

Adm: Capt Becker

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DEPARTMENT OF THE NAVY
BUREAU OF NAVAL PERSONNEL
WASHINGTON, D.C. 20370-3000

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28 APR 1994

MEMORANDUM FOR THE CHIEF OF NAVAL OPERATIONS

Subj: LCDR WALTER F. FITZPATRICK, USN, /1110

1. In response to your inquiry into the issues of the Seattle Post-Examiner article regarding LCDR Fitzpatrick's career, I have summarized two separate chronologies surrounding his 1990 special court-martial and his 1991 captain's mast. The background for this document was developed from information derived from a records review and Office of the Judge Advocate General's input.

2. On 5 April 1990, LCDR Fitzpatrick was convicted by a special court-martial consisting of members convened by Commander, Combat Logistics Group ONE (CLG 1). He was charged with one specification of dereliction of duty, one specification of disobeying a general regulation by using a government owned vehicle for his personal use, one specification of suffering the wrongful disposal of military property, and one specification of larceny of MWR funds. The court found him guilty of one specification, violating UCMJ, Article 92, dereliction in the performance of duties, in that he willfully failed to follow proper procedures for the accounting and expenditures of Morale, Welfare and Recreation (MWR) funds on board USS MARS. The punitive letter of reprimand details that LCDR Fitzpatrick signed a check for \$1400 to pay for a trip to Hawaii for an operations brief. He tried to justify the check by saying the trip was for a MWR brief when, in fact, a MWR brief was neither held nor ever scheduled. The same specification charged that he purchased two televisions, two stereos and two video cassette recorders for his and the commanding officer's staterooms, an expenditure of \$2700. In his response to the letter of reprimand, LCDR Fitzpatrick stated "...[he] used MWR as an excuse to fund a trip of the ship's personnel to Hawaii...because [he] was informed by [his] MWR officer that the trip was authorized." He noted that the record of trial indicates that the commanding officer, CAPT Nordeen, authorized the purchase and placement of the electronic equipment. Additionally, in his response to the letter, he wrote: "It seems incongruous that I be reprimanded for an action taken by the commanding officer and which is conformance of the tolerated policy of the entire group."

On 7 June 1990, CLG 1 approved the findings of the court and ordered the sentence executed. On 17 August 1990, the Assistant Force Judge Advocate, Naval Surface Force, U.S. Pacific Fleet reviewed the case and determined the findings were correct in law and fact, and the sentence was within the limits of law. In March 1992, LCDR Fitzpatrick submitted an application for relief

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Article 69, UCMJ claiming undue command influence on his court martial. Two judge advocates, one reserve and one active duty, reviewed the application. On 14 January 1993, action was taken by the Assistant Judge Advocate General (Military Justice) to "affirm the sentence to reprimand and only so much on the findings of the case as provided for a negligent, as opposed to willful, dereliction...." On 23 February, LCDR Fitzpatrick requested OJAG rule more favorably on his request or, in the alternative, certify his case to the Navy-Marine Corps Court of Military Review, or order a new trial. That request was not received and resubmitted by LCDR Fitzpatrick in November. On 29 November 1993, his request was denied.

Numerous Congressional inquiries have been received. Of note, on 10 January 1994, the Honorable Norm Dicks, U.S. House of Representatives, requested a second review of the case. The request included a letter by LCDR Fitzpatrick that contained more alleged errors in the trial. OJAG assigned three judge advocate generals, one Reserve and two active duty; to review the case. The review found that LCDR Fitzpatrick did not raise any new issues, and a new trial was again denied.

3. LCDR Fitzpatrick's record reveals that he was the subject of a captain's mast in April 1991. On 30 April 1991, the Commanding Officer, USS CARL VINSON (CVN 70) found LCDR Fitzpatrick guilty of violating UCMJ, Article 86, unauthorized absence. LCDR Fitzpatrick was under orders to detach from SUPSHIP Seattle on 29 January 1991 and report to CARL VINSON no later 30 January 1991. No leave enroute or delay in reporting was authorized by his orders. On 5 March 1991, the CARL VINSON operations officer contacted LCDR Fitzpatrick at his home and ordered that he report. LCDR Fitzpatrick reported on 6 March 1991. He was awarded an oral reprimand.

On 9 May, LCDR Fitzpatrick was issued a punitive letter of reprimand. It was determined that the commanding officer was improperly advised that an oral reprimand was punishment; according to the Manual for Courts Martial, it is not. After hearing the merits of the case at mast, the commanding officer's intention was to award punishment. Since no punishment was awarded, he was legally able to later award the letter of reprimand. On 17 May, LCDR Fitzpatrick submitted an appeal stating that his leave was authorized, that he maintained contact with SUPSHIP Seattle during his absence, that his sentence was predetermined, that procedural errors existed, and that the late awarding of the punitive letter subjected him to double jeopardy. On 17 June, Commander, Naval Air Force, U.S. Pacific Fleet denied the appeal. On 5 July, LCDR Fitzpatrick submitted additional

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documentation, and COMNAVAIRPAC again denied his request for relief on 23 July. The Commanding Officer, USS CARL VINSON recommended administrative separation processing. The record of these proceedings was entered in LCDR Fitzpatrick's record on 22 August 1991.

4. On 22 May 1992, LCDR Fitzpatrick's overall performance was reviewed by a board of inquiry convened by Commander, Naval Base, Seattle to determine his retainability; he was retained. The Board recommended retention because:

"The board did not feel there was sufficient evidence to support a finding of guilty for dereliction of duty.

The finding of guilty at a Special Court-Martial for dereliction of duty set into motion a series of events which were confusing at best.

As a result of the Special Court-Martial and the subsequent confusion, LCDR Fitzpatrick demonstrated one incident of poor judgement by not reporting to the CARL VINSON as directed by his orders. This poor judgement was due in part by his honest belief he was authorized leave.

His record of past performance together with the continued strong endorsement by Captain Nordeen, his Commanding Officer, indicates that LCDR Fitzpatrick would be a continued valuable member of the U.S. Navy."

5. Notwithstanding the aforementioned incidents of misconduct, a review of LCDR Fitzpatrick's official service record found several factors that may have affected his failure of selection to commander. LCDR Fitzpatrick is a 1975 graduate of the U.S. Naval Academy. His first commander selection board, the FY 1991 Unrestricted Line Commander Board, convened on 7 March 1990. He failed to select for promotion on that board, and all subsequent selection boards. His fitness reports indicate that from the onset of his career he received many favorable recommendations for early promotion, and later, for command at sea.

By law a statutory selection board may only consider information that is finish filed in a member's record, or as policy, received

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in the Bureau to be finish filed and not yet filed (i.e. fitness reports faxed to establish record continuity). His microfiche record indicates that the Bureau did not finish file the April 1990 special court martial conviction until August 1990, when received. The associated fitness report (891031-901001) for the period of the MWR incident and the subsequent court-martial was not entered into LCDR Fitzpatrick's record until April 1991. Both documents were not indicated as finish filed until well after the FY 1991 Line Commander Board. Although speculative, the court-martial may not have affected LCDR Fitzpatrick's FY 1991 promotion but certainly influenced any future selection possibilities.


R. J. ZLATOFF

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