

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 14-1589 (EGS)
)	
DEPARTMENT OF DEFENSE, et al.,)	
)	
Defendants.)	

PLAINTIFFS' STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

COME NOW Plaintiffs, by counsel, in support of their motions for Summary Judgment, under Local Civil Rule 7(h), and respectfully submit their Statement of Material Facts, listing facts which Plaintiffs contend are undisputed.

Plaintiffs' Undisputed Material Facts	Defendants' Response
Material Facts Not in Dispute as to Defendant DOD	
<p>1. Regarding Plaintiffs' request reflecting initial communications and orders, the DOD produced, as its earliest such communication, a record generated at 3:00 a.m. Washington time.</p> <p>Herrington Decl. ¶¶ 4, 22, Clarke Decl. Ex. 1, Ex. 11.</p>	
<p>2. Seven minutes into the attack, at 3:49 p.m., personnel in both Tripoli and Benghazi contacted the State Department's Diplomatic Security Command Center.</p> <p>Clarke Decl. Ex. 4 at 52.</p>	

Plaintiffs' Undisputed Material Facts	Defendants' Response
<p>3. At 4:05 p.m., the State Department Operations Center issued an "Ops Alert" to "senior Department officials, the White House Situation Room, and others."</p> <p>Clarke Decl. Ex. 4 at 52.</p>	
<p>4. At about 4:05 p.m., "members within the AFRICOM command structure learned of the attack, just more than 30 minutes after it began."</p> <p>Clarke Decl. Ex. 4 at 52.</p>	
<p>5. "Just minutes after word of the attack reached the Secretary, he and General Martin E. Dempsey, Chairman of the Joint Chiefs of Staff, departed the Pentagon."</p> <p>Clarke Decl. Ex. 4 at 54.</p>	
<p>6. In 2013, the DOD represented in its timeline presented to Congress, that, at the 5:00 pm meeting with the President, Secretary Panetta and General Dempsey, "the leaders discuss[ed] potential responses to the emerging situation."</p> <p>Clarke Decl. Ex. 2 at 3-4; Herrington Decl. Ex. F.</p>	
<p>7. In January of 2016, Mr. Panetta testified that, at the 5:00 pm meeting with the President, Secretary Panetta and General Dempsey, "the Principals did not discuss "what resources would or would not be deployed."</p> <p>Clarke Decl. Ex. 3 at 14.</p>	

Plaintiffs' Undisputed Material Facts	Defendants' Response
<p>8. In 2013, the DOD represented in its timeline presented to Congress, that, at 8:30 pm The National Military Command Center conducts a Benghazi Conference Call with representatives from AFRICOM, EUCOM, CENTCOM, TRANSCOM, SOCOM, and the four services."</p> <p>Clarke Decl. Ex. 3 at 3-4; Herrington Decl. Ex. F.</p>	
<p>9. In 2013, the DOD represented in its timeline presented to Congress, that, between 6:00 pm and 8:00 pm, " actions are verbally conveyed from the Pentagon to the affected Combatant Commands "</p> <p>Clarke Decl. Ex. 2 at 3-4; Herrington Decl. Ex. F.</p>	
<p>10. In 2013, the DOD represented in its timeline presented to Congress, that, at 8:39 p.m., "As ordered by Secretary Panetta, the National Military Command Center transmits formal authorization for the two FAST platoons, and associated equipment, to prepare to deploy and for the EUCOM special operations force, and associated equipment, to move to an intermediate staging base in southern Europe."</p> <p>Clarke Decl. Ex. 2 at 3-4; Herrington Decl. Ex. F.</p>	
<p>11. The order referenced in the foregoing Statement was typed out.</p> <p>Clarke Decl. Ex. Exhibit 3 at 33.</p>	
<p>12. In 2013, the DOD represented in its timeline presented to Congress, that, at 8:53</p>	

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<p>p.m., "As ordered by secretary Panetta, the National Military Command Center transmits formal authorization to deploy a special operations force, and associated equipment, from the United States to an intermediate staging base in southern Europe."</p> <p>Clarke Decl. Ex. 2 at 3-4; Herrington Decl. Ex. F.</p>	
<p>13. Mr. Panetta testified that the order referenced in the foregoing Statement was typed out.</p> <p>Clarke Decl. Ex. Exhibit 3 at 33.</p>	
<p>14. Shortly after 4 pm, Secretary Clinton notified National Security Director Tom Donilon.</p> <p>Clarke Decl. Ex. Exhibit 7 at 70.</p>	
<p>15. Upon Panetta and Dempsey's arrival at the White House after 5:00 pm, they first went to the National Security Council quarters for "additional information... about events in Benghazi."</p> <p>Clarke Decl. Ex. Exhibit 3 at 12.</p>	
<p>16. Mr. Panetta claims to have received "no intelligence" from the White House Situation room.</p> <p>Clarke Decl. Ex. Exhibit 3 at 12.</p>	
<p>17. Mr. Panetta and could "not recall" whether Mr. Donilon had even been notified.</p> <p>Clarke Decl. Ex. Exhibit 3 at 12.</p>	

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<p>18. Mr. Panetta testified that, sometime before Jeremy Bash sent his email at 7:19 p.m., he ordered immediate deployment.</p> <p>Clarke Decl. Ex. Exhibit 3 at 33.</p>	
<p>19. Mr. Panetta testified that his deployment order was unequivocally to go.</p> <p>Clarke Decl. Ex. 4 at 69, Ex. 3 at 14, 16, 19, 23, 27, 30, 34, 43, 45, 48.</p>	
<p>20. DOD personnel in Tripoli was ordered to stand down.</p> <p>Clarke Decl. Ex. 5 at 63.</p>	
<p>21. The CIA Chief of Base ordered QRF to "stand down."</p> <p>Clarke Decl. Ex. 4 at 46.</p>	
<p>22. In 2013, the DOD represented in its timeline presented to Congress, that, between 6:00 p.m. and 8:00 p.m. the initial order was contingent "upon receipt of formal authorization."</p> <p>Clarke Decl. Ex. 2 at 3.</p>	
<p>23. Jeremy Bash's 7:19 email relates the condition precedent to deployment as "assuming the Principals agree to deploy."</p> <p>Clarke Decl. Ex. 3 at 27, 34.</p>	

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<p>24. At the 7:30 p.m. White House "roughly two-hour meeting... containing the phrases '[i]f any deployment is made,' and 'Libya must agree to any deployment,' and "[w]ill not deploy until order comes to go to either Tripoli or Benghazi.'"</p> <p>Clarke Decl. Ex. 4 at 115.</p>	
<p>25. Mr. Panetta testified that "cross-border" authority, or permission from Libya would have been necessary prior to deployment.</p> <p>Clarke Decl. Ex. 3 at 20.</p>	
<p>26. Mr. Panetta was unaware of any request for "cross-border" authority, or permission, from Libya.</p> <p>Clarke Decl. Ex. 3 at 20.</p>	
<p>27. AFRICOM Commander General Ham issued an order by 8: 02 p.m.</p> <p>Clarke Decl. Ex. 3 at 47.</p>	
<p>28. Mr. Panetta claimed that, at the 6:00 pm meeting at the Pentagon "principals were... continuing ... to make sure that the steps that I had ordered were taking place."</p> <p>Clarke Decl. Ex. 3 at 17.</p>	
<p>29. Mr. Panetta testified that, at the 6:00 pm meeting at the Pentagon, the principals "were assuring me that the forces were moving into place."</p> <p>Clarke Decl. Ex. 3 at 31.</p>	

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<p>30. The DOD claims that "nearly two more hours elapsed before the Secretary's orders were relayed to those forces."</p> <p>Clarke Decl. Ex. 4 at 56.</p>	
<p>31. The DOD posits that "no one stood watch to steer the Defense Department's bureaucratic behemoth forward to ensure the Secretary's orders were carried out."</p> <p>Clarke Decl. Ex. 4 at 56.</p>	
<p>32. The DOD claims to have issued an order to deploy "11 o'clock."</p> <p>Clarke Decl. Ex. 3 at 44.</p>	
<p>33. It was "roughly 3 1/2 hours from notice of the attack to your [Panetta] decision to get them moving."</p> <p>Clarke Decl. Ex. 3 at 22.</p>	
<p>34. Mr. Panetta excused "roughly 3 1/2 hour" delay on the absence of real-time information, stating that "You don't drop people into a situation unless you have some idea what you're getting into."</p> <p>Clarke Decl. Ex. 3 at 38.</p>	
<p>35. "Special operations aircraft that were stationed at Souda Bay on the night of the attacks in Benghazi and could have been utilized in response to the attacks."</p> <p>Clarke Decl. Ex. 4 at 64.</p>	

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<p>36. "The 12 pages [of maps] withheld by Joint Staff contain the force posture of the Department of Defense for the European Command, Central Command, and Africa Command areas of responsibility as well as the force posture of Special Operation forces worldwide during the relevant timeframe in September 2012."</p> <p>Malloy Decl., ECF 69-1 ¶ 4.</p>	
<p>37. "The disposition of our forces in September 2012 is tactical information that is perishable in that immediate time frame. Therefore, to continue to maintain that revealing that tactical information six years later has no basis in fact.... [and] could be of no value to an adversary."</p> <p>Affidavit of Admiral James A. Lyons, Jr., USN, (Ret) ¶ 5.</p>	
<p>38. The record that the DOD produced as an "OPREP 3" is not that report itself, but rather refers to the OPREP-3.</p> <p>Harrington Decl., ECF 68-4 ECF 68-4 ¶ 24.</p>	
<p>39. The record that the DOD produced as an "OPREP 3" is dated January.</p> <p>Harrington Decl., ECF 68-4 ECF 68-4 ¶ 24.</p>	
<p>40. DOD's search for records of Gaddafi's March 2011 interest in truce and abdication was limited to electronic records.</p> <p>Herrington Decl., ECF 68-4 ¶ 25.</p>	

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<p>41. DOD's search for records of Gaddafi's March 2011 interest in truce and abdication did not include the search term "CIA."</p> <p>Herrington Decl., ECF 68-4 ¶ 25.</p>	
<p>42. The DOD described its search terms for records of Gaddafi's March 2011 interest in truce and abdication "extend[ing] to all known spelling variants of the individuals named in this request," and did not specify the actual the search terms used.</p> <p>Herrington Decl., ECF 68-4 ¶ 26.</p>	
<p>43. The DOD's Declaration regarding its search for records of Gaddafi's March 2011 interest in truce and abdication does not disclose the number of potentially responsive "hits" that were obtained during its searches, nor its procedure for reviewing those potentially responsive records.</p> <p>Herrington Decl., ECF 68-4.</p>	
<p>44. The DOD's Declaration regarding its search for records of Gaddafi's March 2011 interest in truce and abdication does not disclose whether Colonel Linvill is aware of the existence of any responsive records.</p> <p>Herrington Decl., ECF 68-4.</p>	
<p>45. The DOD's Declaration regarding its search for records of Gaddafi's March 2011 interest in truce and abdication does not disclose whether General Carter Ham is aware of the existence of any responsive records.</p>	

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Herrington Decl., ECF 68-4.	
Material Facts Not in Dispute as to Defendant CIA	
<p>46. The CIA's production of IG records at issue does not disclose the substance of the underlying allegation.</p> <p>Clarke Decl. Ex. 8 at 77-103.</p>	
Material Facts Not in Dispute as to Defendant State	
<p>47. The government withheld all surveillance video.</p>	
<p>48. Footage from surveillance video was broadcast on NBC Nightly News in October or November of 2017.</p> <p>See Clarke Decl. ¶ 3.</p>	
<p>49. Footage from surveillance video was shown at the trial of Ahmed Abu Khattala for his participation in the attack.</p> <p>See Clarke Decl. ¶ 2.</p>	
Material Facts Not in Dispute as to Defendant FBI	
<p>50. "[A]n excerpt from the December 30, 2012, Senate Committee On Homeland Security And Governmental Affairs, "Flashing Red: A Special Report On The Terrorist Attack At Benghazi:" [states that] 'On September 15th and 16th, officials from the FBI conducted face-to-face interviews in Germany of the U.S. personnel who had been on the compound in Benghazi during the attack.'"</p>	

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Compl., ECF 31 ¶ 126 (9).	
51. The <i>Select Committee</i> interviewed, and released, the transcripts, of all U.S. personnel who had been on the compounds in Benghazi during the attack. Clarke Decl. Ex. 4 at 58-60.	

DATE: June 25, 2018.

Respectfully submitted,

_____/s/_____
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