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SUMMARY
OF
SALIENT MATTERS WITH RESPECT TO THE
CASE OF
LIEUTENANT COMMANDER MARCUS AURELIUS ARNHEITER, USN

10 MAY 1968

RELIEF OF C. O. VANCE (DER), 1966

SUMMARY

LCDR Marcus Aurelius ARNHEITER was ordered to command of USS VANCE; was relieved by proper authority after numerous reports of irregularities in command, which were confirmed by a subsequent investigation; has had his appeal denied by the Secretary of the Navy; and has continued to seek another hearing, presumably in the hopes of being restored to another command.

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On December 22, 1965, LCDR ARNHEITER relieved LCDR Ross W. Wright as Commanding Officer, USS VANCE. On detachment, LCDR Wright was commended by his squadron commander for the high performance of VANCE. There is ample documented evidence that VANCE under LCDR Wright's command had enjoyed a high reputation among the DERs of Escort Squadron FIVE. Morale was high. Her disciplinary record was superior to that of most ships of her class. She had received the Engineering "E" Award. VANCE was then considered by the other commanding officers of the squadron as the ship to beat if they were to win the coveted squadron "E" as the outstanding ship. VANCE was fully qualified for wartime operations. In fact, official reports of extensive inspections conducted shortly before and also shortly after LCDR ARNHEITER's assumption of command show VANCE to be in the EXCELLENT category and ready for deployment for operations in Southeast Asia.

On December 29, 1965, VANCE proceeded to Southeast Asia on a regularly scheduled deployment with the Seventh Fleet. On January 20, 1966, she reported for duty on the Market Time (coastal surveillance) patrol off the coast of Vietnam. While operating in the Western Pacific, she was under the immediate administrative command of Commander, Escort Squadron SEVEN, CDR D. F. Milligan, USN. After a few weeks, CDR Milligan began to receive disturbing reports of unusual practices in VANCE. (Discussed further on pages 2 and 6.) He received a telephone call from Commander Escort Squadron FIVE in Pearl Harbor, advising him of information concerning such practices within VANCE which had been received through letters to the families of VANCE personnel back in Pearl Harbor. Commander Escort Squadron FIVE recommended that CDR Milligan look into these matters. CDR Milligan also received oral reports from the commanding officers of destroyers returning from the coast of Vietnam and from a Destroyer Division Commander that VANCE was engaged in some unusual operations while in Market Time and in fact had become a nuisance to some of the destroyers conducting regularly assigned shore bombardment.

Concurrently, Rear Admiral N. G. Ward, Commander Naval Forces Vietnam, in Saigon, who commanded the Market Time forces, had become concerned about the strange operations of VANCE and sent his staff operations officer to board VANCE and talk to LCDR ARNHEITTER to insure that he was aware of his operating instructions and also that he understood them. Also during this period, in the conduct of his regular duties, the squadron chaplain on the staff of Commander Escort Squadron SEVEN, an officer with several years previous Army enlisted combat training, rode the various ships to provide religious services and moral guidance. He was aboard VANCE for two weeks and, before leaving, advised LCDR ARNHEITTER of what he believed to be the low morale among the officers and enlisted men that he found in VANCE. Upon returning to the flagship, the squadron chaplain further reported his findings to CDR Milligan. Shortly thereafter, and without knowing about the chaplain's report, another officer from CDR Milligan's staff was aboard VANCE for several days on official business, and upon his return to the flagship he also reported to CDR Milligan on the low state of morale among the ship's company in VANCE.

On March 29, at Subic Bay, P.I., CDR Milligan expressed his concern to RADM D. G. Irvine, who was the Flotilla Commander for the destroyer type ships in the area. RADM Irvine was in the process of being relieved by RADM T. S. King and both Admirals were present when CDR Milligan expressed his concern. RADM Irvine was confronted with the necessity of deciding whether or not to exercise his inherent power to relieve LCDR ARNHEITTER of command or to request his detachment by the Bureau of Naval Personnel. VANCE was due to arrive in Manila for a short period of rest and recreation, but was to return directly to Market Time operations at the end of the visit. In fact the ship did so return on April 13. Under the circumstances, and in view of the inherent difficulties of conducting an investigation of a commanding officer aboard his own ship, it was decided that LCDR ARNHEITTER should be relieved of command in order that a proper investigation could subsequently be made in VANCE. A telegraphic request for orders was made through Commander Cruiser-Destroyer Force back in San Diego to the Bureau of Naval Personnel, as provided for in regulations. On March 30, after due consideration of the available information, and there being no requirement to conduct an investigation prior to relief, the Bureau of Naval Personnel issued telegraphic orders directing CDR Milligan to relieve LCDR ARNHEITTER, who in turn was assigned to temporary duty on a destroyer tender at Subic Bay in order that an investigation could be held.

On the evening of March 31, CDR Milligan arrived aboard VANCE at Manila and relieved LCDR ARNHEITTER. Upon coming aboard, he informed

LCDR ARNHEITER that it was thought that he had engaged in certain irregular practices and that some of his established policies in the ship were definitely seriously detrimental to her morale and effectiveness; but CDR Milligan did not discuss any of the details with LCDR ARNHEITER at that time. LCDR ARNHEITER remained aboard VANCE that night and departed from the ship at 9 o'clock the next morning, April 1, for Subic Bay. CDR Milligan collected voluntary statements from all persons aboard the ship having information on the alleged irregular practices. Upon arrival of VANCE in Subic Bay on April 4, he turned these statements over to the regularly appointed investigating officer, who had concurrently been duly appointed by Admiral King to conduct a due process, fact-finding investigation into the entire matter, in accordance with the Manual of the Judge Advocate General of the Navy. The investigating officer, CAPT Ward C. Witter, USN, who was commander of a destroyer squadron in the area, read the statements obtained by CDR Milligan and then passed them to LCDR ARNHEITER and his counsel, an officer lawyer, a legal specialist in the Navy.

The investigative hearing commenced in Subic Bay on April 6, and continued for 6½ days. The testimony of all witnesses was taken under oath and recorded verbatim. LCDR ARNHEITER and his lawyer counsel were present throughout the proceedings and exercised the opportunity to cross-examine all witnesses and to introduce such evidence as they chose. The investigative officer's report was completed on April 27. The record of proceedings consists of 413 pages of single-spaced testimony. Based on a careful review of this extensive investigation, RADM King recommended that LCDR ARNHEITER be issued a letter of reprimand and that his detachment be held "for cause", as distinguished from a routine detachment, in his official records in the Navy Department. RADM King's letter recommending this course of action was sent to the Bureau of Naval Personnel via Commander Cruiser-Destroyer Force, U. S. Pacific Fleet, Rear Admiral W. H. Baumberger.

After first affording LCDR ARNHEITER the opportunity to comment on the investigation report and RADM King's letter, RADM Baumberger reviewed the investigative report, LCDR ARNHEITER's rebuttal, and attached both to the detachment for cause letter; he recommended at that time that the detachment not be "for cause," that LCDR ARNHEITER not be returned to VANCE, but that he be given command of another ship in his Force. RADM Baumberger based his recommendation on his feeling at that time that LCDR ARNHEITER had in fact come to realize his transgressions, his mistakes, his failure in command. Recognizing that LCDR ARNHEITER had much to offer if his talents were properly channeled, RADM Baumberger felt that he might be able to guide and influence him through a successful command tour. (Later, after many long discussions with LCDR ARNHEITER concerning his case

and from statements made by LCDR ARNHETTER to RADM Baumberger it became evident to him that LCDR ARNHETTER had not recognized, and seemingly could not recognize, his own shortcomings in command and it would not be in the best interest of the Navy to assign him to another command.)

The papers were received in the Bureau of Naval Personnel on September 1. Also on September 1 RADM Baumberger's legal officer came to the Bureau of Naval Personnel to brief VADM Semmes concerning RADM Baumberger's views on the case. After having heard this briefing together with a briefing from his own Staff and after an extensive personal review of the entire matter, VADM Semmes was of the opinion that LCDR ARNHETTER had indeed exercised bad judgment and lack of integrity in so many important matters that his detachment from USS VANCE should be held as being "for cause."

LCDR ARNHETTER's first communication with the Department concerning his case was a letter dated August 29, 1966, and received on about September 2, 1966, addressed to the President of the selection board for promotions to commander, meeting at that time. On September 9, the Chief of Naval Personnel approved LCDR ARNHETTER's detachment as being "for cause" and it routinely was so entered in his record. The record was among those before the selection board. He also regularly endorsed LCDR ARNHETTER's letter of August 29 and delivered it to the selection board. At that time, the issue remained as to whether LCDR ARNHETTER should be reassigned to another command at sea. In view of Commander Cruiser-Destroyer Force, U. S. Pacific Fleet's recommendations for another command within his force, the Chief of Naval Personnel considered it essential to have the recommendations of the Commander-in-Chief, U. S. Pacific Fleet (Admiral Roy E. Johnson) on this matter, and he requested the Commander-in-Chief to review the record and send an endorsement for attachment to the JAG Manual Investigation report as a separate matter. On November 1, at the request of the Commander-in-Chief, U. S. Pacific Fleet, Commander Cruiser-Destroyer Force, U. S. Pacific Fleet endorsed the JAG Manual Investigation Report as a matter separate and distinct from the detachment for cause letter and reiterated his previous position. On January 20, 1967, the Commander-in-Chief, U. S. Pacific Fleet endorsed the JAG Manual Investigation Report, expressed the opinion that the relief was properly one "for cause," and recommended against LCDR ARNHETTER's being "assigned again to command any ship or unit." On January 26, 1967, the investigation report was found by the Judge Advocate General to be legal. The report of the selection board dated September 26, 1966 did not include the name of LCDR ARNHETTER among those selected as best fitted for promotion.

On February 23, 1967, LCDR ARNHETTER filed general court-martial charges of mutiny and conspiracy against Lieutenants Ray S. Hardy, Jr.,

(Executive Officer, USS VANCE), and William T. Generous, Jr., (Operations Officer, USS VANCE), and requested a court of inquiry. The Commander-in-Chief, U. S. Pacific Fleet dismissed the charges as to LT Generous and the Chief of Naval Operations dismissed them as to LT Hardy, since LCDR ARNHEITTEr offered no evidence not already considered. (Change of duty stations required different authorities to act.)

On May 11, 1967, LCDR ARNHEITTEr filed a request for redress from the decision on his relief being recorded "for cause." This appeal was submitted to the Secretary of the Navy via the chain of command and was endorsed by each commander in succession. On June 15, 1967, LCDR ARNHEITTEr preferred another set of general court-martial charges against LT Generous and requested the Secretary of the Navy to convene a court of inquiry and defer the routine release of LT Generous to inactive duty, which was pending at that time. Since it was not necessary for LT Generous to remain on active duty if a court of inquiry were subsequently convened, the Secretary of the Navy directed that the release of LT Generous proceed as scheduled. On July 31, 1967, the Judge Advocate General completed his review of the appeal by LCDR ARNHEITTEr and determined that it was without merit. However, in the meantime, LCDR ARNHEITTEr orally requested that the Secretary not act on his case until he could submit new evidence.

On September 1, LCDR ARNHEITTEr submitted a letter to the Secretary of the Navy submitting what was called "new evidence." Subsequently, while the Secretary was still considering the matter, LCDR ARNHEITTEr suggested that Captain Richard G. Alexander, USN, be permitted to be present at any briefing of the Secretary on the case. The Secretary agreed to discuss the matter with Captain Alexander, and on November 7, 1967, such discussion was held. At the same time, Captain Alexander left with the Secretary a 27-page statement of his views in the case. On the same date, without advising the Secretary, the Chief of Naval Operations, nor any other responsible official, Captain Alexander distributed copies of the statement to members of Congress and others, and it was widely publicized in the press. On November 24, 1967, after an exhaustive review of the entire file, the Secretary of the Navy denied LCDR ARNHEITTEr's various appeals for a court of inquiry and request for redress. The depth of the Secretary's review and his reasons for denying the appeals are covered in detail in his letter to Representative Resnick of January 23, 1968, which has been publicly released together with the Chief of Naval Operations' letter of December 30, 1967, to the Chairman of the House Armed Services Committee (copies appended).

BASIC POINTS IN THE ARNHETTER DECISION

Aside from the conclusion that LCDR ARNHETTER had been treated properly from a procedural point of view, i.e., that his relief was proper under the circumstances, the investigation was adequate, that the review was thorough, there are certain substantive conclusions which are supported by a preponderance of the evidence. These fall generally into three areas:

I. LCDR ARNHETTER lacked reliability and predictability in command -

- (a) His violation of his operating instructions in conducting bombardments, without having been assigned such missions, and without knowing at the time whether U. S. or friendly forces were in the vicinity.
- (b) His boarding of a foreign merchant ship without first obtaining authority from his operational senior, as required by his instructions.
- (c) His seeking and creating of pretexts for departure from his assigned "Market Time" primary mission, i.e., inspection of junks in a sea area extending 40 miles offshore, in order to conduct other missions, such as gunfire support, close inshore, and by covering up his true position by sending false position reports.
- (d) There is strong evidence that he utilized the "scout" boat and the ship's motor whaleboat as "bait" in an effort to draw fire from the shore, so that VANCE could return the fire, in violation of policy and with unwarranted hazard to the personnel in the boats.

Incidents such as those described above caused sufficient concern to the Commander of the "Market Time" forces that he sent a staff officer to VANCE to ensure that LCDR ARNHETTER was aware of and understood his operating instructions and the nature of his assigned mission.

While the Secretary, of course, did not view lightly those aspects of the case which reflected adversely on LCDR ARNHETTER's judgment, leadership and integrity as later discussed, the Secretary viewed the evidence of LCDR ARNHETTER's propensity to deviate from his assigned mission with particular concern. Reflection on the Cuban missile crisis will serve to illustrate the potentially disastrous consequences to our Nation which could result if an officer in command is not scrupulous in following his instructions. The Secretary concluded that the very serious questions raised in his area with respect to LCDR ARNHETTER could not be resolved in his favor.

II. LCDR ARNHEITER was lacking in integrity -

- (a) His knowing submission of false position reports.
- (b) His knowing submission of a false list of critical spare parts.
- (c) His signing of a knowingly fraudulent survey report and involving subordinates in co-signing the reports.
- (d) His introduction of alcoholic beverages into the wardroom in violation of Navy Regulations.
- (e) His reduction of the in-port watch below that required by Fleet regulations to permit maximum attendance at a social function.
- (f) His insisting on obtaining items from the Ship's Store on credit, even when told by his Supply Officer that this was against regulations.
- (g) His encouraging of his officers to pilfer material: e.g., to siphon gas from official cars assigned to VANCE, such gas to be used for the "scout" boat, and to take a silver candelabra from the officers' club in Guam.
- (h) His suggesting to two of his officers, and recommending phraseology for, a citation nominating himself for a Silver Star Medal. The citation described LCDR ARNHEITER's actions in exaggerated terms.

LCDR ARNHEITER argues that many of the foregoing derelictions are minor in nature, and as to the rightness of his motives in many of the above. For example, the fraudulent survey was of candy from the ship's store, so that it could be given to hungry children. There was no reason for the survey, since he could have purchased the candy from the store. Despite the motives, the fact remains that, in the aggregate, these and other incidents of a similar nature demonstrate that LCDR ARNHEITER ignored Naval rules and regulations when it suited his purpose to do so, while at the same time he insisted on literal compliance with his own desires by his officers and men. Such actions by a commanding officer violate one of the fundamental principles stated in law and regulation that a commanding officer in the Naval service is required to show in himself a good example of virtue, honor, patriotism and subordination. To the contrary, the evidence is strong that in involving his officers in his own acts of deceit and violation of regulations, they felt that he was depriving them of dignity.

III. LCDR ARNHEITER's judgment and leadership were faulty -

- (a) His conduct of the so-called "character guidance" program, which many of his officers and crew believed, and not unreasonably, to be compulsory, denominational, religious services.
- (b) His continuation of the childish method of correction of his officers, i.e., the "boner box" system of fines -- after he became aware of the strong adverse reaction of the officers.
- (c) His firing of weapons without any necessity in close proximity of junks which were being inspected. This frightened, if not unduly jeopardized the lives of, the Vietnamese and his own people.
- (d) His expenditure of the crew's welfare funds for the purchase of a speedboat, on which he then mounted a machine gun and which he used for non-recreational purposes as a so-called "scout" boat.
- (e) His holding of "public mast" against alleged offenders, at which time they were brought before the entire crew, without prior notice or preliminary investigation, contrary to usual procedures. There is evidence that the offenders, because of natural extreme nervousness at such an ordeal, were unable to say anything in their own behalf.
- (f) His unwarranted endangering of his personnel by towing at high speed at night the ship's motor whaleboat and the "scout" boat, with men embarked.
- (g) His conduct of a self-initiated "coastal orientation" of Vietcong-controlled territory, close to shore, with limited maneuverability because only one main engine was in operation.

LCDR ARNHEITER's principal contentions concerning his relief for cause, and in his demands for further inquiry, are that VANCE was a woefully lax ship which needed drastic measures by LCDR ARNHEITER to make it fit for forthcoming operations, and that his relief was caused by a conspiracy of dissident junior officers. Neither the record of investigation nor other material since submitted by LCDR ARNHEITER bears out these contentions. The evidence shows that VANCE

had been a fine ship and had completed a previous Market Time employment in an outstanding manner. The evidence also shows that many members of the crew felt they had become the laughing stock of the Fleet under LCDR ARNHEITTEr's command. As to the "conspiracy", the most that can be said in this regard is that LCDR ARNHEITTEr's failure in leadership cost him the willing support of all of the officers and many of the enlisted men of the USS VANCE. Other than LCDR ARNHEITTEr's bare allegations there is no substantial evidence whatsoever of any concert of action to undermine LCDR ARNHEITTEr's authority and position. Further, it was the distinct impression of the investigating officer that it was only through the efforts of the ship's officers that the morale of the crew remained as high as it did.

Discussion:

This case involves the attributes and position of the commanding officer of a ship of the United States Navy. Command of a ship of the Navy is a high privilege, not the right of any person. The position, by law, of a commanding officer of a ship of the Navy is unique, reflecting the special hazards associated with operations at sea and the unceasing responsibility of the commanding officer for the safety of his ship and her crew. For this reason, by statute and by U.S. Navy Regulations, all commanding officers "are required to show in themselves a good example of virtue, honor, patriotism and subordination." Because of his absolute responsibility for a valuable ship, for her officers and enlisted men, and for his official actions which are directly attributable to the Government of which he is an officer, and because of the extraordinary authority which accompanies these responsibilities, the commanding officers of our ships are carefully chosen and are duly observed by their responsible seniors. For the same reasons, should any commanding officer appear to be lacking in essential qualifications, particularly in that cardinal attribute -- judgment, prompt action by responsible seniors is a duty. A ship, her people, and possibly the national interest in the international scene are involved.

Fortunately, we have more officers in the Navy who are qualified and seek command at sea than we have ships to command. Accordingly, the Navy can be selective and there is no necessity for accepting less than high performance from our commanding officers.

In this instance receipt of information of irregular practices within USS VANCE and her operations in the combat area shook the confidence of LCDR ARNHEITTEr's immediate seniors in his ability as a commanding officer. Under the existing circumstances the correct thing was done - it was requested he be detached on temporary duty

to permit an investigation to determine the full nature and extent of his irregular actions as a commanding officer. On completion of the investigation the logical options available were (1) to return him to command of VANCE, (2) order him to command of another DER or (3) order him to other than a command assignment. The findings of the investigation indicated bad judgment and lack of integrity on his part and accordingly he was not ordered to return to a command. On review of the letter of recommendation submitted by his responsible senior, including the investigation record, the Chief of Naval Personnel, in Washington, held the detachment from VANCE to be "for cause" and so placed the letter and decision in LCDR ARNHETTER's official record in the Bureau of Naval Personnel.

The action taken by the Navy in this case is essentially no different than that which would be taken in the case of unsatisfactory performance by a corporate or appointed civil executive in civil life. In fact, LCDR ARNHETTER's seniors would have been derelict in their duties had they not acted firmly. The public has a right to expect such responsible action. As previously stated, no commanding officer has a right to his command and must expect to be relieved of his command if he fails to meet the public trust in his proper performance of duty. There can be no other rule.