago 50. We believe that the correction of an unjust outcome of any legal system is a test of its strength and the strength of the rule of law. Because when our legal system reaches back to correct the mistakes of the past, it is tested by its ability to engage in self-examination and self-reflection, and as a result, the rule of law is strengthened. The Port Chicago Disaster and subsequent mutiny trials are such a test. The Senate can and should lead the nation forward to pass this test of our national character, by including provision for exoneration of the Port Chicago 50 in the final version of the NDAA. We urge you in the strongest possible terms to seize the momentous opportunity before you to achieve justice for the Port Chicago 50. If you have any questions for us, please contact CCCBA's Executive Director Jody Iorns at PortChicago@cccba.org.

Very truly yours,

Port Chicago Task Force