

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-5165  
(C.A. No. 14-01589)

ROGER ARONOFF, Appellant,	)	
	)	
v.	)	
	)	
CENTRAL INTELLIGENCE AGENCY, et. al., Appellees.	)	
	)	
	)	

---

APPELLANT'S  
STATEMENT OF ISSUES TO BE RAISED

Plaintiff-appellant seeks review of the following issues fairly raised by two District Court opinions and by the Magistrate's Report and Recommendation.

Context

All records sought regard the September 11, 2012 attacks on the State Department compound, and the CIA Annex, in Benghazi, Libya, limited to the time period from 3:32 p.m., when the attack began, through 3:00 a.m. the following day, September 12. All references to times are Eastern Standard Time.

Abbreviations

EXORD: Order to Execute  
 QRF: Three named members of the CIA Quick Reaction Force: John Tiegen, Jack Silva, and Mark Geist, ghost writers 2014 book, *13 Hours: The Inside Account of What Really Happened in Benghazi*; 2016 movie *13 Hours: The Secret Soldiers of Benghazi*.  
 COB: CIA Chief-of-Base.  
 302s: FBI 302 Reports of interviews of the three named QRF, conducted in Germany on September 15, 2012.

OPREP-3: DoD report describing important event for immediate attention of the Joint Chiefs of Staff/National Military Command Center, National Command Authority, and other national-level leadership.

*Select Committee:* December 7, 2016 Report of HOUSE SELECT COMMITTEE ON EVENTS SURROUNDING THE 2012 TERRORIST ATTACK IN BENGHAZI.

Central Intelligence Agency

1. Where CIA Director David Petraeus testified that he was unaware of any “stand down” order having been given by the COB to the QRF, was the redaction of that information from a whistleblower’s complaint, and its resultant Report of the CIA Inspector General, justified under Exemptions 1, 3, 5, and 7.

Department of Justice

2. Where plaintiffs seek only those portions of the 302s which recount the COB’s stand down order to the QRF, does the FBI have a rational basis to assert that such disclosure “could reasonably be expected to interfere with enforcement proceedings” under Exemption 7(A).
3. Where plaintiffs seek only those portions of the 302s which recount the COB’s stand down order to the QRF, does the FBI’s withholding-in-full violate its mandate to release reasonably segregable information.
4. Where plaintiffs seek records generated twelve years ago, has the FBI met its burden of showing that prosecutions are “pending or reasonably anticipated” under Exemption 7(A).
5. Where the QRF’s accounts of the COB’s stand down order is vastly public, and in the Congressional record, did the FBI properly withhold that information from the 302s under privacy Exemptions.
6. Is the FBI properly withholding, on privacy grounds, the 302 of John Tiegan, notwithstanding its receipt of Mr. Tiegan’s written waiver.

Department of Defense

7. Did the District Court erroneously fail to find as uncontested fact that the order to respond, known as an EXORD, is, by definition, the first order to respond.
8. Did the District Court erroneously fail to find as fact that the EXORD, transmitted at 3:00 a.m. September 12, disproves the DoD's version that the order to respond had been given "by 7:00 p.m." and the *Select Committee's* account that the order had been relayed to forces by 9:00 p.m.
9. Could disclosure of placement of assets available to respond—twelve years ago—provide adversaries with information that could now be expected to cause serious damage to national security, contrary to the protection provided by Exemption 1.
10. Where the Congressional record is replete with discussions of the assets, travel times, and available personnel and aircraft, and was coterminous with widespread media reports, did plaintiffs meet their burden to show that the information has already been made public through official sources.
11. Did the District Court err in failing to recognize that the DoD component receiving the FOIA request for the OPREP-3 was required to forward it to other components likely to possess it, and did the Magistrate incorrectly conclude that this important event report could have been only verbal, and that the DoD may not be the custodian, and that plaintiffs had not requested the OPREP-3.

Date: August 5, 2024.

Respectfully submitted,

/s/ John H. Clarke

John H. Clarke Bar No. 388599

1629 K Street, NW

Suite 300

Washington, DC 20006

(202) 344-0776

john@johnhclarkelaw.com

*Counsel for Appellant*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of August, 2024, I have caused the foregoing to be served on Appellee's counsel by filing the Certificate on the Court's CM/ECF system. Counsel is a registered user.

/s/ John H. Clarke