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Testimony in Support of New Hampshire House of Representatives Bill 1041

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Hearing Date: January 12, 2024
Committee: Standing Committee on State-Federal Relations and Veterans Affairs

Thank you Chairman Moffett and Members of the Standing Committee for your consideration of HB 1041 to establish a commission to investigate the USS *Liberty* incident and its aftermath. I also appreciate your consideration of my written testimony in support of that bill.

On June 8, 1967, a combined aerial and naval assault, lasting over an hour, by Israeli forces on the USS *Liberty* (AGTR-5) killed 34 Americans and wounded more than 170 others.[1] On the day of the attack but prior to it, the *Liberty* was reconnoitered multiple times by Israeli military aircraft over the span of several daylight hours.[2]

The *Liberty* never approached closer than thirty-eight nautical miles to the Israeli coast.[3] Nevertheless while steaming in clear weather and calm seas in international waters of the Mediterranean Sea northwest of the Egyptian city of al-ʿArīsh, the *Liberty* came under repeated aerial attack by Israeli forces at approximately 2 PM, local time, followed by an assault by Israeli motor torpedo boats.[4]

As a result of the heroic response of its officers and crew, the *Liberty*—not a warship but an auxiliary vessel—is "the most highly decorated ship … for a single action" in US Navy history.[5] Yet, despite the circumstances of the deadly assault and the crew's heroic performance during and after the attack, the US government, evidently, has never investigated the culpability of Israeli civilian leaders and military officers for the unprovoked attack.

On June 10, 1967, a US Naval Court of Inquiry (NCOI) into the attack was convened at the direction of ADM John S. McCain, Jr. with RADM Isaac C. Kidd, Jr. as its presiding officer. RADM Kidd "closed the Court" on June 16, 1967, and it findings were provided to ADM McCain on June 18, 1967. The NCOI's report was classified Top Secret and not declassified until 1976.

On June 28, 1967, the Defense Department issued a public media release comprised of a summary of the proceedings of the NCOI together with a transcript of testimony by the ship's

* At the regular meeting of American Legion Post 40 held on January 9, 2024, the membership authorized me to provide testimony in support of HB 1041 as the Post Judge Advocate.

captain.[6] On the very first page of the summary of proceedings it is stated:

> It was not the responsibility of the Court to rule on the culpability of the attackers and no evidence was heard from the attacking nation … The Court heard witnesses testify ... to significant surveillance of the LIBERTY …
>
> Inasmuch as this was not an international investigation, no evidence was presented on whether any of these [Israeli] aircraft had identified LIBERTY or whether they had passed any information on LIBERTY to their own higher headquarters.

On the same day as the DoD's media release Secretary of State Dean Rusk would read the selections I have quoted above along with other portions of the summary to members of the Senate Committee on Foreign Relations in executive session.

In response to a question by Senator Hickenlooper about whether Israeli pilots had identified the *Liberty* as an American vessel Rusk reiterated: "You see, we do not have in front of our own Naval Court of Inquiry Israeli personnel or officers or anything of that sort so the Court of Inquiry under those circumstances could not, I suppose, properly make a finding on that point."[7]

In fact, Secretary Rusk's Department already had pertinent information. On June 10, 1967, Message 0854 was sent from the US Defense Attaché's Office in Tel Aviv ("USDAO Tel Aviv").[8] Its addressees are the White House, Office of Secretary of Defense, Chief of Naval Operations, State Department, Joint Chiefs of Staff, and the Defense Intelligence Agency.

Message 0854 relayed intelligence obtained from a reliable Israeli source inside the Israeli military establishment. In short, Message 0854 states that Israeli aircraft, at the direction of ground controllers, made at least two reconnaissance passes specifically for the purpose of ascertaining the identity of the *Liberty*.

On each pass, the Israeli aviators observed the *Liberty* flying the American flag and they relayed this information to ground controllers. The Israeli source of this intelligence reported he personally overheard these radio transmissions and disclosed them after he heard an Israeli news broadcast claiming the attack was due to mistaken identity.

Thus, less than 48 hours after the attack, top US civilian and military officials had credible evidence that Israeli officials were falsely claiming the *Liberty* had not been identified as an American vessel before the attack, an assertion the Israelis mendaciously clung to until June 17, 1967. Even then Israelis maintained that the *Liberty* "made an effort to hide its identity by flying a small flag which was difficult to identify from a distance".[9]

Secretary Rusk was not the only top American official to have this information within days of the attack. On June 15, 1967, the USDAO Tel Aviv sent a message (Message 0900) for RADM Kidd, as "President of [the] Court of Inquiry", providing a detailed chronology of the attack and

subsequent events.[10]

In paragraph 13 of Message 0900 the DAO specifically references Message 0854 and states:

> USDAO source reported secondary source gave info gathered by overhearing IDF AF [Air Force] air-to-ground control frequencies. Info suggested that IDF aircraft made two or three identification passes over a ship sometime prior to attack on Liberty. Aircraft reported ship had U.S. flag … Info this para forwarded to limited addressees including CNO and DIA in USDAO 0854 Jun 67.

Although this intelligence was passed to the State Department Secretary Rusk makes no mention of it in his Senate testimony. And, although other message traffic is discussed in and included as exhibits to the NCOI's report neither Message 0854 itself nor the information it contains, as summarized in Message 0900, is discussed or referenced in the body of the report.[11]

As of 2005, it was the position of the US Navy's highest legal authority, the Office of the Judge Advocate General, that "The Court of Inquiry was the only United States Government investigation into the attack."[12] Over the years there were additional American analyses or memoranda occasioned by the attack on the *Liberty* but in none of the public records do they purport to have independently investigated the culpability of Israeli civilian leaders and military officers for the attack.

For instance, the June 1967 Joint Chiefs of Staff Fact Finding Team had a very limited scope. Although the Team produced a 194-page top secret report ("Report of the JCS Fact Finding Team: USS Liberty Incident, 8 June 1967"; JCS Files, 898/392) its mandate was only to "examine the circumstances relating to the issuance and transmission of operations directives to the LIBERTY associated with events during the period 1 June to 8 June 1967 which terminated in the attack on USS LIBERTY ..." As reflected in its final report, the Fact Finding Team did not deviate from that directive.

There is much more to be said on the subject of whether Israeli culpability in the attack on the *Liberty* has ever been properly investigated by anyone in the US government. To that end, I have attached to my testimony a 2021 article published by an unofficial US Navy cryptologic history web site. That article summarizes ongoing federal litigation, now being appealed in *Kinnucan v. National Security Agency et al.*, No. 23-2500 (9th Cir. filed Oct. 2, 2023), to obtain various documents pertaining to the attack that are still classified.

Thus far, my goal has been to provide evidence that no proper, comprehensive investigation has ever been conducted by federal officials. If you are convinced of that then it follows that a proper investigation by a New Hampshire commission into the culpability of Israeli officials and the failure of US officials would not duplicate any existing investigation.

Having argued that no proper investigation has yet my been conducted, in the remainder of my written testimony I will offer seven reasons why, after so many decades, New Hampshire can and

should take on this task.

1. At perhaps no other time in recent memory, since the 1985 arrest of American-born Israeli spy Jonathan Pollard, has US foreign policy regarding Israel been under such close scrutiny as it is now. **As Granite Staters and other Americans, citizens and policy makers alike, reconsider our relationship with Israel they deserve to be fully informed about, among other things, the Israeli attack on the *Liberty* and, perhaps more importantly, why American officials never properly investigated Israeli culpability in that attack.**[13]

2. **June 8, 1967, was not the first time Israeli forces attacked Americans**. In the summer of 1947 a pre-state Jewish paramilitary known as Lehi or the "Stern Gang" reportedly attempted to use a bomb to assassinate President Harry S. Truman.[14] Less than a year later, on May 22, 1948, the US Consul General in Jerusalem, Thomas C. Wasson, America's senior diplomat in Israel, was shot, reportedly by an Israeli sniper, in Jerusalem.[15] US Navy Chief Petty Officer Herbert Walker, assigned to the Consulate's Naval Communication Unit, was also shot by a sniper near the consulate a day prior to Wasson's shooting. Both men died on May 23, 1948.[16] On October 23, 1948, "an Israeli land patrol" in Haifa fired on US personnel in a small boat attached to the USS *George K. MacKenzie* (DD-836).[17] A few weeks later Israeli troops would fire on the USS *Gainard* (DD-706) on December 13, 1948.[18] Then, too, there are the abortive Israeli false flag attacks of Operation Shoshannah, also known as the Lavon Affair, undertaken in 1954 by Israeli agents in Cairo. As Henry Kissinger would years later aptly, if succinctly, state: "The Lavon affair in the '50s was about Israelis blowing up American installations in Cairo and blaming it on the Arabs."[19] In none of the cases recounted above is there any evidence I could find in the public record that the US government ever investigated or attempted to hold Israeli officials accountable for these dangerous and, sometimes, deadly attacks.

3. **American military personnel, including those from New Hampshire, and their families deserve to know that if they are killed or injured in the line of duty by the forces of a foreign power then the American government will hold the officials of the attacking state to public account.**

4. **The families of the military and civilian personnel who died in the attack (or since then) and the survivors deserve to have the assurance that the US did everything reasonably within its power to ascertain all the relevant facts of why Israeli forces attacked the *Liberty* and to know why the federal government, so far, has declined to conduct a proper, comprehensive investigation to that end.** This, of course, includes the family members of US Navy CDR David Edwin Lewis, a *Liberty* survivor, who was born in Colebrook, NH in 1931 and died there in 2021.

5. **Some non-trivial number of your constituents do, or undoubtedly would, support an investigation of the sort contemplated by HB 1041**. Two Congressionally chartered US military veterans organizations have repeatedly passed national resolutions in favor of an investigation (see American Legion resolutions 508 of 1967 and 40 of 2017 and Veterans of Foreign Wars resolutions 470 of 2002, 403 of 2003, 424 of 2006, 420 of 2007, 413 of 2009, and

423 of 2013). New Hampshire veterans are counted among the ranks of both organizations.

6. **Even some ardent supporters of Israel back an investigation**. Historian Michael Oren served on active or reserve duty in the IDF for decades, he also served in the Israeli Knesset and as Israel's ambassador to the United States. In 2007, Oren told the *Chicago Tribune* "the case of the assault on the *Liberty* has never been closed."[20] The article continues: "If anything, Oren said, 'the accusations leveled against Israel have grown sharper with time.' Oren said in an interview that he believed a formal investigation by the U.S., even 40 years later, would be useful if only because it would finally establish Israel's innocence."

7. Finally, New Hampshire should act as part of a vigorous federalism. As James Madison observed in Federalist No. 45, under the US Constitution, the States "retain ... a very extensive portion of active sovereignty" and "State governments may be regarded as constituent and essential parts of the federal government …" The power to investigate federal matters is delegated neither exclusively nor explicitly to Congress; it is an implicit power.[21] Thus, under our federal system and also under the Tenth Amendment to the Constitution, New Hampshire retains the authority to launch its own investigations into federal conduct. Ideally, the federal government would have properly investigated the attack on the *Liberty* decades ago. It did not. **When the federal government shirks its duties the states are not left without recourse, they have the ability and, arguably, a duty to conduct their own investigations into federal inaction or misconduct**. New Hampshire cannot compel the federal government to cooperate in its investigation nor to take any action based upon the findings of a state investigation. However, that should not deter the Granite State from the pursuit of truth, the provision of critical information to the public, and holding the federal government accountable in the courts of history and public opinion.

Thank you again for your consideration of HB 1041 and my testimony in support of it.

Notes

1. Except as otherwise indicated, details on the *Liberty* and the attack are drawn from James M. Ennes, Jr., *Assault on the* Liberty (Reintree Press, 2013) and/or James M. Scott, *The Attack on the* Liberty (Simon & Schuster, 2009).

2. "A State Department report later determined that [Israeli] recon planes buzzed the *Liberty* as many as eight times over a nine-hour period [before the attack]." James M. Scott, "The Spy Ship Left Out in the Cold," *Naval History*, June 2017, p. 30.

3. Scott (2009) p. 186, n. 330 citing A. Jay Cristol, *The Liberty Incident* (Brassey's 2002) p. 267.

4. The attack on the *Liberty* was the only Israeli naval engagement at sea during the 1967 Israeli-Arab war. Far from occurring in a heated battle involving a tangle of enemy ships firing at each other at close quarters—the proverbial "fog of war"—the *Liberty* was a lone, non-combatant vessel attacked in broad daylight on a calm blue sea dozens of miles from any other hostile engagement.

5. On the status of the *Liberty* as an auxiliary vessel see James C. Fahey, *The Ships and Aircraft of the U.S. Fleet* (8th ed., Naval Inst. Pr. 1980) (1965) pp. 46, 83; Ken W. Sayers, *U.S.*

Navy Auxiliary Vessels: A History and Directory from World War I to Today (McFarland & Co., 2019) pp. at 246-247; Deborah W. Cutler & Thomas J. Cutler, *Dictionary of Nautical Terms* (Annapolis: Naval Inst. Pr., 2005) p. 16; U.S. Navy, *The Commander's Handbook on the Law of Naval Operations*, NWP 1-14M §2.3.1 (U.S. Navy 2017) pp. 2-3. On *Liberty* as most decorated vessel see Anthony R. Wells, *A Tale of Two Navies: Geopolitics, Technology, and Strategy in the United States Navy and the Royal Navy, 1960-2015* (Naval Inst. Pr., 2017) p. 82. The ship's commanding officer, William L. McGonagle, was awarded the Medal of Honor (*see* Rep. John V. Tunney, "Congressional Medal of Honor Awarded to Capt. William Loren Mcgonagle", *Congressional Record* 114:13 (Jun. 12, 1968) p. H16993.

6. Office of Assistant Secretary of Defense (Public Affairs), *News Release No. 594-67*, June 28, 1967, US Naval History and Heritage Command, Box 913 of the Immediate Office Files of the Chief of Naval Operations: 1960-1969.

7. *Executive Sessions of the Senate Foreign Relations Committee together with Joint Sessions with the Senate Armed Services Committee* (Historical Series) 90th Cong. 1st sess., 1967 vol. 19, (US GPO, 2006) p. 755.

8. US DAO TEL AVIV SECRET NOFORN 0854 Jun 67, 101000Z, National Archives and Records Administration (NARA), Record Group 319: Records of the Army Staff, "Top Secret Telecommunications Center Messages, 1965-1974" (Entry UD-UP 230). Some of the message text quoted herein has been lightly edited for readability and clarity. *See also* Harriet D. Schwar, ed., "Telegram From the Defense Attaché Office in Israel to the Defense Intelligence Agency", June 13, 1967, *Foreign Relations of the United States* (hereafter "FRUS"), 1964-1968, vol. 19 (US GPO, 2004) Doc. 276.

9. US DAO TEL AVIV CONFIDENTIAL 0928 Jun 67, 181030Z, US Navy, Office of the Judge Advocate General, "Record of Proceedings, Court of Inquiry to Inquire into the Circumstances Surrounding the Armed Attack on USS LIBERTY (AGTR-5) on 8 June 1967". Message 0928 is marked "Doc. 1, Ex. 48 -LIBERTY". This message also contains a possible clue as to why the Johnson administration never properly investigated the attack. Gen. Yitzhak Rabin's aide Lieutenant Colonel Efrat told the US Defense Attaché of Rabin's extreme anger over a recent *Newsweek* article on the attack. Declassified Israeli diplomatic cables indicate that Israelis knew that President Johnson gave an off-the-record briefing with a *Newsweek* reporter where he revealed the Israelis had engaged in a "deliberate attack" against the *Liberty*. Israeli officials and operatives within the US administration quickly mobilized behind the scenes to blackmail Johnson into silence with allegations of antisemitism. Israeli diplomat Ephraim Evron issued instructions to "Alert him [Johnson] to the personal implications if the public finds out that he participated in spreading the story, which borders on blood libel." Four known American Israeli operatives involved in mitigating the impact of Israeli belligerence were Democratic fund-raiser Abe Feinberg (Israeli code name: "Hamlet") US Supreme Court Justice Abe Fortas ("Ilan"), attorney and LBJ confidant David Ginsburg ("Harari"), and US Ambassador to the UN Arthur Goldberg ("Menashe"). See Tom Segev, *1967* (New York: Metropolitan Books, 2007) pp. 568-570; James M. Scott, *The Attack on the Liberty* (Simon & Schuster, 2009) pp. 141, 194-198.

10. US DAO TEL AVIV SECRET NOFORN 0900 Jun 67, 151615Z, US Navy, Office of the Judge Advocate General, "Record of Proceedings, Court of Inquiry to Inquire into the Circumstances Surrounding the Armed Attack on USS LIBERTY (AGTR-5) on 8 June 1967". Message 0900 is marked "Doc. 45, Ex. 48 -LIBERTY".

11. The contents of Message 0854 are also referenced in a June 13, 1967, State Department memo: "In a separate report from USDAO Tel Aviv, a reliable American source was told by a senior Israel Aircraft Industries (IAI) official that on the morning of June 8 he heard IDF transmissions at air-to-ground frequencies. An aircraft reported sighting a ship, was ordered to investigate, and reported back that the ship had a US flag. The aircraft was ordered to recheck and made a second and possibly a third pass, confirming at least for a second time that the flag was US." Harriet D. Schwar, ed., "Memorandum From the Director of the Bureau of Intelligence and Research (Hughes) to Acting Secretary of State Katzenbach", June 13, 1967, *FRUS, 1964-1968*, vol. 19 (US GPO, 2004), Doc. 285. Nicholas Katzenbach, as the Deputy Secretary of State, was Rusk's second-in-command and Acting Secretary when Rusk was abroad.

12. US Navy, Office of the Judge Advocate General, "Letter from Jane G. Dalton, Captain, JAGC, U.S. Navy, to the Hon. Rob Simmons" (5890 Ser 15.151.A1/0198), March 16, 2005, Robert R. Simmons Papers, Archives and Special Collections, University of Connecticut Library, Storrs, CT.

13. I am reminded of the 1796 farewell address of President George Washington, who warned that "a passionate attachment of one nation for another produces a variety of evils. Sympathy for the favorite nation, facilitating the illusion of an imaginary common interest in cases where no real common interest exists, and infusing into one the enmities of the other, betrays the former into a participation in the quarrels and wars of the latter without adequate inducement or justification." *Washington's Farewell Address to the People of the United States*, Senate Pub. 115-5 (US Senate Historical Office, 2017) pp. 19-20.

14. Fifteen days after Israel declared its independence, Lehi's members were inducted into the IDF. On Lehi as a terrorist organization *see,* generally, J. Bowyer Bell, *Terror Out of Zion: Irgun Zvai Leumi, LEHI, and the Palestine Underground, 1929-1949* (St Martin's Pr 1977) and Thomas Suárez, *State of Terror : How Terrorism Created Modern Israel* (Olive Branch Pr. 2017). On the alleged Truman assassination plot *see* Ira R. T. Smith, *"Dear Mr. President . . ." The Story of Fifty Years in the White House Mail Room* (J. Messner, 1949) 229, 230; Margaret Truman, Harry S. Truman (William Morrow & Co., 1973) pp. 489, 490; Nachman Ben-Yehuda, *Political Assassinations by Jews: A Rhetorical Device for Justice* (SUNY Pr. 1993) p. 331, n. 11; Ronald L. Feinman, *Assassinations, Threats, and the American Presidency: From Andrew Jackson to Barack Obama* (Rowman & Littlefield 2015) pp. 77-78.

15. "In Memoriam—Thomas C. Wasson", 25 *American Foreign Service Journal* 19 (1948); John Gordon Freymann, "Jerusalem, 1948," 65 *American Foreign Service Journal* 28 (1988) pp. 30-31.

16. "Second American Dies in Jerusalem: Machine-Gun Wounds Are Fatal to Navy Aide," *New York Times* (May 24, 1948) p. 1.

17. There may have been Marines in the small boat. According to the "Semi-Annual Summary of U.S. Naval Forces, Eastern Atlantic and Mediterranean, 1 April 1948 – 30 September 1948" from CINCNELM dated Oct. 14, 1948, fifty-one Marines from the 21st Marines, Reinforced, landed in Haifa on June 22, 1948, and "reported to the senior USN observer on duty with the [UN] Mediator. Sydney Gruson, "Palestine Battle Spreads To North; Truce Endangered," *New York Times,* Oct. 24, 1948, p. 13; "Alert Sounded in Tel Aviv; All Fronts Reported Quiet; Situation in Galilee is 'static'," *Jewish Telegraphic Agency,* Oct. 25, 1948.

18. Stephen Green, *Taking Sides: America's Secret Relations with a Militant Israel*

(Morrow & Co., 1984) p. 41.

19. Adam M. Howard, ed., "Memorandum of Conversation," July 24, 1975, *FRUS, 1969–1976*, vol. 26 (US GPO, 2011), Document 212.

20. John Crewdson, "New revelations in attack on American spy ship", *Chicago Tribune*, Oct. 02, 2007, <https://www.chicagotribune.com/chi-liberty_tuesoct02-story.html>. Archived at <https://web.archive.org/web/20140807042400/https://www.chicagotribune.com/chi-liberty_tuesoct02-story.html#page=1>.

21. Jennifer L. Selin & Caylie Milazzo, "*The Law*: 'If Men Were Angels': The Legal Dynamics of Overseeing the Executive Branch", *Presidential Studies Quarterly,* Vol. 51, No. 2, June 2021, p. 429.

USS Liberty Lawsuit Reveals US Gov't. Withholding Hundreds of Pages about Deadly 1967 Israeli Attack (Guest Post)

⋮ 8/8/2021



By Michelle Kinnucan

An ongoing federal Freedom of Information Act (FOIA) reveals the US government is refusing to release at least 302 pages of documents concerning an unprovoked attack 54 years ago on an American ship, the USS *Liberty* (AGTR-5).

In a March 10, 2012, letter Pamela N. Phillips, the chief of the National Security Agency's Freedom of Information Act (FOIA) section told Joe Meadors: "The National Security Agency (NSA) finalized the review of all material relative to the attack on the USS Liberty and made it available on the Internet." Ms. Phillips continued: "… any future requests made by you concerning this topic will be filed with your previous FOIA case with no further action by this Agency."[1]

Joe Meadors is a persistent researcher on the attack on USS *Liberty* (AGTR-5). As many Station HYPO readers will know, on June 8, 1967, an attack by Israeli air and naval forces on *Liberty* killed 34 Americans and injured over 170. *Liberty* is "the most highly decorated ship … for a single action" in US Navy history.[2] Meadors knows all about this because he was among the wounded on that day of storied heroism in the face of infamous treachery.

About seven years after a government bureaucrat essentially told Joe Meadors to shut up and sit down I filed my own FOIA requests with the NSA, the Defense Intelligence Agency (DIA), and the Central Intelligence Agency (CIA). Months passed and the government produced not a single record I requested.

Fortunately, I was able to obtain the services of an excellent team of attorneys from Davis Wright Tremaine LLP. The attorneys, Thomas Burke, Caesar Kalinowski, and Allexia Arnold, are not only top-notch lawyers but they're great people to work with and on September 1, 2020, *Kinnucan v. National Security Agency et al.*, (no. 2:20-cv-01309) was filed in the US District Court in Seattle (Burke, Kalinowski, and Arnold did not contribute to or author this article).

According to investigative journalist Stephen Green, the late Robert L. F. Sikes, who was an Appropriations Committee member, said the report I requested contains testimony from a CIA witness that on June 7, 1967, the Israeli government threatened to attack *Liberty* if she was not moved away from Israel.[3] Green also claimed: "The information provided by Representative Sikes has been corroborated by other committee sources who do not wish to be identified".[4] Ostensibly, the NSA is withholding the report at the direction of Congress.

The alleged Israeli threat to attack *Liberty* was purportedly relayed via a June 7, 1967, cable from the US Defense Attaché in Tel Aviv to the Pentagon.[5] I asked the DIA for "All communications and message traffic to or from the Office of Defense Attaché in Israel from June 5, 1967 to June 10, 1967." The DIA says they have no responsive records.

In the NSA's *A History of U.S. Communications Security: The David G. Boak Lectures*, vol. II, it says: "Since those days [1957], no less than 32 … U.S. facilities (embassies, legations, missions) containing crypto-equipment have come under attack, 13 of them during the 6 Day War in the Middle East …" I asked the NSA for records pertaining to the 13 attacks during the 1967 war and for the "Encrypted Traffic Reports … of the USS Little Rock (CLG-4) for the months of May, June, and July of 1967 and/or any analyses or reports that may aggregate or summarize the data/information contained in those reports." The NSA claims they have no responsive records.

Earlier this year, the CIA released three one-page information reports from June and October of 1967.[6] These reports were first released with redactions in the 1970s. Copies obtained by the present lawsuit reveal significant new source information. According to these reports, sources in Tel Aviv stated: "Israel's forces knew exactly what flag the LIBERTY was flying" and Israeli Defense Minister Moshe Dayan "personally ordered the attack" on *Liberty* over the objections of senior military officers, one of whom characterized the attack as "pure murder".

In 1977, CIA Director Turner went on national television and emphasized that these three reports were "raw intelligence". He quickly shifted the focus away from them onto an "evaluated overall document".[7] A day after Turner's television appearance Alan D. Wolfe, then the CIA's Chief of the Near East Division in the Directorate of Operations, commented that the three information reports were "raw reports which in historical hindsight were garbage, but which appeared worthy of dissemination at the time."[8]

In available records, Wolfe does not explain on what basis the reports went from “worthy of dissemination” to “garbage.” As an aside, Wolfe was formally reprimanded for his role in the Aldrich Ames spy scandal. In the 1980s, Ames was a Soviet KGB double agent while working as a CIA counterintelligence officer in Rome where Wolfe was then the CIA Station Chief.

In any case, Wolfe also indicates that the “evaluated overall document” Turner cited was an intelligence memorandum dated June 13, 1967. That memo is one of the documents the CIA released to me.[9] It does not mention or evaluate the three reports implicating Israeli officials in a knowing attack on *Liberty*. It could not because it was prepared before the earliest distribution date—June 23, 1967—of the three information reports.

So, in front of a national audience, Turner invoked a memo that he knew had nothing to say about the three reports he and Wolfe dismissed as mere “raw” intelligence. In fact, one of those “raw” reports was more accurate than CIA analysis at the time.

The memo Turner and Wolfe cited claimed there: “was little doubt that the Israelis failed to identify the Liberty as a US ship before or during the attack.”[10] The second of the three information reports contained intelligence from a US citizen working for an American newspaper. The source claimed that “Around 10-11 June while in Tel Aviv I talked with an Israeli …” The Israeli reportedly made it clear the attack on *Liberty* was no mistake and accurately “implied that the ship’s identity was known at least six hours before the attack …”[11]

From the CIA, I also requested “records pertaining to the response, analysis, evaluation of, and/or decision not to evaluate, the 1967 CIA ‘Information Report’ ” implicating Dayan. None of the documents provided so far by the CIA mention or evaluate the three reports implicating Israeli officials in a knowing attack on *Liberty* nor do any of them reference the alleged June 7, 1967, cable from the Defense Attaché in Tel Aviv.

However, the CIA admits they are withholding in their entirety three other documents totaling 173 pages. The CIA had never before publicly acknowledged the existence of these documents. Based on timing, two of the three documents the CIA refuses to release could conceivably include evaluations of one or two of the three information reports. The CIA describes each of the two documents as an “Internal Document Prepared for the Purpose of Providing a Briefing on Several Topics”.

If you look into the Israeli attack on *Liberty* you will quickly encounter claims that the attack has been investigated multiple times by the US government, which, it is claimed, always found the attack was a tragic case of mistaken identity. In fact, following the 1967 attack, the US Navy undertook a hasty and incomplete Naval Court of Inquiry (NCOI) that found: “Available evidence combines to indicate the attack on LIBERTY on 8 June was in fact a case of mistaken identity.”[12]

However, the June 28, 1967, Defense Department public summary of proceedings of the inquiry into the attack stated: “It was not the responsibility of the Court to rule on the culpability of the attackers and no evidence was heard from the attacking nation”.[13] In 2005, the Navy’s Office of the Judge Advocate General

told a member of Congress that: “The Court of Inquiry was the only United States Government investigation into the attack.”[14]

Many of *Liberty’s* surviving crew dispute the claim of mistaken identity. Over the years they have been joined in that by American officials including Richard Helms (Director of Central Intelligence, 1966-1973), Lieut. Gen. Marshall S. Carter (Director of the NSA, 1965-1969), Captain Ward Boston, Jr., JAGC (legal counsel for the 1967 NCOI), and former Chairman of the Joint Chiefs of Staff Admiral Thomas H. Moorer.[15, 16]

Perhaps all the relevant evidence, when properly analyzed in context, supports the mistaken identity conclusion. However, if the evidence supports that hypothesis then why, after more than five decades, is the US government still refusing to release more than 300 pages of records relevant to understanding the deadly attack? And what other relevant records are they withholding that we don’t even know about? Hopefully, *Kinnucan v. National Security Agency et al.* will pry some of these records loose and bring others to light.

NOTES

1. US National Security Agency, FOIA/PA Office, “Letter from Pamela N. Phillips to Joe Meadors”, March 10, 2012. Online at: https://www.muckrock.com/foi/united-states-of-america-10/audio-tapes-of-june-8-1967-attack-on-the-uss-liberty-1086/#file-4342

2. Anthony R. Wells, *A Tale of Two Navies: Geopolitics, Technology, and Strategy in the United States Navy and the Royal Navy, 1960-2015* (Naval Inst. Pr., 2017) p. 82.

3. Sikes as cited in Stephen Green, *Taking Sides: America’s Secret Relations with a Militant Israel* (Morrow & Co., 1984) p. 239, see also pp. 215, 226.

4. *See* Green, p. 275, n. 48.

5. *See* Green, pp. 226, 239.

6. The CIA’s document IDs for these records are: C01286836, C06140175, and C06140176. You can download these reports and other documents, including case pleadings, from: https://spaces.hightail.com/space/oMuiiUFaID

7. American Broadcasting Company (ABC), *Good Morning America*, September 19, 1977.

8. Harriet Dashiell Schwar, ed., “516. Editorial Note”, *Foreign Relations of the United States*, 1964–1968, Volume XIX, Arab-Israeli Crisis and War, 1967, Edward C. Keefer, series ed. (Washington, DC: US GPO, 2004) pp. 1016-1017. The CIA has has neither released nor acknowledged the three CIA records referenced in Document 516.

9. The CIA’s document ID for this record is C01218180.

10. See CIA document C01218180, p. 3.

11. See CIA document C06140176.

12. US Navy, Office of the Judge Advocate General, “Record of Proceedings, Court of Inquiry to Inquire into the Circumstances Surrounding the Armed Attack on USS LIBERTY (AGTR-5) on 8 June 1967” pp. 161. The entire NCOI record for the *Liberty* attack is available at: https://www.jag.navy.mil/library/jagman_investigations.htm The page quoted is included in Part 6 at: https://www.jag.navy.mil/library/investigations/LIBERTY%20ATTACK%20PT%206.pdf

13. Office of Assistant Secretary of Defense (Public Affairs), “News Release No. 594-67”, June 28, 1967, US Naval History and Heritage Command, Box 913 of the Immediate Office Files of the Chief of Naval Operations: 1960-1969.

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15. American Legion,”Resolution No. 40: USS *Liberty*“, *Proceedings of the 99th National Convention of the American Legion*, US House of Representatives Doc. 115-91 (US GPO, 2018) pp. 124-125.

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