

13 MAR 2015

From: RADM Terry E. Kraft, USN

To: Secretary of the Navy

Subj: REBUTTAL TO SECRETARIAL LETTER OF CENSURE

Ref: (a) Secretarial Letter of Censure dtd 23JAN15

(b) AGAINST 5800.1D S 0114a

(c) Voluntary Statement of RADM T. E. Kraft dtd 25JUL14

(d) Department of Defense Inspector General Report
#11H118481105 dtd 03MAY12

(e) SECNAV Memorandum For The Record dtd 11SEP2012

I respectfully disagreed with the facts and conclusions contained within the Secretarial Letter of Censure, reference (a), that was presented to me by the Vice Chief of Naval Operations (VNO), ADM Michelle Howard, on 9 Feb 2015. In accordance with reference (b), I have elected to exercise my right to submit a written rebuttal for inclusion into my official record. I have separated this letter into several sections in order to clearly rebut each allegation against me. I respectfully request that the secretarial letter of censure be rescinded and removed from my permanent record.

"Within 15 days of receipt of this letter, you may forward a rebuttal, consistent with reference (d), for inclusion in your official record, if you desire." See Reference (a) at #9.

REBUTTAL

I am unable to properly and fully exercise my right of rebuttal due to being denied (i) the opportunity to participate and defend myself during the Central Disposition Authority (CDA) disposition process, and (ii) access to any of the evidence that supports the alleged facts and conclusions contained in reference (a). Per references (a) and (b), I have the absolute right to rebut the pertinent facts that form the basis of each and every conclusion contained within reference (a). I have been and continue to be denied any substantive opportunity to do so in violation of my due process rights.

Further, prior to the CDA's recommendation to SECNAV to censure me, and prior to receiving SECNAV's censure, I was denied the opportunity to respond to the allegations that I violated Standards of Ethical Conduct for Employees of the Executive Branch, the Joint Ethics Regulation, and U.S. Navy Regulations. A standard ethics investigation would have allowed the discovery of evidence by obtaining input from all parties and the opportunity to respond to allegations. That did not occur. Instead, my first contact with this case occurred in July 2014 when the VCNC notified me via phone call that I would be receiving a visit from some "officials". I learned that the "officials" were investigators from the Defense Criminal Investigative Service and Naval Criminal Investigative Service. The investigators wanted to discuss my interactions with a defense contractor, Glenn Defense Marine Asia (GDMA), during my tenure as the Commanding Officer, USS RONALD REAGAN (CVN 76). I was made aware that the investigators had questions concerning some dinner events that I attended while deployed to the Seventh Fleet area of responsibility in 2006-07. Prior to meeting with the investigators, I submitted a written voluntary statement detailing what I recalled of my involvement with GDMA. I thought it was important to state all the facts that I could recall before any interview. In my voluntary written submission, I included documentation that the dinners I attended were official and approved for my attendance. I also stated

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that I recalled paying \$70 dollars for my attendance at each of the dinners in 2006 and 2007.

In September 2014, I agreed to an interview with investigators. The interview was not recorded. Prior to the interview, I requested the opportunity to review any evidence that pertained to me but was denied. Even though I was denied access to any evidence, I still cooperated and agreed to be interviewed. My interview consisted of mostly questions about RADM Miller and gifts that he may have received. In both my interview and my voluntary written statement, I made it clear that I never received any gifts, of any type, from Leonard Francis or GDMA. I also emphasized that I never solicited any gifts from Leonard Francis or GDMA. During my interview, the investigators made it very clear that they were not investigating allegations of ethical misconduct. Rather, the investigators emphasized that they were investigating allegations of bribery, conspiracy to commit bribery, and disclosure of classified information. It is not clear to me whether an actual United States Navy ethics investigation was ever conducted before receipt of my letter of censure.

Unfortunately, 5 September 14 was the last time I was able to make a statement on my behalf. The Department of Justice (DOJ) quickly turned over my interview materials to Navy authorities, having found no evidence of criminal misconduct. In November 2014, I learned that my case was with the CDA, ADM John M. Richardson, Director of the Naval Nuclear Propulsion Program. I notified the CDA's legal advisor, Captain Kirk Foster, JAGC, USN, that I would continue to cooperate but was concerned that the information contained in the DOJ's investigation was incomplete or misleading with regards to facts that could potentially serve as the bases for allegations of ethical misconduct. However, I was never contacted by anyone prior to 9 February 2015, when I received reference 1a.

In January 2015, ADM Richardson visited Japan. During this visit, I asked to discuss this matter with him, but he declined. Upon receiving my Secretarial Letter of Censure, I requested access to the evidence that formed the basis of censure so that I could exercise my right of rebuttal. But again I was denied. I also asked to speak to the SECNAV to discuss the merits of the censure; that too was denied.

Until receiving the Secretarial Censure, I was never notified of the specific allegations levied against me. I was never allowed the opportunity to participate and defend myself prior to the CDA determining that a Secretarial Censure was the appropriate disposition. After receiving my Secretarial Censure, I have repeatedly been denied access to any evidence and denied the opportunity to meet with SECNAV to provide additional and clarifying information. Given that I have been completely removed from the process and prohibited from reviewing any of the evidence, I have been denied my due process right to rebut the pertinent facts and conclusions contained in Reference (a).

"You attended four GDMA-hosted dinner parties . . . By your own admission, you paid \$70 for each of these dinners. The market value of each lavish dinner party was considerably more than \$70.00 per person. Further, you stated to federal investigators that \$70.00 was a reasonable amount to pay, or words to that effect." See Reference (a) at #2.

REBUTTAL

I do not dispute that I attended the four dinners that were mentioned in reference (a) over the course of two years. Three of these dinners occurred during the deployment of 2006 and one occurred in 2007. However, I maintain that \$70.00 per person for each of these meals was a reasonable amount to pay. My superior at the time, Commander Carrier Strike Group SEVEN,

directed that I attend the dinners during the 2006 deployment and approved of my attendance at one dinner in 2007. He was fully aware that the dinners were hosted by GDMA and widely attended by members of his staff and warfare commanders. As such, it was reasonable to assume that the cost I was to be paid adequately covered the cost of the meal. I am unable to more specifically rebut the alleged fair market value and cost of each meal because I have been denied access to that information.

My deployment as the commanding officer of USS RONALD REAGAN was the first time I had been in the Pacific area of operations since 1998. I had never heard of Leonard Francis or GDMA. I now know that dinners sponsored by GDMA and attended by naval officers had been a regular occurrence for years prior to our deployment in 2006 and many years after, for about a decade total.

As the carrier Commanding Officer, USS RONALD REAGAN, I reported to RADM Miller during the deployment of 2006. He was my direct supervisor and wrote my Report of Fitness. The first foreign port call ever for USS RONALD REAGAN was in Brisbane, Australia on the 2006 maiden deployment. It was my first overseas port call as a carrier commanding officer. RADM Miller had clear expectations for my participation in inport events. After media interviews with RADM Miller and myself, we hosted a reception for over 500 Australian guests onboard the ship. The next day, I accompanied RADM Miller on all our official calls, which included the Governor and Lord Mayor of Queensland. We were also guests of honor at a parade and ceremony for Australia Day on 26 January in Brisbane during that port call. I believe that my attendance at these events cemented the desire of RADM Miller to have me accompany him on all official events during a port call. He also invited other warfare commanders, such as the Airwing and Destroyer Squadron Commanders, to accompany him as well.

I believed then and still believe now that my attendance at these dinners was part of my official duties. See 5 C.F.R. 2635.2041. I recall that RADM Miller attended the same three dinners that I attended on the 2006 deployment. My attendance at these dinners was directed, and expected, by RADM Miller. All warfar commanders were expected to attend and were formally tasked at our morning meetings prior to each port call. I recall that RADM Miller's SJA and designated ethics counselor, (b)(6), (b)(7)(C) JAGC, USN, attended these morning meetings. Prior to attending any of the four dinners in question, I discussed my wardroom's attendance with the COMCARSTRGFM Chief of Staff. I also believe that I informed my SJA, (b)(6), (b)(7)(C) JAGC, USN, that I would be attending these dinners. My SJA never expressed any concern. Given the attendance of my reporting senior, RADM Miller, as well as all other warfar commanders in our battle group, I made the reasonable assumption that attendance at the dinners had been approved by the COMCARSTRGFM SEVEN SJA, (b)(6), (b)(7)(C)

I also reasonably believed that these were considered official dinners pursuant to governmental ethical regulations. See 5 C.F.R. § 2635.2041. The dinners were announced and listed on the official schedule of events for each port call. For example, the published official port schedule listed the second dinner that I attended as an "Official Dinner hosted by Deputy Chief of Navy, RMN, VADM Datuk Ramian Mohamed Ali. Attended by, 6 US Embassy Guests, Naval Attache and husband, GDM Staff. Venue - Swiss Chalet Equatorial Hotel, KL." I included a copy of this official port schedule with the written voluntary submission that I provided to investigators, and directly to the CIA, reference (c). At that dinner, I sat next to the Deputy Chief of Navy, RMN, VADM Datuk Ramian Mohamed Ali.

Despite my understanding that this was an official dinner in which I was not required to pay, I thought it prudent to do so. See ALNAV 07714 "It is frequently prudent to return gifts, or to pay for them, rather than to accept them." I directed the members of my wardroom to pay our fair share for the dinners. The meal consisted of several courses and some

wine. I had no idea what type of wine was served or how much it cost. The price of our fair share was determined by interaction, via email, between my Supply Officer and GDMA. We were told by GDMA what to pay for the dinners, and we paid it. I paid it. I am not sure what other organizations in my battle group opted to pay for their meals, but my wardroom always paid for attendance at dinners involving GDMA. Prior to and after each dinner in question, I spoke with my Supply Officer to ensure that members of my wardroom paid. The cost of the dinner was added to our monthly mess bill and paid from our individual Navy Cash Card accounts.

During my interview with investigators in September 2014, they brought up the topic of the cost of a single dinner. The investigators indicated that when calculating the total cost of the event, to include rental costs associated with hosting the event combined with the expensive wines served, the fair market value per person exceeded \$70 per person. In reference (a), the SECNAV states "for example, the total cost of one of the dinners was approximately \$27,063.50, which equates to \$768.72 per attendee." No data is provided in reference (a) as to how that monetary amount was derived. Reference (a) also fails to mention the cost of any other dinner and appears to come from the same information that I previously discussed with the investigators regarding the cost of only one dinner. I have been provided no information as to what the actual cost of my meal was. For all the reasons listed above, I maintain that \$70 seemed a fair cost for what I was served.

The fourth dinner event occurred in 2007 at the Spoon Restaurant in Hong Kong. As with the previous three dinners, I assumed this dinner to be an official event and that my attendance was approved by my new Strike Group Commander, RDML Charles Martoglio. Although he did not personally attend, members of his staff did, including (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) specifically asked the COMCARSTRKGRU (b)(6), (b)(7)(C) if COMCARSTRKGRU SEVEN staff members could attend the dinner. COS told (b)(6), (b)(7)(C) that the Strike Group Commander, PDML Charles Martoglio was not attending but if

members of his staff chose to attend they would not be prevented from doing so. In addition, I also spoke directly with CAPT Joroy prior to the event who stated that we were approved to attend the dinner at the Spoon restaurant. Again, all members of my wardrobe paid approximately \$70 for the meal that was provided at this event. I have been shown no evidence to suggest that this amount was unreasonable or below market value.

"As a senior officer with over 25 years of service at the time, you knew or should have known that \$70.00 per person was not the market value of these extravagant parties." See reference (a) at #2.

"Given the frequency of the gifts which you received from Mr. Francis, especially as two dinners occurred on dates that were only a week apart, your actions would have led a reasonable person with knowledge of the relevant facts to believe that you used your public office for private gain." See Reference (a) at #4.

REBUTTAL

My experience of 25 years as an officer in the United States Navy in 1986 was prepared me to determine the market value of a GDMA-sponsored dinner. No part of my officer training or experience involved estimating the vintage of wines or the cost of a particular type of meal in a particular western pacific country. As stated previously, 2006 was the first overseas deployment of USS RONALD REAGAN, I had never attended any sort of event of this type at any time in my career, and these dinners had been occurring for several years over the span of numerous strike groups prior to our arrival. We relied on the bill that the husbanding agent provided to my Supply Officer to determine not only the cost of the dinners, but for a variety of other support costs for a carrier visiting a foreign port.

Not does the fact that two of the dinners were "only a work apart" establish that a reasonable person would have recognized that I was using my public office for private gain. Rather, their timing is merely a reflection of previously scheduled port calls and should have no bearing on this case. As stated in reference 14, I had nothing to do with the scheduling of port calls in the Seventh Fleet AOR. The dinners occurred in ports that had been scheduled months in advance by individuals well above my pay grade. Based on my experience at the time, reliance on my Staff Judge Advocate (SJA), deference to the Strike Group Commander, and prior custom and practices within the Seventh Fleet area of responsibility, my conduct and decisions as a United States Navy Captain were both objectively ethical and appropriate.

Ethics has always been a key part of my leadership style. No formal ethics training existed for United States Navy Captains when I assumed major command in 2005. The historical lack of ethics training for non-flag officers was an issue that I mentioned to the Chief of Naval Operations, ADM Greenert, at a Navy Flag Officers and Senior Executive Symposium event in 2012. A few years ago, well after my tenure on USS RONALD REAGAN, the Navy improved in this area by providing ethics indoctrination in pre-command training for senior officers.

As a flag officer, I continued my unrelenting emphasis on proper ethical conduct. I lead full ethics training for all front office staff, and my spouse, every quarter. During that training, we discuss recent IG investigations and all current ethics directives. I have kept a detailed log of all gifts received. They are handled appropriately. I am able to provide logs of all gifts received since I became a flag officer in 2009. Despite offering, I was never given the opportunity to present any of this information on my behalf. Had I been permitted to do so, my ethical conduct over the last nine years would have demonstrated that I have always taken the issue of ethics very seriously and I have always taken proactive steps to be in full compliance.

The assumptions and decisions that I made in 2005 while serving as the Commanding Officer, USS RONALD REAGAN were both reasonable and appropriate and confirmed by comparing my decisions and conduct to those of other senior officers and SECNAV's treatment and disposition of those cases. References (b)(6) are publicly available and discuss the DCI's investigation into alleged ethical violations of ADM Stavridis in 2012. Despite different violations of DCI ethics policy, ADM Stavridis "did not use his office for public gain". See Reference (a).

"The COMCARSTRKGRU SEVEN SJA provided a sworn statement on 21 November 2014 indicating that he does not specifically remember discussing these matters at the time and that, if he did discuss them, based on the description of the events which were provided to the COMCARSTRKGRU SEVEN SJA by the investigators, he does not believe that those seeking a legal opinion fully disclosed the relevant facts." See Reference (a) at #3.

REBUTTAL

I have been denied access to the 21 November 2014 sworn statement of the COMCARSTRKGRU SEVEN SJA and denied access to the summary of the interview of the COMCARSTRKGRU SEVEN SJA by NCIS and DCI. This has prevented me from providing an adequate rebuttal to this allegation. However, COMCARSTRKGRU SEVEN SJA was clearly aware that COMCARSTRKGRU, RDML Miller, was attending GDMN-hosted dinners, and that any written ethical opinions regarding those dinner were filed in the COMCARSTRKGRU SEVEN SJA's office.

With approval of Assistant U.S. Attorney (b)(6), (b)(7)(C) my defense counsel conducted several interviews to prepare me for

interview with investigators on 5 September 2014. On 11 September 2014, my defense counsel [REDACTED] JAGC, USN, conducted a telephonic interview with the former COMCARSTRKGRU SEVEN SJA in question. During that conversation, the former COMCARSTRKGRU SEVEN SJA stated that he recalled there were several hosted dinners during the 2006 COMCARSTRKGRU deployment that were attended by his boss, RADM Miller. The COMCARSTRKGRU SEVEN SJA stated that he did not attend any of these dinners. The COMCARSTRKGRU SEVEN SJA also stated that, although he does not specifically recall the details of any of the dinners, he believes that these would have been classified as either official dinners or widely attended gatherings. See 5 C.F.R. § 2635.204 (a), (1). COMCARSTRKGRU SEVEN SJA further stated that any written ethical opinions he drafted regarding these dinners would have been filed in the COMCARSTRKGRU SEVEN SJA office onboard the USS RONALD REAGAN (CVN 76).

"NCIS and DCIS investigators also interviewed your former RONALD REAGAN SJA with regards to these matters. He stated that he did not opine that you could legally engage in the described conduct. Furthermore, your former SJA stated that since he was not a designated ethics counsel, he knew that only the COMCARSTRKGRU SEVEN SJA would have issued legal opinions." See Reference (a) #3.

REBUTTAL

I have been denied access to the summary of the interview of my former USS RONALD REAGAN SJA by NCIS and DCIS, thus limiting my ability to rebut any statements made by him. My former SJA routinely provided me with ethical guidance and he was aware that I was attending these dinners.

On 15 July 2019, my defense counsel, (b)(6), (b)(7)(C) JAGC, USN, conducted a telephonic interview with (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) JAGC, USN, my former USS RONALD REAGAN SJA. During that interview my former SJA stated that he had previously attended the Staff Judge Advocate Course at the Naval Justice School. During that training, they discussed how/when social dinner events hosted by Leonard Francis, GDMA, could be ethically approved to attend. During my tenure as Commanding Officer, USS RONALD REAGAN, I relied heavily on my SJA, (b)(6), (b)(7)(C) JAGC, USN, for ethics advice. Of note, he (or his lieutenants) were key in determining the disposition of the many gifts received by the USS RONALD REAGAN during the time period 2012-08. For example, I recall his legal opinions on a channel upgrade donation to the ship from (b)(6), (b)(7)(C) totaling over \$125,000, and a personal gift of a baseball jersey from the Washington Nationals that I noted in reference (a). I also consulted with my SJA when I was offered free tickets to a San Diego Padres game. We concluded that it would be unethical to accept them and therefore I did not. We routinely discussed ethics issues that arose throughout my Command Tour, and I reasonably relied upon his counsel.

"You further exercised poor judgment by issuing an official Bravo Zulu (BZ) message The lack of judgment in issuing the BZ message was aggravated by the fact that you distributed the endorsement within the days of attending one of the extravagant GDMA-hosted dinners" See Reference (a) at #5.

REBUTTAL

After every port call, the USS RONALD REAGAN sent dozens of "Bravo Zulu" (BZ) messages and letters to those who had helped make our port calls safe and successful. This is standard practice for any carrier Commanding Officer. These letters would be sent to everyone from city officials, to embassy personnel, to local police chiefs. My Secretarial Letter of Censure, reference (a), vaguely refers to an internal message I allegedly

sent mentioning GDMA. Without further information, I am unable to speculate that this is a reference to a message our USMC PORNALIA REAGAN, sent to COMLOGWESTPAC after a port call. This was an internal naval message, providing feedback on multiple issues. It was never intended to be publicly released and never intended to be used as an official endorsement of a contractor.

It is not clear why a normal post port call BZ message could somehow be linked to my attendance at these dinners. Reference (a) mentions that I sent the endorsement "within days" of one of the dinners. The dinners occurred during the port call while the thank you notes and messages were sent after the ship pulled out to sea. This is standard practice. More importantly, reference (a) fails to mention that I complained about GDMA port costs for the Malaysia port call during our post-cruise debrief. This brief was presented to CINCPACFLT, ADM Gary Roughead, Commander Fleet Forces Command, ADM John Natman, and the Chief of Naval Operations, ADM Mike Mullen. Clearly, I had no affinity nor was I pandering to GDMA when I stated repeatedly to senior leadership in 2006 that port costs in Malaysia were out of line with every other port we visited on our maiden deployment.

I have served the United States Navy honorably for 34 years. I have flown in combat missions from Libya in 1986 to Afghanistan in 2011. I have commanded successfully and ethically at every level. I was honored to receive the Defense Achievement Award, First Class, from the Japanese Maritime Self-Defense force and the Legion of Merit award, personally, from Commander U.S. Pacific Fleet two weeks ago at my change of command in Japan. For the reasons above, I feel strongly that I did not violate any ethical regulations by attending four dinners over two deployments that were directed by RADM Miller, approved by his ethics counselor, and paid for by me. In light of the information presented in this rebuttal to the Secretarial Letter of Censure that I received on 9 February 2015 was not merited. I respectfully request that the Secretarial Letter of Censure, dated 23 January 2015, be rescinded and removed from my official record.

Very respectfully,


Terry B. Kraft

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