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FOIA APPEAL

Via regular mail and facsimile (202) 261-8579 (Total Pages: 17)

Chief, Requester Liaison Division  
Office of Information Programs and Services  
U.S. Department of State, SA-2  
Washington, DC 20522-8100

Re: FOIA Request No. F-2014-03625  
Expedited Processing Appeal

Dear Ladies and Gentlemen:

This letter appeals the Department of State's ("State" or "Agency") March 21, 2014, denial of expedited processing of a FOIA request filed by Accuracy in Media, Inc. ("AIM"), and eight individuals, all of whom serve as members of the Citizens' Commission on Benghazi ("CCB"), an unincorporated, informal association of private citizens, working with AIM, to seek, and expose, the truth of the Benghazi tragedy.

The Agency granted the request for a fee waiver, but declined to expedite the processing of the request, responding that the CCB had "not provided adequate justification for expedition" under 22 C.F.R. § 171.12(b), which requires a specific showing of a "compelling need." State's perfunctory conclusion is incorrect, under the FOIA.

**Case law.** Expedited processing is required where the public can only participate in ongoing debate if FOIA requests are promptly processed and the requested information is promptly released. *See Elec. Privacy Info. Ctr. v. Dep't of Justice*, 416 F. Supp. 2d 30, 41 (D.D.C. 2006) (public debate on a wireless surveillance program could "only occur if the DOJ processes its FOIA requests in a timely fashion and releases the information sought."). *See also ACLU v. Dep't of Justice*, 321 F. Supp. 2d 24,30 (D.D.C. 2004); *Al-Fayed*, 254 F.3d at 311.

Exhibit 4
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In *Leadership Conf. on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005), the court held that expedited processing is required where "[t]he importance of this issue is paramount and expedition of these documents could advance the current debate." As the District Court explained in *Elec. Privacy Info. Ctr. v. Dep 't of Justice*, "a meaningful and truly democratic debate ... cannot be based solely upon information that the Administration voluntarily chooses to disseminate." 416 F. Supp. 2d 30, 41 (D.D.C. 2006).

In general, three factors are relevant to demonstrating "urgency to inform," and "compelling need," for purposes of expedited processing: (1) whether the request concerns federal government activity; (2) whether the request concerns a matter of current exigency to the American public; and (3) whether the consequences of delaying a response would compromise a significant recognized interest. See *Al-Fayed v. Cent. Intelligence Agency*, 254 F.3d 300, 310 (D.C. Cir. 2001) (applying H.R. REP. NO. 104-795, at 26 (1996), legislative history of the Electronic Freedom of Information Act Amendments of 1996, Pub. L. 104-231, §8, 110 Stat. 3048, 3051-52).

**Regulations.** Agency regulations similarly recognize the media interest in quickly disseminating breaking, general-interest news concerning federal government activity. See *ACLU v. DOJ*, 321 F. Supp. 2d at 3132; *Gerstein v. Cent. Intelligence Agency*, 2006 U.S. Dist. LEXIS 89847, \*21-\*23 (N.D. Cal. November 29, 2006); *ACLU of N Cal.*, 2006 U.S. Dist. LEXIS at \*23-\*24 ("another recognized interest would be harmed by delay: the media's interest in quickly disseminating breaking, general-interest news").

Agency regulations require an "urgent need," defined as "mean[ing] that the information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of historical interest only, or information sought for litigation or commercial activities would not qualify nor would a news media publication or broadcast deadline unrelated to the news breaking nature of the information." 22 C.F.R. § 171.12(b)(2)(i). Further, the information need be of federal government activity, meaning that "[t]he information concerns some actions taken, contemplated, or alleged by or about the Government of the United States, or one of its components or agencies, including the Congress." *Id.* Here, the information has a particular value that will be lost if not disseminated quickly, and it concerns malfeasance of the United States Government, *and* several of its agencies, *and* the Congress.

**Attacks.** The Benghazi tragedy occurred on September 11, 2012.<sup>1</sup> For the first week, the administration repeated, over and over again, that the attack was spontaneous.<sup>2</sup> This narrative was false and misleading, and known to be false.<sup>3</sup>

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<sup>1</sup> At 9:42 p.m. Benghazi time, 3:42 p.m. Washington time, dozens of attackers, armed with RPGs and assault rifles, swarmed the U.S. Mission compound, overcame the inadequate physical security, and gained access. Ambassador Chris Stevens immediately called the Tripoli embassy. "Greg, we're under attack," he told Gregory Hicks, his Deputy Chief of Mission in Libya. Hicks decided to send help. The attackers set areas of the U.S. Mission on fire, including the building containing the "safe room" where Ambassador Stevens had taken refuge with Security Agent Scott Strickland and Foreign Service Information Management Officer Sean Smith. Strickland tried to lead Stevens and Smith out of the burning building, but was separated in the smoke that had quickly thickened from the gasoline-based fire. About a mile from away, at the CIA Annex, a quick response team, or QRT, undertook a rescue operation. After arriving at the U. S. Mission compound, the QRT, including Tyrone Woods, found Sean Smith, dead from smoke inhalation, but they could not locate Stevens. The QRT successfully evacuated survivors, and Smith's body, from the U.S. Mission, and fled in vehicles to the CIA Annex. The Tripoli Embassy sent a team, including Glen Doherty, from Tripoli to the Benghazi airport, arriving around 1:30 a.m. After an hours-long delay at the airport, the six-man team eventually arrived at the CIA Annex.

At 5:15 a.m., a mortar hit the roof of the building precisely where Glen Doherty and Tyrone Woods were defending with return fire, killing both men instantly. The Tripoli Embassy had sought to send a second team to Tripoli, to secure the airport, to facilitate evacuation from Benghazi, but military superiors denied permission to respond (or, as Lt. Colonel Gibson testified, "ordered to remain in place.... to support the team that was in Tripoli.")

<sup>2</sup> See, for example, statements by Secretary Clinton, the President, Jay Carney, Susan Rice, Victoria Nuland, David Petraeus.

- September 12: Secretary Clinton stated to the press that "[s]ome have sought to justify this vicious behavior as a response to inflammatory material posted on the Internet." The President stated in a Rose Garden speech that "[n]o acts of terror will ever shake the resolve of this great nation, alter that character, or eclipse the light of the values that we stand for," and stated on 60 Minutes that "it's too early to know how exactly this came about, what group was involved, but obviously it was an attack on Americans and we are going to be working with the Libyan government to make sure that we bring these folks to justice, one way or the other."

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- September 13: Press Secretary Jay Carney stated that "[t]he protests we're seeing around the region are in reaction to this movie."
  - September 14: Carney stated that the Administration had "no evidence at this time to suggest otherwise that there was a preplanned..." CIA Director David Petraeus testified in a closed-door session before the Senate Intelligence Committee that the attacks were spontaneous, according to Representative Peter King.
  - September 15: Clinton assured Tyrone Woods' father at his son's funeral that they were going to "arrest and prosecute" the man that made "Innocence of Muslims."
  - September 16: UN Ambassador Susan Rice attributed the attack to the "Innocence of Muslims," on five Sunday talk shows:
    - ABC This Week: "We believe that folks in Benghazi, a small number of people came to the embassy to... replicate the sort of challenge that was posed in Cairo. And then as that unfolded, it seems to have been hijacked, let us say, by some individual clusters of extremists who came with heavier weapons... [a]nd it then evolved from there."
    - CBS Face the Nation: "But based on the best information we have to date, what our assessment is as of the present, is in fact what, it began spontaneously in Benghazi as a reaction to what had transpired some hours earlier in Cairo, where of course, as you know, there was a violent protest outside of our embassy sparked by this hateful video."
    - Fox News Sunday: "The information, the best information and the best assessment we have today is that in fact this was not a preplanned, premeditated attack. That what happened initially was that it was a spontaneous reaction to what had just transpired in Cairo as a consequence of the video. People gathered outside the embassy and then it grew very violent and those with extremist ties joined the fray and came with heavy weapons... then spun out of control."
    - NBC Meet the Press: "[W]hat happened in Benghazi was in fact initially a spontaneous reaction to what had just transpired hours before in Cairo, almost a copycat of—of the demonstrations against our facility in Cairo, which were prompted, of course, by the video."
    - CNN State of the Union: "[S]ome mob was hijacked ultimately by a handful of extremists, the United States is extremely popular..."
  - September 17: State Department spokesperson Victoria Nuland stated that "Ambassador Rice... was very clear... It was also an assessment that you've heard in comments coming from the intelligence community, in comments coming from the White House."
  - September 19: Carney stated that the administration had "no evidence of a pre-planned or premeditated attack."
  - September 20: At a campaign event, the President said that "the outrage over the video were used as an excuse by extremists to see if they can also directly harm U.S. interests."

**Congress.** Even after hearings and closed-door briefings by five different Committees,<sup>4</sup> neither the government, nor the press, can answer even the most fundamental questions raised by the Benghazi tragedy. Why were orders to deploy not immediately given? Why did the Administration cover up the true catalyst for the attack? Indeed, the very purpose for maintaining U.S. diplomatic and CIA facilities in Benghazi remains shrouded in government secrecy. U.S. House of Representatives Resolution 36 seeks creation of a Select Committee to probe the Benghazi tragedy. Congress cannot possibly unearth the truth in the absence of such a Select Committee, as former Attorney General Michael Mukasey observed in the *Wall Street Journal* on April 6:

The Kabuki of a House intelligence hearing—with the witness delivering prepared remarks and committee members keeping one eye on the television cameras and relying on small staffs with many other responsibilities, questioning in five-minute bursts—is not suited

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<sup>3</sup> On September 12, Deputy Chief of Mission in Libya Gregory Hicks spoke to Secretary Clinton, and there was no mention of any protest. On September 15, the CIA Tripoli Chief of Station sent an email to CIA Deputy Director Michael Morell stating that he did not believe that there were demonstrations; the responding CIA quick-response-team saw no demonstration, and press accounts denied any protest. On September 16, 2012, FBI agents relayed by video teleconference to CIA Deputy Director Morell and others that US personnel in reported that there was no protest. FLASHING RED REPORT. That day, FBI agents relayed by video teleconference to CIA Deputy Director Morell and others that U.S. personnel in country reportedly said there was no protest. *Id.* Also on September 16, "a senior official on the ground in Libya informed senior leaders at the State Department that there was no demonstration prior to the attack." US HOUSE OF REPRESENTATIVES INTERIM REPORT, April 2013. "[O]n that same day and prior to Ambassador Rice's scheduled appearances on the Sunday morning programs, a senior official on the ground in Libya informed senior leaders at the State Department that there was no demonstration prior to the attack." US HOUSE OF REPRESENTATIVES INTERIM REPORT, April 2013. On September 18th, in response to an email, "Was there any rioting in Benghazi reported prior to the attack?" an agent at the DS Command Center wrote, "Zip, nothing, nada."

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- (1) House Committee on Armed Services;
- (2) House Committee on Foreign Affairs;
- (3) House Committee on Oversight and Government Reform;
- (4) House Permanent Select Committee on Intelligence; and
- (5) Senate Select Committee on Intelligence.

to the sustained and focused effort necessary to test a witness's story and to pursue leads, even for members who wish to conduct a serious inquiry. The rules of Congress permit the appointment of a select committee to investigate a particular topic when circumstances warrant—a committee staffed for the job and with no other mandate. Notwithstanding Secretary Clinton's immortal "what difference at this point does it make?," the creation of such a committee is overdue.

With no pre-hearing depositions, recalcitrant witnesses know that the questioners' five-minute time limit prevents effective challenge. Classified briefings, where the Members have no incentive to appear adversarial, are even less probative. Predictably, a majority of Americans share Mukasey's opinion<sup>5</sup> that Congress cannot ferret out the truth in the absence of a Select Committee. Lawmakers agree: Resolution 36 has 190 co-sponsors, as of this writing. But House Speaker John Boehner ignores the many calls for a Select Committee.<sup>6</sup> Several

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<sup>5</sup> An October 2013 bipartisan poll conducted by John McLaughlin and Pat Caddell found that 62 percent of Americans favor the creation of a Select Committee to investigate the Benghazi attacks. [http://www.secureamerica.org/poll\\_on\\_benghazi\\_cover\\_up](http://www.secureamerica.org/poll_on_benghazi_cover_up)

<sup>6</sup> On January 6, 2014, a coalition of military leaders and surviving family members submitted a letter to speaker Boehner pleading for his cooperation in establishing the Select Committee. A second such letter followed, on March 5, 2014. The authors, including Ty Woods' father Charles Woods, Sean Smith's mother Pat Smith, and Sean's uncle Michael Ingmire, demanded that the Speaker's "reluctance to lead and resistance to create a Select Committee on Benghazi must end." Significantly, for purposes of this administrative appeal, the proponents observed:

You should be embarrassed that members of Congress, and your own party, are forced to file Freedom of Information Act (FOIA) requests with Obama administration agencies to get basic information about the Benghazi issue... What a sad and pathetic statement about the operations of House standing committees looking into this tragedy that FOIA has become the last resort of even Republican Members seeking the truth!

Committee Reports<sup>7</sup> do, however, reveal that State was grossly negligent in its duty to protect its personnel from criminal attack.<sup>8</sup>

Only recently, on April 2, the Administration offered a motive for dissembling about the catalyst for the attack, as well as its perpetrators, in testimony before the House Select Intelligence Committee hearing, chaired by Mike Rogers:<sup>9</sup> Deputy CIA

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- December 30, 2012, FLASHING RED: A SPECIAL REPORT ON THE TERRORIST ATTACK AT BENGHAZI, issued by both parties U.S. Senate Committee on Homeland Security and Governmental Affairs.
  - April 23, 2013, INTERIM PROGRESS REPORT FOR THE MEMBERS OF THE HOUSE REPUBLICAN CONFERENCE ON THE EVENTS SURROUNDING THE SEPTEMBER 11, 2012 TERRORIST ATTACKS IN BENGHAZI, LIBYA, issued by Republican Majority of five House committees.
  - September 16, 2013, BENGHAZI ATTACKS: INVESTIGATIVE UPDATE INTERIM REPORT ON THE ACCOUNTABILITY REVIEW BOARD, issued by Republican Majority of Committee on Oversight and Government Reform.
  - January 15, 2014, REVIEW OF THE TERRORIST ATTACKS ON U.S. FACILITIES IN BENGHAZI, LIBYA, SEPTEMBER 11-12, 2012, TOGETHER WITH ADDITIONAL VIEWS," issued by U.S. Senate Select Committee on Intelligence.
  - February 7, 2014, BENGHAZI: WHERE IS THE STATE DEPARTMENT ACCOUNTABILITY? issued by Republican Majority of the House Foreign Affairs Committee.
  - February 10, 2014, MAJORITY INTERIM REPORT: BENGHAZI INVESTIGATION UPDATE, issued by Republican Majority of House Armed Services Committee.

- <sup>8</sup> By March 28, 2012 cable, Regional Security Officer Eric Nordstrom requested additional security personnel. On July 9, 2012, Embassy Tripoli cabled requesting continued security support "through mid-September 2012." State never responded. By August 2, 2012 cable, Embassy Tripoli requested that 11 bodyguard positions be added to fill "the vacuum of security personnel... who will be leaving..." This cable described the "security condition in Libya... [as] unpredictable, volatile, and violent."

- <sup>9</sup> See "GOP Benghazi Probe Leader Has Huge Conflict Of Interest," Dick Morris, April 8, 2014:

[Roger's] wife, Kristi Clemens Rogers was the president and the CEO of the company that was contracted by the State Department to provide that security. Mrs. Rogers, until recently, served as president and CEO of Aegis LLC, the contractor to the United States Department of State for intelligence-based and physical security services \*\*\* [that]

Director Michael "Morell said he did the revising because it would have looked unseemly for the CIA to appear to be pounding its chest and blaming the State Department," as Michael Mukasey put it. *Id.* This version has all the earmarks of a fallback story. But even if this most recent version offered by Morell<sup>10</sup> were

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won a \$10 billion, 5-year contract with the State Department to provide security for U.S. diplomatic posts around the world. \*\*\* Congressman Rogers, who abruptly announced his intention not to seek re-election, has been criticized for dragging his feet in the Benghazi investigation. Only when pressure from back benchers on his committee became intense did he agree to hold last week's hearing at which former Deputy CIA Director Mike Morrell testified. Even then, observers noted how mild he was... How on earth can the Rogers family justify having a husband who chairs a Congressional committee charged with reviewing the performance of his wife's company in guarding the Benghazi compound? \*\*\* The accusations of conflict of interest surface at the same time as the Inspector General for the State Department reported that \$6 billion... cannot be accounted for. The contracts covering the work have disappeared."

<sup>10</sup> April 2, 2014 testimony, House Permanent Select Committee on Intelligence:

Representative Mac Thornberry:

Q. To me it seems like you're more interested in protecting the State Department than the State Department is, and more interested in protecting the FBI than the FBI is. And Director Petraeus is concerned because he wanted some more information about warnings in there. So, I don't — that doesn't make sense to me. Can you explain the motivation?

Michael Morell:

A. As I said earlier — First of all, if you look at what I took out, the vast majority is information related to the warnings. And as I said earlier, I thought it inappropriate for the CIA to say publicly that we warned of an attack coming. We also had in there that we had sent a warning cable to Cairo, which I see absolutely no relevance of sending a warning cable to Cairo to what happened in Benghazi. But I simply saw this as a way for CIA to pound its chest and say, "Look, we warned," therefore laying all the blame on the State Department. I did not think that appropriate. I thought that there would be plenty of time to have a conversation about what was warned, and who responded, and how, and I didn't think that that discussion should start publicly.



accurate, it would not explain why orders to immediately deploy U.S. assets were not given, why neither State nor DoD sought immediate help from U.S. allies, much less the purpose of maintaining U.S. diplomatic facilities in Benghazi.

**FOIA Requests.** State, along with DoD and CIA, deny knowledge that any stand down order its equivalent was given, and Secretary Clinton claims that she did, in fact, seek help.<sup>11</sup> No matter which version is the truth, State's production of responsive records sought would prove it.<sup>12</sup> Similarly, production should reveal whether the reason for maintaining U.S. diplomatic facilities in Benghazi was to provide cover for the CIA's arms trafficking.<sup>13</sup>

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<sup>11</sup> Secretary Clinton testimony, Senate Hearing, January 23, 2013: "I directed our response from the State Department, stayed in close contact with officials from across our government and the Libyan government."

<sup>12</sup> CCB April 7, 2014 FOIA Request No. 5: "Records generated from Secretary Clinton's September 11th and 12th, 2012 requests for help for personnel at the Special Mission Compound and the CIA Annex, to:

- (a) The Libyan government;
- (b) The Turkish Consulate in Benghazi;
- (c) The Italian Consulate in Benghazi; and
- (d) The U.K. Security Team.

*See also* CCB February 21, 2014 FOIA Request Nos. 5 and 6: "[R]ecords of Secretary Panetta's actions and communications for the 24-hour period beginning when first notified..."; CCB April 7 and February 21, 2014 FOIA requests to DoD (same).

<sup>13</sup> CCB February 21, 2014 FOIA Request No. 1: "All records of whatsoever nature regarding (1) the Benghazi consulate and (2) its CIA Annex... include[ing] those that disclose... inventories of all weapons brought into the Annex... intended destinations and recipients of all such weaponry... including CIA situation reports, or 'sitreps' ...; FOIA Request No. 13: "For the period of February 15th, 2011, through December 31st, 2012, all DOD and CIA or other intelligence community records, shared with members of Congress, regarding collection, storage, transportation of arms and equipment in Libya."

*See also* CCB April 7, 2014 FOIA Request No. 3: "Records of communications sent from, received by, or routed through, Secretary Clinton's office regarding the need for a permanent constituent post in Benghazi, as well as records regarding Secretary of State Clinton's decision to continue operations in Benghazi, including the extent to which the Benghazi Mission in any way facilitated the existence and operations of the CIA Annex."

**Arms trafficking.** Seymour Hersh's April 17, 2014 observation in "The Red Line and the Rat Line," *London R. of Books*, that "[t]he consulate's only mission was to provide cover for the moving of arms... 'It had no real political role,'" is well-publicized. See "Mainstream Media on Benghazi: It Was About Gun-running," *The New American*, Aug. 7, 2013:

The mainstream media in the United States have increasingly come to the conclusion that the Benghazi attacks were related to a secret gun-running operation managed by the U.S. government to ferry weapons that had been used by Libyan rebels to Syria. Establishment media outlets reporting on the reputed CIA gun-running operation over the past week included Fox News' Geraldo Rivera, London's *Daily Telegraph* newspaper, and CNN television. *The New American* reported the same likely theory back in October and December 2012.

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The idea that Stevens could have been involved in redirecting arms from Libya to Syria is hardly a stretch. He had the perfect résumé for gun-running, as he had helped manage gun-running to the Libyan rebels during the insurgency against former dictator Moammar Gadhafi. \*\*\* Gun-running revelations would also cast the CIA talking points memo scandal in a completely different light.

The Agency's reasons for the existence of a diplomatic facility in Benghazi, or at least its public version, appears in its December 27, 2011, three page "Action Memo for Under Secretary Kennedy," written by then Assistant Secretary of State for Near Eastern Affairs Jeffrey Feltman. Recommending renewal of the lease of the Special Mission Compound, Feltman wrote that, although sharing facilities with the CIA would be the "most economical option" at present, "State presence cannot be accommodated at the annex." But Feltman made this observation without even identifying the CIA. Such a conspicuous absence of the identity of State's proposed co-tenant, along with the dubious reasons advanced for State's remaining in Benghazi, suggests that Feltman knew, but withheld from his memo, that the primary purpose of the mission was to provide cover for a CIA presence in Benghazi. See also, e.g., "Analysis: CIA role in Benghazi underreported," *CNN*, May 15th, 2013.

As reported in the February 2014 UN Security Council "Final report of the Panel of Experts established pursuant to resolution 1973 (2011) concerning Libya," over "the past three years, Libya has become a primary source of illicit weapons... including man-portable air defense systems," "mostly controlled by non-State armed groups" (UN Report ¶¶ 5-6, 18), and predominantly in the eastern part of the country. *Id.* ¶ 33. "Transfers from Libya... of more regular and significant quantities of arms... have developed towards three geographic areas, namely, the Syrian Arab Republic via Lebanon and Turkey, Egypt and the Sahel." In fact,

"[t]ransfers of arms and ammunition from Libya were among the first batches of weapons and ammunition to reach the Syrian opposition....," and the "Syrian Arab Republic had become a preeminent destination for Libyan weapons..." *Id.* ¶ 64.

"Some media reports claimed that United States officials working in Benghazi prior to the attack on the Benghazi consulate in September 2012 might have been involved in transfers of weapons out of Libya via Turkey to the Syrian opposition," the Report observes (¶ 190), citing the August 1, 2013, CNN article, "Exclusive: Dozens of CIA operatives on the ground during Benghazi attack." That piece states:

...CNN has learned the CIA is involved in what one source calls an unprecedented attempt to keep the spy agency's Benghazi secrets from ever leaking out. \*\*\* The lack of information and pressure to silence CIA operatives is disturbing to U.S. Rep. Frank Wolf, whose district includes CIA headquarters in Langley, Virginia. "I think it is a form of a cover-up, and I think it's an attempt to push it under the rug, and I think the American people are feeling the same way," said the Republican.... Wolf has repeatedly gone to the House floor, asking for a select committee to be set-up, a Watergate-style probe involving several intelligence committee investigators assigned to get to the bottom of the failures that took place in Benghazi, and find out just what the State Department and CIA were doing there.

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Lawmakers also want to know about the weapons in Libya, and what happened to them. Speculation on Capitol Hill has included the possibility the U.S. agencies operating in Benghazi were secretly helping to move surface-to-air missiles out of Libya, through Turkey, and into the hands of Syrian rebels. It is clear that two U.S. agencies were operating in Benghazi, one was the State Department, and the other was the CIA... But the State Department also clearly told CNN, they "can't speak for any other agencies." The CIA would not comment on whether it was involved in the transfer of any weapons.

***Possible illegality of arms trafficking.*** Under a law passed in the seventies, all proposed CIA covert operations must be described in a written "finding" submitted for approval to the to eight members of Congress, its senior leadership—the Democratic and Republican leaders of the House and Senate and the Democratic and Republicans leaders on the House and Senate intelligence committees.

Some theorize that House Speaker Boehner's opposition to a Select Committee is motivated by his approval of a Libya-to-Syria gun running operation that would not reflect well on him or the "Gang of Eight." Another possibility is the CIA's involvement of MI6 to "enable the CIA to evade the law by classifying the mission as a liaison operation" in "an operation [that] was run by David Petraeus,"<sup>14</sup> as Sy Hersh's sources claim. Here too, production of requested records would prove, or disprove, the allegations.<sup>15</sup> The media informs us that "weapons deliveries have been funded by the U.S. Congress in votes behind closed doors" through September of 2014,<sup>16</sup> but what about twenty months ago? Did weapons

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<sup>14</sup> On October 26, 2012, Mr. Petraeus' paramour, Paula Broadwell, claimed to have been told of another use of the CIA Annex:

Now, I don't know if a lot of you have heard this but the CIA annex had actually taken a couple of Libyan militia members prisoner, and they think that the attack on the consulate was an attempt to get these prisoners back. It's still being vetted.

<sup>15</sup> See February 21, 2014, FOIA Request 1: "...The descriptions and inventories of all weapons brought into the Annex... intended destinations and recipients of all such weaponry, US Government supply of weapons into Syria."

See also February 24, 2014 FOIA Requests 12 and 13 to CIA: "For the period of February 15th, 2011, through December 31st, 2012, all DOD and CIA or other intelligence community records, shared with members of Congress, regarding collection, storage, transportation of arms and equipment in Libya [and regarding] CIA transport of arms to Syrian rebel forces."

<sup>16</sup> See "Congress secretly approves U.S. weapons flow to 'moderate' Syrian rebels," Jan 27, 2014, (*Reuters*): "The deliveries do not include weapons such as shoulder-launched surface-to-air missiles, known as MANPADs, which could shoot down military or civilian aircraft, the officials said. The weapons deliveries have been funded by the U.S. Congress, in votes behind closed doors, through the end of government fiscal year 2014, which ends on September 30, two officials said."

See also, "Syria: Turkey Supplied 47 Tons of Weapons to Islamist Rebels," *Israel National News*, Dec. 2013.

emanating from Libya provide Syrian "rebels what they most desire," shoulder-launched surface-to-air missiles, or MANPADS?<sup>17</sup>

***Agency backing of Libyan and Syrian revolutions.*** State touted Secretary Clinton's support for the Libyan revolution. "'The Secretary has been the lead in the U.S. Government on Libya since the time that the president made the decision that we would join the NATO-led coalition, that we would help set the theater for the protection of the civilian mission that the NATO-led coalition carried out,' a senior State Department official stated." May 3, 2013, *CNSNews.com*.

Similarly, regarding Syria, on September 9, 2013 the *Washington Post* published a piece, "Hillary Clinton backs Obama on Syria strike," reporting that "[a]s secretary of state, Clinton generally advocated a more hawkish position on Syria than other administration officials, pushing for the U.S. government to support

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<sup>17</sup> See "U.S. weapons reaching Syrian rebels," *Wash. Post* Sept. 11 2013: "The distribution gave U.S. officials confidence that it was possible to limit aid to select rebel units in a battlefield where thousands of fighters share al-Qaeda's ideology, U.S. officials said.... While the State Department is coordinating nonlethal aid, the CIA is overseeing the delivery of weaponry and other lethal equipment to the rebels. ... Washington remains reluctant to give the rebels what they most desire: antitank and anti-aircraft weapons... 'We vet individuals who are getting our assistance to make sure they are not affiliated with terror organizations.'"

See also "Saudis Agree to Provide Syrian Rebels With Mobile Anti-aircraft Missiles U.S. Also Giving Fighters Millions of Dollars for Salaries," Feb. 2014, *Wall Street Journal*:

Saudi Arabia has offered to give the opposition for the first time Chinese man-portable air defense systems, or Manpads, and antitank guided missiles from Russia, according to an Arab diplomat and several opposition figures with knowledge of the efforts. Saudi officials couldn't be reached to comment. The U.S. has long opposed arming rebels with anti-aircraft missiles for fear they could fall into the hands of extremists who might use them against the West or commercial airlines. \*\*\* The weapons are already waiting in warehouses in Jordan and Turkey. Earlier in the conflict, rebels managed to seize a limited number of Manpads from regime forces. But they quickly ran out of the missiles to arm them, the Western diplomat said.

rebels fighting Assad's regime." *See also* February 8, 2013, *New York Times* article, "Deeper Divide On Syria Policy Comes to Light," recounting Senate Armed Services testimony of Defense Secretary Leon Panetta and chairman of the Joint Chiefs of Staff Gen. Martin Dempsey. The *Times* reported that both officials supported "[t]he plan that Mr. Patraeus developed, and that Mrs. Clinton supported, [which] called for vetting rebels and training a cadre of fighters who would be supplied with weapons. The plan would have enlisted the help of a neighboring state." But it was not implemented, according to the Administration, only because the President declined to implement it, in part because he "was worried about the risks... that weapons could fall into the wrong hands."

***Regular processing.*** Delays in processing FOIA requests are endemic at State. *See, e.g.*, "State Department FOIA requests unanswered four long years later... delays are still common," *Assoc. Press*, July 2011, updated Jan. 2012:

The State Department has long had problems with timely FOIA responses. A 2011 study by the National Security Archive at George Washington University listed the State Department as one of the few federal agencies that as of March 10, 2011, had not provided any final response to Obama's open government memo. According to the State Department's annual FOIA report to Congress for 2010, the median response for complex FOIA requests is 228 days. Some of the Center's FOIA requests to State for the "Checkbook Diplomacy" story have now been pending more than 1,500 days. As the time has long since passed for this information to inform the story, the Center has now withdrawn those requests.... Bill Allison of the non-profit Sunlight Foundation... calls the State Department's FOIA office "one of the worst"... He says that the four-year-plus wait time is a major problem...

"The National Security Archive noted that many long-standing requests had likely fallen victim to a referral process in which any agency with a stake in the material can seek to prevent its release" (*id.*), and State's heavy backlog is largely due to the time-and-resource consuming review of classified material, and its referral to other agencies.

***Grounds for expedited processing.*** Libya is "awash with weapons,"<sup>18</sup> and has been at least since the February 2011 Libyan Revolution. Tons of weapons were shipped from eastern Libya to Turkey, and from there into the hands of Syrian rebels. Congress assented to the CIA covert supply of arms to Syrian rebels in 2013, if not in 2012. Secretary Clinton steadfastly championed the revolutions in both Libya and Syria, and she established, and maintained, diplomatic facilities in Benghazi, largely to provide cover for CIA presence there. Later, she testified that she had "no information" about CIA arms trafficking<sup>19</sup> in Benghazi—not a credible claim.

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<sup>18</sup> Testimony of Mrs. Clinton on February 7, 2013, before the Senate Committee on Armed Services:

Well, Senator, you're absolutely right. One of the reasons that we—and other government agencies were present in Benghazi is exactly that. We had a concerted effort to try to track down and find and recover as many MANPADS and other very dangerous weapons as possible. Libya was awash in weapons before the revolution. Obviously, there were additional weapons introduced. But the vast, vast majority came out of Gadhafi warehouses and were—as they—as they were saying, liberated, and then went on the black market, were seized by militia, seized by other groups, and have made their way out of Libya into other countries in the region, and have made their way to Syria, we believe....

<sup>19</sup> *Id.*:

Senator Ran Paul:

Q. Now, my question is, is the U.S. involved with any procuring of weapons, transfer of weapons, buying, selling, anyhow transferring weapons to Turkey out of Libya?

Hillary Clinton:

A. To Turkey? I—I will have to take that question for the record. Nobody's ever raised that with me. I don't—

Q. It's been—it's been in news reports that ships have been leaving from Libya and that they may have weapons. And what I'd like to know is the annex that was close by, were they involved with procuring, buying, selling, obtaining weapons? And were any of these weapons being transferred to other countries, any countries, Turkey included?

A. Well, Senator, you'll have to direct—direct that question to the agency that ran the annex. I will—I will see what information is available and—

Q. You're saying you don't know.

A. I do not know. I don't have any information on that...

On September 11, 2012, when heavily armed extremists attacked State and CIA facilities, neither State, nor any other agency, immediately sent help. Days later, the Administration widely publicized a false and misleading narrative of the catalyst for, and perpetrators of, the murders. Aside from these facts, little else is known about the tragedy.

Did the Administration dissemble the false narrative to avoid proof that Al Qaida was not "on the run," as the President had claimed, just six weeks before the election? Such a conclusion would seem incompatible with CIA's claim that it edited the truth out of the Administration's narrative to avoid embarrassing the State Department. Did the CIA follow the law by briefing the "Gang of Eight" on its gun-running operation, or did the CIA classify the mission as a liaison operation with the British to circumvent that law, as Sy Hersh reported? Was CIA arms trafficking the only reason why State maintained diplomatic facilities in Benghazi? Was the attack an attempt to free Libyan prisoners held at the Annex by the CIA, as Patraeus reportedly told Ms. Broadwell? Did the President decline to implement CIA Director Patraeus' plan to supply weapons to Syrian revolutionaries, against the counsel of Secretaries Clinton and Panetta and Joint Chiefs Chairman Dempsey, as Panetta testified, or did the President, in fact, authorize these arms transfers? And why didn't decision-makers immediately send help to Americans under attack? We seek disclosure of records that would answer these questions, and the public has a right to know.

Given the CCB's comprehensive FOIA requests, if processed in the regular course, the search alone would take many months. State's review will include classified records, a number of which need to be referred to the CIA. Moreover, it is a forgone conclusion that State will not produce the records sought absent a court order to do so, and, thus, litigation, at both the trial and appellate levels, will be necessary. Absent expedited processing, it will be years before the public has answers to the many questions raised by the tragedy.

Presumably, Mrs. Clinton will seek, and win, the nomination for President of the United States, at the Democratic National Convention, in the summer of 2016. Without expedited processing, disclosure will not occur sufficiently in advance of the November 2016 elections to allow the American people to meaningfully participate in the debate, and, thus, the "particular value of the information" would be lost.

Sincerely,

John H. Clarke



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