

2 September 2005

MEMORANDUM FOR SENATOR WARNER

Dear Senator Warner:

It's hard to believe, but it has been over 30 years since we last served in the U.S. Navy together - - you as Secretary of the Navy and I as your Judge Advocate General. Since then I have had only one or two opportunities to speak with you during your illustrious years as a United States Senator - - and then on matters that were undoubtedly relatively inconsequential, since I, at least, have completely forgotten them.

I seek an opportunity to meet and talk with you now, however, for at least a few brief minutes, on a matter that is of genuine and substantial importance, not only to a substantial group of our former Navy and Marine Corps "shipmates, " but to the American public and to our ideal of a fair and honest United States Government. I refer to the matter of the June 1967 Israeli air and surface attack upon the USS LIBERTY (AGTR-5) in the eastern Mediterranean Sea during the "Six-Day War." That attack killed 34 Americans - - 33 U.S. Navy personnel and one American civilian; it wounded an additional 172 American sailors; and it so devastated the \$40,000,000 LIBERTY that she was ultimately sold for a pittance as scrap.

At the time of that attack I was the senior Navy Judge Advocate on the staff of Admiral John Sidney McCain, Jr., CINCUSNAVEUR. Admiral McCain convened a Navy Court of Inquiry to investigate all the circumstances of the attack, and in due course the record of that Court's investigation was sent to me for my legal review - - which was standard Navy practice, and what I was there for. I had the 650-page record for a total of about 18 hours, during 15 of which I was concentrating solely upon it. At the end of that time, after Admiral McCain had learned that I was having problems finding evidence in the record to support some of the Court's findings, but was only about a third of the way through it, the Admiral had the record withdrawn from me, and I had no input into his action upon it.

Not until many years later did I ever see the approving endorsement that Admiral McCain had placed on the Court's record - - on the very day that he withdrew it from me. And not until many years later did I learn, from USS LIBERTY survivors and other competent witnesses, many of the facts of the attack and facts concerning the conduct of the Court of Inquiry.

Senator Warner, in the attached letter, which I joined in signing on 27 July 2005, I have related to the present Secretary of the Navy the facts which convince me - - and which I believe should convince any conscientious and objective official, lawyer or otherwise - - that the Navy Court of Inquiry of 1967 was a near-total farce, and that it could neither then nor now be considered an honest, or a thorough, or a reliable investigation of the major tragedy that was the attack upon the USS LIBERTY.

In the 38 years since the LIBERTY attack, the survivors of that attack have been subjected to unjust treatment in many and diverse ways. Among other things, they have been denied the honor, that should have been theirs, of recognition as prime exemplars of the Navy's historic tradition: "DON'T GIVE UP THE SHIP." By the same token, the American public has during that time been fed a totally erroneous and a dishonest version of the history of that attack.

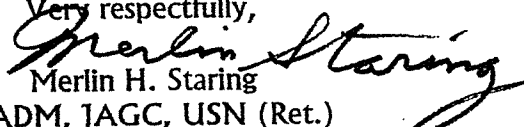
This matter has been raised and has resurfaced now through the filing with the Secretary of the Army, by the USS LIBERTY survivors, of a formal Report of War Crimes committed by the state of Israel on 8 June 1967 through its unprovoked, unjustified, and unlawful attack upon the USS LIBERTY and her complement of 294 American officers and crew. That Report of War Crimes was filed with the Secretary of the Army on 8 June 2005, exactly 38 years after the attack. It is the responsibility of the Secretary of the Army, as the Executive Agent for the Department of Defense in such matters, to supervise the execution of the thorough investigation of such reported incidents - - and it is the responsibility of the Secretary of the Navy to provide for the prompt reporting and investigation of reported incidents committed against members of his department. Finally, it is DOD policy to ensure that all such incidents, where appropriate, be remedied by corrective action.

With the filing of their Report of War Crimes, Senator Warner, the survivors of the USS LIBERTY attack have formally invoked those various responsibilities of the Department and the Secretary of Defense, the Secretary of the Army, and the Secretary of the Navy as summarized briefly above. The official record of the 1967 Navy Court of Inquiry, as now maintained and supplied by the Department of the Navy, quite literally demonstrates on its very face that it fell far, far short of constituting the inquiry "into all the pertinent facts and circumstances leading to and connected with the armed attack; [the] damage resulting therefrom; and [the] deaths of and injuries to naval personnel" as had been directed by its convening authority. In addition, the 5-page approving endorsement that Admiral McCain hastily placed on that record on 18 June 1967 fails even to note that the Court had nowhere nearly fulfilled its directed mission - - and he failed to send the record back for further work to fulfill that mission as it was well within his power to do. Finally, among a number of other respects in which he failed in or abdicated his command responsibilities, the convening authority relied at some points in his endorsement upon incomplete consideration of evidence in the record, and at others purported to reach erroneous, unsubstantiated, or misleading conclusions from the record which it was his duty to have read and considered.

Senator Warner, I think you know me well enough to know that I do not present this matter for your attention lightly, or without having considered the available documents and evidence closely and with a critical eye. I most respectfully ask of you, Sir, that you read our attached Liberty Alliance letter to the Secretary of the Navy, and the two important and revealing documents we have attached to it as Tabs A and B. With the full understanding of the matter that I believe those more detailed documents will give to you as an experienced attorney, and as one with long and impressive Navy credentials and experience at all levels, I earnestly ask that you make your conclusions known to the

Secretary of the Navy and to the Secretary of the Army who now currently have this matter pending before them for consideration in light of their respective responsibilities.

I do have one additional and concluding point that I wish to make with you, Senator, that I would prefer to deliver orally. I hope, Sir, that you will give me that brief opportunity.

Very respectfully,

Merlin H. Staring
RADM, JAGC, USN (Ret.)