

## ABSTRACT

Title of Thesis: “SCANDALOUS CONDUCT TENDING TO THE DESTRUCTION OF GOOD MORALS”: DYNAMICS AND TENSION IN SEX CRIME COURTS-MARTIAL IN THE INTERWAR U.S. NAVY AND MARINE CORPS, 1919-1941

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Interwar (1919-1941) U.S. Navy and Marine Corps sex crime courts-martial had complex dynamics and tension. Written policy criminalized most sex. When policy was enforced, it mostly targeted same-sex crimes. Enlisted men held different beliefs about sex than commissioned officers. Enlisted men’s lived experience was incongruent with policy. Leadership believed that men who had sex with other men should be expelled from the Navy and Marine Corps. Duty was a powerful and frequently used rhetorical tool by judge advocates to argue for conviction for sex crime. The Navy Medical Corps expressed the idea that same-sex sexual activity should not be criminalized as same-sex desire was a mental defect. The dynamics of written policy/policy in action, enlisted men/commissioned officers, and naval service/duty/sexology are explored.

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MORALS”: DYNAMICS AND TENSION IN SEX CRIME COURTS-MARTIAL IN  
THE INTERWAR U.S. NAVY AND MARINE CORPS, 1919-1941

by

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## Preface

Before I begin, I need to define a few terms. The first being “sex crime.” I am using “sex crime” as a catch-all phrase for anything the Navy and Marine Corps criminalized that related to sex acts or romantic intimacy. I am also using “same-sex” and “opposite-sex” to describe these crimes. A same-sex crime involves two men. An opposite-sex crime involves a man and a woman. I have chosen these two terms to avoid the pitfalls of using “homosexual” and “heterosexual.” “Homosexual” and “heterosexual” would imply that the psychological model of sexual identities, first developed in the late 19th century by medical professionals, was dominant and widely accepted during the interwar period. I want to indicate that there were models of sexual identities--particularly from the working class--that competed with the psychological model during the interwar period. Finally, when I use “policy,” I am referring to written criminal codes and regulations; whereas when I use “policy in action” I am referring to how those written codes and regulations were utilized by Navy and Marine Corps personnel.

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## Table of Contents

Preface.....	ii
Acknowledgements.....	iii
Table of Contents.....	iv
List of Tables.....	v
Introduction.....	1
Chapter 1: Scandalous Conduct Tending to the Destruction of Good Morals: Navy and Marine Corps Policy vs. Policy in Action.....	12
Chapter 2: “This Thing of Fucking Seiferth Happened So Often”: Naval Policy and Middle Class Conceptions of Sex vs. Enlisted Men’s Lived Experience and Working Class Conceptions of Sex.....	30
Chapter 3: “It May Sound Hard but We Have to Do It:” Commissioned Officers, Duty, Service, and Medical Evidence.....	61
Naval Leadership and Duty.....	63
Commissioned Officers and Duty.....	74
Navy Medical Corps and Duty.....	91
Epilogue.....	98
Bibliography.....	104

## List of Tables

<b>Table 1</b> .....	11-12
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## Introduction

On November 13, 1941, Seaman John R. Melton was onboard the USS *Pennsylvania*, docked at Pearl Harbor, awaiting his court-martial. Melton had been reported for having oral sex with another sailor in the laundry room of the USS *West Virginia* and a different sailor in Honolulu. He pleaded guilty and asked for the court's mercy. He admitted he struggled with his attraction to other men stating he had "been this way for the biggest portion of my life. I have tried to overcome it."<sup>1</sup> The court did not recommend clemency. Melton was sentenced to be reduced to an Apprentice Seaman, confined in naval prison for a year, and dishonorably discharged. Rear Admiral W. S. Anderson, Commander Battleships Pacific Fleet, expressed disgust at the sentence, feeling it was lenient and did not reflect "the serious moral offenses of a particularly repulsive nature" committed by Melton.<sup>2</sup> While Melton awaited transport to the naval prison in Portsmouth, New Hampshire, Japan attacked Pearl Harbor. Melton, still in custody onboard the USS *West Virginia*, perished in the attack. In light of his death, Judge Advocate General W. B. Woodson wrote that Melton's sentence would be remitted in full because he "was killed in action in the performance of duty and in the service of his country."<sup>3</sup>

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<sup>1</sup> Case of John R. Melton, Seaman first class, U. S. Navy, November 13, 1941; File no. 79923, Box no. 1747; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>2</sup> Case of John R. Melton, Seaman first class, U. S. Navy, November 13, 1941; File no. 79923, Box no. 1747; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>3</sup> Case of John R. Melton, Seaman first class, U. S. Navy, November 13, 1941; File no. 79923, Box no. 1747; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

Melton's case highlights tension in the United States Navy and Marine Corps between performance in military duty and behavioral codes related to sexuality. Before the attack on Pearl Harbor, Melton was considered unfit for naval service because he performed same-sex sexual acts and was to be dishonorably discharged. Afterward, he was hailed among those who had made the ultimate sacrifice in service to the nation at the dawn of World War II. Through the remission of his sentence, Melton was transformed from an undesirable sailor to an ideal one. Even though Melton did not fulfill the Navy's moral ideal of a sailor, he performed his military obligation to sacrifice his life in defense of the nation. Many other sailors and marines were charged with similar crimes during the interwar period (1919-1941), but met with different fates because they were not killed in action.<sup>4</sup> Hundreds were dishonorably discharged from the Navy and Marine Corps and many were imprisoned for years. Courts-martial determined that these sailors and marines were unfit for military duty due to their commission of illicit sex acts or admitted aberrant sexual proclivities that did not align with the Navy and Marine Corps' moral ideal of a sailor or marine.

My study will shine light on the interwar period Navy and Marine Corps and sex crime courts-martial, which historians have ignored. Historian Lawrence R. Murphy gave attention to the so-called "Newport Incident" of 1919-1921. This incident occurred at the Newport, Rhode Island Naval Station when officials directed sailors to entrap other sailors and civilians suspected of same-sex activity. Murphy,

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<sup>4</sup> For the interwar period I am specifically referring to June 29, 1919 (the day after the Treaty of Versailles officially ended World War I) until December 6, 1941 (the day before the Attack on Pearl Harbor).

writing in the late 1980s, unearthed it because it produced congressional hearings and well-known figures such as Franklin D. Roosevelt were involved in the scandal.<sup>5</sup> I will be expanding beyond the Newport Incident to include many other courts-martial all throughout the interwar period. Margot Canaday also wrote about the Newport Incident and discussed some Army and Navy court-martials from 1917-1930 in her examination of how the state came into contact with and began to understand homosexuality and then used the category of “the homosexual” to deny full citizenship benefits to people defined by their sexual object choice of the same sex. Canaday was interested in how the “state,” broadly construed, had to “puzzle before they power” or first encounter sex they felt was aberrant and then find ways to outlaw it. Canaday noted that different arms of the state encountered and understood same-sex sexual activity in different ways over time and that the state and its understanding of same-sex sexual activity was not necessarily monolithic.<sup>6</sup> I will be building upon Canaday’s work by going deeper into the interwar period and doing a deeper dive into courts-martial that Canaday only scratched the surface of. I do challenge Canaday’s argument that the state had to “puzzle before they power” before specifically outlawing “aberrant” sex and Canaday’s chronology of “the homosexual.” I will show that by the interwar period the Navy and Marine Corps already explicitly outlawed all sex except vaginal sex between a husband and a wife. I will also show that the Navy and Marine Corps had targeted enforcement of men who had sex with other men

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<sup>5</sup> Lawrence R. Murphy, *Perverts By Official Order: The Campaign Against Homosexuals By the United States Navy*. (New York: Haworth Press, 1988).

<sup>6</sup> Margot Canaday, *The Straight State* (Princeton, NJ: Princeton University Press, 2009), 55-90, 174-213.

throughout the interwar period. While the Navy and Marine Corps had not arrived at “the homosexual” during the interwar period, there was not as much the Navy and Marine Corps had to shift to fall in line with the rest of the state’s adoption of “the homosexual” as other arms of the state did. Michael Hussey solely focused on court-martials relating to homosexual sex, dipping slightly into the interwar period. In Hussey’s dissertation, he examined Naval court-martial records from 1890-1925. Hussey was interested in how these court-martials could be read for social history ends, focusing on how and where the turn-of-the-century homosexual subcultures described in George Chauncey’s seminal *Gay New York* appeared in the Navy and how gender functioned in homosexual relations in the Navy.<sup>7</sup> I will further Hussey’s discussion of homosexual subcultures in the Navy and add in how class dynamics played a significant role in enforcement and continuance of those homosexual subcultures. I will also show that the Navy and Marine Corps were entry points for some to homosexual subculture. Overall, these works leave the interwar period mostly as a blind spot in the chronology of the Navy and Marine Corps’ understanding of sex. It is important to examine the interwar period as it can provide a rich lens into how the Navy and Marine Corps reacted to the changing ideology about sex in the first half of the twentieth century and because it can provide insight into larger cultural attitudes towards sex during the period.

Studying courts-martial involving sex during the interwar period presents a unique lens into what the Navy and Marine Corps considered to be ideal sexual and

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<sup>7</sup> Michael Hussey, ““Do You Know What It Means When a Man Uses Another Man as a Woman?”: Sodomy, Gender, Class, and Power in the United States Navy, 1890-1925,” (PhD diss., University of Maryland, College Park, 2002).

moral behavior and how the Navy and Marine Corps understood major shifts that were occurring in scientific, social, and personal perceptions of sex. During this period, multiple different beliefs about same-sex activity coexisted at once despite being contradictory. Working class beliefs held that same-sex activity was acceptable for men as long as they played the active role in sex. Working class communities were fairly welcoming to feminine men as well. Gender performance was more important in working class beliefs about sex than sexual object choice. Middle class beliefs held that all same-sex activity was aberrant and that desire for women was innate to masculinity.<sup>8</sup> Additionally, the growth of sexology and its sympathetic view of same-sex attraction as a mental “defect” that should be pitied was an important development in this period.<sup>9</sup> Further, the interwar period marked an “official” end to the involvement of progressive ideology’s influence on Navy policy. The Navy was invested in progressive reform since the turn of the 20th century. It wanted to shift its public image of being a haven for rough and dangerous men, to one focused on morals and responsibility. Part of this reform was a shift in Naval recruiting. The Navy sought out men from the Midwest and South, believing they were more moral than men on the coasts.<sup>10</sup> This shift did not end by the interwar period, but its major push had ended. During World War I, the military at large bought into progressive ideology as leadership became concerned with the military’s rough and dangerous

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<sup>8</sup> George Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940* (New York: BasicBooks, 1994), 33-97.

<sup>9</sup> Naoko Wake, “The Military, Psychiatry, and ‘Unfit’ Soldiers, 1939-1942,” *Journal of the History of Medicine and Allied Sciences* 62, no. 4 (October 2007): 461-494.

<sup>10</sup> Michael Hussey, “Do You Know What It Means When a Man Uses Another Man as a Woman?: Sodomy, Gender, Class, and Power in the United States Navy, 1890-1925,” (PhD diss., University of Maryland, College Park, 2002), 18-95.

image and sexually transmitted diseases. The military worked with progressive groups (such as the YMCA, the Knights of Columbus, and the American Library Association) through the Commission on Training Camp Activities (CTCA) to create ways for soldiers and sailors to find chaste and clean recreation. After World War I, this alliance crumbled over disagreement on whether or not the CTCA should promote prophylaxis or only preach chastity, ending progressive groups' direct involvement with the military.<sup>11</sup> Additionally, historian Naoko Wake highlighted the War Department's consultation with a psychiatrist to create new screening procedures to weed out homosexuals from the Army from 1939-1942. Wake argued that ultimately, this psychiatrist was unable to convince the Army that homosexual men could still work and be valuable contributors to society despite being unfit for military service due to the "homophobic tradition" of the military.<sup>12</sup> In order to examine how these shifts impacted the Navy and Marine Corps, I will ask: What was the Navy and Marine Corps' general attitude towards sex during the interwar period? What was criminalized? How did official policy reflect (or not) what actually happened on a bureaucratic and leadership level, and amongst commissioned officers, noncommissioned officers, and enlisted men? How did the United States Navy and Marine Corps prosecute and punish same-sex and opposite-sex crimes differently? How did sexology impact the Navy and Marine Corps' understanding of sex?

In order to study sex crime courts-martial in the interwar period, I collected 344 sex crime court-martial records held at the National Archives in Washington,

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<sup>11</sup> Nancy K. Bristow, *Making Men Moral: Social Engineering During the Great War* (New York City: New York University Press, 1997).

<sup>12</sup> Naoko Wake, "The Military, Psychiatry, and 'Unfit' Soldiers, 1939-1942," 461-494.

D.C.<sup>13</sup> 1,120 boxes at the Archives contain court-martial records from the interwar period. As I wanted to capture the whole interwar period, it was impossible to go box by box flipping through every record, hoping to find a court-martial that included sex. The boxes in the collection are organized by rough date (example Spring 1921) with no detailed finding aid. Due to the volume of boxes and their haphazard organization, I chose to sample them. I decided to look at 21 boxes per every 100. I picked 21 boxes because that is the maximum number Archives will allow researchers have at once. I requested the boxes ending in the digits “30” through “50” for each set of 100 boxes (ex. 630-650, 1130-1150, etc.).<sup>14</sup> I took pictures of all of the records that appeared to concern sex crimes at a quick glance.<sup>15</sup> I believe the massive quantity of information and data that I have generated is enough to offset any peculiarities introduced through my method.

Throughout this massive quantity of records, various kinds of tension appear. These kinds include: tension between commissioned officers and enlisted men (itself a class conflict between middle-class men and working-class men), tension between the ability to serve in the military and one’s sexual behavior, and tension between sexology and the criminalization of same-sex sexual activity. Courts-martial were fraught with tension--at their heart even was the tension between whether a defendant

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<sup>13</sup> Throughout this article there are a lot of numbers. I am choosing to render all numbers as numerals for uniformity as I felt some sentences would read awkwardly if I switched between numerals and words.

<sup>14</sup> Fortunately, these boxes directly abutted the signing of the Treaty of Versailles and the declaration of war on Japan.

<sup>15</sup> I created a spreadsheet to organize all of the information I learned from reading the records. I read the charges, the closing arguments, the sentence, and additional paperwork included with each record and skimmed the transcript of each record, reading some in full. I had a total of over 19,000 pages worth of court-martial records.

was guilty or not. Looking at tension highlights that the Navy and Marine Corps was not monolithic in its policing and prosecution of sex crimes or in agreement on what was acceptable sexual behavior. Essentially, tension as an analytical tool reveals complex dynamics between facets of the court-martial and military service, including the dynamics between: policy/policy in action, commissioned officers/enlisted men (middle class/working class), duty/responsibility, and duty/sexology.

Two additional facets that were at play in sex crime courts-martial but will not be explicitly discussed in this thesis are race and sexual violence. At the beginning and end of the interwar period, roughly 95% of the Navy was White. The Navy was anywhere between 91% and 95% throughout the interwar period.<sup>16</sup> This racial makeup means that most of the sailors and marines involved in courts-martial were White. A small number of defendants and witnesses were people of color. Of that number in the Navy or Marine Corps, most were Black or Filipino. These men only served as cooks, stewards, or in some cases, firemen. Many naval service restrictions on people of color, particularly Black people, were from the Civil War era. These restrictions intensified in the early 20th century.<sup>17</sup> Essentially, during the interwar period, people of color could only hold low-ranking enlisted positions. Noncommissioned and commissioned officers were almost exclusively White. Due to this racial makeup, race is unsurprisingly rarely explicitly mentioned in courts-martial. Whiteness was therefore implicit in most courts-martial. Despite the silence

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<sup>16</sup> Frederick S. Harrod, *Manning the New Navy: The Development of a Modern Naval Force, 1899-1940* (Westport, CT: Greenwood Press, 1978), 183-184.

<sup>17</sup> Michael Hussey, “Do You Know What It Means When a Man Uses Another Man as a Woman?": Sodomy, Gender, Class, and Power in the United States Navy, 1890-1925,” (PhD diss., University of Maryland, College Park, 2002), 41-47.

of Whiteness, it held a significant amount of power in the process as White commissioned officers argued cases, defended sailors and marines, made rulings, and handed out sentences in courts-martial. While race is similarly silent in my thesis, the power invested in Whiteness and the overwhelmingly White racial makeup of the Navy and Marine Corps should be remembered.

Unlike race, sexual violence is not silent in interwar sex crime courts-martial. Cases dealing with sexual assault and harrasment were common during the period. Many historians and scholars have explained away these cases in the past, even while expressing dismay at how many exist. Especially in cases that involve men assaulting and/or harassing other men, past historians and scholars have felt compelled to argue that these men may have been lying about their experiences to reduce their sentence or be acquitted.<sup>18</sup> Inspired by the cultural change sparked by the #MeToo movement, I have instead chosen to take accusations of sexual assault and harrasment as truth. I have mostly eschewed the arguments made by past historians and scholars. Nevertheless, I have not centered sexual violence in my thesis. While I do discuss instances of sexual violence, I have not examined any specific dynamics involving sexual violence. I chose not to because the dynamics involving it are complex and I did not feel that I could do it justice within the bounds of this thesis. Hopefully further research will be conducted on the topic.

Through my analysis, I will argue that interwar Navy and Marine Corps policy generally aimed at creating a restrictive environment around sex where

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<sup>18</sup> Especially Michael Hussey, ““Do You Know What It Means When a Man Uses Another Man as a Woman?”: Sodomy, Gender, Class, and Power in the United States Navy, 1890-1925.”

everything besides vaginal sex between a husband and wife was criminalized. In practice, more same-sex sexual activity was prosecuted and punished than opposite-sex sexual activity. Same-sex sexual activity was generally punished more harshly as well. Nevertheless, criminalized sexual activity occurred that was not punished by courts-martial and was common knowledge and talk amongst enlisted men, demonstrating that everyday sexual behavior by enlisted men did not conform to the Navy and Marine Corps' expectations laid out in policy. Nevertheless, many commissioned officers argued that the military was no place for sexual "aberrant" and upheld their duty to remove these transgressive sailors and marines from military service. Medical Corps officers, however, presented another viewpoint through the use of sexology that affirmed same-sex sexual acts as being evidence of mental health issues rather than being criminal. Overall, these points illustrate that the enforcement of policy depended on the people doing the enforcing--that policy in action can be different from written policy. The enforcement of Navy and Marine Corps policy required self-policing that was not always effective, particularly when there was incongruence amongst enlisted men's actions, officers' duty, medical information, and written policy. Therefore, policy itself can be seen as a script that directs--but does not control--its enactment.

This thesis is divided into three chapters, each of which will look at a different dynamic that impacted sex crime courts-martial. The first chapter examines the dynamic between policy and policy in action. This chapter looks at the Navy and Marine Corps policy on sex, which reveals the sex-related expectations the Navy and Marine Corps had for sailors and marines. It then explores how the Navy and Marine

Corps enacted this policy. The second chapter studies the class dynamics between commissioned officers and enlisted men. It looks at how sailors and marines performed relative to policy's expectations and whether or not sailors and marines, particularly officers, reported and punished sex crimes. The third chapter looks at two dynamics that involve duty: the dynamic between duty and responsibility plus the dynamic between duty and psychology. This chapter will demonstrate how judge advocates and leadership drew upon the language and force of "duty," the idea that the military was no place for sexual "aberrant," and how medical evidence complicated those ideas. Overall, this thesis will demonstrate that the enactment of Navy and Marine Corps policy was complicated by three complex dynamics present within the court-martial process and military setting. Thus, policy was not enacted to the letter and was enacted more frequently against sailors and marines who committed same-sex crimes, in part due to the strength of the rhetoric of "duty."

## Chapter 1: Scandalous Conduct Tending to the Destruction of Good Morals: Navy and Marine Corps Policy vs. Policy in Action

In 1926, Seaman Curtis Wood of the USS *Nevada* was asked how he knew another sailor was a “cock sucker” during a court-martial. Wood “declined to answer on the ground that it might tend to incriminate him.” The court forced Wood to answer. Wood told the court “Well, I know by him sucking my own cock.”<sup>19</sup> Wood was right; his answer could incriminate him. Throughout the interwar period, oral sex was criminal in the Navy and Marine Corps. It was supposed to result in a charge of scandalous conduct tending to the destruction of good morals.<sup>20</sup> However, it appears that Wood was never charged.<sup>21</sup> Despite having admitted to a crime under oath, Wood escaped without punishment or reprimand. This instance illustrates that there was slippage between the ideals of policy and policy in action. In this chapter, I will explore this slippage. I will show that Navy and Marine Corps policy criminalized all sexual activity besides vaginal sex between a husband and wife and was not harsher on same-sex sexual activity. I will demonstrate that in practice the Navy and Marine Corps prosecuted more same-sex crimes and punished those convicted of same-sex crimes more severely than those convicted of opposite-sex crimes. I will demonstrate that individual officers’ opinion in court-martial proceedings created this slippage between policy and policy in action.

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<sup>19</sup> Case of Harry L. McCannon, Coxswain, U.S. Navy, 26 February 1926; File 64745, Box no. 1234; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>20</sup> United States Navy Department, *Naval Courts and Boards 1923* (Washington, D.C.: Government Publishing Office, 1923), sec. 233.

<sup>21</sup> Due to my sampling method, this is difficult for me to fully verify.

Policy itself is where I will start this exploration of the slippage between the ideals of naval policy and policy in action. *Naval Courts and Boards* contained the Navy and Marine Corps’ policy on court-martial procedures and detailed all of the charges one could face in a court-martial. It was updated twice during the interwar period. The 1917 edition governed courts-martial until the 1923 edition was released. The 1923 edition was replaced in 1937 with another edition.<sup>22</sup> Between the three editions, 21 different charges pertaining to sex crimes were listed and defined. **Table 1** below contains all of those charges and the maximum imprisonment listed in *Naval Courts and Boards*.

**Table 1:**<sup>23</sup>

<b>Charge</b>	<b>Maximum Imprisonment</b>
Conduct Unbecoming an Officer and a Gentleman <sup>24</sup>	Dismissal
Concealing Venereal Disease	Officer: Dismissal Enlisted Man: 3 Months (1923 edition); 6 Months (1937 edition)
Fornication	6 Months
Unlawful Cohabitation	6 Months

<sup>22</sup> The 1917 edition is the most different of the three, giving little detail as to what specifically constitutes each charge. Instead, the elements of each charge are implicit in a sample charge. Additionally, the 1917 edition contains fewer charges than the following editions. Judge Advocate General J. L. Latimer admitted in his introduction to the 1923 edition that the 1917 edition gave the Navy some “trouble,” so the 1923 edition contains more details. # For the purposes of this article, the 1923 editions and the 1937 edition are practically identical, save one small change on the maximum punishment for concealing a venereal disease. I will generally be drawing upon the 1923 and 1937 editions as they cover a majority of the interwar period, but will consider the 1917 edition when relevant.

<sup>23</sup> United States Navy Department, *Naval Courts and Boards 1917* (Washington, D.C.: Government Publishing Office, 1918). United States Navy Department, *Naval Courts and Boards 1923*. United States Navy Department, *Naval Courts and Boards 1937* (Washington, D.C.: Government Publishing Office, 1945).

<sup>24</sup> It is important to note that this charge was not exclusively used for sex crimes, but nevertheless could be used for sex crimes.

Lewd or Indecent Behavior <sup>25</sup>	1 Year
Seduction	1 Year
Adultery	3 Years
Mailing Obscene Matter	5 Years
Importing/Transporting Obscene Matter	5 Years
Circulating Obscene Matter	5 Years
“White Slavery” (Prostitution)	5 Years
Polygamy	5 Years
“Pandering” (Inducing a Woman into Prostitution)	5 Years
“Pandering” His Wife	10 Years
“White Slavery” of a Girl Under 18	10 Years
Sodomy	Officer: 15 Years (1917 edition); 12 Years (1923 & 1937 editions) <sup>26</sup> Enlisted Man: 10 Years
Scandalous Conduct Tending to the Destruction of Good Morals	15 Years
Carnal Knowledge of a Female Under 16	15 Years
Incest	15 Years
Assault with Intent to Commit Rape	20 Years
Rape	20 Years (1917 edition); Death (1923 & 1937 editions) <sup>27</sup>

<sup>25</sup> This charge is exclusive to the 1917 edition.

<sup>26</sup> It is difficult to say why the Navy and Marine Corps lowered the maximum imprisonment for officers convicted of sodomy. Perhaps it was because the Navy and Marine Corps no longer felt sodomy was quite as bad as incest and carnal knowledge of a female under 16. Perhaps it was to bring the maximum closer to the maximum for enlisted men, as perhaps they found it unfair officers might have to spend significantly more time imprisoned for the same act. However, I would be hesitant to draw any conclusion here without further research.

<sup>27</sup> *Naval Courts and Boards* notes to not sentence actually anyone to death for rape despite it being the maximum sentence because it was not actually possible for the Navy to sentence someone to death for rape. *Naval Courts and Boards* notes that in practice the maximum punishment for rape was life in prison.

A few things stand out in **Table 1** and the details provided about each charge in *Naval Courts and Boards*. First is the importance of marriage. The Navy and Marine Corps considered “fornication” to be “unlawful carnal knowledge by an unmarried person of another,” outlawing all sex outside of marriage.<sup>28</sup> Further, the description for “carnal knowledge of a female under 16” made mention that “carnal knowledge will be unlawful in such a case unless the female is the wife of the man.”<sup>29</sup> Thus, having sex with a woman under 16 could land a sailor or marine in naval prison for up to 15 years, unless he happened to be married to that woman. In the case of the “pandering” charge, marriage could be an aggravating circumstance. A sailor or marine could receive a sentence of 5 years in naval prison for inducing a woman into prostitution--unless she was his wife--in that case he could land 10 years in naval prison.<sup>30</sup> Marriage exacerbated the heinousness of this crime and thus netted a harsher sentence. Through these three charges, the Navy and Marine Corps affirmed the sanctity of marriage. Per policy, marriage gave a man and a woman the privilege to have sex with each other--even to have sex that would be criminal based on the woman’s age. However, marriage was a bond that was inviolable--sex could not be had outside of marriage, and a husband would be punished more severely for sexually offering his wife to others. Therefore, marriage was a critical piece of Navy and Marine Corps policy on sex as it delimited the boundaries of whom it was acceptable for a sailor or marine to have sex with.

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<sup>28</sup> United States Navy Department, *Naval Courts and Boards 1937*, 124.

<sup>29</sup> United States Navy Department, *Naval Courts and Boards 1923*, sec. 296.

<sup>30</sup> United States Navy Department, *Naval Courts and Boards 1923*, sec. 726.

The second thing that stands out in policy is the lack of a specific charge for same-sex crimes. Only two charges made explicit mention of same-sex acts: sodomy and scandalous conduct tending to the destruction of good morals. The “sodomy” charge included both same-sex and opposite-sex acts. The Navy and Marine Corps defined “sodomy” as “sexual connection by a man or woman with a brute animal, or connection per anus by a man with any other man or with a woman.”<sup>31</sup> Further, anything that was not vaginal sex between a husband and wife could be charged under “scandalous conduct tending to the destruction of good morals” (hereafter “scandalous conduct”) which functioned as a “catch-all charge.” *Naval Courts and Boards* said of the scandalous conduct charge, “the offenses that may have to be laid under this charge are so diverse that it is impracticable to set forth the elements of each one.” Yet, *Naval Courts and Boards* listed “permit lewd pictures to be taken,” “propose fornication,” “acts short of sodomy,” and “oral coition” as examples.<sup>32</sup> This charge could range from talking dirty, to making a pass at a woman, to having oral sex with another sailor or marine. Therefore, there was no charge that was solely used for same-sex crimes. However, the charge of “rape” was exclusive to sex between men and women. Additionally, rape carried the highest maximum punishment: death.<sup>33</sup> From policy, it appears that the Navy and Marine Corps did not consider same-sex crimes to innately be outright worse or more heinous than opposite-sex crimes considering this lack of an exclusive charge and the fact that the highest penalty for a sex crime belonged to an exclusively opposite-sex crime.

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<sup>31</sup> United States Navy Department, *Naval Courts and Boards 1923*, sec. 283.

<sup>32</sup> United States Navy Department, *Naval Courts and Boards 1923*, sec. 233.

<sup>33</sup> United States Navy Department, *Naval Courts and Boards 1923*, sec. 296.

It is necessary to note here that the charges that could be used for same-sex crimes generally carried higher maximum imprisonments than those used for opposite-sex exclusive crimes (except rape). Fornication only carried a maximum time of 6 months in naval prison. A sailor or marine convicted of adultery could only spend 3 years in naval prison. Even polygamy could only result in 5 years in naval prison, whereas sodomy could result in 12 years in naval prison for an officer and 10 years in naval prison for an enlisted man. A conviction for scandalous conduct could result in a lengthy 15-year stay in naval prison.<sup>34</sup> These maximum sentences indicate a slight bias against same-sex crimes in policy. These maximum sentences provide a look at which crimes the Navy and Marine Corps believed to be the least severe and the most severe as well. It is clear from **Table 1** that the Navy and Marine Corps believed that crimes that broke the bond of marriage (such as adultery and pandering his wife) and involved violence (such as rape) were worse than other charges that did not involve marriage (fornication and pandering) or violence (fornication and adultery). Overall, multiple factors, such as whether a crime could be a same-sex crime or an opposite-sex crime, or whether it broke the bond of marriage, or involved violence determined how harsh the Navy and Marine Corps set the maximum punishment.

While *Naval Courts and Boards* set rules for sailors and marines to follow and indicated a slightly greater concern over same-sex crime than opposite-sex crime, the way the policy contained in *Naval Courts and Boards* was put into action indicated that the Navy and Marine Corps was in fact more concerned with same-sex crime

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<sup>34</sup> United States Navy Department, *Naval Courts and Boards 1923*, sec. 726.

than opposite-sex crime. Of the 344 cases contained in my sample, 238 of them involved same-sex crimes and 85 of them involved opposite-sex crimes. This split shows that the Navy and Marine Corps prosecuted more same-sex crimes than opposite-sex crimes.

This uneven split can be explained by the Navy and Marine Corps' necessary ambivalence towards sailors and marines having sex with women. This ambivalence came from two sources. The first was the inability to stop sailors and marines from having sex with women they encountered. Shore patrol could never catch all men committing fornication. The second was that the Navy and Marine Corps likely recognized to some extent that in practice many men needed a sexual outlet when away from their wives, significant others, and American women. From the late 19th century onward, it was commonly expected that men had a sex drive and thus needed sexual outlets. A few historians have looked at how poorly U.S. military bans on sex and fraternization went in war zones from World War I to World War II and the pragmatic decisions the military made because of the failed bans. Historian Erika Kuhlman noted that during the post-World War I occupation of the Rhineland, American military leadership initially banned fraternization between American soldiers and German women but then lifted the ban when they saw that it was wholly ineffective in preventing American soldiers and German women from interacting and having sex.<sup>35</sup> Similarly, historian Mary Louise Roberts found that military leadership acknowledged the need for a sexual outlet for soldiers in World War II France and

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<sup>35</sup> Erika Kuhlman, "American Doughboys and German Fräuleins: Sexuality, Patriarchy, and Privilege in the American-Occupied Rhineland, 1918-23," *The Journal of Military History* 71, no. 4 (October 2007): 1077-1106.

rather than ban fraternization, leadership focused on educating soldiers on the use of condoms and chemical prophylaxis.<sup>36</sup> In both cases, military leadership found that bans on fraternization and sex were unsuccessful and did nothing to prevent fraternization and sex, so military leadership stopped standing in the way of sex. To keep the military functioning and the troops happy, leadership turned the other way and ignored illicit sexual conduct. This pragmatic choice was a position of necessary ambivalence towards sexual conduct that was against policy. Naval policy against fornication, adultery, and virtually all other opposite-sex crimes should be viewed the same way (a ban in theory) but in most cases, not in action.

The manpower and time needed to prosecute all men who had sex outside of marriage with women was another reason for necessary ambivalence. Testimony from a 1929 court-martial illustrates how difficult it would be to prosecute everyone that policy dictated. Lt. Roger D. Mackey of the Navy Medical Corps who served as the medical officer aboard the USS *Trenton* told the court that “between 1 September 1928 and 30 April 1929, there were thirty eight original admissions for gonorrhea.” He was then asked what percentage of the crew had gonorrhea. Mackey told the court “I would be inclined to place the percentage at something better than fifty percent.”<sup>37</sup> While some of these sailors could have gotten gonorrhea from their wives or from each other, it is unlikely that all 38 cases of gonorrhea would have been transmitted these ways. Therefore, nearly 38 men could have been charged with some form of sex

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<sup>36</sup> Mary Louise Roberts, “The Price of Discretion: Prostitution, Venereal Disease, and the American Military in France, 1944-1946,” *The American Historical Review* 115, no. 4 (October 2010): 1002-1030.

<sup>37</sup> Case of Elmo Burris, Boatswain’s mate second class, U. S. Navy, 23 May 1929; File no. 71413, Box no. 1442; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

crime by virtue of having venereal disease.<sup>38</sup> Yet, it seems as if none of these sailors was. Prosecuting this many men was likely seen as a waste of manpower and time. Up to 38 courts-martial would have needed to occur, and up to 38 sailors could have been convicted, thrown in military prison, and/or discharged from the Navy, resulting in a loss of over 50% of the *Trenton*'s crew. Mackey was asked if this was "not remarkably low percentage of gonorrheal infection considering the recent duty of this vessel?" He cryptically told the court that it was "unusual."<sup>39</sup> While Mackey's response was indecipherable, it is apparent that gonorrhea infections were a fact of deployment. Therefore, prosecuting every instance of sex that policy criminalized would have been ruinous and time consuming. The Navy and Marine Corps had to exercise necessary ambivalence to keep the force operating. Strict enforcement of naval policy would have left the *Trenton* and other vessels and units with severe staff shortages.

However, this necessary ambivalence raises the question: what is the purpose of the policy if it is not followed? Essentially, policy helped create a clean image for the Navy and Marine Corps. Historian Michael Hussey noted that beginning at the turn of the twentieth century the Navy wanted to rehabilitate its image from a place for dangerous and rough men that was occasionally used as a dumping ground for criminals and delinquents to one in which young men cultivated good morals and

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<sup>38</sup> Venereal disease was used as evidence by Judge Advocates in the prosecution of sex crimes.

<sup>39</sup> The *Trenton* had been to China recently. Case of Elmo Burris, Boatswain's mate second class, U. S. Navy, 23 May 1929; File no. 71413, Box no. 1442; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

independence.<sup>40</sup> Policy helped with this goal. Policy aimed at creating a chaste environment where the only acceptable sex occurred between a husband and a wife. Policy can be seen as being a mission statement. It served as an official stance for the Navy and Marine Corps on issues dealing with sex. Policy also put forth a moral ideal for sailors and marines to follow. The Navy and Marine Corps knew that following policy to its letter was not possible or efficient, but knew that policy could serve as a guiding hand to sway sailors and marines to become moral men and give them an ideal to live up to. Policy in turn would then sway the Navy and Marine Corps' image to be one of morals and decency. Thus, the slippage between policy and policy in action was not always one of stress to policy. Instead, this slippage helped the Navy and Marine Corps further other goals and/or helped the Navy and Marine Corps escape difficult consequences as a result of directly following policy.

Another area of slippage between policy and policy in action is that while policy named 21 different sexual crimes, only 11 of these charges showed up in my sample. Why were the other charges not used? The 11 charges used were scandalous conduct, sodomy, rape, conduct unbecoming an officer and a gentleman, concealing a venereal disease, fornication, lewd or indecent behavior, adultery, circulating obscene matter, polygamy, and assault with intent to commit rape. The majority of the charges in my sample were scandalous conduct or sodomy. Scandalous conduct alone was charged 287 times. Some charges could be difficult to prove. One was seduction.

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<sup>40</sup> Michael Hussey, "Do You Know What It Means When a Man Uses Another Man as a Woman?": Sodomy, Gender, Class, and Power in the United States Navy, 1890-1925," (PhD diss., University of Maryland, College Park, 2002), 18-95.

Seduction required that the woman's "previous chaste character" be proved.<sup>41</sup> Proving "chaste character" was difficult because *Naval Courts and Boards* was unclear on what evidence could be used and what "chaste character" was. It was also difficult to find someone who could testify to the woman's entire life to know that being "seduced" by a sailor or marine was what stripped her of her moral character. Scandalous conduct was significantly easier to charge. As it had no constituting elements, anything could be scandalous conduct as long as a court could be convinced of it. It was not proper procedure to charge scandalous conduct in cases where another charge would fit, but scandalous conduct was generally listed as a "lesser included offense" for many sex crimes, resulting in a gray area that allowed scandalous conduct to be used for any sex crime.<sup>42</sup> Occasionally charging decisions did not make sense. In the case of Machinist's Mate Thomas Arcena, Arcena was charged with scandalous conduct after he had been convicted in Los Angeles County Court for "pimping."<sup>43</sup> "Pimping" would suggest that Arcena should have been charged with either "white slavery" or pandering. The Navy may have felt that they did not have sufficient evidence to convict him of either in a court-martial. The County Court's conviction makes this explanation suspect, however. Nevertheless, Arcena's case shows that even when another charge would seem obvious, the Navy went with scandalous conduct instead, likely to ensure a conviction. The use of the scandalous conduct charge allowed the Navy to get an easier conviction when the use

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<sup>41</sup> United States Navy Department, *Naval Courts and Boards 1923*, sec. 283.

<sup>42</sup> United States Navy Department, *Naval Courts and Boards 1923*.

<sup>43</sup> Case of Thomas Arcena, Machinist's mate first class, U. S. Fleet Reserve, October 15, 1941; File no. 79728, Box no. 1741; Records of Proceedings of General Courts Martial, 1866-1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

of a more specific charge could be more difficult to convict. Further, scandalous conduct carried with it a hefty maximum imprisonment term of 15 years whereas many specific charges (except rape) carried lesser maximum imprisonment terms. Therefore, scandalous conduct could help the Navy and Marine Corps dole out harsher punishments to sailors and marines as it saw fit.

The Navy and Marine Corps in practice rarely doled out the maximum punishment for any sex crime. The most illustrative examples are the median imprisonment times for scandalous conduct and sodomy for cases in my sample. Scandalous conduct had a median imprisonment time of 3 years, whereas its maximum imprisonment time according to *Naval Courts and Boards* was 15 years. Sodomy had a median imprisonment time of 6 years with a maximum imprisonment time of 12 years for an officer and 10 years for an enlisted man listed in *Naval Courts and Boards*. Looking at the unused charges and maximum imprisonment times, it would appear that the Navy and Marine Corps were more lenient about sex crime than *Naval Courts and Boards* would indicate.

The differences in the periods of imprisonment awarded to those convicted of same-sex crimes and opposite-sex crimes, however, illustrates that the Navy and Marine Corps punished same-sex crimes more harshly than opposite-sex crimes. The median imprisonment time for an opposite-sex crime was 1 year, whereas it was 5 years for same-sex crimes. While both types were charged under scandalous conduct, this disparity in imprisonment time shows that the Navy and Marine Corps doled out harsher punishments for same-sex crimes.

How the Navy and Marine Corps put policy into action largely depended upon individual cases, the circumstances surrounding them, and the individual officers involved in the court-martial's opinions. Four marines charged with raping Matthildur Halldorsdottir show how individual circumstances, presentation, and opinion determined how naval policy was put into action. Marine private John F. Freeman was convicted of rape in 1941 and sentenced "to be confined for the remainder of his natural life" by the court.<sup>44</sup> Freeman and three other marines were on liberty in Iceland in the countryside near Reykjavik when they came upon Matthildur Halldorsdottir and her husband Kjartan Jakobsson picking berries. Halldorsdottir and Jakobsson found the marines a nuisance, but ignored them until the couple left for home. While walking up a steep hill, Freeman and three other marines assaulted Jakobsson and Halldorsdottir and took turns raping Halldorsdottir. Freeman pled guilty to the charge and made a statement to the court. He reminded the court he was "only nineteen" and told the court that he hoped in the future he could "prove...that I can be a decent man."<sup>45</sup> His defense counsel then entered evidence for mitigation. This evidence was witness testimony on the difficulties of serving in Iceland, particularly the lack of recreation. The judge advocate pointedly asked a witness "Do you consider the present conditions in which we are serving any justification for a

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<sup>44</sup> Case of John F. Freeman, Private, U. S. Marine Corps, September 13, 1941; File no. 79679, Box no. 1739; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C. Case of John Marx Jr., Private, U. S. Marine Corps, September 18, 1941; File no. 79678, Box no. 1739; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>45</sup> Case of John F. Freeman, Private, U. S. Marine Corps, September 13, 1941; File no. 79679, Box no. 1739; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

man striking a civilian and, or raping his wife?" which the defense counsel objected to and the court sustained.<sup>46</sup> Then in an unusual move, the court allowed the judge advocate to call witnesses to show how heinous the crime was, including Halldorsdottir and Jakobsson, despite the defense's objections.<sup>47</sup> The court did not buy the defense's argument that lack of recreation was a legitimate cause to rape a woman, and likely found it offensive. While impossible to tell what the officers sitting on the court determining Freeman's fate were thinking, the idea that marines must be provided with recreation and that it was a hardship to not have any recreation likely felt like an insult to military service. One had pledged to give their life for the country when enlisting in the Marine Corps. If war was to come, where were marines, who could not withstand the supposed hardship of being bored to find themselves? This question was critical as the Marine Corps was in Iceland preparing to enter in war with Nazi Germany if necessary. Plus, according to one witness, many Icelandic newspapers were concerned that marines were creating sexual and moral problems by associating with Icelandic women.<sup>48</sup> This case was likely vexing to local marine leadership, who wanted to smooth over relations with locals. Further, with the

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<sup>46</sup> Major Jaime Sabater, judge advocate. Case of John F. Freeman, Private, U. S. Marine Corps, September 13, 1941; File no. 79679, Box no. 1739; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>47</sup> Case of John F. Freeman, Private, U. S. Marine Corps, September 13, 1941; File no. 79679, Box no. 1739; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>48</sup> Second Lieutenant Charles Janvier, witness. Case of John F. Freeman, Private, U. S. Marine Corps, September 13, 1941; File no. 79679, Box no. 1739; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

dramatic testimony of Halldorsdottir and Jakobsson, the officers sitting on the court found little reason to be sympathetic to Freeman if they were not frustrated with him.

The three other marines involved in this crime were also tried by court-martial, but none received as harsh a sentence, despite there being little difference in each's role in the crime. All three were found guilty. Private Raleigh N. Ross was sentenced to be imprisoned for 20 years, Private Earl W. Pharr for 15 years, and Private John Marx Jr. for 10 years, each a long sentence compared to the median for opposite-sex crimes.<sup>49</sup> The differences in the sentences can be chalked up to the individual cases, presentation of each one, and the different officers that judged each case. Each of these marines were tried by courts composed of different officers. Each sentence was thus dependent on the reactions and opinions of the individual court members. While sentencing guidelines and maximum sentences were all available to the court, they were not rigid rules. These cases show the individual nature of courts-martial. While judge advocates and defense counsels might make the same or similar arguments, different officers sitting on the courts understood and resonated with those arguments differently and thus provided different sentences for the same exact crime. Individual officers' opinions created slippage between policy and policy in action, as a uniform application of policy was impossible due to differing opinions. Opinion

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<sup>49</sup> Case of Raleigh N. Ross, Private, U. S. Marine Corps, September 8, 1941; File no. 79680, Box no. 1739; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C. Case of Earl W. Pharr, Private, U. S. Marine Corps, September 18, 1941; File no. 79681, Box no. 1739; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C. Case of John Marx Jr., Private, U. S. Marine Corps, September 18, 1941; File no. 79678, Box no. 1739; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

thus created an avenue for any defendant, defense counsel, judge advocate, or court to press upon the unique circumstances of the case to win a judgment that might contradict or minimize what policy aimed at punishing.

Nevertheless, other arms of the Naval and Marine Corps were intended to combat the role of opinion and regulate sentencing. Continuing with the example of the four marines convicted of rape in Iceland in 1941, these arms can be seen. For Freeman, Brigadier General John Marston reduced his imprisonment to 20 years soon after the trial. The Naval Clemency and Prison Inspection Board reduced it to 15 years in 1945.<sup>50</sup> Marston expressed frustration at Marx's sentence, believing it was "grossly inadequate" as the crime "occurred with malice aforethought, in a brutal manner, and in collusion with three other persons" and noted there were no "mitigating or extenuating circumstances" and that the court was "negligent" because it failed to adjudicate a deserving sentence.<sup>51</sup> Nevertheless, there was not much Marston or anyone could do at that point besides send the case back to the same court (which Marston elected not to do), so Marx served a 10-year term. Pharr and Ross's sentences were untouched, serving their respective 20-year and 15-year terms.<sup>52</sup> Therefore, Marston (and Judge Advocate General W. B. Woodson and Major General

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<sup>50</sup> Case of John F. Freeman, Private, U. S. Marine Corps, September 13, 1941; File no. 79679, Box no. 1739; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>51</sup> Case of John Marx Jr., Private, U. S. Marine Corps, September 18, 1941; File no. 79678, Box no. 1739; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>52</sup> Case of Raleigh N. Ross, Private, U. S. Marine Corps, September 8, 1941; File no. 79680, Box no. 1739; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C. Case of Earl W. Pharr, Private, U. S. Marine Corps, September 18, 1941; File no. 79681, Box no. 1739; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

Commandant T. Holcomb, who both approved Marston's findings) believed that a reasonable sentence for rape was between 15-20 years. While not a perfect method, requiring cases and their findings to be approved by leadership lessened some of the randomness of the opinion of each court, but not entirely. Policy unequivocally held that rape was a serious crime, but the courts that tried these rape cases and leadership could not agree on what was an adequate sentence. By complaining about sentencing and reducing sentences, leadership introduced an element of dissent into the proceedings that pitted leadership and courts against one another on opinions on how policy should be put into action. Even within this fairly rigid system with guidelines, maximums, and multiple levels of approval, individual opinions created conflict on how policy should be put into action.

Opinion's role and the conflict that came with it was recognized by the Navy and Marine Corps. One judge advocate said in court in 1929, "The sanction of military discipline and the efficiency of all military organization would depend upon the personal theories and opinions, however crude, of the individuals who compose them," quoting from *Naval Digest 1916*.<sup>53</sup> While he argued that naval discipline would fall apart if it relied too much on personal opinions on sex that individuals may hold, he highlighted how powerful individual opinions were in reaching verdicts and sentencing. While opinion may create conflict, it was an unavoidable aspect baked into court-martial proceedings and was inescapable.

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<sup>53</sup> Lieutenant Clement R. Baume, judge advocate. Case of Earl A. Blake, Pharmacist's mate third class, U. S. Navy, 29 May, 1929; File no. 71414, Box no. 1443; Records of Proceedings of General Courts Martial, 1866-1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

Despite the slippage between policy and policy in action, the interwar Navy and Marine Corps were successful in prosecuting sex crime, considering the 74% conviction rate within my sample. However, regardless of policy's criminalization of all sexual behavior beyond vaginal sex between a husband and a wife, most of the charges filed targeted same-sex crimes. Further, the Navy and Marine Corps doled out harsher punishments for same-sex crimes. Regardless of the slippage between policy and policy in action, the role of opinion stymied the possibility of uniform enforcement of policy. Policy's enforcement was placed within the hands of individual courts and individual leaders--each with their own opinion on how policy should be put into action.

## Chapter 2: “This Thing of Fucking Seiferth Happened So Often”: Naval Policy and Middle Class Conceptions of Sex vs. Enlisted Men’s Lived Experience and Working Class Conceptions of Sex

After Seaman Curtis Wood testified that he had received oral sex from another sailor aboard the USS *Nevada* in a 1926 court-martial, he was asked if anyone witnessed the act. He could not recall. He was then asked if “practices of that kind [are] so common on this ship that you have to stop and think it over whether there was somebody else there or not when somebody sucked your cock?” Wood gave a noncommittal answer at first, but then replied “yes sir” when the question was repeated.<sup>54</sup> Wood’s testimony reveals that oral sex amongst sailors was common aboard the *Nevada*. His testimony highlights an incongruence between policy and enlisted men’s lived experience. Even though policy criminalized all sexual behavior aside from vaginal sex between a husband and wife, enlisted men regularly participated in criminalized sex. Enlisted men regularly talked, gossiped, and joked about criminalized sex as well. Therefore, enlisted men’s lived experience was incongruent with policy--particularly with the view that policy represented a moral ideal for sailors and marines to follow. In this chapter, I will argue that enlisted men’s lived experience did not reflect the moral ideal of policy. I will demonstrate that criminalized sex was a common topic of discussion and humor amongst enlisted men and that criminalized sex was more common in the Navy and Marine Corps than court-martial proceedings would indicate. I will show that many enlisted men had

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<sup>54</sup> Case of Harry L. McCannon, Coxswain, U.S. Navy, 26 February 1926; File 64745, Box no. 1234; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

familiarity with and accepted early twentieth century urban conceptions of same-sex activity that were in conflict with the middle-class conceptions of same-sex activity that informed policy. I will also argue that the incongruence between policy and enlisted men's lived experience was due to some noncommissioned officers' choice to handle sex crime in less formal ways than with policy. Overall, this chapter will show that policy had a slippery, incomplete hold over enlisted men in large part due to their own conceptions of sex that were different from the moral ideal put forth by policy.

Before looking at policy's loose grip over enlisted men's lived experience, it is important to lay out the differences between early twentieth century working-class and middle-class conceptions of same-sex activity. There was some class mixture amongst enlisted men, but many enlisted men were working class. Anyone in a position to influence policy and policy in action (such as commissioned officers and leadership) was middle class or upper class. While both classes were diverse in their beliefs about sexuality, a few traits were predominant. Historian George Chauncey's seminal *Gay New York* revealed differences in urban working-class and middle-class conceptions of same-sex activity in the early twentieth century. Chauncey's work helps illuminate why enlisted men, commissioned officers, and leadership had different views of same-sex activity. Chauncey described working class sexuality as focusing less on gender presentation--openly feminine men were visible. Some same-sex activity was tolerated and openly talked about. A man could still be "normal" as long as he played the penetrative role in sex.<sup>55</sup> Middle class men, however, largely

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<sup>55</sup> George Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940* (New York: BasicBooks, 1994), 33-97.

did not accept feminine men, believed that sexual desire for other men was inherently feminine, and believed that they needed sexual desire for women to be “normal.” These beliefs were informed by the crisis of masculinity that occurred in the early twentieth century. Many middle-class men began to work for other men as salaried employees and in office settings and feared they were losing their masculine “prerogative” and “independence.”<sup>56</sup> Thus, enlisted men brought their working-class beliefs with them into the Navy and Marine Corps when they enlisted--which conflicted with the moral ideal that commissioned officers and leadership strove to create through the policy informed by their own ideas about sex.

Enlisted men’s beliefs about sex were diverse, but working-class conceptions were predominant. Most expressed beliefs or behaved along standard working class lines, however some expressed resent and disgust at same-sex activity. Regardless, chatter and gossip about sex was common amongst enlisted men. Perhaps this was due to the diverse beliefs about sex amongst enlisted men. Or maybe this was because enlisted men felt camaraderie in their beliefs about sex and those beliefs conflicted with policy, leadership, and commissioned officers. Noncommissioned officers, having once been enlisted men themselves, generally held working class beliefs about sex.<sup>57</sup> As a result, noncommissioned officers did not discipline sex crime in the way policy demanded they should. Regardless of personal beliefs about sex, working class beliefs played an impact on enlisted men’s lived experience as openness about

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<sup>56</sup> Chauncey, *Gay New York*, 99-127.

<sup>57</sup> In this article, I will be using “noncommissioned officers” to refer to any officer who enlisted and did not go through officer candidate school including petty officers and warrant officers.

criminalized sex was common. Thus, the average enlisted man's experience was incongruent with policy.

A common feature of enlisted men's lived experience was joking about criminalized sex. Many enlisted men would make jokes about having sex with each other. One fireman said in 1920 that it was not unusual "for the men on board ship to joke with one another and make [sexual] proposals to each other."<sup>58</sup> A seaman said in 1923 that it was "nothing unusual" to tease a yeoman "about his chicken [a seaman] and [look] as if [the yeoman] asked [the chicken] for a kiss."<sup>59</sup> "Chicken" was a working class slang term that typically meant a younger man who played the passive role in anal sex with another man.<sup>60</sup> In 1941, a private joked that "with the lack of white women on the island I might have to resort to a nice clean boy."<sup>61</sup> This joke poked fun at the lack of women all enlisted men were subjected to when deployed. This joke rendered White men as being sexually desirable, particularly in as a passive sexual object. While a White man was this private's second choice of passive sex object, a White man was still more sexually desirable than a woman of color. This private possibly found interracial sex disgusting, undesirable, and/or dangerous. He

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<sup>58</sup> Fireman Third Class Frank L. Backenstow, witness. Case of Ralph D. Snyder, Engine Man Second Class, U.S. Navy, 31 March 1920; File no. 47611, Box no. 730; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>59</sup> Seaman Second Class William Oscar Huette, witness. Case of Harry S. Dorrington, Yeoman first class, U.S. Navy, and Roy J. Galloway, Seaman second class, U.S. Navy. 18 July 1923; File no. 58045, Box no. 1031; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>60</sup> Michael Hussey, "Do You Know What It Means When a Man Uses Another Man as a Woman?" 169.

<sup>61</sup> Private First Class Alexander Pressutti, witness. Case of Dale L. Peters, Corporal, U.S. Marine Corps, June 24, 1941; File no. 79538, Box no. 1733; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

was perhaps interested in sexually penetrating men, but felt he could not admit it when the more “viable” or “correct” option of White women were available. This joke suggests that this private slightly bought into middle class conceptions of sex that desiring women was critical to masculinity. In a similar vein, these jokes may have allowed enlisted men to say “the quiet part out loud.” These enlisted men may have wanted to have sex with and sexually penetrate men, but felt that they could not due to the pressure from policy and its moral ideal. Humor and its guise of unseriousness may have allowed these enlisted men to express hidden desires. Joking may have been a way to relieve pressure between their lived experience and policy. Joking may have also been a way for these enlisted men to express discomfort with same-sex activity, or humor could have been used to put down others engaging in same-sex activity. By diffusing this discomfort through humor, some enlisted men may have relieved pressure caused by same-sex activity occurring around them. Nevertheless, these jokes indicate that discussing same-sex activity, at least in a jocular way, was not frowned upon and was commonplace amongst enlisted men.

Enlisted men acknowledged that this joking needed to be kept on the down low, however. A chief radio electrician said in 1936 that making “light of certain sex perversion acts...was all right in common practice if kept quiet.”<sup>62</sup> This chief radio electrician indicated that joking needed to be silenced around specific people. He recognized that certain sailors and marines would not get the joke and/or be made uncomfortable. Commissioned officers in particular might not find these jokes funny.

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<sup>62</sup> Chief Radio Electrician E. S. Tucker, witness. Case of Clair N. Burke, Carpenter’s Mate Third Class, U.S. Navy, 11 March, 1936. File no. 77233, Box no. 1640; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

Due to different class backgrounds, joking around commissioned officers could create trouble. A commissioned officer could investigate and court-martial men who joked about same-sex activity. For example, in 1926 seaman Cecil B. Clements created a nude drawing of another sailor and gave that sailor an enlarged anus in the drawing. He titled the drawing “Pink Lips.”<sup>63</sup> Seaman Jean M. Ellrich saw Clements’s drawing and commented “I would like to rape ‘Pink Lips’ and have been trying to do it for two months, but she is too wise for me.”<sup>64</sup> Both sailors played off this situation as a drunken joke. Both were nevertheless court-martialed by commissioned officers for this “joke.” It is possible that this situation was not a joke. Clements may have drawn the picture to get off to a sailor he found attractive and wanted to penetrate. Ellrich may have shared Clements’s desires and remarked on it. In this case, the two were operating under working class beliefs about sex. It was acceptable for Clements to find the sailor attractive and make a lewd drawing of him and for Ellrich to want to penetrate “Pink Lips” and to say so. If it was a joke, it was one that drew enough consternation from commissioned officers to ultimately lead to Ellrich’s and Clements’s imprisonment for 6 months and dishonorable discharges. Commissioned officers possibly did not get or could not see the humor in same-sex activity because they were of the belief that it was criminal and a threat to their masculinity. Regardless, this incident marked that joking could be dangerous--if commissioned officers got wind of the joke.

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<sup>63</sup> Case of Cecil B. Clements, seaman second class, U.S. Navy, 27 February, 1926. File no. 64819, Box no. 1236; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>64</sup> Case of Jean M. Ellrich, seaman second class, U.S. Navy, 3 March, 1926. File no. 64818, Box no. 1236; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

However, joking about same-sex activity could also be dangerous amongst enlisted men. It could be dangerous for one's reputation. Fireman Louis D. Bates, who told a lot of these jokes, said in 1924 that it led to "suspicion [of] me of putting out." He said "that is where they are wrong I am no poge."<sup>65</sup> Poge was a working-class slang term for a man who played the passive role in anal sex with another man.<sup>66</sup> Perhaps because Bates carried the joke on for too long or told too many of these jokes, other enlisted men started to suspect him of having genuine interest in being penetrated by another man. In this case, it is possible that some enlisted men subscribed to middle class beliefs about same-sex attraction. These enlisted men who suspected Bates might have found humor in these jokes because it helped them feminize other men and bolster their own masculinity. Once Bates joked too much, some enlisted men wanted to distance themselves from him and similar jokes for fear that they might be suspected by others or feminized too. Or the joke wore thin and was unfunny because it was told too much. Nevertheless, an oversaturation of humor about same-sex activity could draw ire from enlisted men who maybe would not mind the odd joke about same-sex activity, but did not want to be besieged with discussion of it.

These jokes sometimes lead to enlisted men not taking claims of same-sex activity, particularly sexual harassment and assault, seriously. Multiple enlisted men reported being laughed at or worried about being laughed at if they claimed that

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<sup>65</sup> Case of Philip Cohen, Seaman First Class, U.S. Navy, 1 August 1924; File no. 61273, Box no. 1131; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>66</sup> Michael Hussey, "Do You Know What It Means When a Man Uses Another Man as a Woman?" 162.

another sailor had performed a sex act on them. In 1920, seaman Clarence E. Upton said that he did not tell his shipmates when a chief quartermaster tried to remove Upton's pants and have sex with him because he "thought they would make a fool out of me." He thought that a commanding officer "would probably laugh at me or something like that."<sup>67</sup> Upton felt isolated because he thought no one would take his claim seriously because many enlisted men found jokes about same-sex activity funny. If Upton had joked about same-sex activity, he might not have been taken seriously and may have been considered a "boy who cried wolf" if he reported it. Further, as Upton would have been penetrated by a superior, he would have been considered abnormal and a joke by his working-class peers. Due to this power imbalance, Upton may have been worried that he would be punished in retaliation, not taken seriously, ignored for the sake of convenience, blocked by supporters of Upton's superior, or even got in trouble himself, despite being the victim of sexual harassment, if a commanding officer thought Upton had done something to provoke the advance. Upton was caught in a complex dilemma between the commonality of jokes about same-sex activity, working class beliefs about same-sex activity, middle class beliefs about same-sex activity, and a power imbalance.

Upton's fears were realistic. In 1935, when seaman Burnham Kimball tried to tell fellow enlisted men that a carpenter's mate had performed oral sex on him, Kimball said he "told these boys that there was a queer down there... They sort of

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<sup>67</sup> Case of Austin H. Fergus, quartermaster first class, U.S. Navy, 30 December 1920; File no. 51774, Box no. 843; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

laughed at me and didn't know whether to believe it or not."<sup>68</sup> Just as Upton feared, Kimball's fellow enlisted men laughed at him when he reported having a same-sex sexual act performed on him. They laughed at Kimball possibly because he was making something out of a sexual activity that was common within working class conceptions of same-sex activity. These frequent jokes made it difficult for enlisted men to tell how serious someone was when discussing same-sex activity. Therefore, joking about same-sex activity could create problems amongst enlisted men. It caused sailors and marines to be fearful about admitting to being sexually assaulted by other men. Enlisted men worried their peers would laugh at them and crack jokes about the situation, either because they saw nothing unusual about sex between two men or because it was too hard to tell whether it was a serious issue or a joke.

Some enlisted men mentioned that they did not realize that men who tried to commit same-sex crimes with them were serious until they thought about it. When another seaman touched seaman Charles F. Guest's penis when he was sleeping in 1924, Guest "didn't take so serious a view then...didn't think anything wrong right away."<sup>69</sup> Because enlisted men often joked about same-sex acts, Guest viewed it as just another joke. Only after thinking about it did Guest realize that the other seaman was not joking and that he had been violated. Similarly, Hospital Apprentice Maynard Ernest Finch asked Pharmacist's Mate LeRoy E. Malloy in 1929 if he was queer and

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<sup>68</sup> Case of Clair N. Burke, Carpenter's Mate Third Class, U.S. Navy, 11 March, 1936. File no. 77233, Box no. 1640; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>69</sup> Case of John P. Inge, Seaman first class, U.S. Navy, 18 October 1924; File no. 61611, Box no. 1140; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

Malloy answered, “no, unless you would call getting into a few boys queer” and grinned.<sup>70</sup> Due to the grin, Finch struggled to discern whether Malloy was joking. It was nearly impossible for Finch to assess at that moment whether it was a joke considering the frequency of jokes on the topic. Sometimes the opposite would happen. An enlisted man would initially feel uncomfortable with a sex act or proposal then convince himself it was a joke. Apprentice Seaman George B. Allman did this when his first platoon leader offered to “blow” him. In 1927, Allman said “instead of being a fellow that runs and tells everything I thought afterwards somebody mentioned that he just done it for fun and I supposed that he had quit fooling around like that.”<sup>71</sup> Allman initially felt that what his platoon leader had said was improper, but was convinced that it was in jest. In this sense, jokes managed conflict over same-sex activity amongst enlisted men. Jokes convinced sailors that when they had been assaulted or propositioned, it was a joke, or helped tamp down initial shock over being propositioned.

Jokes about same-sex activity created complicated situations for sailors and marines. Jokes allowed enlisted men to express working-class beliefs about sexuality and/or put down men as being feminine along the lines of middle-class beliefs about sexuality. In this sense, jokes may have helped cool class conflict amongst enlisted men who came from different backgrounds. While the meanings and motivations

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<sup>70</sup> Case of LeRoy E. Malloy, Pharmacist’s Mate Third Class, U.S. Navy, 16 July 1929; File no. 71580, Box no. 1448; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>71</sup> Case of Verdie Lee Crooks, Seaman Second class, U.S. Navy, 14 November 1927; File no. 68220, Box no. 1343; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

behind the jokes might have been unclear to the different classes, both could agree that such jokes were funny (albeit for different reasons). Jokes may have defused the pressure working class enlisted men felt being subjected to the moral ideal of policy that criminalized same-sex activity. By joking about same-sex activity, working class enlisted men kept their sexual culture alive as jokes allowed them to say what they could not say seriously while subject to policy. Jokes could also create problems amongst enlisted men by getting old or by sowing rumors that a sailor or marine was interested in men. Jokes could land enlisted men in court-martial, naval prison, or result in their removal from the force because commissioned officers did not necessarily find them funny. Jokes also created issues for enlisted men who wanted to speak seriously with their peers about sexual harassment and assault. Jokes were a critical piece in the incongruence between enlisted men's lived experience and policy's moral ideal.

Enlisted men knew that other enlisted men engaged in same-sex activity as a normal part of their life. A fireman said that at the Naval Training Station in San Francisco, California, in 1920 enlisted men “usually do sometimes [put ‘hickeys’ on their necks] when they wrestle.”<sup>72</sup> According to this fireman, kissing another enlisted man to the point of leaving a mark was not usual. A seaman stationed aboard the *U.S.S. Nevada* admitted that “cocksucking” was not uncommon on the ship in 1926.<sup>73</sup>

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<sup>72</sup> Fireman Third Class James F. Beauchamp, witness. Case of John H. Harrison, apprentice seaman, U.S. Navy, 15 December 1920; File no. 51567, Box no. 837; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>73</sup> Seaman Second Class Curtis Wood, witness. Case of Harry L. McCannon, Coxswain, U.S. Navy, 26 February 1926; File 64745, Box no. 1234; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

How open these sailors were about having oral sex with each other on the *Nevada* is unclear, but numerous enlisted men were involved. Both of these examples present same-sex sexual contact as being a normal part of enlisted daily life. They demonstrate that working class enlisted men did not leave their beliefs about same-sex activity nor their same-sex sexual behavior behind when they enlisted in the Navy or Marine Corps. Nor were they convinced to reform themselves into policy's moral ideal. In 1923, seaman John Cassina reportedly exclaimed, "I'm a sailor now, I have been stewed, screwed, and tattooed" after a boatswain's mate possibly sexually assaulted him.<sup>74</sup> While Cassina might have made this statement in shock, it implies that he felt having anal sex with another sailor was an essential part of a sailor's life. Cassina possibly thought or knew that many of his peers were engaging in anal sex with one another. While Cassina's statement was unusual within a working-class milieu as he admitted to playing the passive role in sex, admitting that he had sex with another man was not unusual within working class settings. An apprentice seaman's 1919 testimony gives credence to this idea. He admitted that anal sex was common aboard the USS *Oklahoma*. He said "this thing of fucking Seiferth [another apprentice seaman] happened so often I didn't pay much heed."<sup>75</sup> Apprentice Seaman Seiferth was having so much sex with other enlisted men, it was no surprise that the act was going on. These other apprentice seamen possibly ignored Seiferth because

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<sup>74</sup> Case of James H. Davis, Boatswain's Mate Second Class, U.S. Navy, 5 October 1923; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>75</sup> Apprentice Seaman Joseph Patrick Conboy, witness. Case of Oscar L. Richardson, Coxswain, U.S. Navy, 5 August 1919; File no. 45120, Box no. 642; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

they were used to hearing about, seeing, and/or engaging in same-sex activity themselves in their own working-class communities. As these were all apprentice seamen, they would have been new recruits, so they did not have much distance from their home working class communities and sexual culture. They were maybe even unaware that this behavior was criminalized because it was normal in their civilian lives. In 1926, Apprentice Seaman Moreau testified that there was a sailor “who used to go around the brig just like a girl. He acted very queer at all times and that is why all the fellows used to hang around him.”<sup>76</sup> Not only was this sailor presenting himself as “queer” all the time, other sailors were interested in him because of it. This sailor might have been considered a “fairy” as he had a feminine presentation. According to historian George Chauncey, fairies were a common fixture in urban working class same-sex sexual environments.<sup>77</sup> It is not unrealistic to imagine that considering their prevalence that fairies may have enlisted in the Navy and Marine Corps and continued to carry on with their working-class gender performance and sexual behavior, despite it flying in the face of policy. The fact that in multiple instances same-sex acts were reported to the court as being commonplace is stunning as all of these admissions could have resulted in many more enlisted men being charged. All of these examples illustrate that working class sexual culture was alive amongst enlisted men in the Navy and Marine Corps despite the moral ideal set forth by policy.

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<sup>76</sup> Case of Joseph F. Moreau, Apprentice Seaman, U.S. Navy, May 5, 1926; File no. 65036, Box no. 1244; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>77</sup> Chauncey, *Gay New York*, 47-63.

The fact that some enlisted men were engaging in sex with each other raises the question of whether these enlisted men knew they were committing a crime. Some enlisted men knew same-sex activity was criminal, while others did not. Seaman Herbert E. Oldes, who in 1920 was charged with scandalous conduct for proposing oral sex to Apprentice Seaman Donald L. Morehouse, reportedly said to Morehouse after making the proposal, “if you are any kind of friend of mine, for God’s sake keep it to yourself.”<sup>78</sup> This remark would indicate that Oldes knew he could get in serious trouble. Oldes recognized the danger his sexual behavior put him in. In 1920, one machinist’s mate told the court that he knew the maximum imprisonment time for sodomy was 10 years and that the maximum imprisonment time for scandalous conduct was 15 years.<sup>79</sup> This machinist’s mate showed that some enlisted men had familiarity with the content of *Naval Courts and Boards*. Carpenter’s Mate Stanley C. Wilson said in 1920 that “the general opinion...[is] that every ‘poge’ gets out of the service.”<sup>80</sup> This statement shows that Wilson knew working class sexual roles. He also knew that men who were penetrated by other men were kicked out of the Navy and Marine Corps. Essentially, Wilson knew that what sex was permissible differed in civilian and military contexts. Notably, in 1931 two apprentice seamen gave each

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<sup>78</sup> Case of Herbert H. Oldes, Seaman Second Class, U.S. Navy, 14 April 1920; File no. 47768, Box no. 735; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>79</sup> Machinist’s Mate First Class W. T. Henry, witness. Case of Valentine Keeley, Chief Water Tender, U.S. Navy, April 23, 1920; File no. 48238, Box no. 748; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>80</sup> Case of Robert C. Read, Boatswain’s Mate First Class, U.S. Navy, 5 March 1920; File no. 47612, Box no. 730; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

other a hand job in full view of other sailors to obtain a discharge.<sup>81</sup> Their choice shows that enlisted men knew that men who were caught committing same-sex acts were removed from the Navy and Marine Corps. All of these instances show that some enlisted men knew that there were penalties for participating in working class same-sex behavior.

However, not all enlisted men were aware of policy. Fireman Harvey Leonidas Hibbert, standing trial in 1920 for sodomy and scandalous conduct, testified that he did not know what the penalties for either crime were.<sup>82</sup> While Hibbert perhaps wanted to feign innocence, he may have legitimately not thought about whether having sex with another man was a crime in the Navy and Marine Corps. He might have engaged in same-sex activity in his home working class community or may have known of others doing so and may have thought nothing of it. Private Edmond F. Clark similarly testified in 1920 that “he was only fooling and didn’t think it was a serious crime or offense” when he played with a naval prisoner’s penis when he was watching the prisoner.<sup>83</sup> It is possible that Clark was trying to present himself as innocent and unaware, but maybe he did not consider his act a crime, perhaps due to working class beliefs about sexuality. In 1920, an apprentice seaman did not know

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<sup>81</sup> Case of George P. Morris, Apprentice Seaman, United States Navy, 4 March, 1931; File no. 74062, Box no. 1530; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

Case of Morris 74062 and Bechard 74063

<sup>82</sup> Case of Valentine Keeley, Chief Water Tender, U.S. Navy, April 23, 1920; File no. 48238, Box no. 748; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>83</sup> Case of Edmond F. Clark, Private, U.S. Marine Corps, May 11, 1920; File no. 48255, Box no. 748; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

the punishment for sodomy until he was in the brig awaiting trial for sodomy when “a fellow in the brig told [him] twenty years.”<sup>84</sup> While the brig-mate was incorrect, he reportedly only learned it was a punishable offense after he had been charged with it, perhaps because he thought same-sex activity was normal while surrounded by peers in the working class. In 1919, one apprentice seaman noted that he did not report sodomy because “I was new in the navy [sic]. I didn’t know anything about the rules and regulations.”<sup>85</sup> This apprentice seaman highlighted that new recruits would be the most likely to be unfamiliar with policy on same-sex crimes. They were fresh from their home working class communities where they may have engaged in same-sex activity without stigma. These enlisted men demonstrate that not all enlisted men knew that the Navy and Marine Corps criminalized same-sex activity. Therefore, some enlisted men were aware of the Navy and Marine Corps’ moral ideal, while others did not.

Other enlisted men’s lived experiences were in line with policy. In 1926, a seaman said that a fellow seaman’s reputation was “no good...because he is queer.”<sup>86</sup> This seaman was looked down upon by the crew because he either was known to engage in same-sex acts and/or was feminine. The stigmatization of this sailor was

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<sup>84</sup> Apprentice Seaman John H. Harrison, accused. Case of John H. Harrison, apprentice seaman, U.S. Navy, 15 December 1920; File no. 51567, Box no. 837; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>85</sup> Apprentice Seaman Joseph Patrick Conboy, witness. Case of Oscar L. Richardson, Coxswain, U.S. Navy, 5 August 1919; File no. 45120, Box no. 642; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>86</sup> Seaman First Class Eddie J. Trahan, witness. Case of Eugene H. Candee, Boatswain’s mate second class, U.S. Navy, 20 February, 1926; File no. 64747, Box no. 1234; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

more in line with middle class beliefs about same-sex activity. One aviation machinist's mate said of a Navy photographer in 1926, "lots of the fellows - they thought he was a degenerate of some sort, and didn't take much interest in him."<sup>87</sup> Association with same-sex acts led other sailors to avoid him, possibly thinking he was feminine for engaging in same-sex acts. This avoidance indicates that some enlisted men held middle class beliefs about same-sex activity. They may have been concerned about their own reputation, particularly their masculinity. These sailors also simply may have been concerned about the Navy and Marine Corps suspecting them of same-sex activity through association. Other enlisted men expressed revulsion at men who performed oral sex on other men. In 1929 an officer's cook said of a fireman, "he must have been sucking his penis and that it was terrible to be among that kind of men, drinking and eating with men of that sort."<sup>88</sup> If sharing a meal with a man who performed oral sex on another man was revolting, one can only imagine what this officer's cook may have felt being near them in general, perhaps in the crew's quarters. This officer's cook may have held middle class beliefs about same-sex activity--that the fireman was aberrant and a disgrace to masculinity. These sailors' statements show that not all enlisted men held working class beliefs about sexuality and indicate that there may have been an element of class conflict amongst

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<sup>87</sup> Aviation Machinist's Mate Second Class L. B. Holtz, witness. Case of Edwin I. Chatcuff, Storekeeper First Class, U.S. Navy, 27 April 1926; File no. 64896, Box no. 1239; Records of Proceedings of General Courts Martial, 1866-1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>88</sup> Officer's Cook First Class, Fred Luther Evans, witness. Case of Arthur M. Mousette, Fireman third class, U.S. Navy, 31 May, 1929; File no. 71428, Box no. 1443; Records of Proceedings of General Courts Martial, 1866-1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

enlisted men, particularly about sex. They demonstrate that there was some dissent about same-sex activity among enlisted men that was not fueled by policy.

Beyond simply expressing revulsion at same-sex activity, some enlisted men reacted violently to it. In 1919, one apprentice seaman said that when another sailor called him a “poag” he got angry. He said “I wanted to start a fight with him, as I wouldn’t stand for that name.”<sup>89</sup> This apprentice seaman was infuriated at the suggestion that he would be passive in sex with another man and essentially wanted to fight over some name calling. This apprentice seaman’s anger may not have been provoked by a middle-class conception of sexuality, however. As in working class beliefs about sexuality, a man was only “normal” if he performed the active role in sex with another man, he may have been upset at the allegation that he was not “normal.” Further, it could be dangerous for anyone to try to engage in same-sex activity with an enlisted man. In 1929, a hospital apprentice knocked out a civilian man who propositioned him.<sup>90</sup> The civilian possibly assumed that since he was speaking with an enlisted man, who likely held working class beliefs about same-sex activity, that he would be receptive. If so, this incident indicates that civilians did not know the diversity of beliefs about same-sex activity among enlisted men.

Essentially, propositioning the wrong enlisted man could be dangerous. It is also indicative of the idea that enlisted men interested in same-sex acts had to create

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<sup>89</sup> Apprentice Seaman Joseph Patrick Conboy, witness. Case of Joseph Mol, Chief Boatswain’s mate, U.S. Navy, July 18, 1919; File no. 45121, Box no. 643; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>90</sup> Case of Charles A. Anderson, Fireman Second Class, U.S. Navy, 6 August, 1929; File no. 71636, Box no. 1450; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

networks to know who would react positively to propositions. Enlisted men who subscribed to working class beliefs about same-sex activity had to tread carefully and identify each other to not offend or provoke the wrong person. In another example, a technical sergeant testified in 1941 that Sergeant Albert J. Wells said about “queers around Washington” that “he would kick their teeth out.”<sup>91</sup> Wells was so offended by their existence that he wanted to beat them up. Wells himself was facing charges for propositioning two privates to perform oral sex on him. Wells perhaps struggled with his own same-sex desire and put on a violent facade to avoid a conviction or was particularly self-hating. He may have struggled with his own beliefs about same-sex activity, likely formed from a working-class background, and the moral ideal set forth by policy. The change in community, from an open working-class community to the constrictive military community, might have created internal conflict for enlisted men. They had come from communities where same-sex behavior was not unusual, but were thrust into the Navy and Marine Corps in which it was criminalized. This change could have been destabilizing and provoked self-hatred. Incidents such as these reminded enlisted men that there could be violent reprisal for even speaking about same-sex activity with the wrong enlisted man.

If a noncommissioned officer got wind of same-sex activity, violent reprisal was not the only consequence enlisted men might face among themselves for engaging in same-sex activity. Some noncommissioned officers expressed that it was part of their duty to prosecute same-sex crimes. A gunner’s mate bluntly said in 1929

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<sup>91</sup> Technical Sergeant Joseph L. Schwab, witness. Case of Albert J. Wells, sergeant, U.S. Marine Corps, August 13, 1941; File no. 79571, Box no. 1735; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

that it was his duty “to arrest sex perverts and moral degenerates.”<sup>92</sup> Whether or not he was specifically ordered to do so, this gunner’s mate saw capturing anyone who committed a same-sex crime as being central to his service. If he had initially come from a working-class background that was open about same-sex activity, by 1929 he was in line with policy. However, this gunner’s mate may have felt he did not have a choice rather than prosecute same-sex activity. As he was a noncommissioned officer, he had more power and responsibility than the average enlisted man. Regardless of his personal opinion or background, he might have felt that he had to follow policy because of his position. Boatswain’s Mate Robert C. Read similarly testified: “there were rumors on board the *Orion* that sodomy was going on...I thought it was my duty as a boatswain’s mate to find out if there was such a man in the first division. I always had the best division on the ship, and I wanted to keep it so” during his trial for scandalous conduct for proposing sodomy.<sup>93</sup> Whether or not Read was just trying to get the charge dropped, Read stated that it was part of his duty to capture anyone engaging in sodomy aboard his boat. Read was perhaps not investigating sodomy to prosecute it, but to figure out who might be willing to engage in it. Read’s position as a noncommissioned officer distanced him from enlisted men whose sexual culture he may have shared and wanted to participate in. It is possible that Read might have been telling the truth--that he wanted to root out anyone committing sodomy. In this

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<sup>92</sup> Gunner’s Mate Second Class William Henry Johnson, witness. Case of Hugh Geoghan, Chief Machinist’s Mate, U.S. Navy, 9 April 1929; File no. 71164, Box no. 1434; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>93</sup> Case of Robert C. Read, Boatswain’s Mate First Class, U.S. Navy, 5 March 1920; File no. 47612, Box no. 730; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

case, regardless of his background, he was compelled by his position to enforce naval policy. Interestingly, the court acquitted Read, which in turn affirmed that Read was doing good work rooting out sodomy. If either of these noncommissioned officers came from a working-class background, by the time they had been promoted to noncommissioned officer status, their ties to their former community were unclear. Regardless of personal opinion, they felt that they were tasked with upholding naval policy and its moral ideal.

Many noncommissioned officers chose not to uphold naval policy, however. For example, in 1920, one chief turret captain said “I hear[d] the men in the turret’s crew making immoral remarks about certain men, whose names, at the time, they did not mention. I thought though, at the time, it was just a crude joke and I told them to keep quiet.”<sup>94</sup> Having been a general enlisted man, this chief turret captain understood that enlisted men joked about same-sex activity. He could have reported these men but did not want to, demonstrating that he understood and held working class beliefs about same-sex activity despite his position of power. This chief turret captain demonstrated that enlisted men’s lived experience and policy were incongruent because policy, in some instances, required enlisted men to enforce it. If a noncommissioned officer thought that the sexual behavior he witnessed was normal due to his background and did not feel the call of duty, he would skirt policy.

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<sup>94</sup> Chief Turret Captain Daniel J. Lane, witness. Case of William H. Douglass, boatswain’s mate first class, U.S. Navy, and Earl L. Saul, seaman second class, U.S. Navy, April 24, 1920; File no. 47848, Box no. 737; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

Noncommissioned officers sometimes refused to do anything when same-sex sexual activity was reported to them. In one 1936 case, a seaman tried reporting to the chief quartermaster that he had been propositioned by another sailor. The chief quartermaster reportedly told him to “get the hell out of here, you don’t know what you are talking about,” ending the conversation.<sup>95</sup> This chief quartermaster had no interest in policing same-sex activity, even if a sailor wanted to report it. This chief quartermaster may have been protecting the other sailor. He likely understood that many enlisted men held working class beliefs about same-sex activity. He possibly chose to downplay the issue to not stoke class and cultural conflict aboard his ship and among enlisted men. He may have thought that the other sailor happened to proposition someone who did not come from a working-class background and did not share the same beliefs about same-sex behavior. Regardless, this chief quartermaster did not follow policy by not taking the report seriously. In doing so, he acknowledged the presence and prevalence of working-class beliefs about sexuality among enlisted men.

Other noncommissioned officers were satisfied with warnings for same-sex crime. For example, in 1919, Coxswain Cecil L. Burk told an apprentice seaman who shook his penis at Burk, “things like that are very serious offenses if you were reported, but as you are new in the Navy you will get away with it, if it never happens

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<sup>95</sup> Seaman Second Class Burnham Kimball, witness. Case of Clair N. Burke, Carpenter’s Mate Third Class, U.S. Navy, 11 March, 1936. File no. 77233, Box no. 1640; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

again.”<sup>96</sup> This incident is interesting because Burk let a breach of rank go as well as a sex-crime. Burk understood that an apprentice seaman would not know the norms of the Navy and thus should not be punished harshly. In 1920, a chief yeoman reportedly issued a more dire warning to anyone engaging in same-sex activity. This chief yeoman “made a speech about [moral perversion] at noon formation for chow one day...He said... ‘This man had better go ashore tonight and stay there, and never come back.’”<sup>97</sup> He preferred an enlisted man desert than stick around and face a court-martial. He did not tolerate same-sex crimes, but did not force courts-martial. He provided a difficult, but perhaps less embarrassing way out of the Navy instead. He was possibly familiar with working class beliefs about same-sex activity and knew that if enlisted men did not leave them behind, they would find themselves in trouble with policy and its moral ideal. The chief yeoman’s warning can be taken as an exit ramp for any man not willing to change for the Navy. It is also possible that this chief yeoman did not identify with working class beliefs about same-sex activity and truly wanted all men who indulged in it removed without wasting Navy resources. Neither this chief yeoman nor Burk chose to enact policy. Both possibly believed that putting policy in action was a waste of time for men who believed that there was nothing unusual about same-sex activity. Both may have thought that their warnings might be an imperative for enlisted men to change their behavior to reflect policy’s moral ideal.

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<sup>96</sup> Case of Cecil L. Burk, Coxswain, U.S. Navy, August 7, 1919; File no. 45117. Box no. 642; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>97</sup> Apprentice Seaman Francis John Mooney, witness. Case of Herbert H. Oldes, Seaman Second Class, U.S. Navy, 14 April 1920; File no. 47768, Box no. 735; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

These examples illustrate that enlisted men's lived experience was incongruent with policy in part because putting policy in action required noncommissioned officers to implement it.

Some noncommissioned officers used their authority to warn newly enlisted men about same-sex activity in the Navy--particularly those not familiar with urban working-class beliefs about same-sex activity. For example, in 1919, Boatswain's Mate Kenneth Hellwig told Apprentice Seaman Joseph Patrick Conboy about "poag chasers and gold diggers in the third division." Hellwig said that he "frequently gave lectures on cleanliness, sobriety, and how to get along in the Navy in general."<sup>98</sup> Hellwig took Conboy under his wing and helped him and others steer clear of trouble, including sexual trouble, while in the Navy. Conboy might not have come from an urban working-class background. It would then make sense that Hellwig would need to explain terms like "poag" and "gold digger" to Conboy. The Navy and Marine Corps exposed non-working-class men to working class sexual culture for the first time. This exposure cultivated discomfort, danger, and interest as these men navigated a new sexual culture. Thus, noncommissioned officers such as Hellwig were mentors and guides for these men navigating these new sexual norms, all within an environment in which engaging with these norms could earn a man a criminal charge.

Encountering same-sex activity for the first time was not an unusual experience for newly enlisted men in the Navy and Marine Corps. In 1920, one

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<sup>98</sup> Case of Nicholas Roes, Coxswain, U.S. Navy, July 31, 1919; File no. 45119, Box no. 642; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

seaman said that he first learned the terms “pogue” and “chicken” while “at the General Detail, Newport, Rhode Island.”<sup>99</sup> A private had a similar story and said in 1929 that he did not know what “pogue” meant “before I came into the Marine Corps.”<sup>100</sup> Enlistment taught both of these men working class slang for men who engaged in same-sex acts, particularly men who were penetrated by other men. Neither of these enlisted men may have come from working class backgrounds so their enlistment in the Navy or Marine Corps marked their first encounter with working class culture. Another seaman first heard about sodomy when he “just heard different fellows talk about it...[and] queer fellows in Los Angeles...on board ship.”<sup>101</sup> Eavesdropping on other enlisted men’s conversations was this seaman’s first encounter with same-sex activity. If he did not come from a working-class background, other enlisted men who did may have avoided him or kept their sexual culture to themselves. They may have done so to avoid trouble or provoking class conflict. In 1936, Apprentice Seaman Thomas Francis Baker called Apprentice Seaman Joseph E. Legire a “homosexual,” but had no idea what it meant. Baker only knew the term because someone back in his hometown was called a “homosexual” because “he was jumping around, they called him a homosexual.” It was not until

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<sup>99</sup> Seaman Robert Preston Wood, witness. Case of Lieutenant Harry Mack, SC. (T) U.S. Navy, April 19, 1920; File no. 48035, Box no. 742; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>100</sup> Private Gideon Taylor, witness. Case of John Lunden, Corporal, U.S. Marine Corps, 22 March, 1929; File no. 71292, Box no. 1438; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>101</sup> Seaman First Class Charles F. Guest, witness. Case of John P. Inge, Seaman first class, U.S. Navy, 18 October 1924; File no. 61611, Box no. 1140; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

Pharmacist's Mate Richard E. Allen explained to Baker what it meant that Baker realized he had done wrong and apologized to Legire.<sup>102</sup> Baker probably thought the word sounded funny or interesting and tested it out on Legire. He did not realize that it had a negative connotation. That connotation needed to be explained to him. This case is unique because the word "homosexual" was used. The use of this word is indicative of a move toward a conception of sexuality that focused on sexual object choice that crossed class barriers. By 1936, it is possible that with a combination of the rising popularity of sexology and policy which ignored gender performance and sexual position, some enlisted men bought into new beliefs about sexuality that were not too different from the moral ideal set forth by policy. Another seaman said in 1929 that he found out what sodomy was when a man he served with was found guilty of sodomy.<sup>103</sup> This statement shows that courts-martial educated some enlisted men about same-sex activity instead of purely serving as a deterrent. Thus, policy unintentionally informed more men about criminalized sex practices. While difficult to assess, it is possible that some enlisted men became sexually excited and/or interested in performing some of the sex acts described in courts-martial. It is possible as well that some got off on hearing details and gossip surrounding sex-crime courts-martial. In these situations, Navy and Marine Corps service marked these men's first encounter with same-sex sexual activity. While policy strove to create a cleaner,

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<sup>102</sup> Case of Richard E. Allen, Pharmacist's mate third class, U.S. Navy, 3 June 1936; File no. 77319, Box no. 1644; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>103</sup> Seaman First Class, Edward D. Williams, accused. Case of Edward D. Williams, Seaman first class, U.S. Navy, June 3, 1929; File no. 71424, Box no. 1443; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

moral force that was in tune with middle class beliefs about sex, the sheer number of enlisted men from a working-class background, plus the Navy and Marine Corps' enactment of policy wound up introducing men to the working-class sexual culture.

Some enlisted men decided that same-sex acts were not necessarily bad when they came into contact with them. In 1936, Carpenter's Mate Clair N. Burke reportedly said ““cock-suckers weren't as bad as people seemed to think they were’, and he said he had met with them himself and it wasn't so bad, and he also told me about when he was in the Hawaiian Islands, or some place like that, he had had this electric flip.”<sup>104</sup> Being deployed to Hawaii and an encounter with same-sex activity there changed Burke's mind. It is unclear if this encounter led to a sexual awakening for Burke. He was charged with scandalous conduct for performing oral sex on another sailor. Naval service led Burke, who previously thought same-sex activity was aberrant, to think about same-sex activity along working class lines. Clearly, Navy and Marine Corps service introduced some enlisted men to the concept and/or pleasures of same-sex activity. Naval policy could not stop discussion and encounters with working class conceptions of same-sex activity.

There was much chatter and gossip about sex, particularly about same-sex activity, among enlisted men. A fireman told the court in 1929 that in general “you hear lots about [poging] in the Navy.”<sup>105</sup> This fireman made it clear that enlisted men

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<sup>104</sup> Case of Clair N. Burke, Carpenter's Mate Third Class, U.S. Navy, 11 March, 1936. File no. 77233, Box no. 1640; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>105</sup> Poging is used in this testimony by this fireman but not specifically in this space or answer. The word I replaced was “it” which refers to “running around with poges” which was in the question the fireman was responding to. Fireman Third Class John Hardy Rowell, witness. Case of William J. Hurley, Chief Boilermaker, U.S. Navy, 6 March, 1929; File no. 71078, Box no. 1431; Records of

frequently talked about same-sex activity with working class terminology for men who participated in same-sex activity. One boatswain's mate supposedly spread the rumor in 1920 that he "heard the saying that there were poges [that] came aboard in the draft."<sup>106</sup> This boatswain's mate was gossiping about men who were sexually penetrated by other men and spreading rumors that there were "poges" among them. This boatswain's mate may have been concerned or knew that the necessity of manpower brought urban working-class men aboard who would not follow policy. In 1919, whenever one boatswain's mate was seen around the USS *Oklahoma*, reportedly other enlisted men would say "there goes the poag from the third division" and frequently talked about this boatswain's mate.<sup>107</sup> While it is unclear what the substance of these conversations was, it is clear that this boatswain's mate and his proclivity for playing the passive role in sex with other men were a central feature of gossip. These men's use of a working-class term for this boatswain's mate, indicated that they were all at least familiar, if not a part of, working class sexual culture. A lieutenant aboard the USS *Bruce* said of Machinist's Mate Ernest Roy Bishop that in 1927 "it developed that it was common knowledge, scandal, or gossip, what ever [sic] it may be, among the crew of the ship that Bishop was believed to be a pervert."<sup>108</sup>

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Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>106</sup> Boatswain's Mate First Class Robert C. Read, accused. Case of Robert C. Read, Boatswain's Mate First Class, U.S. Navy, 5 March 1920; File no. 47612, Box no. 730; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>107</sup> Apprentice Seaman Joseph Patrick Conboy, witness. Case of Joseph Mol, Chief Boatswain's mate, U.S. Navy, July 18, 1919; File no. 45121, Box no. 643; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>108</sup> Lieutenant Thomas John Ryan, witness. Case of Ernest Roy Bishop, Machinist's mate second class, U.S. Navy, 28 November 1927; File no. 68201, Box no. 1343; Records of Proceedings of

The whole *Bruce* was talking about Bishop and his sex life, regardless of whether or not it was positive. A chief gunner's mate told the court in 1920 that in the Navy there were two unique slang terms for talking about men who played the passive role in sex with other men--those terms being "scupper" and "sea-whore."<sup>109</sup> The existence of Navy-specific terms to discuss these men suggests that they were a common topic of conversation in the Navy. These terms indicate that enlisted men's working-class sexual culture might have evolved and changed within a naval setting. These terms suggest that working class sexual culture was central to naval sexual culture. Therefore, regardless of class and sexual culture, sex was something all enlisted men could speak about. Gossip about sex could unify enlisted men. Regardless of class dynamics and policy, gossip about sex was common among enlisted men.

Opposite sex activity was a common topic of discussion as well. For example, one boatswain's mate told the court in 1920 that the term "fish...is generally considered, in the way that the gobs would speak, as a prostitute, or some lover or degraded woman."<sup>110</sup> "Gobs" refers to enlisted men. The existence of the term "fish" shows that enlisted men discussed prostitutes and "degraded" women frequently enough to need a shorthand. Additionally, this shorthand could help enlisted men avoid reprimand from a commissioned officer, if they were unfamiliar with enlisted

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General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>109</sup> Chief Gunner's Mate William Robinson, witness. Case of Reese V. Gentry, Cox. U.S.N., and Ralph T. Averill, F3c, U.S.N., 27 April 1920; File no. 47867, Box no. 738; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>110</sup> Boatswain's Mate Second Class George M. Winney, witness. Case of Lieutenant Harry Mack, SC. (T) U.S. Navy, April 19, 1920; File no. 48035, Box no. 742; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

men's slang. An electrician's mate in 1927 said of a woman that "her reputation is, of being a bad woman" and that many enlisted men knew her as a prostitute.<sup>111</sup> This electrician's mate asserted that enlisted men shared information with one another about prostitutes. One chief electrician in 1920 said of a specific woman that "I have heard that her character is universally bad; that she made a practice of running around with soldiers and drinking, and I was told by one man that he knew four or five fellows who had screwed her, and that she carries a nickname of 'Powder Puff,' because of an effeminate soldier she used to associate with."<sup>112</sup> Due to the fact this woman had a nickname, it is clear that many enlisted men talked about this woman. Also, as the chief electrician says he knows multiple men that had sex with her, it is likely that enlisted men frequently discussed their sexual conquests and adventures with one another. The fact that discussion of opposite-sex activity was common suggests that enlisted men were not always or mostly interested in discussing same-sex activity. It is difficult to assess how opposite-sex sex was discussed, however, as the Navy and Marine Corps did not prosecute nearly as many opposite sex crimes as same-sex crimes. Therefore, discussion of opposite-sex activity might have been a more common topic of discussion than same-sex activity as it was less likely to instigate criminal charges. A musician who was charged with scandalous conduct in 1936 for having an oral sex threesome with another sailor and a woman suspiciously

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<sup>111</sup> Electrician's Mate Second Class William C. Maski, witness. Case of Harry K. Leventen, Lieutenant, U.S. Navy, 30 August, 1927; File no. 67905, Box no. 1333; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>112</sup> Chief Electrician Homer Worley, witness. Case of Ensign (T) Benjamin F. Stairley, U.S. Navy, May 5, 1920; File no. 48173, Box no. 746; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

claimed that “sexual normalcy” was a common topic of conversation and said, “sailors always talk about [it].”<sup>113</sup> It is possible that enlisted men frequently talked among themselves about what was “normal” in terms of sex for them. Enlisted men may have talked over the differences between working class sexual cultures, middle class sexual cultures, and the moral ideal put forth by policy.

Overall, criminalized sex was a common topic amongst enlisted men. Whether it was in joking about, gossiping about, engaging in, or witnessing criminalized sex, many enlisted men encountered criminalized sex in the Navy or the Marine Corps. The evidence presented in this chapter highlights the incongruence between the policy’s moral ideal and the lived experience of enlisted men. Enlisted men’s lived experience suggests that policy held sway over enlisted men’s sex lives in the Navy and Marine Corps. Many enlisted men held working class beliefs about sex and did not change their beliefs simply because they were in conflict with policy, itself influenced by middle class beliefs about sex. Some noncommissioned officers, who began their naval service as enlisted men, understood this and did not follow policy when it came to policing sex crime. Some enlisted men and noncommissioned officers, however, did not hold working class beliefs about sexuality, which created conflict with their fellow enlisted men. Essentially, working class men’s behavior and beliefs about same-sex activity conflicted with policy itself. While present and widespread, it was with complaint, dissent, and of course prosecution that enlisted men’s lived experiences stood against policy.

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<sup>113</sup> Case of Homer E. St. Sauveur, First Musician, U.S. Navy, 27 March, 1936; File no. 77250, Box no. 1641; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

### Chapter 3: “It May Sound Hard but We Have to Do It:” Commissioned Officers, Duty, Service, and Medical Evidence

In 1921, water tender George A. Salisbury and seaman Gordon Grayson were standing trial for sodomy. Lieutenant Maurice T. Scanlan, Navy, acted as their defense council and First Lieutenant Lester A. Dessez, Marine Corps, was prosecuting them as the judge advocate. Dessez asked Lieutenant Commander George A. Riker, Medical Corps, to testify about his physical examination for evidence of sodomy that he had been ordered to conduct on Grayson. Being an order, Grayson was unable to consent to the examination. Scanlan objected, arguing that evidence procured from such an examination was a violation of the fifth amendment. Scanlan said it would be “the accused’s own body testifying against him, and the Constitution guarantees every man that he shall not be convicted upon his own testimony...It could have been obtained only by requiring the accused to lay bare his body for inspection, in other words to surrender the citadel of his body without his consent.” Dessez then responded “When a man enters [sic] the naval service he voluntarily [sic] waives certain Constitutional rights which are explained to him on his enlistment.” The court sided with Dessez and ordered Riker to proceed. Riker told the court that while Grayson’s physical condition was “unusual” he “can not” say “what did produce this condition.”<sup>114</sup> This situation hit upon the role of duty and medical evidence in courts-martial. Duty compelled Riker to complete his examination without Grayson’s consent. Duty forced Grayson to waive his right to

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<sup>114</sup> Case of George A. Salisbury, WT2c., U.S. Navy. Gordon Grayson, Seaman first class, U.S. Navy. Tried in Joinder. November 18, 1921; File no. 55224, Box no. 945; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

consent and to invoke the fifth amendment. As sailors, both Riker and Grayson had little say. Medical evidence was frequently seen in sex crime courts-martial as being a silver bullet to win the case, but it frequently was anything but. Medical evidence was often inconclusive at best. Despite fighting its entrance into evidence, Riker's medical evidence would be unlikely to hurt Scanlan's case as it was inconclusive as to whether sodomy had been committed on Grayson. In this chapter I will look at how duty and medical evidence were invoked in sex crime courts-martial. I will argue that duty was a double-edged sword. Naval leadership believed it was their duty to protect the Navy and Marine Corps from men who participated in same-sex activity. Duty was also a powerful rhetorical device used by judge advocates to sway the court towards a conviction. As officers on the court heard arguments and testimony, judge advocates frequently reminded those officers that it was their responsibility to follow policy and punish sex crime. Judge Advocates also frequently reminded these officers that duty called them to protect the service from sexual criminals. Duty, however, also called Navy Medical Corps officers to provide accurate and professional medical testimony that was sometimes at odds with Navy and Marine Corps policy, particularly when their testimony included references to sexology. Overall, duty was a compelling force in courts-martial that helped win convictions and steel officers' resolve to expel sexual criminals from the service, but was in tension with policy when it called upon Medical Corps officers to give expert testimony.

Invocations of duty and service were frequent in sex-crime courts-martial. Leadership felt it was their duty to protect the Navy and Marine Corps from men who engaged in same-sex activity. Duty and service were frequently invoked by

commissioned officers to argue in favor of the expulsion of everyone who committed same-sex acts from the Navy and Marine Corps. Their invocation put everyone on warning that service in the Navy and Marine Corps and participating in same-sex activity were mutually exclusive. This tactic was successful as commissioned officers composed the court. Commissioned officers had dedicated their lives to the Navy and Marine Corps. Many felt a strong tie and motivation to uphold policy--not to mention that policy's moral ideal was congruent with their middle and upper-class beliefs about sexuality. Yet, medical evidence forced a reckoning on the ethics of jailing everyone who engaged in same-sex activity as sexology declared that same-sex activity was a mental defect and not a crime. Regardless, duty and service won out as commissioned officers continued to be responsive to the pledge they had made to the Navy and Marine Corps to uphold its policy.

### *Naval Leadership and Duty*

Naval leadership, unsurprisingly frequently invoked duty and service as the main reasons to run all men convicted of same-sex crimes out of the Navy and Marine Corps. Vice Admiral C. S. Kempff, Commander Battleships, Battle Force, United States Fleet wrote in 1936 that “crimes of sex perversion are something which cannot be tolerated in the Navy.”<sup>115</sup> Kempff was blunt that men who performed same-sex sexual acts had no place in the Navy. Kempff likely believed that it was his duty as a Vice Admiral to run these men out of the Navy. Admiral Henry Braid Wilson,

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<sup>115</sup> Case of Leo H. Gagon, Shipfitter second class, U. S. Navy, 6 October 1936; File no. 77435, Box no.1648; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

Commander in Chief, U.S. Atlantic Fleet wrote in 1919 that same-sex crimes needed to be punished harshly so “that the naval service may not be demoralized, as must surely follow lenient treatment of such cases.”<sup>116</sup> Wilson thought that keeping men who committed same-sex crimes around would create morale issues in the Navy. Thus, the Navy needed to get rid of these men before the service writ large suffered. He believed that he was protecting and stewarding the Navy by demanding harsh treatment--a necessity of his role as an Admiral. Philip Williams, Chief of the Bureau of Navigation in the early 1920s, similarly wanted the Navy to get rid of all men who committed same-sex crimes. He wrote that all men who committed same-sex crimes should be sent to state or federal prisons so they did not further “contaminate” the Navy.<sup>117</sup> Williams did not want to keep the men the Navy sentenced for same-sex crimes in its own penitentiaries. He argued that having these men around would be bad for the Navy’s image. He suggested that their presence would compromise non-sexual offenders in naval penitentiaries just by being around. He proposed that the service itself was corrupted by their presence. As these examples illustrate, leadership believed that the tension between service and sex was easily resolved by simply expelling anyone who participated in same-sex activity. While their motives and personal opinions may have been different, they all acted in a way that was consistent

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<sup>116</sup> Case of Paul L. Burton, Boatswain’s Mate Second Class, U. S. Navy, August 8, 1919; File no. 45218, Box no. 647; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>117</sup> Williams wrote something similar in his comments on multiple cases but this case has the best example and explanation of what he means: Case of John Palmer, Engineman Second Class, U. S. Navy and of Robert Dewey Moore, Seaman Second Class, U.S. Navy, April 14, 1920; File no. 47780, Box no. 736; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

with the positions they held and the duty to guide and steward the Navy and Marine Corps that they had all sworn to.

Leadership would occasionally lament over having to punish a sailor or marine for an opposite-sex crime while expressing little remorse for punishing those convicted of same-sex crimes. For example, metalsmith Archie L. Hammock was convicted of bigamy in 1936. When looking over the case, Rear Admiral W. T. Cluverius, Commander Base Force, U. S. Fleet wrote “[I] with regret approve the punishment of an enlisted man with so outstanding a professional record over a long period of years but who has grievously committed himself by his personal conduct.”<sup>118</sup> While Cluverius admitted that Hammock had committed a crime, he lamented losing a talented sailor because of unfortunate personal conduct. Officials who wrote about sailors and marines who committed same-sex crimes almost never lamented losing their talent. Leadership likely believed that it was impossible for a man who committed same-sex acts to be a competent sailor or marine. As leadership largely came from middle class or upper-class backgrounds, they were likely to believe that same-sex attraction was itself feminine. As the military was a homosocial environment and military service a masculine right and prerogative, leadership probably believed that these men were incapable of functioning with the masculine rigor, responsibility, and independence expected from sailors and marines. Men who exhibited opposite-sex attraction and got ensnared in a sex crime, were more likely to receive leadership’s praise and lament because their attraction to women made them

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<sup>118</sup> Case of Archie L. Hammock, Metalsmith first class, U. S. Navy, 16 November, 1936; File no. 77457, Box no. 1649; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

inherently masculine, and thus, candidates for competent service. Leadership thus registered small disagreement with policy by voicing the idea that policy was too harsh, at least on men with opposite-sex attraction, without abdicating their role as leaders nor directly challenging the status quo of policy.

However, in one unique case, leadership exercised leniency when dealing with a same-sex crime. This was the case of John R. Melton, which I mentioned at the beginning of this thesis. Melton was convicted for scandalous conduct for performing oral sex on two other sailors and sentenced to be dishonorably discharged and imprisoned for a year. The sentence would have been carried out had Melton not been killed in action during the December 7, 1941, attack on Pearl Harbor. Judge Advocate General W. B. Woodson wrote that Melton “was killed in action in the performance of duty and in the service of his country” and remitted the whole sentence.<sup>119</sup> Melton's case shows that on occasion leadership could exercise some clemency when dealing with same-sex crimes. Of course, this clemency required Melton's death, which essentially helped leadership's goal of excising those who participated in same-sex activity from the Navy and Marine Corps. Melton was not remembered as a criminal, but as someone who had died a valiant death in service to the nation. Melton's case and its unique circumstances highlight that leadership on occasion understood same-sex acts and the sailors and marines who participated in them with some nuance. It indicates that leadership could occasionally be broken out of a binary of service and same-sex activity. But this required that the sailor or marine had been a

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<sup>119</sup> Case of John R. Melton, Seaman first class, U. S. Navy, November 13, 1941; File no. 79923, Box no. 1747; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

significant credit to the service, the nation, and had fulfilled their duty to the utmost point they had sworn. Death, in this instance, could wipe away the binary between service and same-sex activity. It allowed leadership to see the sailor as a whole person who had same-sex desire but also was an ideal sailor, even if he did not live up to policy's moral ideal.

Leadership occasionally inserted dissent into courts-martial by criticizing the court and/or the judge advocate. Leadership would sometimes complain that the court and/or judge advocate did not fulfill their duty to bring offenders to justice. Sometimes leadership would complain that the court "usurps a function of" leadership by giving light sentences, showing a bit of anger at leadership's inability to punish individuals.<sup>120</sup> Other times, leadership would express incredulity at how the court could "fail to realize the gravity of the offenses charged."<sup>121</sup> Leadership could not understand how commissioned officers could punish sex crimes lightly when they were serious offenses. Leadership felt these officers were tasked with bringing sex offenders to justice in a court-martial and that these officers failed. Leadership felt that these officers let down the service by not fulfilling their duty properly, creating tension between leadership and commissioned officers on policy in action.

Leadership also expressed dissent when they chastised the court for taking a plea for clemency into account during sentencing and over light sentencing in

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<sup>120</sup> Admiral H. B. Wilson. Case of Paul L. Burton, Boatswain's Mate Second Class, U. S. Navy, August 8, 1919; File no. 45218, Box no. 647; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>121</sup> Admiral C. S. Williams, Commander in Chief, United States Asiatic Fleet. Case of Cecil B. Clements, seaman second class, U. S. Navy, 27 February, 1926. File no. 64819, Box no. 1236; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

general.<sup>122</sup> Leadership believed that it was not the court's place to take the plea for clemency into account when sentencing. Leadership thought that clemency should be given only after they had reviewed the case. Leadership would occasionally say that the court and/or judge advocate was "derelict in [their] duty to the government."<sup>123</sup> This was a serious and insulting allegation as they all had a sworn duty to protect the country. Sometimes leadership would flat out say they disagreed with the court's findings. For example, Acting Chief of the Bureau of Navigation T. R. Kurtz complained in 1929 that the court had been swayed by the defense's argument that the accused had been influenced into committing a same-sex crime, when Kurtz believed that the accused had done so of his free will.<sup>124</sup> Kurtz was angry that the court did not accept his interpretation. He believed that a sex offender had been let off easy and restored to duty. He was furious because he believed that the court had a duty to protect the service from men who committed same-sex acts. Kurtz and others did not hesitate to express disapproval of courts and judge advocates by invoking service and duty to allege malpractice and a failure to protect others in the service from the threat of same-sex activity.

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<sup>122</sup> Colonel R. M. Cutts. Case of Coll D. Smith, Private, U. S. Marine Corps, 29 April, 1931; File no. 74274, Box no. 1538. Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>123</sup> Judge Advocate General O. G. Murfin. Case of John Virgil Christman, alias John Victor Christman, alias John Virgie Christman, Engineman first class, U. S. Navy, 30 July 1931; File no. 74528, Box no. 1546; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>124</sup> Case of Guy V. McBride, Seaman first class, U. S. Navy, 27 March, 1929; File no. 71150, Box no. 1434; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

This occasionally strained dynamic between leadership and the court was recognized by leadership. Vice Admiral Kempff wrote in 1936: “Much of the evidence may depend upon the ability of individual members of the court to judge personalities. It is their opportunity and responsibility. It is denied to [us], who can judge the case only by the recorded testimony.”<sup>125</sup> Kempff was aware that the individual officers of the court’s opinions were what held the power in rulings and sentencing. He realized that leadership did not have the necessary information to fairly judge cases. This statement marks a realization that leadership was divorced from what happened on boats and on deployment amongst enlisted men. As leadership did not interact with the average enlisted man on a daily basis, they had enough distance to easily express revulsion at same-sex acts and express middle-class beliefs about sex. Leadership simply was not privy to enlisted men’s lived experience. They did not come face to face with sailors having sex with each other or hear constant joking and gossip about sex. Instead, they sat in offices and on ships’ bridges. They were segregated from enlisted men in their own cabins and mess halls. Therefore, it was easy for leadership to expect that duty and policy would supersede sex and desire. By being disconnected they could easily believe that many sailors and marines held the same middle-class beliefs about sex that those in leadership did. Some in leadership might have realized that many enlisted men held different beliefs, but leadership did not care because they did not have to come face to face with behavior informed by those beliefs. Kempff acknowledged this and noted that other

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<sup>125</sup> Case of Leo H. Gagon, Shipfitter second class, U. S. Navy, 6 October 1936; File no. 77435, Box no.1648; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

commissioned officers, particularly those who deployed and/or directly led enlisted men, were in closer proximity and more apt to make judgements in court. While in most cases, there was no conflict between leadership and the court, these instances show that leadership considered sex crimes to be serious offenses that needed punishment. With their rigid beliefs, leadership sometimes believed the courts and commissioned officers took sex crime lightly. Leadership did not hesitate to dissent when they felt that the commissioned officers did not fulfill their duty to bring offenders to justice.

Sometimes leadership would dissent within itself. For example, Rear Admiral C. H. Woodward, Commander Destroyers, Battle Force, United States Fleet complained that a light sentence that only included dismissal from the Navy given to a lieutenant junior grade for touching another sailor who was naked was a “miscarriage of justice.” Woodward requested permission from the Secretary of the Navy to send the case back to the court to force them to give a harsher sentence but was denied.<sup>126</sup> Whether the Secretary agreed with Woodward is unclear, but the Secretary nevertheless felt it was not worthwhile to send the case back. In another incident, Rear Admiral M. F. Draemel, Commander Destroyers, Battle Force, United States Pacific Fleet complained that a seaman had been acquitted when he believed the seaman was guilty of sodomy. He officially “disapproved” the findings. T. L. Gatch, the acting Judge Advocate General, chastised Draemel and reminded him that he should not “approve” or “disapprove” findings when there was an acquittal

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<sup>126</sup> Case of Donald K. McLeod, Lieutenant (junior grade), U. S. Navy, 11 June, 1936; File no. 77329, Box no. 1645; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

involved as it was Navy policy.<sup>127</sup> While Gatch may have not been any happier than Draemel about letting a sailor who may have committed sodomy remain in the Navy, he made sure that Draemel knew that the court's acquittal was final. In these conflicts a focus on following policy and punishing offenders appropriately was common amongst members of leadership. While there was no disagreement amongst leadership that men who engaged in same-sex activity should be excluded from the Navy and Marine Corps, there was disagreement amongst leadership about how to properly bring offenders to justice.

Following policy was such a powerful impetus for leadership that leadership would let offenders go in a few cases with technicalities, regardless of the crime they were accused of. The Judge Advocate General was mostly responsible for finding these technicalities. In one 1919 case, the Judge Advocate General let an offender go because the charges brought against him did not mention intent and intent needed to be mentioned for the charges to be in due form.<sup>128</sup> In a 1923 case, the Judge Advocate General did not believe that the Judge Advocate had produced enough evidence to convict a sailor of scandalous conduct.<sup>129</sup> In a 1929 case, the Judge Advocate General let a sailor off because the Naval Investigators had illegally seized evidence.<sup>130</sup> While

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<sup>127</sup> Case of Robert H. Franken, Seaman second class, U. S. Navy, October 15, 1941; File no. 79898, Box no. 1746; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>128</sup> Case of George Frost, fireman first class, U. S. Navy, August 11, 1919; File no. 45303, Box no. 650; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>129</sup> Case of John C. Soule, Electrician's mate third class, U. S. Navy, 10 July, 1923; File no. 58008, Box no. 1030. Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>130</sup> Case of LeRoy E. Malloy, Pharmacist's Mate Third Class, U. S. Navy, 16 July, 1929; File no. 71580, Box no. 1448; Records of Proceedings of General Courts Martial, 1866–1951; Records of the

the Judge Advocate General may have been hesitant or resentful of keeping these men in the Navy, he did so because policy demanded it. The Judge Advocate General sometimes had to put personal opinions aside when reviewing cases. He instead focused on following policy to the letter of the law, unlike many others involved in courts-martial. Thus, the Judge Advocate General was bound by duty. His duty was to strictly follow policy and make sure all courts-martial were done in proper fashion. Being bound by duty, it did not matter what he thought about same-sex activity and military service--duty overrode all other impulses.

Every so often leadership disagreed with the court on what was a crime. In a few cases, leadership denied that certain acts were crimes when a sailor or marine had been convicted for those acts. In one from 1920, a chief gunner's mate was convicted of scandalous conduct for forcing another sailor to undress and get into a bunk. The Judge Advocate General wrote in response that "there is nothing scandalous...per se, in one man forcibly undressing another and forcing him into a bunk...for instance, had the man undressed been intoxicated or sick."<sup>131</sup> The Judge Advocate General allowed wider latitude than the court as to what was acceptable. The Judge Advocate General believed that the act itself was not inherently criminal because it may not have been done in an attempt to commit a same-sex act. In a 1927 case, a seaman was convicted of scandalous conduct for public urination. Vice Admiral W. V. Pratt, Commander Battleship Divisions, Battle Fleet, United States Fleet wrote that "it is

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Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>131</sup> Case of George A. Ney, Chief Gunner's Mate, U. S. Navy, 7 May 1920; File no.48237, Box no. 748; Records of Proceedings of General Courts Martial, 1866-1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

conceivable that a person might under certain circumstances urinate in a public street without committing the offense of scandalous conduct.”<sup>132</sup> Pratt did not believe that public urination itself was inherently a crime. Pratt showed greater leniency than the court in his interpretation and beliefs. While these instances of disagreement were rare, leadership’s responses to these cases demonstrate that leadership could be less harsh than individual courts. Of course, this leniency was because of individual leaders’ personal opinions and beliefs. These cases demonstrate that occasionally there was disagreement between leadership and other commissioned officers on what behavior was criminal. Leadership and commissioned officers were not monolithic despite sharing middle and upper-class beliefs about sex. Either case could have been seen as inappropriate from a middle or upper-class viewpoint. Leadership was nevertheless willing to extend the benefit of the doubt.

Overall, leadership aimed to stamp out same-sex sexual activity and the sailors and marines who participated in it. Leadership argued that men who committed same-sex acts had no place in military service and believed it was their duty to protect the Navy and Marine Corps from these men. Leadership’s beliefs are unsurprising considering it was leadership who created policy. As leadership viewed everything from above and only dealt with sex crime through court-martial transcripts, they rarely had a nuanced opinion on sex crime. Their position did not require them to consider offenders as full people and service members. Instead, these service members were simply deviates whose crimes were revealed through trial

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<sup>132</sup> Case of George P. Dahm, Seaman First Class, U. S. Navy, 8-9 December, 1927; File no. 68404, Box no. 1348; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

transcripts. Even when leadership had a nuanced opinion, leadership phrased it as a disagreement with the court. Leadership believed same-sex activity and service were incompatible.

### Commissioned Officers and Duty

Commissioned officers' beliefs did not stray far from leadership's beliefs. Commissioned officers were tasked with upholding naval policy like leadership. Commissioned officers, however, spent more time in the "field" dealing with individual sex offenses than leadership did. This proximity created room for nuance. They were forced to consider offenders as whole people and as service members. Commissioned officers nevertheless agreed that the Navy and Marine Corps should expel men who participated in same-sex activity. Commissioned officers were more prone to making negative remarks about opposite-sex offenses than leadership. This was also due to their proximity to sex offenses. However, most of the statements commissioned officers made on sex were done when they were acting as judge advocates or defense councils. I will not insist that these statements are representative of personal opinions as they were made when trying to convict someone or acquit them. However, the court they were trying to convince was made up of commissioned officers as well. I will consider these statements to be representative of what commissioned officers were willing to believe or "buy" as true or authentic. Duty and service were frequently invoked in these statements and were powerful tools to sway the court.

Commissioned officers mostly presented same-sex sexual activity as a horrible, disgusting crime worthy of shame. In 1929, a Marine Corps first lieutenant

serving as judge advocate for a sodomy case said of the accused sailors: “they have been wicked enough in their animal like scheming to commit this crime.”<sup>133</sup> While trying to secure a conviction, this first lieutenant reduced these two sailors to animals who caved to base instincts. In a different 1929 case, a Marine Corps captain said anyone convicted of a same-sex crime should “be put away from association with his fellow men for as long a period as the law permits in order that society may be protected from contamination by his filthy mind and methods.”<sup>134</sup> This captain, while trying to get a conviction, argued that the society needed to be protected from men who participated in same-sex activity because it was disgusting and corrupting. In a 1920 case, a Navy lieutenant judge advocate asked a witness to describe sodomy he saw. The lieutenant said, “we have to go into these disgusting details, go ahead and tell us all about it.”<sup>135</sup> He editorialized to reinforce how awful sodomy was so the court would hand down a harsh sentence. He assumed that all other commissioned officers on the court would find the details of the case unnerving and disgusting. He reminded the court that it is their responsibility to hear the details, no matter how unpleasant. This last judge advocate invoked duty in a unique way. Commissioned officers might not want to sit on a court-martial, particularly one that dealt with a sex

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<sup>133</sup> First Lieutenant Clifford Prichard, judge advocate. Case (in joinder) of Clay Cashion, Chief Boatswain’s Mate, U.S. Navy, and Chester Walton, Seaman second class, U.S. Navy, 29 March 1929; File no. 71333, Box no. 1439; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>134</sup> Captain James F. Moriarty, judge advocate. Case of Elbert H. Stratton, Private, U.S. Marine Corps, 23 March, 1929; File no. 71293, Box no. 1438; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>135</sup> Lieutenant Forrest K. Libenow, judge advocate. Case of Valentine Keeley, Chief Water Tender, U.S. Navy, April 23, 1920; File no. 48238, Box no. 748; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

crime. This judge advocate reminded the court that they were duty-bound to hear the details in order to judge the case fairly. All three judge advocates harnessed class-based beliefs about sexuality. The acts described were likely to offend or shock middle or upper class commissioned officers. Judge advocates were thus able to weaponize conflicting class-based beliefs to push for a conviction.

Many commissioned officers believed it was their duty to carry out policy and to punish sex crimes. In a case surrounding a wild (likely lewd) party with men and women aboard Submarine Chaser #201 in 1921, Navy Lieutenant John J. Murray said “there is no telling what I would have seen had conditions been permitted to continue through the night, I feel certain there would have been a very serious scandal attached to Submarine Chaser #201.”<sup>136</sup> Murray placed himself as the only thing standing between order and scandal. If Murray had not caught the party before it got out of hand, it would have been a larger problem for the Navy than it already was. Judge advocates frequently reminded the court of their duty to punish sex crime severely as well. One Reserve ensign told the court in 1920 “the Naval Service [sic] may not be demoralized as must surely follow lenient treatment of such cases.”<sup>137</sup> This ensign warned that a light sentence would lead to moral problems. In 1920, a Navy lieutenant asked the court “will you help to stamp out this criminal practice by a finding of guilty and an adequate punishment to this serious offense or, will you

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<sup>136</sup> Case of Ernest A. E. Magnat, Fireman second class, U.S. Navy; File no. 51712, Box no. 841; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>137</sup> Ensign T.J. Stapleton, judge advocate. Case of Ensign Sam Stone Bush, Jr., (T), U.S. Navy, March 22, 1920; File no. 47705, Box no. 734; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

allow the words of two culprits to ride unbridled over the testimony of a petty officer, who was then and there in the execution of the duties of his office?”<sup>138</sup> This lieutenant's call to action included requests to keep a sex crime in check and to make sure that the authority of petty officers was not trampled upon. In all of these cases, some aspect of a commissioned officer's duty was pulled upon. In the Submarine Chaser #201 case, the lieutenant showed that he took his duty in upholding naval policy seriously and zealously. The reserve ensign drew upon the same rhetoric as leadership about the quality of life and morality in the service and the morality of the force was at stake. The use of this rhetoric reinforced for commissioned officers that it was essential to be harsh on sex crime. The privileges and power of rank were at stake as well. If the court sided with enlisted offenders over officers, then enlisted men might be less likely to follow policy regulating sex. All of these issues could convince a court who took their duty seriously that they needed to act on sex crime.

The rhetoric of duty and responsibility sometimes expanded beyond the realm of the Navy and Marine Corps. In 1920, a Navy lieutenant noted that there might be international relations issues if a bigamous marriage consummated in England went unpunished. This lieutenant said, “It should be remembered that one act such as this will outweigh much of the good conduct of our Navy personnel in this country, and leniency in inflicting punishment in cases of such a nature is bound to have a demoralizing effect.”<sup>139</sup> Naval discipline and morale were not the only issues at stake.

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<sup>138</sup> Lieutenant Leland P. Lovette, judge advocate. Case of Reese V. Gentry, Cox. U.S.N., and Ralph T. Averill, F3c, U.S.N., 27 April 1920; File no. 47867, Box no. 738; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>139</sup> Lieutenant (jg) (T) Thomas H. Laine, judge advocate. Case of Robert Norwood, Chief Electrician (General), United States Navy, April 7, 1920; File no. 47753, Box no. 735; Records of Proceedings of

The United States' relationship with England and the U.S. military's relationship with English civilians were at stake as well. The lieutenant's invocation of larger, international situations reminded the court of their special and important duty to consider when ruling on the case. These officers were not simply deciding whether the accused was guilty, they were also managing an international incident. In 1927, a Marine Corps Captain judge advocate reminded the court of the additional harm an offender could do if acquitted: "to permit a moral pervert...to remain at large to associate with and prey upon such youths as he seems to select, would be a serious crime against any community which contains any boys whatsoever."<sup>140</sup> He made the consequences of acquittal dire. Not only were morale and discipline at stake, but the safety of young boys was at stake as well. Thus, he asserted that the court had a duty to protect young children. The court had to not only keep the Navy and Marine Corps safe, but the communities in which the Navy and Marine Corps had presence in as well. Overall, judge advocates played to their fellow commissioned officers' desire to follow duty and act responsibly in their rulings.

Commissioned officers largely agreed that the Navy should expel anyone involved in same-sex sexual activity, similar to leadership. For example, in 1935, a Marine Corps captain judge said of sodomy "a man who is found guilty of a heinous assault of this nature deserves no consideration. There is no place in the Naval [sic] service for men of this type. There is no crime deserving a more severe

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General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>140</sup> Captain Tracy G. Hunter, judge advocate. Case of Fermin Gamo, Officers' steward first class, U.S. Navy, 29 September, 1927; File no. 67965, Box no. 1335; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

punishment.”<sup>141</sup> This captain made it clear that the Navy was no place for any man involved in sodomy. He also intimated that sodomy was inherently violent by calling sodomy an “assault,” invoking the idea that it was the court’s duty to protect the Navy and Marine Corps from these men. In a 1936 case, a different Marine Corps captain said of the accused charged with sodomy, “it appears that the accused has brought shame and infamy on the naval service.”<sup>142</sup> He suggested that by committing sodomy, any sailor or marine could be a stain on the Navy and Marine Corps and introduce unwanted scandal. In a 1926 case that revolved around an apartment party that had “moral degenerates” and men with feminine dress such as “bracelets,” the Marine Corps captain judge advocate said “We have no place in the Navy for a man that would be a party to any such doings as were going on in this apartment that night.”<sup>143</sup> Even if this defendant was not guilty of a sex act himself, being around men who participated in same-sex and gender-transgressing activity was enough to disqualify him from naval service according to this judge advocate. The mention of men in feminine dress suggested that this party included fairies and thus was likely to have been mostly working-class people. This judge advocate was therefore indicating that enlisted men needed to distance themselves from their own working-class culture to

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<sup>141</sup> Captain Benjamin W. Atkinson, junior, judge advocate. Case of Teddy R. Baxter, Seaman first class, U.S. Navy, 23 July, 1935; File no. 76996, Box no. 1631; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>142</sup> Captain George D. Hamilton, judge advocate. Case of Allen H. Dodge, Corporal, U.S. Marine Corps, 28 April, 1936; File no. 77275, Box no. 1642; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>143</sup> Captain Richard B. Buchanan, judge advocate. Case of Edwin I. Chatcuff, Storekeeper First Class, U.S. Navy, 27 April 1926; File no. 64896, Box no. 1239; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

be in the Navy or Marine Corps. These judge advocates insisted that same-sex acts and naval service were mutually exclusive.

Even commissioned officers serving as defense counsel would periodically affirm how horrid, disgusting, and shameful same-sex activity was and that it had no place in the Navy. In 1921, a Marine Corps captain served as defense counsel for a private charged with scandalous conduct for letting another private perform oral sex on him. The captain said that a marine who witnessed the act displayed no “signs of shame on his face...the ordinary man would have blushed and bowed his head.”<sup>144</sup> Regardless of his role as defense counsel, he still noted how unusual and shameful same-sex activity was. Considering how common it was for enlisted men to speak about same-sex activity, the role of class dynamics becomes clear. This captain had to play to the beliefs of the court to try to get his defendant off, regardless of the lived experience of his defendant. As commissioned officers were middle and upper class, this captain had to perform middle class values for the court to be taken seriously and not criticized himself.

In 1921, Navy Lieutenant Lester A. Dessez made a similar comment when acting as defense counsel for two sailors charged with sodomy. Dessez said “those who do mention [sodomy] dismiss it in a [sic] few words as possible as though fearful of contamination and toss it aside quickly like a soiled rag.”<sup>145</sup> Dessez presented

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<sup>144</sup> Captain Harold D. Shannon, defense council. Case of Walter C. Graham, Private, U.S. Marine Corps, Wednesday, October 12th, 1921; File no. 54783, Box no. 931; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>145</sup> Case of George A. Salisbury, WT2c., U.S. Navy. Gordon Grayson, Seaman first class, U.S. Navy. Tried in Joinder. November 18, 1921; File no. 55224, Box no. 945; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

speaking about sodomy as something to be nervous and ashamed of because it could poison the minds of those who do not engage in the act. It was necessary for Dessez to perform middle class values for the court to enhance his credibility and the position of his defendants. It was immaterial, or possibly damaging, if his defendants chatted about sodomy frequently with their fellow enlisted men. Dessez later said that the case even if the defendants were acquitted, “will afford thoughtless men a cudgel to wound the sensibilities of these men for many days to come. Promotions will be denied them. The society of their shipmates will be withheld. They will be ostracized.”<sup>146</sup> Dessez made it clear that an accusation of sodomy haunted men for a long time and made it difficult for them to have companionship with other men. Even though the ostracization of their shipmates was unlikely, Dessez needed the court to believe that everyone involved held middle class beliefs about sexuality.

Dessez was not alone in his assessment. In 1936 Lieutenant (junior grade) Donald K. McLeod was charged with scandalous conduct for touching another sailor’s body when indecently exposed. McLeod said during his court-martial “I believe that in view of the fact that this accusation will put a permanent stain on my reputation in the naval service I will not be able to remain” even if he was acquitted by the court.<sup>147</sup> McLeod likely knew that he would have difficulty issuing orders and commanding authority with the permanent mark of a same-sex scandalous conduct

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<sup>146</sup> Case of George A. Salisbury, WT2c., U.S. Navy. Gordon Grayson, Seaman first class, U.S. Navy. Tried in Joinder. November 18, 1921; File no. 55224, Box no. 945; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>147</sup> Case of Donald K. McLeod, Lieutenant (junior grade), U.S. Navy, 11 June, 1936; File no. 77329, Box no. 1645; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

charge. He would also likely have difficulty associating with other commissioned officers due to their middle-class beliefs about sex. Realistically, these commissioned officers were trying to soften the court's blow. If they and their defendants showed the court that they recognized same-sex activity was a crime and that they performed the middle-class values expected of them, they might be acquitted or get a light sentence. Defense counsels' willingness to acknowledge same-sex activity as horrible and shameful demonstrates that most commissioned officers knew other commissioned officers were repulsed by same-sex activity because of their middle-class beliefs about sexuality.

Some commissioned officers nevertheless expressed sympathy for those who engaged in sex crimes. One Navy lieutenant judge advocate said in 1935, "While it is known that unmarried men in the Territory of Hawaii have considerable difficulty finding proper female outlet for their sexual needs, any of various modes other than female outlet are not sanctioned or approved by those in command."<sup>148</sup> This lieutenant implied that it was natural for White men to seek out other White men as sexual partners when there were no White women around. He also acknowledged that unmarried men would naturally desire sex with a woman. This statement contradicted policy's criminalization of fornication. This judge advocate indirectly challenged policy by implying that it was acceptable for sailors and marines to engage in fornication because they needed a sexual outlet. This judge advocate invoked racism

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<sup>148</sup> Lieutenant Jesse G. Johnson, judge advocate. Case of Clarence G. A. Crevier, Storekeeper second class, U.S. Navy, and Charles E. Neher, Seaman first class, U.S. Navy, 18 October, 1935; File no. 77147, Box no. 1636; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

by suggesting that women of color were not an acceptable sexual outlet for White men. His suggestion that it was marginally acceptable for a man to have sex with another man flew directly in the face of commissioned officer's middle-class conceptions of sex. While he presented a more nuanced view of sex than middle class beliefs would allow, this judge advocate was perhaps simply acknowledging the racist views of his fellow commissioned officers. As White men, this judge advocate and the court likely disapproved of interracial sex and thought it was dangerous. He was then probably providing the court with the motive for the accused's crime. While expressing some understanding of enlisted men's lived experience, this judge advocate was more interested in providing a motive for the crime.

A major serving as judge advocate in 1919 similarly noted in a case that involved a chief boatswain's mate sexually assaulting an underage girl "A man who was tied up aboard ship and who came ashore after being on board ship for a considerable length of time, particularly on a small ship where he had no opportunity to keep himself in the best mental condition, by reason of having no opportunity to exert his energy, is not a normal man when he first came ashore."<sup>149</sup> This statement is unusual because it could explain why any deployed sailor or marine committed a sex crime. It is peculiar because it is an indictment of conditions aboard naval vessels in that being on a small vessel could harm one's mental health. He suggested that naval duty created problems for sailors' and marines' mental and physical health. He was most likely providing a motive for the crime, however. While he understood what

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<sup>149</sup> Major Robert E. Adams, judge advocate. Case of Robert Novak, Chief Boatswain's Mate, U.S. Naval Reserve Force. Thursday, July 17th, 1919; File no. 44975, Box no. 638; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

enlisted men experienced, he was more concerned with his charge to prosecute sex crime.

Another expression of sympathy came from Captain Thad T. Taylor when he served as a judge advocate for a case involving same-sex oral sex in 1929. Taylor said “I remember one time I met a person who had been stroke oar in one of our big universities, a wonderful athlete, a man’s man, but he was a pervert and they nicked him, caught him cold. Some people say it is insanity, some say it is hereditary, but whatever it is we have got to keep it out of the Navy for if we don’t we are going to have our meals served by people like this. It may sound hard but we have to do it.”<sup>150</sup> Taylor explained how hard it was to identify who was liable to engage in same-sex activity. Men could be great athletes and seemingly normal, masculine men, but still desire other men. He offered that it might not be this man’s fault that he held same-sex desire; he might have a mental condition or been born with the urge. These ideas were indicative of having some knowledge of sexology’s tenet that same-sex attraction was a congenital mental defect and not a crime. These ideas contradicted middle class beliefs about sexuality that required men to desire women to be masculine. Men like the one Taylor discussed would have certainly fueled middle class men’s crisis over their masculinity. Taylor consequently expressed resentment at the idea of having anyone like this man anywhere near him or in the Navy. Taylor reminded the court that they were duty-bound to expel men who participated in same-sex activity from the Navy, no matter how cruel it might seem. It is surprising that

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<sup>150</sup> Case of Zuwreitha J. W. Babcock, Apprentice Seaman, U.S. Navy, 11 June, 1929; File no. 71388, Box no. 1442; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

this statement was made by a judge advocate. It was Taylor's duty to convict the accused. Taylor possibly really knew this man, who seemed normal at a glance, but was a "pervert." Taylor possibly remembered feeling bad for him after he was arrested. He maybe even pitied this man because he was unable to control himself due to disease or genetics. While Taylor argued that men who engaged in same-sex activity should not be in the Navy, he humanized them through this anecdote. The court possibly was less-inclined to view the accused as an "animal" or as horrifying, but instead as someone who could not control his own urges in light of Taylor's anecdote. Taylor knew that there was burgeoning medical evidence to suggest that men who exhibited same-sex attraction could not help themselves. He might have known that his peers were familiar with this evidence. He may have simply been keeping up with changing beliefs about sex. He nevertheless conceded that the Navy and Marine Corps were not following the correct course of action by imprisoning these men. He still reminded the court that they were duty-bound to follow policy, indicating tension between policy, what duty called the court to do, and medical evidence. This call to duty could wipe away any guilt anyone might feel for their vote to convict. He reminded them that their role as Navy and Marine Corps officers should come first and their personal opinions come second. While some commissioned officers tried to understand why people committed sex crimes and were sympathetic to their plight, they were all clear on what was a sex crime and what naval policy called upon them to do, regardless of whatever tension medical evidence introduced.

Taylor's statement draws attention to how use of medical evidence introduced tension into courts-martial. Other commissioned officers demonstrated familiarity with sexology and its most important writers. Some were familiar with the literature, such as Marine Corps Captain George C. Hammer who asked a medical officer in 1923 if he was familiar with the work of the "authorities on sex" including "Havelock Ellis, Thoinet & Weisse, White & Joliffe."<sup>151</sup> This question is remarkable considering some of the ideas put forth by these authorities, such as Havelock Ellis who held that same-sex desire was innate, would not enter popular discussion until nearly a decade later. Major Cecil L. Baker went a step further in 1936 saying, "now it is a pretty well established fact and a matter of common knowledge that that perversion is an inherent trait. It is not something like mumps or measles that you get any time in life."<sup>152</sup> Baker articulated that people were born with same-sex desire (in Baker's words, "perversion"). By asserting it was a "fact" and "common knowledge," Baker indicated that in his social circle--mostly other Marine Corps commissioned officers--that everyone knew same-sex desire was congenital. These officers demonstrate that some commissioned officers had knowledge of sexology and its understanding of same-sex desire. As many commissioned officers were focused on their duty to follow policy, sexology did not alter verdicts when commissioned officers considered their naval duties first.

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<sup>151</sup> Case of Harry S. Dorrington, Yeoman first class, U.S. Navy, and Roy J. Galloway, Seaman second class, U.S. Navy. 18 July 1923; File no. 58045, Box no. 1031; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>152</sup> Case of Donald K. McLeod, Lieutenant (junior grade), U.S. Navy, 11 June, 1936; File no. 77329, Box no. 1645; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

Sexology could create internal conflict for commissioned officers who wrangled with the contradiction in their same-sex desire and military service. This dynamic is evident in testimony given by commissioned officers charged with same-sex crimes. The best example is Ensign George D. Birdsall who was charged with scandalous conduct for various same-sex acts and who pled guilty in 1921. Birdsall made a statement to the court in which he discussed being wrought with desire for a seaman onboard the USS *Beaver*. Aboard the *Beaver*, Birdsall sought out the medical officer and told him of his struggle with this desire. The medical officer suggested to Birdsall that he saw something feminine in this seaman and it would likely go away. Birdsall's desire did not go away and he gave into it. Birdsall pleaded with the court: "It is impossible for me to describe the torment that I have gone through since this has taken hold of me. I have prayed for some relief from it and at times have feared that it would drive me insane...I respectfully request that, if within the province of the court, a sentence including medical examination with a view to cure be considered as a possibility."<sup>153</sup> Birdsall's description of this desire as "torment" and his consultation with a medical officer shows that Birdsall had familiarity with sexology. He believed that an issue with his mental state caused this desire. Even after admitting this desire to his peers on the court, he begged for mercy. He wanted the court to recognize that he had an illness and that he wanted to be treated. Birdsall likely found some refuge in sexology from the "torment" of his desire as he thought medical professionals could help him deal with it. Sexology also created internal conflict, however, as he

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<sup>153</sup> Case of Ensign (T) George D. Birdsall, U.S. Navy, October 27, 1921; File no. 54883, Box no. 934; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

now felt that he needed to be cured. This internal conflict was exacerbated by his role as an ensign as policy and his peers made it clear that they believed that same-sex attraction and service were incompatible.

In another case, the accused themselves did not plea for medical help with their same-sex desire, but their defense council did. In this 1941 case, Lieutenant Commander A. E. Wills of the Navy Reserve mentioned that times had changed and that same-sex sexual acts should no longer be criminalized due to advances in medical knowledge. He said, “many offenses previously described ‘criminal design,’ ‘criminal intent,’ are now recognized in the medical world and outside in the judicial world as being due to psychopathic and pathological conditions for which the offender was no more responsible than if he were deaf, dumb, and blind...But I respectfully submit that it is a barbarity to imprison men for such a cause.”<sup>154</sup> While Wills was trying to help the accused get a light sentence, Wills made a powerful challenge to naval policy. He asserted that the Navy was backwards and inhumane for imprisoning people with mental health issues instead of offering them assistance to get the help they need. Wills insisted that it was not the accused’s fault he was attracted to other men, but a mental health condition. Wills acknowledged that men with this mental health struggle should not be in the Navy, but presented a sympathetic view of same-sex behavior and challenged naval policy to adopt that sympathetic view.

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<sup>154</sup> Case of George W. Kunkle, Seaman second class, U.S. Navy, June 23, 1941; File no. 79453, Box no. 1730; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

However, not every commissioned officer was willing to petition the Navy and Marine Corps to change their policy or even believed they should change policy. The judge advocate, Lieutenant Robert L. Johnson, Navy Retired, opposing Wills in that case acknowledged that Wills was correct that medical professionals believed imprisonment was not appropriate for men with same-sex desire. Johnson nevertheless contended that the Navy and Marine Corps still considered same-sex acts as crimes worthy of imprisonment. Johnson said “this court’s duty is to adjudge a sentence adequate to the offense and not to try to change the law, nor by its sentence recognize that it considers the law improper.”<sup>155</sup> Johnson, was looking to get a conviction lest he be chastised by leadership for prosecutorial incompetence. He nevertheless showed no interest in changing naval policy, only interest in following it. He invoked duty to suppress the court between from weighing medical evidence and to insist the court follow policy. As the accused was found guilty it is clear that Wills and Johnson’s peers on the court agreed with Johnson. It was not their place to change naval policy, only to follow it. Duty was clearly a strong impetus in figuring out how to approach tension in court created by medical evidence.

Beyond arguing that it was necessary to follow duty and policy, some commissioned officers criticized the idea that policy should be changed. In a 1935 case, a Navy lieutenant judge advocate scoffed at the idea of changing policy. After the defense made a similar argument to Wills’, this lieutenant said “If the defense expects the Navy to get out special regulations for hairy men and those men who get

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<sup>155</sup> Case of George W. Kunkle, Seaman second class, U.S. Navy, June 23, 1941; File no. 79453, Box no. 1730; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

into bed with hairy men, they will find that our Navy lawmakers will certainly not agree to that method of sleeping.”<sup>156</sup> This lieutenant argued that there was no way leadership would consider changing policy that criminalized same-sex activity. This attitude is one reason naval policy did not change as a result of sexology. If naval leadership and commissioned officers were so against same-sex activity and only interested in following extant policy that also happened to align with their middle-class worldview, it would prove difficult to change policy no matter how well versed in sexology individuals in the Navy and Marine Corps became.

Perhaps due to their commitment to duty, some commissioned officers were hostile towards sexology. In 1929, a civilian defense counsel tried to use medical evidence to show that men only commit sodomy when they are offered money. The Marine Corps captain judge advocate opposing him said “The other day I had occasion to make a resume of the cases we have tried, involving sex perversion, and out of the twenty-three of such cases all but two of them were cases where the accused had tried to get some other man to commit sodomy on him. So from that...[your] book must be wrong somewhere...There is no doctor or medical authority can change my mind on that.”<sup>157</sup> While this defense counsel made an unusual argument, this captain’s statement that no “book...doctor or medical

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<sup>156</sup> Lieutenant Jesse G. Johnson, judge advocate. Case of Clarence G. A. Crevier, Storekeeper second class, U.S. Navy, and Charles E. Neher, Seaman first class, U.S. Navy, 18 October, 1935; File no. 77147, Box no. 1636; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>157</sup> Captain Thad T. Taylor, judge advocate. Case of Hugh Geoghan, Chief Machinist’s Mate, U.S. Navy, 9 April 1929; File no. 71164, Box no. 1434; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

authority” could change his mind signified that he was not open to considering sexology. Extrapolating from this captain, it is possible that other commissioned officers had no interest in what medical officials had to say about sex. These commissioned officers held tight to their own beliefs and were resistant to changing them. That resistance likely came from a feeling of being duty-bound and because policy aligned with the middle-class worldviews of many commissioned officers. These commissioned officers may have been hesitant to change policy as well because they might have seen sexology as an interloping ideology that was not applicable to the Navy and Marine Corps because it did not understand the Navy and Marine Corps unique homosocial situation. Overall, duty restricted most commissioned officers’ ability to open their minds.

#### *Navy Medical Corps and Duty*

Many Navy Medical Corps officers had open minds about sexology and were unafraid to complicate courts-martial by presenting medical evidence. While unsurprising as practicing medicine was what Medical Corps officers were taxed with, it is critical that Medical Corps officers presented a view of sex that focused on sexual object choice over gender performance and emphasized same-sex acts as being related to mental health, contradicting policy. Some in the Medical Corps were even psychiatric professionals before joining the Medical Corps.<sup>158</sup> Their medical expertise

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<sup>158</sup> Case of Earl A. Blake, Pharmacist’s mate third class, U.S. Navy, 29 May 1929; File no. 71414, Box no. 1443; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

and evidence nevertheless complicated decisions for the commissioned officers of the court.

Medical Corps officers frequently argued that it was impossible to tell whether or not a man was attracted to other men. For example, Commander J. C. Thompson said in 1929 that “It is perfectly possible for a man to be a sex pervert and to be able to mask his behavior completely from those with whom he falls in contact who are not trained students of human behavior.”<sup>159</sup> Thompson believed that only medical professionals could determine whether a man was attracted to other men as there were no outward signs of this attraction. In 1926 Lieutenant Commander Gordon D. Hale’s analysis was blunt, “outwardly it is impossible to tell the difference between a normal man and a moral pervert.”<sup>160</sup> The only way to tell whether or not a man was interested in other men was to know his state of mind or catch him having sex with another man. This viewpoint presented sexuality as being determined by one’s sexual object choice and not how one presented gender. Thus, the Medical Corps helped the Navy and Marine Corps begin the shift toward the personage of “the homosexual” that would be dominant by the 1950s by insisting that sexual object choice as a primary factor in defining a man. However, when this evidence was presented in the 1920s, it was likely new to many commissioned officers who may have been shocked by it. This evidence challenged many commissioned officers’

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<sup>159</sup> Case of Earl A. Blake, Pharmacist’s mate third class, U. S. Navy, 29 May, 1929; File no. 71414, Box no. 1443; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>160</sup> Case of Eugene H. Candee, Boatswain’s mate second class, U.S. Navy, 20 February, 1926; File no. 64747, Box no. 1234; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

beliefs about sexuality that held that sexual attraction towards men made a man inherently feminine.

Medical Corps officers continually brought sexology to the Navy's doorstep, regardless of whether it complicated matters. Lieutenant J. P. Owen told the court in 1923 that he had read works by "Havelock Ellis, Thoinet & Weisse, White & Joliffe."<sup>161</sup> Therefore Medical Corps officers had access to sexological literature and used that access. In 1941, Lieutenant Commander James E. Fetherston said of men who commit same-sex sexual acts that "recognized medical opinion today considers those persons as sexual perverts...to be psychopathic, that is, they have a disease of the mind" and told the court that imprisonment "would not correct the condition in any psychopathic patient."<sup>162</sup> Fetherston made clear that he has read sexological literature by acknowledging that same-sex desire was a mental condition. He brought the conflict between sexological thought and policy to a head by telling the court that he did not think imprisonment was proper same-sex activity. Medical Corps officers nevertheless did not have the power to change naval policy on same-sex crimes, even if they tried to sway individual officers', sailors', and marines' minds.

Not all Medical Corps officers were well versed in sexology like Owen and Fetherston. In 1935 Lieutenant Commander William W. Davies testified that "it is the general accepted theory that the man on which sodomy is committed has a relaxed

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<sup>161</sup> Case of Harry S. Dorrington, Yeoman first class, U.S. Navy, and Roy J. Galloway, Seaman second class, U.S. Navy. 18 July 1923; File no. 58045, Box no. 1031; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>162</sup> Case of George W. Kunkle, Seaman second class, U.S. Navy, June 23, 1941; File no. 79453, Box no. 1730; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

anal orifice,” that sodomy was impossible for a man without a relaxed anal orifice, and that “normal” men did not have relaxed anal orifices, nor could they relax their anal orifice.<sup>163</sup> This analysis contradicted sexology as it implied that one’s sexuality was due to a congenital malformation of a body part, rather than one’s sexual object choice. Even Lieutenant Owen, who had read some sexological works, gave suspect testimony to the court. Owen told the court in 1923 that “sodomy is always committed in very desolated places” and implied that “sodomists” had particular spaces in which they had sex. He made comments such as “it is not customary for sodomists to work in that sort of a place.”<sup>164</sup> While Owen was correct that most men who have sex with men did it away from other people, Owen failed to mention that most men who have sex with women do so away from other people as well. While Medical Corps officers may have been more prone to accept sexology than leadership, commissioned officers, and enlisted men, they still relied on questionable information occasionally.

Medical Corps officers sometimes disagreed with policy, leadership, and commissioned officers on what was a same-sex crime. Lieutenant J. P. Owen said that he felt it was normal for sailors to pet each other and lay in each other’s laps aboard ship.<sup>165</sup> This level of intimacy may have been criminalized by policy, condemned by

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<sup>163</sup> Case of John Kuhn, Torpedoman first class, U.S. Navy, and Milton Leroy Gurr, Seaman second class, U.S. Navy, 29 June, 1936; File no. 77352, Box no. 1646; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>164</sup> Case of Harry S. Dorrington, Yeoman first class, U.S. Navy, and Roy J. Galloway, Seaman second class, U.S. Navy. 18 July 1923; File no. 58045, Box no. 1031; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>165</sup> Case of Harry S. Dorrington, Yeoman first class, U.S. Navy, and Roy J. Galloway, Seaman second class, U.S. Navy. 18 July 1923; File no. 58045, Box no. 1031; Records of Proceedings of General

leadership, and charged by commissioned officers, but Owen felt that it was going too far to convict with only that evidence. Further, Lieutenant Cecil H. Coggins did not believe that a man placing his hand on another man's thigh was "indicative of homosexuality" and would not be sufficient to convict for scandalous conduct.<sup>166</sup> While these statements made by medical officers were little more than evidence in court, these statements show Medical Corps officers' hesitancy to pronounce any same-sex intimacy as being indication of same-sex desire.

Medical Corps officers did not only speak about same-sex acts, they spoke about opposite-sex acts as well. In 1920, Lieutenant Commander William E. Glanville was asked whether a man who exposed himself to a random woman and urinated around her was a pervert or degenerate. He answered that yes, the act would "show a mark of perversion or degeneracy if the woman was a stranger to the man or had made no advances to the man at all" and that it was "form of degeneracy for a man to urinate on the person they are after."<sup>167</sup> Glanville believed that men interested in women could be perverts or degenerates too, possibly because of a medical issue. When trying to explain why a chief boatswain's mate had exposed himself to an underage girl, Lieutenant Commander Robert F. Sheehan said that it was possible that "a big, strong, robust man, is liable to have a reaction that would show itself in a

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Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>166</sup> Case of Corydon H. Kimball, Lieutenant Commander, U.S. Navy, June 19, 1941; File no. 79453. Box no. 1730; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>167</sup> Case of Stanley Brothers, Mess Attendant First Class, U.S. Navy, December 20, 1920; File no. 51369. Box no. 831; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

sexual capacity” after “having been confined aboard ship” and noted that children frequently lie about being taken advantage of sexually.<sup>168</sup> Sheehan understood that sometimes when a man has been shut in a cramped space with only men, an unpleasant reaction could occur when he gets out of that space. Sheehan implied that many more Navy men could have a similar reaction when they return from deployment, indicating that the Navy had larger issues than this one case. While Medical Corps officers paid less attention to opposite-sex activity than same-sex activity, they showed that medicine could be used to analyze opposite-sex activity and challenge naval practice as well.

Some Medical Corps officers took their role as officers seriously and reported any infractions of policy they came across. For example, a Medical Corps lieutenant commander reported an assistant paymaster because a pay clerk told him that the assistant paymaster had engaged in same-sex activity. This lieutenant commander said “I considered it my duty as an officer in the Naval service to take official cognizance of this and report it to my commanding officer, which I did.”<sup>169</sup> This lieutenant commander illustrated that he felt the call of duty to expel men who committed same-sex acts from the Navy like leadership and commissioned officers. Even Medical Corps officers were susceptible to putting the responsibility attached to their rank first before anything else.

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<sup>168</sup> Case of Robert Novak, Chief Boatswain’s Mate, U.S. Naval Reserve Force. Thursday, July 17th, 1919; File no. 44975, Box no. 638; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

<sup>169</sup> Lieutenant Commander Clyde Bradley Camerer, witness. Case of George W. Armstrong, Lieutenant, Supply Corps, U.S. Navy, Tuesday, October 9, 1923; File no. 58467, Box no. 1043; Records of Proceedings of General Courts Martial, 1866–1951; Records of the Office of the Judge Advocate General (Navy), Record Group 125; National Archives Building, Washington, D.C.

Commissioned officers realized that sexual behavior, policy, naval service, duty, and medical evidence sometimes created friction with one another. Commissioned officers frequently pushed the idea that same-sex activity and naval service were mutually exclusive. Duty was frequently invoked by judge advocates to sway the court to convict. Courts wrangled with whether to weigh medical evidence or follow policy, but always chose to follow policy. Nevertheless, medical officers continued to bring sexology's ideas to the Navy and Marine Corps, regardless of how these ideas conflicted with commissioned officers and policy.

## Epilogue

Throughout this thesis I have examined numerous dynamics within interwar sex crime courts-martial. These dynamics illuminate how different factors, such as policy, policy in action, class, rank, military service, military duty, and medical evidence all played a role in determining the outcome of courts-martial. From a look at policy, to the testimony given in courts-martial, to the rhetoric of leadership, judge advocates, defense councils, and the Medical Corps, it becomes clear that there were multiple dynamics in play in any court-martial proceeding.

The first chapter looked at the dynamic between policy and policy in action. These dynamics were mostly in play during charging decisions. *Naval Courts and Boards* laid out 21 different charges for sex crimes. It criminalized all sex besides vaginal sex between a husband and a wife. When enforcing policy, the Navy and Marine Corps chose to enforce policy against those who committed same-sex crimes more frequently than those who committed opposite-sex crimes. Those who committed opposite-sex crimes received lesser sentences than those who committed same-sex crimes despite no split in sentencing severity in policy. Additionally, only eleven charges were used. Some charges, such as scandalous conduct, were easier to prove than others and thus received more use. Aside from charging decisions, the court itself was a significant factor in putting policy into action. The court had the power of discretion when it came to conviction and sentencing that led to a non-uniform enforcement and enactment of policy. Overall, policy and policy in action were incongruent because policy was enacted differently based upon individual circumstances.

The second chapter looked at how policy and enlisted men's lived experiences were incongruent. Enlisted men's lived experiences in the Navy and Marine Corps were reflective of the spirit of naval policy nor its moral ideal. Criminalized sex was a common topic of discussion, jokes, and gossip amongst enlisted men. Enlisted men had significant interest in criminalized sex. Furthermore, enlisted men paid little heed to what policy had criminalized and regularly indulged in criminalized sex in front of one another. Noncommissioned officers, who had once been regular enlisted men themselves, did not always follow policy and would let enlisted men off with warnings or downplay the criminalized sexual activity that was happening amongst them. These differences between policy and enlisted men's lived experience are indicative of class dynamics. As many enlisted men came from working class backgrounds in which same-sex sexual activity was not uncommon, they continued to perform same-sex sexual activity in the Navy and Marine Corps with little regard for policy. Policy was crafted by leadership and commissioned officers, who were from a middle or upper-class backgrounds and held that same-sex attraction was inherently bad because it was inherently feminine. Despite this class split, some enlisted men were uncomfortable with, revolted by, and reacted violently to same-sex activity. Some sailors and marines knew nothing of same-sex sexual activity before serving in the Navy or Marine Corps. The Navy and Marine Corps was then an entrance point to working class sexual culture. Enlisted men and their lived experiences in the Navy and Marine Corps had a loose relationship with policy.

The third and final chapter dealt with the dynamics between naval service, naval duty, medical evidence, and sex. Commissioned officers, particularly

leadership, believed that the Navy and Marine Corps should exclude men who performed same-sex acts. Commissioned officers believed that naval service and same-sex activity were mutually exclusive. Leadership and other commissioned officers drew upon the idea of duty frequently when speaking on kicking men out who participated in same-sex acts or why same-sex acts needed to be prosecuted. Duty was a powerful rhetorical tool that was weaponized in courts-martial by judge advocates to gain support of their peers for a conviction. Nevertheless, medical evidence, particularly sexology, introduced by Navy Medical Corps officers complicated courts-martial. Medical Corps officers used medical evidence and sexology to call out their commissioned officers' devotion to duty and policy by articulating that policy's stricture to imprison men convicted for same-sex activity was not the proper and ethical course of action. Instead, as many Medical Corps officers believed that same-sex attraction was a mental defect, they held that prison was a poor solution for these men who needed treatment. Nevertheless, commissioned officers' call to duty and willingness to follow policy won out and medical evidence was unheeded and ridiculed. Thus, courts-martial could involve complex dynamics and the call to duty was generally an easy way, if not a motivationally powerful way, out of any complications.

In this thesis, I revealed previously undiscussed aspects of the dynamics between the interwar Navy and Marine Corps and sex. By bringing together same-sex and opposite-sex crimes, I proved that the Navy and Marine Corps prosecuted and punished same-sex crime more harshly than opposite-sex crime. While unsurprising, doing this analysis revealed the mechanisms which enabled differential policing and

prosecution. By looking at enlisted men's lived experiences, I was highlighted that enlisted men discussed and joked about criminalized sex frequently. By taking a close look at what enlisted men said in court about sex, I revealed that the Navy and Marine Corps was a site of knowledge production about same-sex activity as many sailors and marines came into contact with same-sex activity for the first time upon enlisting. Previously, historians (namely Alan Bérubé) had focused on how mass mobilization during World War II made the military a space of knowledge production about same-sex activity.<sup>170</sup> Therefore, I demonstrated that even in peacetime, the military was still a site of knowledge production about same-sex activity. I also showed that sexology and medicalized beliefs about same-sex desire had penetrated the Navy and Marine Corps by the early 1920s. The articulation of these beliefs that early is unusual and remarkable. Overall, my thesis furthers our knowledge of beliefs about sex in the 1920s and 1930s and how those beliefs impacted service in the Navy and Marine Corps.

This thesis also challenged Margot Canaday's work on the state's creation of "the homosexual." I showed that throughout the interwar period leadership, commissioned officers, and some noncommissioned officers were clear that the Navy and Marine Corps was no place for men who have sex with men. In fact, many of these leaders and officers felt it was their duty to keep such men out of the service. I demonstrated that the Navy and Marine Corps were quite successful in convicting same-sex crime even without any criminal statutes that solely applied to same-sex

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<sup>170</sup> Alan Bérubé, *Coming Out Under Fire: The History of Gay Men and Women in World War Two* (New York: The Free Press, 1990).

crime. Thanks to the malleable nature of the scandalous conduct charge, the Navy and Marine Corps did not have to “puzzle” much to find a way to exclude men who had sex with men from military service. I contend that the Navy and Marine Corps had practically created “the homosexual” in all but name. All in all, the interwar Navy and Marine Corps successfully used existing mechanisms to exclude men who had sex with men from military service. The other arms of the state that Canaday looked at may have simply been slower or more ineffective in their exclusion of men who have sex with men from citizenship benefits than the Navy and Marine Corps were. Regardless, my point emphasizes one of Canaday’s points: the state is not monolithic in its enactment of policy.

After the beginning of World War II, many of the dynamics I discussed became moot as the military shifted away from court-martialing same-sex activity to giving soldiers “blue” or undesirable discharges. This change was made to save the military time and manpower during the war.<sup>171</sup> However, this change allowed the military to avoid any roadblocks created for the military in securing a conviction for same-sex activity. It additionally allowed the military to ignore the challenge of sexology to change policy. Instead of placing the onus of conviction on a group of commissioned officers, now only one officer had to sign off on a man’s removal from the service. While the military was not necessarily “frustrated” with the court-martial, this change allowed the military to sidestep any disagreements on who should be prosecuted and what was criminal. Nevertheless, as I have shown, individual opinion did play a large role in courts-martial. By turning over the power to remove a man

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<sup>171</sup> Bérubé, *Coming Out Under Fire*.

from the military for same-sex activity to a single officer, individual opinion gained more power. The military had to now rely upon a single man's call to follow duty, instead of a group. While this change made some aspects of removing men for same-sex activity from the military easier, it also created more loopholes for these men to remain in the military. If the individuals around did not care to follow policy for personal opinion or any other reason, same-sex crime would go unpunished. In a similar vein to interwar courts-martial, individuals played a significant role in how policy is enacted and are influenced by multiple dynamics that can assist with, stall, or stop the enactment of policy.

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