

# WHAT EXPLAINS COMMANDER LIPPOLD'S NEWFOUND IMPATIENCE ON THE COLE PROSECUTIONS?

Eight and a half years ago, Commander Kirk Lippold's ship, the USS Cole, was attacked by Al Qaeda. As Richard Clarke explained it in *Against All Enemies*, the Cole should never have been in Yemen.

For over three years the CSG had been concerned with security at the ports in the region that were being used by the U.S. Navy. Steve Simon had written a scathing report on security he discovered at the Navy pier near Dubai in the United Arab Emirates. Sandy Berger had sent the report to the Secretary of Defense. I had personally crawled around and climbed up into sniper positions at the U.S. Navy facility in Bahrain because of repeated reports that al Qaeda planned to attack there. The Defense Department had fixed the problems in Bahrain and the UAW, but bases weren't the only points of vulnerability. When the USS Cole was attacked, we were shocked to learn that the Navy was even making port calls in Yemen.

Mike Sheehan, then the State Department representative on the CSG, had summed up our feelings: "Yemen is a viper's nest of terrorists. What the fuck was the Cole doing there in the first place?"

By late November, the Yemenis provided information to the US that preliminarily tied the attack to Al Qaeda; by late December, the

case became stronger. Yet Clinton held back from a response because, the 9/11 Commission reported, CIA and FBI never conclusively tied the attack to Al Qaeda and besides it didn't seem like Clinton wanted to know anyway.

Clarke recalled that while the Pentagon and the State Department had reservations about retaliation, the issue never came to a head because the FBI and the CIA never reached a firm conclusion. He thought they were "holding back." He said he did not know why, but his impression was that Tenet and Reno possibly thought the White House "didn't really want to know" since the principals' discussions by November suggested that there was not much WhiteHouse interest in conducting further military operations against Afghanistan in the administration's last weeks.

The Clinton Administration refused to do what Clarke and Sheehan pushed to do: to retaliate militarily. Soon after Bush was inaugurated, Clarke started pushing for a response again.

In his January 25 memo, Clarke had advised Rice that the government should respond to the Cole attack, but "should take advantage of the policy that 'we will respond at a time, place and manner of our own choosing' and not be forced into knee-jerk responses." Before Vice President Cheney visited the CIA in mid-February, Clarke sent him a memo—outside the usual White House document-management system—suggesting that he ask CIA officials "what additional information is needed before CIA can definitively conclude that al-Qida was responsible" for the Cole. In March 2001, the CIA's briefing slides for Rice were still describing the CIA's "preliminary judgment" that a "strong circumstantial case" could be made

against al Qaeda but noting that the CIA continued to lack "conclusive information on external command and control" of the attack. Clarke and his aides continued to provide Rice and Hadley with evidence reinforcing the case against al Qaeda and urging action.

[snip]

Rice told us that there was never a formal, recorded decision not to retaliate specifically for the Cole attack. Exchanges with the President, between the President and Tenet, and between herself and Powell and Rumsfeld had produced a consensus that "tit-for-tat" responses were likely to be counterproductive. This had been the case, she thought, with the cruise missile strikes of August 1998. The new team at the Pentagon did not push for action. On the contrary, Rumsfeld thought that too much time had passed and his deputy, Paul Wolfowitz, thought that the Cole attack was "stale." Hadley said that in the end, the Administration's real response to the Cole would be a new, more aggressive strategy against al Qaeda.

Yet Roger Cressey thinks the Bush Administration didn't respond to the Cole simply because it hadn't happened on their watch.

"During the first part of the Bush administration, no one was willing to take ownership of this," said Roger W. Cressey, a former counterterrorism official in the Clinton and Bush administrations who helped oversee the White House's response to the Cole attack. "It didn't happen on their watch. It was the forgotten attack."

From December 17, 2000 forward, the US had

confirmation of Rahim al-Nashiri's role in the *Cole* bombing. He was protected by the Yemeni Government.

At the time, Yemeni authorities insisted that Nashiri had fled the country before the *Cole* bombing. But a senior Yemeni official said that was not the case and that Yemeni investigators had located Nashiri in Taizz, a city about 90 miles northwest of Aden, soon after the attack. The official said Nashiri spent several months in Taizz, where he received high-level protection from the government. "We knew where he was, but we could not arrest him," said the official, who spoke on condition of anonymity because he feared retaliation.

He was not arrested until November 2002. Sometime thereafter, al-Nashiri was water-boarded. In 2005, at a time when the CIA was at risk for having violated the Convention Against Torture, the CIA destroyed tapes of Nashiri's interrogation sessions. He was not charged by the US until July of last year, but by that point, Nashiri had recanted his confession, saying he had confessed because he was tortured (among the things he confessed was that Osama bin Laden had a nuclear weapon).

Meanwhile, Yemen established a virtual revolving door for the *Cole* participants it had in custody: with show trials, followed by prison escapes.

Some Yemenis have questioned whether their government has other motives. One senior Yemeni official, speaking on the condition of anonymity, said Badawi and other al-Qaeda members have a long relationship with Yemen's intelligence agencies and were recruited in the past to target political opponents.

Khaled al-Anesi, an attorney for some of the *Cole* defendants, said Yemen had

rushed to convict them. But he said he is still mystified by the government's subsequent handling of the case.

"There's something that doesn't smell right," he said. "It was all very strange. After these people were convicted in unfair trials, all of a sudden it was announced that they had escaped. And then the government announced they had surrendered, but we still don't know how they escaped or if they had help."

In other words, there were many things that went wrong in seeking justice for the *Cole* bombing: the reluctance on the part of both the Clinton and Bush Administrations to retaliate for the bombing, Yemeni refusal to cooperate in any real legal proceedings against the plotters, the taint of evidence the US had gathered through torture.

Yet through all that time, Lippold has apparently only spoken up publicly once, in 2006, when he called for the US to put more pressure on the Yemenis to bring plotters to justice.

That might be because Lippold's role in the *Cole* bombing has itself been controversial. Lippold's initial story—that the boat had been involved in the mooring operation bringing the ship into the port—was quickly challenged. Then, days later, it was reported that the ship had not followed required security procedures in Aden. The Navy conducted an investigation into his actions, and initial results of the investigation showed that there had been some failures to implement the security plan—though Lippold may have been ordered not to follow all security precautions because of diplomatic concerns. These orders from higher officers, along with DIA warnings that the Navy ignored, may be why the report did not, ultimately, call for any punishment for Lippold; in announcing that decision in one of his last acts as Secretary of Defense, William

Cohen attributed blame to the entire chain of command. Yet later that year, Senator Warner criticized the Navy's decision not to punish Lippold and, when the Navy submitted Lippold for promotion to Captain in 2002, that promotion was not approved by the Senate. Finally, in 2006, later in the year he had called for more pressure on Yemen, his name was finally taken off the promotion list. In the last decade, Lippold has had close working associations with Richard Danzig and Mike Mullen.

So maybe Lippold has had good reason not to complain publicly about the lack of any real response to the *Cole* bombing, or about the Bush Administration's failure to hold either the plotters rounded up by Yemen or the detainees it held in CIA and DOD custody responsible for the bombing—because doing so might hurt his career.

But there's another reason he may not have been too harsh about the way that the US' own screw-ups with al-Nashiri have delayed his prosecution: after 9/11, Lippold worked at the Joint Chiefs of Staff crafting detainee policy.

He recently served as Deputy Division Chief and Politico-Military Planner, Joint Chiefs of Staff, Directorate for Strategic Plans and Policy (J-5), War on Terrorism Division, where he was instrumental in crafting detainee policy for the war on terrorism during its initial stages following the 9/11 attacks. [my emphasis]

Given that fact, don't you think it rather remarkable that on the very day that a Bush dead-ender judge defied Obama's request for a delay in al-Nashiri's trial, Lippold was ready at hand to strongly attack Obama's decision to shut down Gitmo?

'We shouldn't make policy decisions based on human rights and legal advocacy groups,' retired U.S. Navy Cmdr. Kurt Lippold said in a telephone interview.

"We should consider what is best for the American people, which is not to jeopardize those who are fighting the war on terror – or even more adversely impact the families who have already suffered losses as a result of the war."

[snip]

On Thursday, Lippold called Pohl's decision "a victory for the 17 families of the sailors who lost their lives on the USS Cole over eight years ago."

[snip]

But Lippold also denounced suggestions that the Pentagon official who oversees the Guantanamo legal cases, Susan J. Crawford, could withdraw the charges, without prejudice, which would allow them to be reinstated later, should the administration want.

That move, Lippold said, would be "a tragic, politically based mistake. We are now politicizing the war on terrorism . . . an order of magnitude worse than anything we've done."

"If she decides to drop all charges against detainees simply so that the president's executive order could be followed that smacks of undue command influence and politics," Lippold said.

[snip]

"I don't think we should close Guantanamo Bay until we have some process in place, until we understand the impact of closing it, until there is a much more robust review by the international community on how to deal with these detainees," he said. "To bring them to the U.S. and give them the same constitutional rights that we as American citizens have earned is an affront to the decency of these families

and should absolutely not be allowed."

And voila, here we have him doing to the cable news circuit, appearing on this morning's Morning Joe.

Of course, both McClatchy and Morning Joe failed to mention Lippold's role in crafting detainee policy, something that seems just as central to his objections to Obama's policies as his role as Commander of the *Cole*.

Interestingly, Lippold's newfound impatience on the *Cole* prosecutions appears to coincide with his very recent engagement with Military Families United (his association with the group was announced to their Facebook group on February 2).

I've recently become associated with a group called Military Families United that truly represents the families of Blue and Gold Star folks that are out there, defending our freedom worldwide.

Military Families United popped up last summer and has fought for some important policies—like improved veterans care. But one of the goals of the 501c4 appears to be to brand Obama's action—which in the case of ending torture will make members of the military safer around the world—as soft on terrorism. How handy for them, then, they they found someone who had been involved in crafting policy at Gitmo whom they could present, instead, as someone with no more interest than avenging the *Cole* attack? And how handy that that dead-ender judge made al-Nashiri's prosecution the contentious issue.

I expect we haven't heard the last of Commander Lippold.