

Liberty Alliance

The Honorable Gordon England
Secretary of the Navy
1000 Navy Pentagon
Washington, DC 20350-1000

July 27, 2005

Subject: United States Government
Investigation of the 8 June 1967
Israeli attack on the USS LIBERTY (AGTR-5)

Dear Mr. Secretary:

I am RADM Clarence A. (Mark) Hill, Jr., USN (Ret.), and I write to you in my capacity as Chairman pro tem of the U.S.S. Liberty Alliance, Inc. I assumed that position after the death in February 2004 of Admiral Thomas H. Moorer, USN, the retired chairman of the Joint Chiefs of Staff. Admiral Moorer was the Founding Chairman of our Liberty Alliance which he had been instrumental in forming in May 2002 as an organization devoted solely to the support of the survivors of the 8 June 1967 Israeli attack on the USS LIBERTY (AGTR-5) and of their organization, The USS LIBERTY Veterans Association. Right up to the time of his death Admiral Moorer had for over 36 years been outspoken in his support of the USS LIBERTY survivors and their efforts to rectify the injustices to which both they and the American public had been subjected through a deliberate manipulation and warping of the recorded history of the event.

For reasons which will become apparent, I have asked RADM Merlin H. Staring, JAGC, USN (Ret.), a former Judge Advocate General of the Navy and the Treasurer of our Liberty Alliance, to join me in preparing this letter and in submitting it for your consideration.

☆☆☆☆
Admiral Thomas H. Moorer, USN
Chairman, Joint Chiefs of Staff
Retired
Founding Chairman

☆☆☆☆
General Ray Davis, USMC
Medal of Honor
General of Marines, Retired
Founding Vice Chairman

☆☆
RADM Clarence A. (Mark) Hill, Jr.
USN (Ret.)
Chairman pro tem

☆☆
RADM Merlin Staring
JAGC, USN (Ret.)
Former Judge Advocate General
Treasurer

☆
BGen Max G. Halliday
USMC (Ret.)
Director

Ambassador James Akins
Director

Captain Richard Kiepfer, MD
USN (Ret.), *Director*
U.S.S. Liberty Survivor

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As we are sure you are well aware, the U.S. Navy technical research ship USS LIBERTY (AGTR-5) was on 8 June 1967 attacked by Israeli air and naval forces in the Eastern Mediterranean Sea. Thirty-four Americans assigned to the vessel – 33 U.S. Navy personnel and one civilian U.S. Government employee – were killed in the attack; 172 Navy personnel were wounded; and the ship was damaged beyond any further use and was accordingly scrapped. On 10 June 1967 Admiral John S. McCain, Jr., USN, Commander in Chief, United States Naval Forces, Europe (CINCUSNAVEUR), headquartered in London, England, appointed a formal Court of Inquiry “to inquire into all the pertinent facts and circumstances leading to and connected with [that] armed attack; damage resulting therefrom; and deaths of and injuries to naval personnel.”

We address you now in this matter, Mr. Secretary, for two important reasons, both springing from an official letter that your Department recently addressed to an inquiring Member of Congress under date of 16 March 2005. We attach at TAB A, for your ready reference, a letter of that date which the Office of the Judge Advocate General sent to Congressman Rob Simmons of Connecticut.

Our first reason for addressing you with respect to that letter is in the nature of a fervent thank you. In the Department’s letter to the Congressman is the statement, for the record, that “[the] Court of Inquiry [ordered by Admiral John S. McCain, Jr., Commander-in-Chief, U.S. Naval Forces, Europe] was the only United States Government investigation into the attack.” (Emphasis supplied.) We are most grateful to the Department of the Navy for this official confirmation of a fact that the USS LIBERTY survivors, and others in their support, have maintained over all of these 38 years since the attack. During those years there have been many published assertions and claims that the attack had already been “investigated” a dozen or more times, by various Congressional or other U.S. Government officials or authorities. We deeply appreciate having that matter laid authoritatively to rest.

Following immediately upon that helpful clarification, however, the letter at TAB A states: “The Navy plans no further investigations into the incident.” (Emphasis supplied.) We most respectfully submit, Mr. Secretary, that such a position by the Department of the Navy – if it is to be construed as a firm and considered determination – can only be adopted by ignoring a complex of evidence and circumstances that demonstrate the utter inadequacy and unreliability of the investigative proceedings conducted by the Navy Court of Inquiry of June 1967 – to put the kindest face on the record of those proceedings. If, on the other hand, the statement is intended to indicate only that the Navy has no present plans to reopen the matter – perhaps leaving open the possibility of further investigative proceedings, by the Navy or Congress or other duly constituted authority – we most respectfully submit that the Navy, in

consideration of the facts that we shall now enumerate, should not oppose such further investigative proceedings should they be conducted or ordered by the Congress, for example – or by the Secretary of the Army, who now has just such a request under consideration in his capacity as Executive Agent for the Secretary of Defense pursuant to Department of Defense Directive Number 5810-01B of 29 March 2004.

The Court of Inquiry appointed by Admiral McCain on 10 June 1967 was directed to take the sworn testimony of witnesses and to submit a verbatim record of its proceedings, including its findings of fact. It first convened at the London headquarters of the Convening Authority late on 10 June 1967, then proceeded to the Mediterranean Sea where it conducted its proceedings, first aboard USS LIBERTY as she limped under escort toward Malta, then at Malta where the ship was drydocked.

Upon the initial convening of the Court at London Admiral McCain had orally directed that it conduct and complete its proceedings within one week. In its record of proceedings, as a preface to its Findings of Fact, the Court cited, as an “unusual difficulty” that it had experienced in conducting its proceedings, “the necessity [thus imposed] of investigating such a major naval disaster of international significance in an extremely abbreviated time frame.” Pursuant to that patently unusual and unreasonable directive and requirement, however, the Court, after meeting during the three calendar days of 13 to 15 June at Malta [its record presents those Malta sessions as constituting its “Second” and “Third” days], returned to London on 16 June 1967 and on that day there conducted its final “Fourth Day” proceedings. At London, on 16 and 17 June, the Court’s Findings of Fact were formulated and its tape-recorded proceedings were rendered into a written record which, with its documentary exhibits and appendages, constituted a document of over 650 pages.

The official Navy record of the proceedings of that 1967 Court of Inquiry thus reveals that the Court, pursuant to the one-week time limit imposed upon it, actually met during portions of five calendar days – two days of its allotted time having been consumed in its travel between London and the Mediterranean. It is small wonder that the Court fell far short of fulfilling its directed mission of inquiring into “all the pertinent facts and circumstances leading to and connected with” that attack.

The failure of the Court to inquire into, and to record, “all the pertinent facts and circumstances” is both apparent and clear from multiple circumstances of record. We will flag here, preliminarily and briefly, some of the most significant and blatant of those tell-tale indicators:

- (1) The arbitrary imposition of a 7-day time limit within which the Court was required to complete its inquiry into a massively complex event;

- (2) The fact that, in its three days in Malta, it had access to and took testimony from only 14 of the 260 surviving members of LIBERTY'S complement – many of her 172 wounded crewmen, obviously including many who had been at the heart of the action, having already been medevaced to other U.S. Navy vessels and shoreside facilities for medical attention. (Never thereafter were these critically important eyewitnesses officially questioned concerning their observations of or experiences during the attack.)
- (3) Some of the few crewmen whose testimony was in fact recorded included in their sworn testimony factual observations concerning the attack which were eliminated by the Court from its written record or were otherwise subsequently redacted from the Court's record as it is now officially held and acknowledged by the Government;
- (4) Some of the LIBERTY crewmen who did have an opportunity to testify before the Court attempted to respond in full, or to include in or add to their accounts factual observations which would have been clearly relevant to the "pertinent facts and circumstances . . . connected with the armed attack" that the Court had been charged with eliciting -- but were stopped and expressly forbidden by the Court to testify further in those areas;
- (5) The President of the Court and the Court's appointed Counsel, toward the conclusion of the last day of their proceedings at Malta on 15 June 1967, discussed the perceived advisability of the Court's proceeding to Israel in an attempt to get relevant evidence from Israeli sources; the President of the Court telephoned Admiral McCain, the Convening Authority, seeking an extension of the Court's deadline to permit such an investigative effort; but any such extension was denied by the Convening Authority and the President was told to "come home with what you have."

Some, or perhaps all, of these investigative deficiencies are directly attributable to the "unusual difficulty" that the Court itself acknowledged at the time that it had experienced in conducting its proceedings – "the necessity of investigating such a major naval disaster of international significance in an extremely abbreviated time frame."

Moving from the hasty proceedings of the Court of Inquiry to the submission and processing of its results – on the afternoon of 17 June 1967 the record of the Court's proceedings was delivered by the Court's appointed Counsel to the senior Navy Judge Advocate General's Corps officer then on the CINCUSNAVEUR staff – then-Captain Merlin H. Staring, JAGC, USN. In

delivering the record the Court's Counsel simply told the CINCUSNAVEUR Staff Judge Advocate that Admiral McCain was sending it to him for his review. The Staff Judge Advocate thus charged with that review – a normal and anticipated procedure whereby the Convening Authority would have available a legal opinion and recommendations concerning the Inquiry proceeding and its results – turned immediately to his detailed examination and consideration of the record. He continued that process steadily into the early morning hours of 18 June 1967, then after a four-hour rest break resumed his review at 6:00 AM on 18 June 1967.

Early in the forenoon of 18 June the Court's Counsel, again as an emissary from the Convening Authority, reappeared and inquired of the Staff Judge Advocate concerning the status of his review and when it might be expected to be completed. The Staff Judge Advocate advised that he had by then read only about a third of the record – that there were many clerical and typographical flaws in the physical record that should be remedied before it was formally forwarded to the high governmental authorities who undoubtedly awaited it – that, more importantly, the reviewer had not yet been able to find, in the parts of the record that he had so far reviewed, testimony or other evidence to support some of the Court's stated findings – and that he could not yet estimate when he could complete his review and recommendations but was continuing to devote himself solely to that task.

The Court's Counsel departed with that information, reported it to Admiral McCain and the President of the Court, Rear Admiral Kidd, then returned to the Staff Judge Advocate about 20 minutes later with the message that CINCUSNAVEUR, the Convening Authority, had directed him to come and get the Court's record from the Staff Judge Advocate and bring it back to the Convening Authority. The Staff Judge Advocate accordingly surrendered the record to the emissary exactly as he had received it; he was neither then nor later asked for any of his work or any opinions that he might have formed to that point; and he had no further contact with the Court of Inquiry or its results at any time during the remaining eight years of his active Navy career.

The records ultimately declassified and released by your Department, Mr. Secretary, show that the record of proceedings of the Court of Inquiry, as thus produced, was formally submitted by the President of the Court to Admiral McCain, the Convening Authority, by letter dated 18 June 1967. Your records also show that, on that same 18 June 1967 date, Admiral McCain endorsed the record forward, addressed to the Judge Advocate General of the Navy as required by the Navy's investigative procedures – the Judge Advocate General being then charged with the responsibility of circulating the investigative record to all cognizant or interested Navy officials and commands and, ultimately, with the permanent custody and safekeeping of the official record. Admiral McCain's endorsement consisted of five typewritten pages of substantive or procedural

comments, concluding with his unqualified approval of the proceedings and findings of the Court of Inquiry "based upon knowledge available as of 191425Z" (emphasis supplied). [Since we will have occasion to refer to a number of provisions of that endorsement, a full copy of it is attached for your convenient reference as TAB B.]

Rear Admiral Kidd, the President of the Court, departed the London CINCUSNAVEUR headquarters on the afternoon or evening of 18 June 1967 en route to Washington, DC, with the thus-endorsed record of the Court of Inquiry for delivery to the Department of the Navy. Whether he did so on 18 June as thus understood, or on 19 June as might be indicated by the "191425Z" date time group which rather illogically concludes Admiral McCain's 18 June endorsement, it is certain that the drafting of that endorsement, and such consideration of the content of the 650-plus-page record as may have underlain it, was all accomplished – presumably by Admiral McCain with or without the assistance of his nonlegal staff (or perhaps Rear Admiral Kidd) – within either about five hours [up to 181425Z June 1967] or about 29 hours [up to 191425Z June 1967].

We would first note that the U.S. Navy commander who appointed the Court of Inquiry directed it "to inquire 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." In contrast to the fully warranted and completely justified breadth of that investigative assignment, the recent letter from your Department to the Congress purports to restate – and, in the process, seeks to narrow – both the scope and significance of that Court of Inquiry investigation. Noting simply that the Court had been ordered "to investigate the circumstances surrounding the attack," it told the Congress that the investigation had "focused primarily on U.S. military communications problems prior to the attack" and upon "the heroic efforts of LIBERTY'S crew in damage control during the aftermath of the attack." To the extent that these latter representations may be true, they constitute in themselves an acknowledgment that the 1967 Court of Inquiry fell far short of inquiring into "all the pertinent facts and circumstances leading to and connected with the armed attack," as had been clearly directed by the Convening Authority.

The Court's very first recorded Finding of Fact was to the effect that the attack by Israeli forces upon USS LIBERTY resulted from a mistaken identification of that ship, (thus was not an intentional assault on the part of the Israelis). The Convening Authority, in paragraph 15 of his endorsement, addressed that vital aspect of the matter only briefly, attributing his conclusion that "the attack was in fact a mistake" to his series of preceding "comments," most of which did indeed relate to "U.S. military communications problems prior to the attack." (One exception: His almost-admiring comments in his paragraph 11 concerning the "remarkable efficiency of the coordinated Israeli air and surface attack" and the "particularly noteworthy . . . efficacy of [the Israelis'] air-

delivered rockets" with respect to "their penetrating capabilities and devastating accuracy.")

Only one of the prior comments upon which the Convening Authority thus relied in support of his conclusion that the attack "was in fact a mistake" bore even tangentially upon the possibility of "mistake," versus "intentional attack" – his paragraph 14, seemingly bemoaning a deterioration of the competence of both the United States and the Israelis in visual identification procedures. In connection with that rather pious observation he professed that the LIBERTY'S national colors had been "shot down in the opening stages of [the] action," taking no account whatsoever of the testimony, in the Court's record, that those colors had been promptly replaced by the ship's larger and even more visible "holiday colors." In addition, he expressly noted that both "intense fires on the ship," ignited in the early stages of the attack – "coupled with herculean efforts by [LIBERTY'S] engineer department to increase speed . . . produced heavy black smoke which compounded the recognition problem facing the attacking forces." It is far from clear in what manner the USS LIBERTY, or any other United States force, displayed in this event any apparent deficiency "in our recognition (sic) competence" which would prompt such a gratuitous and misleading attempt to assume for our nation a shared responsibility.

Beyond these observations concerning the incomplete, the shallow, and the contrived comments by the Convening Authority in his endorsement on the Court's record, Mr. Secretary – an endorsement as demonstrably hasty and ill-considered as the Court's proceedings themselves – there is yet more to demonstrate more specifically that the 1967 Navy Court of Inquiry into the unprovoked attack upon the USS LIBERTY was and is totally inadequate as a basis for an accurate historical record of that tragic event – and a totally inadequate record of the actions, the merits, and the entitlements of the survivors of that event and of the families and survivors of the 34 Americans who were killed in that event.

At the very outset, in orally ordering that the Court of Inquiry complete and submit its work within one week, the Convening Authority imposed a condition that was totally and blatantly unreasonable in the circumstances. A basically unarmed United States Navy ship had been subjected to a sudden, concerted, and unprovoked attack by unmarked forces of a foreign nation. Thirty-four Americans had been killed in the assault; 172 others had been wounded - - many of them disabled in varying degrees for life; and the ship devastated beyond further use. To require the official investigation of an event of such magnitude and complexity to be completed in one week was not only to invite a superficial, incomplete, and unreliable result - - but to ensure it.

There is still now available, Mr. Secretary, a very substantial volume of live and fully competent testimony – officially unheard testimony – to the events of 8

June 1967 and to the widespread aftermath of those events. Over 30 of the Navy and Marine Corps survivors of the Israeli attack are still available -- many of them having overcome or tolerated grievous wounds and having carried (and suffered), for 35 years, graphic memories of the events of 8 June 1967. Those survivors, once they ultimately overcame the fear of threatened consequences that had been drilled into them by the 1967 Court of Inquiry, have now for years sought to be heard -- and they both stand ready and seek now to state their observed truths about the assault on the LIBERTY and its aftermaths.

In addition, there are still available a substantial number of other competent witnesses who, while not among the heroic victims and survivors of the attack, were privy in various ways to relevant June 1967 events. Such additional testimony includes, but is not limited to, the following:

(1) Eye witness accounts of aircraft surveillance, well prior to the Israeli attack on the LIBERTY, with the Israeli Star of David identification on one of those surveillance aircraft plainly visible to members of LIBERTY'S crew.

(2) Evidence that the LIBERTY herself was, except for her special antennas, nothing more than a Victory ship converted for U. S. Navy purposes -- a type which dominated the U. S. Navy's Service and Transport Forces at the time. Her profile, paint, and bow designation were identical to those of a plethora of U.S. Navy ships that had plied the Mediterranean during the 1960's, every day of the year. Based on those characteristics alone, no military pilot of a Mediterranean littoral country could have failed to identify her, prior to the attack, as an American ship -- without even considering all of the other forms of identification she displayed at the time, including particularly, of course, her U.S flag.

(3) Evidence that the communication foul-ups which resulted in LIBERTY'S being some one-hundred miles from where the JCS had ultimately intended her to be -- a major focus of the cursory endorsement placed on the investigative report by the Commander-in-Chief, U S. Naval Forces, Europe -- is somewhat beside the point in view of the subsequent telephonic contact established between the Secretary of Defense and the President, in Washington, with Rear Admiral Lawrence R. Geis, USN, the Commander of Carrier Task Force 60.1 who flew his flag on USS AMERICA (CV-66). Within range to succor LIBERTY, Admiral Geis had authorized AMERICA's Captain, Don Engen, to launch fighter aircraft that could, by their mere presence, have without further bloodshed ended any mistaken-identity claim by the attackers. Ordered by the President to recall the fighter aircraft that had been launched to aid the LIBERTY in response to her distress call, Admiral Geis had no alternative to compliance with that direct order from the Commander-in-Chief. That

order thus ended any chance of alleviating the loss of life and damage to which USS LIBERTY was being subjected.

Although the CINCUSNAVEUR endorsement to the LIBERTY Court of Inquiry may have been stamped "TOP SECRET" for reasons of "State," we do not hesitate to observe here that, had its contents become public knowledge at the time, it would have been greeted with derision and disgust by every officer and sailor in our Fleet, world-wide.

In the long-continued and still continuing attempt by the U. S. Government – and the Navy – to keep the true facts of the attack on the USS LIBERTY from general knowledge – as well as the efforts of its crew to save their ship, which they accomplished without outside assistance – their rightful place in the annals of the U. S. Navy's historic tradition – "Don't Give Up The Ship" – has been denied to them. We submit that it is time – and there is still time – to right a great wrong.

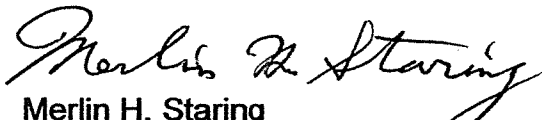
As we have indicated briefly above, Mr. Secretary, The Liberty Veterans Association – the survivors of the attack – have on 8 June 2005 filed with the Secretary of the Army, in his capacity as Executive Agent for the Secretary of Defense, a formal and well-documented Report of War Crimes Committed Against U.S. Military Personnel on June 8, 1967, during the Israeli attack on the USS LIBERTY on that date. That documented report seeks to generate the convening, by the Secretary of the Army, of an investigating body to undertake "the complete investigation [of the attack on LIBERTY] that should have been carried out thirty-eight years ago." One of the several War Crimes specifically reported in that submission by the survivors involves the actions of the attacking Israeli forces in firing at and destroying or sinking the humanitarian life rafts that the LIBERTY had launched, or was preparing to launch, in an effort to save some of her wounded personnel. At least one survivor witness before the 1967 Navy Court of Inquiry testified, under oath, specifically on those actions by the Israeli forces – but that portion of his sworn testimony was omitted from the Court's written record – or was thereafter deleted from the official record of those proceedings as held and produced (belatedly) by the Department of the Navy as its official custodian.

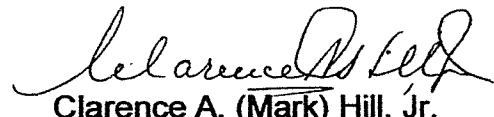
Because of the official interest that the Secretary of the Army thus has in these circumstances – and because of the relevance of this entire communication to the consideration that he is now giving to this Department of Defense matter – we are simultaneously delivering a copy of this letter to the Secretary of the Army for his information and consideration as well.

We most respectfully ask, Mr. Secretary, that you carefully consider our foregoing presentation – that you examine and appraise, objectively, the official records of your Department to which we have referred, and the validity and

accuracy of those records that we have challenged -- and that you now, before it is too utterly late, both consent to and support the efforts of the LIBERTY survivors and their supporters to generate a full, fair, and objective United States Government investigation into the facts and records of the 8 June 1967 attack by Israel upon the USS LIBERTY (AGTR-5).

Most sincerely, and very respectfully,


Merlin H. Staring
Rear Admiral, JAGC, USN (Ret.)


Clarence A. (Mark) Hill, Jr.
Rear Admiral, USN (Ret.)

Copy to:
The Secretary of the Army