

Exhibit 28

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Special Report

Cristol Claim of 13 Investigations Into Israel's Attack on USS *Liberty* a Travesty

By Terence O'Keefe

When A. Jay Cristol's *The Liberty Incident* was released a year ago, it was uncritically hailed as the last word in the 36-year controversy surrounding Israel's 1967 attack on the USS *Liberty* that took 34 American lives and wounded 172. The book was packed with tedious minutiae arguing the case. Indeed, if its author is to be believed, *Liberty* survivors have engaged in a 36-year slander against the state of Israel—which was guilty, at worst, of a grievous mistake in the heat of war.

"Thirteen investigations have all exonerated Israel," is Cristol's mantra.

Like many others, I found the author's case initially persuasive. Here, after all, is a federal judge, a Navy captain, author, scholar, former Navy lawyer and apparently a combat fighter pilot who claims to have studied this matter for 15 years, with an open mind, and who finally was forced to conclude that it was a tragic accident. Those who say otherwise, I agreed, must be either mistaken or malicious.

But the survivors are persuasive, too—and Cristol dismisses their eyewitness accounts out-of-hand. Eyewitnesses, he claims, are not reliable, as they are too close to the event to be believed. Better to rely upon dispassionate historians such as himself who examine the evidence later, with a cooler and more objective vision.

It was with that view that I decided to examine both the Cristol and the *Liberty* positions in an effort to find where the truth lies. For more than a year I queried survivors and Mr. Cristol himself, seeking facts, evidence and the truth.

To most questions, Cristol points to his account of 13 exonerating investigations, so I focused closely on those. Here is the result:

Cristol's 13 Investigations

1. The U.S. Navy Court of Inquiry: The senior legal adviser to the Court of Inquiry reflected that, in his entire career, he has never seen court of inquiry appointing letters with such limited authority, or an investigation made in such haste. The court's hearings began before the *Liberty* even arrived in Malta, and the report was completed just 10 days after the attack. The court commented on this haste in the official record: "The Court of Inquiry experienced no unusual difficulties incident to conducting the subject proceedings except for the necessity of investigating such a major naval disaster of international significance in an extremely abbreviated time frame."

Due in part to the required haste and the limitations imposed on the scope of the court's inquiries ("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 concluded that "available evidence combines to indicate...[that the attack was] a case of mistaken identity."

How, one might ask, could one inquire into all of the circumstances without hearing from the attacking nation? In fact, the court did neither. According to Captain Ward Boston, chief legal counsel to the Court of Inquiry, the court found that the attack was deliberate, but reported falsely that it was not because they

were directed by the president of the United States and the secretary of defense to report falsely. So the findings are fraudulent. Yet these fraudulent findings were the basis for several other reports that followed.

2. Israeli government investigations: The Ram Ron and Yerushalmi reports of 1967 were not investigations. Both were elements of an Israeli process to determine whether anyone in Israel should be tried for a crime. That the attack itself was an accident was a given. Both hearings officers determined that no one in Israel did anything wrong, and that the USS *Liberty* was partly responsible, for a number of contrived reasons, such as "failure to fly a flag" and "trying to hide"—which the Navy Court of Inquiry found to be untrue.

3. The Joint Chiefs of Staff Report of June 1967: This was an inquiry into the mishandling of several messages intended for the ship. It was not an investigation into the attack. It did not exonerate Israel, because it did not in any way consider the question of culpability.

4. CIA report of June 13, 1967: This interim report, completed five days after the attack, reported "our best judgment [is] that the attack...was a mistake." No investigation was conducted, and no first-hand evidence was collected. Then-CIA Director Richard Helms concluded and later reported in his autobiography that the attack was planned and deliberate—a fact ignored by Mr. Cristol.

5. Clark Clifford report of July 18, 1967: Clark Clifford was directed by Lyndon Johnson to review the Court of Inquiry report and the interim CIA report and "not to make an independent inquiry." His was merely a summary of other fallacious reports, not an "investigation" as alleged by Mr. Cristol. The report reached no conclusions and did not exonerate Israel, as Mr. Cristol also claimed. On the contrary, Clifford wrote later that he regarded the attack as deliberate—a fact ignored by Mr. Cristol.

6. and 7. Two Senate Investigations: The Committee on Foreign Relations meeting of 1967 and Senate Armed Services Committee meeting of 1968 were hearings on unrelated matters which clearly skeptical members used to castigate representatives of the administration under oath before them. Typical questions were, "Why can't we get the truth about this?" They were not "investigations" at all, but budget hearings, and reported no conclusions concerning the attack. They did not exonerate Israel, as claimed by Mr. Cristol.

8. House Appropriations Committee meeting of April and May 1968: This was a budget committee meeting which explored the issue of lost messages intended for the ship. It was not an investigation and reported no conclusions concerning the attack, as alleged by Mr. Cristol.

9. House Armed Services Committee Review of Communications, May 1971: *Liberty* communications were discussed along with other communications failures. The committee reported no conclusions concerning the attack, as alleged by Mr. Cristol.

10. Senate Select Committee on Intelligence, 1979/1981: Mr. Cristol claims that the committee investigated the attack and exonerated Israel, yet he has been unable to provide minutes, a report or other evidence of such an investigation. Rules of the select committee require that any committee investigation be followed by a report. There is no report of such an investigation; ergo, there was no such investigation.

11. National Security Agency Report, 1981: Upon the publication in 1980 of *Assault on the Liberty* by James Ennes, the National Security Agency completed a detailed account of the attack. The report drew no conclusions, although its authors did note that the deputy director dismissed the Israeli excuse (the Yerushalmi report) as "a nice whitewash." The report did not exonerate Israel, as claimed by Mr. Cristol.

12. State of Israel—Israel Defense Force History Department report of June 1982: This Israeli government report was a reaction to a published report by Sen. Adlai Stevenson III that he believed the attack to be deliberate and hoped to provide a forum for survivors to tell their story. It was primarily a summary of the Ram Ron and Yerushalmi reports. The Stevenson forum, which was the impetus for the report, was never held. The report supports the official Israeli position that the attack was a tragic accident.

13. House Armed Services Committee investigation of 1991/1992: Though cited by Mr. Cristol as an investigation which exonerates Israel, the U.S. government reports no record of such an investigation. Cristol claims that the investigation resulted from a letter to Rep. Nicholas Mavroules from Joe Meadors, then-president of the USS *Liberty* Veterans Association, seeking Mavroules' support. Instead of responding

to *Liberty* veterans, however, Congressman Mavroules referred the matter to Mr. Cristol for advice. Survivors heard nothing further. Meadors' letter was never answered. The U.S. government reports that there has been no such investigation.

Time for a Real Investigation

Liberty survivors have said for 36 years that theirs is the only major maritime incident not investigated by Congress. Apologist Cristol's response is to claim that no investigation is needed because the attack has been investigated repeatedly, and that each such investigation has exonerated Israel. That claim is pure fantasy. A recent request to the Congressional Research Service for evidence of any congressional inquiry into the attack on the USS *Liberty* brought a report that Congress has never investigated the attack. Israeli culpability for the attack on the USS *Liberty* has never been investigated by any agency of the United States government. It should be.

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