

28 September 2009

**MEMORANDUM FOR MICHAEL B. DONLEY, SECRETARY OF  
THE AIR FORCE**

**FROM: General (ret) T. Michael Moseley, USAF**

**SUBJECT: Response to SECAF, 21 September 2009 Memorandum**

Thank you for the courtesy and opportunity to respond to your letter of 21 September 2009 and to address these actions resulting from the reinvestigation done by the Department of Defense Inspector General (DOD/IG). I truly appreciate the opportunity to again comment on this reinvestigation and to set the record straight for you as well as for the men and women of the United States Air Force.

First, allow me to state up front that I categorically disagree with the recent findings of this reinvestigation and I completely reject the notion of any wrongdoing on my part. I have previously provided the DOD/IG an in depth rebuttal to their assertions forwarded to me following the reinvestigation and I have made my position to the IG crystal clear. (I will also attach that full rebuttal and AF/JA supporting materials to this letter for your review as well.) This lengthy rebuttal, provided the DOD/IG, included an in depth analysis by my counsel establishing my proper and sustainable adherence to existing standards of conduct, the Joint Ethics Regulations, Federal Acquisition Regulations and the actual facts. I remain troubled these facts were completely ignored. In summary, at no time did I show preferential treatment to a contractor, at no time did I provide non-public information to a contractor and at no time did I ever approve or direct the misuse of subordinates' time and Government property. Additionally, my counsel provided compelling evidence that the monetary value of the gifts received fell well within the allowable standard under the existing regulations. And, the alleged solicitation of a gift was, in fact, the simple passing of a request...not a solicitation of a personal gift that neither I or my family would benefit from in any way. For your consideration, and to be crystal clear, the only guidance I gave anyone during the evolution of this endeavor was to "DO THIS RIGHT." It's as simple as that. Again, I categorically disagree with the findings and I reject the notion of any wrongdoing on my part.

I am also very concerned and very disappointed in a process that appears to have been politicized relative to the conduct of the reinvestigation and the subsequent findings we are addressing today. I, along with counsel, have so stated our concerns in my reply to the assertions made by the DOD/IG. Over the course of this 3-plus year investigation and reinvestigation, I have been absolutely honest, open; fully cooperative and I have made all written and electronic records immediately available for review. And, from my tenure as Vice Chief of Staff of the United States Air Force through the date of my retirement as Chief of Staff of the United States Air Force, I have also had *every* document and communication (written and electronic) reviewed in real time by a JAG Counsel to insure all regulations and standards of conduct are met. And, I have been advised there were no instances of wrongdoing or breaches of ethics or acquisition regulations, policies or standards of conduct. I have also been repeatedly told that while certain senior Air Force officers were identified with wrongdoing from the original investigation – I was not included. As this reinvestigation revealed *no new facts* from the previous 2-plus year investigation, one can only conclude that following the public pressure brought to bear on the DOD/IG by certain officials in the Congress (an elected member and staff) to continue to vilify senior Air Force leadership and to find some type of wrongdoing on my part – we find ourselves where we are today. And, that politicizing of an inspector general process that I have held sacred for over thirty-seven years as a commander at all levels and as the 18<sup>th</sup> Chief of Staff of the United States Air Force, is not only a miscarriage of that process but, in my mind, a major breach of faith.

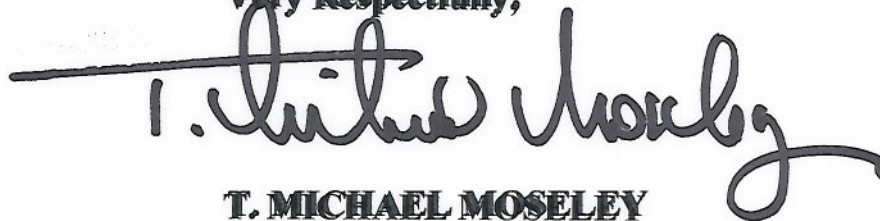
As you highlight in your letter, I (as well as my family) have proudly sacrificed and served our country and our Air Force with distinction, honor and professionalism in peacetime as well as in command of combat forces for over thirty-seven years. I've commanded United States Air Force, Joint and Combined Air Forces at all levels to include theater command – in combat in multiple locations. I've been blessed to have had the privilege of serving in seven joint assignments alongside the magnificent Soldiers, Sailors, Marines and Coast Guardsmen that also defend the Republic. To be clear again, at no time during my tenure as an officer in the United States Air Force, as the Vice Chief of Staff of the United States Air Force or as the 18<sup>th</sup> Chief of Staff of the United States Air Force did I violate a trust with the public

or cross a line relative to ethical standards, regulations or policy.  
**NEVER!**

**Mr. Secretary, I am also troubled we are forced into having this exchange of correspondence. For your review and reconsideration of the actions forwarded to me I will attach not only the original rebuttal to the DOD/IG's assertions but also my current counsel's comments and observations. I look forward to your reconsideration – given all of the facts presented, and an understanding of the process that appears to have been truly politicized. If you remain convinced to place a copy of your memorandum in my permanent records, I respectfully request you also place a copy of this memorandum, and all of the attachments, in my record as well.**

**Mr. Secretary, thank you again for the opportunity to respond directly to you, to address this incomplete IG process, to factually refute each of the assertions made in the reinvestigation with the actual facts and to set the record straight for the men and women of the United States Air Force. God Bless these men and women that wear Air Force "Blue" and God Bless the UNITED STATES AIR FORCE. I remain**

**Very Respectfully,**

A handwritten signature in dark ink, appearing to read "T. Michael Moseley". The signature is written in a cursive style with a long horizontal stroke at the beginning.

**T. MICHAEL MOSELEY**

**General (ret), United States Air Force**

**18<sup>th</sup> Chief of Staff**

**2 Attachments:**

- 1. Memorandum from Col Mayberry dtd 30 Sep 09**
- 2. Memorandum from Col Whiteman dtd 16 Mar 09**



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS AIR FORCE LEGAL OPERATIONS AGENCY

30 September 2009

MEMORADUM FOR MICHAEL B. DONLEY, SECRETARY OF THE AIR FORCE

FROM: Karen E. Mayberry, Colonel, USAF

SUBJECT: Response to Letter of Admonishment

Mr. Secretary, I am the counsel representing General T. Michael Moseley, USAF (Ret). Although it may be unusual for counsel to submit a response to a Letter of Admonishment, I am compelled to do so in these unique circumstances. I appreciate that you have been thrust into the difficult position of reviewing a re-investigation done by the Department of Defense Inspector General (DoD/IG). On behalf of my client, I request that you reconsider your decision to take action based upon this re-investigation for the reasons set forth below.

Preliminarily, the key relevant factor that must be considered is the inappropriate and heavy handed leverage used by Senators, Congressmen and staffers to demand this re-investigation and to dictate the only acceptable conclusion. In May 2008, the DoD/IG, Lieutenant General Claude M. Kicklighter, told your predecessor that the DoD/IG was going to "stand" on the January 2008 report that summarized the work of the DoD/IG's two-year investigation that identified wrongdoing by a number of AF officials ... specifically not including General Moseley. Unfortunately, upon the retirement of Lt Gen Kicklighter, the DoD/IG caved to improper political pressure to "re-investigate" and reach unsupportable conclusions against General Moseley. The re-investigation revealed no new facts yet it purports to establish that General Moseley's actions now fall below acceptable standards. In fact, the only new development was the improper political pressure from the office of Senator McCaskill to find some type of wrongdoing on the part of General Moseley. Chris Paul, a Senate staffer, is a well known detractor of the Air Force. A reliable source informs me that Chris Paul displays photos of General Moseley (and General Martin) in his office space with a pin conspicuously stuck in the middle of each of their foreheads. To say that there is a sense of personal retribution among those who leveraged improper political pressure concerning this re-investigation is an understatement.

One of the most significant details never addressed in this re-investigation involves the fact that while General Moseley served as the Vice Chief of Staff and the Chief of Staff, there was an active duty Judge Advocate (JAG) assigned to review ALL of his incoming and outgoing e-mail communications for potential legal issues. It is virtually inconceivable to think that a competent investigative team comprised of experienced personnel, to include an Air Force JAG, would never "uncover" this critical fact. More disturbing is the fact that Gen Moseley's previous counsel clearly identified this practice in his 16 March 2009 Response to Tentative Conclusions (Tab C, p. 29), yet the final report includes no mention of this fact, or in any way included this in the analysis. In sum, the re-investigation was improperly demanded; found no new evidence, and ignored critical new evidence presented to the investigators. New conclusions by the DoD IG, fabricated with a blind eye, from whole cloth, should not be used as the basis for any adverse action against General Moseley.

Another issue raised by General Moseley's previous counsel concerned the conflict of interest regarding one of the members of the investigative team, a JAG, had previously worked directly for General Moseley and been removed from her position for substandard duty performance. This allegation was investigated by the DoD IG's Office of Professional Responsibility (OPR) -- General Moseley was interviewed on the 23<sup>rd</sup> of June. I received a copy of the transcript of General Moseley's interview in early July. Neither General Moseley nor I heard another word about the OPR investigation until we received our copy of the redacted final DoD IG report. On page 2, it indicates that the OPR findings were "considered" prior to the release of the final DoD IG report. However, there is nothing to say what the OPR investigative findings were. Without knowing the nature of the findings or the analysis used to reach those findings, we are unable to provide an appropriate response. Consequently, we reiterate our concern that a member of the DoD IG investigative team had an obvious conflict of interest based on a prior professional relationship with General Moseley, another fundamental flaw in the underlying re-investigation.

Moreover, quite apart from the improper motivation (and superficial conduct) of the re-investigation, the new conclusions themselves do not withstand logical scrutiny.

### **CONCLUSION #1—PREFERENTIAL TREATMENT**

The report's first conclusion states that General Moseley "provided preferential treatment to a contractor," Strategic Message Solutions (SMS), by providing SMS direct access to himself; by providing SMS direct access to his personal insights on AF strategic communications; and providing SMS use of Air Force resources not authorized by the terms of the Thunderbirds Air Show Productions Services (TAPS) contract. This modification of the tentative findings was based upon substantially unchanged "facts."

This conclusion is based in large part on the protest filed. The report asserts that the protest perceived Mr. Shipley's "close relationship with Air Force senior officers" as improper while in reality, the protest asserts the privileged relationship with the Thunderbirds and the fact that retired General Hal Hornburg was a principle member of the winning contractor. The protest never referred to any other senior AF officers. Nonetheless the DoD IG twisted the actual language of the protest in order to associate the actions of General Moseley with the contracting process that had already been turned inside out by numerous investigations.

The report includes evidence of interaction between General Moseley and The Judge Advocate General but goes on to state that "we found no evidence that General Moseley sought other legal advice about his contacts with Mr. Shipley...." (see p 24 of the current report which is almost the verbatim language of the Tentative findings found at Tab B, p. 18). As previously mentioned, there is--and always was available evidence that General Moseley had a JAG reviewing his e-mail interactions in real-time. This regular course of conduct is clear evidence that General Moseley had a reasonable belief that his activity was being monitored and if there was a concern as to the propriety of his contacts, it would be brought to his attention. General Moseley had a process in place designed to provide him with professional, legal guidance. He justifiably relied on that process. The report before you completely ignores the existence of this process, wrongly criticizes General Moseley for not seeking legal advice, and made no efforts to determine the nature of the advice provided by the JAGs who were monitoring his communications. The apparent intentional disregard of these critically important facts is a fatal flaw in the creation and substantiation of this allegation.

## **CONCLUSION #2—APPEARANCE OF IMPROPER DISCLOSURE OF NON-PUBLIC INFORMATION**

The second conclusion states that General Moseley “created an appearance of improper disclosure of non-public information.”

In the tentative conclusions, General Moseley was alleged to have definitively disclosed non-public information. The final conclusion backs off of this, and relies on the “appearance” that he disclosed non-public information using the perspective of a reasonable person with knowledge of the relevant facts. Unfortunately, the investigators were not reasonable and their report does not include all of the relevant facts. The investigators accepted as fact that, at every opportunity General Moseley shared his vision of strategic communication with everyone. Furthermore, they concluded that the evidence did not sufficiently demonstrate that General Moseley’s communications with Mr. Shipley actually furthered SMS’s private interests. Not to be deterred, the investigators speculated that General Moseley’s interaction with Mr. Shipley “may have provided” and “could have provided” Mr. Shipley information for potential future contract opportunities. It is this speculation on which is founded their conclusion that--while there was no outright violation of the JER--there was an appearance of such a violation. Once again, the absence of evidence forms the basis of the substantiated finding. The impact on General Moseley as a result of this unfounded allegation is tangible and detrimental. This conclusion cannot stand and should be disregarded.

## **CONCLUSION #3—MISUSE OF SUBORDINATES TIME AND GOVERNMENT PROPERTY**

The third conclusion states that General Moseley “misused subordinates’ time and Government property” by telling members of his staff to “give Mr. Shipley whatever he needs,” “provided unfettered access to any and all AF media products,” or “all the things we got.” These statements are characterized as “encouraging his subordinates to provide unauthorized assistance to Mr. Shipley in his performance of the TAPS contract.” The one word that is consistent from General Moseley’s testimony and the other witnesses is “access”; nothing more and nothing less. The evidence elicited also clearly establishes that it was Major Haworth (narrator for the Thunderbirds), not General Moseley, that prepared the list of deliverables for the Office of Strategic Communications and Public Affairs. Glaringly absent is an analysis of the facts and circumstances involving the close connection between Major Haworth and Mr. Shipley:

- Major Haworth worked directly and extensively with Mr. Shipley when Major Haworth was a member of the Thunderbirds
- Major Haworth had a personal relationship with Mr. Shipley
- Major Haworth was a member of the source selection team for the TAPS contract
- Major Haworth constantly pushed hard for SMS in the source selection evaluation
- Mr. Shipley offered Major Haworth a job during the TAPS source selection process
- Major Haworth illegally failed to report Mr. Shipley’s employment offer during the source selection process
- Major Haworth was punished for his wrongful conduct in favor of SMS in conjunction with the TAPS source selection process.

The re-investigation presents absolutely no evidence that General Moseley ever directed anyone to do anything other than “do it right.” The report acknowledges that General Moseley never had personal knowledge of the language of the contract. Furthermore, there is no evidence that at any time did the contracting officer, the director of Public Affairs, the director of the Strategic Communications Office, or anyone else familiar with the details of the contract provide any information to him that he was exceeding the scope of the contract. Nevertheless,

he is found to have encouraged the provision of AF resources. The investigation provides no such evidence because there is no such evidence. Despite the complete lack of evidence directly linking anything General Moseley said or did with the activities associated with the brief life of the TAPS contract, he is now-- over three years later--being held responsible.

In the final report, Colonel Johnson provided evidence that General Moseley believed that what he was asking the AF to provide to Mr. Shipley was appropriate under the contract. The "deliverables" were not directed by General Moseley but rather by Major Haworth. The re-investigation presents no evidence that General Moseley misused subordinates' time or government property.

#### **CONCLUSION #4—IMPROPER GIFTS**

The fourth conclusion states that General Moseley "improperly solicited a gift from a prohibited source, and accepted gifts from a prohibited source that were given to him because of his position." With regard to the "accepted" gifts—the report concluded these were not gifts based on a personal relationship.

General Moseley never solicited anything from Mr. Shipley. Although much was made of the request that General Moseley forwarded from an acquaintance, very little was included in the report regarding the activities of the Heritage Flight Program. General Moseley believed then, and still does, that it is common practice for the Heritage Flight pilots to fly local dignitaries. These incentive, courtesy, and media flights are a standard part of the Heritage Flight Program. At his own initiative, Mr. Shipley regularly provides these flights to Colonels at every air show he participates in. The conclusion of the investigation that Mr. Shipley would not have offered his assistance in providing the ride to the acquaintance if General Moseley was not the Chief of Staff is without factual basis, and ludicrous. At the risk of sounding like a broken record, the glaring omissions of the investigation concerning the activities of the Heritage Flight Program can hardly form a rational basis for a substantiated conclusion against General Moseley.

The final report agrees that the value of the DVD of General Moseley's daughter and the homemade video are of negligible value but nevertheless they are added on to further denigrate his reputation. The crux of the violation is based on the "totality" of the value of the gifts, including the overnight stay at the Shipley home in July 2005. Despite the evidence that no business discussions were held and that the invitation came from General Hornburg whom General Moseley has known for over 40 years, the investigation reaches the conclusion that there was no social relationship involved in the visit. Notwithstanding the conclusion that the value of the overnight stay exceeded the \$50 limit General Moseley's visit to the Shipley home was based upon a personal relationship, and therefore was not a violation of the JER.

In closing, Mr. Secretary, I submit that the glaring and critical lack of facts in the DoD IG report is so significant as to nullify the IG's conclusions. You were put in the untenable position of having to rely upon this flawed report. I respectfully request that you consider the totality of the information before you and conclude that it fails to establish any conduct by General Moseley's rising to the level of wrongdoing. Respectfully, the Letter of Admonishment is without tactual basis, and should be rescinded.

  
KAREN E. MAYBERRY, Col, USAF  
Defense Counsel