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THE PORT CHICAGO MUTINY: THE STORY OF THE LARGEST MUTINY TRIAL IN U.S. NAVAL HISTORY. By *Robert L. Allen.* New York: Warner Books. 1989. Pp. xxi, 192. $19.95.

> They asked if I knew what "conscientious objector" meant. I told them that when the white man asked me to go off somewhere and fight and maybe die to preserve the way the white man treated the black man in America, then my conscience made me object.
>
> — Malcolm X[1]

For African Americans, the logic of Malcolm X's statement has an inescapable universality. Even so, most black men have been willing to fight in America's wars. They have heeded the call both because of patriotism and in the hope that their participation might lead to improvements in their status and that of other blacks. Throughout much of American history, black patriotism was deemed suspect by whites who admitted blacks into the military only when motivated by necessity.[2] Because of this reluctance, blacks in the military, in addition to the usual risks of war, were expected to remember their subordinate role in civilian life and suffer silently the racial insults and discriminatory treatment consonant with their lesser status. A black group's refusal to accept such dishonor with dignity was deemed a racial rebellion and treated as one.

In August 1917, Negro soldiers of the Twenty-fourth Infantry's Third Battalion, seasoned regulars, began fighting with white civilians

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* Weld Professor of Law, Harvard University. A.B. 1952, Duquesne University; LL.B. 1957, University of Pittsburgh. Ed.

1. M.X. with the assistance of A. Haley, The Autobiography of Malcolm X 205 (1964).

2. In the Revolutionary War, despite the heroics of Crispus Attucks (the first man to die at the Boston Massacre) and other black men who fought at Lexington, Concord, Ticonderoga, and Bunker Hill, blacks were initially barred from military service. Upon taking command of the American troops in July 1775, George Washington issued an order that no Negroes should be enlisted. Subsequently, finding himself short of white enlistments and with the British promising freedom to slaves who joined their side, Washington changed his mind and black soldiers fought in several major battles. L. BENNETT, BEFORE THE MAYFLOWER: A HISTORY OF BLACK AMERICA 55-59 (4th ed. 1969).

In the War of 1812, as well as the naval war with France (1798-1800), "Negro soldiers and sailors served prominently, and often courageously," after military necessity negated policies issued in 1798 forbidding Negro enlistments in the Marine Corps and on naval ships. L. LITWACK, NORTH OF SLAVERY 32 (1961).

In the Civil War, efforts by blacks to serve were initially rejected, but Lincoln underwent a change in attitude when faced with, among other things, shortages of white men willing to fight. D. BELL, RACE, RACISM AND AMERICAN LAW 3-6 (2d ed. 1980).

in Houston, Texas, who had been goading and insulting them. The black soldiers were disarmed when it was feared they might use their weapons to defend themselves. Refusing to be outdone, the soldiers seized arms and, in the riot that ensued, seventeen whites and two Negroes were killed. "With only a slight pretense of a trial, thirteen Negro soldiers were [denied appeal and] hanged for murder and mutiny, forty-one were imprisoned for life, and forty others were held pending further investigation."[3] Following the Houston riots, the government suspended black recruitment until late September while pondering whether to keep all blacks out of combat. In response to a hail of protests from blacks around the country, blacks were admitted to combat duty — in principle. In fact, though, most black soldiers were assigned to labor duty.[4]

During World War II, more than a million black men and women served in the armed services. Although there was a great deal of discrimination, blacks had a greater opportunity to serve in front-line roles than in previous wars. Even so, many blacks were simply laborers in uniform. They faced blatant discrimination and quick retaliation if they dared take a stand against it. It was just such resistance that the Navy construed as mutiny after unarmed black sailors refused to return to loading ammunition in the wake of a major munitions explosion on the West Coast.

His interest sparked by a faded 1945 pamphlet protesting the mutiny court-martial, Robert Allen, scholar, writer, and civil rights and anti-war activist, worried over, researched, and wrote *The Port Chicago Mutiny* over a period of ten years. Despite setbacks and periodic self-doubts about the likelihood of bringing his project to a successful conclusion, Allen pressed on. He overcame obstacles of hard-to-obtain records, lost and reluctant interviewees, and a general lack of interest in an unfortunate incident that, after all, had occurred almost fifty years ago while America was locked into a war that threatened its survival.

Allen, though, did not want this tragedy to be either forgotten or rationalized into oblivion. He subtitled his work, *The Story of the Largest Mass Mutiny Trial in U.S. Naval History.* The result is worth

3. J. FRANKLIN & A. MOSS, FROM SLAVERY TO FREEDOM 297 (6th ed. 1988); *see also* N. PAINTER, STANDING AT ARMAGEDDON 332 (1987). Bergman describes the subsequent legal events:

> The NAACP engaged a defense attorney for the soldiers and campaigned for clemency. President Wilson commuted 10 death sentences to life imprisonment. NAACP efforts led 4 years later to the release of some and a reduction in life sentences of others. Its efforts continued until 1938 when President Roosevelt released the last prisoner.

P. BERGMAN, THE CHRONOLOGICAL HISTORY OF THE NEGRO IN AMERICA 381 (1969).

4. N. PAINTER, *supra* note 3, at 332.

the effort because, while the events Allen investigated occurred more than a decade before the Supreme Court declared government-sanctioned racial segregation unconstitutional,[5] the racial attitudes and policies that led to a largely forgotten disaster in a small California town provide a standard for comparing current racial events, some of which are less dramatic but no less damaging. At the least, the chronicle provides another perspective on the intricacies of racial prejudice in the United States.

In 1944, during the height of World War II, the U.S. Navy loaded thousands of tons of ammunition onto Liberty ships from a dock in Port Chicago, a small town near San Francisco. At this dock, unlike other, similar West Coast sites, the Navy did not use civilian stevedores but assigned this backbreaking and highly dangerous labor to black sailors laboring under the direction of white officers who were far more concerned about setting records for tonnage loaded than about safety procedures or the welfare of their men.

The black sailors, trained to serve at sea, received no instruction in the handling of ammunition. Joe Small, one of the black sailors assigned to the loading group and later indicted as a leader of the mutiny, operated a winch that lifted nets filled with bombs and artillery shells from the docks to the holds of the ships. Small told Robert Allen "that he rather casually 'picked up' the job of being a winch operator after watching other men operate the machines" (p. 42). Small was aware of the danger. "If a bomb fell out or the net came loose and dumped the load into the hold, it would mean disaster. There is absolutely no place to run or hide in the hold of a Liberty ship being loaded with ammunition" (p. 11).

Weeks before the explosion, the longshoremen's union reportedly warned the Navy that there would be a disaster if the Navy continued to use untrained seamen to load ammunition. The union, for example, would not allow a winch operator like Joe Small to handle ammunition unless he had years of experience with other cargo. The Navy ignored the warning and rejected union offers to send experienced longshoremen to train Navy recruits in safety practices (p. 120).

Understandably, morale among the black sailors was low. They were far from the war zone and yet assigned to very dangerous work performed under the constant pushing of white officers. There was little chance for promotion and virtually no recreational facilities. The town of Port Chicago was not friendly to blacks, and there was no military transportation from the base to Oakland or to San Francisco.

5. Brown v. Board of Educ., 347 U.S. 483 (1954).

The men expressed their opposition in varying ways. Occasionally, a man might go AWOL or simply refuse to work. Others, over time, came to discount the risks or simply accept what they could not change. Some, like Joe Small, challenged the officers regarding the risk of an explosion. The officers, denied that concussion alone would explode the bombs and assured the men that the bombs were harmless with their detonator caps removed.

On July 17, 1944, what many feared, happened:

> [A]n explosion with a force equal to that of the bomb dropped on Hiroshima nearly leveled . . . Port Chicago. Two military cargo ships loaded with ammunition and the entire Port Chicago waterfront were vaporized by the blast . . . . Three hundred and twenty men lost their lives. Two hundred and two of them were black. It was the worst home-front disaster of World War II.[6]

Following the disaster, the Navy denied the surviving black sailors the thirty-day leave it allowed the white survivors. After only a few weeks, the black men were ordered back to work at another port nearby, where the conditions were just as unsafe as those that had prevailed despite the frequent complaints at Port Chicago. When more than 200 black sailors refused the order, they were marched to a barge and held under guard for several days. Eventually, fifty men were singled out for court-martial, charged with mutiny, and convicted. By year's end, they had received and were already serving prison sentences ranging from eight to fifteen years.

Robert Allen obtained the basic facts of the explosion and trial from a faded pamphlet that asked, "Remember Port Chicago?" (p. xiii). He gathered more details from newspaper accounts and declassified military records. But the uniqueness of the story comes from interviews with the survivors, principally Joe Small. In the wake of the explosion, and advised that transfers to other work, including combat, would not be granted, many of the men decided that they did not want to load ammunition anymore. As one of them put it:

> I just said: No, I ain't going back on that damn thing [shiploading]. Why don't they get some whiteys and put them down there. I said hell, I'm a gunneryman. They taught me how to fire guns; I'm supposed to be on a ship. Now they got me working as a stevedore. And I'm not getting stevedore's pay. [p. 76]

Several of the men approached Small for advice. They respected him and viewed him as their informal leader. Small made it clear that he would not return to loading ammunition, though he was ready to do other work. The work stoppage that precipitated the arrests and

6. This vivid description is from the book's dust jacket.

charges was not planned. Three weeks after the explosion, when the men were ordered to fall in, it was not clear whether they would be marched to the docks or to the parade ground. At a fork in the road, the lieutenant in charge gave the order "Column Left" toward the docks. Everybody stopped dead and refused to move.

An officer called Small out from the ranks and asked him point blank whether he was going back to work. Small told him, "No, sir." Asked why, Small said he was afraid, at which point others in the ranks said, "If Small don't go, we're not going, either" (p. 81). The base chaplain, oblivious of the incongruity both in his words and in the Navy's treatment of these black sailors, added insult to injury by trying to appeal to their race pride. He told the men that "they were letting down the loyal men of their race and their friends as well" (p. 81). When efforts to shame the men for failing to do their duty in the war effort failed, they were individually ordered back to work. The 258 men out of 328 who continued to express an unwillingness to handle ammunition were confined to a barge tied to a pier. In the meantime, civilian contract stevedores were hurriedly hired to load the ships.

Like captives in the hold of a slave ship, the men were confined in the crowded barge for three days. Tensions were high on the barge, and there were frequent arguments and not infrequent fights. Fearing a riot, Small warned them to be calm and to avoid the guards. The officers, he felt, were just waiting for the men to "mess up. . . . [S]o they [could] mess us up" (p. 84). He urged the men to stick together and to provide the officers no excuse for calling in the Marines. The meeting lasted only a few minutes, but at the court-martial it became evidence of a mutinous conspiracy organized by Small. The men felt that at best, they might be transferred, at worst they might be imprisoned or given dishonorable discharges. No one expected the mutiny charges. As one sailor told Allen later, "We didn't even know what mutiny meant" (p. 84).

Following another demand that the men choose either to work or to face a court-martial for mutiny and a possible death sentence, fifty continued to refuse and were placed in the brig. All 258 men, both those who chose work and received summary court-martials and those who still refused, were interrogated intensively for the next three weeks — without benefit of counsel — in an effort to build a case against those, like Small, who steadfastly refused to load ammunition.

Interestingly, a few days after the work stoppage, the Navy sought to defuse racial discrimination charges by introducing a personnel rotation system so that black sailors would not be retained indefinitely at

the munitions loading docks. In addition, a contingent of white enlisted men were sent to work at Port Chicago. Had the Navy responded to the black sailors' concerns with these actions initially, the black seamen would not have refused to work, and there would have been no reason for a mutiny court-martial.

The fifty were formally charged with mutiny in September 1944. The Navy encouraged press coverage, perhaps, Allen suggests, both to counter claims that it would be a kangaroo court and to intimidate other dissident sailors. The trial lasted more than a month, but after only 80 minutes of deliberation, all fifty of the defendants were found guilty of mutiny. Thurgood Marshall, then counsel to the National Association for the Advancement of Colored People, who observed the trial, noted that this averaged out to about a minute-and-a-half of deliberation for each defendant. All were sentenced to fifteen years in prison with reductions to twelve years for some not deemed "ringleaders." Even the 208 men who agreed to work after initially joining the work stoppage were given summary court-martials resulting in bad-conduct discharges and forfeiture of three months' pay. Allen informs us that "[w]ith perverse but unrelenting logic those who were responsible for the conditions at Port Chicago were never accused of any wrongdoing, while those who were the chief victims of those conditions were charged, tried, convicted, and jailed" (pp. 128-29).

The NAACP, other civil rights groups, and the black media had taken a strong interest in the case. They pressured government officials and launched a media campaign that met with some success after the Japanese surrendered in August 1945 and war hysteria subsided. The following month, sentences were reduced to two to three years with credit for time already served.

The Port Chicago men were released from prison but not from the Navy. They were divided into small groups and sent to the South Pacific for a "probationary period." Joe Small recalls this time of exile, of wandering back and forth across the Pacific without duties and nothing to do but make mess call. The men were finally discharged "under honorable conditions" but the mutiny convictions still stand. When Allen interviewed Small forty years later, he still remembered the appalling conditions under which they were working. The explosion, Small recalled, offered an avenue of escape from those appalling conditions.

After returning home, Small married and raised a family despite experiencing a good deal of discrimination in civilian life. He remains philosophical about the disaster, tragedy, and hardship he has encountered over the years. He carries no grudges against the Navy. As he

puts it, "I don't find nothing wrong with the Navy as a whole, because the Navy has changed tremendously since I was in there. There's been tremendous strides toward desegregation" (pp. 142-43). Small proudly told Allen that one of his sons was entering the Navy, adding "I wouldn't want him to go into any service except the Navy" (p. 143).

Reading *The Port Chicago Mutiny* and trying to imagine the motivations for the blatant and unremitting racism the Navy forced the black sailors in Port Chicago to endure, my thoughts returned again and again to a question a black student once raised in my civil rights course. Obviously agitated by the class' lengthy discussion of racial discrimination, the student raised his hand and asked dramatically, "Professor Bell, would you please tell me just one thing. Why are white folks so mean?"

My student's question was, of course, not a question at all. Rather, it was a telling statement that the course was intended to answer, even though there are no answers that are really sufficient or satisfying. When defining a situation is too difficult, illustrations can help. Robert Allen's book provides us with a definitive illustration. For the Port Chicago tragedy is, at bottom, a portrait of racial meanness. It is a tragedy precisely because it was far more illustrative of the norm than the accidental in the history of American racial justice.

As it pertains to blacks in wartime, the American norm has always been ambivalence: an illogical oscillation between valuing blacks as comrades-in-arms in a crisis and a deeply felt need not to permit blacks to escape from their subordinate place. Meanness then is that quality of racism that is the equivalent of "piling on" in football or "kicking a man when he is down" in street fighting. That is, both analogies acknowledge that there is a struggle and that one side, though prevailing, is moved to humiliate the opponent, to inflict an unneeded blow to remove all doubt as to "who is boss."

The racial meanness phenomenon is certainly not limited to the military. Indeed, as conditions for blacks in civilian life continue to deteriorate, it may be that the military services are something of an equality haven for blacks in uniform. But consider the meanness component in the Supreme Court's civil rights rulings in the past few Terms. For example, Brenda Patterson charged that during ten years of employment, she was subjected to various forms of racial harassment, denied wage increases, promotions, and training for higher-level jobs, and was finally discharged — all because she is black. She sought relief under a civil rights statute guaranteeing blacks the same right to

"make and enforce contracts . . . as is enjoyed by white citizens."[7] A majority of the Court construed the statute to deny relief because the statutory language "prohibits discrimination only in the making and enforcement of contracts."[8] Thus, the statute does not reach "conduct by the employer after the contract relation has been established, including . . . imposition of discriminatory working conditions."[9] Thus construed, the statute that even in its most liberal reading[10] had made only a small dent in the hard shell of employment discrimination, is reduced to a status best described as ludicrous.

Inconsistency is also a form of racial meanness when it denies civil rights petitioners relief on a rationale Professor Kenneth Karst has deemed " 'Heads, we win; tails, you lose.' "[11] Karst notes that "when majoritarian politics produces an affirmative action program"[12] like the lay-off scheme in *Wygant v. Jackson Board of Education*[13] or the set-aside plan in *City of Richmond v. J.A. Croson Co.*,[14] those challenging the constitutionality of such plans have argued with increasing effectiveness that the plans abandon the "principle of 'individual merit' in favor of a group remedy."[15] But when blacks show disparate impact to support charges that a policy is discriminatory despite its facial neutrality, the Court expresses a "slippery-slope" type fear that relief would be unlimited, much as it did in *Washington v. Davis*.[16] Seemingly traumatized by this fear, the Court rejects impressive evidence of

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7. 42 U.S.C. § 1981 (1982).

8. Patterson v. McLean Credit Union, 109 S. Ct. 2363, 2372 (1989).

9. 109 S. Ct. at 2373; *see also* Jett v. Dallas Indep. School Dist., 109 S. Ct. 2702 (1989) (holding that 42 U.S.C. § 1981 does not provide an independent federal damage remedy for racial discrimination by local government entities); Lorance v. AT & T Technologies, 109 S. Ct. 2261 (1989) (holding that a discrimination claim against a seniority system begins to run at the time of its adoption even though its discriminatory effect may not be noticeable at that time); Martin v. Wilks, 109 S. Ct. 2180 (1989) (holding that firefighters who failed to intervene in earlier employment discrimination case are not precluded from challenging employment decisions taken pursuant to the consent decree issued in the earlier case); Wards Cove Packing Co. v. Atonio, 109 S. Ct. 2115 (1989) (suggesting more stringent standards of proof in employment discrimination cases and appearing to reject the "disparate impact" analysis adopted in the landmark decision in Griggs v. Duke Power Co., 401 U.S. 424 (1971)); City of Richmond v. J.A. Croson Co., 109 S. Ct. 706 (1989) (Court, using strict scrutiny test, invalidated a municipal set-aside plan that required prime contractors to subcontract to minority subcontractors at least 30% of the dollar amount of each city contract awarded).

10. Runyon v. McCrary, 427 U.S. 160 (1976).

11. K. KARST, BELONGING TO AMERICA 158 (1989).

12. *Id.*

13. 476 U.S. 267 (1986) (layoff scheme provided that teachers with most seniority would be retained but that minority members would never constitute a higher percentage of those laid off than the percentage of minority personnel employed when the layoffs occurred).

14. 109 S. Ct. 706 (1989). The set-aside plan is briefly described *supra*, at note 9.

15. K. KARST, *supra* note 11, at 158.

16. Justice White's opinion reflects the "slippery slope" argument against using showings of disparate impact to establish that a statute is discriminatory:

discriminatory motive, while suggesting that group harms should be remedied by majoritarian politics.[17]

In the past, one of the best defenses against racial meanness was a black person like Joe Small. Reading *The Port Chicago Mutiny,* I wondered: In a society where black people willing to confront racial discrimination in a defiant way are treated as dangerous and subversive, what combination of circumstances produces an individual with Joe Small's pride and self-assurance? In the military service and in civilian life, Small always stood up for his rights and, often enough, paid a price for his refusal to buckle under. And yet, he harbored no bitterness, proudly telling Robert Allen that his son was enlisting in the Navy. Whatever the source of Small's strengths, one wonders whether they would be sufficient were he growing up in an inner-city area today.

For those of us active in the civil rights movement, it is difficult to concede that the segregation era — with all its hardships — was less harsh than life for poor and working class blacks in this post-*Brown* "equal opportunity" period. Unlike the Supreme Court reviewing the statistics in the *McCleskey v. Kemp* death penalty case,[18] we cannot ignore the steadily worsening statistics of black poverty, unemployment, broken homes, drug abuse, and violent crime. Thus, while Robert Allen has provided us with a quite readable report of a fifty-year-old, racial "mutiny" that never was, both social indicators and common sense enable a prediction that, without major reforms, future racial rebellions will not be just fabrications manifesting the meanness of racist whites. Rather, they will be the predictable consequences of that meanness, and will not likely be deterred because the charges of mutiny are accurate.

A rule that a statute designed to serve neutral ends is nevertheless invalid, absent compelling justification, if in practice it benefits or burdens one race more than another would be far reaching and would raise serious questions about, and perhaps invalidate, a whole range of tax, welfare, public service, regulatory, and licensing statutes that may be more burdensome to the poor and to the average black than to the more affluent white."

426 U.S. 229, 248 (1976) (footnote omitted).

17. *See, e.g.,* McCleskey v. Kemp, 481 U.S. 279 (1987).

McCleskey's arguments [that statistical evidence strongly indicates that in Georgia, blacks convicted of killing whites are far more likely to receive the death penalty than either blacks or whites convicted of killing blacks] are best presented to the legislative bodies. . . . Legislatures . . . are better qualified to weigh and "evaluate the results of statistical studies in terms of their own local conditions and with a flexibility of approach that is not available to the courts."

481 U.S. at 319 (quoting Gregg v. Georgia, 428 U.S. 153, 186 (1976)).

18. *See supra* note 17.