

Contra Costa County Bar Association - Port Chicago Task Force

2300 Clayton Road
Concord, CA 94520

July 17, 2023

The Honorable Franklin R. Parker
Assistant Secretary for Manpower & Reserve Affairs
United States Navy
Pentagon, Room 4E598
Washington, D.C. 20350

Re: Exoneration of the Port Chicago 50

Dear Assistant Secretary Parker:

Introduction

We write to you concerning the “Port Chicago 50”—50 Black sailors who were convicted (wrongfully, in our opinion) of mutiny in 1944 for declining to return to work after an explosion at the Port Chicago Naval Magazine near present-day Concord, California. We believe that the situation of the Port Chicago 50 is analogous to that of the recently exonerated Philadelphia 15. On June 16, 2023, the New York Times quoted you as stating, “This simply was the right decision...I believe acknowledging and addressing past injustice only makes us stronger, because it brings us ever closer to the ideals upon which our nation was founded.” The Port Chicago 50 were tried and convicted of a mutiny because they would not load munitions after the tragic explosion that occurred on July 17, 1944, which killed 320 sailors and injured more. Their convictions are also an injustice that should also be made right.

We write in the hope that we can engage the Navy through your leadership to address what we regard as an historic injustice - the convictions of the Port Chicago 50. Today is the 79th anniversary of the explosion at Port Chicago, and the 79th anniversary of the mutiny convictions will come in October. We have a vision of the Navy holding a ceremony in October to mark that date and to announce that it has expunged the mutiny convictions and issued honorable discharges to these brave men. This would be posthumous, of course, but to their families, their communities, and to our broader society, this action would be healing and just, as we explain below. The Navy itself will benefit, through this demonstration of the will to correct the injustice of the convictions, which fell on the men who were through their courageous actions a major catalyst for desegregation of the Navy, and the other branches of the military service, by 1948.

Over 1400 signatories are part of a growing coalition of civil rights, veterans, religious, and legal groups who are mobilizing to advocate for exoneration of the Port Chicago 50. The Contra Costa County Bar Association’s Port Chicago Task Force is a group of approximately twenty

attorney and non-attorney volunteers who are committed to raising awareness about this history and advocating for exoneration. The Black Employees Collective advocates for diversity, equity, inclusion and belonging in the East Bay Regional Park's parklands. Citizens for Historical Equity is an organization dedicated to advocating for inclusive history and diverse representation in our public institutions and is active in the struggle to seek exoneration of the Port Chicago 50. We know that we stand on the shoulders of great Americans from Thurgood Marshall and Eleanor Roosevelt to Robert Allen, Reverend Diana McDaniel, and Representative George Miller and his successor Mark DeSaulnier who have, over the past 79 years, forcefully advocated for exoneration of the Port Chicago 50, and we rely on their work greatly because it established hard and sound facts that call out for exoneration. But more than that, we join forces with millions of Americans who want to see our nation's worst injustices made right. These many Americans include, of course, the descendants of the Port Chicago 50 and all of the African American sailors who toiled in a segregated Navy while the nation fought a world war against notions of racial superiority espoused by fascists in Europe and Asia. These men committed to this national effort to defeat tyranny while not being able to enjoy freedom at home. Within a short decade of the end of the war, with the Supreme Court's decision in *Brown v. Board of Education*, our domestic discrimination grounded in the doctrine of "separate but equal" came to an end (at least as a matter of our stated laws, if not in everyday life and practice). But the Port Chicago 50 still carried the stain of their convictions for the rest of their days.

We write this letter jointly in another step of our cooperative efforts to persuade the government to act and we welcome the opportunity to discuss our request, the facts, and the issues with you. With the recent action taken to exonerate the Philadelphia 15, we understand that our government will take this step when appropriate. We applaud the Navy's action on the Friday before Juneteenth. There is no stronger case in our view than that of the Port Chicago 50.

Statement of Facts

The following factual statement is largely taken from the Navy's official account, available online at <https://www.history.navy.mil/browse-by-topic/wars-conflicts-and-operations/world-war-ii/1944/port-chicago.html>. We have added two references to the 1994 report of the Board for Correction of Naval Records for clarity. To be clear, we believe this factual account is only partially accurate or complete, but we use it here because even under the Navy's official account, the case for exoneration is strong. The official account follows:

Planning for the naval magazine and naval barracks at Port Chicago, California, began shortly after the 7 December 1941 attack on Pearl Harbor, when the Navy assessed that the Mare Island Naval Weapons Station (outside Vallejo, California) would soon reach the limits of its capacity. The new facility's location near the small town of Port Chicago, on Suisun Bay, at the confluence of the Sacramento and San Joaquin rivers to the northeast of San Francisco Bay, appeared ideal for munitions transfer and loading. Construction began in February 1942 and continued throughout the balance of the year. As commercial stevedores were subject to union rules regarding working conditions, and an adequate number of stevedores was not available, Navy personnel were to carry out the loading duties. The command was commissioned on 30 November 1942 as an annex of the Mare Island facility; on 8 December, the first ship was loaded at the magazine's munitions pier.

Reflective of the Navy's personnel policies at the time, which barred African American Sailors from nearly all seagoing branches, most of the Navy ordnance battalions—the stevedores performing hard physical labor of loading—assigned to Port Chicago Naval Magazine and similar facilities were comprised of African American enlisted personnel and white officers. Many of the latter were older reservists recalled to active duty or junior officers with wartime commissions who had had little or no training in handling munitions and minimal leadership experience, particularly in racially segregated commands. The purview of the African American petty officers and chiefs was limited, and inexperience and inadequate training further handicapped them. Assignment of Sailors to the ordnance battalions was purported to be based solely on results of the standard Navy classification test in use at the time; however, in 1994 the Board for Correction of Naval Records concluded that “racial discrimination did play a part in the assignment of African-American sailors to load ammunition.” In addition to the naval service's segregation policy, the relative geographic isolation of the base, triple-shift operations, often-hazardous working conditions, lack of recreational facilities, and the unending tedium of the duty rotation contributed to discontent, low morale, and disciplinary issues. The chain of command focused primarily on maintaining a high operations tempo with periodically increased loading quotas.

On the evening of 17 July 1944, disaster struck. Two cargo ships, SS *Quinault Victory* and SS *E. A. Bryan*, were berthed at the munitions pier, the latter vessel being loaded with a variety of munitions. In the holds of *E. A. Bryan* or on the pier ready to be loaded were 4,606 tons of anti aircraft ammunition, aerial bombs, high explosives, and smokeless powder. Another 429 tons were still in 16 railcars on the pier, awaiting transfer to both ships. According to witness statements, at 2218 (10:18 PM) a dull clang (possibly caused by a falling cargo boom) and a sound of splintering wood preceded a blinding flash and heavy detonation on the pier, followed within seconds by smaller detonations and then the massive explosion of munitions in *E. A. Bryan*'s holds. The ship, most of the pier, all structures within a 1,000-foot radius, and many of the flatcars disintegrated. The explosion blew *Quinault Victory* into large pieces that sank in the waters of Suisun Bay. A Coast Guard fire barge was blown away from the munitions pier and sank, taking its 5-man crew with it. The 320 individuals in the immediate proximity of the blasts— Navy personnel on the loading details, a Marine Corps sentry, the ships' Navy Armed Guard and merchant mariner crews, and civilian employees—were killed instantly. Of these, the remains of only 51 were identifiable afterward. African American Sailors comprised nearly two thirds of those killed. More than 250 other personnel at the Port Chicago facility were injured, a number seriously. Most of the buildings on base, many of light frame construction, were damaged; the rest were destroyed. Secondary fires raged and munitions continued to cook off for some time after the explosion of *E. A. Bryan*. Smoke billowed over two miles into the sky, and the shock of the detonations caused structural damage and broke windows in surrounding communities, was felt 40 miles to the southwest in San Francisco, and registered as far away as Nevada. A number of privately owned vessels and small boats underway in Suisun Bay were damaged by falling debris.

A Navy court of inquiry convened on 21 July and carried on its investigation for 39 days. The court's primary focus was on the training and operational practices carried out prior to the blasts. Thus, it was solely in this context that the personal and professional challenges encountered by personnel in the isolated, racially segregated command were examined. However, the court's report strongly implied that African American enlisted personnel had slowed training evolutions

and day-to-day operations and made them more difficult. To support this implication, the investigation included the racist stereotype that African American sailors were “neither temperamentally [nor] intellectually capable of handling high explosives.” The Board for Correction of Naval Records reviewed this statement in 1994 and concluded it did not meet the standard for racial bias, stating “neither racial prejudice nor other improper factors tainted the original investigations.”

The court of inquiry raised no questions concerning the white officers’ leadership responsibilities or any shortcomings.

Nevertheless, in the court’s opinion, the explosions and resultant loss of life and damage were not due in any way to negligence or inefficiency—in fact, the conduct and emergency response efforts of African American enlisted personnel immediately after the event were considered exemplary. Although the exact cause of the initial detonation could not be identified due to lack of immediate eye witnesses and the extensive destruction of the munitions pier area, a number of operational shortcomings were identified that could have contributed to the disaster. Broadly summed up, these were:

- By 1944, wartime operational requirements had nearly maximized Port Chicago Naval Magazine’s operational capacity;
- Despite ongoing attempts to make up for shortfalls, proper munitions-handling training of officers and men was uneven at best;
- Ever-increasing operational requirements invariably led the command to disobey a number of basic federal safety codes and procedures;
- At the time, the U.S. Navy Board of Ordnance instructions did not sufficiently cover all aspects of ordnance safety and handling in port during wartime. Port Chicago only selectively followed the standard—and more specific—U.S. Coast Guard instruction, compiled in 1943, due to the high operations tempo; and
- Suggestions were made to never make loading munitions a matter of competition.

Most of the court’s recommendations, which essentially addressed these operations-related findings, would be implemented at naval ordnance facilities before the end of the war—including at the rebuilt Port Chicago Naval Magazine.

While the court of inquiry was still pursuing its investigation, events that occurred less than a month after the Port Chicago explosions kept the tragedy in the public eye. They also imbued the event with notoriety and controversy, and would ultimately remain unresolved until the end of the 20th century.

Soon after the disaster, surviving ordnance battalion personnel were transferred from Port Chicago to Mare Island Naval Weapons Station. There, the Sailors were again assigned to ordnance-loading duties, under similar conditions they had encountered at Port Chicago. Still severely shaken by their experiences, the men approached their tasks with a high degree of uneasiness, particularly because the Navy had not determined the cause of the explosion. On 9 August, 328 ordnance battalion Sailors objected to carrying out their duties unless safety

conditions were improved to be in compliance with safety standards. Following appeals by their officers, 70 men agreed to stand down and carry on with their work. Ultimately, 50 men—later known as the “Port Chicago 50”—stood their ground.

The 208 men who returned to duty received summary courts-martial for refusal to obey orders and were sentenced to forfeiture of three months’ pay. The remaining 50 Sailors were wrongly charged with mutiny. On 14 September, their general court-martial opened. On 24 October, the court found the men guilty of conspiracy to commit mutiny, and they received sentences ranging from eight to 15 years of confinement and dishonorable discharges. At this point, the court-martial had generated some degree of attention among the public, particularly in the African American community. Future Supreme Court Justice Thurgood Marshall, at the time the NAACP chief counsel, had attended many of the court’s sessions and appealed the Sailors’ conviction with the Navy judge advocate general. Although the appeal proved unsuccessful, Marshall’s written communication with Secretary of the Navy James Forrestal prompted the latter to direct that the Navy review the case. The review recommended a retrial, this time disregarding previously allowed hearsay evidence. The court’s board reconvened but reaffirmed the original sentences. However, pressure from several quarters, including First Lady Eleanor Roosevelt, prompted Forrestal to have the convicted Sailors released from confinement in January 1946. The men were dispersed among various ships deployed in the Pacific, performing menial duties until receiving general discharges under honorable conditions. Into the 1990s, they and their descendants repeatedly appealed to Congress and the Navy to have their names and records cleared. Recognition finally occurred: On 17 July 1994, the Port Chicago Naval Magazine National Memorial was dedicated to those lost in the disaster. Freddie Meeks, at the time thought to be the last surviving known member of the “Port Chicago 50,” received a Presidential pardon in December 1999. However, complete exoneration of all 50 Sailors has not occurred to date.

Although the Navy initially dealt with the Port Chicago explosion and the subsequent “mutiny” in narrow operational and disciplinary contexts, many facets of both incidents ultimately had broad ramifications for the service. The relative operational inefficiency and, more significantly, the moral cost, of maintaining segregated commands were very clear in the aftermath of the tragedy at Port Chicago and the later events at Mare Island. Moreover, both the court of inquiry’s report and the courts-martial proceedings inadvertently highlighted the fundamental racial inequality in the naval service at the time when the nation was engaged in a global conflict to restore and preserve fundamental freedoms. On 26 July 1948, this untenable contrast between institutional policy and public ideals would finally be ended by President Harry S. Truman’s Executive Order 9981, which paved the way toward desegregation of the U.S. Navy and other armed services.

Discussion

1. Exoneration Arguments Grounded in Legal Concepts

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.

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. Exoneration 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.

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 annual defense authorization legislation 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. Exoneration here is also appropriate.

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 events at the Capitol on January 6, 2021. 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, citing safety and training concerns, did not 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 less unsafe. 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.

We are also 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 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.

The Port Chicago 50 objected to returning 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.

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 decided 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.

Finally, 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 appropriately objected to loading munitions in the deadly 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. 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 and it was contrary to governing federal safety regulations, of which the Navy knew full well before the explosion. 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.

2. Policy Arguments Supporting Exoneration

Exoneration of the Port Chicago 50 would correct a historic injustice, and the decision would put the Navy in the favorable light of owning up to the decisions of the past. Those who have served, who presently serve, and those who may enlist would see in the Navy the exercise of discretion in favor of its members and their welfare. The morale of those serving would be boosted, and more recruits would choose to enlist in a Navy willing to correct its past mistakes.

Exoneration would also recognize the Port Chicago 50 as civil rights heroes who played a significant role in desegregating the Navy and, shortly thereafter, the entire U.S. military. This was a momentous step in the modern civil rights movement. It is important to recognize the courage of the Port Chicago 50. Overcoming the threats of an Admiral and taking a stand in a racially segregated Navy was a difficult choice. This was not what the men wanted; instead, they

wanted to fight in the war effort against Germany and Japan. The disappointment of being relegated to work far from the front lines and often menial in scope did not snuff out their strength of character.

The modern Navy is a vital institution of American life, part of its defenses and a place where young men and women are formed to be productive citizens after their service. This Navy is able to look at its past actions and take corrective steps. Dr. Martin Luther King, Jr. wrote in the Letter from Birmingham Jail, “Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.” The Navy, the Port Chicago 50, the sailors who served with them, and our nation today, are linked in this network, this destiny. By expunging the convictions of the Port Chicago 50 and re-designating their discharge as honorable, the Navy will make a just and right ending to this nearly eighty-year struggle.

We know that the Navy led the way among the armed services in desegregating itself, and we are asking the Navy to lead the way in this struggle, too. The duty of a sailor to not follow an order that is unjust, immoral, or illegal is a bedrock principle of today's Navy, and it is only right and just that this same precept be applied to correct the history of the Port Chicago 50 and write the final, just chapter in their struggle for justice.

Conclusion

Finally, several of us attended the extremely moving annual commemoration event at the site of the explosion this past Saturday, and we are enclosing a copy of a letter from Vice President Kamala Harris that was read aloud for those in attendance. We hope you will consider that letter and all of the information we have presented in reaching the just and right conclusion to exonerate the Port Chicago 50. Please let us know if we can answer any questions or discuss any concerns you may have. We can be contacted at the address above or through CCCBA's Executive Director Jody Iorns at PortChicago50@cccba.org. Thank you.

/s/ Contra Costa County Bar Association's Port Chicago Task Force

/s/ Black Employees Collective

/s/ Citizens for Historical Equity

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