

REAR ADMIRAL JOHN W. BITOFF, USN (RET.)
1911 Pierce Street
San Francisco, California 94115

April 30, 1999

The Honorable Norm Dicks
United States Congressman
6th District Washington
500 Pacific Avenue
Bremerton, WA 98337

RECEIVED

VIA FAX @ 10:46 a.m.

FRIDAY, 30 APRIL 1999

SENT TO ME BY RADM BITOFF

Dear Congressman Dicks:

This is in response to your letter of March 5, 1999 in which you asked me to provide you with a written account of my role in the case of LCDR Walter Fitzpatrick, USN (Retired). I regret the length of time it took for me to respond to your request, but the incident that eventually led to LCDR Fitzpatrick being tried by a court-martial occurred in 1988 and it required an enormous effort on my part to recall the details associated with the case. In addition, I retired from active service at the end of 1991 and I am no longer privy to the official files and other documents pertaining to this case.

As a matter of background, I was Commander Combat Logistics Group ONE (CLG-1) and Commander Naval Base San Francisco from January 1989 through October 1991. In addition, I was Commander Task Force 33, the operational commander for all logistics ships, including Military Sealift Command ships, in the U.S. THIRD Fleet. In my CLG-1 hat I had 15 major ships, including the USS MARS (AFS-1), and approximately 6000 officers and men.

I had close personal knowledge and frequent association with the 15 commanding officers in my Group. I met with them frequently and wrote their fitness reports. Conversely, I had little or no contact with the ship's executive officers and with the exception of one or two, I did not know them by name. I did not know LCDR Walter Fitzpatrick, Executive Officer, USS MARS, personally or by reputation. The USS MARS was a top performing ship with two exceptional commanding officers during my tenure. Both of these fine officers went on to command aircraft carriers and one of them became a flag officer. USS MARS was nominated by me for the coveted Battle Efficiency "E" award in both competitive cycles during my tour. She was considered to be the best AFS in the Pacific Fleet. It stands to reason that LCDR Fitzpatrick; the ship's executive officer (the number two officer in the ship's chain of command) played a significant role in USS MARS's achievement.

The incident that led eventually to LCDR Fitzpatrick's trial before a court-martial occurred in 1988, long before I assumed command of Combat Logistics Group ONE. The incident I am referring to concerned a group of USS MARS officers and enlistedmen and their spouses who represented the ship at the funeral for the brother

of Captain Michael B. Nordeen, USN, the MARS commanding officer. The funeral took place at Arlington National Cemetery. Captain Nordeen's brother, also a Navy captain, was murdered by terrorists while serving in Greece. Funding to send the ship's representatives to the funeral came from the USS MARS Morale, Welfare and Recreation (MWR) fund. The decision to send a delegation from the ship apparently occurred after Captain Nordeen departed on emergency leave. Incidentally, this thoughtful gesture by MARS personnel was lauded at the highest echelons of the Navy, including the Chief of Naval Personnel

My predecessor, RADM Robert Tony, USN, did not brief me on the incident during the change of command process, and when later queried by me, indicated that he did not inform me because he believed it to be a minor matter. I first became aware of a possible problem with MARS MWR account when the ship became the subject of an MWR audit or "assist visit" by the Commander Surface Warfare Force, U.S. Pacific Fleet (COMSURFPAC) civilian Welfare and Recreation Management Specialist. Somewhere in the sequence of events, I also remember being informed of a telephone message on our Waste, Fraud and Abuse "hotline" that questioned the expenditures for the funeral trip. The distinction I am making here is that I did not ask for the audit, it was initiated by my immediate senior in the chain of command. The audit questioned the use MWR funds for sending a delegation from the MARS to the funeral. In addition, other expenditures were in question, including the purchase of a tent for official ceremonies and the purchase of several televisions and stereo sets for the ship. As a result of the audit, COMNAVSURFPAC directed me to conduct an inquiry to the allegations contained in the inspection report.

The next thing that happened in sequence was an Article 32 Investigation to determine if there was any real wrongdoing in this case. My recall is not complete as to the specific details that led up to the Article 32, but I believe my Chief of Staff came to see me in the company of LT Timothy W. Zeller, my Staff Judge Advocate, regarding the matter. LT Zeller was adamant that we conduct an Article 32 investigation, if for no other reason than to "cover our six o'clock" with higher authority. I concurred, hoping that it would clear the air on this issue. I assumed the Article 32 investigation would follow normal practice and be conducted by a civilian special agent of what was then called the Naval Investigative Service or NIS.

I was extremely busy at this time dividing myself between my duties at my two primary commands and the increasing demands placed on me by my CTF 33 operational hat. In fact, I was deployed much of this time in Alaska and the Aleutian Islands for PACEX 89, the largest peacetime exercise in Pacific Fleet history. My CLG-1 staff remained behind in Oakland in the normal conduct of business while I was deployed aboard ship. Shortly after my return from deployment, the Loma Prieta earthquake struck the Bay Area and I found myself leading the Navy's massive rescue and recovery effort.

I clearly remember being surprised by how aggressive LT Zeller seemed to be about this case and specifically, LCDR Fitzpatrick's role in it. I liked Tim Zeller personally and I had complete faith and trust in him. However, it was obvious that LT Zeller saw

most things in terms of black and white. On one occasion, during an informal conversation in my office, I told him that real life situations were often too complicated for purely black and white solutions and that sometimes the answer lies in shades of gray. He smiled, and said, "I guess it's my Marine Corps training." I mentioned this encounter to my Chief of Staff and he agreed with my assessment of LT Zeller and added that he was nevertheless, extremely persevering and serious in all endeavors.

When the Article 32 investigation was completed, I was surprised to find LT Zeller had conducted the investigation, rather than the NIS. I questioned my Chief of Staff on this point and I recall him telling me that LT Zeller had asked NIS for assistance, but they were unable to provide an agent to go to sea aboard USS MARS. I am not sure whether LT Zeller and/or my Chief of Staff briefed me when they provided me with the results of the Article 32, but I do remember not being terribly concerned with the seriousness of what I was being told. I specifically remember asking the following questions: Did anyone line their pockets with the MWR expenditures? Was there anything irregular regarding the purchase of the TVs and stereo equipment for the ship or did any of this equipment find its way to a crewmembers home or car? The answer to each of my questions was no.

LT Zeller remained hard over on the use of MWR funds for the crewmembers to attend the funeral. I did not agree that these were criminal acts, but rather "creative", albeit improper use of MWR funds and a modicum of poor judgement as well. Based on this information, I told LT Zeller that I would convene an Article 15 NJP (Admiral's Mast) in the case of LCDR Fitzpatrick. I would have taken the same action with CAPT Nordeen, the former commanding officer, but he had departed the area and I no longer had Article 15 jurisdiction over him. I did however, award CAPT Nordeen a Non-Punitive Letter of Instruction, citing the discrepancies noted in the COMSURFPAC MWR audit. I also directed that crewmembers that received funds for the trip to the funeral in Arlington National Cemetery are asked to return all, or as much as, they could afford, to the MARS MWR fund. I believe there was a reasonable attempt to do this, because I received a telephone call from one of the officers (a Navy Chaplain) who attended the funeral with his wife, telling me that he returned the funds and asked for my understanding on this matter.

I was not making light of the charges regarding the misappropriation of MWR funds. My training and upbringing in the Destroyer Force, where I spent most of my seagoing career, made me a "strict constructionist" regarding the proper administration of all funds that were entrusted in my care. However, my long experience revealed that the Naval Aviation community had a reputation for taking a different or more liberal view of MWR funds as apposed to appropriated funds. Many Naval Aviators took a more imaginative or creative approach to the administration of MWR funds. I do not mean to infer that funds were used in an illegal fashion from a criminal perspective, but rather giving short shrift to the MWR Regulations "fine print" as long as it enhanced crew morale. I have had personal experience with similar matters when I was a junior officer. Based on the aforementioned and the fact the commanding officer was a naval aviator, I concluded that this atmosphere existed on USS MARS and it should not be a surprise that the executive officer would reflect the

captain's attitude. Therefore, I had no desire to single out LCDR Fitzpatrick for punishment.

I next received an office call from CAPT Kevin Anderson, USMC, certified as a Judge Advocate, who I believe was accompanied by LT Zeller, my Staff Judge Advocate. CAPT Anderson identified himself as LCDR Fitzpatrick's Defense Counsel and then informed me that LCDR Fitzpatrick would not accept Admiral's Mast / Article 15 NJP unless I guaranteed that if any punishment was awarded, it would be non-punitive (i.e. not go in his record). I was startled and incensed by this demand, particularly coming from an officer of the court. I made it clear to CAPT Anderson that he was not acting in the best interests of his client. I gave him a stern lecture and told him that I have had NJP authority, on and off, for almost 30 years, beginning as a Lieutenant commanding officer and that I never prejudged a case that came before me. On the contrary, I dismissed many cases at Captain's Mast because new information surfaced during the proceedings. As a matter of principle, I could not accede to CAPT Anderson's demands. I closed the meeting by telling CAPT Anderson, in the strongest possible terms, that he and LCDR Fitzpatrick were making a serious mistake that could have terrible consequences. I instructed him to advise LCDR Fitzpatrick that Article 15/ NJP was in his best interest. LCDR Fitzpatrick, through his Defense Counsel, chose trial by court-martial vice Article 15 /NJP. LCDR Fitzpatrick's refusal to accept Article 15/NJP left me with no legal recourse but to convene a Special Court-Martial. The court-martial convicted LCDR Fitzpatrick of violating Article 92 of the Uniform Code of Military Justice, being derelict in the performance of his duties regarding the administration and expenditure of MWR funds. Therefore, I awarded him a Letter of Reprimand.

Congressman Dicks, I tried to avoid a court-martial in this case at every turn in the road. Based on my assessment of the charges, I believed that a court-martial would be a waste of the Navy's time and money and it would unfairly single out LCDR Fitzpatrick for punishment. There was no doubt in my mind that MWR funds were used improperly and there was sufficient blame to go around. I was convinced that there was no personal gain from the misuse of these funds and in the final analysis, the ship and the Navy were the ultimate beneficiaries. However, rules and regulations are there for good reason and I, in good conscience, could not sweep the matter under the rug. While I indicated earlier that I never prejudged an Article 15 case, I necessarily went into the proceedings with a general idea or window of possible punishment if no additional information or extenuating circumstances were presented. In this case, if LCDR Fitzpatrick had accepted Article 15/NJP and nothing more untoward came out, I was prepared to award him a Non-Punitive Letter of Instruction, the same punishment that was meted out to his commanding officer. This would have allowed him to go on with his career without impediment.

I have never understood why LCDR Fitzpatrick and/or his defense counsel refused my offer of Article 15. At the time, I surmised that it was a combination of LCDR Fitzpatrick acting in a fit of peak and incompetence on the part of CAPT Anderson, his defense counsel. I distinctly remember being unimpressed with CAPT Anderson, beginning with the encounter in my office the day he refused to accept the Article 15

for his client. I fervently hoped that LCDR Fitzpatrick and CAPT Anderson would come to their senses before risking it all at a court-martial. Had they done so up to the very minute before the court-martial opened, I would have gladly reverted to Article 15/NJP. In addition, I was a very accessible flag officer with a career-long reputation for championing the underdog and for my friendly demeanor. Why was it that LCDR Fitzpatrick, or anyone else in his camp, did not attempt to meet with me and have reason prevail in this case?

You should be aware, that in the wake of the court-martial conviction, LCDR Fitzpatrick did exercise the right of appeal and I denied it. Frankly, by my very nature, I was inclined to grant the appeal, but after much soul searching and seeking independent opinion from other senior officers not associated with the case, I found myself with a moral dilemma. I believed the punishment awarded by the court-martial to be too harsh and that LCDR Fitzpatrick was bearing full responsibility for the events on USS MARS, but I brought the charges and I convened the court-martial in the proper conduct of my duties. How could I now throw it all to the wind just because I was not happy with the results of the proceedings that I instituted. That court was made up of a jury of his peers, who unfortunately did not see the situation in the same light, which I did. They came close however and cleared him of all charges and specifications but one. It was a tough call and I made my decision after much thought and deliberation. I have always been extremely unhappy with the outcome of this case and I wish I could have prevented the irrational behavior that brought it about.

I had to make a statement on this case in 1994 when the Chief of Naval Operations directed the Judge Advocate General of the Navy to look into the matter following a series of newspaper articles that appeared in your home state of Washington. I had hoped that upon review, the case would have been thrown out on some technicality. However, my position has not changed in the ensuing years: (1) the charges stemming from the events aboard USS MARS should not have been consummated in a court-martial; (2) LCDR Fitzpatrick was not properly served by his defense counsel; (3) LCDR Fitzpatrick, by virtue of his rank and experience, should have known that it was in his best interest to accept Article 15/NJP; and (4) LCDR Fitzpatrick should have done everything in his power to meet with me before the die was cast.

LCDR Fitzpatrick has petitioned me over the years and most recently and most ardently, during the last two months, to change all that has happened and "restore him to his rightful place on active duty." I have neither the power nor the authority to grant his wish. However, he has made a series of new and disturbing allegations, which if true, bear looking into. The most serious of these allegations from my perspective, are:

- That CAPT Anderson did not apprise him of my comments during the meeting in which he, on behalf of LCDR Fitzpatrick, refused Article 15/NJP.

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- That there are serious doubts as to the validity of LCDR Fitzpatrick's signature on the Response to Letter of Reprimand dated July 17, 1990, or the so called "confession".

I am not sure what action you are inclined to take on behalf of LCDR Fitzpatrick, if any, after reading my statement. I have tried to paint a picture of the events of this case and how they unfolded to the best of my recollection. I can assure you that I carried out my important responsibilities in this case to the best of my ability. I am not a lawyer and I do not presume to have in-depth knowledge of the arcane language associated with the legal documents, procedures and other minute details associated cases of this type. I followed the advice of my Staff Judge Advocate, as well as the advice of other legal authorities throughout these proceedings. If there were procedural errors made by me, they were not intentional and the Office of the Judge Advocate General of the Navy or other competent authority has heretofore not brought them to my attention.

I believe the only option open to you to bring some humane closure to this tragedy, is to convince the Navy to review this case again in light of the troubling allegations mentioned above. Possibly, in a gesture of magnanimity, the Secretary of the Navy might grant clemency and remove the Federal conviction from his record. As an aside, but of great immediate importance, LCDR Fitzpatrick informed me that there is a move afoot to remove his security clearances as a delayed result of his long ago conviction. If this is allowed to happen it will, in all likelihood, deprive him of his ability to earn a living. Based on the circumstances of this case, removing his security clearances is not appropriate and is draconian by any civilized rule of measure.

Sincerely,



John W. Broff
Rear Admiral, U.S. Navy (Retired)