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Book Review to In Harm 's Way: The Sinking of the USS Indianapolis and the Extraordinary Story of Its Survivors

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Book Review

IN HARM'S WAY: THE SINKING OF THE USS *INDIANAPOLIS* AND THE EXTRAORDINARY STORY OF ITS SURVIVORS[1]

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On July 30, 1945, just days before the end of World War II, a Japanese submarine sank the USS *Indianapolis*, directly killing 300 of the ship's 1200-man crew.[3] Nine-hundred men entered the water alive.[4] Unbelievably, the U.S. Navy did not even realize that one of its ships was missing until four days later, and by the end of the belated rescue effort, only 317 men had survived.[5] The Navy blamed the ship's captain, Captain Charles McVay, III, for both the sinking and the delayed rescue, making him the only captain in the history of the U.S. Navy to be court-martialed for losing his ship to an act of war.[6] Twenty-three years later, still receiving hate mail from relatives of casualties and before his name would be cleared, he killed himself.[7]

Doug Stanton tells the story of this disastrous voyage and the Navy's subsequent treatment of McVay in *In Harm's Way: The Sinking of the USS* Indianapolis *and the Extraordinary Story of Its Survivors.* Stanton had been working as a contributing editor for *Esquire* and *Outside* magazines[8] and became interested in the Indianapolis after learning that the survivors planned to reunite.[9] Having no military background, Stanton intended to write only a short article on the disaster;[10] instead, he became captivated by the survivors' accounts of bravery and survival: "For almost five days, they struggled against unbelievably harsh conditions, fighting off sharks, hypothermia, physical and mental exhaustion, and finally, hallucinatory dementia. And yet more than 300 of them managed to survive. The question I wanted to ask was, *How*?"[11] The survivors wanted to clear McVay's name and lift the stigma that resulted from his conviction; Stanton took up their cause.[12] Finally, Stanton wanted to pin the blame for the disaster on the Navy, where he felt it belonged: "[T]he [N]avy put them in harm's way, hundreds of men died violently, and then the government refused to acknowledge its culpability."[13]

The article became a book, and Stanton published *In Harm's Way* in 2001 to the universal praise of critics and history buffs.[14] Shortly after publication, the Navy exonerated McVay, announcing that he was not culpable for the sinking or the loss of life caused by the delayed rescue.[15] But this leads to the question: why review an already thoroughly reviewed and acclaimed book, four years after publication? Why now, considering that one of Stanton's primary goals for writing *In Harm's Way* has been reached?

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[1] DOUG STANTON, IN HARM'S WAY: THE SINKING OF THE USS INDIANAPOLIS AND THE EXTRAORDINARY STORY OF ITS SURVIVORS (St. Martin's Paperbacks, 2002) (2001).

[2] U.S. Army. Written while assigned as a student, 53d Judge Advocate Officer Graduate Course, The Judge Advocate General's Legal Center and School, U.S. Army, Charlottesville, Virginia.

[3] *See* STANTON, *supra* note 1, at 7.

[4] *See id.*

[5] *See id.*

[6] *See id.* at 8.

[7] *See id.* at 4, 6.

[8] *See id.* at inside back cover.

[9] *See id.* at 309.

[10] *See id.*

[11] *Id.* at 310.

[12] *See id.* at 8, 266, 270.

[13] *Id.* at 311.

[14] *See* http://www.ussindianapolisinharmsway.com/bookreviews.htm (last visited May 11, 2005) (providing a long list of positive reviews from, among others, Tom Brokaw and Stephen Ambrose).

[15] *See* STANTON, *supra* note 1, at 269.

Because America is again at war, and *In Harm's Way* offers contemporary lessons to military officers and judge advocates. Stanton's account captures the irregular, sometimes startling, and sometimes reaffirming ways that people respond when they reach the edge of life. Small-unit leaders who pick up *In Harm's Way* will learn how people behave while they are under enormous stress. [16] *In Harm's Way* also contains important lessons on risk management, showing what can happen when senior leaders personally manage the risks attached to potentially catastrophic missions, and how to assign responsibility and blame when risk becomes reality. Finally, *In Harm's Way* contains a simple lesson for judge advocates: a legally defensible position is not always a just position. While Stanton does not explicitly make all of these points (indeed, the reader will learn some of these lessons by spotting the shortfalls in some of Stanton's arguments), military officers and judge advocates will profit from them, while being rewarded with a riveting account of survival.

I. Why Some Men Survived

Stanton documents some uncomfortable facts: many sailors acted in apparently shameful and cowardly ways after just a short time in the water. On the second day, some sailors started to kill themselves:

> Those still lucid enough looked on in disbelief as their former shipmates calmly untied their life vests, took a single stroke forward, and sank without a word. Others suddenly turned from the group and started swimming, waiting for a shark to hit, and then looked up in terrified satisfaction when it did. Others simply fell face-forward and refused to rise. A boy would swim over to his buddy, lift his head by the hair from the water, and begin screaming for him to come to his senses. Often, he refused, and continued to quietly drown himself.[17]

Even more disturbing, on the third day, the sailors started to attack and kill each other.[18]

By applying modern medical knowledge, Stanton explains how the sailors deteriorated to a state of dementia so quickly. The men suffered from plasma shift, the inhalation of salt spray which caused their lungs to fill slowly with fluid, ultimately lowering the oxygen content in their bloodstreams.[19] They had hypothermia, losing an average of one degree of body temperature for every hour of exposure at nighttime.[20] Hypothermia depresses the central nervous system, allowing apathy and amnesia to set in.[21] Some sailors, with their judgment clouded and hallucinations underway, started drinking salt water, causing their cells to shrink, expand, and explode, disrupting their neuro-electical activity.[22] All of these factors, combined with shock associated with wounds suffered in the submarine attack and the constant shark attacks, acted on the sailors' central nervous systems, causing them to behave in such shocking ways.

Stanton offers plenty of examples of men acting heroically in the water, and their personal courage should inspire small-unit leaders.[23] But unfortunately, Stanton does not answer the question he set out for himself: why did some of the 900 men who entered the water survive, and some not? He makes some offhand remarks that each survivor, at some point, made a decision to live, and those with families seemed to avoid drinking salt water.[24] But he never draws any overarching conclusions on the root of human nature, and this conclusion would have been valuable to small unit-leaders.

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[16] *In Harm's Way* fits into the "survivor's story genre. *See also* NATHANIEL PHILBRICK, IN THE HEART OF THE SEA: THE TRAGEDY OF THE WHALESHIP ESSEX (2000) (describing the true story of the survivors of a New England whaling ship attacked by a whale in the Pacific); JOE SIMPSON, TOUCHING THE VOID: THE TRUE STORY OF ONE MAN'S MIRACULOUS SURVIVAL (1989) (telling the story of the victim of a serious mountain climbing accident, who survived against all odds).

[17] STANTON, *supra* note 1, at 167-68.

[18] *See id.* at 177 (describing how one sailor "saw boys with knives blindly stabbing at buddies who were still tied to them," and how a different sailor "gouged out another's eyes with his fingers").

[19] *See id.* at 151.

[20] *See id.* at 163.

[21] *See id.*

[22] *See id.* at 172.

[23] *Id.* at 135-36, 144-45 (describing how a Marine captain and a chaplain organized the survivors and distributed safety gear); *id.* at 181 (describing a Navy ensign's efforts to keep his noncommissioned officer alive); *id.* at 235 (describing sailors jumping off of rescue ships into shark-infested water to pull survivors to safety).

[24] *Id.* at 172.

II. Risk Management

Stanton successfully argues that the Navy leadership was partly responsible[25] for the ship's sinking because the Navy failed to mitigate the risk that an enemy submarine would sink the ship.[26] First, the Navy did not provide the ship with a needed security measure—a destroyer escort. The Indianapolis was a heavy cruiser, whose mission was to shell enemy positions on land and to provide air defense coverage for her flotilla.[27] Her design traded armor for speed; as a result, she required destroyer escorts for security against submarines.[28] Recognizing the need for security, McVay requested a destroyer escort for his voyage from Guam to Leyte.[29] The Navy denied his request, telling him that a destroyer was not necessary or available: the area where McVay was traveling was considered a backwater (or rear area) of the fight, and the destroyers were needed farther north.[30] Yet, if the Navy had mitigated the risk of submarine attack by providing an escort, the ship might not have sunk: after spotting an enemy ship, the Japanese submarine's captain was concerned that the ship might be a destroyer.[31] The Navy's senior leaders assumed this risk, not McVay.

Next, the Navy assumed risk when it withheld highly classified intelligence from its captains. Before leaving for Leyte, McVay asked for all of the intelligence available for his route.[32] He received a report that did not contain any recent, credible information about submarine activity in the area.[33] Importantly, the intelligence report did not contain a critical piece of information known to the Navy, a Japanese submarine group was operating on the Indianapolis's assigned route.[34]

The Navy sometimes withheld intelligence from its captains because intelligence officers used a top-secret code-breaking program to obtain their information.[35] Following the Battle of Midway, U.S. newspapers reported that American forces knew all of the Japanese positions.[36] The Japanese figured out that the United States had a machine that could crack their codes, so they changed them all.[37] Once the Americans developed a new code breaker, the Americans decided to keep its existence a closely-held secret, even if it meant not sinking Japanese ships when the Americans knew where they were—or, as was the case with McVay, disclosing to captains that submarines were in their area of operations.[38] Again, had the Navy mitigated this risk of submarine attack by providing this intelligence, the ship might not have been sunk. The submarine that sank the *Indianapolis* was from this enemy submarine group.[39] Had McVay known this intelligence, he may have taken different measures to protect himself, to include taking a defensive measure that the Navy later court-martialed him for not taking. The Navy's senior leaders assumed this risk, not McVay.

Turning to the delayed rescue, Stanton argues that the Navy leadership was partly responsible for that, too. The Navy assumed risk when it ordered its ships to travel alone, a risk that McVay well understood: "Whenever I was traveling alone, I always had the feeling, 'Suppose we go down and we can't get a message off? What will happen then?'"[40] This risk became

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[25] The obvious direct cause of the sinking was the Japanese submarine commander who sunk the Indianapolis in an act of war. *Id.* at 295. Stanton is really looking at the proximate causes of the disaster and who bears responsibility for them.

[26] *Id.* at 70.

[27] *See id.* at 25.

[28] *See id.* at 25, 70.

[29] *See id.* at 70.

[30] *See id.*

[31] *See id.* at 94.

[32] *See id.* at 70-71.

[33] *See id.* at 72.

[34] *See id.*

[35] *See id.* at 72-73.

[36] *See id.* at 73.

[37] *See id.*

[38] *See id.*

[39] *See id.* at 75.

[40] *Id.* at 59.

a reality when the ship's main radio shack was destroyed by the torpedo attack.[41] Sailors were able to get send a primitive, nonstandard distress signal from a back-up radio shack by quickly and ingeniously using whatever undamaged equipment remained.[42]

The Navy took steps to mitigate the risk that a ship might sink before it could get out a distress signal—it established a tracking system that, if properly executed, would alert the Navy to overdue ships. The tracking system failed, though, when leaders and lower-ranking sailors failed to do their jobs. Stanton effectively lays out this chain of errors, angrily contrasting the personal courage of sailors in the water who risked death to save others, while officers and sailors in the rear failed to exercise basic competence from the comfort and safety of their offices.

The first error occurred at Tinian, where McVay was to report to Vice Admiral Jesse Oldendorf and then to his subordinate, Rear Admiral Lynde McCormick.[43] McCormick's staff, however, improperly decoded the reporting order, thought it was for another command, and so stopped deciphering it.[44] Consequently, McCormick had no reason to watch for the ship.[45] Two days later, McCormick received the message when it was sent out again (and this time correctly decoded), but he was confused:

> In the first place, he was uncertain as to why the *Indianapolis* was reporting to him. Further, because she was the flagship of the Fifth Fleet, he assumed she would be diverted north to replace another cruiser, the USS *Portland*, that had recently been taken out of service. McCormick doubted that the *Indy* would ever make landfall at Leyte. Her arrival, from his point of view, was a nonissue.[46]

His boss, Oldendorf, received the first message, but that message did not contain the ship's report date.[47] Oldendorf never received the second message, which did contain the report date.[48]

> [Because of this,] Oldendorf knew that Captain McVay would be reporting to him, but he didn't know *when* to expect him. The effect of this double error in communication was simple: the two people whom McVay was to report did not possess enough information to determine if he was late. As he sailed to Leyte, Captain McVay was, essentially, a man headed nowhere.[49]

Neither of these senior officers did anything to clear up the issue.

The system errors and personal failures continued. A sailor on the island of Tacloban heard the non-standard distress message and passed it to the senior ranking officer on his base, who promptly dismissed the report.[50] Just a few days later, when that same sailor noticed that the *Indianapolis* had not arrived in her berth he remained silent because he thought no one would listen to him.[51] The distress message also made it to Leyte, where the officer on duty dispatched two ships to the reported site.[52] Unbelievably, Commodore Norman Gillette, the acting commander of the Philippine Sea Frontier, hearing that the ships had been dispatched without his authority, recalled them, and took no further action.[53]

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[41] *See id.* at 101.

[42] *See id.* at 123-25. These sailors put their lives at risk to send out the signal, staying with the ship until she had listed completely on her side. *See id.* at 124-25.

[43] *See id.* at 76-77.

[44] *See id.* at 64-65.

[45] *See id.* at 65.

[46] *Id.* at 77.

[47] *See id.* at 77-78.

[48] *See id.* at 77.

[49] *Id.* at 78.

[50] *See id.* at 125-26.

[51] *See id.* at 126.

[52] *See id.*

[53] *See id.* at 126-27.

Soon, problems with the tracking system arose. Six months earlier, in order to reduce shipping dispatches and increase security, Admiral Ernest King directed that the arrival of combatant ships would not be reported, but his directive contained ambiguity: "What was implied—but not intended—was that the *non-arrival* of combatants would also remain unreported."[54] Facing somewhat unclear guidance, tracking officers made faulty assumptions, which built errors into the system that would ultimately cause the system to fail. The first morning after the sinking, an operations officer at Leyte moved the ship's marker into the "arrived" column on the routing board: "He assumed her voyage had been uneventful; at least he had heard nothing to the contrary. Combatant vessels were always assumed to have arrived at their destinations, unless contradictory news was announced."[55] At nearly the same time, the dispatching headquarters in Guam assumed that the ship had arrived and removed a similar marker from the plotting board in that office.[56] In Tacloban, a tracking officer noted that the ship had not arrived, but did not call anyone to inquire—he simply marked her as overdue.[57] To work, the tracking system required an outside stimulus—a distress call or a positive report of non-arrival—and so the ship's absence fell through the cracks.

Here, military officers and judge advocates can pull a contemporary lesson: when senior leaders personally manage the risk associated with potentially catastrophic events, they can create an environment where small system or personal failures can lead to catastrophic results. Such senior leaders need to ensure that they issue clear instructions, that they build redundancies into mitigation systems, and that they establish clear communication channels between the redundant systems. Leaders then need to designate someone to supervise the system. If the Navy leadership had followed these steps with the *Indianapolis*, the Navy would have certainly noticed the ship's absence.

But while Stanton assigns responsibility to the Navy, he goes too far when he suggests that the Navy was culpable or blameworthy for these risk management decisions.[58] The Navy's senior leaders made a rational risk decision when they denied the destroyer escort. The Navy operated with limited resources and had to send them where they were needed most. Further, the Navy did establish a tracking system designed to mitigate that risk of traveling alone; unfortunately, that system had errors which surfaced when officers and sailors failed to do their jobs. The Navy also reasonably calculated the risk in withholding the intelligence. This code breaker could potentially prevent the loss of scores of American ships and lives in a major battle. The loss of one or two ships elsewhere would be a reasonable cost for that advantage. Contrary to Stanton's argument, the lesson is that when leaders make rational risk-based decisions, those leaders are *responsible* for making those risk management decisions, but they are not *culpable* for reasonable decisions simply because those risks materialize.

III. Clearing McVay's Name

Stanton drives home the lesson that when risks become reality, senior leaders should accept responsibility for their risk decisions and not scapegoat the junior leader who happens to be on watch when lightning strikes. Instead of accepting responsibility for their risk decisions, the Navy's senior leadership took the low road and decided to scapegoat McVay. The Navy charged McVay with hazarding his ship by not performing a defensive maneuver (called zigzagging), and with failing to order abandon ship in a timely manner (the Navy believed that if he had given the order earlier, the crew would have had more time to gather and distribute survival gear).[59] The court-martial convicted him of the first charge, but acquitted him of the second.[60]

Why the Navy prosecuted McVay is still up for debate and Stanton does not try to answer that question.[61] As late as 1996, the Navy's legal position was that "Captain McVay's court-martial was legally sound; no injustice has been done, and

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[54] *Id.* at 166.

[55] *Id.* at 165.

[56] *See id.*

[57] *See id.* at 165-66.

[58] *See id.* at 73-74, 311.

[59] *See id.* at 248, 250.

[60] *See id.* at 253. Stanton notes the facts that lead to the acquittal on the second charge. McVay ordered abandon ship just eight minutes after the attack, following the best battle damage assessment that he could make. *See id.* at 98-104. The ship sank just four minutes later. *See id.* at 104, 130. Stanton also argues that the Navy had improper motives for preferring this charge. *Id.* at 250

[61] *See id.* at 265; Commander William J. Toti, *The Sinking of the* Indy *& Responsibility of Command*, PROCEEDINGS, Oct. 1999, at 35-36 (describing the controversy over the charging decision). Stanton hints that the government wanted to dodge public bewilderment about why this disaster happened so close to the end of the war. STANTON, *supra* note 1, at 246-47.

remedial action is not warranted."[62] Nearly all of *In Harm's Way* attacks the point that "no injustice has been done," but unfortunately, Stanton only spends a few pages attacking the Navy's conclusion that the court-martial itself was legally correct.[63]

In 1999, Rear Admiral John D. Hutson, the Judge Advocate General for the Navy, testified before a Senate committee that "the finding of guilty was supported by fact and law."[64] Stanton argues that that McVay's failure to zigzag did not contribute to the sinking. The Japanese submarine's commander testified that zigzagging would not have prevented him from sinking the ship, and an American submarine commander testified that zigzagging had negligible value.[65] Therefore, McVay should not have been convicted. Hutson argued the contrary (and correct) position. Hazarding a ship, like dereliction of duty, is an unusual charge: the charge only requires *simple* negligence; and, that negligence need not cause actual harm.[66] Although McVay's failure to zigzag had no causal connection to the disaster, McVay could still be found guilty of hazarding his ship.[67] Turning to the negligence element, Stanton persuasively argues that McVay acted reasonably and admirably throughout the ordeal.[68] Some facts indicated that McVay did act reasonably: the actual movement order that said that McVay had the authority to not zigzag at night during poor visibility,[69] and on the night of the attack, visibility was poor. But Hutson correctly points out that the *court-martial* could have found that McVay negligently hazarded his ship. Just hours before the attack, McVay received a report that said that the day before, a merchant ship had spotted a periscope in his area.[70] The court-martial could have found him negligent on that fact alone,[71] so the Navy could not overturn the conviction on a factual basis.[72]

Hutson continued that "the proceedings were fair and [McVay was] provided full due process of law."[73] This time, Hutson was wrong. Stanton points out several ways that the trial was not fair: one of the members who sat on the preliminary board of inquiry had a conflict of interest;[74] McVay was given an inexperienced lawyer;[75] he was given only a few days to prepare for trial;[76] and the Navy withheld material evidence from McVay because it was highly classified.[77] Hutson provides some counter arguments (McVay was given counsel, allowed to confront witnesses, and had the opportunity

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[62] STANTON, *supra* not 1, at at 265 (quoting Commander R.D. Scott, a Naval judge advocate who reviewed McVay's case); *see also* Toti, *supra* note 61, at 36.

[63] *See* STANTON, *supra* note 1, at 249-254, 265-67. Judge advocates interested in the details of McVay's court-martial would be better off reading *All the Drowned Sailors*, RAYMOND B. LECH, ALL THE DROWNED SAILORS app. A-L (1982) (containing, among other documents, verbatim transcripts of the Japanese submarine commander, copies of the message traffic between the commands, and briefs and legal opinions associated with McVay's court-martial); *Fatal Voyage*, DAN KURZMAN, FATAL VOYAGE: THE SINKING OF THE USS INDIANAPOLIS (1990); and the report of the 1999 congressional hearing, *The Sinking of the U.S.S. Indianapolis and the Subsequent Court Martial of Rear Adm. Charles B. McVay III, USN: Before the Sen. Arm. Ser. Comm.*, 106th Cong. 70 (1999) [hereinafter Senate Committee Hearing]. In addition to providing more information on the court-martial, both *Fatal Voyage* and *All the Drowned Sailors* expose the risks that the Navy took and the blunders made by Navy personnel while providing compelling narrations of the sailors' time in the water.

[64] STANTON, *supra* note 1, at 72.

[65] *See id.* at 253.

[66] Senate Committee Hearing, *supra* note 63, at 72-74. *Compare* UCMJ art. 92(a)(3) (2000), *with* UCMJ art. 110 (2000).

[67] Senate Committee Hearing, *supra* note 63, at 72-74.

[68] STANTON, *supra* note 1, at 8, 270-73.

[69] *See id.* at 81.

[70] *See id.* at 80; Senate Committee Hearing, *supra* note 64, at 72.

[71] Commander William Toti argues: "[McVay] failed to take 'all necessary measures' to protect his ship. And in our system of responsibility of command, it does not matter whether that action would have been effective—he should have tried." Toti, *supra* note 61, at 37.

[72] Senate Committee Hearing, *supra* note 63, at 74.

[73] *Id.* at 71.

[74] *See* STANTON, *supra* note 1, at 245 (noting that panel member Vice Admiral George Murray's command gave McVay the incomplete intelligence report).

[75] *See id.* at 250.

[76] *See id.* at 249.

[77] *See id.* at 252.

to present evidence);[78] but the call is close enough that Hutson could have gone the other way if his client, the Navy, had wanted to clear McVay. Stanton should have made that point clear.

Considering that the emotional drive of his book is to clear McVay's name, Stanton should have pointed out the elephant in the room: why had the Navy stood by an unjust conviction for fifty years? Why was the Navy's top lawyer arguing before Congress—an audience looking to correct injustice—that McVay's conviction should stand? Did the Secretary of the Navy ever ask the President to unconditionally pardon McVay? Why did Hutson dismiss this option?[79] The lesson for judge advocates is that "a decision can be legally correct and still be unjust."[80] Hutson should have told the Senate committee as much. Judge advocates must spot when "legally correct" does not equal "just," and tell the client—and Congress, when asked—how to make things right.

In Harm's Way deserves a fresh look. Stanton's gripping narrative captures the unbelievable suffering and sacrifice that the Greatest Generation made to preserve America's freedom, and for those unfamiliar with the Indianapolis story, *In Harm's Way* will be incredibly rewarding. While *In Harm's Way* has some flaws, military officers or judge advocates can still pull the essential lessons from the book without much effort. These lessons on human behavior, risk management, and professional courage find new relevance in today's conflicts, where small unit leaders find themselves in stressful combat situations where their decisions can have strategic implications and their knowledge of human behavior must be deep; where the risks associated with potentially catastrophic events are managed by our most senior leaders; and where judge advocates and other government lawyers often find themselves arguing the legally defensible position, rather than the morally correct position.

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[78] Senate Committee Hearing, *supra* note 63, at 71.

[79] At the time, Hutson erroneously argued that full or unconditional presidential pardons do not overturn convictions. *Id.* at 74. *But see Ex parte* Garland, 71 U.S. (4 Wall.) 333, 380 (1866):

> A pardon reaches both the punishment prescribed for the offense and the guilt of the offender; and when the pardon is full, it releases the punishment and it blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense.

[80] STANTON, *supra* note 1, at 265 (quoting Toti, *supra* note 61, at 38).