

NOT YET SCHEDULED FOR ORAL ARGUMENT

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.)
)
 _____)

DEFERRED JOINT APPENDIX

VOLUME 1 OF 2

On Appeal from the United States District Court for the
District of Columbia, Hon. Loren L. Alikhan, District Judge

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U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:14-cv-01589-LLA

ACCURACY IN MEDIA, INC. et al v. DEPARTMENT OF DEFENSE et al
Assigned to: Judge Loren L. AliKhan
Case in other court: USCA, 24-05165
Cause: 05:552 Freedom of Information Act

Date Filed: 09/19/2014
Date Terminated: 04/30/2024
Jury Demand: None
Nature of Suit: 895 Freedom of Information Act
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
09/19/2014	<u>1</u>	COMPLAINT against All Defendants (Filing fee \$ 400 receipt number 0090-3844221) filed by CLARE M LOPEZ, LARRY W. BAILEY, JAMES A. LYONS, JR, ROGER L ARONOFF, KEVIN MICHAEL SHIPP, ACCURACY IN MEDIA, INC., KENNETH BENWAY, RICHARD F BRAUER, JR.(Clarke, John) (Entered: 09/19/2014)
09/19/2014	<u>2</u>	CIVIL COVER SHEET by ACCURACY IN MEDIA, INC. re <u>1</u> Complaint, filed by ACCURACY IN MEDIA, INC.. Related document: <u>1</u> Complaint, filed by CLARE M LOPEZ, ROGER L ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, JAMES A. LYONS, JR., ACCURACY IN MEDIA, INC., RICHARD F BRAUER, JR, KEVIN MICHAEL SHIPP.(Clarke, John) (Entered: 09/19/2014)
09/19/2014	<u>3</u>	REQUEST FOR SUMMONS TO ISSUE by ACCURACY IN MEDIA, INC. re <u>1</u> Complaint, filed by ACCURACY IN MEDIA, INC.. Related document: <u>1</u> Complaint, filed by CLARE M LOPEZ, ROGER L ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, JAMES A. LYONS, JR., ACCURACY IN MEDIA, INC., RICHARD F BRAUER, JR, KEVIN MICHAEL SHIPP. (Attachments: # <u>1</u> Summons, # <u>2</u> Summons, # <u>3</u> Summons, # <u>4</u> Summons, # <u>5</u> Summons, # <u>6</u> Summons)(Clarke, John) (Entered: 09/19/2014)
09/19/2014		Case Assigned to Judge Emmet G. Sullivan. (kb) (Entered: 09/19/2014)
09/20/2014	<u>4</u>	REQUEST FOR SUMMONS TO ISSUE <i>Summons</i> by ACCURACY IN MEDIA, INC. filed by ACCURACY IN MEDIA, INC.. (Attachments: # <u>1</u> Summons, # <u>2</u> Summons)(Clarke, John) (Entered: 09/20/2014)
09/22/2014	<u>5</u>	SUMMONS (2) Issued Electronically as to U.S. Attorney and U.S. Attorney General (td,) (Entered: 09/22/2014)
09/22/2014	<u>6</u>	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by ACCURACY IN MEDIA, INC. (Attachments: # <u>1</u> CERTIFICATE RULE LCvR 7.1)(Clarke, John) (Entered: 09/22/2014)
09/23/2014	<u>7</u>	SUMMONS (4) Issued Electronically as to CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE. (Attachments: # <u>1</u> Consent Form, # <u>2</u> Notice of Consent)(kb) (Entered: 09/23/2014)
12/22/2014	<u>8</u>	NOTICE of Appearance by Megan Anne Crowley on behalf of All Defendants (Crowley, Megan) (Entered: 12/22/2014)
12/22/2014	<u>9</u>	ANSWER to Complaint by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE. (Attachments: # <u>1</u> Exhibit Attachment 1, # <u>2</u> Exhibit Attachment 2, # <u>3</u> Exhibit Attachment 3, # <u>4</u> Exhibit Attachment 4, # <u>5</u> Exhibit Attachment 5, # <u>6</u> Exhibit Attachment 6, # <u>7</u> Exhibit Attachment 7, # <u>8</u> Exhibit Attachment 8, # <u>9</u> Exhibit Attachment 9, # <u>10</u> Exhibit Attachment 10, # <u>11</u> Exhibit Attachment 11, # <u>12</u> Exhibit Attachment 12, # <u>13</u> Exhibit Attachment 13, # <u>14</u> Exhibit Attachment 14, # <u>15</u> Exhibit Attachment 15, # <u>16</u> Exhibit Attachment 16, # <u>17</u> Exhibit Attachment 17, # <u>18</u> Exhibit Attachment 18, # <u>19</u> Exhibit Attachment 19, # <u>20</u> Exhibit Attachment 20)(Crowley, Megan) (Entered: 12/22/2014)

01/06/2015	<u>10</u>	ORDER FOR MEET AND CONFER REPORT. Attorney Meet and Confer Conference by 1/28/2015. Meet & Confer Statement due by 2/11/2015. Signed by Judge Emmet G. Sullivan on 01/06/15. (mac) (Entered: 01/06/2015)
01/07/2015	<u>11</u>	Unopposed MOTION for Leave to File <i>Supplemental Complaint</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Text of Proposed Order, # <u>2</u> Supplement Supplemental Complaint)(Clarke, John) (Entered: 01/07/2015)
01/12/2015		MINUTE ORDER granting <u>11</u> plaintiffs' unopposed motion for leave to file supplemental complaint. The government shall answer or otherwise respond to <u>11</u> plaintiffs' supplemental complaint by no later than January 23, 2015. Signed by Judge Emmet G. Sullivan on January 12, 2015. (lcegs4) (Entered: 01/12/2015)
01/12/2015		Set/Reset Deadlines: Government Answer due by 1/23/2015. (mac) (Entered: 01/12/2015)
01/12/2015	<u>12</u>	SUPPLEMENTAL COMPLAINT against CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE filed by CLARE M. LOPEZ, LARRY W. BAILEY, JAMES A. LYONS, JR, ROGER L. ARONOFF, KEVIN MICHAEL SHIPP, ACCURACY IN MEDIA, INC., KENNETH BENWAY, RICHARD F. BRAUER, JR.(jf,) (Entered: 01/13/2015)
01/23/2015	<u>13</u>	ANSWER to <u>12</u> Complaint, by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4)(Crowley, Megan) (Entered: 01/23/2015)
01/26/2015	<u>14</u>	AMENDED ORDER FOR MEET AND CONFER REPORT. Attorney Meet and Confer Conference by 2/17/2015. Meet & Confer Statement due by 3/3/2015. Signed by Judge Emmet G. Sullivan on 01/26/2015. (mac) (Entered: 01/26/2015)
02/22/2015	<u>15</u>	MOTION to Expedite , MOTION to Stay <i>CASE AGAINST CIA</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Exhibit DOD/DIA Ad–Appeal Letter, # <u>2</u> Exhibit DOD/DIA Ad–Appeal+Rpt–Q's–Timeline, # <u>3</u> Exhibit DOD/DIA Ad–Appeal Exhibits, # <u>4</u> Exhibit State Dept Ad Appeal, # <u>5</u> Exhibit CIA Ad Appeal, # <u>6</u> Exhibit Admiral Kubic Transcript, # <u>7</u> Exhibit Intel Committee Rpt Excerpt, # <u>8</u> Exhibit LexisNexis search, # <u>9</u> Exhibit List Congressional record)(Clarke, John) (Entered: 02/22/2015)
02/26/2015	<u>16</u>	NOTICE OF WITHDRAWAL OF MOTION by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP re <u>15</u> MOTION to Expedite MOTION to Stay <i>CASE AGAINST CIA</i> (Clarke, John) (Entered: 02/26/2015)
02/26/2015		MINUTE ORDER. The plaintiffs styled one filing as a motion to expedite and motion to stay case against the CIA. The plaintiffs' filing consists of over 300 pages of materials. On February 26, 2015, the plaintiffs filed a <u>16</u> notice of withdrawal of <u>15</u> motion for expedited processing. To avoid any confusion in the record, and in the interests of judicial economy, the plaintiffs are directed to refile only the motion to stay case against the CIA by no later than March 6, 2015. Accordingly, <u>15</u> plaintiffs' motion to expedite and motion to stay case against the CIA is DENIED without prejudice. Signed by Judge Emmet G. Sullivan on February 26, 2015. (lcegs4) (Entered: 02/26/2015)
02/27/2015		Set/Reset Deadlines: Plaintiffs Refiling of Motion To Stay Case Against the CIA due by 3/6/2015. (mac) (Entered: 02/27/2015)
03/03/2015	<u>17</u>	MEET AND CONFER STATEMENT. (Clarke, John) (Entered: 03/03/2015)
03/03/2015	<u>18</u>	Unopposed MOTION for Order <i>Preserving Certain Allegations</i> by DEPARTMENT OF JUSTICE (Attachments: # <u>1</u> Declaration Hardy Decl., # <u>2</u> Text of Proposed Order)(Crowley, Megan) (Entered: 03/03/2015)

03/05/2015	<u>19</u>	MOTION to Stay <i>PARTIAL STAY AGAINST CIA</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Exhibit Intel Comittee Rpt Excerpt 1-15-14, # <u>2</u> Exhibit List Congressional Record, # <u>3</u> Exhibit Ad Charles Kubic, USN, (Ret.) transcript Press Roundtable)(Clarke, John) (Entered: 03/05/2015)
03/20/2015		MINUTE ORDER. The CIA is directed to file its response to <u>19</u> plaintiffs' motion to stay by no later than March 27, 2015. Signed by Judge Emmet G. Sullivan on March 20, 2015. (lcegs4) (Entered: 03/20/2015)
03/20/2015		Set/Reset Deadlines: CIA Response due by 3/27/2015. (mac) (Entered: 03/20/2015)
03/23/2015	<u>20</u>	NOTICE OF FILING OF PROPOSED SCHEDULING ORDER by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR re <u>17</u> Meet and Confer Statement (Attachments: # <u>1</u> Text of Proposed Order)(Clarke, John) (Entered: 03/23/2015)
03/27/2015	<u>21</u>	RESPONSE TO ORDER OF THE COURT re Order filed by CENTRAL INTELLIGENCE AGENCY. (Crowley, Megan) (Entered: 03/27/2015)
04/03/2015	<u>22</u>	REPLY to opposition to motion re <u>19</u> MOTION to Stay <i>PARTIAL STAY AGAINST CIA</i> filed by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP. (Clarke, John) (Entered: 04/03/2015)
04/03/2015	<u>23</u>	MOTION for Partial Summary Judgment <i>AGAINST DEFENDANT STATE DEPARTMENT ON ISSUE OF PRODUCTION IN ELECTRONIC FORMAT</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Exhibit State Dept FOIA requests, # <u>2</u> Exhibit State Dept email to plaintiffs, # <u>3</u> Text of Proposed Order)(Clarke, John) Modified event title on 4/6/2015 (znmw,). (Entered: 04/03/2015)
04/16/2015	<u>24</u>	STIPULATION re <u>23</u> MOTION for Partial Summary Judgment by DEPARTMENT OF STATE. (Crowley, Megan) (Entered: 04/16/2015)
05/13/2015	<u>25</u>	MOTION for Partial Summary Judgment <i>against Defendant DOJ for Disclosure of Three FBI 302 Reports</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Exhibit Ex 1 13 Hours excerpts, # <u>2</u> Exhibit Ex 2 Katallah indictment, # <u>3</u> Exhibit Ex 3 Katallah docket, # <u>4</u> Text of Proposed Order)(Clarke, John). (Entered: 05/13/2015)
05/14/2015	<u>26</u>	MOTION for Extension of Time to File Response/Reply as to <u>25</u> MOTION for Summary Judgment <i>against Defendant DOJ for Disclosure of Three FBI 302 Reports</i> by DEPARTMENT OF JUSTICE (Attachments: # <u>1</u> Text of Proposed Order)(Crowley, Megan) (Entered: 05/14/2015)
05/26/2015	<u>27</u>	MOTION to Amend/Correct <i>COMPLAINT</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Exhibit Amended Complaint, # <u>2</u> Text of Proposed Order)(Clarke, John) (Entered: 05/26/2015)
05/27/2015		MINUTE ORDER granting <u>26</u> defendants' unopposed motion for extension of time. Defendants shall respond to <u>25</u> plaintiff's motion for summary judgment by no later than June 8, 2015. Signed by Judge Emmet G. Sullivan on May 27, 2015. (lcegs2) (Entered: 05/27/2015)
05/27/2015		Set/Reset Deadlines: Defendant Response to Motion for Summary Judgment due by 6/8/2015. (mac) (Entered: 05/27/2015)
05/27/2015		Set/Reset Deadlines: IRS Summary Judgment motion and Vaughn Index due by 6/15/2015. Plaintiff Opposition to Defendant's Motion, Combined With Any Cross Motion For Summary Judgment due by 7/15/2015. Defendant Reply In Further Support Of Its Motion, Combined With Its Opposition To The Plaintiff's Cross Motion

		due by 8/17/2015. Plaintiff Reply In Further Support Of Its Motion due by 8/31/2015. (zmac) (Entered: 05/27/2015)
06/03/2015	<u>28</u>	STATUS REPORT by DEPARTMENT OF DEFENSE, DEPARTMENT OF STATE. (Crowley, Megan) (Entered: 06/03/2015)
06/08/2015	<u>29</u>	Memorandum in opposition to re <u>25</u> MOTION for Summary Judgment <i>against Defendant DOJ for Disclosure of Three FBI 302 Reports</i> filed by DEPARTMENT OF JUSTICE. (Attachments: # <u>1</u> Declaration, # <u>2</u> Declaration, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit)(Crowley, Megan) (Entered: 06/08/2015)
06/15/2015	<u>30</u>	Unopposed MOTION for Extension of Time to File Response/Reply to DOJ <i>Opposition to Motion for Partial Summary Judgment</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Text of Proposed Order)(Clarke, John) (Entered: 06/15/2015)
06/17/2015		MINUTE ORDER granting <u>30</u> plaintiffs' unopposed motion for extension of time. Plaintiffs shall file their reply in further support of <u>25</u> their motion for summary judgment by no later than June 26, 2015. Signed by Judge Emmet G. Sullivan on June 17, 2015. (lcegs2) (Entered: 06/17/2015)
06/17/2015		Set/Reset Deadlines: Plaintiff Reply In Further Support of Motion for Summary Judgment due by 6/26/2015. (mac) (Entered: 06/17/2015)
06/23/2015		MINUTE ORDER granting <u>18</u> unopposed motion for a preservation order, granting <u>19</u> plaintiff's motion to stay certain claims against the CIA, denying <u>23</u> plaintiff's first motion for partial summary judgment, denying without prejudice <u>25</u> plaintiff's second motion for partial summary judgment. The plaintiff in this case has filed a series of motions that are, in the Court's view premature and unnecessarily piecemeal. The parties submitted <u>20</u> a proposed schedule for the production of documents in this case, but the plaintiff proceeded almost immediately to file motions for partial summary judgment on narrow issues. The plaintiff, however, chose to file this case as one civil action and it will proceed as such. First, the Court GRANTS <u>18</u> the Department of Justice's unopposed motion for an Order permitting it to move for summary judgment based on the applicability of Exemption 7(A) to certain records without waiving any allegation that those records are exempt from release for other reasons. Second, the Court grants <u>19</u> plaintiff's motion to stay the portions of its claim against the Central Intelligence Agency that, in plaintiff's view, will become ripe only upon issuance of a Report by the House Select Committee. The Court finds that judicial economy would not be served by excluding these claims entirely from this case, only to reopen them at some later date. Third, in accordance with <u>24</u> the parties' stipulation, plaintiff's <u>23</u> first motion for partial summary judgment was WITHDRAWN and is therefore DENIED. Fourth, plaintiff's <u>27</u> unopposed motion for leave to file a Second Amended Complaint is hereby GRANTED. Plaintiff's Second Amended Complaint, Exhibit 1 to <u>27</u> its motion for leave, shall be filed on the docket as a separate docket entry. Defendants shall respond to the Second Amended Complaint in accordance with the Federal Rules of Civil Procedure. In view of the filing of a Second Amended Complaint and the fact that the plaintiff has sought repeatedly to file piecemeal motions for partial summary judgment, the Court DENIES WITHOUT PREJUDICE <u>25</u> plaintiff's second motion for partial summary judgment. The plaintiff chose to file this case against a number of defendants and including a number of potential legal and factual issues, and to file it in a single case. The Court intends to treat the case as such, with the exception of the claims against the CIA that have been stayed by this Order. Accordingly, neither party shall move for summary judgment on a piecemeal basis without obtaining leave of this Court and demonstrating good cause for proceeding in that manner. The parties are directed to confer and file a joint status report setting forth the following information: (1) the current status of the House Select Committee's Report and any indication of when that Report may be issued, and therefore when plaintiff's stayed claims may be reopened; (2) the parties' competing proposals for a schedule for the completion of any production of any further records by each of the defendant agencies; and (3) the parties' suggestions for an appropriate schedule—to commence after every defendant has completed its production schedule—for the briefing of a single round of cross motions for summary judgment. If the parties cannot agree on any of these issues, they shall include their individual perspectives in a joint status report. The joint status

		report shall be filed by no later than July 3, 2015. Signed by Judge Emmet G. Sullivan on June 23, 2015. (lcegs2) (Entered: 06/23/2015)
06/24/2015	<u>31</u>	SECOND AMENDED COMPLAINT against CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE filed by CLARE M. LOPEZ, LARRY W. BAILEY, JAMES A. LYONS, JR, ROGER L. ARONOFF, KEVIN MICHAEL SHIPP, ACCURACY IN MEDIA, INC., KENNETH BENWAY, RICHARD F. BRAUER, JR.(jf) (Entered: 06/24/2015)
06/24/2015		Set/Reset Deadlines: Joint Status Report due by 7/3/2015. (mac) (Entered: 06/24/2015)
07/03/2015	<u>32</u>	STATUS REPORT <i>JOINT</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP. (Clarke, John) (Entered: 07/03/2015)
07/13/2015	<u>33</u>	ANSWER to <u>31</u> Amended Complaint, by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE. Related document: <u>31</u> Amended Complaint, filed by RICHARD F. BRAUER, JR, KENNETH BENWAY, ROGER L. ARONOFF, KEVIN MICHAEL SHIPP, CLARE M. LOPEZ, LARRY W. BAILEY, ACCURACY IN MEDIA, INC., JAMES A. LYONS, JR..(Crowley, Megan) (Entered: 07/13/2015)
09/03/2015	<u>34</u>	NOTICE <i>Regarding Motion</i> by U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Exhibit A)(Crowley, Megan) (Entered: 09/03/2015)
09/03/2015	<u>35</u>	MOTION to Stay by U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Crowley, Megan) (Entered: 09/03/2015)
09/04/2015	<u>36</u>	NOTICE <i>of Court Order</i> by U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Exhibit)(Crowley, Megan) (Entered: 09/04/2015)
10/16/2015	<u>37</u>	Unopposed MOTION for Extension of Time to <i>Make Final Production</i> by U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Crowley, Megan) (Entered: 10/16/2015)
10/23/2015		MINUTE ORDER granting <u>37</u> Defendant's Unopposed Motion for Extension of Time. Defendant shall make its final production no later than December 4, 2015. Signed by Judge Emmet G. Sullivan on October 23, 2015. (lcegs4) (Entered: 10/23/2015)
10/23/2015		MINUTE ORDER denying Defendant's motion to stay as moot. Signed by Judge Emmet G. Sullivan on October 23, 2015. (lcegs4) (Entered: 10/23/2015)
12/03/2015	<u>38</u>	Unopposed MOTION for Extension of Time to <i>Make Final Production</i> by U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Crowley, Megan) (Entered: 12/03/2015)
12/06/2015		MINUTE ORDER granting <u>38</u> Defendant's Unopposed Motion for Extension of Time. It is hereby ordered that Defendant Department of State shall make its final production of documents on or before December 21, 2015. Signed by Judge Emmet G. Sullivan on December 6, 2015. (lcegs4) (Entered: 12/06/2015)
12/07/2015		Set/Reset Deadlines: Defendant Department of State Final Production Of Documents due by 12/21/2015. (mac) (Entered: 12/07/2015)
12/21/2015	<u>39</u>	Unopposed MOTION for Extension of Time to <i>Make Final Production</i> by U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Crowley, Megan) (Entered: 12/21/2015)
12/23/2015		MINUTE ORDER granting <u>39</u> Unopposed Motion for Extension of Time. Defendant Department of State shall file a status report no later than January 22, 2016 indicating the status of its search and production of any responsive, non-exempt documents. Signed by Judge Emmet G. Sullivan on December 23, 2015. (lcegs4) (Entered: 12/23/2015)
12/23/2015		Set/Reset Deadlines: Status Report due by 1/22/2016. (mac) (Entered: 12/23/2015)

01/22/2016	<u>40</u>	STATUS REPORT by U.S. DEPARTMENT OF STATE. (Attachments: # <u>1</u> Text of Proposed Order)(Crowley, Megan) (Entered: 01/22/2016)
02/01/2016		MINUTE ORDER directing the Defendants to complete its additional searches and file a status report no later than February 5, 2016. Signed by Judge Emmet G. Sullivan on February 1, 2016. (lcegs4) (Entered: 02/01/2016)
02/01/2016		Set/Reset Deadlines: Status Report due by 2/5/2016. (mac) (Entered: 02/01/2016)
02/05/2016	<u>41</u>	STATUS REPORT by U.S. DEPARTMENT OF STATE. (Crowley, Megan) (Entered: 02/05/2016)
03/25/2016	<u>42</u>	STATUS REPORT by U.S. DEPARTMENT OF STATE. (Crowley, Megan) (Entered: 03/25/2016)
05/05/2016	<u>43</u>	Unopposed MOTION for Extension of Time to <i>Make Final Production</i> by U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Crowley, Megan) (Entered: 05/05/2016)
05/18/2016		MINUTE ORDER granting <u>43</u> Motion for Extension of Time, nunc pro tunc. Signed by Judge Emmet G. Sullivan on May 18, 2016. (lcegs4) (Entered: 05/18/2016)
05/18/2016		Set/Reset Deadlines: Status Report due by 5/19/2016. (mac) (Entered: 05/18/2016)
05/19/2016	<u>44</u>	Joint STATUS REPORT by U.S. DEPARTMENT OF STATE. (Crowley, Megan) (Entered: 05/19/2016)
05/26/2016	<u>45</u>	Joint STATUS REPORT by U.S. DEPARTMENT OF STATE. (Crowley, Megan) (Entered: 05/26/2016)
05/27/2016	<u>46</u>	Unopposed MOTION for Extension of Time to <i>Make Final Production</i> by DEPARTMENT OF DEFENSE (Attachments: # <u>1</u> Text of Proposed Order)(Crowley, Megan) (Entered: 05/27/2016)
06/02/2016	<u>47</u>	Joint STATUS REPORT by U.S. DEPARTMENT OF STATE. (Crowley, Megan) (Entered: 06/02/2016)
06/09/2016	<u>48</u>	Joint STATUS REPORT by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP. (Clarke, John) (Entered: 06/09/2016)
06/13/2016	<u>49</u>	Joint STATUS REPORT by U.S. DEPARTMENT OF STATE. (Crowley, Megan) (Entered: 06/13/2016)
06/22/2016	<u>50</u>	Joint MOTION for Extension of Time to <i>TO SUBMIT PROPOSED BRIEFING SCHEDULE</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP (Clarke, John) (Entered: 06/22/2016)
06/23/2016		MINUTE ORDER granting <u>46</u> Motion for Extension of Time to; granting <u>50</u> Motion for Extension of Time. Signed by Judge Emmet G. Sullivan on June 23, 2016. (lcegs4) (Entered: 06/23/2016)
06/23/2016		Set/Reset Deadlines: Briefing Schedule due by 6/24/2016 (mac) (Entered: 06/23/2016)
06/24/2016	<u>51</u>	Joint STATUS REPORT <i>and Proposed Briefing Schedule</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE. (Crowley, Megan) (Entered: 06/24/2016)
06/24/2016	<u>52</u>	MEMORANDUM re <u>51</u> Status Report filed by DEPARTMENT OF JUSTICE, DEPARTMENT OF DEFENSE, U.S. DEPARTMENT OF STATE, CENTRAL INTELLIGENCE AGENCY by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP. (Clarke, John) (Entered: 06/24/2016)

07/01/2016	<u>53</u>	MEMORANDUM re <u>51</u> Status Report filed by DEPARTMENT OF JUSTICE, DEPARTMENT OF DEFENSE, U.S. DEPARTMENT OF STATE, CENTRAL INTELLIGENCE AGENCY by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE. (Crowley, Megan) (Entered: 07/01/2016)
07/01/2016	<u>54</u>	NOTICE of Exhibit A to Memorandum by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE re <u>53</u> Memorandum, (Crowley, Megan) (Entered: 07/01/2016)
07/22/2016	<u>55</u>	Unopposed MOTION to Lift Stay re Order on Motion for Partial Summary Judgment, Order on Motion to Amend/Correct, Order on Motion for Order, Order on Motion to Stay,,, by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Text of Proposed Order)(Clarke, John) (Entered: 07/22/2016)
07/25/2016		MINUTE ORDER granting <u>55</u> Motion to Lift Stay. Signed by Judge Emmet G. Sullivan on July 25, 2016. (lcegs4) (Entered: 07/25/2016)
09/22/2016		MINUTE ORDER directing the parties to file a Joint Status Report setting forth recommendations for further proceedings no later than September 30, 2016. Signed by Judge Emmet G. Sullivan on September 22, 2016. (lcegs4) (Entered: 09/22/2016)
09/22/2016		Set/Reset Deadlines: Status Report due by 9/30/2016 (mac) (Entered: 09/22/2016)
09/27/2016	<u>56</u>	Joint STATUS REPORT by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE. (Moore, Tamra) (Entered: 09/27/2016)
09/28/2016		MINUTE ORDER. In view of <u>56</u> joint status report, the parties are directed to file a joint status report by no later than November 18, 2016, proposing a production schedule and a briefing schedule regarding any remaining issues. Signed by Judge Emmet G. Sullivan on 9/28/2016. (lcegs4) (Entered: 09/28/2016)
09/29/2016		Set/Reset Deadlines: Status Report due by 11/18/2016 (mac) (Entered: 09/29/2016)
11/18/2016	<u>57</u>	Joint MOTION for Extension of Time to <i>Submit Joint Status Report</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Moore, Tamra) (Entered: 11/18/2016)
11/21/2016		MINUTE ORDER granting <u>57</u> joint motion for extension of time to submit parties' joint status report. The parties shall file a joint status report by no later than December 1, 2016. Signed by Judge Emmet G. Sullivan on 11/21/2016. (lcegs4) (Entered: 11/21/2016)
11/22/2016		Set/Reset Deadlines: Joint Status Report due by 12/1/2016. (mac) (Entered: 11/22/2016)
12/01/2016	<u>58</u>	Joint STATUS REPORT by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE. (Attachments: # <u>1</u> Text of Proposed Order)(Moore, Tamra) (Entered: 12/01/2016)
12/14/2016		MINUTE ORDER. Upon consideration of <u>58</u> the parties joint status report, the parties are directed to comply with the following schedule: The CIA shall produce any remaining responsive, non-exempt records no later than February 28, 2017. Defendants shall file their summary judgment motion no later than March 31, 2017. Plaintiffs shall file their cross-motion for summary judgment and opposition to Defendants' motion no later than May 1, 2017. Defendants shall file their reply in support of their summary judgment motion and in opposition to Plaintiffs' cross-motion no later than May 15, 2017. Plaintiffs shall file their reply in support of their cross-motion no later than May 30, 2017. Signed by Judge Emmet G. Sullivan on 12/14/2016. (lcegs4) (Entered: 12/14/2016)

12/15/2016		Set/Reset Deadlines: Defendants Summary Judgment Motion due by 3/31/2017. Plaintiff Cross-Motion for Summary Judgment And Opposition To Defendants' Motion due by 5/1/2017. Defendants Reply In Support Of Their Summary Judgment Motion And In Opposition To Plaintiffs' Cross-Motion due by 5/15/2017. Plaintiff Reply In Support Of Their Cross-Motion due by 5/30/2017. (mac) (Entered: 12/15/2016)
03/19/2017	<u>59</u>	Joint MOTION for Briefing Schedule <i>to be Amended</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Moore, Tamra) (Entered: 03/19/2017)
03/22/2017		MINUTE ORDER granting <u>59</u> joint motion to amend briefing schedule. The parties shall file a joint status report identifying what, if any, issues remain for the Court to resolve on or before May 12, 2017. In the event that the parties are unable to resolve this matter outside of litigation, the parties shall file their respective dispositive motions according to the following briefing schedule: Defendants shall file their motion for summary judgment by no later than June 2, 2017. Plaintiffs shall file their cross-motion for summary judgment by no later than June 30, 2017. Defendants shall file their reply in support of their motion, combined with their opposition to plaintiffs' cross-motion for summary judgment by no later than July 14, 2017. Plaintiffs shall file their reply in support of their cross-motion for summary judgment by no later than July 28, 2017. Signed by Judge Emmet G. Sullivan on 3/22/2017. (lcegs4) (Entered: 03/22/2017)
03/23/2017		Set/Reset Deadlines: Joint Status Report due by 5/12/2017. Defendants Motion For Summary Judgment due by 6/2/2017. Plaintiffs Cross-Motion For Summary Judgment due by 6/30/2017. Defendant Reply In Support Of Their Motion, Combined With Their Opposition To Plaintiffs' Cross Motion For Summary Judgment due by 7/14/2017. Plaintiffs Reply In Support Of Their Cross-Motion For Summary Judgment due 7/28/2017. (mac) (Entered: 03/23/2017)
05/12/2017	<u>60</u>	Joint MOTION for Briefing Schedule <i>and Joint Status Report</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Moore, Tamra) (Entered: 05/12/2017)
05/12/2017		MINUTE ORDER. Upon consideration of the parties' joint status report, the Court grants <u>60</u> the parties' joint motion to amend the briefing schedule. The deadlines for dispositive motions will be continued as follows: defendants' motion for summary judgment shall be filed no later September 15, 2017; plaintiffs' opposition, which shall be combined with plaintiffs' cross-motion for summary judgment, shall be filed no later than October 13, 2017; defendants' reply, combined with defendants' opposition to plaintiffs' cross-motion, shall be filed no later than November 3, 2017; and plaintiffs' reply shall be filed by no later than December 17, 2017. Signed by Judge Emmet G. Sullivan on 5/12/2017. (lcegs2) (Entered: 05/12/2017)
05/12/2017		Set/Reset Deadlines: Defendants' Motion For Summary Judgment due by 9/15/2017. Plaintiff Opposition, Which Shall Be Combined With Plaintiffs' Cross-Motion For Summary Judgment due by 10/13/2017. Defendants' Reply Combined With Defendants' Opposition To Plaintiffs' Cross-Motion due by 11/3/2017. Plaintiffs' Reply due 12/17/2017 (mac) (Entered: 05/12/2017)
05/12/2017	61	Joint STATUS REPORT by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE. (See Docket Entry <u>60</u> to view document). (znmw) (Entered: 05/15/2017)
07/31/2017	<u>62</u>	STANDING ORDER: The parties are directed to read the attached Standing Order Governing Civil Cases Before Judge Emmet G. Sullivan in its entirety upon receipt. The parties are hereby ORDERED to comply with the directives in the attached Standing Order. Signed by Judge Emmet G. Sullivan on 7/31/2017. (Attachments: # <u>1</u> Exhibit) (lcegs1) (Entered: 07/31/2017)
09/05/2017	<u>63</u>	Joint MOTION for Briefing Schedule <i>to be Amended</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Moore,

		Tamra) (Entered: 09/05/2017)
09/06/2017		MINUTE ORDER granting <u>63</u> the parties' joint motion to amend the briefing schedule. The deadlines for dispositive motions will be amended as follows: defendants' motion for summary judgment shall be filed by no later than December 15, 2017; plaintiffs' opposition, which shall be combined with plaintiffs' cross-motion for summary judgment, shall be filed by no later than January 19, 2018; defendants' reply, combined with defendants' opposition to plaintiffs' cross-motion, shall be filed by no later than February 9, 2018; and plaintiffs' reply shall be filed by no later than March 2, 2018. Signed by Judge Emmet G. Sullivan on September 6, 2017. (lcegs2) (Entered: 09/06/2017)
09/07/2017		Set/Reset Deadlines: Defendants' Motion For Summary Judgment due by 12/15/2017. Plaintiffs' Opposition, Which Shall Be Combined With Plaintiffs' Cross-Motion For Summary Judgment by 1/19/2018. Defendants' Reply, Combined With Defendants' Opposition To Plaintiffs' Cross-Motion due by 2/9/2018. Plaintiffs' Reply due by 3/2/2018. (mac) (Entered: 09/07/2017)
11/29/2017	<u>64</u>	Joint MOTION for Briefing Schedule <i>to be Amended</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Moore, Tamra) (Entered: 11/29/2017)
12/01/2017		MINUTE ORDER granting <u>64</u> the parties' joint motion to amend the briefing schedule. The deadlines for dispositive motions will be amended as follows: defendants' motion for summary judgment shall be filed by no later than March 9, 2018; plaintiffs' opposition, which shall be combined with plaintiffs' cross-motion for summary judgment, shall be filed by no later than April 6, 2018; defendants' reply, combined with defendants' opposition to plaintiffs' cross-motion, shall be filed by no later than April 27, 2018; and plaintiffs' reply shall be filed by no later than May 18, 2018. Signed by Judge Emmet G. Sullivan on December 1, 2017. (lcegs2) (Entered: 12/01/2017)
12/01/2017		Set/Reset Deadlines: Defendant Motion For Summary Judgment due by 3/9/2018. Plaintiff Opposition, Which Shall Be Combined With Plaintiffs' Cross-Motion For Summary Judgment due by 4/6/2018. Defendants' Reply, Combined With Defendants' Opposition To Plaintiffs' Cross-Motion due by 4/27/2018. Plaintiffs' Reply due by 5/18/2018. (mac) (Entered: 12/01/2017)
03/02/2018	<u>65</u>	Joint MOTION for Briefing Schedule <i>to be Amended</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Moore, Tamra) (Entered: 03/02/2018)
03/07/2018		MINUTE ORDER granting <u>65</u> joint motion for briefing schedule to be amended for good cause shown. The briefing schedule set forth in the Court's December 1, 2017 Minute Order is therefore VACATED and the deadlines for dispositive motions will be amended as follows: defendants' motion for summary judgment shall be filed by April 20, 2018; plaintiffs' opposition to defendants' motion for summary judgment and any cross-motion for summary judgment shall be filed by May 18, 2018; defendants' reply in support of their motion and opposition to the plaintiffs' cross-motion shall be filed by June 15, 2018; plaintiffs' reply in support of their cross-motion shall be filed by July 13, 2018. Signed by Judge Emmet G. Sullivan on 3/7/2018. (lcegs3) (Entered: 03/07/2018)
04/13/2018	<u>66</u>	Consent MOTION for Extension of Time to <i>file Defendants' Summary Judgment and to Amend Briefing Schedule</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Moore, Tamra) (Entered: 04/13/2018)
04/15/2018		MINUTE ORDER granting <u>66</u> consent motion for briefing schedule to be amended for good cause shown. The briefing schedule set forth in the Court's March 7, 2018 Minute Order is therefore VACATED and the deadlines for dispositive motions will be amended as follows: defendants' motion for summary judgment shall be filed by May 4, 2018; plaintiffs' combined opposition to defendants' motion for summary judgment and cross-motion for summary judgment shall be filed by June 8, 2018;

		defendants' combined reply in support of their motion and opposition to plaintiffs' cross-motion shall be filed by July 13, 2018; and plaintiffs' reply in support of their cross-motion shall be filed by August 10, 2018. Signed by Judge Emmet G. Sullivan on April 15, 2018. (lcegs2) (Entered: 04/15/2018)
05/03/2018	<u>67</u>	Consent MOTION for Extension of Time to <i>file Defendants' Summary Judgment and to Amend Briefing Schedule</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Moore, Tamra) (Entered: 05/03/2018)
05/03/2018		MINUTE ORDER granting <u>67</u> defendants' consent motion for an extension of time. The parties are directed to comply with the following briefing schedule: defendants' motion for summary judgment shall be filed by May 10, 2018; plaintiffs' combined opposition to defendants' motion for summary judgment and cross-motion for summary judgment shall be filed by June 15, 2018; defendants' combined reply in support of their motion and opposition to plaintiffs' cross-motion shall be filed by July 13, 2018; and plaintiffs' reply in support of their cross-motion shall be filed by August 10, 2018. Signed by Judge Emmet G. Sullivan on May 3, 2018. (lcegs2) (Entered: 05/03/2018)
05/04/2018		Set/Reset Deadlines: Defendants' Motion For Summary Judgment due by 5/10/2018. Plaintiffs' Combined Opposition To Defendants' Motion For Summary Judgment And Cross-Motion For Summary Judgment due by 6/15/2018. Defendants' Combined Reply In Support Of Their Motion And Opposition To Plaintiffs' Cross-Motion due by 7/13/2018. Plaintiffs' Reply In Support Of Their Cross-Motion due by 8/10/2018. (mac) (Entered: 05/04/2018)
05/10/2018	<u>68</u>	MOTION for Summary Judgment by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Statement of Facts, # <u>2</u> Memorandum in Support, # <u>3</u> Defendants' Index of Declarations and Accompanying Exhibits, # <u>4</u> Herrington (DOD) Declaration, # <u>5</u> Shiner (CIA) Declaration, # <u>6</u> Stein (State) Declaration, # <u>7</u> Third Hardy (FBI) Declaration, # <u>8</u> Hardy (FBI-State Consult) Declaration, # <u>9</u> Williams (DIA) Declaration, # <u>10</u> Text of Proposed Order)(Moore, Tamra) (Attachment 7 replaced on 5/11/2018) (td). (Attachment 8 replaced on 5/11/2018) (td). Modified to replace blank documents on 5/11/2018 (td). (Attachment 8 replaced on 5/11/2018) (ztd). (Entered: 05/10/2018)
05/14/2018	<u>69</u>	ERRATA by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE <u>68</u> MOTION for Summary Judgment filed by DEPARTMENT OF JUSTICE, DEPARTMENT OF DEFENSE, CENTRAL INTELLIGENCE AGENCY, U.S. DEPARTMENT OF STATE. (Attachments: # <u>1</u> Declaration of Rear Admiral (upper half) James J. Malloy and exhibits)(Moore, Tamra) (Entered: 05/14/2018)
06/12/2018	<u>70</u>	Consent MOTION to Amend/Correct Set/Reset Deadlines, by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Text of Proposed Order)(Clarke, John) Modified event on 6/15/2018 (znmw). (Entered: 06/12/2018)
06/15/2018		MINUTE ORDER granting plaintiffs' consent motion to amend the briefing schedule. The parties are directed to comply with the following briefing schedule: plaintiffs' combined cross-motion for summary judgment and opposition to defendants' motion shall be filed by no later than June 25, 2018; defendants' combined reply and opposition to plaintiffs' motion shall be filed by no later than July 23, 2018; and plaintiffs' reply in support of their cross-motion shall be filed by no later than August 20, 2018. Signed by Judge Emmet G. Sullivan on June 15, 2018. (lcegs2) (Entered: 06/15/2018)
06/15/2018		Set/Reset Deadlines: Plaintiffs' Combined Cross-Motion For Summary Judgment And Opposition To Defendants' Motion due by 6/25/2018. Defendants Combined Reply And Opposition To Plaintiffs Motion due by 7/23/2018. Plaintiffs' Reply In Support Of Their Cross-Motion due by 8/20/2018. (mac) (Entered: 06/15/2018)

06/25/2018	<u>71</u>	Cross MOTION for Summary Judgment by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Declaration John H Clarke, # <u>2</u> Affidavit Admiral James A. Lyons, Jr., USN, (Ret), # <u>3</u> Affidavit Rear Admiral Charles R. Kubic, CEC, USN (Ret), # <u>4</u> Statement of Facts, # <u>5</u> Exhibit Counter–Statement of Facts, # <u>6</u> Exhibit Index of Declarations, # <u>7</u> Text of Proposed Order)(Clarke, John) . (Entered: 06/25/2018)
06/25/2018	72	Memorandum in opposition to re <u>68</u> MOTION for Summary Judgment filed by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP. (See Docket Entry <u>71</u> to view document) (jf) (Entered: 06/27/2018)
06/25/2018	73	MOTION for Leave to Propound Interrogatory to DOD by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP. (See Docket Entry <u>71</u> to view document) (jf) (Entered: 06/27/2018)
06/27/2018		NOTICE OF ERROR re <u>71</u> Motion for Summary Judgment; emailed to johnhclarke@earthlink.net, cc'd 2 associated attorneys -- The PDF file you docketed contained errors: 1. Two–part docket entry, 2. DO NOT REFILE–Counsel is reminded to docket all parts of their pleading (zjf,) (Entered: 06/27/2018)
07/09/2018	<u>74</u>	RESPONSE re 73 MOTION for Leave to Propound Interrogatory to DOD filed by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE. (Moore, Tamra) (Entered: 07/09/2018)
07/16/2018	<u>75</u>	REPLY to opposition to motion re 73 MOTION for Leave to Propound Interrogatory to DOD filed by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP. (Attachments: # <u>1</u> Exhibit FAST Commander Testimony)(Clarke, John) (Entered: 07/16/2018)
07/18/2018	<u>76</u>	Consent MOTION for Extension of Time to File Response/Reply as to <u>71</u> MOTION for Summary Judgment , <u>68</u> MOTION for Summary Judgment by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Moore, Tamra) (Entered: 07/18/2018)
07/20/2018		MINUTE ORDER granting <u>76</u> Motion for Extension of Time to File Response/Reply. Defendants shall file their reply in support of defendant's motion for summary judgment and opposition to plaintiffs' cross motion for summary judgment by no later than July 27, 2018.Signed by Judge Emmet G. Sullivan on 7/20/2018. (lcegs1) (Entered: 07/20/2018)
07/23/2018		Set/Reset Deadlines: Defendants Reply In Support Of Defendant's Motion For Summary Judgment And Opposition To Plaintiffs' Cross Motion For Summary Judgment due by 7/27/2018. (mac) (Entered: 07/23/2018)
07/27/2018	<u>77</u>	REPLY to opposition to motion re <u>68</u> MOTION for Summary Judgment filed by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE. (Attachments: # <u>1</u> Supplemental Declaration of Mark H. Herrington, # <u>2</u> Supplemental Declaration of Antoinette B. Shiner)(Moore, Tamra) (Entered: 07/27/2018)
07/27/2018	<u>78</u>	RESPONSE re <u>71</u> MOTION for Summary Judgment filed by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE. (Attachments: # <u>1</u> Supplemental Declaration of Mark H. Herrington, # <u>2</u> Supplemental Declaration of Antoinette B. Shiner, # <u>3</u> Defendants' Response to Plaintiffs' Statement of Material Facts Not In Dispute)(Moore, Tamra) (Entered: 07/27/2018)
08/20/2018	<u>79</u>	MOTION for Extension of Time to File Response/Reply by All Plaintiffs (Attachments: # <u>1</u> Text of Proposed Order)(Clarke, John) Modified on 8/21/2018 to

		correct docket event/text (jf). (Entered: 08/20/2018)
08/21/2018		MINUTE ORDER granting <u>79</u> plaintiffs' consent motion for an extension of time to file response/reply. Plaintiffs shall file a reply by no later than August 27, 2018. Signed by Judge Emmet G. Sullivan on 8/21/2018.(lcegs2) (Entered: 08/21/2018)
08/22/2018		Set/Reset Deadlines: Plaintiff Reply due by 8/27/2018. (mac) (Entered: 08/22/2018)
08/27/2018	<u>80</u>	REPLY to opposition to motion re <u>71</u> MOTION for Summary Judgment filed by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP. (Clarke, John) (Entered: 08/27/2018)
01/07/2019		MINUTE ORDER REFERRING CASE to a Magistrate Judge for full case management, up to but excluding trial pursuant to Local Civil Rule 72.2. This includes, with respect to pending potentially dispositive motions, the preparation of a report and recommendation pursuant to Local Civil Rule 72.3. The parties are reminded, that pursuant to Local Civil Rule 73.1, the parties may consent to the assignment of this action to a magistrate judge for all purposes, including trial. Consent of the district court judge is not necessary. Signed by Judge Emmet G. Sullivan on 1/7/2019. (lcegs1) (Entered: 01/07/2019)
01/07/2019		MINUTE ORDER STAYING CASE. In view of the referral of this case to a Magistrate Judge for full case management, proceedings before Judge Emmet G. Sullivan are hereby STAYED. Signed by Judge Emmet G. Sullivan on 1/7/2019. (lcegs1) (Entered: 01/07/2019)
01/07/2019		CASE RANDOMLY REFERRED to Magistrate Judge Deborah A. Robinson for full case management, up to but excluding trial. (zad) (Entered: 01/08/2019)
02/22/2019		MINUTE ORDER: Status Conference set for 3/12/2019 at 02:00 PM in Courtroom 4 before Magistrate Judge Deborah A. Robinson. So Ordered by Magistrate Judge Deborah A. Robinson on 2/22/2019. (lcdar1) (Entered: 02/22/2019)
02/22/2019		Status Conference previously set for 3/12/2019 rescheduled to 3/14/2019 at 02:00 PM before Magistrate Judge Deborah A. Robinson. The court apologizes for any confusion. So Ordered by Magistrate Judge Deborah A. Robinson on 2/22/2019. (lcdar1) (Entered: 02/22/2019)
03/14/2019		Minute Entry for proceedings held before Magistrate Judge Deborah A. Robinson: Status Conference held on 3/14/2019. No later than 3/21/2019, the parties shall jointly submit a Status Report. The report shall include all changes in status from the time briefing commenced in this matter. (Court Reporter: FTR Gold)(FTR Time Frame: 2:04 – 2:41) (zcdw) (Entered: 03/14/2019)
03/21/2019	<u>81</u>	Joint STATUS REPORT by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, KEVIN MICHAEL SHIPP. (Clarke, John) (Entered: 03/21/2019)
08/11/2020	<u>82</u>	TRANSCRIPT OF PROCEEDINGS before Magistrate Judge Deborah A. Robinson held on March 14, 2019; Page Numbers: 1–25. Date of Issuance:August 11, 2020. Court Reporter/Transcriber Lorraine Herman, Telephone number 202–354–3196, Transcripts may be ordered by submitting the <u>Transcript Order Form</u> For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi–page, condensed, CD or ASCII) may be purchased from the court reporter. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty–one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov.

		Redaction Request due 9/1/2020. Redacted Transcript Deadline set for 9/11/2020. Release of Transcript Restriction set for 11/9/2020.(Herman, Lorraine) (Main Document 82 replaced on 8/19/2020) (zjf). (Entered: 08/11/2020)
08/27/2020	<u>83</u>	REPORT AND RECOMMENDATION re <u>71</u> MOTION for Summary Judgment filed by RICHARD F. BRAUER, JR, KENNETH BENWAY, ROGER L. ARONOFF, KEVIN MICHAEL SHIPP, CLARE M. LOPEZ, LARRY W. BAILEY, ACCURACY IN MEDIA, INC., JAMES A. LYONS, JR., <u>73</u> MOTION for Leave to Propound Interrogatory to DOD filed by RICHARD F. BRAUER, JR, KENNETH BENWAY, ROGER L. ARONOFF, KEVIN MICHAEL SHIPP, CLARE M. LOPEZ, LARRY W. BAILEY, JAMES A. LYONS, JR., ACCURACY IN MEDIA, INC., <u>68</u> MOTION for Summary Judgment filed by DEPARTMENT OF JUSTICE, DEPARTMENT OF DEFENSE, CENTRAL INTELLIGENCE AGENCY, U.S. DEPARTMENT OF STATE. Signed by Magistrate Judge Deborah A. Robinson on 8/27/2020. (lcdar3) (Entered: 08/27/2020)
08/28/2020	<u>84</u>	NOTICE OF SUBSTITUTION OF COUNSEL by Joshua Charles Abbuhl on behalf of All Defendants Substituting for attorney Tamra Moore, Megan Crowley (Abbuhl, Joshua) (Entered: 08/28/2020)
09/09/2020	<u>85</u>	Unopposed MOTION for Extension of Time to <i>Submit Objections to Magistrate Judge's Report and Recommendation</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Text of Proposed Order)(Clarke, John) (Entered: 09/09/2020)
09/09/2020		MINUTE ORDER granting <u>85</u> Unopposed MOTION for Extension of Time to Submit Objections to Magistrate Judge's Report and Recommendation, though Plaintiffs' counsel is admonished for failing to comply with this Court's "Motions for Extension of Time" requirements as indicated in the Court's Standing Order, ECF No. <u>62</u> at 7 ("Absent extenuating circumstances, motions for... scheduling change[s] must be filed THREE business days prior to the scheduled... deadline...."). Plaintiffs shall filed their objections to the Report and Recommendation by no later than September 24, 2020 at NOON. Future requests for extension will be viewed with disfavor. Signed by Judge Emmet G. Sullivan on 9/9/2020. (lcegs2) (Entered: 09/09/2020)
09/10/2020		Set/Reset Deadlines: Plaintiffs Objections To The Report and Recommendation due no later than 12:00PM on 09/24/2020. (mac) (Entered: 09/10/2020)
09/10/2020	<u>86</u>	NOTICE re <u>83</u> <i>Report and Recommendation</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Abbuhl, Joshua) Modified to add link on 9/11/2020 (znmw). (Entered: 09/10/2020)
09/23/2020	<u>87</u>	NOTICE <i>Objection to Magistrate Judge's Report and Recommendation</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Exhibit DOD timeline, # <u>2</u> Exhibit EXORD)(Clarke, John) (Entered: 09/23/2020)
09/23/2020	88	OBJECTION to <u>83</u> Report and Recommendations filed by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, KEVIN MICHAEL SHIPP. (See Docket Entry <u>87</u> to view document) (zjf) (Entered: 09/24/2020)
10/02/2020	<u>89</u>	Unopposed MOTION for Extension of Time to File Response/Reply to <i>Plaintiffs' Objections to R&R</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Abbuhl, Joshua) (Entered: 10/02/2020)
10/05/2020		MINUTE ORDER granting <u>89</u> Unopposed MOTION for Extension of Time. The Defendant shall file its Response/Reply to Plaintiffs' Objections by no later than November 9, 2020. Signed by Judge Emmet G. Sullivan on 10/5/2020. (lcegs2) (Entered: 10/05/2020)
10/05/2020		Set/Reset Deadlines: Defendant Response/Reply To Plaintiffs Objections due by 11/9/2020. (mac) (Entered: 10/05/2020)

10/30/2020	<u>90</u>	Unopposed MOTION for Extension of Time to File Response/Reply to <i>Plaintiffs' Objections to Report & Recommendation</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Abbuhl, Joshua) (Entered: 10/30/2020)
11/02/2020		MINUTE ORDER granting <u>90</u> Unopposed MOTION for Extension of Time to File Response/Reply. The Defendant shall file its Response/Reply to Plaintiffs' Objections by no later than November 23, 2020. Signed by Judge Emmet G. Sullivan on 11/2/2020. (lcegs2) (Entered: 11/02/2020)
11/03/2020		Set/Reset Deadlines: Defendant Response/Reply To Plaintiffs' Objections due by 11/23/2020 (mac) (Entered: 11/03/2020)
11/23/2020	<u>91</u>	RESPONSE to <i>Plaintiffs' 88 Objections to Magistrate's Report & Recommendation</i> filed by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE. (Abbuhl, Joshua) (Entered: 11/23/2020)
11/28/2022	<u>92</u>	MEMORANDUM OPINION. Signed by Judge Emmet G. Sullivan on 11/28/2022. (lcegs2) (Entered: 11/28/2022)
11/28/2022	<u>93</u>	ORDER granting in part and denying in part <u>68</u> Motion for Summary Judgment; granting in part and denying in part <u>71</u> Motion for Summary Judgment; denying <u>73</u> Motion. Signed by Judge Emmet G. Sullivan on 11/28/2022. (lcegs2) (Entered: 11/28/2022)
11/28/2022		Set/Reset Deadlines: Joint Status Report due by 1/20/2023 (mac) (Entered: 11/28/2022)
01/20/2023	<u>94</u>	Joint STATUS REPORT by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, U.S. DEPARTMENT OF STATE, US DEPT OF JUSTICE. (Abbuhl, Joshua) (Entered: 01/20/2023)
01/23/2023		MINUTE ORDER. In view of <u>94</u> joint status report, the parties shall file a joint status report with proposed briefing schedule by no later than February 16, 2023. Signed by Judge Emmet G. Sullivan on 1/23/2023. (lcegs1) (Entered: 01/23/2023)
01/23/2023		Set/Reset Deadlines: Parties Joint Status Report With Proposed Briefing Schedule due by 2/16/2023. (mac) (Entered: 01/23/2023)
02/16/2023	<u>95</u>	Joint STATUS REPORT by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, U.S. DEPARTMENT OF STATE, US DEPT OF JUSTICE. (Abbuhl, Joshua) (Entered: 02/16/2023)
02/22/2023		MINUTE ORDER. In view of <u>95</u> Joint Status Report, the following deadlines shall govern this case: (1) Defendants shall file their motion for summary judgment by no later than June 29, 2023; (2) Plaintiffs shall file a combined motion for summary judgment and response to Defendants' motion by no later than August 10, 2023; (3) Defendants shall file a combined response to Plaintiffs' motion and reply in support of Defendants' motion for summary judgment by no later than September 14, 2023; (4) Plaintiffs shall file a reply in support of Plaintiffs' motion for summary judgment by no later than October 13, 2023. Signed by Judge Emmet G. Sullivan on 2/22/2023. (lcegs1) (Entered: 02/22/2023)
02/22/2023		Set/Reset Deadlines: Defendants Motion For Summary Judgment due by 06/29/2023. Plaintiffs Combined motion For Summary Judgment And Response To Defendants' Motion due by 08/10/2023. Defendants Combined Response to Plaintiffs' Motion And Reply In Support Of Defendants' Motion For Summary Judgment due by 09/14/2023. Plaintiffs Reply In Support of Plaintiffs' Motion For Summary Judgment due by 10/13/2023. (mac) (Entered: 02/22/2023)
04/06/2023		Case Unstayed (mac) (Entered: 04/06/2023)
06/29/2023	<u>96</u>	NOTICE of Appearance by Kristina Ann Wolfe on behalf of All Defendants (Wolfe, Kristina) (Entered: 06/29/2023)
06/29/2023	<u>97</u>	MOTION for Summary Judgment (<i>Renewed</i>) by US DEPT OF JUSTICE. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Declaration of Michael G. Seidel, # <u>3</u>

		Declaration Exhibit A (First Declaration of David M. Hardy), # <u>4</u> Declaration Exhibit B (February 2021 Letter), # <u>5</u> Declaration Exhibit C (Declaration of Timothy J. Kootz), # <u>6</u> Declaration Exhibit D (Declaration of Vanna Blaine), # <u>7</u> Statement of Facts, # <u>8</u> Text of Proposed Order)(Wolfe, Kristina) (Entered: 06/29/2023)
08/10/2023	<u>98</u>	Cross MOTION for Summary Judgment <i>and OPPOSITION to Defendant FBI MOTION for Summary Judgment</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, KEVIN MICHAEL SHIPP. (Attachments: # <u>1</u> Affidavit AFFIDAVIT OF JOHN TIEGAN, # <u>2</u> Exhibit INDEX OF EXHIBITS, # <u>3</u> Exhibit STATEMENT OF MATERIAL FACTS NOT IN DISPUTE, # <u>4</u> Exhibit RESPONSE TO DEFENDANT STATEMENT OF MATERIAL FACTS, # <u>5</u> Text of Proposed Order)(Clarke, John) (Entered: 08/10/2023)
08/10/2023	<u>99</u>	Memorandum in opposition to re <u>97</u> Motion for Summary Judgment, filed by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, KEVIN MICHAEL SHIPP. (Clarke, John) (Entered: 08/10/2023)
09/14/2023	<u>100</u>	Memorandum in opposition to re <u>98</u> Motion for Summary Judgment, filed by US DEPT OF JUSTICE. (Attachments: # <u>1</u> Statement of Facts (Response), # <u>2</u> Text of Proposed Order)(Wolfe, Kristina) (Entered: 09/14/2023)
09/14/2023	<u>101</u>	REPLY to opposition to motion re <u>97</u> MOTION for Summary Judgment (<i>Renewed</i>) filed by US DEPT OF JUSTICE. (Wolfe, Kristina) (Entered: 09/14/2023)
10/13/2023	<u>102</u>	REPLY to opposition to motion re <u>98</u> Cross MOTION for Summary Judgment <i>and OPPOSITION to Defendant FBI MOTION for Summary Judgment</i> filed by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP. (Clarke, John) (Entered: 10/13/2023)
01/04/2024		Case directly reassigned to Judge Loren L. AliKhan. Judge Emmet G. Sullivan is no longer assigned to the case. (ztnr) (Entered: 01/04/2024)
04/26/2024	<u>103</u>	MEMORANDUM OPINION: For the reasons stated in the attached document, Defendant Federal Bureau of Investigation's Renewed Motion for Summary Judgment <u>97</u> , will be granted and Plaintiffs' Cross-Motion for Summary Judgment <u>98</u> will be denied. A separate order will issue. See document for details. Signed by Judge Loren L. AliKhan on 04/26/2024. (lc1la3) (Entered: 04/26/2024)
04/26/2024	<u>104</u>	ORDER: For the reasons stated in the court's Memorandum Opinion <u>103</u> , it is hereby ORDERED that Defendant Federal Bureau of Investigation's Renewed Motion for Summary Judgment <u>97</u> is GRANTED and Plaintiffs' Cross-Motion for Summary Judgment <u>98</u> is DENIED. The Clerk of Court is directed to close this case. See document for details. Signed by Judge Loren L. AliKhan on 04/26/2024. (lc1la3) (Entered: 04/26/2024)
06/22/2024	<u>105</u>	NOTICE OF APPEAL TO DC CIRCUIT COURT by ROGER L. ARONOFF. Filing fee \$ 605, receipt number ADCDC-10977918. Fee Status: Fee Paid. Parties have been notified. (Clarke, John) (Entered: 06/22/2024)
06/24/2024	<u>106</u>	Transmission of the Notice of Appeal, Order Appealed (Memorandum Opinion), and Docket Sheet to US Court of Appeals. The Court of Appeals fee was paid re <u>105</u> Notice of Appeal to DC Circuit Court. (znmw) (Entered: 06/24/2024)
06/24/2024		USCA Case Number 24-5165 for <u>105</u> Notice of Appeal to DC Circuit Court filed by ROGER L. ARONOFF. (znmw) (Entered: 06/24/2024)

DECLARATION OF RICHARD J. TAPPAN

I, Richard J. Tappan, declare and say as follows:

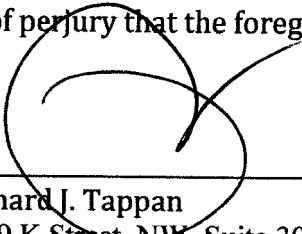
1. I am a lawyer practicing in Washington, DC.
2. On February 8, 2015, I searched online at LexisNexis Advance research service, using the "News" filter, for the term "Benghazi," for the periods of (A) September 11, 2012, through February 8, 2015, (B) September 11, 2012, through December 31, 2012, (C) the calendar year 2013, (D) the calendar year 2014, and (E) January 1, 2015, through February 8, 2015. The results:

A.	September 11, 2012, through February 8, 2015:	
(a)	Newspapers	52,404
(b)	Newswires & Press Releases	32,185
(c)	News Transcripts	14,698
(d)	Web-based Publications	10,053
(e)	Blogs	33,359
B.	September 11, 2012, through December 31, 2012:	
(a)	Newspapers	16,015
(b)	Newswires & Press Releases	10,026
(c)	News Transcripts	4,778
(d)	Web-based Publications	3,152
(e)	Blogs	3,729
C.	Calendar year 2013:	
(a)	Newspapers	19,744
(b)	Newswires & Press Releases	11,594
(c)	News Transcripts	5,170
(d)	News	4,419
D.	Calendar year 2014:	
(a)	Newspapers	15,957
(b)	Newswires & Press Releases	10,018
(c)	News Transcripts	4,565
(d)	News	3,551
(e)	Blogs	12,467

Exhibit 8

- E. January 1, 2015, through February 8, 2015:
- | | | |
|-----|----------------------------|-----|
| (a) | Newspapers | 688 |
| (b) | Newswires & Press Releases | 547 |
| (c) | News Transcripts | 188 |
| (d) | News | 47 |
| (e) | Blogs | 458 |
| (d) | Web-based Publications | 147 |

I declare under penalty of perjury that the foregoing is true and correct. Executed this 8th of February, 2015.



Richard J. Tappan
1629 K Street, NW, Suite 300
Washington, DC 20006



REVIEW
of the
TERRORIST ATTACKS ON U.S. FACILITIES
IN BENGHAZI, LIBYA, SEPTEMBER 11-12, 2012
together with
ADDITIONAL VIEWS

January 15, 2014

SENATE SELECT COMMITTEE ON INTELLIGENCE

United States Senate

113th Congress

Exhibit 1

***SSCI Review of the Terrorist Attacks on U.S. Facilities in Benghazi,
Libya, September 11-12, 2012***

I. PURPOSE OF THIS REPORT

The purpose of this report is to review the September 11-12, 2012, terrorist attacks against two U.S. facilities in Benghazi, Libya. This review by the Senate Select Committee on Intelligence (hereinafter “SSCI” or “the Committee”) focuses primarily on the analysis by and actions of the Intelligence Community (IC) leading up to, during, and immediately following the attacks. The report also addresses, as appropriate, other issues about the attacks as they relate to the Department of Defense (DoD) and Department of State (State or State Department).

It is important to acknowledge at the outset that diplomacy and intelligence collection are inherently risky, and that all risk cannot be eliminated. Diplomatic and intelligence personnel work in high-risk locations all over the world to collect information necessary to prevent future attacks against the United States and our allies. Between 1998 (the year of the terrorist attacks against the U.S. Embassies in Kenya and Tanzania) and 2012, 273 significant attacks were carried out against U.S. diplomatic facilities and personnel.¹ The need to place personnel in high-risk locations carries significant vulnerabilities for the United States. The Committee intends for this report to help increase security and reduce the risks to our personnel serving overseas and to better explain what happened before, during, and after the attacks.

II. THE COMMITTEE’S REVIEW²

Hearings, Briefings, and Meetings: The Committee began its initial review of the September 11, 2012, terrorist attacks against the U.S facilities in Benghazi, Libya, on September 13, 2012, which transitioned into a formal review a few

¹ U.S. Department of State, Bureau of Diplomatic Security, *Significant Attacks Against U.S. Diplomatic Facilities and Personnel, 1998-2012*, revised July 2013. This report also states on page i: “This information is not an all-inclusive compilation; rather, it is a reasonably comprehensive listing of significant attacks.”

² The Committee notes that the IC, State, and DoD provided the Committee with hundreds of key documents throughout this review, although sometimes with a significant amount of resistance, especially from State. This lack of cooperation unnecessarily hampered the Committee’s review.

weeks later. This report and our findings and recommendations are based upon the extensive work conducted by Committee Members and staff during this review, including the following hearings, briefings, and meetings (which included interviews of U.S. personnel on the ground during the attacks):

- Three Committee oversight hearings with witnesses from the Office of the Director of National Intelligence (ODNI), National Counterterrorism Center (NCTC), Central Intelligence Agency (CIA), Federal Bureau of Investigation (FBI), State, and DoD;
- Two Committee briefings with David Petraeus—one while he was CIA Director and one after his resignation;
- Three Committee briefings with Robert Litt, ODNI General Counsel, regarding the issue of the CIA Talking Points;
- Four on-the record Member and staff meetings with:
 1. Gregory Hicks, Deputy Chief of Mission (DCM) in Tripoli during the attacks;³
 2. Mark Thompson, Acting Deputy Assistant Secretary for Counterterrorism at the State Department;
 3. Eric Nordstrom, former Regional Security Officer (RSO) in Libya; and
 4. the former CIA Chief of Base in Benghazi who was at the Annex on the night of the attacks; and
- At least 17 other staff briefings and meetings, including interviews of U.S. Government security personnel on the ground in Benghazi the night of the attacks.

³ Mr. Hicks met with Committee staff, without Senators, in a follow-up session. See SSCI Transcript, *Staff Interview of Gregory Hicks*, June 19, 2003.

[REDACTED]

Documents and Video Reviewed: The Committee reviewed: (1) thousands of intelligence reports and internal documents (including e-mails, cables, etc.) which were provided by the IC, the State Department, and DoD; (2) written responses to Committee questions for the record; (3) numerous open-source materials; and (4) surveillance videos related to the attacks.

III. DESCRIPTION OF THE SEPTEMBER 11-12, 2012, ATTACKS

The sequence of events in Benghazi on the night of September 11, 2012, and the morning of September 12, 2012, have been widely described in media and other reports. There were effectively at least three different attacks against U.S. facilities in fewer than eight hours. Understanding the evolution and the sequence of attacks is important to provide the context in which Americans in Benghazi and Tripoli and U.S. officials in Washington, D.C., evaluated events as they unfolded and formulated operational and policy responses. Below are the key details about the three attacks.

1. Attack on the U.S. Temporary Mission Facility at Approximately 9:40 p.m.

At approximately 9:40 p.m. Benghazi time, on September 11, 2012, dozens of attackers easily gained access to the U.S. Temporary Mission Facility (hereinafter “the TMF,” “the Mission facility,” or “the Mission compound”) by scaling and then opening the front vehicle gate.⁴ Over the course of the entire attack on the TMF, at least 60 different attackers entered the U.S. compound and can be seen on the surveillance video recovered from the Mission facility.⁵ The attackers moved unimpeded throughout the compound, entering and exiting buildings at will.

After entering the Mission facility, the attackers used diesel fuel to set fire to the barracks/guard house of the Libyan 17th February Brigade militia, which served as a security force provided by the host nation for the Mission compound, and then proceeded towards the main buildings of the compound.⁶ A Diplomatic Security (DS) agent working in the Tactical Operations Center (TOC) of the Mission

⁴ SSCI Transcript, *Hearing on the Attacks in Benghazi*, November 15, 2012, p. 24.

⁵ James R. Clapper, Director of National Intelligence, *Joint Statement for the Record, SSCI Hearing on the Attacks in Benghazi*, November 15, 2012, p. 3.

⁶ *Ibid.*

facility immediately activated the Imminent Danger Notification System.⁷ He also alerted the CIA personnel stationed at the nearby CIA Annex (hereinafter “the Annex”), the Libyan 17th February Brigade, the U.S. Embassy in Tripoli, and the Diplomatic Security Command Center (DSCC) in Washington, D.C.⁸

There were five DS agents at the Mission compound that night. Two had traveled from Tripoli with U.S. Ambassador to Libya Christopher Stevens (who was staying at the Mission compound in Benghazi), and three others were assigned to the Mission facility. In addition to the five DS agents on duty, there were three armed members of the Libyan 17th February Brigade militia, three Libyan National Police officers, and five unarmed members of a local security team contracted through a British company, Blue Mountain Group, who were guarding the Mission facility that night. In addition, six armed CIA security personnel (plus an interpreter) operating out of the nearby Annex were able to respond quickly after receiving word of the attack.

After the DS agent in the Tactical Operations Center at the Temporary Mission Facility alerted the Annex security team that the TMF was under attack at approximately 9:40 p.m., the Chief of Base called the [REDACTED], “who advised that he would immediately deploy a [REDACTED] force to provide assistance,” according to a September 19, 2012, cable that provided the joint CIA Station/Base report on the events surrounding the September 11-12 attacks.⁹

Two armored vehicles were prepared so the security team could respond from the Annex. Approximately 20-25 minutes after the first call came into the Annex that the Temporary Mission Facility was under attack, a security team left the Annex for the Mission compound. In footage taken from the Annex’s security cameras, the security team can be observed departing the CIA Annex at 10:03 p.m. Benghazi time. During the period between approximately 9:40 p.m. and 10:03 p.m. Benghazi time, the Chief of Base and security team members attempted to secure assistance and heavy weapons (such as .50 caliber truck-mounted machine guns) from the 17th February Brigade and other militias that had been assisting the United States.¹⁰ Then, the team drove to the Mission facility and made their way

⁷ NCTC and FBI, *The 11-12 September Attacks on US Facilities in Benghazi*, November 13, 2012, p. 3.

⁸ Ibid.

⁹ E-mail from [REDACTED] to [REDACTED], “Fw: Subject: Eyes Only – Tripoli Station and Benghazi Base Report on Events of 11-12 September,” containing CIA TRIPOLI 27900, September 19, 2012, p. 2.

¹⁰ Classified Report of the Department of State Accountability Review Board (ARB), December 18, 2012, p. 27.

onto the Mission compound in the face of enemy fire, arriving in the vicinity of the compound at approximately 10:10 p.m. Benghazi time.¹¹ The Committee explored claims that there was a “stand down” order given to the security team at the Annex. Although some members of the security team expressed frustration that they were unable to respond more quickly to the Mission compound,¹² the Committee found no evidence of intentional delay or obstruction by the Chief of Base or any other party.¹³

Meanwhile, a DS agent secured Ambassador Stevens and State Department Information Management Officer Sean Smith in the “safe area” of the main building of the Mission facility (Building C). The attackers used diesel fuel to set the main building ablaze and thick smoke rapidly filled the entire structure. According to testimony of the Director of the NCTC, the DS agent began leading the Ambassador and Mr. Smith toward the emergency escape window to escape the smoke.¹⁴ Nearing unconsciousness himself, the agent opened the emergency escape window and crawled out. He then realized he had become separated from the Ambassador and Sean Smith in the smoke, so he reentered and searched the building multiple times.¹⁵ The DS agent, suffering from severe smoke inhalation, climbed a ladder to the roof where he radioed the other DS agents for assistance and attempted unsuccessfully to ventilate the building by breaking a skylight.¹⁶

Other DS agents went to retrieve their M-4 carbine assault rifles from Building B when the attack began. When they attempted to return to the main building (Building C) to help protect the Ambassador, they encountered armed attackers and decided to return to Building B to take cover rather than open fire. They eventually regrouped, made their way to a nearby armored vehicle, and then drove over to assist the agent on the roof of Building C searching for the

¹¹ NCTC and FBI, *The 11-12 September Attacks on US Facilities in Benghazi*, November 13, 2012, p. 4; E-mail from CIA Office of Congressional Affairs (OCA) staff to Staff Director, House Permanent Select Committee on Intelligence (HPSCI), et al., “Background Points used on 1 Nov,” November 2, 2012, p. 1.

¹² SSCI Memorandum for the Record, “Staff Briefing and Secure Video Teleconference (SVTC) with CIA Benghazi Survivors,” June 27, 2013.

¹³ According to informal notes obtained from the CIA, the security team left for the Annex without the formal approval of the Chief of Base, see attachments to e-mail from CIA staff [REDACTED] to CIA staff [REDACTED], September 23, 2012. However, a Memorandum for the Record prepared by the Deputy Chief of Base specifically states that the Chief “authorized the move” and the Chief told the Committee: “We launched our QRF [Quick Reaction Force] as soon as possible down to the State [Department] compound.” [REDACTED], Memorandum for the Record, “Events of 11-12 SEP 2012 at Benghazi Base, Libya,” September 19, 2012, p. 1; and SSCI Transcript, *Member and Staff Interview of former Chief of Base*, December 20, 2012, p. 3.

¹⁴ SSCI Transcript, *Hearing on the Attacks in Benghazi*, November 15, 2012, pp. 27-29.

¹⁵ NCTC and FBI, *The 11-12 September Attacks on US Facilities in Benghazi*, November 13, 2012, p. 4.

¹⁶ Unclassified Report of the ARB, December 18, 2012, p. 22.

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.)	
_____)	

AMENDED COMPLAINT FOR INJUNCTIVE RELIEF
(Freedom of Information Act, 5 U.S.C. § 552, as amended)

PRELIMINARY STATEMENT

In March of 2011, Christopher Stevens became the United States Special Representative to the anti-Gaddafi rebels' political organization, the Libyan Transitional National Council, based in Benghazi. Among Stevens' activities was to create a program to collect surface-to-air missiles, or SAMs, fired via man-portable air-defense systems, or MANPADS.

On Tuesday, September 11, 2012, Ambassador Stevens' final scheduled meeting in Benghazi was with the Turkish consul general, Ali Akin. That evening, at 9:32 p.m., or earlier, dozens of attackers, armed with assault rifles and anti-tank rocket-propelled-grenades, swarmed the gate at the State Department's Benghazi Special Mission Compound, which, at the time, housed seven Americans. Moving with military tactics, the invaders lobbed a grenade into the Mission's command post, and then fired AK-47's into its main doorway. Eventually, their numbers swelled to more than 60.

Within minutes, Ambassador Stevens called his second in command, in Tripoli, Deputy Chief of Mission Greg Hicks. "Greg, we're under attack." Hicks immediately called the CIA Chief in Tripoli, the operations Center at the State Department in Washington, and the CIA's Benghazi facility, the "CIA Annex," the Agency's secret headquarters in Benghazi. Days earlier, a sheet of paper had been posted at the CIA Annex stating, "Be advised, we have reports from locals that a Western facility or US Embassy/Consulate/Government target will be attacked in the next week."

One purpose for maintaining the CIA Annex was to buy back, through Qatari cut-outs, as many MANPADS as possible, for \$12,000 or more each. Thousands had been looted from Qaddafi's stockpiles. Many of those recovered were loaded onto

covered trucks and sent to the Libyan ports in Benghazi and Tripoli for onward shipping to Turkey and ultimate delivery overland to Syrian rebels.

Locked inside the Mission's Technical Operation Center, Alec Henderson alerted the CIA Annex, Embassy Tripoli, and the State Department Operations Center in Washington about the attack. Henderson stayed in contact, as did Hicks, while the Tripoli Defense Attaché kept African Command and the Joint Chiefs of Staff informed. Word quickly reached Defense Secretary Leon Panetta and chairman of the Joint Chiefs of Staff General Martin Dempsey.

Global conference calls included European Command, Central Command, Special Operations Command, Transportation Command, and the Army, Navy, Air Force, and Marines. Thirty-three minutes into the attack, at 4:05 p.m. Washington time, State's Operations Center issued an alert to the White House Situation Room, the FBI, and the Office of the Director of National Intelligence, among other key government and intelligence offices. An "OPREP-3 Pinnacle Report" alerted the Pentagon's National Military Command Center. By the time that Africa Command's reconnaissance drone arrived overhead, ninety minutes into the siege, the attackers had set multiple fires.

Within five minutes of Henderson's first call to the CIA Annex, five of the Agency's Quick Reaction Force there had "jockeyed up" and assembled in two armored cars, ready to go. But the CIA Chief of Base, who was in charge, forbade the rescuer's departure while he spoke by phone with officials. After being ordered to stay in place at least three times, when they heard Henderson plead, "If you guys do not get here, we're going to die," the rescuers disobeyed orders, and "moved to the sound of the guns" a half mile away, which they could hear in the distance. Later, most, if not all, of these rescuers would opine that Ambassador Christopher Stevens and Sean Smith would have lived but for the delay.

US officials were informed when Tyrone Woods and six others, most of whom were heavily armed, left the CIA's facility, and when they arrived at the Mission. Soon after these rescuers discovered that Sean Smith had died from smoke inhalation, but that Ambassador Stevens could not be found. Washington was told this. Updates included that the group of 14 Americans at the Mission had made a break for the CIA Annex, in two armored SUV's, barely successfully. They had been targeted by multiple machinegun attacks as they fled.

Officials worldwide were informed when the seven-man Tripoli Task Force rescue team arrived at the CIA Annex, and that Glen Doherty had joined Tyrone Woods on the roof of the CIA headquarters building, and began defending the 28 Americans on site. Washington was apprised in real time when the CIA Annex was hit with rocket-propelled grenades, bombs, and intense firefights. And Washington knew when the attackers fired, in rapid succession, five seven-pound 82-mm mortar rounds at the Americans. The third and fourth rounds hit the roof of the CIA headquarters building, killing Tyrone Woods and Glen Doherty instantly, and

seriously wounding two others. The Americans had averted a tragedy on a larger scale during the eight-hour siege only by performing extraordinary acts of courage and heroism.

At the time, a 130-man Marine Force Reconnaissance force, along with an AC-130 Spectre gunship, was stationed in Sigonella, Sicily—about an hour's flight from the Mission. US aircraft at Aviano Air Base, in northeastern Italy, were about two hours away. US F-16 Aircraft were located at Souda Bay, Greece. Two Marine Corps Fleet Antiterrorism Security Teams were stationed three-and-a-half to four hours away, in Rota, Spain. Also about three-and-a-half hours away, in Croatia, a forty-man Special Operations Commander's-in-Extremis Force was conducting a counterterrorism exercise. In the United States, Special Operations Forces were eight hours flying time from bases in Sicily and Spain, from where they could have inserted into Libya. The Benghazi survivors were finally safe when they lifted off from Benghazi's airport, bound for Tripoli, thirteen hours after the siege began.

Shortly after the attacks, administration officials engaged in a cover-up of the facts surrounding the event, including deletion from the government databases relevant materials and reports, as set forth in a November 1, 2012 authoritative memorandum that has been submitted to several in Congress.

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Jurisdiction

1. Plaintiffs bring this action under the Freedom of Information Act ("the FOIA"), 5 U.S.C. § 552, as amended. The FOIA provides this Court jurisdiction over this matter. Venue is proper under § 552 (a)(4)(B) of the FOIA.

Parties

2. Plaintiff Accuracy in Media, Inc. ("AIM") is a District of Columbia non-profit 501(c)(3) corporation, organized and operated to publish and disseminate news to the American public, which it has steadily been doing done for over 35 years. AIM's principle place of business is 4350 East West Highway, Suite 555, Bethesda, Maryland.

3. Plaintiff Roger L. Aronoff is an individual residing at 5500 Friendship Boulevard, No. 1408, Chevy Chase, Maryland. Mr. Aronoff serves as AIM's Editor and Executive Secretary. He has worked as a journalist, TV producer, writer, and director of award-winning documentaries, and has appeared as a guest commentator on NPR, Air America, CNN, Fox News, CNBC, Court TV, Russia Today,

and Canadian TV. Mr. Aronoff is a prolific writer. He has authored over a dozen articles on Benghazi.

4. Mr. Aronoff is the founder of an informal association, the Citizens' Commission on Benghazi, or "CCB," a group of fifteen distinguished former military and Central Intelligence Agency personnel, all of whom are ardent students of the Benghazi tragedy, and all of whom are extremely troubled by it. The CCB is investigating the matter. It functions like a grand jury, including issuing reports. Collectively, CCB members have published over 40 articles on Benghazi. *See, e.g.,* <http://www.aim.org/benghazi/>. Seven of the CCB's 15 members are plaintiffs in this action.

5. Plaintiff Captain Larry W. Bailey, USN, (Ret.) is an individual residing at 103 Pamlico Place, Chocowinity, North Carolina. He is a 27-year US Navy SEAL veteran. In Vietnam, he led the first East Coast SEAL platoon into combat. Captain Bailey has also served in the Dominican Republic, Philippines, Panama, Bolivia, and Scotland. Captain Bailey commanded the Naval Special Warfare Center for three years, where all SEALs are trained. Since 2007, he has been involved in national policy issues, including having chaired Gathering of Eagles. He too is published on the Benghazi matter.

6. Along with plaintiffs Lieutenant Colonel Benway and Colonel Brauer, Captain Bailey is co-founder of *Special Operations Speaks*, or SOS, a pro-military PAC focused primarily on the welfare of military personnel. SOS views the Benghazi tragedy as a symptom of a greater threat to United States power, and, so, regularly

includes Benghazi news among the matters it publicizes. *See*

<http://specialoperationspeaks.com/>.

7. Plaintiff Lieutenant Colonel Kenneth Benway, USA, (Ret.) is an individual residing at 8 Martin Way, Whispering Pines, North Carolina. Colonel Benway enlisted in the Army as a parachute infantryman in 1966. After Special Forces training, he deployed to Vietnam. In 1970, he was commissioned as Second Lieutenant of Infantry, serving in leadership assignments in both Germany and Italy. Over the course of 27 years in uniform, Colonel Benway served with the three Special Forces Groups, Special Operations Command in Europe, as an exchange program officer with the Italian Susa Alpine Infantry Battalion in northwest Italy, and with the Army JFK Special Warfare Center and School. On retiring in 1993, he served as senior special operations analyst, program manager and corporate director in a variety of contracted support arrangements with the Army Special Operations community. Lieutenant Colonel Benway is co-founder of *Special Operations Speaks*.

8. Plaintiff Colonel Richard F. Brauer Jr., USAF, (Ret) is an individual residing at 24 Country Club Road, Shalimar, Florida. Colonel Brauer has amassed 5,200 hours of worldwide flying, attaining the aeronautical rating of Master Navigator. His tours of flying duty and deployments include Vietnam, Europe, Central and South America, and Australia, where he served as an Air Force Exchange Officer and flying instructor for the Royal Australian Air Force. Following his Pentagon tour, he was selected to be the 12th Commandant of the United States Air Force Special Operations School, where he served until his retirement in 1991,

having completed 26 years of active duty military service. In 2010, Colonel Brauer was inducted into the Air Commando Hall of Fame. He too is co-founder of *Special Operations Speaks*.

9. Plaintiff Clare M. Lopez is an individual who resides in Woodbridge, Virginia. She is Vice President for Research & Analysis at the Center for Security Policy, 1901 Pennsylvania Avenue, NW, Suite 201, Washington, DC. Ms. Lopez was formerly was a career operations officer with the Central Intelligence Agency. Ms. Lopez is also a skilled writer, having authored numerous articles on Benghazi, as well as being the principal author of the CCB's April 20, 2014 Interim Report on Benghazi.

10. Plaintiff Admiral James A. Lyons, Jr., USN, (Ret) is an individual whose residence is 9481 Piney Mountain Road, Warrenton, Virginia. Admiral Lyons is a former four-star admiral, Commander-in-Chief of the U.S. Pacific Fleet, Father of the Navy Seal Red Cell Program, Senior US Military Representative to the UN, and Deputy Chief of Naval Operations where he was the principal advisor to the Joint Chiefs of Staff. His commands include the US Second Fleet, NATO Striking Fleet, Seventh Fleet Logistic Force, and several ship commands. He has appeared on Fox Business News several times, and is a regular contributor to the Op Ed Section of the Washington Times, where eight of his pieces concerning Benghazi have been published.

11. Plaintiff Kevin Michael Shipp is an individual residing at 636 9th Avenue North, Jacksonville Beach, Florida. Mr. Shipp is a former Central Intelligence Agency officer and antiterrorism expert, having held several high level positions in

the CIA. He was assigned to be a protective agent for the Director of Central Intelligence, a counterintelligence investigator, a Counterterrorism Center officer, a team leader protecting sensitive CIA assets from assassination, a manager of high-risk protective operations, a lead instructor for members of allied governments, an internal staff security investigator, and a polygraph examiner. He was tasked with protecting the CIA from foreign agent penetration and the chief of training for the CIA federal police force. Mr. Shipp functioned as program manager for the Department of State, Diplomatic Security, and Anti Terrorism Assistance global police-training program. He is the recipient of two CIA Meritorious Unit Citations, three Exceptional Performance Awards, and a Medallion for overseas covert operations. He is the author of the book, *From the Company of Shadows—CIA Operations and the War on Terrorism*, Ascent Pub., 2012.

12. These seven members of the Citizens Committee on Benghazi, along with Accuracy in Media, Inc., are collectively referred to as "plaintiffs."

Defendants

13. Defendant United States Department of Defense, or "DOD" or "defendant" is a Department of the Executive Branch of the United States, and is an agency within the meaning of 5 U.S.C. § 552 (f)(1). Plaintiffs made FOIA requests to ten component offices of the Department of Defense:

- (1) Department of the Army, or "Army"
- (2) Navy Department, or "Navy"
- (3) Department of the Air Force, or "Air Force"
- (4) Marine Corps
- (5) European Command
- (6) Central Command
- (7) Africa Command
- (8) Special Operations Command

- (9) Office of Secretary of Defense and Joint Staff
- (10) Defense Intelligence Agency

14. Defendant United States Department of State ("State Department") is a Department of the Executive Branch of the United States, and is an agency within the meaning of 5 U.S.C. § 552 (f)(1).

15. Defendant United States Department of Justice is a Department of the Executive Branch of the United States, and is an agency within the meaning of 5 U.S.C. § 552 (f)(1). The Federal Bureau of Investigation is the investigative component of the Department of Justice. The Department of Justice is responsible for the FBI's compliance with the FOIA. This defendant is hereinafter referred to as simply "FBI."

16. Defendant Central Intelligence Agency ("CIA") is a Department of the Executive Branch of the United States, and is an agency within the meaning of 5 U.S.C. § 552 (f)(1).

DEPARTMENT OF DEFENSE

FOIA REQUESTS

17. Plaintiffs made 19 FOIA requests to defendant DOD.

Initial reports

18. Copies of radio communications from the compound, requested from Africa Command [and State Department]:

Audio. All records of **radio communications** emanating from the **Compound's Tactical Operations Center (TOC)**, on September 11th and 12th, 2012, whether made by Regional Security Officer (RSO) Alec Henderson or any other person.

19. Records of contemporaneous notifications to DOD, sought from Defense Intelligence Agency:

Op Rep 3's. The OPEREP-3 PINNACLE **reports used** to provide any Department of Defense division (or office or entity) with notification of, or **information about**, the September 11th and 12th, 2012 **attacks** on U.S. facilities in Benghazi, Libya

20. Communications to and from AFRICOM Joint Operations Center, made to Africa Command:

AFRICOM communications. All records of **AFRICOM Joint Operations Center (JOC)** Chief's communications subsequent to that Officer's receipt of messages emanating from the Compound's TOC. This request is to be read to include all communications **to all US personnel, whether armed forces or civilians**, and includes communications to General Carter Ham, the Unified Combatant Command, the Pentagon, CIA, Department of State, and White House including the Situation Room.

Help from allies

21. Appeals for help from allies in country made to (1) Africa Command, and (2) Office of the Secretary of Defense and the Joint Staff [and State Department]:

Appeals for help. Records of **requests for help** for personnel at the Special Mission Compound and the CIA Annex, to:

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

Sigonella

22. Request for records of 130-man Marine Force team at Naval Air Station Sigonella, Sicily made to (1) Navy, (2) Air Force, (3) Marines, and (4) European Command:

Records disclosing the readiness status of the **130-man Marine Force Reconnaissance Team** at NAS Sigonella, including:

- (a) All **communications with, and orders to, NAS Sigonella personnel** to get ready to deploy, and, if applicable, to deploy, to Benghazi; and
- (b) All **communications from NAS Sigonella personnel notifying command that assets were ready** to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, **if applicable, orders to abort or turn back.**

23. Records of US aircraft in Sigonella, Sicily made to (1) Navy, (2) Air Force, and (3) European Command:

Sigonella. Records **identifying**, and concerning, all **US aircraft** at NATO Base Sigonella, Naval Air Station Sigonella in Sicily, Italy ("NAS Sigonella"), whether transport, cargo, refueling, fighter, attack, or surveillance. Records should include those that disclose the readiness status of:

- Any F-16 and F-18 fighters (a/k/a F/A-18 – Fighter/Attack);
- C-5, C-9, C-17, C-40 and C-130 transport;
- C-2 cargo; C-26 passenger/cargo;
- KC-10 and KC-135 refueling; and
- P-3 surveillance.

24. Request for records of DOD seeking help by use of Italian aircraft in Sigonella Sicily made to (1) Marines, and (2) European Command:

Any records of the Department of Defense **seeking help by use of Italian aircraft** at NAS Sigonella.

Aviano

25. Request for records of US aircraft at Aviano, Italy, made to Air Force:

[D]isclosure of records **identifying all US aircraft at Aviano** Air Base in northeastern Italy on September 11th and 12th, 2012, including all U.S. Air Force 31st Fighter Wing assets, whether transport, cargo, refueling, fighter, attack, or surveillance.

Rota

26. Request for records of two Marine Corps Fleet Antiterrorism Security Teams in Rota, Spain made to (1) Navy, (2) Marines, (3) European Command, and (4) Special Operations Command:

Rota. Records revealing the status of **two Marine Corps "Fleet Antiterrorism Security Teams" ("FAST")**, at the Spanish naval base Naval Station Rota ("NAVSTA Rota"), including:

- (a) All **communications** with, and **orders** to, NAVSTA Rota personnel to get ready to deploy, and, if applicable, to deploy; and
- (b) All communications from NAVSTA Rota personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back

Croatia

27. Records of orders to Special Operations Commanders-In-Extremis Force in Croatia made to (1) Army, (2) European Command, and (3) Special Operations Command:

Records regarding the readiness status of, and **orders** given to, **airborne** special operations unit, "**Commanders-In-extremis Force**" ("CIF"), assigned to the European Command, and **in Croatia**, including:

- (a) **Orders** for the CIF to deploy to NAS Sigonella; and
- (b) All **communications** from the CIF notifying command that it was ready to deploy, and, if applicable, that aircraft was airborne, bound for NAS Sigonella, and, if applicable, orders to abort or turn back.

Djibouti

28. Records of US aircraft in Djibouti made to Africa Command:

Records **identifying**, and concerning, all **US aircraft in Djibouti** on September 11, 2012, whether at Camp Lemonnier, Ambouli International Airport, and whether detailed or

assigned to the Combined Joint Task Force-Horn of Africa (CJTF-HOA). Records should include those that disclose the readiness status of all AC-130 gunships.

United States

29. Orders to Special Operations in the United States made to Special Operations Command:

United States. Records disclosing the readiness status of, and **orders given to, Special Operations Forces** ("Special Ops" or "SOF") **in the United States**, including:

- (a) Orders for Special Ops to deploy to Libya; and
- (b) Communications from SOF notifying command that it was ready to deploy, and, if applicable, that aircraft was airborne, bound for Libya, and, if applicable, orders to abort or turn back.

Maps

30. Request for maps depicting assets made to (1) European Command, (2) Africa Command, (3) Central Command, (4) Office of the Secretary of Defense and Joint Staff, and (5) Defense Intelligence Agency:

Maps. **Maps depicting all assets** that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.

Readiness status

31. Records of readiness status of all armed forces requested from Defense Intelligence Agency:

Orders regarding readiness status. For the period of July 1, 2012, through September 30, 2012, records of all **directives, orders and other communications regarding the readiness status** of United States armed forces on the anniversary of the September 11th, 2001, attacks on the World Trade center, to or from:

EUCOM (European Command);
CENTCOM (United States Central Command);
AFRICOM (U.S. Africa Command);
USSOCOM (Special Operations Command);
OSD/JS (Office of Secretary of Defense and Joint Staff);
Naval Air Station Sigonella, Sicily;
Spanish naval base Naval Station Rota, Spain;
Aviano Air Base in northeastern Italy; and
Special Operations Forces in the United States

Contingency plans

32. Records of relevant military contingency action plans made to Office of Secretary of Defense and Joint Staff:

Records concerning **joint military contingency plans**:

- (a) **Plan Identification (PID) Number and title of the operation plan or plans** prepared using Deliberate Planning procedures, found in Joint Publication 5-0, Joint Operation Plan, August 2011, for use by the supported combatant commander (1) to support military, diplomatic and interagency activities in Libya, through 2012, and (2) to support the military crisis response to the attacks on the Benghazi facilities on September 11 and 12, 2012.
- (b) **Operation plan or plans for use by the supported combatant commander** to support military crisis response to the attacks on the Benghazi facilities on September 11 and 12, 2012.
- (c) List of commands, organizations and agencies comprising the **joint planning and execution community (JPEC)**, found in Joint Publication 5-0, Joint Operation Plan, August 2011, which developed, coordinated, and approved the operation plans referred to under (a) above.
- (d) Supported **combatant commander's Joint Intelligence Preparation** of the Operational Environment (JIPOE), developed to support the plans referenced under (a) above.
- (e) List of commands, organizations, agencies and offices comprising the **supported combatant commander's joint interagency coordinating group (JIACG)**, established to support the plans referenced under (a) above.

- (f) Copies of any **combatant command commercial contracts** established to **support** military, diplomatic and interagency activities at **Tripoli and at Benghazi** prior to the attacks on the Benghazi facilities on September 11 and 12, 2012.

33. [Paragraph 33 deleted.]

Aircraft radio transmission

34. Request for "Feet dry over Libya" radio transmission made to (1) Air force, (2) Africa Command, and (3) Special Operations Command:

"Feet dry over Libya" radio transmission. Any record of transmission from any aircraft during the crisis that stated, "Feet dry over Libya," or words to that effect, informing that aircraft was transitioning from above the Mediterranean Sea to above the Libyan landmass.

Gaddafi offer of abdication

35. Request for records of Gaddafi's March 2011 interest in truce and abdication made to Africa Command:

Records of all **communications generated in March of 2011 regarding Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication** and exile out of Libya, by or to:

- (a) Head of Qaddafi's personal security General Abdulqader Yusef Dibri;
- (b) Rear Admiral (ret.) Chuck Kubic;
- (c) AFRICOM personnel, including but not limited to:
 - (i) General Carter Ham; and
 - (ii) Lieutenant Commander Brian Linvill; and
- (d) The CIA.

October 2011 assets pre-positioned

36. Records of assets pre-positioned off the coast of Tripoli on October 18, 2011, made to (1) Navy, (2) Africa Command, (3) Office of the Secretary of Defense

and the Joint Staff, and (4) Defense Intelligence Agency [as well as State Department]:

Military assets pre-positioned in October 2011. In addition to records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, we also seek records identifying DoD assets pre-positioned off the coast of Tripoli on October 18, 2011, **when Secretary Clinton visited Libya.**

ADMINISTRATIVE RECORD

Army
March 31, 2014 FOIA Request

37. On March 31, 2014, plaintiffs submitted their FOIA request, by certified mail, to the Army. Plaintiffs requested "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012."

Specifically, plaintiffs sought production of:

Records regarding the readiness status of, and **orders** given to, **airborne special operations unit, "Commanders-In-extremis Force"** ("CIF"), assigned to the European Command, and **in Croatia**, including:

- (a) Orders for the CIF to deploy to NAS Sigonella; and
- (b) All communications from the CIF notifying command that it was ready to deploy, and, if applicable, that aircraft was airborne, bound for NAS Sigonella, and, if applicable, orders to abort or turn back.

38. Seeking a waiver of any fees associated with the search and review of responsive records, the FOIA request sought agency recognition as "representatives of the news media." Plaintiffs' are entitled to news media status because disclosure is in the public interest: It will be "likely to contribute significantly the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

Plaintiffs also sought a public interest waiver of duplication fees, under 5 U.S.C. § 552(a)(4)(A)(iii).

39. Plaintiffs FOIA request also prays for expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II), citing DOD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program." Plaintiffs posit that the regulations support expedition because "the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity," and that the requesters have demonstrated a "compelling need for the information."

40. By letter dated June 19, the Army wrote that it had "responded to your request on April 03, 2014, informing you that we referred the request to the Department of State. On June 19, 2014, we received a letter from the Department of State informing us that you will have to send your request directly to them." On June 20, plaintiffs replied:

There appears to be a misunderstanding. Contrary to your June 19 letter, the Army did not notified (sic) me of any referral. This is the first I have heard from the Army since I submitted the Request on March 31. Kindly email me a copy of the referenced notification. Moreover, it would appear to be an error to refer the request to the State Department.... In an effort to alleviate the necessity of the Army to refer the matter, I made the same FOIA request to two other DoD components, and so informed the Army, writing, "[k]indly note that we are simultaneously making this request, verbatim, to (1) HQ USEUCOM (U.S. European Command), and (2) HQ USSOCOM (Special Operations Command)." Even if the orders to deploy, or not deploy, assets, had come from the State Department, we still seek the DoD records. These same requesters already submitted extensive FOIA requests to the State Department, first on February 21, 2014, and second on April 7, 2014.

Constructive Exhaustion
of Administrative Remedies

41. Beyond its April 3 notification that it had referred plaintiffs' FOIA request to the State Department, the Army has not responded. As of the date of this complaint, defendant has failed to produce any responsive records or to demonstrate that they are exempt from disclosure. Because the twentieth day since plaintiffs made their March 31 FOIA request was in April, plaintiffs have constructively exhausted their administrative remedies under 5 U.S.C. § 552 (b)(6)(A)(i).

Navy
March 31, 2014 FOIA Request

42. On March 31, 2014, plaintiffs wrote to the Secretary of the Navy Chief of Naval Operations FOIA Office, seeking "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Plaintiffs sought disclosure of:

1. **Sigonella.** Records **identifying**, and concerning, all **US aircraft** at NATO Base Sigonella, Naval Air Station Sigonella in Sicily, Italy ("NAS Sigonella"), whether transport, cargo, refueling, fighter, attack, or surveillance. Records should include those that disclose the readiness status of:
 - Any F-16 and F-18 fighters (a/k/a F/A-18 – Fighter/Attack);
 - C-5, C-9, C-17, C-40 and C-130 transport;
 - C-2 cargo; C-26 passenger/cargo;
 - KC-10 and KC-135 refueling; and
 - P-3 surveillance.
2. Records disclosing the readiness status of the **130-man Marine Force Reconnaissance Team** at NAS Sigonella, including:

- (a) All **communications with, and orders to**, NAS Sigonella personnel to get ready to deploy, and, if applicable, to deploy, to Benghazi; and
 - (b) All communications from NAS Sigonella personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
3. **Rota.** Records revealing the status of **two Marine Corps "Fleet Antiterrorism Security Teams ("FAST")**, at the Spanish naval base Naval Station Rota ("NAVSTA Rota"), including:
- (a) All **communications with, and orders to**, NAVSTA Rota personnel to get ready to deploy, and, if applicable, to deploy; and
 - (b) All communications from NAVSTA Rota personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
4. **Military assets pre-positioned in October 2011.** In addition to records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, we also seek records identifying DoD assets pre-positioned off the coast of Tripoli on October 18, 2011, when Secretary Clinton visited Libya.
43. Plaintiffs' FOIA request prayed for:
- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
 - (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
 - (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

44. In an effort to avoid the necessity of Navy having to refer the requests to other components of defendant DOD, plaintiffs wrote:

Kindly note that Request No. 1, seeking disclosure of records of aircraft at Sigonella, is also being made to (a) the Department of the Air Force, and (b) the HQ USEUCOM (U.S. European

Command). Request No. 2, for records concerning the readiness status of the 130-man Marine Force, is also being made to (a) the Department of the Air Force, (b) HQ USEUCOM (U.S. European Command), and (c) Commandant of the Marine Corps. Request No. 4, for records of military assets pre-positioned in October 2011 off the coast of Tripoli, is also made to (a) HQ U.S. AFRICOM (U.S. Africa Command), as well as (b) OSD/JS (Office of the Secretary of Defense and the Joint Staff).

45. By April 16 email, the Navy acknowledged receipt of plaintiffs' FOIA request. A week later, on April 23, 2014, the Navy wrote:

We have determined that the information you are seeking may be maintained by the Commander, Naval Forces Europe and Africa/US Sixth Fleet... Therefore, we have forwarded your request to that office for action and direct response to you. Please be advised... will address your request for an expedited processing and fee waiver.

46. By letter dated May 7, 2014, the office of the Commander, Naval Forces Europe and Africa/US Sixth Fleet, denied plaintiffs' request for expedited processing, as well as plaintiffs' request for statutory fee waivers.

47. On June 16, 2014, plaintiffs administratively appealed. Plaintiffs administratively appealed all DOD denials of expedited processing and statutory fee waiver determinations in the 40-page appeal, plus 38 attached exhibits. Plaintiffs' appeal proves:

- (a) For the first ten days following the attacks, the Administration repeatedly represented that the attack was spontaneous. This was false, and known to be false. Since then, the Administration has advanced several different versions of the facts.
- (b) The Administration baldly claims that it reacted with all due dispatch, even while the publicly-available record would appear to contradict that claim, in several respects. Disclosure of the just the DOD records sought will settle the matter.

- (c) Moreover, even if any one of the Administration's narratives were true, it would not solve the mystery of why the government failed to try to rescue its personnel. Congressional probes and reports demonstrate the Administration's negligence, but are silent on the issue of motive for the absence of an immediate response by the DOD.
- (d) The Administration facilitated delivery of weapons to militias known to be affiliates of jihadists, first to bring down Qaddafi, and subsequently to try and oust Assad. Did decision-makers fear that a rescue operation might expose this operation, exposing them to accusations of violating The Arms Export Control Act, or even materially supporting terrorists?
- (e) The circumstances mandate expedited processing. If processed in the regular course, full disclosure will occur only after the November 2016 elections, and the American people would lose the opportunity to meaningfully participate in this debate. The particular value of the information would be lost. This is particularly evident given the high probability that litigation at the appellate level will be necessary.
- (f) On the issue of when and how the State Department responded, disclosure will also reveal whether Secretary Clinton was truthful when she claimed to have sought help from American allies.
- (g) "Here, the public interest in disclosure is enormous... The public has a right to disclosure of records that would answer the many questions posed by the facts of the Benghazi attacks—*before* the next presidential election."

48. By June 20 letter, the Defense Freedom of Information Policy Office acknowledged that it had received plaintiffs' appeal on June 18. On June 20, the Defense Freedom of Information Policy Office wrote to plaintiffs that it was "unable to complete your appeal within the statutory time requirement."

Exhaustion of
Administrative Remedies

49. By letter of August 20, 2014, the Navy ruled on plaintiffs' appeal, granting it in part, and denying in part. The Navy agreed to treat plaintiffs as a

"member of the news media," and agreed to grant them a public interest waiver of duplication fees, but denied plaintiffs' request for expedited processing. Plaintiffs have exhausted their administrative remedies.

Air Force
First FOIA Request—March 31, 2014

50. On March 31, 2014, by certified mail to the Air Force, plaintiffs requested "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Specifically, plaintiffs sought production of:

1. **Signonella.** Records identifying, and concerning, all **US aircraft** at NATO Base Signonella, **Naval Air Station Signonella in Sicily, Italy** ("NAS Signonella"), whether transport, cargo, refueling, fighter, attack, or surveillance. Records should include those that disclose the readiness status of:
 - Any F-16 and F-18 fighters (a/k/a F/A-18 - Fighter/Attack);
 - C-5, C-9, C-17, C-40 and C-130 transport;
 - C-2 cargo; C-26 passenger/cargo;
 - KC-10 and KC-135 refueling; and
 - P-3 surveillance.
2. Records disclosing the readiness status of the **130-man Marine Force Reconnaissance Team at NAS Signonella**, including:
 - (a) All **communications with, and orders** to, NAS Signonella personnel to get ready to deploy, and, if applicable, to deploy; and
 - (b) All communications from NAS Signonella personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
3. **"Feet dry over Libya" radio transmission.** Any record of transmission from any aircraft during the crisis that stated, "Feet dry over Libya," or words to that effect, informing that aircraft was transitioning from above the Mediterranean Sea to above the Libyan landmass.

51. Plaintiffs' FOIA request prayed for:

- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
- (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
- (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

52. In an effort to avoid the necessity of Department of the Air Force to refer the requests to other components of defendant DOD, plaintiffs wrote:

Kindly note that Request No. 1, seeking disclosure of records of aircraft at Sigonella, is also being made to (a) Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), as well as (b) the HQ USEUCOM (U.S. European Command). Request No. 2, for records concerning the readiness status of the 130-man Marine Force at Sigonella, is also being made to (a) the Commandant of the Marine Corps, (b) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), and (c) HQ USEUCOM (U.S. European Command). Request No. 3, for records of a radio transmission, "Feet dry over Libya" or the like, is also being made to (a) HQ U.S. AFRICOM (U.S. Africa Command), and (b) HQ USSOCOM (Special Operations Command).

53. Upon information and belief, plaintiffs did not receive the Air Force's July 1 letter responding to their March 31 FOIA request, until the government filed its Answer.

Constructive Exhaustion
of Administrative Remedies

54. Defendant DOD averred that the Air Force responded to plaintiffs' March 31, 2014 FOIA request in a letter dated July 1, 2014, wherein the Air Force informed plaintiffs that "[t]he Operations, Plans and Requirements conducted an appropriate search for responsive records and indicated they have no equity in the

request" and that a "no records" determination was made. That letter also apprised plaintiffs of their rights to appeal the "no records" determination.

55. Plaintiffs believe that they did not receive the Air Force's July 1 response. In any event, on December 31, 2014, plaintiffs submitted a FOIA Request to the Air Force seeking disclosure of the exact same records requested in their March 31, 2014, FOIA Request to the Air Force. By letter dated February 9, 2015, the Air Force granted plaintiffs' request for a "news media" fee waiver, and denied their request for expedited processing.

Air Force
Second FOIA Request—April 7, 2014

56. On April 7, 2014, by certified mail to defendant Department of the Air Force, plaintiffs sought:

[D]isclosure of records **identifying all US aircraft at Aviano Air Base in northeastern Italy** on September 11th and 12th, 2012, including all U.S. Air Force 31st Fighter Wing assets, whether transport, cargo, refueling, fighter, attack, or surveillance.

57. Here too plaintiffs' FOIA request sought:
- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
 - (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
 - (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

Constructive Exhaustion
of Administrative Remedies

58. The twenty day period since plaintiffs submitted this FOIA request expired in May, without a response from the Air Force, and plaintiffs have constructively exhausted their administrative under 5 U.S.C. § 552 (b)(6)(A)(i).

Marine Corps
March 31, 2014 FOIA Request

59. On March 31, 2014, plaintiffs sent, via certified mail return receipt requested, to Commandant of the Marine Corps, a FOIA request for "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Specifically, plaintiffs sought disclosure of:

1. **Sigonella.** Records disclosing the readiness status of the **130-man Marine Force Reconnaissance Team** at NAS Sigonella, including:
 - (a) All **communications with, and orders to**, NAS Sigonella personnel to get ready to deploy, and, if applicable, to deploy, to Benghazi; and
 - (b) All communications from NAS Sigonella personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
2. Any records of the Department of Defense **seeking help by use of Italian aircraft** at NAS Sigonella.
3. **Rota.** Records revealing the status of **two Marine Corps "Fleet Antiterrorism Security Teams ("FAST")**, at the Spanish naval base Naval Station Rota ("NAVSTA Rota"), including:
 - (a) **All communications with, and orders to**, NAVSTA Rota personnel to get ready to deploy, and, if applicable, to deploy; and
 - (b) All communications from NAVSTA Rota personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, and, if applicable, orders to abort or turn back.

60. Here too plaintiffs' FOIA request included prayers for:

- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
- (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
- (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

61. In an effort to avoid the necessity of Marine Corps having to refer the requests to other components of defendant DOD, plaintiffs wrote:

Kindly note that Request No. 1, for records concerning the readiness status of the 130-man Marine Force at Sigonella, is also being made to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), (b) the Department of the Air Force, and (c) HQ USEUCOM (U.S. European Command). Request No. 2, for any records of the Department of Defense seeking help by use of Italian aircraft at NAS Sigonella, is also being made to HQ USEUCOM (U.S. European Command). Request No. 3, for records of the status of the two Marine Corps "FAST" teams at Spanish naval base Naval Station Rota, is also being made to (a) Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), (b) HQ USEUCOM (U.S. European Command), and (c) HQ USSOCOM (Special Operations Command).

62. By email dated April 8, 2014, the Marine Corps acknowledged receipt of plaintiffs' FOIA request. Two weeks later, on April 23, 2014, the Marine Corps wrote:

In an effort to assist you we have referred **item one** of your request to the Commander, US Marine Forces Europe, Attn: G-1 FOIA, Unit 30401, APO-AE9107, for direct response to you. If you would like to inquire about the status of your request, please contact Major Roger Mattioli via email at roger.mattioli@usmc or by fax to 011-49-703-112-392.

We note that **item two** refers to records under the cognizance of the Department of Defense (DoD). Since you also sent your

request to DoD, we will not refer this to them and will consider that as inapplicable to the U.S. Marine Corps.

Per our previous correspondence, we have referred **item three** of your request to the Marine Corps Security Force Regiment, 4th St. Bldg 624, Williamsburg, VA 23185, for direct response to you. If you would like to inquire about the status of your request, please call Captain Siva Ambikapath at (757) 877-7126 or send an email to siva.ambikapath@usmc.mil.

63. Defendant DOD averred that the Marine Corps responded in a letter dated April 21, 2014, stating that it was denying News Media status and expedited processing, and that it had referred item 3 of your request to the Marine Corps Security Force Regiment . . . for direct response to you." The letter placed plaintiffs' request in the "other" fee category, providing plaintiffs two hours of search time and 100 pages of duplication free of charge. The letter also apprised plaintiffs of their appeal rights.

64. Upon information and belief, plaintiff did not receive the Marine Corps' April 21 response. In any event, on December 31, 2014, plaintiffs submitted a FOIA Request to the Marine Corps seeking disclosure of the exact same records requested in their April 8, 2014, FOIA Request to the Marine Corps. Plaintiffs will seek leave to amend their Complaint, should it be necessary.

65. As of the date of the filing of the Complaint, the Marine Corps has failed to produce any responsive records, or demonstrate that such records are exempt from production.

Constructive Exhaustion
of Administrative Remedies

66. As of the date of the filing of the Complaint, the Marine Corps has failed to produce any responsive records, or demonstrate that such records are exempt from production.

European Command
March 31, 2014 FOIA Request

67. On March 31, 2014, by certified mail to defendant European Command, plaintiffs requested "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Specifically, plaintiffs sought disclosure of:

1. **Signonella.** Records **identifying**, and concerning, all **US aircraft** at NATO Base Signonella, Naval Air Station **Signonella in Sicily**, Italy ("NAS Signonella"), whether transport, cargo, refueling, fighter, attack, or surveillance. Records should include those that disclose the readiness status of:
 - Any F-16 and F-18 fighters (a/k/a F/A-18 – Fighter/Attack);
 - C-5, C-9, C-17, C-40 and C-130 transport;
 - C-2 cargo; C-26 passenger/cargo;
 - KC-10 and KC-135 refueling; and
 - P-3 surveillance.
2. Records disclosing the readiness status of the **130-man Marine Force Reconnaissance Team** at NAS **Signonella**, including:
 - (a) All **communications with, and orders to**, NAS Signonella personnel to get ready to deploy, and, if applicable, to deploy, to Benghazi; and
 - (b) All communications from NAS Signonella personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
3. Any records of the Department of Defense seeking **help by use of Italian aircraft** at NAS Signonella.

4. **Rota.** Records revealing the status of **two Marine Corps Fleet Antiterrorism Security Teams ("FAST"), at the Spanish naval base Naval Station Rota ("NAVSTA Rota")**, including:
 - (a) All **communications with, and orders to**, NAVSTA Rota personnel to get ready to deploy, and, if applicable, to deploy; and
 - (b) All communications from NAVSTA Rota personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, and, if applicable, orders to abort or turn back.
5. **Croatia.** Records regarding the readiness status of, and **orders given to**, airborne special operations unit, **"Commanders In-extremis Force" ("CIF")**, assigned to the European Command, and **in Croatia**, including:
 - (a) **Orders** for the CIF to deploy to NAS Sigonella; and
 - (b) All **communications** from the CIF notifying command that it was ready to deploy, and, if applicable, that aircraft was airborne, bound for NAS Sigonella, and, if applicable, orders to abort or turn back.
6. **Maps.** Maps **depicting all assets** that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.

68. In an effort to avoid the necessity of European Command to refer the requests to other components of defendant DOD, plaintiffs' FOIA request states:

Kindly note that Request No. 1, seeking disclosure of records of aircraft at Sigonella, is also being made to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), and (b) the Department of the Air Force. Request No. 2, for records concerning the readiness status of the 130-man Marine Force at Sigonella, is also being made to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), (b) the Department of the Air Force, and (c) Commandant of the Marine Corps. Request No. 3, for any records of the Department of Defense seeking help by use of Italian aircraft at NAS Sigonella, is also being made to the Commandant of the Marine Corps. Request No. 4, for records of the status of the two Marine Corps "FAST" teams at Spanish naval base Naval Station Rota, is also being

made to (a) the Commandant of the Marine Corps, and (b) HQ USSOCOM (Special Operations Command).

69. Again, plaintiffs' FOIA request sought:
- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
 - (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
 - (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

70. By letter dated May 22, 2014, European Command denied plaintiffs' request for expedited processing, as well as their request to be placed in the "news media" fee category. That letter placed plaintiffs' request in the "other" fee category, providing plaintiffs two hours of search time and 100 pages of duplication free of charge.

71. On June 30, 2014, plaintiffs administratively appealed. The particulars of that appeal, as well as all DOD appeals, are set forth above.

72. By letter dated July 3, 2014, European Command wrote to plaintiffs, "[w]e understand the standard time frame for FOIA request is 20 working days from the day it was received, however due to the complexity of your request; your case has been assigned to the complex tracking queue."

Exhaustion of
Administrative Remedies

73. European Command received plaintiffs' administrative appeal on July 1. Taking into account the ten working day extension as memorialized by defendant in its July 3 letter, the time for defendant to rule on plaintiff's appeal had exceeded

twenty working days, and plaintiffs had exhausted their administrative remedies when they filed their initial Complaint, on September 19, 2014.

74. By letter dated December 4, 2014, European Command "respond[ed] to Accuracy in Media's June 30, 2014, Freedom of Information Act (FOIA) appeal... [of] the U.S. European Command's (USEUCOM) decision to deny their request for news media status and expedited processing for the FOIA." Defendant denied plaintiffs' request for expedited processing, and "grant[ed] Accuracy in Media's request to be placed in the 'news media' category."

Central Command
March 31, 2014 FOIA Request

75. On March 31, 2014, by certified mail to defendant Central Command, plaintiffs requested "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Specifically, plaintiffs sought production of:

Maps depicting all assets that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.

76. In an effort to avoid the necessity of Central Command to refer the requests to other components of defendant Department of Defense, plaintiffs wrote, "[k]indly note that this Request is simultaneously being made to (a) HQ USEUCOM (U.S. European Command), (b) HQ U.S. AFRICOM (U.S. Africa Command), and (c) OSD/JS (Office of the Secretary of Defense and the Joint Staff).

77. Plaintiffs' FOIA request sought (a) news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II), (b) a public interest waiver of duplication fees under 5

U.S.C. § 552(a)(4)(A)(iii), and (c) expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

78. By letter dated April 9, 2014, Central Command informed plaintiffs that the requested information "falls under United States Africa Command's (AFRICOM) purview. Since you simultaneously submitted your FOIA request to AFRICOM, USCENTCOM is administratively closing your FOIA request." Defendant's April 9 letter did not apprise plaintiffs of their right to administratively appeal. Defendant's April 9 letter was not an adverse determination.

**Constructive Exhaustion
of Administrative Remedies**

79. The twenty day period since plaintiff's ' March 31 FOIA request was in April. Central Command has not substantively responded. Plaintiffs have constructively exhausted their administrative remedies by virtue of the DOD's failure to respond within twenty working days under 5 U.S.C. § 552 (b)(6)(A)(i).

**Africa Command
First FOIA Request—March 31, 2014**

80. On March 21, 2014, by certified mail to defendant Africa Command, plaintiffs requested "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Plaintiffs sought disclosure of:

1. **AFRICOM communications.** All records of **AFRICOM Joint Operations Center (JOC)** Chief's communications subsequent to that Officer's receipt of messages emanating from the Compound's TOC. This request is to be read to include all communications **to all US personnel, whether armed forces or civilians**, and includes communications to General Carter Ham, the Unified Combatant Command, the Pentagon, CIA, Department of State, and White House including the Situation Room.

2. **Appeals for help.** Records of **requests for help** for personnel at the Special Mission Compound and the CIA Annex, to:
 - (a) The **Turkish Consulate** in Benghazi;
 - (b) The **Italian Consulate** in Benghazi; and
 - (c) The **U.K. Security Team**.
3. **Maps.** Maps **depicting all assets** that could have been dispatched to Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.
4. **Audio.** All records of **radio communications** emanating from the **Compound's Tactical Operations Center (TOC)**, on September 11th and 12th, 2012, whether made by Regional Security Officer (RSO) Alec Henderson or any other person.
5. **"Feet dry over Libya" radio transmission.** Any record of transmission from any aircraft during the crisis that stated, "Feet dry over Libya," or words to that effect, informing that aircraft was transitioning from above the Mediterranean Sea to above the Libyan landmass.
6. **Military assets pre-positioned in October 2011.** In addition to records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, we also seek records identifying DoD assets pre-positioned **off the coast of Tripoli** on October 18, 2011, when Secretary Clinton visited Libya.

81. In an effort to avoid the necessity of Africa Command to refer the requests to other components of defendant Department of Defense, plaintiffs' FOIA request notes:

[R]ecords sought in Request No. 2, regarding any appeals for help for Special Mission Compound or CIA Annex personnel, made to the Turkish or Italian Consulates or the U.K. Security Team, is simultaneously being submitted to OSD/JS (Office of the Secretary of Defense and the Joint Staff). Request No. 3, for maps of depicting assets, is simultaneously being made to (a) the HQ USEUCOM (U.S. European Command), (b) the United States Central Command CCJ6-RDF (FOIA), and (c) OSD/JS (Office of the Secretary of Defense and the Joint Staff).

82. Plaintiffs' FOIA request also sought:

- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
- (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
- (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

83. By correspondence dated April 14, 2014, defendant denied plaintiffs' request for expedited processing, and similarly denied plaintiff's requests for news media and public interest statutory fee waivers.

84. Plaintiffs' June 12, 2014 administrative appeal includes their points and authorities recounted above.

85. By letter dated June 18, 2014, DOD's Defense Freedom of Information Policy Office notified plaintiffs that it was "unable to complete your appeal within the [twenty working-day] statutory time requirement."

Exhaustion of
Administrative Remedies

86. By letter dated August 25, 2014, DOD's Office of the Deputy Chief Management Officer responded to plaintiffs' June 12 administrative appeal, granting plaintiffs' prayer to be recognized as members of the news media under 5 U.S.C. § 552 (a)(4)(A)(ii)(II), and granting them a public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii), but denying their request for expedited processing.

Africa Command
Second FOIA Request—October 1, 2014

87. On October 1, 2014, by certified mail to defendant Africa Command, plaintiffs requested disclosure of:

1. Records **identifying**, and concerning, all **US aircraft in Djibouti** on September 11, 2012, whether at Camp Lemonnier, Ambouli International Airport, and whether detailed or assigned to the Combined Joint Task Force-Horn of Africa (CJTF-HOA). Records should include those that disclose the readiness status of all AC-130 gunships.
2. Records of all **communications generated in March of 2011 regarding Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication** and exile out of Libya, by or to:
 - (a) Head of Qaddafi's personal security General Abdulqader Yusef Dibri;
 - (b) Rear Admiral (ret.) Chuck Kubic;
 - (c) AFRICOM personnel, including but not limited to:
 - (i) General Carter Ham; and
 - (ii) Lieutenant Commander Brian Linvill; and
 - (d) The CIA.

88. Plaintiffs' FOIA request prayed for:

- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
- (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
- (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

Constructive Exhaustion
of Administrative Remedies

89. Africa Command has not responded, nor produced any responsive records or demonstrated that they are exempt from disclosure. Over twenty working days has passed since defendant received plaintiffs' October 1 FOIA

request. Plaintiffs have constructively exhausted their administrative remedies under 5 U.S.C. § 552 (b)(6)(A)(i).

Special Operations Command
March 31, 2014 FOIA Request

90. On March 31, 2014, by certified mail to defendant Special Operations Command, plaintiffs requested "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Specifically, plaintiffs seek disclosure of:

1. **Rota.** Records revealing the status of **two Marine Corps Fleet Antiterrorism Security Teams ("FAST")**, at the Spanish naval base Naval Station Rota ("NAVSTA Rota"), including:
 - (a) All **communications with, and orders to**, NAVSTA Rota personnel to get ready to deploy, and, if applicable, to deploy, to Benghazi; and
 - (b) All communications from NAVSTA Rota personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.

2. **Croatia.** Records regarding the readiness status of, and orders given to, **airborne special operations unit, Commanders In-extremis Force ("CIF")**, assigned to the European Command, and **in Croatia**, including:
 - (a) **Orders** for the CIF to deploy to NAS Sigonella; **and**
 - (b) All **communications** from the CIF notifying command that it was ready to deploy, and, if applicable, that aircraft was airborne, bound for NAS Sigonella, and, if applicable, orders to abort or turn back.

3. **United States.** Records disclosing the readiness status of, and orders given to, **Special Operations Forces ("Special Ops" or "SOF") in the United States**, including:
 - (a) **Orders** for Special Ops to deploy to Libya; and
 - (b) **Communications** from SOF notifying command that it was ready to deploy, and, if applicable, that aircraft was airborne, bound for Libya, and, if applicable, orders to abort or turn back.

4. **"Feet dry over Libya" radio transmission.** Any record of transmission from any aircraft during the crisis that stated, "Feet dry over Libya," or words to that effect, informing that aircraft was transitioning from above the Mediterranean Sea to above the Libyan landmass.

91. And plaintiffs' FOIA request sought:

- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
- (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
- (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

92. In an effort to avoid the necessity of Special Operations Command to refer the requests to other components of the DOD, plaintiffs' FOIA request included:

Kindly note that Request No. 1, regarding orders given to the two Marine Corps Fleet Antiterrorism Security Teams at Naval Station Rota, is being simultaneously submitted to (a) the Commandant of the Marine Corps, and (2) HQ USEUCOM (U.S. European Command). Request No. 2, seeking orders given to the Commanders In-extremis Force in Croatia, is also being made to (a) the Department of the Army, and (b) HQ USEUCOM (U.S. European Command). Request No. 4, for the radio transmission recording, "Feet dry over Libya" or the like, is also submitted to (a) the Air Force, and (b) HQ U.S. AFRICOM (U.S. Africa Command).

93. By letter dated August 29, Special Operations acknowledged receipt of plaintiffs' March 31 FOIA Request. That letter placed plaintiffs in the "News Media" category for fee purposes, denied its request for a public interest fee waiver, but, otherwise, contained no substantive response. It did not apprise plaintiffs of any right to administratively appeal. Defendant Special Operations' August 29 correspondence was not an adverse determination.

Constructive Exhaustion
of Administrative Remedies

94. The twenty day period since March 31 was in April. Special Operations has not responded, and, so, plaintiffs have constructively exhausted their administrative remedies by virtue of the DOD's failure to respond within twenty working days under 5 U.S.C. § 552 (b)(6)(A)(i).

Office of Secretary of Defense and Joint Staff
March 31, 2014 FOIA Request

95. On March 31, 2014, by certified mail to defendant Office of Secretary of Defense and Joint Staff, plaintiffs wrote, "FOIA request Nos. 1, 2 and 3 are for disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Specifically, the CCB sought production of:

1. Maps. Maps **depicting all assets** that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.
2. **Appeals for help.** Records of requests for help for the Special Mission Compound and the CIA Annex, to:
 - (a) The **Turkish Consulate** in Benghazi;
 - (b) The **Italian Consulate** in Benghazi; and
 - (c) The **U.K. Security Team**.
3. Records concerning **joint military contingency plans**:
 - (a) **Plan Identification (PID) Number and title of the operation plan or plans** prepared using Deliberate Planning procedures, found in Joint Publication 5-0, Joint Operation Plan, August 2011, for use by the supported combatant commander (1) to support military, diplomatic and interagency activities in Libya, through 2012, and (2) to support the military crisis response to the attacks on the Benghazi facilities on September 11 and 12, 2012.

- (b) Operation **plan** or plans **for use by the supported combatant commander** to support military crisis response to the attacks on the Benghazi facilities on September 11 and 12, 2012.
 - (c) List of commands, organizations and agencies comprising the **joint planning and execution community** (JPEC), found in Joint Publication 5-0, Joint Operation Plan, August 2011, which developed, coordinated, and approved the operation plans referred to under (a) above.
 - (d) Supported **combatant commander's Joint Intelligence Preparation** of the Operational Environment (JIPOE), developed to support the plans referenced under (a) above.
 - (e) List of commands, organizations, agencies and offices comprising the **supported combatant commander's joint interagency coordinating group** (JIACG), established to support the plans referenced under (a) above.
 - (f) Copies of any **combatant command commercial contracts** established to **support** military, diplomatic and interagency activities at **Tripoli and at Benghazi** prior to the attacks on the Benghazi facilities on September 11 and 12, 2012.
4. **Military assets pre-positioned in October 2011.** In addition to records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, we also seek records identifying DoD assets pre-positioned **off the coast of Tripoli** on October 18, 2011, when Secretary Clinton visited Libya.
96. Plaintiffs' FOIA request also sought:
- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
 - (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
 - (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

97. In an effort to avoid the necessity of defendant Office of Secretary of Defense and Joint Staff to refer the requests to other components of the DOD, plaintiffs' FOIA request states:

Kindly note that Request No. 1, seeking maps of assets, is also being simultaneously made to (a) HQ USEUCOM (U.S. European Command), (b) United States Central Command CCJ6-RDF (FOIA), and (c) HQ U.S. AFRICOM (U.S. Africa Command). Request No. 2, for records of requests for assistance from the Turkish or Italian Consulates or the U.K. Security Team, as well as Request No. 4, regarding records of military assets pre-positioned in October 2011 off Tripoli on October 18, 2011, is also being submitted to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), and (b) HQ U.S. AFRICOM (U.S. Africa Command).

98. By correspondence on April 10, 2014, Office of Secretary of Defense and Joint Staff denied plaintiffs' request for expedited processing, and failed to grant plaintiff's prayers for news media and public interest statutory fee waivers.

99. On June 6, 2014, plaintiffs administratively appealed the denial of expedited processing, and include additional points and authorities in support of their prayers for statutory fee waivers and expedited processing.

100. By letter dated June 11, 2014, DOD's Defense Freedom of Information Policy Office notified plaintiffs that it was "unable to complete your appeal within the [twenty working-day] statutory time requirement."

Exhaustion of
Administrative Remedies

101. By July 2, 2014 letter, the Office of the Secretary of Defense denied plaintiffs' appeal for expedited processing and granted plaintiffs' request for news media status.

102. By letter dated September 19, 2014, DOD's Office of Freedom of Information denied twelve pages of records responsive to plaintiffs' request. On that same day, September 19, plaintiffs filed their Complaint.

103. Plaintiffs submitted their administrative appeal on September 29, 2014. By letter dated October 8, 2014, DOD's Freedom of Information Division acknowledged receipt of plaintiffs' appeal and wrote that "[d]ue to an extremely heavy FOIA workload, we are unable to complete your appeal within the statutory time requirement."

104. Whether defendant's September 19 response was made before, or after, plaintiffs filed their initial Complaint, the time for Office of the Secretary of Defense to timely rule on plaintiff's September 29 appeal has expired, and plaintiffs have exhausted their administrative remedies.

Defense Intelligence Agency
First FOIA Request—April 7, 2014

105. On April 7, 2014, by certified mail to the Defense Intelligence Agency, plaintiffs requested disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012. Specifically, plaintiffs sought disclosure of:

1. **Maps.** Maps depicting **all assets** within fifteen hundred miles of Benghazi, Libya, on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.
2. **Military assets pre-positioned in October 2011.** Records of all Defense Department assets that were pre-positioned **off the coast of Tripoli on October 18, 2011**, when Secretary Clinton visited Libya.

* * *

[Item 3 withdrawn]

106. In an effort to avoid the necessity of defendant Defense Intelligence Agency to refer the requests to other components of defendant Department of Defense, plaintiffs' FOIA request recites:

Kindly note that on March 31st, Request No. 1, seeking maps of assets, was also made to (a) HQ USEUCOM (U.S. European Command), (b) United States Central Command CCF6-RDF (FOIA), (c) HQ U.S. AFRICOM (U.S. Africa Command), and (d) OSD/JS (Office of the Secretary of Defense and the Joint Staff). Request No. 2, regarding records of military assets pre-positioned off Tripoli on October 18, 2011, was also submitted on March 31st to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), (b) HQ U.S. AFRICOM (U.S. Africa Command), and (c) OSD/JS (Office of the Secretary of Defense and the Joint Staff).

107. Plaintiffs' FOIA request sought:

- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
- (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
- (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

108. Defendant Defense Intelligence Agency has failed to acknowledge receipt of plaintiffs' FOIA requests or otherwise respond to plaintiffs' April 7, 2014 FOIA request.

Constructive Exhaustion
of Administrative Remedies

109. The twenty day period since DOD's receipt of plaintiffs' April 7 FOIA request expired in May. The Defense Intelligence Agency has not to date responded, and plaintiffs have constructively exhausted their administrative remedies by the DOD's failure to respond within twenty working days. 5 U.S.C. § 552 (b)(6)(A)(i).

Defense Intelligence Agency
Second FOIA Request—May 28, 2014

110. On May 28, 2014, by certified mail to defendant Defense Intelligence Agency, plaintiffs requested disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012. Specifically, plaintiffs sought disclosure of:

1. **Op Rep 3's.** The OPEREP-3 PINNACLE **reports used** to provide any Department of Defense division (or office or entity) with notification of, or **information about**, the September 11th and 12th, 2012 **attacks** on U.S. facilities in Benghazi, Libya.
2. **Orders regarding readiness status.** For the period of July 1, 2012, through September 30, 2012, records of all **directives, orders and other communications regarding the readiness status** of United States armed forces on the anniversary of the September 11th, 2001, attacks on the World Trade center, to or from:

EUCOM (European Command);
CENTCOM (United States Central Command);
AFRICOM (U.S. Africa Command);
USSOCOM (Special Operations Command);
OSD/JS (Office of Secretary of Defense and Joint Staff);
Naval Air Station Sigonella, Sicily;
Spanish naval base Naval Station Rota, Spain;
Aviano Air Base iii northeastern Italy; and
Special Operations Forces in the United States

111. Plaintiffs' FOIA request sought (a) news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II), (b) a public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii), and (c) expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

112. By correspondence on June 30, defendant denied plaintiffs' request for expedited processing, and failed to grant plaintiff's requests for statutory fee waivers.

113. On July 7, 2014, plaintiffs administratively appealed. That appeal begins:

This letter is an appeal of the Defense Intelligence Agency's June 30, 2014 denial of expedited processing for the captioned May 28 FOIA request. As I have received no response to the April 7, FOIA request (a copy of which I enclose), if possible, kindly include this submission in the record of the appeal of the April 7, 2014 FOIA request.

114. Plaintiffs' appeal includes the additional points and authorities in support of their prayers for expedited processing and fee waivers, as described above.

Exhaustion of
Administrative Remedies

115. The Defense Intelligence Agency received plaintiffs' July 7 appeal in mid-July. The applicable twenty-day period expired in mid-August. The DOD has not ruled on plaintiffs' administrative appeal, and, thus, plaintiffs have exhausted their administrative remedies by this failure to respond within twenty working days, under 5 U.S.C. § 552 (b)(6)(A)(i).

DEPARTMENT OF STATE
First FOIA Request—February 21, 2014

116. On February 21, 2014, by certified mail to defendant State Department, plaintiffs made the following FOIA requests for records activities in Libya:

[Item 1 withdrawn]

2. Any and all **videos** depicting the United States Consulate in Benghazi, Libya (including the Special Mission Compound and the Annex) between September 10, 2012 and September 12, 2012. This request includes, but is not limited to (1) all videos and photographs obtained, transmitted, or recorded via any unmanned aerial vehicles (UAVs), and (2) video of closed-circuit television monitor at the Benghazi Mission facility's Tactical Operations Center on September 11th and 12th, 2013.
3. All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the **survivors' accounts** of the attack.
4. All records of radio **communications** emanating from the Compound's **Tactical Operations Center (TOC)**, on September 11th and 12th, 2012, whether made by Regional Security Officer (RSO) Alec Henderson or any other person.

* * *

[Item 5 withdrawn]

6. All records of Secretary **Clinton's actions and communications** for the 24-hour period beginning when first notified that the Benghazi Consulate was under attack. Responsive records include:
 - (1) All records generated by Secretary Clinton, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of her telephone calls placed or received

* * *

[Item 6(3) withdrawn]

* * *

[Item 7 through 10 withdrawn]

11. All notes, memoranda, and correspondence generated between January of 2007 and September 11, 2012, regarding meetings between Christopher **Stevens or any other Tripoli Embassy official, and one or more of the following** individuals:
 - Ahmed Abu Khattala, a **commander** of the Libyan **Ansar al-Shariah** militia group

- Mustafa Abdul Jalil, **Chairman of the Libyan National Transitional Council** from 5 March 2011-8 August 2012
- Mahmoud Jibril, **Interim Prime Minister of Libya** and Chair of the Executive Board of the National Transitional Council from 5 March-23 October 2011
- Wissam bin Hamid, a Libya Shield Brigade commander, supporter of the Libyan Muslim Brotherhood Justice & Construction Party, and veteran jihad fighter of Iraq & Afghanistan, who provided security for US representatives in Benghazi and was tentatively identified by the Library of Congress as the **head of al-Qa'eda in Libya**
- Abdelhakim Belhadj (aka Abdallah al Sadeq), veteran jihad fighter of Iraq & Afghanistan, **commander** of the AQ franchise militia, **Libyan Islamic Fighting Group (LIFG)** (aka Libyan Islamic Movement for Change), post-revolution military commander of Tripoli, and Libyan delegation leader to the Syrian Free Army in late 2011
- Ismael al-Sallabi (brother of Ali), **commander** of the Al-Qa'eda-linked **al-Sahati Brigade** during the revolution, and Benghazi Military Council commander afterwards, close ally of Abdelhakim Belhadj and Mustafa Jalil
- Ali al-Sallabi (brother of Ismael), called the 'spiritual leader' of the Libyan revolution, Muslim Brotherhood links, **led effort** with Seif al-Qaddafi and US Embassy Tripoli **to gain release of jihadi detainees from Libyan jails**
- Mohammad al-Sallabi, father of Ali and Ismael, among the **founders of the Libyan Muslim Brotherhood** in the 1960s
- Abu Sufian bin Qumu, veteran jihad fighter in Afghanistan from Derna, Libya, captured in 2001, detained at GITMO, sent back to Libyan jail, released in 2010, led jihad vs Qaddafi in 2011, and [said to have] **led Benghazi Mission attack** in Sep 2012.

* * *

[Items 12 through 15 withdrawn]

117. By letter dated May 5, 2014, plaintiffs narrowed this February 21

State Department FOIA request, writing:

Request number one as currently written begins:

All records of whatsoever nature regarding (1) the Benghazi consulate and (2) its CIA Annex, for the time period of January 1st, 2011, through September 30th, 2012. This request is all-inclusive for all records, however recorded, including emails, reports, memoranda, correspondence, teletypes, telephone calls, text messages, and audio and video recordings, regarding all uses of the Benghazi consulate and CIA Annex. Responsive records include those that disclose...

Please note that we hereby narrow this item to exclude any records "regarding (1) the Benghazi consulate," leaving only records in State's custody regarding (2), the CIA annex. Thus, full disclosure under this item will still reveal the relationship between State and CIA activities at the annex, but will eliminate the necessity to produce numerous other records.

118. By letter dated August 5, 2014, plaintiffs further narrowed this FOIA request to the State Department:

Please note that we further narrow the requests, and withdraw Request Nos. 1(10), 5, 7, 8, 10, 12, 13, and 14. Request 1(10) sought CIA situation reports. Request 5 sought "records of Secretary Panetta's actions and communications..." Request 7 asked for disclosure of records of "the President's first notification that the Benghazi Consulate was under attack..." Request 8 sought disclosure of records reflecting Ambassador Stevens' schedule on September 11, 2012. Request 10 sought disclosure Ambassador Stevens correspondence on September 10th and 11th, 2012. Request 12 sought "DOD and CIA... records shared with members of Congress regarding... collection, storage, transportation of arms and equipment in Libya." Request 13 asked that "DOD and CIA... records of Congressional approval for CIA transport of arms to Syrian rebel forces" be disclosed. Request 14 sought "records regarding Deputy National Security Adviser for Homeland Security and Counter-terrorism John Brennan's recommendations regarding the overthrow of Libyan leader Muammar Gaddafi."

119. By letter dated March 21, the State Department granted plaintiffs' request to be placed in the news media status and as well their request for a waiver

of duplication costs, and denied their request for expedited processing, writing that they "ha[d] not provided adequate justification for expedition."

120. On April 18, 2014, plaintiffs administratively appealed the denial of expedited processing.

Exhaustion of
Administrative Remedies

121. On May 8, 2014, defendant State Department denied plaintiffs' appeal of its request for expedited processing. Plaintiffs have exhausted their administrative remedies, under 5 U.S.C. § 552 (b)(6)(A)(i).

**State Department
Second FOIA Request—April 7, 2014**

122. On April 7, 2014, by certified mail to defendant State Department, plaintiffs made five more FOIA requests. Also seeking news media fee waivers, and expedited processing, plaintiffs requested:

1. Records generated from August 2009, through October of 2011, regarding Secretary of State **Clinton's recommendations** regarding U.S. support to those seeking **to oust** forces loyal to Colonel Muammar **Gaddafi** and his government.
2. Records generated from March of 2011 through September of 2012, regarding Secretary of State **Clinton's recommendations to support those seeking to oust** forces loyal to the government of Bashar al-**Assad**.

[Requests 3, 4, and 5 withdrawn]

123. By letter dated April 21, the State Department granted plaintiffs news media status, but denied their request for expedited processing.

124. Because plaintiffs neglected to timely appeal the State Department's denial of expedited processing, on July 1, 2014, plaintiffs wrote:

Kindly consider accepting this letter as an appeal of the State Department's April 21 denial of expedited processing of the captioned April 7, 2014, FOIA request. Alternatively, this letter is a part of the accompanying July 1 FOIA request, submitted in support of prayers for fee waivers and expedited processing. The April 7, 2014, FOIA request, and the July 1 FOIA request, are identical.

Plaintiffs' July 1 submission includes its additional points and authorities in support of its request for expedited processing under 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

Exhaustion of
Administrative Remedies

125. On August 25, 2014, the State Department responded that it was treating plaintiffs' July 1 submission as a late-filed "appeal of the denial of expeditious processing in your April 7 request," but "uph[eld] the decision to deny expeditious processing." Thus, plaintiffs have exhausted their administrative remedies.

FEDERAL BUREAU OF INVESTIGATION
February 21, 2014 FOIA Request

126. On February 21, 2014, by certified mail to defendant FBI, plaintiffs requested disclosure of "the following records of activities in Libya... regardless of the source" of the records:

* * *

[Items 1, 2, 3, and 4 withdrawn]

5. All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the **survivors' accounts** of the attack.

[Items 6 and 7 withdrawn]

8. September **15th or 16th FBI 302 Interview Reports**, and corresponding handwritten notes, of interviews conducted in Germany of United States personnel who had been in the Benghazi mission and the Benghazi CIA annex during the September 11th and 12th attacks on those facilities.
9. Records of the **video teleconference** on the afternoon of [] September 16th, 2012, between the FBI and other IC officials in Washington, regarding FBI interviews with U.S. personnel who had been on the compounds in Benghazi during the attack. For your reference, the following is an 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:"

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. The U.S. personnel who were interviewed saw no indications that there had been a protest prior to the attack. Information from those interviews was shared on a secure video teleconference on the afternoon of the 16th with FBI and other IC officials in Washington; it is unclear whether the question of whether a protest took place was discussed during this video conference.

[Item 10 withdrawn]

127. Plaintiffs' FOIA request sought:
 - (a) News media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II); and
 - (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii).

128. On March 14, 2014, the FBI denied the requests in their entirety, reasoning that, because plaintiffs "have requested information about a third party," they should provide an "authorization and consent from the individual(s)," or "proof of death," or "justification that the public interest in disclosure outweighs personal privacy." "In the absence of such information," the response continued, the FBI "can

neither confirm nor deny the existence of any records responsive to your request, which, if they were to exist, would be exempt from disclosure pursuant to FOIA Exemptions (b)(6) and (b)(7)(C), 5 U.S.C. §§ 552 (b)(6) and (b)(7)(C)."

129. On March 31, 2014, plaintiffs administratively appealed, writing that "withholdings under FOIA Exemptions (b)(6) and (b)(7)(C) cannot justify the FBI's blanket denial" because release of most of the information sought would implicate no privacy concerns, and that redactions and segregation could vitiate any privacy concerns. "In sum," plaintiffs reasoned, disclosure of half of the information sought would implicate no privacy interest. As to the other half, plaintiff observed:

[T]here are no personal privacy interests in the records sought that could not be protected by proper redaction and segregation, and the absence of any third-party releases does not justify the FBI's blanket withholding. Moreover, the public interest in disclosure outweighs any cognizable personal privacy interests that may otherwise justify non-disclosure. The Benghazi tragedy and its aftermath is subject of numerous congressional probes and widespread, ongoing, publicity. The information sought is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and its inner workings. Disclosure will show the degree to which the Executive Branch has complied in good faith with relevant law, and whether it accurately informed Congress and the public about the Benghazi tragedy.

130. This March 31, Administrative appeal also narrowed the FBI FOIA requests, regarding the autopsy reports. Plaintiffs wrote:

Insofar as the request for complete autopsy reports of the victims of the September 11th and 12th, 2012 Benghazi attacks, the subject of Request 10, we agree that personal privacy interests justifies their non-disclosure, at least in the absence of a release by the primary next-of-kin. However, these FOIA requests seek to reveal, among other things, whether the FBI is conducting a thorough investigation. Thus, whether this murder probe includes any review of the autopsy

reports should be disclosed, and almost any response, even one withholding the reports, would suffice.

131. By letter dated August 5, 2014, plaintiffs further narrowed their FOIA request to the FBI, writing:

Please note that we further narrow the requests to withdraw Request Nos. 2(4), 3, 4, and 6. Request No. 2(4) sought records of "any probe into the meetings from January 2007 through September 2012 between Tripoli Embassy officials, including Christopher Stevens, and the individuals identified in the following Request 3 below." Additionally, plaintiffs withdraw Request No. 3, which sought records "regarding meetings between Christopher Stevens or any other Tripoli Embassy official, and one or more of the following [nine] individuals..." Request No. 4 sought disclosure of "records of whatsoever nature regarding (1) the Benghazi consulate and (2) its CIA Annex for the time period of January 1st, 2011, through September 30th, 2012..." Lastly, Request No. 6 sought copies of "[a]ll calendars, day books, journals, notes, memoranda, or other records reflecting Ambassador Stevens' schedule on September 11..."

132. On July 8, 2014, DOJ'S Office of Information Policy reversed its initial determination, and "remand[ed] your clients' request for a search for responsive records." Although the FBI's reversal did not seek a commitment from plaintiffs to pay search or review fees, it did not grant plaintiffs' request to be treated as a member of the news media under 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

Exhaustion of
Administrative Remedies

133. On July 10, 2014, plaintiffs sent, by overnight "express mail," a letter "submitted in [further] support of prayers for fee waivers, and expedited processing, for the captioned request." In this submission, plaintiffs explained that "the letter was submitted on July 7 for inclusion in the record on appeal, but, on July 9, I received a letter by email that the case had been remanded on July 8."

134. Twenty working days since plaintiffs' February 21 FOIA request has long since passed. The FBI has not yet responded to plaintiffs' request for news media fee waiver under 5 U.S.C. § 552 (a)(4)(A)(ii)(II), or their request for a public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii). Nor has it produced any records, or demonstrated that records are exempt from disclosure. Plaintiffs have exhausted their administrative remedies under 5 U.S.C. § 552 (b)(6)(A)(i).

135. By August 19 letter, the DOJ's Office of Information Policy wrote to plaintiff that the administrative appeal from the action of the FBI had been received on August 14, 2014. The parties dispute whether July 11 or August 14 is the correct date of the FBI's receipt of the materials, but, in either event, on September 19, 2014, when plaintiffs filed their Complaint, over twenty working days had elapsed since plaintiffs submitted their appeal, and, thus, plaintiffs had exhausted their administrative remedies.

CENTRAL INTELLIGENCE AGENCY
First FOIA Request—February 24, 2014

136. On February 24, 2014, by certified mail to defendant CIA, plaintiffs requested disclosure of "the following records of activities" in Libya:

1. All records of whatsoever nature regarding (1) the Benghazi Special Mission Compound or "Ambassador's compound" or "**Benghazi Mission**" and (2) the **CIA Annex**, *for the time period of January 1st, 2011, through September 30th, 2012*. This request is all-inclusive for all records, however recorded, including emails, reports, memoranda, correspondence, teletypes, telephone calls, text messages, and audio and video recordings, regarding all uses of the Benghazi Mission and the CIA Annex. Responsive records include those that disclose:

- (1) The **comings and goings of all persons**, whether civilian, military, American or foreign, including any non-US personnel questioned, interrogated, detained, or transported through, the CIA Annex and Benghazi Mission;
 - (2) The descriptions and inventories of **all weapons** brought into the **Annex**, including small arms, ammunition, and man-portable air defense systems, or **Manpads**, and missiles;
 - (3) The **sources** of all such weapons;
 - (4) The descriptions and inventories of all weapons removed from the Annex,
 - (5) The intended **destinations and recipients** of all such weaponry, including
 - (i) All transfers of arms and equipment to Libyan resistance fighters, both before or after the United Nations recognized the National Transitional Council as the legal representative of Libya;
 - (ii) Transportation of **arms out of Libya**, bound for Syria, thorough Turkey, Qatar, Saudi Arabia, Qatar, or Jordan;
 - (6) All **communication and cryptographic equipment** at the CIA Annex and Benghazi Mission;
 - (7) The **weaponry**, communication, cryptographic equipment, and electronic or paper files, **left in the Annex and Benghazi Mission** when US personnel abandoned these facilities on September 11th and 12th, 2012;
 - (8) Information about the **weapons recovered from fallen attackers** at the Ambassador's compound as well as the CIA Annex during and after the attacks;
 - (9) Information about the **identities and affiliations of any of those fallen fighters** as well as the disposition of their bodies, alive or dead; and
 - (10) CIA **situation reports**, or "sitreps," sent, including on September 11th, 12th, and 13th.
2. Any and all **videos** depicting the United States Mission in Benghazi, Libya (including the Special Mission Compound and the CIA Annex) between September 10, 2012 and September 12, 2012. This request includes, but is not limited to (1) all videos and photographs obtained, transmitted, or recorded via any unmanned aerial vehicles (UAVs), and (2) video of closed-circuit television monitor at the Benghazi Mission facility's Tactical Operations Center on September 11th and 12th, 2013.

3. All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the **survivors' accounts** of the attack.
4. All records of **radio communications** emanating from the Compound's Tactical Operations Center (TOC), on September 11th and 12th, 2012, whether made by Regional Security Officer (RSO) Alec Henderson or any other person.
5. All records of CIA Director David **Petraeus' actions** and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack.
Responsive records include:
 - (1) All records generated by Director Petraeus, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
 - (3) All records generated by anyone about the CIA Director's actions and communications.
6. All records of Deputy CIA Director Michael **Morell actions** and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack.
Responsive records include:
 - (1) All records generated by Deputy CIA Director Morell, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
 - (3) All records generated by anyone about the CIA Deputy Director's actions and communications.

* * *

[Items 7 and 8 withdrawn]

9. All records of the purpose of Ambassador **Stevens' meetings** on September 11, 2012, including analysis or assessments of those meetings, whether written before or after September 11, 2012.

* * *

[Item 10 withdrawn]

11. All notes, memoranda, and correspondence generated between January of 2007 and September 11, 2012, regarding meetings between Christopher **Stevens or any other Tripoli Embassy official, and one or more of the following** individuals:

- Ahmed Abu Khattala, a **commander** of the Libyan **Ansar al-Shariah** militia group
 - Mustafa Abdul Jalil, **Chairman of the Libyan National Transitional Council** from 5 March 2011-8 August 2012
 - Mahmoud Jibril, **Interim Prime Minister of Libya** and Chair of the Executive Board of the National Transitional Council from 5 March-23 October 2011
 - Wissam bin Hamid, a Libya Shield Brigade commander, supporter of the Libyan Muslim Brotherhood Justice & Construction Party, and veteran jihad fighter of Iraq & Afghanistan, who provided security for US representatives in Benghazi and was tentatively identified by the Library of Congress as the **head of al-Qa'eda in Libya**
 - Abdelhakim Belhadj (aka Abdallah al Sadeq), veteran jihad fighter of Iraq & Afghanistan, **commander** of the AQ franchise militia, **Libyan Islamic Fighting Group (LIFG)** (aka Libyan Islamic Movement for Change), post-revolution military commander of Tripoli, and Libyan delegation leader to the Syrian Free Army in late 2011
 - Ismael al-Sallabi (brother of Ali), **commander** of the Al-Qa'eda-linked **al-Sahati Brigade** during the revolution, and Benghazi Military Council commander afterwards, close ally of Abdelhakim Belhadj and Mustafa Jalil
 - Ali al-Sallabi (brother of Ismael), called the 'spiritual leader' of the Libyan revolution, Muslim Brotherhood links, **led effort** with Seif al-Qaddafi and US Embassy Tripoli **to gain release of jihadi detainees from Libyan jails**
 - Mohammad al-Sallabi, father of Ali and Ismael, among the **founders of the Libyan Muslim Brotherhood** in the 1960s
 - Abu Sufian bin Qumu, veteran jihad fighter in Afghanistan from Derna, Libya, captured in 2001, detained at GITMO, sent back to Libyan jail, released in 2010, led jihad vs Qaddafi in 2011, and [said to have] **led Benghazi Mission attack** in Sep 2012.
12. 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.

13. For the period of February 15th, 2011, through December 31st, 2012, all DOD and CIA or other intelligence community records of **Congressional approval for CIA transport of arms** to Syrian rebel forces.

* * *

[Item 14 withdrawn]

15. Records of the **video teleconference** on the afternoon of the **September 16th, 2012**, between the FBI and other IC officials in Washington, regarding FBI interviews with U.S. personnel who had been on the compounds in Benghazi during the attack. For your reference, the following is an 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:"

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. The U.S. personnel who were interviewed saw no indications that there had been a protest prior to the attack. Information from those interviews was shared on a secure video teleconference on the afternoon of the 16th with FBI and other IC officials in Washington; it is unclear whether the question of whether a protest took place was discussed during this video conference.

16. **Non-Disclosure Agreements** signed by survivors of the Benghazi attacks, including employees or contractors of the CIA or DOD.
137. Plaintiffs' FOIA request also sought:
 - (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II); and
 - (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii).
138. By letter dated August 5, 2014, plaintiffs narrowed the request,

writing:

Please note that the FOIA requesters hereby withdraw three of their requests, numbered seven, eight, and ten. Request 7 sought disclosure of "the President's first notification that the Benghazi Mission was under attack..." Request 8 sought disclosure of "records reflecting Ambassador Stevens' schedule on September 11, 2012," and Request 10 sought "correspondence to or from Ambassador Stevens on September 10th and 11th, 2012."

139. By letter dated April 14, 2014, the CIA acknowledged receipt of plaintiffs' request, writing only that its "officers will review your request and will advise you should they encounter any problems or if they cannot begin the search without additional information."

140. On July 1, 2014, plaintiffs submitted additional points and authorities in support of their requests for statutory fee waivers, and, additionally, sought expedited processing under 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

141. By letter dated July 17, 2014, the CIA acknowledged receipt of plaintiffs' July 1 submission, and denied plaintiffs' request for expedited processing.

142. Despite the defendant's failure to apprise plaintiffs of their right to administratively appeal the CIA's position, on July 25, 2014, plaintiffs did appeal.

They wrote:

This is an appeal of the captioned denial of expedited processing. Additionally, the CIA did not respond to the requesters' prayers for news media and public interest fee waivers. Nor has the CIA produced any records. Kindly also accept this as an appeal of these matters.

Exhaustion of
Administrative Remedies

143. By letter dated July 31, defendant CIA responded to plaintiffs' July 25 administrative appeal. Defendant granted plaintiffs' request for a news media fee waiver, writing that it had "reviewed your request for a fee waiver and determined

that it meets the standard... we will charge no fees associated with the processing of your request." The CIA also granted plaintiffs' request for a public interest fee waiver of duplication costs. It denied plaintiffs' request for expedited processing, advising that CIA "regulations do not provide for appeals of denials of expedited processing requests."

CIA
Second FOIA Request—October 1, 2014

144. On October 1, 2014, by certified mail to defendant CIA, plaintiffs requested disclosure of:

1. Any and all reports, memoranda, correspondence, maps, diagrams, charts, printouts, whether or not recorded electronically, regarding **allegations that Executive Branch personnel deleted**, destroyed, erased, obliterated, or obscured, **records of CIA activities in Libya in the aftermath of the September 11 and 12, 2012 attacks** in Benghazi, Libya, including but not limited to records in possession of the CIA Office of Inspector General.
2. Records of all **communications generated in March of 2011** regarding Colonel Muammar **Gaddafi's expressed interest in a truce and possible abdication** and exile out of Libya, by or to:
 - (a) Head of Qaddafi's personal security General Abdulqader Yusef Dibri;
 - (b) Rear Admiral (ret.) Chuck Kubic;
 - (c) AFRICOM personnel, including but not limited to:
 - (i) General Carter Ham; and
 - (ii) Lieutenant Commander Brian Linvill; and
 - (d) The CIA.

145. Plaintiffs' FOIA request prayed for:

- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
- (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and

(c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

146. By letter dated November 3, 2014, the CIA acknowledged receipt of plaintiffs' request.

**Constructive Exhaustion
of Administrative Remedies**

147. Beyond its November 3 acknowledgment of having received plaintiffs' October 1 FOIA request, the CIA has not responded. As of the date of this Amended Complaint, over twenty working days has passed since defendant received plaintiffs' October 1 FOIA request, and defendant has not produced the records nor demonstrated that they are exempt. Thus, plaintiffs have constructively exhausted their administrative remedies under 5 U.S.C. § 552 (b)(6)(A)(i).

**Count I
Prompt Disclosure
(All Defendants)**

148. Plaintiffs restate paragraphs 1-147 as if fully repeated here.

149. As of the date of this complaint, defendants have failed to produce any responsive records. Nor have they demonstrated that such records are exempt from disclosure, with the possible exception of the Office of Secretary of Defense and Joint Staff in its September 19, 2014 correspondence, denying 12 pages of records responsive to plaintiffs' requests for maps depicting available assets.

150. Plaintiffs have a statutory right to the records they seek, and there is no legal basis for defendants' refusal to disclose them.

**Count II
Expedited Processing
(All Defendants)**

151. Plaintiffs restate paragraphs 1-150 as if fully repeated here.

152. All FOIA requests, and corresponding administrative appeals, seek expedited processing. Defendants' failure to expedite the processing of the information sought violates 5 U.S.C. § 552(a)(4)(A)(ii)(II). Additionally, plaintiffs meet the requisite requirements as set forth in the respective agency regulations to be entitled to expedited processing of their FOIA requests, and plaintiffs have a legal right under the respective regulations of the agency defendants to be granted expedited processing.

Count III
News Media Status
(Defendants FBI and four of ten DOD components—
(1) Army,(2) Marine Corps, (3) Central Command, and (4) DIA)

153. Plaintiffs restate paragraphs 1-152 as if fully repeated here.

154. Plaintiffs are entitled to recognition as members of the news media under 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

155. Plaintiffs were not afforded News Media Status by defendants FBI, and four DOD components:

- (1) Army
- (2) Marine Corps
- (3) Central Command
- (4) DIA

156. Plaintiffs were afforded News Media status by defendants CIA, State Department, and six components of the DOD:

- (1) Navy
- (2) Air Force
- (3) Africa Command
- (4) European Command
- (5) Special Operations Command
- (6) Office of the Secretary of Defense and Joint Staff

Count IV
Public Interest Fee Waiver
(Defendants FBI and six DOD components (1) Army (2) Air Force
(3) Marine Corps (4) Central Command (5) European Command (6) DIA)

157. Plaintiffs restate paragraphs 1-156 as if fully repeated here.

158. Plaintiffs are entitled to a partial or complete waiver of costs associated with reproduction of the requested records, in the public interest, under 5 U.S.C. § 552(a)(4)(A)(iii).

159. Plaintiffs' requests for public interest waiver of reproduction costs were denied by defendants FBI and four components of the defendant DOD:

- (1) Army
- (2) Air Force
- (3) Central Command
- (4) DIA

160. Two components of the DOD denied plaintiffs' requests for a public interest fee waiver, and placed the requests in the "other" fee category, affording plaintiffs two hours of search time and 100 pages of duplication free of charge:

- (1) European Command
- (2) Marine Corps

161. Defendants State Department and CIA granted plaintiffs' requests for public interest waiver of reproduction costs, as did four components of defendant DOD:

- (1) Navy
- (2) Africa Command
- (3) Special Operations Command
- (4) Office of the Secretary of Defense and Joint Staff

WHEREFORE, plaintiffs respectfully pray that this Court:

- I. Grant plaintiffs' requests for:
 - A. Expedited processing under 5 U.S.C. § 552(a)(4)(A)(ii)(II);
 - B. Status as representatives of the news media under 5 U.S.C. § 552(a)(4)(A)(ii)(II); and
 - C. A waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii).

- II. Order defendants to:
 - A. Conduct a thorough search for all responsive records;
 - B. Promptly coordinate or refer requested records or portions thereof to other government agencies, as appropriate;
 - C. Provide a *Vaughn* index inventorying all responsive records and itemizing and justifying all withholdings; and
 - D. Promptly disclose the requested information, as it is processed, on a rolling basis, in electronic form.

- III. Award plaintiffs their costs and reasonable attorneys' fees, under 5 U.S.C. § 552 (a)(4)(E) and 28 U.S.C. § 2412(d).

DATE: May 26, 2015.

Respectfully submitted,

_____/ s/
John H. Clarke Bar No. 388599
Attorney for plaintiffs
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 344-0776
johnhclarke@earthlink.net

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ACCURACY IN MEDIA, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.	)	Civil Action No. 14-1589 (EGS)
)	
UNITED STATES DEPARTMENT OF)	
DEFENSE, <i>et al.</i>)	
)	
Defendants.)	
)	

JOINT MOTION TO AMEND BRIEFING SCHEDULE

As this Court is aware, the parties to this Freedom of Information Act (“FOIA”) suit¹ have been actively engaged in discussions aimed at determining whether the issues in this action could be narrowed and in what manner. As the parties’ prior Joint Status Reports have explained, “[t]hose discussions have been productive and have greatly assisted the parties in narrowing the issues that are being challenged in this FOIA action, which seeks records related to the September 11, 2012 attack on the [State Department diplomatic and CIA facilities] in Benghazi, Libya from four [] different Defendant agencies and several of their respective components.” *See, e.g.*, Joint Status Report at 1, ECF No. 60 (May 12, 2017); *see also* Joint Status Report, ECF No. 63 (Sept. 5, 2017).

For example, as part of those discussions, Defendants agreed to provide, and in fact provided, draft *Vaughn* indices to Plaintiffs in an effort to explain the bases for the

¹ Plaintiffs brought this FOIA action against Defendants, the Central Intelligence Agency (“CIA”), the United States Department of Defense and several of its component departments, the Department of State, and the United States Department of Justice and its component, the Federal Bureau of Investigation (collectively, “Defendants”). *See generally* Compl., ECF No. 1 (Sept. 19, 2014).

agencies' decisions related to the withholding of many of the records. And after reviewing the draft *Vaughn* indices, Plaintiffs agreed to narrow further the issues that are being challenged in this FOIA litigation. The State Department also agreed to conduct a supplemental search that yielded documents responsive to one or more of Plaintiffs' FOIA requests.

In the parties' November 2017 Joint Motion to Amend, the parties explained that as a result of the parties' discussions and diligence, they had substantially narrowed the issues that remain to be litigated in this case to certain discrete issues, which primarily focus on the agencies' searches and decisions to withhold in full or part certain records responsive to Plaintiffs' FOIA requests. *See* Joint Mot. to Amend Briefing Schedule at 2-3, ECF No. 64 (Nov. 29, 2017). The parties then requested that the Court set a briefing schedule for the parties to file cross-motions for summary judgment the outstanding issues. The Court granted that joint motion in its December 1, 2017 Minute Order (Dec. 1, 2017).

Since the Court issued its December 1, 2017 Minute Order, Defendants and their agency counsel have been working diligently to respond to the specific issues set forth in the parties' November 2017 filing. However, during discussions between counsels for the parties that occurred this week, the parties discovered that they were not entirely in agreement on the issues to be litigated. Specifically, during these discussions, Plaintiffs, through their counsel, stated that they intend to challenge the searches conducted in response to three additional FOIA requests. Prior to these discussions, Defendants had been unaware that Plaintiffs disputed these particular searches.

Rather than litigate what was or was not within the scope of issues that the parties had previously agreed were to be litigated and in the interest of expeditiously resolving Plaintiffs' claims, Defendants have agreed to address the additional search issues in their summary judgment briefing. In order to allow Defendants sufficient time to address the three disputed searches about which Defendants became aware this week, the parties respectfully request that the Court enter the following extended briefing schedule:

- April 20, 2018: Defendants file their motion for summary judgment;
- May 18, 2018: Plaintiffs file their opposition to Defendants' motion for summary judgment and cross-motion for summary judgment;
- June 15, 2018: Defendants file their reply in support of their motion for summary judgment and in opposition to Plaintiffs' cross-motion for summary judgment; and
- July 13, 2018: Plaintiffs file their reply in support of their cross-motion for summary judgment.

Finally, the parties submit that the following issues are the *only* issues that remain for this Court to resolve upon the parties' cross-motions for summary judgment:

The United States Department of Defense

1. Whether DOD's search for documents responsive to Plaintiffs' request for initial reports and orders and communications referenced in Plaintiffs' FOIA directed at DOD as referenced in ¶¶ 18-29, among other paragraphs referencing initial reports, orders and communications, of the Second Amended Complaint, was reasonable;
2. Whether DoD's search for records of Gaddafi's March 2011 interest in truce and abdication made to Africa Command in response to

Plaintiffs' FOIA request as referenced in ¶ 35 of the Second Amended Complaint was reasonable; and

3. Whether DOD properly withheld in full documents reflecting DoD's maps depicting assets in response to Plaintiffs' FOIA request as referenced in ¶ 30 of the Second Amended Complaint. The parties believe that the Court's decision on whether DOD properly withheld the maps depicting assets will be dispositive on the issue of DoD's decision to withhold records regarding personnel and other available assets, which are the subject of Plaintiffs' other FOIA requests directed at DOD.

The State Department

1. Whether the search conducted by the State Department for records responsive to the portion of Plaintiffs' FOIA request referenced in ¶ 116(6) of the Second Amended Complaint; and
2. Whether the State Department properly withheld in full or part C05935290 (call log), C06052236 (ARB interview summary), C06052239 (ARB interview summary), C06052240 (ARB interview summary), and video footage bates labeled C05467904, C05467908, C05467912, C05467920, C05467921, C05467910, C05467913, C05467914, C05467915, C05467916, C05467917, and C05467919.

The Central Intelligence Agency

1. Whether the CIA's *Glomar* assertion in response to Plaintiffs' request for records of "all communications generated in March 2011 regarding

Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication and exile out of Libya" as referenced in ¶ 144(2) of the Second Amended Complaint is proper;

2. Whether the CIA's search for records in response to Plaintiffs' request for "[a]ll records of CIA Director David Patreaus's actions and communications for the 24-hour period beginning when first notified of the attack" and "[a]ll records of Deputy CIA Director Michael Morell[']s *sic* actions and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack" as referenced in ¶¶ 136(5)-(6) of the Second Amended Complaint was reasonable; and
3. Whether the agency properly withheld redacted information in the document bates labeled document C06354620 produced in response to Plaintiffs' request for records reflecting "allegations that the Executive Branch personnel deleted . . . records of CIA activities in Libya in the aftermath of the . . . attacks . . . including but not limited to records in possession of the CIA Office of the Inspector General" as referenced in ¶ 144(1) of the Second Amended Complaint.

The Federal Bureau of Investigation

1. Whether the FBI's *Glomar* assertion in response to Plaintiffs' request for records reflecting survivors' accounts, including September 15 or 16 FBI 302 interview reports as referenced in ¶ 126(8) of the Second Amended Complaint is proper.

The Defense Intelligence Agency

1. Whether the agency properly withheld in full records V-11 (an intelligence report dated September 12, 2012), V-19 (a situation report dated September 12, 2012), V-45 (an intelligence report dated September 12, 2012), and V-48 (an intelligence report dated September 12, 2012).

A proposed order is attached to this motion.

Dated: March 2, 2018

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Branch Director

/s/ Tamra T. Moore
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Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ACCURACY IN MEDIA, <i>et al.</i>)	
)	
Plaintiffs,)	
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v.)	Civil Action No. 14-1589 (EGS)
)	
UNITED STATES DEPARTMENT OF)	
DEFENSE, <i>et al.</i>)	
)	
Defendants.)	
)	

[PROPOSED] ORDER

Upon consideration of the parties' Joint Motion, it is hereby

ORDERED that the parties shall file their respective dispositive motions as follows:

- April 20, 2018: Defendants file their motion for summary judgment;
- May 18, 2018: Plaintiffs file their opposition to Defendants' motion for summary judgment and cross-motion for summary judgment;
- June 15, 2018: Defendants file their reply in support of their motion for summary judgment and in opposition to Plaintiffs' cross-motion for summary judgment; and
- July 13, 2018: Plaintiffs file their reply in support of their cross-motion for summary judgment.

Dated: _____, 2018.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
ACCURACY IN MEDIA, INC., <i>et al.</i>)	
)	
Plaintiffs,	)	Civil Action No.
	)	14-cv-1589 (EGS)
v.)	
)	
DEPARTMENT OF DEFENSE, <i>et al.</i>)	
)	
Defendants.)	
_____)	

DECLARATION OF REAR ADMIRAL JAMES J. MALLOY

Pursuant to 28 U.S.C. § 1746, I, James J. Malloy, Rear Admiral (upper half), United States Navy, hereby declare under penalty of perjury that the following is true and correct:

1. I am the Vice Director of Operations for the Joint Staff at the Pentagon and have served in this capacity since July 2017. In my capacity as the Vice Director of Operations, I assist in the execution of all Department of Defense (“DoD”) operational matters outside of the continental United States. As such, I coordinate and communicate frequently with the staffs of the Unified Combatant Commands, to include U.S. Africa Command, U.S. Central Command, U.S. European Command, U.S. Pacific Command, U.S. Southern Command, U.S. Strategic Command, U.S. Transportation Command and U.S. Special Operations Command, as well as with the Intelligence Community, to ensure on behalf of the Chairman of the Joint Chiefs of Staff that the President of the United States’ and Secretary of Defense’s direction and guidance are conveyed and executed, and that combatant command concerns are addressed by the Joint Staff. I evaluate and synthesize such concerns and advise and make recommendations to the Chairman of the Joint Chiefs of Staff regarding our worldwide military operations.

2. I make the following statements based upon my years of service and experience in the United States military, personal knowledge, and information made available to me in my official capacity. I have served in the United States Armed Forces for over thirty years at various levels of command and staff. In recent years, I have served as deputy director of operations, U.S. Central Command (J3), and commander, Carrier Strike Group 10. As the Vice Director of Operations, I receive and review daily operational plans and briefings, reports, and intelligence analyses from the Combatant Commands, the Joint Staff, and the Intelligence Community. I assist with the supervision of the National Military Command Center, which is responsible for monitoring worldwide events affecting national security and U.S. interests twenty-four hours a day, seven days a week. I have traveled in an official capacity to a number of countries where U.S. forces are conducting ongoing operations against al Qa'ida and associated terrorist groups, engaging with senior military and government officials. As a result of my experiences, I have extensive knowledge of our military forces and their capabilities, current operations, and the conventional and unconventional forces and capabilities of the enemies arrayed against us.

3. I am familiar with the FOIA request, dated March 31, 2014, submitted by Plaintiffs seeking categories of documents relating to the attack on US facilities in Benghazi, Libya, on September 11 and 12, 2012. The portion of the request relevant to this declaration sought “[m]aps depicting all assets that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of [sic] such maps were created before or after September 11, 2012.” A true and correct copy of the March 31, 2014, letter is attached as Exhibit A.

Responsive Records

4. The Joint Staff located 12 pages responsive to section 1 of Plaintiffs' request and provided a response on September 19, 2014, which stated that those records were withheld in full pursuant to Exemption 1, as they are currently and properly classified. A copy of that response is attached as Exhibit B. The purpose of this declaration is to detail the basis of that withholding. I understand through counsel that this withholding is the only redaction in DoD's production being challenged by Plaintiffs.

FOIA Exemption (b)(1)

5. FOIA exemption (b)(1) provides that FOIA does not require the production of records that are: "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b)(1).

6. In Section 1.3(a)(2) of Executive Order ("E.O.") 13526, the President authorized agency heads to designate officials that may classify information originally as TOP SECRET. In turn, and pursuant to Section 1.3(c) of E.O. 13526, the Deputy Secretary of Defense, acting pursuant to a delegation from the Secretary of Defense, has authorized me to exercise TOP SECRET and SECRET original classification authority.

7. Section 1.1(a) of E.O. 13526 provides that information may be originally classified under the terms of this order only if all of the following conditions are met: (1) an original classification authority is classifying the information; (2) the information is owned by, produced by or for, or is under the control of the U.S. Government, which these documents are; (3) the information falls within one or more of the categories of information listed in section 1.4 of Executive Order 13526; and (4) the original classification authority determines that the

unauthorized disclosure of the information reasonably could be expected to result in some level of damage to the national security, and the original classification authority is able to identify or describe the damage.

8. As relevant here, section 1.4(a) permits classification of information pertaining to military plans, weapons systems, or operations; 1.4(d) permits classification of information pertaining to, “foreign relations or foreign activities of the United States;” and 1.4(g) permits classification of vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security.

9. The 12 pages 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. These documents contain the numbers and locations of ships, submarines, response forces, and aircraft surrounding Benghazi, Libya. They further contain the numbers of military personnel located in particular countries during that time. Finally, they contain the transit time required for each available asset to reach Benghazi.

10. This information fits squarely within sections 1.4(a), 1.4(d), and 1.4(g) of E.O. 13526, as it details military operations conducted overseas, describes foreign activities of the United States, and provides transit times and a list of assets that demonstrate the capabilities of DoD’s plans and infrastructure.

11. This information is sensitive and classified at the Secret level, because the release of this information reasonably could be expected to cause serious damage to the national security. Even with the passage of time, how DoD’s forces are positioned at a particular time could provide potentially damaging and/or threatening insight to adversaries regarding DoD’s interests, intent,

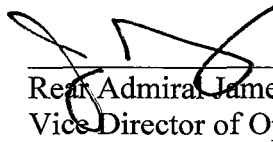
and potential operations in these volatile regions of the world. Tensions with hostile foreign governments could rise depending on the disclosure of such positioning. Terrorist organizations, violent extremist organizations, or hostile foreign governments could use transit time capability information to plan attacks within windows of perceived vulnerability. It is for this reason that this information is currently and properly classified and must not be released.

Review for Reasonably Segregable Information

12. Joint Staff has conducted a page-by-page and line-by-line review of the 12 pages at issue in this declaration. I can confirm that there is no reasonably segregable information contained in any of the records.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11th day of May 2018, in Arlington, VA.



Rear Admiral James J. Malloy, USN
Vice Director of Operations, J-3, Joint Staff

Exhibit A

14-F-0683

Law Office
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Suite 300
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Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
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March 31, 2014

By Certified Mail — Return Receipt Requested
Article Number 7013 2630 0000 5201 4415

FOIA REQUEST

OSD/JS (Office of the Secretary of Defense and the Joint Staff)
FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

Re: **FOIA Requests**

Dear Ladies and Gentlemen:

This is a request for production of records under the Freedom of Information Act, 5 USC § 552, the "FOIA." I write on behalf of Accuracy in Media, Inc., a District of Columbia 501(c)(3) non-profit corporation, as well as the following eight individuals, all of whom serve as members of the "Citizens' Commission on Benghazi," an unincorporated, informal association of individuals, all working with Accuracy in Media. They are (1) Roger Aronoff, (2) Larry Bailey, (3) Kenneth Benway, (4) Dick Brauer, (5) Clare Lopez, (6) James A. Lyons, Jr., (7) Kevin Shipp, and (8) Wayne Simmons.

Requests. FOIA request Nos. 1, 2 and 3 are for disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012. Specifically, we seek production of:

1. **Maps.** Maps depicting all assets that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.

2. **Appeals for help.** Records of requests for help for the Special Mission Compound and the CIA Annex, to:
 - (a) The Turkish Consulate in Benghazi;
 - (b) The Italian Consulate in Benghazi; and
 - (c) The U.K. Security Team.

3. **Records concerning joint military contingency plans:**
 - (a) Plan Identification (PID) Number and title of the operation plan or plans prepared using Deliberate Planning procedures, found in Joint Publication 5-0, Joint Operation Plan, August 2011, **for use** by the supported combatant commander (1) to support military, diplomatic and interagency activities in Libya, through 2012, and (2) to support the military crisis response to the attacks on the Benghazi facilities on September 11 and 12, 2012.
 - (b) Operation plan or plans for use by the supported combatant commander to support military crisis response to the attacks on the Benghazi facilities on September 11 and 12, 2012.
 - (c) List of commands, organizations and agencies comprising the joint planning and execution community (JPEC), found in Joint Publication 5-0, Joint Operation Plan, August 2011, which developed, coordinated, and approved the operation plans referred to under (a) above.
 - (d) Supported combatant commander's Joint Intelligence Preparation of the Operational Environment (JIPOE), developed to support the plans referenced under (a) above.
 - (e) List of commands, organizations, agencies and offices comprising the supported combatant commander's joint interagency coordinating group (JIACG), established to support the plans referenced under (a) above.
 - (f) Copies of any combatant command commercial contracts established to support military, diplomatic and interagency activities at Tripoli and at Benghazi prior to the attacks on the Benghazi facilities on September 11 and 12, 2012.

4. **Military assets pre-positioned in October 2011.** In addition to records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, we also seek records identifying DoD assets pre-positioned off the coast of Tripoli on October 18, 2011, when Secretary Clinton visited Libya.

Kindly note that Request No. 1, seeking maps of assets, is also being simultaneously made to (a) HQ USEUCOM (U.S. European Command), (b) United States Central Command CCJ6-RDF (FOIA), and (c) HQ U.S. AFRICOM (U.S. Africa Command). Request No. 2, for records of requests for assistance from the Turkish or Italian Consulates or the U.K. Security Team, as well as Request No. 4, regarding records of military assets pre-positioned in October 2011 off Tripoli on October 18, 2011, is also being submitted to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), and (b) HQ U.S. AFRICOM (U.S. Africa Command).

Expedited Processing. These FOIA requests are subject to expedited processing under DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," 32 CFR Part 286. Specifically § C1.5.4.3 mandates expedited processing "to a requester after the requester requests such and demonstrates a compelling need for the information." Under § C1.5.4.3.2:

A compelling need also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.... Representatives of the news media (see paragraph C6.1.5.7., below) would normally qualify as individuals primarily engaged in disseminating information.

Accuracy in Media, Inc. ("AIM") is a "representatives of the news media," entitling it to a statutory fee waivers, as set forth below. Kindly accept this letter as a certification that the information contained herein is true and correct to the best of the requesters' knowledge, under § C1.5.4.3.3:

A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of their knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

Request for Waiver of Search and Review Fees. As a representatives of the news media, AIM submits that it is entitled to a waiver of any fees associated with the search and review of records responsive to these FOIA Requests, under 5 U.S.C. § 552 (a)(4)(A)(ii)(II). See generally DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," 32 CFR Part 286.

AIM is organized and operated to publish or broadcast news to the public, and has been doing so for more than 45 years. It clearly meets the standard of "representative of the news media" status. A "representative of the news media" is "a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *Nat'l Sec. Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

Upon disclosure of the records sought, AIM has concrete plans to make the information public. Its ability and intent to disseminate the information requested is beyond question. Accuracy in Media articles on the subject include, "The MSM and Benghazi: Will Their Coverage Harm Obama Administration?," "Shameful Media Coverage of Benghazi Scandal and Cover-up," "Media Embrace Obama's Controversial Picks for National Security Team," "New York Times Attempts to Blur Benghazi Scandal," "McClatchy Reporter Changes Tune on Benghazi," "CBS in Damage Control Over Error-Filled Benghazi Report," "'60 Minutes' Reveals Little New in Benghazi Exposé," "The Left's Continued Assault on the Truth About Benghazi," "Media Coverage of Benghazi Leans Toward Political Theater," "Conservative Leaders Call on Speaker Boehner: Form a Select Committee on Benghazi," "Further Proof That Obama Knew the Truth About Benghazi," "Blaming the Victim in Benghazigate," "Obama and His Media Loyalists Still Spinning Benghazi," and "Does Navy Map Alter the Benghazi Narrative?"

Additionally, several of the individual requesters have published a number of articles about the matter. See, for examples, "Navy SEAL: 'There's guilt in this administration,'" by Captain Larry Bailey, published in WND.com in April of 2013; two articles by Clare Lopez appearing in Pundicity.com in October of 2012, "Benghazi: The Set-Up and the Cover-Up," and "Did Turkey Play a Role in Benghazi Attack?;" and Admiral James Lyons' pieces appearing in the Washington Times, "Obama's Chain of Command Unravels Over Benghazi (October 2012), "Obama needs to come clean on what happened in Benghazi" (October 2012), "The Key Benghazi Questions Still Unanswered" (January 2013), "A hard slog to get Benghazi answers" (January 2013), and "A call to Courage over Benghazi" (May 2013).

Public Interest Fee Waiver. 5 U.S.C. § 552(a)(4)(A)(iii) provides that "[d]ocuments shall be furnished without any charge or at a charge reduced... if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."

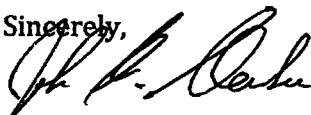
Here, the FOIA requesters do not have a commercial interest in the disclosure. Their purpose is to inform the public. The subject of the requested records concerns the operations or activities of the United States Government. The information sought is directed at finding out what information the government has about its failure to timely respond when its facilities came under attack. These FOIA Requests also concern what information the government did not provide to the public, as well as congressional investigators.

Upon disclosure of the records sought, AIM, as well as other several of the individual requesters, has concrete plans to make the information public, as demonstrated above. The information sought would be likely to contribute to an understanding of United States Government operations or activities, and disclosure will enhance public understanding of the Benghazi incident as compared with awareness prior to the disclosure. The interest of enhancing the public's understanding of the operations or activities of the U.S. Government is clear, and the records' connection to these government activities is direct.

Electronic Format. Kindly produce these records in electronic format. See e-FOIA amendment 5 U.S.C. § 552 (a)(3)(B), as amended, requiring Agency to "provide the record in any form or format requested . . . if the record is readily reproducible by the agency in that form or format." See FOIA Update Vol. XVII, No. 4, 1996.

Reply to Accuracy in Media. If you have any questions about handling this request, please ask via email, to JohnHClarke@earthlink.net. Otherwise, kindly respond, and produce records, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

Sincerely,



John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

Exhibit B



**DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

19 SEP 2014

Ref: 14-F-0683

Mr. John Clarke
John H. Clarke Law Office
1629 K Street, NW, Suite 300
Washington, DC 20006

Dear Mr. Clarke:

This is the final response to your Freedom of Information Act (FOIA) request dated March 31, 2014, which was received in this office on April 7, 2014. Twelve pages of records were located as responsive to section 1 of your request.

Mr. Mark S. Patrick, Chief, Information Management Division, Joint Staff (JS) has determined that the records responsive to your request, totaling 12 pages, are being denied in their entirety. The records denied in their entirety do not contain meaningful portions that are reasonably segregable. The information is currently and properly classified in accordance with Executive Order 13526, Section 1.4 (a) concerning military plans, weapons, or operations; Section 1.4 (d), concerning foreign relations or foreign activities of the United States, including confidential sources; and Section 1.4 (g) concerning vulnerabilities or capability of systems, installations, infrastructures, projects, plans or protection services relating to the national security. Accordingly, this information is denied pursuant to 5 USC § 552 (b)(1). The pages denied in their entirety do not contain meaningful portions that are reasonably segregable.

Mr. Mark S. Patrick, Chief, Information Management Division, Joint Staff (JS) a FOIA Initial Denial Authority (IDA), advised that based on the information provided in sections 2, 3, and 4 of your request and thorough searches of the paper and electronic records and files of the JS, no documents of the kind you described could be located. We believe that these search methods were appropriate and could reasonably be expected to produce the requested records if they existed. Mr. Patrick further certified that after making a good faith effort and conducting a thorough search of records using methods, detailed above, that could reasonably be expected to produce the information requested, there are no records, and that to the best of their knowledge, no such documents exist within the records of the JS.

There are no assessable fees associated with this response. If you are not satisfied with this action, you may appeal to the appellate authority, the Director of Administration and Management, Office of the Secretary of Defense, by writing directly to the Defense Freedom of Information Policy Office, Attn: Mr. James Hogan, 1155 Defense Pentagon, Washington, D.C. 20301-1155. Your appeal should be postmarked within 60 calendar days of the date of this letter,

should cite to case number 14-F-0683, and should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

for Charles P. Marge

Paul J. Jacobsmeyer
Chief

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
ACCURACY IN MEDIA, INC., <i>et al.</i>)	
)	Civil Action No.
Plaintiffs,)	14-cv-1589 (EGS)
)	
v.)	
)	
DEPARTMENT OF DEFENSE, <i>et al.</i>)	
)	
Defendants.)	
_____)	

DECLARATION OF MARK H. HERRINGTON

Pursuant to 28 U.S.C. § 1746, I, Mark H. Herrington, hereby declare under penalty of perjury that the following is true and correct:

1. I am an Associate Deputy General Counsel in the Office of General Counsel (“OGC”) of the United States Department of Defense (“DoD”). OGC provides legal advice to the Secretary of Defense and other leaders within the DoD. I am responsible for, among other things, overseeing Freedom of Information Act (“FOIA”) litigation involving DoD. I have held my current position since March 2007. My duties include coordinating searches across DoD to ensure thoroughness, reasonableness, and consistency, and also coordinating productions of responsive documents, including the appropriate redaction of some of those documents.

2. The statements in this declaration are based upon my personal knowledge and upon my review of information available to me in my official capacity. Specifically, I am the OGC counsel currently assigned to this case.

3. I am familiar with the FOIA requests submitted by Plaintiffs to nine DoD components seeking categories of documents related to the attack on United States’ facilities in Benghazi,

Libya, on September 11, 2012, and September 12, 2012.¹ I also understand that with respect to DoD, Plaintiffs intend to challenge only three aspects of DoD's response to Plaintiffs' FOIA request: (a) the search that DoD conducted in response to Plaintiffs' FOIA request seeking initial reports and orders and communications as detailed below; (b) the search that DoD component, Africa Command ("AFRICOM"), conducted for records responsive to Plaintiffs' request for records of Gaddafi's alleged March 2011 interest in truce and abdication; and (c) whether DoD properly withheld in full records reflecting DoD's assets, including maps, personnel, and aircraft. *See* Joint Mot. to Amend Briefing Schedule at 3-4, ECF No. 65.

4. This declaration addresses only the sufficiency of the searches conducted in response to Plaintiffs' request for records reflecting (1) initial orders and communications, and (2) Gaddafi's alleged interest in a truce and abdication.² As explained in detail below, with respect to Plaintiffs' request for records reflecting initial reports and orders, the relevant DoD components conducted a thorough search for records responsive to Plaintiffs' requests seeking initial orders and communications and produced the non-exempt portions of the same. Plaintiffs' claim that DoD failed to conduct a reasonably adequate search for records responsive to those particular

¹ In response to all of the FOIA requests directed at DoD (including nine component agencies), DoD processed over 1,200 pages of records, which were either released in full, released in part, or denied in full. As previously mentioned, from the vast collection of DoD responsive records released to Plaintiffs, Plaintiffs challenge only a small set of documents withheld by the Joint Staff on September 19, 2014, which contain the force posture of the Department of Defense for the EUCOM, Central Command ("CENTCOM"), and AFRICOM areas of responsibility as well as the force posture of Special Operation forces worldwide during the relevant timeframe in September 2012, and a few documents located by DIA. Those withholdings are addressed in separate declarations by Rear Admiral Andrew L. Lewis, United States Navy, of the Joint Staff, and Alesia Williams of DIA.

² While the challenged searches fit into two general categories, initial orders and reports and Gaddafi's alleged March 2011 interest in a truce, those requests appear in letters to five DoD components and detailed in paragraph 6 of this declaration.

request is based solely on Plaintiffs' unsubstantiated speculation that other responsive records exist. They do not.

5. The same is true with respect to Plaintiffs' request for records concerning Gaddafi's alleged March 2011 interest in a truce and abdication. DoD component, AFRICOM, to whom Plaintiffs directed this request, conducted a thorough search for responsive records.

The Scope of the Two Challenged FOIA Requests Directed At DoD

6. Plaintiffs' FOIA requests sought records concerning orders in response to the attack on the United States mission in Benghazi, including "orders to, NAVSTA Rota personnel to get ready to deploy, and if applicable, to deploy" (*See* March 31, 2014 requests to Navy, Marine Corps, and European Command ("EUCOM") attached as Exhibits 1, 2, and 3), "orders [to an airborne special operations unit in Croatia] to deploy to NAS Sigonella" (*See* March 31, 2014 request to EUCOM attached as Exhibit 3), and "orders to, NAS Sigonella personnel to get ready to deploy, and if applicable, to deploy" (*See* March 31, 2014 request to Navy, Marine Corps, and EUCOM attached as Exhibits 1, 2 and 3). In addition, in a May 28, 2014 letter to the Defense Intelligence Agency ("DIA"), Plaintiff requested the "OPREP-3 PINNACLE report(s) used to provide any Department of Defense division (or office or entity) with notification of, or information about, the September 11th and 12th 2012 attacks on U.S. facilities in Benghazi, Libya." (*See* request attached as Exhibit 4).

7. Finally, in an October 1, 2014 letter to AFRICOM, Plaintiff sought "records of all communications generated in March of 2011, regarding Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication and exile out of Libya." (*See* request attached as Exhibit 5).

I. DoD Components' Searches for Records Responsive to Plaintiffs' Requests for Records of Initial Orders and Communications were Sufficient.

A. DIA's Search for Records of Initial Orders and Communications.

8. Plaintiffs directed two letters containing requests to DIA dated April 7 and May 28, 2014.

As relevant here, in the May 28th request, Plaintiff sought records of "OPREP-3 PINNACLE report(s) used to provide any Department of Defense division (or office or entity) with notification of, or information about, the September 11th and 12th 2012 attacks on U.S. facilities in Benghazi, Libya." *See* Exhibit 4. As explained again later in this declaration, DIA would not be the unit responsible for such a report, but rather the combatant command with the area of responsibility for the location of the incident would be responsible for the report. An OPREP 3 is a report of a specific incident, and a PINNACLE OPREP 3 describes an event of such importance that it needs to be brought to the immediate attention of the National Command Authority, Joint Chiefs of Staff/National Military Command Center, and other national-level leadership.

9. Regardless of this misdirected request, in response to this specific request by Plaintiffs' DIA conducted two searches of its Record Message Traffic ("RMT") database, a proprietary DIA repository for electronic message traffic, which currently holds in excess of 70 million such messages addressed to or originated by DIA, from January 1, 1987, to the present. DIA personnel used boolean logic and key words such as "msgid," "oprep," "pinnacle," and "Benghazi," which would be likely to capture responsive documents. One RMT search covered a three-year date range of January 1, 2012, to May 13, 2015.

B. EUCOM's Search for Records of Initial Orders and Communications.

10. In order to locate records responsive to Plaintiffs' request for records reflecting "personnel to get ready to deploy, and if applicable, to deploy," EUCOM conducted a search of the following directorates: the J2 - Directorate of Intelligence; the J33- EUCOM Plans and Operations Center, Operations Division; and the J5/8 - Directorate of Strategy. The J2executes agile, all-source, multi-disciplined intelligence operations that are fully synchronized and integrated with Theater Component, National and Partner Organizations; the J33 enables US EUCOM planning and execution, and enhances Senior leader decision-making superiority across the entire spectrum of military operations; and the J5/8 is responsible to Commander US EUCOM for formulation and staff direction of the execution of basic military/political policy and planning for command activities involving relations with other U.S. Unified Commands, allied military and international military organizations, and subordinate commands. EUCOM reasonably determined that these three directorates were likely to have records responsive to Plaintiffs' request for initial orders and communications related to the September 11, 2012 attack on the United States mission in Benghazi, Libya.

11. Personnel in these directorates conducted searches of their paper and electronic media, including searches conducted of safes, which store classified materials, E-mail accounts, and network share drives. In addition, to ensure that the search for records reasonably captured all responsive records, EUCOM's search of its paper and electronic records, included a search at all levels of classification, for which any reasonable records would likely reside. To conduct their electronic search, personnel in the three directorates used search terms such as "Libya," "Benghazi," "FAST," "Marine Force Reconnaissance Team," "Marine Corps Fleet Antiterrorism Security Team," "Naval Station Rota," "NAVSTA Rota," "NASSIG," and "NAS Sigonella."

Personnel in the directorates determined that these terms were sufficiently broad to ensure that they reasonably captured the universe of potentially responsive records.

C. Navy's Search for Records of Initial Orders and Communications.

12. In response to Plaintiffs' request for records reflecting various "personnel to get ready to deploy, and if applicable, to deploy," Navy directed the U.S. Naval Forces Europe-Africa / U.S. 6th Fleet ("CNE-CNA-C6F") to conduct a search for records responsive to this request. Navy selected CNE-CAN-C64 because it is the Navy command with geographic responsibility for, among other countries, Libya. In turn, personnel within CNE-CAN-C64 directed the following offices to conduct a search for responsive records: N21 (collections/ISR-Intelligence Surveillance Reconnaissance), N33 (Current OPS), N35 (Future OPS), Combined Task Force ("CTF") 65, CTF 67, and CTF 68. CNE-CNA-C6F's decision to search these particular divisions and subordinate commands was based on CNE-CNA-C6F's assessment that these particular offices' duties and tasking responsibilities could potentially yield documents responsive to Plaintiffs' request for records reflecting various "personnel to get ready to deploy, and if applicable, to deploy."

13. These particular offices within CNE-CNA-C6F conducted searches of both electronic and paper databases at all levels of classification. CNE-CNA-C6F is a command with high security awareness; therefore, most of the records are stored electronically on shared drives on systems appropriate to the classification of the information. Paper files are kept in secured safes.

D. Marine Corps' Search for Records of Initial Orders and Communications

14. The Marine Corps directed that personnel in the Marine Corps Forces Europe / Africa ("MARFOREUR/AF"), the Marine Corps component within the command of both the EUCOM and AFRICOM Combatant Commands, conduct a search for records reflecting various

“personnel to get ready to deploy, and if applicable, to deploy.” MARFOREUR/AF has geographic responsibility for the region in and around Libya, among other regions, and thus the Marine Corps reasonably concluded that MARFOREUR/AF could potentially have records responsive to this particular request. MARFOREUR/AF searched their combined shared drives and shared portal on both unclassified and unclassified systems.

15. In addition to conducting a search of their electronic and paper files, MARFOREUR/AF personnel also identified and interviewed key personnel who were present at the command in 2012, and tasked those individuals with searching their archived emails and paper files for responsive records. MARFOREUR/AF personnel did not locate any responsive records, likely attributable to the fact that Special-Purpose Marine Air-Ground Task Force Crisis Response-Africa was created in response to the attacks on the 2012 embassy in Benghazi. At the time of the attack, MARFOREUR/AF did not have an embassy support mission, and were not contacted during the attack.

II. DoD’s Release of Records Responsive to Plaintiffs’ Request for Initial Written Orders and OPREP Report(s).

16. As explained in detail above, DoD components DIA, EUCOM, Navy, and Marine Corps each conducted electronic and paper file searches for records responsive to Plaintiffs’ request for initial written orders and communications. In response to this particular request, EUCOM produced a redacted copy of the Execution Order (“EXORD”) dated 0700 Zulu (Greenwich mean time) September 12, 2012. The EXORD is the initial written order directing EUCOM to execute an action in response to the September 11, 2012 attack on the United States mission in Benghazi, Libya. A copy of the EXORD, as produced to Plaintiff, is attached as Exhibit 6.

17. In addition, EUCOM released Fragmentary Orders, which are written orders issued *after* the initial EXORD that delineate changes in the initial EXORD. *See, e.g.*, Exhibit 7 (an example of a FRAGORD released to Plaintiffs).

18. This EXORD that EUCOM produced to Plaintiffs is the first written order. Despite relaying this information, Plaintiffs insist that there must have been earlier written orders. In an effort to assuage Plaintiffs' concern that the DoD production failed to include these alleged earlier written orders, I provided Plaintiffs with a two-page timeline of DoD actions on September 11-12, 2012, which was prepared and provided to Congress for the multiple inquiries into the Benghazi attack. A copy of that timeline is attached as Exhibit 8.

19. As set forth in the timeline, during the timeframe of 6:00 – 8:00 P.M. Eastern Daylight Time (2200 – 2400 Zulu) on September 11, 2012, “Secretary Pennetta directs (provides verbal authorization) the following actions.” After listing three units that prepared to deploy based on Secretary Panetta’s *verbal* orders, the timeline specifically states that “[d]uring this period, actions are *verbally conveyed* from the Pentagon to the affected Combatant Commands in order to expedite movement of forces upon receipt of formal authorization.” (emphasis added)

20. In other words, the timeline provided to Plaintiffs demonstrates that the initial orders in response to the September 11, 2012 attack on the United States mission in Benghazi, Libya, were conveyed *verbally*. This timeline of events is further supported by the fact that the EXORD (Exhibit 6), lists a phone conversation at 2228 Zulu on September 11, 2012, as reference A. The subsequent FRAGORD lists the phone conversation as reference A and the EXORD as reference B. *See* Exhibit 7.

21. The fact that the initial orders were conveyed verbally is also supported by a timeline of events that the Navy produced to Plaintiff, attached as Exhibit 9, which specifically references an

initial phone call at 0008 local time in Rota Spain on September 12, 2012 (2208 Zulu Time September 11, 2012), and the EUCOM Exord, issued at 0900 local time (0700 Zulu on September 12, 2012).

22. The EXORD mentioned above and attached is the first *written* order – there are no others.

23. With respect to Plaintiffs' request for OPREP 3 reports, AFRICOM released this report to Plaintiffs. *See* Exhibit 10. As detailed above, Plaintiffs directed their request for "OPREP-3 PINNACLE report(s) used to provide any Department of Defense division (or office or entity) with notification of, or information about, the September 11th and 12th 2012 attacks on U.S. facilities in Benghazi, Libya," to DoD component, DIA. *See supra* ¶¶ 8-9. I have delineated the search that DIA conducted in response to this request.

24. As mentioned above, An OPREP 3 is a report of a specific incident, and a PINNACLE OPREP 3 describes an event of such importance that it needs to be brought to the immediate attention of the National Command Authority, Joint Chiefs of Staff/National Military Command Center, and other national-level leadership. While a request for a PINNACLE OPREP 3 was not sent to AFRICOM by Plaintiff, they did locate and produce Exhibit 10 as part of their response. Given that AFRICOM is the combatant command responsible for the area encompassing Libya, it is logical that the OPREP 3 report would come from it.

III. The Search that AFRICOM conducted for Records Regarding Gaddafi's Alleged Abdication Was Reasonable and Adequate.

25. With regard to Plaintiffs' request to AFRICOM for "records of all communications generated in March of 2011, regarding Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication and exile out of Libya," the following offices conducted a thorough search for records in AFRICOM's possession: AFRICOM's J5 Directorate (Strategy,

Engagement, and Programs), The Combined Joint Task Force - Horn of Africa Component, Records Management, the J6 Directorate (Command, Control, Communications and Computer Systems), which searched the AFRICOM portal, and the Office of the Commander. AFRICOM personnel determined that these offices were reasonably likely to have documents responsive to this particular request. In addition, AFRICOM personnel directed COL Brian Linvill to conduct a search of his electronic and paper files because Plaintiffs specifically mentioned him in the request.

26. In order to locate any electronic records responsive to Plaintiffs' request, COL Brian Linvill and personnel in the specific AFRICOM offices tasked with conducting this search, used broad search terms such as "Gaddafi," "Qaddafi," "Dibri," "Kubic," "Ham," and "Linvill," covering the March 2011 time period. The search effort extended to all known spelling variants of the individuals named in this request. These terms were sufficiently broad to encompass the universe of potentially responsive records.

Conclusion

27. Thus, DoD has not only conducted searches sufficient to locate all information responsive to Plaintiffs requests, but has produced the very documents Plaintiffs claim are lacking. Finally, DoD has provided explanations, backed by documented evidence, as to why earlier orders were not in written format, but conveyed verbally.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of May, 2018, in Arlington, VA.

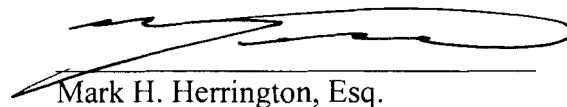

Mark H. Herrington, Esq.

Exhibit 1

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 332-3030
JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

March 31, 2014

Dept Of the Navy (OPNAV) PA/FOIA Policy Office
Freedom Of Information/Privacy Act Request
Date Received: 4/9/14 Statutory due date: 5/14/14
DON PA/FOIA/consult Tracking Number: 2014 004935
Acknowledgement date: _____

By Certified Mail -- Return Receipt Requested
Article Number 7013 2630 0000 5201 4392

FOIA REQUEST

Secretary of the Navy Chief of Naval Operations (SECNAV/CNO)
FOIA Office
Chief of Naval Operations (DNS-36)
2000 Navy Pentagon
Washington, DC 20350-2000

Re: FOIA Requests

Dear Ladies and Gentlemen:

This is a request for production of records under the Freedom of Information Act, 5 USC § 552, the "FOIA." I write on behalf of Accuracy in Media, Inc., a District of Columbia 501(c)(3) non-profit corporation, as well as the following eight individuals, all of whom serve as members of the "Citizens' Commission on Benghazi," an unincorporated, informal association of individuals, all working with Accuracy in Media. They are (1) Roger Aronoff, (2) Larry Bailey, (3) Kenneth Benway, (4) Dick Brauer, (5) Clare Lopez, (6) James A. Lyons, Jr., (7) Kevin Shipp, and (8) Wayne Simmons.

Requests. These FOIA requests are for disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012. Specifically, we seek production of:

1. **Signonella.** Records identifying, and concerning, all US aircraft at NATO Base Signonella, Naval Air Station Signonella in Sicily, Italy ("NAS Signonella"), whether transport, cargo, refueling, fighter, attack, or surveillance. Records should include those that disclose the readiness status of:

- Any F-16 and F-18 fighters (a/k/a F/A-18 – Fighter/Attack);
 - C-5, C-9, C-17, C-40 and C-130 transport;
 - C-2 cargo; C-26 passenger/cargo;
 - KC-10 and KC-135 refueling; and
 - P-3 surveillance.
2. Records disclosing the readiness status of the 130-man Marine Force Reconnaissance Team at NAS Sigonella, including:
 - (a) All communications with, and orders to, NAS Sigonella personnel to get ready to deploy, and, if applicable, to deploy, to Benghazi; and
 - (b) All communications from NAS Sigonella personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
 3. **Rota.** Records revealing the status of two Marine Corps "Fleet Antiterrorism Security Teams ("FAST"), at the Spanish naval base Naval Station Rota ("NAVSTA Rota"), including:
 - (a) All communications with, and orders to, NAVSTA Rota personnel to get ready to deploy, and, if applicable, to deploy; and
 - (b) All communications from NAVSTA Rota personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
 4. **Military assets pre-positioned in October 2011.** In addition to records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, we also seek records identifying DoD assets pre-positioned off the coast of Tripoli on October 18, 2011, when Secretary Clinton visited Libya.

Kindly note that Request No. 1, seeking disclosure of records of aircraft at Sigonella, is also being made to (a) the Department of the Air Force, and (b) the HQ USEUCOM (U.S. European Command). Request No. 2, for records concerning the readiness status of the 130-man Marine Force, is also being made to (a) the Department of the Air Force, (b) HQ USEUCOM (U.S. European Command), and (c) Commandant of the Marine Corps. Request No. 4, for records of military assets pre-positioned in October 2011 off the coast of Tripoli, is also made to (a) HQ U.S. AFRICOM (U.S. Africa Command), as well as (b) OSD/JS (Office of the Secretary of Defense and the Joint Staff).

Expedited Processing. These FOIA requests are subject to expedited processing under DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," 32 CFR Part 286. Specifically § C1.5.4.3 mandates expedited processing "to a requester after the requester requests such and demonstrates a compelling need for the information." Under § C1.5.4.3.2:

A compelling need also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.... Representatives of the news media (see paragraph C6.1.5.7., below) would normally qualify as individuals primarily engaged in disseminating information.

Accuracy in Media, Inc. ("AIM") is a "representatives of the news media," entitling it to a statutory fee waivers, as set forth below. Kindly accept this letter as a certification that the information contained herein is true and correct to the best of the requesters' knowledge, under § C1.5.4.3.3:

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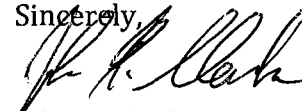
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Reply to Accuracy in Media. If you have any questions about handling this request, please ask via email, to JohnHClarke@earthlink.net. Otherwise, kindly respond, and produce records, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

Sincerely,



John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

Exhibit 2

Law Office
John H. Clarke
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Washington, DC 20006
(202) 332-3030
JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

March 31, 2014

By Certified Mail -- Return Receipt Requested
Article Number 7013 2630 0000 5201 4378

RECEIVED
CMC (ARSF)

APR 7 2014

HQMC FOIA FILE NO.
()

FOIA REQUEST

Commandant of the Marine Corps
Headquarters US Marine Corps (ARSF)
3000 Marine Corps Pentagon Room 2B289
Washington DC 20350-3000

Re: FOIA Requests

Dear Ladies and Gentlemen:

This is a request for production of records under the Freedom of Information Act, 5 USC § 552, the "FOIA." I write on behalf of Accuracy in Media, Inc., a District of Columbia 501(c)(3) non-profit corporation, as well as the following eight individuals, all of whom serve as members of the "Citizens' Commission on Benghazi," an unincorporated, informal association of individuals, all working with Accuracy in Media. They are (1) Roger Aronoff, (2) Larry Bailey, (3) Kenneth Benway, (4) Dick Brauer, (5) Clare Lopez, (6) James A. Lyons, Jr., (7) Kevin Shipp, and (8) Wayne Simmons.

Requests. These FOIA requests are for disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012. Specifically, we seek production of:

1. **Sigonella.** Records disclosing the readiness status of the 130-man Marine Force Reconnaissance Team at NAS Sigonella, including:
 - (a) All communications with, and orders to, NAS Sigonella personnel to get ready to deploy, and, if applicable, to deploy, to Benghazi; and

- (b) All communications from NAS Sigonella personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
2. Any records of the Department of Defense seeking help by use of Italian aircraft at NAS Sigonella.
 3. **Rota.** Records revealing the status of two Marine Corps "Fleet Antiterrorism Security Teams ("FAST"), at the Spanish naval base Naval Station Rota ("NAVSTA Rota"), including:
 - (a) All communications with, and orders to, NAVSTA Rota personnel to get ready to deploy, and, if applicable, to deploy; and
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Kindly note that Request No. 1, for records concerning the readiness status of the 130-man Marine Force at Sigonella, is also being made to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), (b) the Department of the Air Force, and (c) HQ USEUCOM (U.S. European Command). Request No. 2, for any records of the Department of Defense seeking help by use of Italian aircraft at NAS Sigonella, is also being made to HQ USEUCOM (U.S. European Command). Request No. 3, for records of the status of the two Marine Corps "FAST" teams at Spanish naval base Naval Station Rota, is also being made to (a) Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), (b) HQ USEUCOM (U.S. European Command), and (c) HQ USSOCOM (Special Operations Command).

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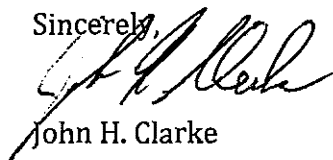
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March 31, 2014

By Certified Mail -- Return Receipt Requested

FOIA REQUEST

HQ USEUCOM (U.S. European Command)
FOIA Requestor Service Center
Unit 30400
APO AE (Army Post Office Army in Europe) 09131

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Requests. These FOIA requests are for disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012. Specifically, we seek production of:

1. **Sigonella.** Records identifying, and concerning, all US aircraft at NATO Base Sigonella, Naval Air Station Sigonella in Sicily, Italy ("NAS Sigonella"), whether transport, cargo, refueling, fighter, attack, or surveillance. Records should include those that disclose the readiness status of:

- Any F-16 and F-18 fighters (a/k/a F/A-18 – Fighter/Attack);
 - C-5, C-9, C-17, C-40 and C-130 transport;
 - C-2 cargo; C-26 passenger/cargo;
 - KC-10 and KC-135 refueling; and
 - P-3 surveillance.
2. Records disclosing the readiness status of the 130-man Marine Force Reconnaissance Team at NAS Sigonella, including:
 - (a) All communications with, and orders to, NAS Sigonella personnel to get ready to deploy, and, if applicable, to deploy, to Benghazi; and
 - (b) All communications from NAS Sigonella personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
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 5. **Croatia.** Records regarding the readiness status of, and orders given to, airborne special operations unit, "Commanders In-extremis Force" ("CIF"), assigned to the European Command, and in Croatia, including:
 - (a) Orders for the CIF to deploy to NAS Sigonella; and
 - (b) All communications from the CIF notifying command that it was ready to deploy, and, if applicable, that aircraft was airborne, bound for NAS Sigonella, and, if applicable, orders to abort or turn back.

6. **Maps.** Maps depicting all assets that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.

Kindly note that Request No. 1, seeking disclosure of records of aircraft at Sigonella, is also being made to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), and (b) the Department of the Air Force. Request No. 2, for records concerning the readiness status of the 130-man Marine Force at Sigonella, is also being made to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), (b) the Department of the Air Force, and (c) Commandant of the Marine Corps. Request No. 3, for any records of the Department of Defense seeking help by use of Italian aircraft at NAS Sigonella, is also being made to the Commandant of the Marine Corps. Request No. 4, for records of the status of the two Marine Corps "FAST" teams at Spanish naval base Naval Station Rota, is also being made to (a) the Commandant of the Marine Corps, and (b) HQ USSOCOM (Special Operations Command).

Request No. 5, for records of the readiness status and orders given to airborne "Commanders In-extremis Force," is also being made to (a) the Department of the Army, and (b) HQ USSOCOM (Special Operations Command). Request No. 6, for maps depicting all assets that could have been dispatched to the Benghazi mission or the CIA annex facility, is also being made to (a) United States Central Command CCJ6-RDF (FOIA), (2) HQ U.S. AFRICOM (U.S. Africa Command), and (c) the OSD/JS (Office of the Secretary of Defense and the Joint Staff).

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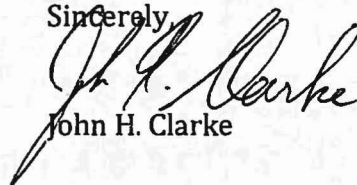
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Exhibit 4

FOIA

Law Office
John H. Clarke
1629 K Street, NW
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Washington, DC 20006
(202) 332-3030
JohnHClarke@earthlink.net

JUN 04 2014

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

May 28, 2014

By Certified Mail -- Return Receipt Requested
Article Number 7010 3090 0000 0316 6482

FOIA REQUEST

Defense Intelligence Agency
ATTN: DAN-1A (FOIA)
200 MacDill Blvd
Washington, DC 20340-5100

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Request. This FOIA request is for disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012. Specifically, we seek production of:

The requesters seek disclosure of:

1. **Op Rep 3's.** The OPREP-3 PINNACLE report(s) used to provide any Department of Defense division (or office or entity) with notification of, or information about, the September 11th and 12th 2012 attacks on U.S. facilities in Benghazi, Libya.

2. **Orders re readiness status.** For the period of July 1, 2012, through September 30, 2012, records of all directives, orders, and other communications regarding the readiness status of United States armed forces on the anniversary of the September 11th, 2001, attacks on the World Trade center, to or from:

USEUCOM (U.S. European Command);

CENTCOM (United States Central Command);

AFRICOM (U.S. Africa Command);

USSOCOM (Special Operations Command);

OSD/JS (Office of the Secretary of Defense and the Joint Staff);

Naval Air Station Sigonella, Sicily;

Spanish naval base Naval Station Rota, Spain;

Aviano Air Base in northeastern Italy; and

Special Operations Forces in the United States.

Kindly note that I have not submitted these FOIA requests to any other division of the Department of Defense.

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AIM is organized and operated to publish or broadcast news to the public, and has been doing so for more than 45 years. It clearly meets the standard of "representative of the news media" status. A "representative of the news media" is "a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *Nat'l Sec. Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

Upon disclosure of the records sought, AIM has concrete plans to make the information public. Its ability and intent to disseminate the information requested is beyond question. Accuracy in Media articles on the subject include:

"MSNBC Seeks to Discredit Benghazi Investigation," *Accuracy in Media*, May 25, 2014, R. Aronoff.

"Infiltration of the U.S. Government, Part One," *Accuracy in Media*, May 5, 2014, C. Kincaid.

"Media Hits and Misses Covering Benghazi Press Conference," *Accuracy in Media*, April 28, 2014, R. Aronoff.

"Citizens' Commission on Benghazi Releases Interim Report," *Accuracy in Media*, April 24, 2014.

"Material Support to Terrorism: The Case of Libya," *Accuracy in Media*, April 22, 2014, C. Lopez.

- "Protecting Hillary Trumps Benghazi Investigation," *Accuracy in Media*, March 31, 2014, B. Stotts.
- "Does Navy Map Alter the Benghazi Narrative?" *Accuracy in Media*, Feb 16, 2014, R. Aronoff.
- "Obama and His Media Loyalists Still Spinning Benghazi," *Accuracy in Media*, Feb 6, 2014, R. Aronoff.
- "Blaming the Victim in Benghaziigate," *Accuracy in Media*, Jan 22, 2014, R. Aronoff.
- "Further Proof That Obama Knew the Truth About Benghazi," *Accuracy in Media*, Jan 14, 2014, R. Aronoff and B. Stotts.
- "Conservative Leaders Call on Speaker Boehner: Form a Select Committee on Benghazi," *Accuracy in Media*, Jan 7, 2014, R. Aronoff.
- "New York Times Attempts to Blur Benghazi Scandal," *Accuracy in Media*, December 31, 2013, R. Aronoff and B. Stotts.
- "McClatchy Reporter Changes Tune on Benghazi," *Accuracy in Media*, December 18, 2013, B. Stotts.
- "CBS in Damage Control Over Error-Filled Benghazi Report," *Accuracy in Media*, November 8, 2013, R. Aronoff.
- "'60 Minutes' Reveals Little New in Benghazi Exposé," *Accuracy in Media*, Oct 31, 2013, R. Aronoff.
- "The Left's Continued Assault on the Truth About Benghazi," *Accuracy in Media*, October 28, 2013, R. Aronoff.
- "Media Coverage of Benghazi Leans Toward Political Theater," *Accuracy in Media*, October 4, 2013, B. Stotts.
- "Media Embrace Obama's Controversial Picks for National Security Team," *Accuracy in Media*, June 6, 2013. R. Aronoff.
- "The MSM and Benghazi: Will Their Coverage Harm Obama Administration?," *Accuracy in Media*, May 10, 2013, R. Radosh.

"Shameful Media Coverage of Benghazi Scandal and Cover-up," *Accuracy in Media*, November 6, 2012, R. Aronoff.

Additionally, several of the individual requesters have published a number of articles about the matter.

"A call to Courage over Benghazi," *Wash Times*, May 1, 2013, J. Lyons.

"Navy SEAL: 'There's guilt in this administration,'" *WND*, April 8, 2013, L. Bailey.

"A hard slog to get Benghazi answers," *Wash Times*, Jan 30, 2013, J. Lyons.

"Benghazi demands a select committee in Congress," *Wash Times*, Jan 16, 2014, J. Lyons.

"The Key Benghazi Questions Still Unanswered," *Wash Times*, Jan 11, 2013, J. Lyons.

"Benghazi lies unravel as Obama, Clinton & Rice still deceive America," *Wash Times*, Dec 30, 2103, A. West.

"Did Turkey Play a Role in Benghazi Attack?" *Clarion Project*, Oct 31, 2012, C. Lopez.

"Benghazi: The Set-Up and the Cover-Up," *Pundicity.com*, Oct 30, 2012, C. Lopez.

"Obama needs to come clean on what happened in Benghazi," *Wash Times*, Oct 28, 2012, J. Lyons.

"Obama's Chain of Command Unravels Over Benghazi Murders," *Wash Times*, Oct 18, 2012, J. Lyons.

Public Interest Fee Waiver. 5 U.S.C. § 552(a)(4)(A)(iii) provides that "[d]ocuments shall be furnished without any charge or at a charge reduced... if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."

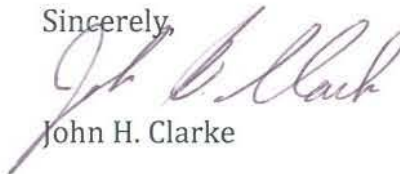
Here, the FOIA requesters do not have a commercial interest in the disclosure. Their purpose is to inform the public. The subject of the requested records concerns the operations or activities of the United States Government. The information sought is directed at finding out what information the government has about its failure to timely respond when its facilities came under attack. This FOIA Request also concerns what information the government did not provide to the public, as well as congressional investigators.

Upon disclosure of the records sought, AIM and several of the individual requesters have concrete plans to make the information public, as demonstrated above. The information sought would be likely to contribute to an understanding of United States Government operations or activities, and disclosure will enhance public understanding of the Benghazi incident as compared with awareness prior to the disclosure. The interest of enhancing the public's understanding of the operations or activities of the U.S. Government is clear, and the records' connection to these government activities is direct.

Electronic Format. Kindly produce these records in electronic format. *See* e-FOIA amendment 5 U.S.C. § 552 (a)(3)(B), as amended, requiring Agency to "provide the record in any form or format requested . . . if the record is readily reproducible by the agency in that form or format." *See* FOIA Update Vol. XVII, No. 4, 1996.

Reply to Accuracy in Media. If you have any questions about handling this request, please ask via email, to JohnHClarke@earthlink.net. Otherwise, kindly respond, and produce records, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

Sincerely,



John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

Exhibit 5

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 332-3030
JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

October 1, 2014

By Certified Mail—Return Receipt Requested
Article Number 7013 3020 0000 7279 3723

FOIA REQUEST

HQ U.S. AFRICOM (U.S. Africa Command)
FOIA Requester Service Center
Unit 29951
APO AE (Army Post Office Army in Europe) 09751

Re: FOIA Requests

Dear Ladies and Gentlemen:

This is a request for production of records under the Freedom of Information Act, 5 USC § 552, the "FOIA." I write on behalf of Accuracy in Media, Inc., a District of Columbia 501(c)(3) non-profit corporation, as well as the following seven individuals, all of whom serve as members of the "Citizens' Commission on Benghazi," an unincorporated, informal association of individuals, all working with Accuracy in Media. They are (1) Roger Aronoff, (2) Larry Bailey, (3) Kenneth Benway, (4) Dick Brauer, (5) Clare Lopez, (6) James A. Lyons, Jr., and (7) Kevin Shipp. The requesters seek production of:

1. **Records identifying, and concerning, all US aircraft in Djibouti on September 11, 2012, whether at Camp Lemonnier, Ambouli International Airport, and whether detailed or assigned to the Combined Joint Task Force-Horn of Africa (CJTF-HOA). Records should include those that disclose the readiness status of all AC-130 gunships.**

2. Records of all communications generated in March of 2011 regarding Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication and exile out of Libya, by or to:
- (a) Head of Qaddafi's personal security General Abdulqader Yusef Dibri;
 - (b) Rear Admiral (ret.) Chuck Kubic;
 - (c) AFRICOM personnel, including but not limited to:
 - (i) General Carter Ham; and
 - (ii) Lieutenant Commander Brian Linvill; and
 - (d) The CIA.

Expedited Processing. These FOIA requests are subject to expedited processing under DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," 32 CFR Part 286. Specifically § C1.5.4.3 mandates expedited processing "to a requester after the requester requests such and demonstrates a compelling need for the information." Under § C1.5.4.3.2:

A compelling need also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.... Representatives of the news media (see paragraph C6.1.5.7., below) would normally qualify as individuals primarily engaged in disseminating information.

Accuracy in Media, Inc. ("AIM") is a "representatives of the news media," entitling it to a statutory fee waivers, as set forth below. Kindly accept this letter as a certification that the information contained herein is true and correct to the best of the requesters' knowledge, under § C1.5.4.3.3:

A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of their knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

Request for Waiver of Search and Review Fees. As a representatives of the news media, AIM submits that it is entitled to a waiver of any fees associated with the search and review of records responsive to these FOIA Requests, under 5 U.S.C. § 552 (a)(4)(A)(ii)(II). *See generally* DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," 32 CFR Part 286.

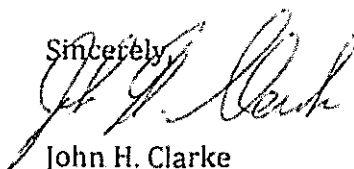
Here, the FOIA requesters do not have a commercial interest in the disclosure. Their purpose is to inform the public. The subject of the requested records concerns the operations or activities of the United States Government. The information sought is directed at finding out what information the government has about its failure to timely respond when its facilities came under attack. These FOIA Requests also concern what information the government did not provide to the public, as well as congressional investigators.

Upon disclosure of the records sought, AIM, as well as other several of the individual requesters, has concrete plans to make the information public, as demonstrated above. The information sought would be likely to contribute to an understanding of United States Government operations or activities, and disclosure will enhance public understanding of the Benghazi incident as compared with awareness prior to the disclosure. The interest of enhancing the public's understanding of the operations or activities of the U.S. Government is clear, and the records' connection to these government activities is direct.

Electronic Format. Kindly produce these records in electronic format. See e-FOIA amendment 5 U.S.C. § 552 (a)(3)(B), as amended, requiring Agency to "provide the record in any form or format requested . . . if the record is readily reproducible by the agency in that form or format." See FOIA Update Vol. XVII, No. 4, 1996.

Reply to Accuracy in Media. If you have any questions about handling this request, please ask via email, to JohnHClarke@earthlink.net. Otherwise, kindly respond, and produce records, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

Sincerely,



John H. Clarke

cc: Accuracy in Media, Inc.
 Roger Aronoff
 Larry Bailey
 Kenneth Benway
 Dick Brauer
 Clare Lopez
 James A. Lyons, Jr.
 Kevin Shipp

Exhibit 6

Subject: USEUCOM EXORD FOR COMMANDERS IN-EXTREMIS FORCE (CIF) DEPLOYMENT

Originator: EUCOM J3 DIRECTORATE(MC)

DTG: 120700Z Sep 12 Precedence: ROUTINE

To: SOCEUR(mc), COMUSNAVEUR NAPLES IT(sc), SOCEUR(mc),
USAFECOMMANTCENTER(mc), USAREUR CG(mc), COMMARFOREUR(mc)

cc: SOCEUR J3 OPERATIONS DIRECTORATE(MC), EUCOM J1 DIRECTORATE(MC), EUCOM J37
Joint Readiness Training and Exercise Div(mc), EUCOM EPOC Antiterrorism
Division(mc), EUCOM J4-Eddoc Eucom Deployment-Distribution Ops Ctr(mc), EUCOM
J5-P Plans Div(mc), EUCOM J4-JLOC(mc), USCENTCOM COMMAND CENTER(mc), USAREUR
G3(mc), EUCOM J2 DIRECTORATE(MC), EUCOM EPOC Operations Div(mc), EUCOM J4
DIRECTORATE(MC), EUCOM J5-J8 Directorate(mc), EUCOM J6 DIRECTORATE(MC), EUCOM
J7 DIRECTORATE(mc), EUCOM J9 DIRECTORATE(mc), EUCOM PA Public Affairs(mc),
EUCOM JA Judge Advocate Directorate(mc)

MSGID/ORDER/CDRUSEUCOM//
REF/A/PHONECON/CDRUSEUCOM/112228ZSEP12//

NARR/+(S) (b)(1) EO 13526 § 1.4(a)

ORDTYP/EXORD/CDRUSEUCOM//
TIMEZONE/Z//

NARR/+(S) (b)(1) EO 13526 § 1.4(a)

GENTEXT/SITUATION/

1. +(S)

(b)(1) EO 13526 § 1.4(a)

GENTEXT/MISSION/

2. +(S)

(b)(1) EO 13526 § 1.4(a)

GENTEXT/EXECUTION/

3. +(S)

(b)(1) EO 13526 § 1.4(a)

3.B. (U) TASKS.

3.B.1. (U) CDR, SOCEUR (CDRSOCEUR).

(b)(1) EO 13526 § 1.4(a)

3.B.1.B. ~~(S)~~ (b)(1) EO 13526 § 1.4(a)

3.B.2. (U) COMMANDER, NAVAL FORCES EUROPE (CDRNAVEUR).

(b)(1) EO 13526 § 1.4(a)

3.B.4. (U) CDR, US ARMY EUROPE (CDRUSAREUR).

3.B.4.A. ~~(S)~~ (b)(1) EO 13526 § 1.4(a)

3.B.5. (U) CDR, US MARINE FORCES EUROPE (CDRUSMARFOREUR).

3.B.5.A. ~~(S)~~ (b)(1) EO 13526 § 1.4(a)

GENTEXT/ADMIN AND LOG/

(b)(1) EO 13526 § 1.4(a)

GENTEXT/COMMAND AND SIGNAL/

5. (U) COMMAND AND SIGNAL//

5.A. (U) COMMAND RELATIONSHIPS. CDRUSAFRICOM IS THE SUPPORTED COMBATANT COMMANDER FOR THIS MISSION. CDRUSEUCOM IS THE SUPPORTING COMBATANT COMMANDER. ALL OTHER COMPONENT COMMANDERS ARE SUPPORTING.

5.B. ~~(S)~~

(b)(1) EO 13526 § 1.4(a)

5.E (U) POINTS OF CONTACT.

(b)(3) 10USC 130b (b)(6)

Derived From: MULTIPLE SOURCES

Declassify On: 120700Z Sep 22

Date of Source: 010001Z Aug 08

Exhibit 7

Subject: FRAGORD 001 TO USEUCOM EXORD FOR COMMANDERS IN-EXTREMIS FORCE (CIF) DEPLOYMENT

Originator: EUCOM J3 DIRECTORATE (MC)

DTG: 131935Z Sep 12

To: COMSOCEUR(mc), COMUSNAVEUR NAPLES IT(mc); COMUSAFE(sc); COMUSAREUR(mc); COMUSMARFOREUR(mc)

Cc: SOCEUR J3 OPERATIONS DIRECTORATE(mc); EUCOM J1 Directorate(mc), EUCOM J37 JOINT READINESS TRAINING AND EXERCISE DIV(MC), EUCOM EPOC ANTITERRORISM DIVISION(MC), EUCOM J4-EDDOC EUCOM DEPLOYMENT-DISTRIBUTION OPS CTR(MC), EUCOM J5-P PLANS DIV(MC), EUCOM J4-JLOC(mc), USCENTCOM COMMAND CENTER(mc), USAREUR G3(mc), EUCOM J2 Directorate(mc), EUCOM EPOC Operations Div(mc), EUCOM J4 Directorate(mc), EUCOM J5-J8 Directorate(mc), EUCOM J6 Directorate(mc), EUCOM J7 DIRECTORATE(mc), EUCOM J9 DIRECTORATE(mc), EUCOM PA PUBLIC AFFAIRS(mc), EUCOM JA JUDGE ADVOCATE DIRECTORATE(mc)

~~SECRET//NONE~~

MSGID/ORDER/CDRUSEUCOM//
REF/A/PHONECON/CDRUSEUCOM/112228ZSEP12//
REF/B/ORDER/CDRUSEUCOM/120700ZSEP12//
REF/C/VOCO/CDRUSEUCOM/131135ZSEP12//
REF/D/CJCS/DEPORD/120541ZSEP12//

NARR/~~(S)~~ REF A

(b)(1) EO 13526 § 1.4(a)

ORDTYP/EXORD/CDRUSEUCOM//
TIMEZONE/Z//

NARR/~~(S)~~
(b)(1) EO 13526 § 1.4(a)

GENTEXT/SITUATION/

1. ~~(S)~~ **(b)(1) EO 13526 § 1.4(a)**

EO 13526 § 1.4a

GENTEXT/MISSION/

2. ~~(S)~~

(b)(1) EO 13526 § 1.4(a)

GENTEXT/EXECUTION/

3. (U) EXECUTION.

3.A. (U) CONCEPT OF OPERATION.

3.A.1. ~~(S)~~

(b)(1) EO 13526 § 1.4(a)

3.B. (U) TASKS.

3.B.1. (U) SPECIAL OPERATIONS COMMAND EUROPE (SOCEUR).

3.B.1.A. ~~(S)~~ ~~(b)(1) EO 13526 § 1.4(a)~~

3.B.2. (U) UNITED STATES NAVAL FORCES EUROPE (USNAVEUR).

3.B.2.A. (U) NO CHANGE.

3.B.2.B. ~~(S)~~

(b)(1) EO 13526 § 1.4(a)

3.B.4. (U) UNITED STATES ARMY IN EUROPE (USAREUR).

3.B.4.A. ~~(S)~~ ~~(b)(1) EO 13526 § 1.4(a)~~

3.B.5. (U) MARINE FORCES EUROPE (MARFOREUR).

3.B.5.A. ~~(S)~~ ~~(b)(1) EO 13526 § 1.4(a)~~

GENTEXT/ADMIN AND LOG/

4. (U) ADMIN AND LOG. NO CHANGE.//

GENTEXT/COMMAND AND SIGNAL/

5. (U) COMMAND AND SIGNAL.

5.A. (U) - 5.D. ~~(S)~~ NO CHANGE.

5.E. (U) POINTS OF CONTACT.

(b)(3) 10USC 130b (b)(6)

DERIVED FROM: MULTIPLE SOURCES

DECLASSIFY ON: 131935Z SEP 22

DATE OF SOURCE: 010001Z AUG 08

Exhibit 8

Timeline of Department of Defense Actions on September 11-12, 2012

All times are Eastern Daylight Time (EDT, Washington, DC)
and Eastern European Time (EET, Benghazi)

Tuesday, September 11, 2012

EDT // EET

- ~3:42 pm // 9:42 pm The incident starts at the facility in Benghazi.
- 3:59 pm // 9:59 pm An unarmed, unmanned, surveillance aircraft is directed to reposition overhead the Benghazi facility.
- 4:32 pm // 10:32pm The National Military Command Center at the Pentagon, after receiving initial reports of the incident from the State Department, notifies the Office of the Secretary of Defense and the Joint Staff. The information is quickly passed to Secretary Panetta and General Dempsey.
- 5:00 pm // 11:00pm Secretary Panetta and General Dempsey attend a previously scheduled meeting with the President at the White House. The leaders discuss potential responses to the emerging situation.
- 5:10 pm // 11:10 pm The diverted surveillance aircraft arrives on station over the Benghazi facility.
- ~5:30 pm // 11:30 pm All surviving American personnel have departed the facility.
- 6:00-8:00 pm //
12:00-2:00 am Secretary Panetta convenes a series of meetings in the Pentagon with senior officials including General Dempsey and General Ham. They discuss additional response options for Benghazi and for the potential outbreak of further violence throughout the region, particularly in Tunis, Tripoli, Cairo, and Sana'a. During these meetings, Secretary Panetta directs (provides verbal authorization) the following actions:
- 1) A Fleet Antiterrorism Security Team (FAST) platoon, stationed in Rota, Spain, to prepare to deploy to Benghazi, and a second FAST platoon, also stationed in Rota, Spain, to prepare to deploy to the Embassy in Tripoli.
 - 2) A EUCOM special operations force, which is training in Central Europe, to prepare to deploy to an intermediate staging base in southern Europe.
 - 3) A special operations force based in the United States to prepare to deploy to an intermediate staging base in southern Europe.
- During this period, actions are verbally conveyed from the Pentagon to the affected Combatant Commands in order to expedite movement of forces upon receipt of formal authorization.
- ~6:30 pm // 12:30 am A six-man security team from U.S. Embassy Tripoli, including two DoD personnel, departs for Benghazi.

- ~7:30 pm // 1:30 am The American security team from Tripoli lands in Benghazi.
- ~8:30pm // 2:30 am The National Military Command Center conducts a Benghazi Conference Call with representatives from AFRICOM, EUCOM, CENTCOM, TRANSCOM, SOCOM, and the four services.
- 8:39pm // 2:39 am 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.
- 8:53pm // 2:53 am 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.
- ~11:00 pm // 5:00 am A second, unmanned, unarmed surveillance aircraft is directed to relieve the initial asset still over Benghazi.
- ~11:15 pm // 5:15 am The second facility in Benghazi comes under mortar and rocket propelled grenade fire.

Wednesday, September 12, 2012

- 12:05 am // 6:05am AFRICOM orders a C-17 aircraft in Germany to prepare to deploy to Libya to evacuate Americans.
- ~1:40 am // 7:40 am The first wave of American personnel depart Benghazi for Tripoli via airplane.
- ~4:00 am // 10:00 am The second wave of Americans, including the fallen, depart Benghazi for Tripoli via airplane.
- 8:15 am // 2:15 pm The C-17 departs Germany en route Tripoli to evacuate Americans.
- 1:17 pm // 7:17 pm The C-17 departs Tripoli en route Ramstein, Germany with the American personnel and the remains of Ambassador Stevens, Sean Smith, Tyrone Woods, and Glen Doherty.
- 1:57 pm // 7:57 pm The EUCOM special operations force, and associated equipment, arrives at an intermediate staging base in southern Europe.
- 2:56 pm // 8:56 pm The FAST platoon, and associated equipment, arrives in Tripoli.
- 3:28 pm // 9:28 pm The special operations force deployed from the United States, and associated equipment, arrives at an intermediate staging base in southern Europe.
- 4:19 pm // 10:19 pm The C-17 arrives in Ramstein, Germany.

Exhibit 9

12 September 2012

0008- Received initial phonecall from SDO

0234- From BWC: EUCOM JOC Team chief passed a VOCO order for the EUCOM FAST PLT to be prepared to deploy to the US Embassy in Libya will possible follow on to the US Consulate in Benghazi.

0236- FAST alerted

0546- Commodore Martin provided info to C6F: FAST will initially provide a platoon of Marine infantry + command element (65 personnel) trained specifically for fixed site defense for up to ten days without resupply. They have crew-served weapons, personal weapons, and non-lethal capability. They have C2 capability and can communicate back, although the principal paths will be unclassified. They do NOT have ground mobility and will have to have it provided. CTF 68 can provide such a package from other units but it will require more airlift than currently provided. The ROE unless otherwise specified would be JCS ROE. They will exercise the inherent right of self defense and will protect US citizens and property. However, they are trained in escalation of force. If the embassy has other desires with respect to ROE, we will need to work that out in the next several hours.

0600- Info: 1x C-130 will arrive at 0945Z and 1xC-130 will arrive at 1000Z to transport your FAST team to Tripoli.

0811- C-130 (Herky-656) Departed Ramstein

0900- EUCOM EXORD released

0942- C-130 (Herky-655) Departed Ramstein

1043- Supplemental ROE received

1204- C-130 (Herky-656) Arrived at Rota

1351- C-130 (Herky-655) Arrived Rota

1332- BWC sends: "DoS, DoD, HN have approved and provided all authorities for this mission" - Leidig

1438- Received from BWC: Final word from VADM Leidig is below. UNIFORMS ARE AUTHORIZED for FAST.

1542- Received from BWC: Per AFRICOM direction, civilian attire for the FAST Team.

1555- C-130 (Herky-656) Wheels up

1617- Lack of status protections received from JAG

1700- Wheels up for C-130 (Herky-655)

1845- BWC notified that 2nd Platoon is set on 6 hour PTDO

(Flight time to Tripoli is 3:50)

2028- Notified BWC, 1st A/C on deck (from Capt Drexler)

2100- Notified BWC, 2nd A/C on deck

2202- Commodore sent to wide distro: Just spoke with Major Cobb, CO FASTEUR. Both sticks are on the ground and linked. FAST has established a solid connection with the embassy and is working through the details of the next 24 hours. We were not a secure line and did not discuss details. However, one detachment is moving to a secure compound now. Another detachment will stay with the aircraft and unload the material, then move to this compound. We will report when unloading and movements are complete. CO is satisfied with provided FP and support.

2225- Received NAVAF Libya TASKORD

13 September 2012

0943- Commodore sent fol to RDML Roegge: "To amplify FASTEUR's status, FASTEUR A6 and HQ element are on a 6-hr PTDO, consisting of 55 pax (includes 2 EOD from EODMU8) and 8x 463L pallets. This is the ready platoon's normal status and it can be maintained indefinitely. Personnel on PTDO don't get liberty and that is really the only major limitation. There is no ground mobility associated with this, so, as with Tripoli, this will have to be provided. If organic mobility options are desired, we can provide this from other CTF 68 units. However, this will take more lift than two C-130s.

As of 13Sept12 1000Z, embarkation and ammunition preparation will be complete for a 3-hr ready to move timeline. Factors that could cause actual delay in departure are mission planning and potential delays uploading aircraft at the flight line. FAST will be looking at possible reinforcement sites and develop mission plans for each to help mitigate the first issue. We will work with the air crews and Rota base operations to minimize aircraft loading delays. Having the aircraft at Rota will help significantly. We are also providing load-planner personnel from other units in CTF 68.

FAST can sustain a 3-hour PTDO for an extended period. The only limitations are the requirement to keep personnel on a very short tether - minimal chow, PT, personal errand breaks. We offer two weeks at 3-hours continuously, then mitigated by a week of 6-hour PTDO to reset. This is adjustable, and there's no doctrinal requirement for any break. We can align the down-times with aircrew rest to allow more predictability."

0955- VOCO received to send FAST Plt to Souda Bay ASAP. EUCOM J4 tasked to ensure availability for beddown/logistical support.

1022- VOCO received to hold FAST in Rota.

1325- VOCO received to send FAST Plt to Souda.

1800 1st A/C Departs for Souda Bay

1830 2nd A/C Departs for Souda Bay

Exhibit 10

Subject: JUKEBOX LOTUS
Originator: AFRICOM OPS LOG(MC)
DTG: 212247Z Jan 12 **Precedence:** IMMEDIATE**DAC:**
To: NMCC WASHINGTON DC, CJCS WASHINGTON DC, CDR USCENTCOM(MC), EUCOM CDR(MC), JOINT STAFF J31(MC), COMBATANT CDR USNORTHCOM(SC), CDR USPACOM HONOLULU HI(SC), CDR USSOCOM(MC), CDR USSTRATCOM(SC), CDR USTRANSCOM(SC), DIRNSA FT GEORGE G MEADE MD, JWAC DAHLGREN VA
Cc: WHITE HOUSE SITUATION ROOM WASHINGTON DC, SECSTATE WASHINGTON DC, CSAF WASHINGTON DC, CSA(SC), CNO WASHINGTON DC(SC), CMC WASHINGTON DC(SC), DISA WASHINGTON DC(SC), NGA HQ BETHESDA MD, DIA WASHINGTON DC, HQ DLA FORT BELVOIR VA(SC), NCTC WASHINGTON DC, USCYBERCOM FT GEORGE G MEADE MD, DEPT OF JUSTICE COMMAND CENTER WASHINGTON DC, DEA HQS WASHINGTON DC(MC), COMSC WASHINGTON DC(SC), COMDT COGARD WASHINGTON DC, HQ USASETAF(MC), COMUSNAVEUR COMUSNAVAF NAPLES IT(SC), COMMARFORAF(MC), 17AF COS(MC), SOCAFROA ROD JOC(MC), CJTF HOA COMMANDER(MC), JAC MOLESWORTH RAF MOLESWORTH UK, COMJSOC FT BRAGG NC, CDR ZTW WASHINGTON DC, AMEMBASSY NAIROBI, JCSE MACDILL AFB FL(SC)

~~SECRET//NOFORN~~

MSGID/OPREP-3/CDRUSAFRICOM/002//

REF/A/DESC: INITIAL VOICE OPREP-3 REPORT/AFRICOM JOC EA CELL/12HHHHZSEP12/-//

REF/B/DESC: INITIAL OPREP-3 REPORT/AFRICOM JOC TO JS VIA JABBER/12HHHHZSEP12/-//

REF/C/DESC: PROTOCOL FOR USEUCOM CIF ISO USAFRICOM CRISIS RESPONSE FY12 /251500ZMAY12/-//

1. ~~(S/NF)~~ AFRICOM OPREP-3/ ATTACK AGAINST US CONSULATE IN BENGHAZI.

2. ~~(U)~~ CURRENT SITUATION: REF B/

2.A ~~(S/NF)~~ CDRUSAFRICOM RECEIVED AN INITIAL REPORT OF AN ATTACK AGAINST THE US CONSULATE IN BENGHAZI, LIBY (b)(1)1.4a

(b)(1)1.4a

2.B ~~(S)~~ (b)(1)1.4a

(b)(1)1.4a

2.B.1. ~~(U)~~ (b)(3)/(b)(6)

(b)(3)/(b)(6)

2.B.2. ~~(U)~~ (b)(3)/(b)(6)

(b)(3)/(b)(6)

2.B.3. ~~(U)~~ (b)(3)/(b)(6)

(b)(3)/(b)(6)

2.B.4. ~~(U)~~ INFORMATION MANAGEMENT.

2.B.4.A. ~~(S/NF)~~ (b)(1)1.4a

(b)(1)1.4a

(b)(1)1.4a

2.B.4.B. ~~(S)~~ (b)(1)1.4a

(b)(1)1.4a

HTTPS://PORTAL.AFRICOM.SMIL.MIL (b)(6)

2.B.4.C. ~~(U)~~ PRIMARY COORDINATION WILL BE CONDUCTED VIA JWICS VTC.

2.B.4.D. ~~(U)~~

2.B.4.E. ~~(U)~~

2.B.4.F. ~~(U)~~

2.B.4.G. ~~(U)~~

2.B.4.H. ~~(U)~~

2.B.4.I. ~~(U)~~

2.B.4.J. ~~(U)~~

(b)(3)/(b)(6)

2.B.5. ~~(S//NF)~~ (b)(1)1.4a

(b)(1)1.4a

2.B.5.1. ~~(S//NF)~~ (b)(1)1.4a

(b)(1)1.4a

2.B.5.2. ~~(S//NF)~~ (b)(1)1.4a

(b)(1)1.4a

3. ~~(S)~~ (b)(1)1.4a(b)(3)/(b)(6)

(b)(1)1.4a

CLASSIFIED BY: (b)(3)/(b)(6) J3, USAFRICOM

REASON: 1.4A

DECLASSIFY ON: 12 **HHHH**ZSEP12

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., et al.,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY, et
al.,

Defendants.

Case No. 1:14-CV-01589 (EGS)

DECLARATION OF ANTOINETTE B. SHINER,
INFORMATION REVIEW OFFICER FOR THE
LITIGATION INFORMATION REVIEW OFFICE
CENTRAL INTELLIGENCE AGENCY

I, ANTOINETTE B. SHINER, hereby declare and state:

I. INTRODUCTION

1. I am the Information Review Officer ("IRO") for the Litigation Information Review Office ("LIRO") at the Central Intelligence Agency ("CIA" or "Agency"). I have worked in the information review and release field since 2000.

A. Professional Background

2. Prior to becoming the IRO for LIRO, I served as the IRO for the Directorate of Support ("DS") for over sixteen months. In that capacity, I was responsible for making classification and release determinations for information originating within the DS. Prior to that, I was the Deputy IRO for the Director's Area of the CIA ("DIR Area") for over three

years. In that role, I was responsible for making classification and release determinations for information originating within the DIR Area. Before assuming that role, I was a reviewer in the DS for seven months, where I performed research and provided input and recommendations on classification and release decisions. Prior to that position, I worked in the Public Information Program Division ("PIPD") within the Information Management Services ("IMS") Group for over ten years engaged in all aspects of FOIA case management.

3. I am a senior CIA official and hold original classification authority at the TOP SECRET level under written delegation of authority pursuant to section 1.3(c) of Executive Order 13526, 75 Fed. Reg. 707 (Jan. 5, 2010). This means that I am authorized to assess the current, proper classification of CIA information, up to and including TOP SECRET information, based on the classification criteria of Executive Order 13526 and applicable regulations.

4. Among other things, I am responsible for the classification review of CIA documents and information that may be the subject of court proceedings or public requests for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a.

B. Purpose

5. Through the exercise of my official duties, I have become familiar with this civil action and the underlying FOIA requests. I make the following statements based upon my personal knowledge and information made available to me in my official capacity. I am submitting this declaration in support of the Motion for Summary Judgment to be filed by the United States Department of Justice in this proceeding.

6. The purpose of this Declaration is to explain and justify, to the greatest extent possible on the public record, the CIA's actions in responding to Plaintiffs' FOIA requests in this action. Part II of this Declaration chronicles Plaintiffs' FOIA requests and the CIA's responses in this case; Part III identifies the three issues Plaintiffs take with CIA's actions and responses in this case; and Parts IV-VI address in turn each purported issue.

II. BACKGROUND

7. This matter concerns two different, yet related, FOIA requests from Plaintiffs to CIA. The first FOIA request is dated 24 February 2014 ("February FOIA Request") and the second request is dated 1 October 2014 ("October FOIA Request").

A. February FOIA Request

8. Plaintiffs' February FOIA Request sought several categories of records pertaining to the September 2012 terrorist

attack in Benghazi, Libya and the CIA's response to that attack. A true and correct copy of the February FOIA Request is attached as Exhibit "A".

9. By letter dated 14 April 2014, the CIA acknowledged receipt of Plaintiffs' February FOIA request and assigned it the reference number F-2014-00953. A true and correct copy of this letter is attached as Exhibit "B".

10. By letter dated 5 August 2014, Plaintiffs withdrew three of their requests--specifically, item numbers 7, 8, and 10 of the February FOIA Request. A true and correct copy of this letter is attached as Exhibit "C".

11. By letter dated 18 September 2014, the CIA sent Plaintiffs an update regarding their February FOIA Request. In this letter, the CIA declined to process certain portions of Plaintiffs' February FOIA Request, which fell under the auspices of another federal agency. A true and correct copy of this letter is attached as Exhibit "D".

12. On 19 September 2014, Plaintiffs filed a complaint in this Court naming CIA as a defendant. Plaintiffs subsequently amended their complaint on 12 January 2015 and 25 June 2015. Defendants responded to Plaintiffs' Second Amended Complaint on 13 July 2015.

13. By letter dated 29 September 2014, Plaintiffs appealed certain of the CIA's denials regarding the February FOIA

Request. A true and correct copy of this letter is attached as Exhibit "E".

14. By motion filed on 22 July 2016, Plaintiffs limited the February FOIA Request to items 3, 5, 6, and 16 only and narrowed the scope of items 3, 5, and 6. See Plaintiffs' Unopposed Motion to Lift Partial Stay Against CIA, ECF No. 55.

15. By letter dated 28 February 2017, the CIA provided Plaintiffs with an update regarding the February FOIA Request and made a partial production of documents. A true and correct copy of this letter is attached as Exhibit "F".

16. By letter dated 3 March 2017, the CIA made a final production responsive to the remaining items in the February FOIA Request. A true and correct copy of this letter is attached as Exhibit "G".

B. October FOIA Request

17. In addition to the February FOIA Request described above, Plaintiffs submitted a different, yet related, FOIA request dated 1 October 2014. The October FOIA Request contains two items.

18. First, it requests "[a]ny and all reports, memoranda, correspondence, maps, diagrams, charts, printouts . . . regarding allegations that Executive Branch personnel deleted, destroyed, erased, obliterated, or obscured, records of CIA activities in Libya in the aftermath of the September 11 and 12,

2012 attacks in Benghazi, Libya, including but not limited to records in possession of the CIA Office of Inspector General.”

19. Second, the October FOIA request seeks records generated in March of 2011 pertaining to Colonel Muammar Gaddafi’s “expressed interest in a truce and possible abdication and exile out of Libya, by or to: (a) Head of Qaddafi’s personal security General Abdulqader Yusef Dibri; (b) Rear Admiral (ret.) Chuck Kubic; (c) AFRICOM personnel . . . [and] (d) The CIA.” A true and correct copy of the October FOIA Request is attached as Exhibit “H”.

20. By letter dated 3 November 2014, the CIA acknowledged receipt of the October FOIA Request and assigned it a reference number of F-2015-00060. A true and correct copy of this letter is attached as Exhibit “I”.

21. By letter dated 30 September 2015, the CIA stated that it completed a thorough search for documents responsive to Item 1, which yielded a search result of twenty documents. The CIA stated that it would produce eight documents in redacted form but that the remaining twelve documents must be denied in their entirety on the basis of FOIA exemptions (b) (1), (b) (3), (b) (5), (b) (6), and (b) (7).

22. With respect to Items 2(a) and (d) of the October FOIA Request, the CIA’s letter states that “in accordance with section 3.6(a) of Executive Order 13526, the CIA can neither

confirm nor deny the existence or nonexistence of records responsive to your request." The letter further explains that the fact of the existence or nonexistence of the requested records is currently and properly classified and relates to intelligence sources and methods information that is protected from disclosure by section 6 of the CIA Act of 1949 and section 102(A)(i)(1) of the National Security Act of 1947. The letter also notes that Plaintiffs should consider this portion of the response a denial of their request pursuant to FOIA exemptions (b)(1) and (b)(3). Lastly, the letter states that Items 2(b) and (c) of the October FOIA Request fall under the auspices of the Department of Defense. A true and correct copy of the 30 September 2015 letter is attached as Exhibit "J".

III. PLAINTIFFS' REMAINING CHALLENGES

23. Plaintiffs challenge three aspects of CIA's actions and/or responses to items from both the February and October FOIA Requests. See Joint Motion to Amend Briefing Schedule, ECF No. 65.

1. Plaintiffs' Challenge Regarding the Adequacy of CIA's Search for Records Responsive to Items 5 and 6 of the February FOIA Request.

24. Plaintiffs intend to challenge the adequacy of CIA's search for records in response to Plaintiffs' request for "[a]ll records of CIA Director David Petraeus' [and Deputy CIA Director Michael Morell's] actions and communications for the 24-hour

period beginning when first notified that the Benghazi Mission was under attack.” ECF No. 55 at 2; see *id.* at 2-3 (narrowing Plaintiffs’ original request to “omit ‘telephone logs or bills’ and ‘records generated by anyone about’ the actions and communications,” leaving the scope of the search to comprise “[a]ll records *generated by*” the two individuals within the specified time period) (quoting Ex. A at 3) (emphasis added).

2. Plaintiffs’ Challenge to CIA’s Reliance on Certain FOIA Exemptions Withholdings in CIA’s Response to the October FOIA Request.

25. Plaintiffs intend to challenge the CIA’s redactions of certain Office of Inspector General (“OIG”) documents (“IG Documents”)¹ responsive to item 1 of Plaintiffs’ October FOIA Request. Specifically, Plaintiffs take issue with certain redactions made prior to release of a response letter to the U.S. Senate from the CIA Inspector General, with attachments that include comments regarding the Benghazi attacks.

3. Plaintiffs’ Challenge to CIA’s *Glomar* Assertion in its Response to the October FOIA Request.

26. Finally, Plaintiffs intend to challenge the CIA’s *Glomar* response with respect to Items 2(a) and (d) of the October FOIA Request, which called for communications purportedly generated in March 2011 regarding Colonel Muammar Gaddafi.

¹ The IG Documents at issue are identified as document number C06354620.

27. The remaining sections of this declaration address the details surrounding these three issues raised by Plaintiffs.

IV. CIA'S SEARCH FOR DIRECTOR PETRAEUS' AND DEPUTY DIRECTOR MORELL'S RECORDS WAS REASONABLE AND ADEQUATE.

28. In searching for documents responsive to this request, as narrowed, CIA conducted an exhaustive electronic and hard copy search for responsive records. Indeed, CIA went beyond the parameters of Plaintiffs' request for these records: although Plaintiffs sought records for a 24-hour period, in order to ensure an adequate search, CIA determined a 30-hour period of time would be more appropriate in order to avoid missing records likely to be responsive to Plaintiffs' underlying request. CIA personnel conducted a document-by-document review of the search results to determine responsiveness and proceeded to process such documents for appropriate release. Note that Plaintiffs are challenging only the reasonableness of this search and not the disposition of responsive documents. As noted in Section III, *supra*, the narrowed request sought records – to include email, memoranda, and notes – generated by Director Petraeus and Deputy Director Morell during the requested time period.

29. CIA completed a search for records responsive to items 5 and 6 of the February FOIA Request, as narrowed, in the locations reasonably expected to contain them. Information management professionals within IMS directed searches of the

electronic mailboxes – both classified and unclassified – of Director Petraeus and Deputy Director Morell for the relevant time period. In addition, IMS conducted searches of multiple databases within the Director's Area in which other records generated by Director Petraeus and Deputy Director Morell would be found, including databases containing hand-written notes and memoranda intended for either internal or external audiences. IMS also directed a search of the Office of Congressional Affairs. In the course of these searches, CIA personnel included all relevant office databases and archival records deemed likely to contain responsive records.

30. In light of the narrow time period applicable to items 5 and 6 of the February FOIA request, CIA personnel searched *all* email sent by Director Petraeus and *all* email sent by Deputy Director Morell between 3:40pm Eastern Time on September 11, 2012 (the day of the Benghazi attack) and 9:40pm Eastern Time on September 12, 2012.² CIA personnel utilized keyword searches for the database searches, including broad search terms such as relevant titles (e.g., Director), names (e.g., Petraeus), locations (e.g., Benghazi), facilities (e.g., annex), and actions (e.g., attack).

² A 30-hour window of time, rather than the requested 24-hour window, was employed due to the uncertainty as to when exactly Director Petraeus and Deputy Director Morell were first notified of the Benghazi attack. The 30-hour window begins at the time the attack began.

31. In sum, CIA personnel conducted a very thorough search that was reasonably calculated to uncover all documents relevant to items 5 and 6 of the February FOIA Request, as narrowed.

V. CIA PROPERLY REDACTED PORTIONS OF THE IG DOCUMENTS PURSUANT TO MULTIPLE FOIA EXEMPTIONS.

32. In evaluating the IG Documents, the CIA conducted a page-by-page and line-by-line review, and released all reasonably segregable, non-exempt information. After reviewing the records at issue, I have determined that no additional information may be released without jeopardizing classified, statutorily protected, or privileged information that falls within the scope of one or more FOIA exemptions.

A. Exemption (b) (1)

33. Exemption (b) (1) provides that the FOIA does not require the production of records that are: "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b) (1). The IG Documents include specific and detailed information concerning the IG investigation and include sensitive and classified information regarding Agency personnel and activities.³ Thus, as explained below, the exemption (b) (1) withholdings in the IG Documents at

³ See, e.g., IG Documents (C06354620) at pages 5, 8, and 11.

issue satisfy the procedural and the substantive requirements of Executive Order 13526, which governs classification. See E.O. 13526 § 1.1(a), § 1.4(c).

34. Section 1.1(a) of Executive Order 13526 provides that information may be originally classified under the terms of this order if the following conditions are met: (1) an original classification authority is classifying the information; (2) the information is owned by, produced by or for, or is under the control of the U.S. Government; (3) the information falls within one or more of the categories of information listed in section 1.4 of Executive Order 13526; and (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in some level of damage to the national security, and the original classification authority is able to identify or describe the damage. The Executive Order also mandates that records be properly marked and requires that records not be classified for an improper purpose.

(a) Original classification authority. Pursuant to a written delegation of authority in accordance with Executive Order 13526, I hold original classification authority at the TOP SECRET level. Therefore, I am authorized to conduct classification reviews and to make original classification decisions. I have determined that

certain information in the IG Documents is currently and properly classified.

- (b) U.S. Government information. The information at issue is owned by the U.S. Government, was produced by or for the U.S. Government, and is under the control of the U.S. Government.
- (c) Classification categories in Section 1.4 of the Executive Order. Exemption (b)(1) is asserted in this case to protect information that concerns "intelligence activities (including covert action), [or] intelligence sources or methods" pursuant to section 1.4(c) of Executive Order 13526.
- (d) Damage to the national security. I have determined that the CIA information contained in the records at issue is classified SECRET, because it constitutes information the unauthorized disclosure of which could reasonably be expected to result in serious damage to the national security.
- (e) Proper purpose. With respect to the information for which exemption (b)(1) is asserted in this case, I have determined that this information has not been classified in order to conceal violations of law, inefficiency, or administrative error; prevent embarrassment to a person, organization or agency; restrain competition; or prevent or

delay the release of information that does not require protection in the interests of national security.

(f) Marking. The documents are properly marked in accordance with section 1.6 of the Executive Order.

35. In sum, I have determined that information withheld pursuant to exemption (b)(1) has been properly withheld because its disclosure could identify CIA sources, methods, and activities. The redacted information includes code words, locations, names of covert personnel, as well as references to classified Agency programs, functions, assets, and activities unrelated to the September 2012 attacks.

36. *Code Words*. As mentioned, some of the redacted information consists of code words. The use of code words is an intelligence method whereby words and letter codes are substituted for actual names, identities, or programs in order to protect intelligence sources and methods. Specifically, the CIA and other federal agencies use code words in cables and other correspondence to disguise the true name of a person or entity of operational intelligence interest, such as a source, a field installation, or a covert program.

37. When obtained and matched to other information, code words possess a great deal of meaning for someone able to fit them into the proper framework. For example, the reader of a message is better able to assess the value of its contents if

the reader can identify a source or an intelligence activity by the code word. By using these code words, the CIA and other federal agencies add an extra measure of security, minimizing the damage that would flow from an unauthorized disclosure of intelligence information. The disclosure of code words – especially in context or in the aggregate – can permit foreign intelligence services and other groups to fit disparate pieces of information together to discern or deduce the identity of the source or nature of the project or location for which the code word stands, thereby compromising intelligence operations and impairing the national security of the United States.

38. *Covert Personnel.* Some of the redacted information contains the names of covert CIA personnel.⁴ The CIA considers the identities of its undercover employees and their activities to constitute intelligence sources and methods. In order to carry out its mission of gathering and disseminating intelligence, the CIA places certain employees undercover to protect the fact, nature, and details of the Agency's interest in foreign activities as well as the intelligence sources and methods employed to assist in those activities. Disclosing the identity of a covert employee could expose the intelligence activities with which the employee has been involved and the

⁴ See, e.g., IG Documents (C06354620) at page 11.

sources with whom the employee has had contact. Additionally, disclosing the identity of a covert employee could jeopardize the safety of the employee, his or her family, his or her sources, and even other persons with whom he or she has had contact.

39. As such, disclosure of this information could reasonably be expected to result in serious damage to national security.

B. Exemption (b) (3)

40. Exemption (b) (3) protects information that is specifically exempted from disclosure by statute. To justify withholding under exemption (b) (3), a statute must either (i) require that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establish particular criteria for withholding or refer to particular types of matters to be withheld. 5 U.S.C. § 552(b) (3).

41. Section 6 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. § 3507 (the "CIA Act"), provides that the CIA shall be exempted from the provisions of "any other law" (in this case, FOIA) which requires the publication or disclosure of, the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency. Accordingly, under Section 6, the CIA is exempt from disclosing information relating to employees' names and personal

identifiers. The CIA Act therefore constitutes a federal statute that "establish[es] particular criteria for withholding or refer[s] to particular types of matters to be withheld" and is well-established as a qualifying withholding statute under exemption (b) (3). 5 U.S.C. § 552(b) (3). The documents at issue contain information concerning the organization, names, or official titles of personnel employed by the CIA, the disclosure of which the CIA Act expressly prohibits.

42. Although the CIA Act's exemptions from disclosure of certain information do not expressly require the CIA to identify or describe the damage to national security that reasonably could be expected to result from their unauthorized disclosure, the withheld information that is covered by the CIA Act similarly relates to intelligence activities, sources, and methods covered by the Executive Order for classified information. Therefore, the damage to national security that reasonably could be expected to result from the unauthorized disclosure of information relating to the identities and functions of CIA personnel is co-extensive with the damage that reasonably could be expected to result from the unauthorized disclosure of classified information.

43. Additionally, Section 102A(i) (1) of the National Security Act of 1947, as amended, 50 U.S.C. § 3024 (the "National Security Act"), which provides that the Director of

National Intelligence ("DNI") "shall protect intelligence sources and methods from unauthorized disclosure," applies to certain responsive records. As an initial matter, the National Security Act is likewise a well-recognized exemption (b) (3) withholding statute that both refers to particular types of matters to be withheld, and "requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue." 5 U.S.C. § 552(b) (3). Under the direction of the DNI pursuant to section 102A of the National Security Act, as amended, and in accordance with section 6 of the CIA Act of 1949, as amended, and sections 1.6(b) and 1.6(d) of Executive Order 12333,⁵ the Director of the CIA is responsible for protecting CIA intelligence sources and methods from unauthorized disclosure. Accordingly, the CIA relies on the National Security Act as well as the CIA Act to withhold information that would reveal intelligence sources and methods and their application by Agency personnel.

44. The National Security Act's statutory requirement to protect intelligence sources and methods does not require the CIA to identify or describe the damage to national security that reasonably could be expected to result from their unauthorized

⁵ Section 1.6(d) of Executive Order 12333, as amended by Executive Order 13470 (July 30, 2008) requires the Director of the Central Intelligence Agency to "[p]rotect intelligence and intelligence sources, methods, and activities from unauthorized disclosure"

disclosure. Nonetheless, in this case, the protections of the National Security Act apply to the same information for which exemption (b)(1) was asserted to protect code words and names of covert personnel. As indicated above, although no harm rationale is required, the release of this information is reasonably likely to significantly impair the CIA's ability to carry out its core missions of gathering and analyzing intelligence.

C. Exemption (b)(6)

45. I have also determined that certain information must be withheld pursuant to FOIA exemption (b)(6). 5 U.S.C.

§ 552(b)(6) exempts from disclosure:

personnel and medical files and similar files when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy.

46. Therefore, in addition to withholding the names of CIA officers pursuant to the CIA Act, the CIA has also asserted exemption (b)(6) to withhold CIA officers' and contractors' names. The disclosure of this information would constitute a clearly unwarranted invasion of personal privacy and has been properly withheld under exemption (b)(6).

47. When withholding information pursuant to exemption (b)(6) the Agency must balance the privacy interests of the individuals mentioned in these records against any public

interest in disclosure. In asserting these exemptions, each item of information was examined to determine the nature and strength of the privacy interest of every individual whose name and/or identifying information appears in the documents at issue. In each instance where information was withheld, it was determined that individual privacy rights outweighed the public interest.

48. The publicity associated with the release of a CIA employee's identity in connection with a particular investigation could trigger hostility towards that particular individual and potentially jeopardize ongoing and future investigations by the IG. As a result, they maintain substantial privacy interest in not having their identities disclosed.⁶ In contrast, there is no public interest to be served by disclosing the identities of the CIA personnel to the public because their identities would not significantly increase the public's understanding of the CIA's operations and activities. Thus, disclosure of this information would constitute a clearly unwarranted invasion of these employees' personal privacy.

⁶ Indeed, the Agency took steps to redact personal identifying information both in an internal communication from the IG to Director Petraeus and in the IG's response to the U.S. Senate Select Committee on Intelligence. See IG Documents (C06354620) at 1 ("I have redacted any identifying information regarding the officer"), 7 ("I have redacted the officer's identity").

49. The CIA concluded that the information should be withheld under exemption (b) (6) and determined that the individual's privacy interests were not outweighed by any public interest in disclosure. As noted above, CIA conducted a page-by-page and line-by-line review to identify all non-exempt information, and every effort has been made to release all segregable information contained in these records without invading the privacy interests of these individuals.

D. Exemption (b) (7)

50. Certain records and information generated by CIA's OIG were "compiled for law enforcement purposes" within the meaning of Exemption 7.

51. Exemption 7 protects:

Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy [or] (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institute which furnished information on a confidential basis and, in the case of a record or information compiled by a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.

52. With respect to exemption (b) (7) (C), much of the analysis is duplicative of exemption (b) (6), which is discussed above. Although the balancing test for exemption (b) (6) uses a

"would constitute a clearly unwarranted invasion of personal privacy" standard, and the test for (b) (7) (C) uses the lower standard of "could reasonably be expected to constitute an unwarranted invasion of personal privacy," the analysis and balancing required by both exemptions is sufficiently similar to warrant a consolidated discussion. The privacy interests are balanced against the public's interest in disclosure under the analysis of both exemptions. Therefore, for additional analysis of exemption (b) (7) (C), please refer to Part V-C above.

53. With respect to exemption (b) (7) (D), the CIA has asserted this exemption to protect information provided by confidential sources to the OIG in the course of its investigation.

54. The OIG is charged with providing objective and independent oversight into the programs and operations of the CIA. Here, the OIG opened an investigation pertaining to the September 2012 attacks in Benghazi, Libya. As a matter of Agency policy, the OIG does not disclose the identities of persons it interviews⁷ or the substance of their statements unless such disclosure is determined to be necessary for the full reporting of a matter or the fulfillment of other OIG or

⁷Moreover, where interviewees are CIA employees, as was the case here, the CIA Act precludes disclosure of the identities of the interviewed employee as well as referenced names and titles of other Agency employees. See *supra*, ¶ 41.

Agency responsibilities. Pursuant to Agency policy, all interviewees were under an express or implied promise of confidentiality. The OIG shared this information to the extent necessary for law enforcement purposes. These documents contain details that would tend to identify the parties by virtue of their position in the Agency or their role in, or knowledge of, the underlying events.

55. Exemption (b) (7) (D) requires no showing of harm, or balancing of privacy and public interests. However, the performance of the OIG's mission to conduct independent investigations is heavily reliant upon its access to unfiltered information provided by confidential sources. Disclosure of the sources and the information provided would severely compromise the OIG's ability to perform those duties. Accordingly, CIA has asserted exemption (b) (7) (D) to protect OIG investigators' interview notes and memoranda.

56. Therefore, for the reasons set forth above, the IG Documents are withheld in part pursuant to exemptions (b) (1) and (b) (3), and, to the extent that they are personally-identifying, exemptions (b) (6) and (b) (7) (C). These documents are further withheld pursuant to exemption (b) (7) (D).

VI. CIA'S GLOMAR DETERMINATION IS PROPER.

57. Section 3.6(a) of Executive Order 13526 provides the authority for the CIA to issue a response neither confirming nor

denying the existence or nonexistence of requested records, also known as a "Glomar" response, in response to requests for information submitted pursuant to the FOIA. Specifically, Section 3.6(a) provides that: "An agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence or nonexistence is itself classified under this order or its predecessors."

58. Plaintiffs' FOIA requests present just such a circumstance, wherein the mere confirmation or denial of the existence or nonexistence of responsive records would itself reveal a classified fact - namely, whether CIA has or had an intelligence interest in Colonel Muammar Gaddafi's possible abdication, exile, or truce, as well as any intelligence interest in General Abdulqader Yusef Dibri as it pertains to Gaddafi's possible abdication, exile, or truce. Therefore, with respect to Items 2(a) and (d) of Plaintiffs' October FOIA Request, CIA properly issued a Glomar response.

59. The CIA is charged with carrying out a number of important functions on behalf of the United States, which include, among other activities, collecting and analyzing foreign intelligence and counterintelligence. A defining characteristic of the CIA's intelligence activities is that they are typically carried out through clandestine means, and therefore, they must remain secret in order to be effective. In

the context of FOIA, this means that the CIA must carefully evaluate whether its response to a particular FOIA request could jeopardize the clandestine nature of its intelligence activities or otherwise reveal previously undisclosed intelligence information, including but not limited to, its sources, capabilities, authorities, interests, strengths, weaknesses, and resources.

60. In a typical scenario, a FOIA requester submits a request to the CIA for information on a particular subject and the CIA conducts a search of records subject to the FOIA reasonably calculated to uncover responsive records, and advises whether responsive records were located. If records are located, the CIA provides the non-exempt records or reasonably segregable non-exempt portions of records. In this typical circumstance, the CIA's response - either to provide or not provide the records sought - actually confirms the existence or nonexistence of CIA records on the subject of the request. Typically, this confirmation neither threatens the national security nor reveals intelligence sources and methods because the mere fact that the CIA possesses or does not possess records is not itself a classified fact.

61. In other cases, the confirmation or denial of the existence or nonexistence of other responsive records would itself reveal a classified fact: namely, whether the CIA has an

intelligence interest in, or clandestine connection to, a particular individual or activity. In those cases, the CIA asserts a Glomar response because the existence or nonexistence of CIA records responsive to the request is a currently and properly classified fact, the disclosure of which reasonably could be expected to cause damage to the national security.

62. Thus, acknowledging the existence or nonexistence of such records necessarily would disclose at minimum the CIA's association with or intelligence interest, or lack thereof, in the expressed interest in a truce or possible abdication and exile out of Libya of Muammar Gaddafi. Disclosure of whether CIA was involved or not in these alleged specific intelligence activities and interests would reveal information concerning the reach, locations, and capabilities or limitations of CIA's clandestine intelligence activities and operations.

63. The release of such information would provide CIA's adversaries with insight on how the CIA might or might not choose to focus its intelligence activities, including, for example, whether the CIA has or had any affiliation with Muammar Gaddafi or Abdulqader Yusef Dibri.

64. Additionally, if the CIA were to provide responses either confirming or denying that it possesses records concerning any particular individual, in this case Muammar Gaddafi or Abdulqader Yusef Dibri, these admissions, in addition

to revealing information about the CIA's specific intelligence interests or activities, would endanger human intelligence sources. Such responses, therefore, reasonably could be expected to cause serious damage to U.S. national security.

65. To be credible and effective, the CIA must assert a Glomar response consistently in all cases where the existence or nonexistence of responsive records is itself a classified fact, including in those cases in which the CIA does not possess records responsive to a particular request. If the CIA were to invoke a Glomar response only when it actually possessed responsive records, the Glomar response would be interpreted as an admission that responsive records exist. This practice would reveal the very information that the CIA must protect in the interest of national security.

66. Therefore, the CIA asserted Glomar responses to Item Numbers 2(a) and (d) of Plaintiffs' October FOIA Request because the existence or nonexistence of CIA records responsive to these requests is a currently and properly classified fact, the disclosure of which reasonably could be expected to cause damage to the national security. The fact of the existence or nonexistence of records responsive to Plaintiffs' FOIA request is currently and properly exempt from release under FOIA exemptions (b) (1) and (b) (3).

67. With respect to exemption (b) (1) and consistent with sections 1.1(a) and 3.6(a) of Executive Order 13526, I have determined that the existence or nonexistence of the requested records is a currently and properly classified fact that concerns "intelligence activities" and "intelligence sources and methods" under section 1.4(c) of the Executive Order; the requested records are owned by and under the control of the U.S. Government; and the unauthorized disclosure of the existence or nonexistence of requested records reasonably could be expected to result in serious damage to national security.

68. My determination that the existence or nonexistence of the requested records is classified has not been made to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interests of national security.

69. With respect to exemption (b) (3), confirming or denying the existence or nonexistence of records responsive to Item Numbers 2(a) and (d) of Plaintiffs' October FOIA Request would reveal information concerning intelligence activities and interests that the National Security Act and CIA Act require CIA to protect.

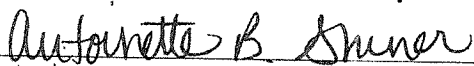
70. Accordingly, the fact of the existence or nonexistence of records that would reflect a classified connection to the CIA is exempt from disclosure under FOIA exemption (b)(3) pursuant to both the National Security Act and the CIA Act. Although these statutes do not require the CIA to identify and describe the damage to the national security that reasonably could be expected to result should the CIA confirm or deny the existence or nonexistence of records reflecting a classified connection between the CIA and the subject of the FOIA request, I nonetheless refer the Court to the paragraphs above for a description of the damage to the national security should anything other than a Glomar response be required of the CIA in this instance.

71. In sum, for CIA to officially confirm or deny the existence or nonexistence of the requested records would reveal classified national security information that concerns intelligence activities, and intelligence sources and methods. I have determined that such a revelation could be expected to cause serious damage to U.S. national security. Accordingly, I have determined that the fact of the existence or nonexistence of records responsive to Items 2(a) and (d) of Plaintiffs' October FOIA Request is currently and properly classified and exempt from release under FOIA exemptions (b)(1) and (b)(3).

* * *

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of May 2018.



Antoinette B. Shiner
Information Review Officer
Litigation Information Review Office
Central Intelligence Agency

EXHIBIT A

F-2014-00953

Law Office
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February 24, 2014

By Certified Mail — Return Receipt Requested
Article Number 7010 3090 0000 0316 6512

FOIA REQUEST

Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

Dear Ladies and Gentlemen:

This is a request for production of records under the Freedom of Information Act, 5 USC § 552, the "FOIA."

FOIA Requesters. I write on behalf of my clients, Accuracy in Media, Inc., a District of Columbia 501(c)(3) non-profit corporation, as well as the following eight individuals, all of whom serve as members of the "Citizens' Commission on Benghazi," an unincorporated, informal association of individuals, all working with Accuracy in Media. They are (1) Roger Aronoff, (2) Larry Bailey, (3) Kenneth Benway, (4) Dick Brauer, (5) Clare Lopez, (6) James A. Lyons, Jr., (7) Kevin Shipp, and (8) Wayne Simmons.

FOIA Requests. These requests are for the following records of activities in Libya, in the care, custody or control of the Central Intelligence Agency, regardless of the source of the records:

1. All records of whatsoever nature regarding (1) the Benghazi Special Mission Compound or "Ambassador's compound" or "Benghazi Mission" and (2) the CIA Annex, for the time period of January 1st, 2011, through September 30th, 2012. This request is all-inclusive for all records, however recorded, including emails, reports, memoranda, correspondence, teletypes, telephone calls, text messages, and audio and video recordings, regarding all uses of the Benghazi Mission and the CIA Annex. Responsive records include those that disclose:

MAR 04 2014

- (1) The comings and goings of all persons, whether civilian, military, American or foreign, including any non-US personnel questioned, interrogated, detained, or transported through, the CIA Annex and Benghazi Mission;
 - (2) The descriptions and inventories of all weapons brought into the Annex, including small arms, ammunition, and man-portable air defense systems, or Manpads, and missiles;
 - (3) The sources of all such weapons;
 - (4) The descriptions and inventories of all weapons removed from the Annex,
 - (5) The intended destinations and recipients of all such weaponry, including
 - (i) All transfers of arms and equipment to Libyan resistance fighters, both before or after the United Nations recognized the National Transitional Council as the legal representative of Libya;
 - (ii) Transportation of arms out of Libya, bound for Syria, through Turkey, Qatar, Saudi Arabia, Qatar, or Jordan;
 - (6) All communication and cryptographic equipment at the CIA Annex and Benghazi Mission;
 - (7) The weaponry, communication, cryptographic equipment, and electronic or paper files, left in the Annex and Benghazi Mission when US personnel abandoned these facilities on September 11th and 12th, 2012;
 - (8) Information about the weapons recovered from fallen attackers at the Ambassador's compound as well as the CIA Annex during and after the attacks;
 - (9) Information about the identities and affiliations of any of those fallen fighters as well as the disposition of their bodies, alive or dead; and
 - (10) CIA situation reports, or "sitreps," sent, including on September 11th, 12th, and 13th.
2. Any and all videos depicting the United States Mission in Benghazi, Libya (including the Special Mission Compound and the CIA Annex) between September 10, 2012 and September 12, 2012. This request includes, but is not limited to (1) all videos and photographs obtained, transmitted, or recorded via any unmanned aerial vehicles (UAVs), and (2) video of closed-circuit television monitor at the Benghazi Mission facility's Tactical Operations Center on September 11th and 12th, 2013.

3. All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the survivors' accounts of the attack.
4. All records of radio communications emanating from the Compound's Tactical Operations Center (TOC), on September 11th and 12th, 2012, whether made by Regional Security Officer (RSO) Alec Henderson or any other person.
5. All records of CIA Director David Petraeus' actions and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack. Responsive records include:
 - (1) All records generated by Director Petraeus, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
 - (3) All records generated by anyone about the CIA Director's actions and communications.
6. All records of Deputy CIA Director Michael Morell actions and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack. Responsive records include:
 - (1) All records generated by Deputy CIA Director Morell, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
 - (3) All records generated by anyone about the CIA Deputy Director's actions and communications.
7. Any records reflecting the time, and substance, of the President's first notification that the Benghazi Mission was under attack, and his actions, and communications, for the next 24 hours.
8. All calendars, day books, journals, notes, memoranda, or other records reflecting Ambassador Stevens' schedule on September 11, 2012, including the Ambassador's diary, and all correspondence to or from the Ambassador regarding his meetings that day, including with the Turkish Consul General.

9. All records of the purpose of Ambassador Stevens' meetings on September 11, 2012, including analysis or assessments of those meetings, whether written before or after September 11, 2012.
10. All correspondence to or from Ambassador Stevens on September 10th and 11th, 2012.
11. All notes, memoranda, and correspondence generated between January of 2007 and September 11, 2012, regarding meetings between Christopher Stevens or any other Tripoli Embassy official, and one or more of the following individuals:
 - **Ahmed Abu Khattala**, a commander of the Libyan Ansar al-Shariah militia group
 - **Mustafa Abdul Jalil**, Chairman of the Libyan National Transitional Council from 5 March 2011-8 August 2012
 - **Mahmoud Jibril**, Interim Prime Minister of Libya and Chair of the Executive Board of the National Transitional Council from 5 March-23 October 2011
 - **Wissam bin Hamid**, a Libya Shield Brigade commander, supporter of the Libyan Muslim Brotherhood Justice & Construction Party, and veteran jihad fighter of Iraq & Afghanistan, who provided security for US representatives in Benghazi and was tentatively identified by the Library of Congress as the head of al-Qa'eda in Libya
 - **Abdelhakim Belhadj** (aka Abdallah al Sadeq), veteran jihad fighter of Iraq & Afghanistan, commander of the AQ franchise militia, Libyan Islamic Fighting Group (LIFG) (aka Libyan Islamic Movement for Change), post-revolution military commander of Tripoli, and Libyan delegation leader to the Syrian Free Army in late 2011
 - **Ismael al-Sallabi** (brother of Ali), commander of the Al-Qa'eda-linked al-Sahati Brigade during the revolution, and Benghazi Military Council commander afterwards, close ally of Abdelhakim Belhadj and Mustafa Jalil
 - **Ali al-Sallabi** (brother of Ismael), called the 'spiritual leader' of the Libyan revolution, Muslim Brotherhood links, led effort with Seif al-Qaddafi and US Embassy Tripoli to gain release of jihadi detainees from Libyan jails
 - **Mohammad al-Sallabi**, father of Ali and Ismael, among the founders of the Libyan Muslim Brotherhood in the 1960s
 - **Abu Sufian bin Qumu**, veteran jihad fighter in Afghanistan from Derna, Libya, captured in 2001, detained at GITMO, sent back to Libyan jail, released in 2010, led jihad vs Qaddafi in 2011, and led Benghazi Mission attack in Sep 2012.

12. 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.
13. For the period of February 15th, 2011, through December 31st, 2012, all DOD and CIA or other intelligence community records of Congressional approval for CIA transport of arms to Syrian rebel forces.
14. All records regarding Deputy National Security Adviser for Homeland Security and Counter-terrorism John Brennan's recommendations regarding the overthrow of Libyan leader Muammar Gaddafi.
15. Records of the video teleconference on the afternoon of the September 16th, 2012, between the FBI and other IC officials in Washington, regarding FBI interviews with U.S. personnel who had been on the compounds in Benghazi during the attack. For your reference, the following is an 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:"

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. The U.S. personnel who were interviewed saw no indications that there had been a protest prior to the attack. Information from those interviews was shared on a secure video teleconference on the afternoon of the 16th with FBI and other IC officials in Washington; it is unclear whether the question of whether a protest took place was discussed during this video conference.

16. Non-Disclosure Agreements signed by survivors of the Benghazi attacks, including employees or contractors of the CIA or DOD.

Electronic Format. Kindly produce these records in electronic format. See e-FOIA amendment 5 U.S.C. § 552 (a)(3)(B), as amended, requiring Agency to "provide the record in any form or format requested . . . if the record is readily reproducible by the agency in that form or format." See generally FOIA Update Vol. XVII, No. 4, 1996.

Request for Waiver of Search and Review Fees. As a representative of the news media, Accuracy in Media, Inc. ("AIM"), submits that it is entitled to a waiver of any fees associated with the search and review of records responsive to these FOIA Requests, under 5 U.S.C. § 552 (a)(4)(A)(ii)(II). In July of 2007, the CIA adopted new regulations. 32 C.F.R. § 1900.02, *Definitions*, states, in part:

- (3) *Representative of the news media* means a request from an individual actively gathering news for an entity that is organized and operated to publish and broadcast news to the American public and pursuant to their news dissemination function and not their commercial interests; the term *news* means information which concerns current events, would be of current interest to the general public, would enhance the public understanding of the operations or activities of the U.S. Government, and is in fact disseminated to a significant element of the public at minimal cost; freelance journalists are included in this definition if they can demonstrate a solid basis for expecting publication through such an organization, even though not actually employed by it; a publication contract or prior publication record is relevant to such status;

AIM is organized and operated to publish or broadcast news to the public, and has been doing so for more than 40 years. It clearly meets the standard of "representative of the news media" status. A "representative of the news media" is "a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *Nat'l Sec. Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

To meet FOIA's "member of the news media" status, a requestor must "use[] its editorial skills to turn the raw materials into a distinct work." *Nat'l Sec. Archive*, 880 F.2d at 1387. To be considered a representative of the news media for fee purposes, "a requestor must establish that it has a firm intent to disseminate, rather than merely make available, the requested information." *Judicial Watch*, 185 F. Supp. 2d at 60 (citation and internal quotation marks omitted).

Upon disclosure of the records sought, AIM has concrete plans to make the information public. Its ability and intent to disseminate the information requested, is beyond question. Accuracy in Media Articles on the subject include "The MSM and Benghazi: Will Their Coverage Harm Obama Administration?," "Shameful Media Coverage of Benghazi Scandal and Cover-up," "Media Embrace Obama's Controversial Picks for National Security Team," "New York Times Attempts to Blur Benghazi Scandal," "McClatchy Reporter Changes Tune on Benghazi," "CBS in Damage Control Over Error-Filled Benghazi Report," "60 Minutes' Reveals Little New in Benghazi Exposé," "The Left's Continued Assault on the Truth About Benghazi," "Media Coverage of Benghazi Leans Toward Political Theater," "Conservative Leaders Call on Speaker Boehner: Form a Select Committee on Benghazi," "Further Proof That Obama Knew the Truth About Benghazi," "Blaming the Victim in Benghaziigate," "Obama and His Media Loyalists Still Spinning Benghazi," and "Does Navy Map Alter the Benghazi Narrative?"

Additionally, several of the individual requesters have published a number of articles about the matter. See, for examples, "Navy SEAL: There's guilt in this administration," by Captain Larry Bailey, published in WND.com in April of 2013; two articles by Clare Lopez appearing in Pundicity.com in October of 2012, "Benghazi: The Set-Up and the Cover-Up," and "Did Turkey Play a Role in Benghazi Attack?;" and Admiral James Lyons' pieces appearing in the Washington Times, "Obama's Chain of Command Unravels Over Benghazi" (October 2012), "Obama needs to come clean on what happened in Benghazi" (October 2012), "The Key Benghazi Questions Still Unanswered" (January 2013), "A hard slog to get Benghazi answers" (January 2013), and "A call to Courage over Benghazi" (May 2013).

Neither AIM nor the individuals identified above have any "commercial interest" that would be furthered by the disclosure of the requested information, as that term has been interpreted by the courts under 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

Public Interest Fee Waiver. 5 U.S.C. § 552(a)(4)(A)(iii) provides that "[d]ocuments shall be furnished without any charge or at a charge reduced... if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."

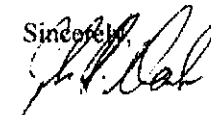
Here, the FOIA requesters do not have a commercial interest in the disclosure. Their purpose is to inform the public. The subject of the requested records concerns the operations or activities of the United States Government. The information sought is directed at finding out what information the government has about its failure to timely respond when its facilities came under attack. These FOIA Requests also concern what information the government did not provide to the public, as well as congressional investigators.

Upon disclosure of the records sought, AIM, as well as other several of the individual requesters, has concrete plans to make the information public, in accordance with AIM's news dissemination function. The information sought would be likely to contribute to an understanding of United States Government operations or activities, and disclosure will enhance public understanding of the Benghazi incident as compared with awareness prior to the disclosure. The interest of enhancing the public's understanding of the operations or activities of the U.S. Government is clear, and the records' connection to these government activities is direct.

Release of the information will contribute to an understanding of government operations or activities regarding the Benghazi issue, as compared with awareness prior to the disclosure. Thus, the requesters provide an adequate showing of their concrete plans to disseminate the requested information, and adequately demonstrate how disclosure of the requested documents meets the requirements for a public interest fee waiver.

Reply to Accuracy in Media. If you have any questions about handling this request, please ask via email, to JohnHClarke@earthlink.net. Otherwise, kindly respond, and produce records, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

Sincerely,



John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

Accuracy in Media, Inc.
4350 East West Highway
Suite 555
Bethesda, MD 20814-4582



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FOIA REQUEST

Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

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FEB 28 2018
INSPECTED

RETURN RECEIPT
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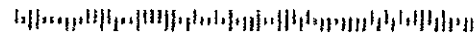


EXHIBIT B

Central Intelligence Agency



Washington, D.C. 20505

14 April 2014

John H. Clarke, Esq.
1629 K Street, NW
Suite 300
Washington, DC 20006

Reference: F-2014-00953

Dear Mr. Clarke:

On 4 March 2014, the office of the Information and Privacy Coordinator received your 24 February 2014 Freedom of Information Act (FOIA) request, submitted on behalf of Accuracy in Media, Inc., "Citizens Commission on Benghazi," for:

- "1. All records of whatsoever nature regarding (1) the Benghazi Special Mission Compound or 'Ambassador's compound' or 'Benghazi Mission' and (2) the CIA Annex for the time period of January 1st 2011, through September 30, 2012. This request is all-inclusive for all records, however recorded, including emails, reports, memoranda, correspondence, teletypes, telephone calls, text messages, and audio and video recordings, regarding all uses of the Benghazi Mission and the CIA Annex. Responsive records include those that disclose:
 - (1) The comings and goings of all persons, whether civilian, military, American or foreign, including any non-US personnel questioned, interrogated, detained, or transported through, the CIA Annex and Benghazi Mission;
 - (2) The descriptions and inventories of all weapons brought into the Annex, including small arms, ammunition, and man-portable air defense systems, or Manpads and missiles;
 - (3) The sources of all such weapons;
 - (4) The descriptions and inventories of all weapons removed from the Annex.
 - (5) The intended destinations and recipients of all such weaponry, including
 - (i) All transfers of arms and equipment to Libyan resistance fighters, both before or after the United Nations recognized the National Transitional Council as the legal representative of Libya;
 - (ii) Transportation of arms out of Libya, bound for Syria, through Turkey, Qatar, Saudi Arabia, Qatar, or Jordan;
 - (6) All communication and cryptographic equipment at the CIA Annex and Benghazi Mission;

- (7) The weaponry, communication, cryptographic equipment, and electronic or paper files, left in the Annex and Benghazi Mission when US personnel abandoned these facilities on September 11th and 12th, 2012;
 - (8) Information about the weapons recovered from fallen attackers at the Ambassador's compound as well as the CIA Annex during and after the attacks;
 - (9) Information about the identities and affiliations of any of those fallen fighters as well as the disposition of their bodies, alive or dead; and
 - (10) CIA situation reports, or 'sitreps,' sent, including on September 11th, 12th, and 13th.
2. Any and all videos depicting the United States Mission in Benghazi, Libya (including the Special Mission Compound and the CIA Annex) between September 10, 2012 and September 12, 2012. This request includes, but is not limited to (1) all videos and photographs obtained, transmitted, or recorded via any unmanned aerial vehicles (UAVs), and (2) video of closed-circuit television monitor at the Benghazi Mission facility's Tactical Operations Center on September 11th and 12th, 2013.
 3. All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the survivors' accounts of the attack.
 4. All records of radio communications emanating from the Compound's Tactical Operations Center (TOC), on September 11th and 12th, 2012, whether made by Regional Security Officer (RSO) Alec Henderson or any other person.
 5. All records of CIA Director David Petraeus' actions and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack. Responsive records include:
 - (1) All records generated by Director Petraeus, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
 - (3) All records generated by anyone about the CIA Director's actions and communications.
 6. All records of Deputy CIA Director Michael Morell actions and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack. Responsive records include:
 - (1) All records generated by Deputy CIA Director Morell, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
 - (3) All records generated by anyone about the CIA Deputy Director's actions and communications.

7. Any records reflecting the time, and substance, of the President's first notification that the Benghazi Mission was under attack, and his actions, and communications, for the next 24 hours.
8. All calendars, day books, journals, notes, memoranda, or other records reflecting Ambassador Stevens' schedule on September 11, 2012, including the Ambassador's diary, and all correspondence to or from the Ambassador regarding his meetings that day, including with the Turkish Consul General.
9. All records of the purpose of Ambassador Stevens' meetings on September 11, 2012, including analysis or assessments of those meetings, whether written before or after September 11, 2012.
10. All correspondence to or from Ambassador Stevens on September 10th and 11th, 2012.
11. All notes, memoranda, and correspondence generated between January of 2007 and September 11, 2012, regarding meetings between Christopher Stevens or any other Tripoli Embassy official, and one or more of the following individuals:
 - Ahmed Abu Khattala, a commander of the Libyan Ansar al-Shariah militia group
 - Mustafa Abdul Jalil, Chairman of the Libyan National Transitional Council from 5 March 2011-8 August 2012
 - Mahmoud Jibril, Interim Prime Minister of Libya and Chair of the Executive Board of the Transnational Council from 5 March-23 October 2011
 - Wissam bin Hamid, a Libya Shield Brigade commander, supporter of the Libyan Muslim Brotherhood Justice & Construction Party, and veteran jihad fighter of Iraq & Afghanistan, who provided security for US representatives in Benghazi and was tentatively identified by the Library of Congress as the head of al-Qa'eda in Libya
 - Abdelhakim Belhadj (aka Abdallah al Sadeq), veteran jihad fighter of Iraq & Afghanistan, commander of the AQ franchise militia, Libyan Islamic Fighting Group (LIFG) (aka Libyan Islamic Movement for Change), post-revolution military commander of Tripoli, and Libyan delegation leader to the Syrian Free Army in late 2011
 - Ismael al-Sallabi (brother of Ali), commander of the Al-Qa'eda-linked al-Sahati Brigade during the revolution, and Benghazi Military Council commander afterwards, close ally of Abdelhakim Belhadj and Mustafa Jalil
 - Ali al-Sallabi (brother of Ismael), called the 'spiritual leader' of the Libyan revolution, Muslim Brotherhood links, led effort with Seif al-Qaddafi and US Embassy Tripoli to gain release of jihadi detainees from Libyan jails
 - Mohammed al-Sallabi, father of Ali and Ismael, among the founders of the Libyan Muslim Brotherhood in the 1960s

- Abu Sufian bin Qumu, veteran jihad fighter in Afghanistan from Derna, Libya, captured in 2001, detained at GITMO, sent back to Libyan jail, released in 2010, led jihad vs Qaddafi in 2011, and led Benghazi Mission attack in Sep 2012.
12. 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.
 13. For the period of February 15th, 2011, through December 31st, 2012, all DOD and CIA or other intelligence community records of Congressional approval for CIA transport of arms to Syrian rebel forces.
 14. All records regarding Deputy National Security Adviser for Homeland Security and Counter-terrorism John Brennan's recommendations regarding the overthrow of Libyan leader Muammar Gaddafi.
 15. Records of the video teleconference on the afternoon of the September 16th, 2012, between the FBI and other IC officials in Washington, regarding FBI interviews with U.S. personnel who had been on the compounds in Benghazi during the attack...
 16. Non-Disclosure Agreements signed by survivors of the Benghazi attacks, including employees or contractors of the CIA or DOD."

Our officers will review your request and will advise you should they encounter any problems or if they cannot begin the search without additional information. We have assigned your request the reference number above. Please use this number when corresponding with us so that we can identify it easily.

Sincerely,



Michele Meeks
Information and Privacy Coordinator

EXHIBIT C

C06229257

Law Office
John H. Clarke
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JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

August 5, 2014

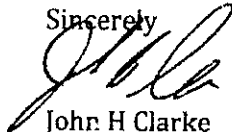
Ms. Michele Meeks
Information and Privacy Coordinator
CENTRAL INTELLIGENCE AGENCY
Washington, DC 20505

Re: February 24, 2014 FOIA Request
CIA Reference No. F-2014-00953
Acknowledgement of receipt: April 14, 2014
CIA denial of Expedited Processing: July 17, 2014
Administrative Appeal: July 25, 2014

Dear Ms Meeks:

Please note that the FOIA requesters hereby withdraw three of their requests, numbered seven, eight, and ten. Request 7 sought disclosure of "the President's first notification that the Benghazi Mission was under attack..." Request 8 sought disclosure of "records reflecting Ambassador Stevens' schedule on September 11, 2012," and Request 10 sought "correspondence to or from Ambassador Stevens on September 10th and 11th, 2012."

Thank you.

Sincerely

John H Clarke

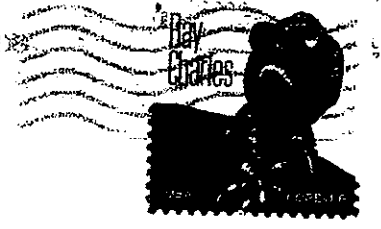
cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

AUG 12 2014

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006

CAPITOL DISTRICT 2000/2008

05 AUG 2014 PM 2 L



Ms. Michele Meeks
Information and Privacy Coordinator
CENTRAL INTELLIGENCE AGENCY
Washington, DC 20505

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AUG 11 2014

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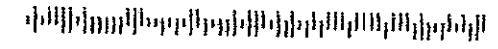


EXHIBIT D

Central Intelligence Agency



Washington, D.C. 20505

18 September 2014

John H. Clarke, Esquire
1629 K Street, NW
Suite 300
Washington, DC 20006

Reference: F-2014-00953

Dear Mr. Clarke:

This is further to our 17 July 2014 letter concerning your 24 February 2014 Freedom of Information Act (FOIA) request, submitted on behalf of Accuracy in Media, Inc. "Citizens Commission on Benghazi," for:

- "1. All records of whatsoever nature regarding (1) the Benghazi Special Mission Compound or 'Ambassador's compound' or 'Benghazi Mission' and (2) the CIA Annex for the time period of January 1st 2011, through September 30, 2012. This request is inclusive for all records, however recorded, including emails, reports, memoranda, correspondence, teletypes, telephone calls, text messages, and audio and video recordings, regarding the uses of the Benghazi Mission and the CIA Annex. Responsive records include those that disclose:
 - (1) The comings and goings of all persons, whether civilian, military, American or foreign, including any-non-US personnel questioned, interrogated, detained, or transported through, the CIA Annex and Benghazi Mission;
 - (2) The descriptions and inventories of all weapons brought into the Annex, including small arms, ammunition, and man-portable air defense systems, or Manpads and missiles;
 - (3) The sources of all such weapons;
 - (4) The descriptions and inventories of all weapons removed from the Annex,
 - (5) The intended destinations and recipients of all such weaponry, including
 - (i) All transfers of arms and equipment to Libyan resistance fighters, both before or after the United Nations recognized the National Transitional Council as the legal representative of Libya;
 - (ii) Transportation of arms out of Libya, bound for Syria, through Turkey, Qatar, Saudi Arabia, Qatar, or Jordan;
 - (6) All communication and cryptographic equipment at the CIA Annex and Benghazi Mission;
 - (7) The weaponry, communication, cryptographic equipment, and electronic or paper files, left in the Annex and Benghazi Mission when US personnel abandoned these facilities on September 11th and 12th, 2012;

- (8) Information about the weapons recovered from fallen attackers at the Ambassador's compound as well as the CIA Annex during and after the attacks;
 - (9) Information about the identities and affiliations of any of those fallen fighters as well as the disposition of their bodies, alive or dead; and
 - (10) CIA situation reports, or 'sitreps,' sent, including on September 11th, 12th, and 13th.
2. Any and all videos depicting the United States Mission in Benghazi, Libya (including the Special Mission Compound and the CIA Annex) between September 10, 2012 and September 12, 2012. This request includes, but is not limited to (1) all videos and photographs obtained, transmitted, or recorded via any unmanned aerial vehicles (UAVs), and (2) video of closed-circuit television monitor at the Benghazi Mission facility's Tactical Operations Center on September 11th and 12th, 2013.
3. All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the survivors' accounts of the attack.
4. All records of radio communications emanating from the Compound's Tactical Operations Center (TOC), on September 11th and 12th, 2012, whether made by Regional Security Officer (RSO) Alec Henderson or any other person.
5. All records of CIA Director David Petraeus' actions and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack. Responsive records include:
 - (1) All records generated by Director Petraeus, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
 - (3) All records generated by anyone about the CIA Director's actions and communications.
6. All records of Deputy CIA Director Michael Morell actions and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack. Responsive records include:
 - (1) All records generated by Deputy CIA Director Morell, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
 - (3) All records generated by anyone about the CIA Deputy Director's actions and communications.
7. Any records reflecting the time, and substance, of the President's first notification that the Benghazi Mission was under attack, and his actions, and communications, for the next 24 hours.

8. All calendars, day books, journals, notes, memoranda, or other records reflecting Ambassador Stevens' schedule on September 11, 2012, including the Ambassador's diary, and all correspondence to or from the Ambassador regarding his meetings that day, including with the Turkish Consul General.
9. All records of the purpose of Ambassador Stevens' meetings on September 11, 2012, including analysis or assessments of those meetings, whether written before or after September 11, 2012.
10. All correspondence to or from Ambassador Stevens on September 10th and 11th, 2012.
11. All notes, memoranda, and correspondence generated between January of 2007 and September 11, 2012, regarding meetings between Christopher Stevens or any other Tripoli Embassy official, and one or more of the following individuals:
 - Ahmed Abu Khattala, a commander of the Libyan Ansar al-Shariah militia group
 - Mustafa Abdul Jalil, Chairman of the Libyan National Transitional Council from 5 March 2011-8 August 2012
 - Mahmoud Jabril, Interim Prime Minister of Libya and Chair of the Executive Board of the Transnational Council from 5 March-23 October 2011
 - Wissam bin Hamid, a Libya Shield Brigade commander, supporter of the Libyan Muslim Brotherhood Justice & Construction Party and veteran jihad fighter of Iraq and Afghanistan, who provided security for US representatives in Benghazi and was tentatively identified by the Library of Congress as the head of al-Qa'eda in Libya
 - Abdelhakim Belhadj (aka Abdallah al Sadeq), veteran jihad fighter of Iraq and Afghanistan, commander of the AQ franchise militia, Libyan Islamic Fighting Group (LIFG) (aka Libyan Islamic Movement for Change), post-revolution military commander of Tripoli, and Libyan delegation leader to the Syrian Free Army in late 2011
 - Ismael al-Sallabi (brother of Ali), commander of the Al-Qa'eda-linked al-Sahati Brigade during the revolution, and Benghazi Military Council commander afterwards, close ally of Abdelhakim Belhadj and Mustafa Jalil
 - Ali al-Sallabi (brother of Ismael), called the 'spiritual leader' of the Libyan revolution, Muslim Brotherhood links, led effort with Seif al-Qaddafi and US Embassy Tripoli to gain release of jihadi detainees from Libyan jails
 - Mohammed al-Sallibi, father of Ali and Ismael, among the founders of the Libyan Muslim Brotherhood in the 1960s
 - Abu Sufian bin Qumu, veteran jihad fighter in Afghanistan from Derna, Libya, captured in 2001, detained at GITMO, sent back to Libyan jail, released in 2010, led jihad vs Qaddafi in 2011, and led Benghazi Mission attack in Sep 2012.

12. 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.
13. For the period of February 15th, 2011, through December 31st, 2012, all DOD and CIA or other intelligence community records of Congressional approval for CIA transport of arms to Syrian rebel forces.
14. All records regarding Deputy National Security Adviser for Homeland Security and Counter-terrorism John Brennan's recommendations regarding the overthrow of Libyan leader Muammar Gaddafi.
15. Records of the video teleconference on the afternoon of the September 16th, 2012, between the FBI and other IC officials in Washington, regarding FBI interviews with U.S. personnel who had been on the compounds in Benghazi during the attack...
16. Non-Disclosure Agreements signed by survivors of the Benghazi attacks, including employees or contractors of the CIA or DOD."

Per your earlier 5 August 2014 letter, we will not conduct a search for Items 7, 8, and 10 of your request.

With regard to Part 1 of Item 2 of your request, we are currently processing a request for the same records from another requester. Once our research and review of that request are completed, we will forward to you the same CIA-originated records, if released. We have a substantial backlog, which we are working diligently to reduce, so we are unable to estimate when we will complete our review. However, we will notify you once the processing of the original request is complete.

With regard to those portions of Item 1 and Part 2 of Item 2 of your request pertaining to the "Benghazi Special Mission Compound," or "Ambassador's compound," or "Benghazi Mission," and Items 4, 9, and 11 of your request, the information you seek would fall under the auspices of the Department of State. With regard to those portions of Items 12, 13, and 16 of your request pertaining to the Department of Defense "or other intelligence community records," the information you seek would fall under the auspices of the Department of Defense or those specific agencies within the intelligence community you are interested in. With regard to Item 14 of your request, the information you seek would fall under the auspices of the Department of Homeland Security. With regard to the portion of Item 15 of your request pertaining to the "FBI and other IC officials in Washington," the information you seek would fall under the auspices of the FBI or those specific agencies within the intelligence community you are interested in. Please be aware that the CIA is not authorized to release records held by other government agencies.

With regard to those portions of your request pertaining to the CIA annex and the remaining items of your request, the CIA Information Act, 50 U.S.C. § 431, as amended, exempts CIA operational files from the search, review, publication, and disclosure requirements of the FOIA. To the extent your request seeks information that is subject to the FOIA, we accept your request, and we will process it in accordance with the FOIA, 5 U.S.C. § 552, as amended. Unless you object, we will limit our search to CIA records up to and including the date the Agency starts its search. We have reviewed your request for a fee waiver and determined that it meets the standard. Therefore, we will charge no fees associated with processing your request.

The large number of FOIA requests CIA receives has created unavoidable delays making it unlikely that we can respond within the 20 working days the FOIA requires. You have the right to consider our honest appraisal as a denial of your request and you may appeal to the Agency Release Panel. A more practical approach would permit us to continue processing your request and respond to you as soon as we can. You will retain your appeal rights and, once you receive the results of our search, can appeal at that time if you wish. We will proceed on that basis unless you object.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michele Meeks".

Michele Meeks
Information and Privacy Coordinator

EXHIBIT E

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Law Office
John H. Clarke
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and Maryland

FAX: (202) 332-3030
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September 29, 2014

FOIA APPEAL

Ms. Michele Meeks
Information and Privacy Coordinator
CENTRAL INTELLIGENCE AGENCY
Washington, DC 20505

Re: February 24, 2014 FOIA Request
September 18, 2014 Denial of FOIA Requests
Reference No. F-2014-00953

Dear Ms. Meeks:

This is an appeal of the captioned denial. Kindly note that on the morning of September 19, 2014, I filed a lawsuit seeking disclosure of the requested records. Your letter, dated September 18, was postmarked on the afternoon of September 19. Thus, unless CIA counsel asserts that plaintiffs failed to exhaust their administrative remedies, and the court holds that the lawsuit was filed only after you responded, this Administrative Appeal may be moot.

You wrote that, "[w]ith regard to those portions of Item 1 and Part 2 of Item 2 of your request pertaining to the 'Benghazi Special Mission Compound,' or 'Ambassador's compound,' or 'Benghazi Mission,' and Items 4, 9, and 11 of your request, the information you seek would fall under the auspices of the Department of State." Part 1 of Request 1 seeks various records of concerning the Special Mission Compound ("SMC"). Request 4 seeks production of radio communications emanating from the Compound's Tactical Operations Center of the SMC on September 11th and 12th, 2012. Request 9 seeks records concerning Ambassador Stevens' meetings on September 11, 2012. Request 11 seeks disclosure of records generated between January of 2007 and September 11, 2012, regarding meetings between Tripoli Embassy officials and one or nine named individuals.

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Although much of this information sought does, in fact, fall under the auspices of the Department of State, the CIA is the proper Agency from which to seek disclosure. Because we believe that the SMC was established and maintained primarily to provide an excuse for CIA presence in Benghazi, we believe that the CIA is in possession of records sought in Request 1. We also believe that Ambassador Stevens' meetings on September 11 concerned CIA operations, and, so, the CIA would be the correct Agency from which to seek disclosure of records sought by Request 9. Similarly, because the meetings referenced in Request 11 were undertaken in furtherance of CIA operations to support Libyan rebels, the CIA, we believe, is in possession of records responsive to this Request.

Regarding Request 12, seeking disclosure of records shared with members of Congress regarding arms in Libya, Request 13 seeking intelligence community records of Congressional approval for CIA transport of arms to Syrian rebel forces, and Request 16 for Non-Disclosure Agreements signed by survivors of the Benghazi attacks, you responded that these records "would fall under the auspices of the Department of Defense or those specific agencies within the intelligence community." We do not believe that this is so. We agree that "the CIA is not authorized to release records held by other government agencies." However, to the extent that the CIA is in possession of these records, they are properly the subject of a FOIA request, and CIA is required to coordinate with, or refer to, other agencies prior to disclosure.

In response to Request 14, seeking "John Brennan's recommendations regarding the overthrow of Libyan leader Muammar Gaddafi," you wrote that "the information you seek would fall under the auspices of the Department of Homeland Security." Although we do not agree, we hereby withdraw Request 14.

Regarding Request 15, seeking records of the "video teleconference on the afternoon of the September 16th, 2012, between the FBI and other IC officials in Washington, regarding FBI interviews with U.S. personnel who had been on the compounds in Benghazi during the attack," you wrote that "the information you seek would fall under the auspices of the FBI or those specific agencies within the intelligence community you are interested in," and that "the CIA is not authorized to release records held by other government agencies." Please be advised that the CIA is the "specific agenc[y] within the intelligence community... [that we] are interested in." And, again, to the extent that the CIA is in possession of these records, they are properly the subject of a FOIA request, and CIA is required to coordinate with, or refer to, other agencies prior to CIA disclosure.

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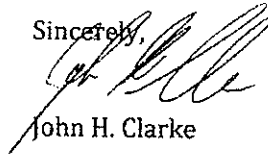
3

Lastly, you wrote that "[w]ith regard to those portions of your request pertaining to the CIA annex and the remaining items of your request, the CIA Information Act, 50 U.S.C. § 431, as amended, exempts CIA operational files from the search, review, publication, and disclosure requirements of the FOIA." While this statement is accurate, that statute, "Operational files of the Central Intelligence Agency," also contains exceptions. *See, e.g.*, 50 U.S.C. § 431(c)(3):

[E]xempted operational files shall continue to be subject to search and review for information concerning *** the specific subject matter of an investigation by the congressional intelligence committees, the Intelligence Oversight Board, the Department of Justice, the Office of General Counsel of the Central Intelligence Agency, the Office of Inspector General of the Central Intelligence Agency, or the Office of the Director of National Intelligence for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity.

We believe that much of the information requested falls within one or more exceptions under 50 U.S.C. § 431.

Sincerely,



John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp

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UNCLASSIFIED

UNCLASSIFIED

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John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006

CAPITAL DISTRICT 200/208

29 SEP 2014 PM 11



FOIA APPEAL

Ms. Michele Meeks
Information and Privacy Coordinator
CENTRAL INTELLIGENCE AGENCY
Washington, DC 20505

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OCT 03 2014

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EXHIBIT F

Central Intelligence Agency



Washington, D.C. 20505

28 February 2017

John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006

Re: F-2014-00953; 14-cv-01589

Dear Mr. Clarke:

This letter is in response to the 24 February 2014 Freedom of Information Act (FOIA) request that you submitted on behalf of your client, Accuracy in Media, Inc., that was most recently narrowed in the Motion filed on 22 July 2016 to the following items:

“• Survivor’s accounts. Complaint ¶ 136:

3. All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the survivors' accounts of the attack.

This request is narrowed to specify identify only Memorandum for the Record, prepared by the Deputy Chief of Base "Events of 11-12 SEP 2012 at Benghazi Base, Libya," September 19, 2012. That record is cited on page 5, footnote 13, of the January 15, 2014. U.S. Senate Select Committee on Intelligence Review of the Terrorist Attacks on U.S. Facilities in Benghazi, Libya, September 11-12, 2012:

According to informal notes obtained from the CIA, the security team left for the Annex [sic] without the formal approval of the Chief of Base, see attachments to e-mail from CIA staff [redacted] to CIA staff [redacted] September 23, 2012. However, a Memorandum for the Record prepared by the Deputy Chief of Base specifically states that the Chief "authorized the move" and the Chief told the Committee: "We launched QRF [Quick Reaction Force] as soon as possible down to the State [Department] compound." Memorandum for the Record, "Events of 11 - 12 SEP 2012 at Benghazi Base, Libya," September 19, 2012, p. 1

- Contemporaneous records generated by CIA Director and Deputy Director. Complaint ¶ 136:

5, 6. All records of CIA Director David Petraeus" [and Deputy CIA Director Michael Morell's actions and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack. Responsive records include:

- (1) All records generated by Director Petraeus, [and Deputy Director Morell] including all emails, memoranda, or notes;
- (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
- (3) All records generated by anyone about the CIA Director's [and Deputy Director's] actions and communications.

These two items are narrowed to omit "telephone logs or bills" and "records generated by anyone about" the actions and communications.

Fourth item at issue

- Non-Disclosure Agreements. Complaint ¶ 136:

16. Non-Disclosure Agreements signed by survivors of the Benghazi attacks, including employees or contractors of the CIA or DOD."

We processed the request in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the National Security Act, 50 U.S.C. § 3141, as amended.

We completed a thorough search for records responsive to the request and located sixty nine (69) responsive documents. At this time, we have determined that forty four (44) documents can be released in segregable form with redactions made on the basis of FOIA exemptions (b)(1), (b)(3), (b)(5), and (b)(6). We have also determined that twenty three (23) documents must be denied in their entirety on the basis of FOIA exemptions (b)(1), (b)(3), (b)(5), and (b)(6). Exemption (b)(3) pertains to Section 6 of the Central Intelligence Agency Act of 1949, 50 U.S.C. § 3507, noted as exemption "(b)(3)CIAAct" on the enclosed documents, and/or Section 102A(i)(1) of the National Security Act of 1947, 50 U.S.C § 3024(i)(1), noted as exemption "(b)(3)NatSecAct" on the enclosed documents. We are still coordinating the review of two (2) documents and will release those to you once all equity holders have responded.

Sincerely,



Allison Fong
Acting Information and Privacy Coordinator

Enclosures

EXHIBIT G

Central Intelligence Agency



Washington, D.C. 20505

3 March 2017

John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006

Re: F-2014-00953; 14-cv-01589

Dear Mr. Clarke:

This letter is a follow-up response to your 24 February 2014 Freedom of Information Act (FOIA) request that you submitted on behalf of your client, Accuracy in Media, Inc., that was most recently narrowed in the Motion filed on 22 July 2016 to the following items:

• Survivor's accounts. Complaint ¶ 136:

3. All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the survivors' accounts of the attack.

This request is narrowed to specify identify only Memorandum for the Record, prepared by the Deputy Chief of Base "Events of 11-12 SEP 2012 at Benghazi Base, Libya," September 19, 2012. That record is cited on page 5, footnote 13, of the January 15, 2014, U.S. Senate Select Committee on Intelligence Review of the Terrorist Attacks on U.S. Facilities in Benghazi, Libya, September 11-12, 2012:

According to informal notes obtained from the CIA, the security team left for the Annex [sic] without the formal approval of the Chief of Base, see attachments to e-mail from CIA staff [redacted] to CIA staff [redacted] September 23, 2012. However, a Memorandum for the Record prepared by the Deputy Chief of Base specifically states that the Chief "authorized the move" and the Chief told the Committee: "We launched QRF [Quick Reaction Force] as soon as possible down to the State [Department] compound." Memorandum for the Record, "Events of 11 - 12 SEP 2012 at Benghazi Base, Libya," September 19, 2012, p. 1

- Contemporaneous records generated by CIA Director and Deputy Director.
Complaint ¶ 136:

5, 6. All records of CIA Director David Petraeus" [and Deputy CIA Director Michael Morell's actions and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack. Responsive records include:

- (1) All records generated by Director Petraeus, [and Deputy Director Morell] including all emails, memoranda, or notes;
- (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
- (3) All records generated by anyone about the CIA Director's [and Deputy Director's] actions and communications.

These two items are narrowed to omit "telephone logs or bills" and "records generated by anyone about" the actions and communications.

Fourth item at issue

- Non-Disclosure Agreements. Complaint ¶ 136:

16. Non-Disclosure Agreements signed by survivors of the Benghazi attacks, including employees or contractors of the CIA or DOD."

We processed the request in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the National Security Act, 50 U.S.C. § 3141, as amended.

We completed a thorough search for records responsive to the request and located sixty nine (69) responsive documents. On 28 February 2017, we produced forty four (44) documents in segregable form and denied twenty three (23) documents in their entirety. At this time, two (2) remaining documents can be released in segregable form with redactions made on the basis of FOIA exemptions (b)(3), (b)(5), and (b)(6). Exemption (b)(3) pertains to Section 6 of the Central Intelligence Agency Act of 1949, 50 U.S.C. § 3507, noted as exemption "(b)(3)CIAAct" on the enclosed documents, and/or Section 102A(i)(1) of the National Security Act of 1947, 50 U.S.C § 3024(i)(1), noted as exemption "(b)(3)NatSecAct" on the enclosed documents.

This concludes our response to the above referenced request.

Sincerely,



Allison Fong
Acting Information and Privacy Coordinator

Enclosures

EXHIBIT H

F-2015 - 00060

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JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

October 1, 2014

By Certified Mail—Return Receipt Requested
Article Number 7013 3020 0000 7279 3730

FOIA REQUEST

Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

Dear Ladies and Gentlemen:

This is a request for production of records under the Freedom of Information Act, 5 USC § 552, the "FOIA."

FOIA Requesters. I write on behalf of my clients, Accuracy in Media, Inc., a District of Columbia 501(c)(3) non-profit corporation, as well as the following seven individuals, all of whom serve as members of the "Citizens' Commission on Benghazi," an unincorporated, informal association of individuals, all working with Accuracy in Media. They are (1) Roger Aronoff, (2) Larry Bailey, (3) Kenneth Benway, (4) Dick Brauer, (5) Clare Lopez, (6) James A. Lyons, Jr., and (7) Kevin Shipp.

FOIA Requests. These requests are for the following records of activities in Libya, in the care, custody or control of the Central Intelligence Agency, regardless of the source of the records:

1. Any and all reports, memoranda, correspondence, maps, diagrams, charts, printouts, whether or not recorded electronically, regarding allegations that Executive Branch personnel deleted, destroyed, erased, obliterated, or obscured, records of CIA activities in Libya in the aftermath of the September 11 and 12, 2012 attacks in Benghazi, Libya, including but not limited to records in possession of the CIA Office of Inspector General.

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2. Records of all communications generated in March of 2011 regarding Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication and exile out of Libya, by or to:
 - (a) Head of Qaddafi's personal security General Abdulqader Yusef Dibri;
 - (b) Rear Admiral (ret.) Chuck Kubic;
 - (c) AFRICOM personnel, including but not limited to:
 - (i) General Carter Ham; and
 - (ii) Lieutenant Commander Brian Linvill; and
 - (d) The CIA.

Electronic Format. Kindly produce these records in electronic format. See e-FOIA amendment 5 U.S.C. § 552 (a)(3)(B), as amended, requiring Agency to "provide the record in any form or format requested . . . if the record is readily reproducible by the agency in that form or format." See *generally* FOIA Update Vol. XVII, No. 4, 1996.

Request for Waiver of Search and Review Fees. As a representatives of the news media, Accuracy in Media, Inc. ("AIM"), submits that it is entitled to a waiver of any fees associated with the search and review of records responsive to these FOIA Requests, under 5 U.S.C. § 552 (a)(4)(A)(ii)(II). In July of 2007, the CIA adopted new regulations. 32 C.F.R. § 1900.02, *Definitions*, states, in part:

- (3) *Representative of the news media* means a request from an individual actively gathering news for an entity that is organized and operated to publish and broadcast news to the American public and pursuant to their news dissemination function and not their commercial interests; the term *news* means information which concerns current events, would be of current interest to the general public, would enhance the public understanding of the operations or activities of the U.S. Government, and is in fact disseminated to a significant element of the public at minimal cost; freelance journalists are included in this definition if they can demonstrate a solid basis for expecting publication through such an organization, even though not actually employed by it; a publication contract or prior publication record is relevant to such status;

AIM is organized and operated to publish or broadcast news to the public, and has been doing so for more than 40 years. It clearly meets the standard of "representative of the news media" status. A "representative of the news media" is "a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *Nat'l Sec. Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

To meet FOIA's "member of the news media" status, a requestor must "use[] its editorial skills to turn the raw materials into a distinct work." *Nat'l Sec. Archive*, 880 F.2d at 1387. To be considered a representative of the news media for fee purposes, "a requester must establish that it has a firm intent to disseminate, rather than merely make available, the requested information." *Judicial Watch*, 185 F. Supp. 2d at 60 (citation and internal quotation marks omitted).

Upon disclosure of the records sought, AIM has concrete plans to make the information public. Its ability and intent to disseminate the information requested, is beyond question. Accuracy in Media Articles on the subject include "The MSM and Benghazi: Will Their Coverage Harm Obama Administration?," "Shameful Media Coverage of Benghazi Scandal and Cover-up," "Media Embrace Obama's Controversial Picks for National Security Team," "New York Times Attempts to Blur Benghazi Scandal," "McClatchy Reporter Changes Tune on Benghazi," "CBS in Damage Control Over Error-Filled Benghazi Report," "'60 Minutes' Reveals Little New in Benghazi Exposé," "The Left's Continued Assault on the Truth About Benghazi," "Media Coverage of Benghazi Leans Toward Political Theater," "Conservative Leaders Call on Speaker Boehner: Form a Select Committee on Benghazi," "Further Proof That Obama Knew the Truth About Benghazi," "Blaming the Victim in Benghazigate," "Obama and His Media Loyalists Still Spinning Benghazi," and "Does Navy Map Alter the Benghazi Narrative?"

Additionally, several of the individual requesters have published a number of articles about the matter. See, for examples, "Navy SEAL: 'There's guilt in this administration,'" by Captain Larry Bailey, published in WND.com in April of 2013; two articles by Clare Lopez appearing in Pundicity.com in October of 2012, "Benghazi: The Set-Up and the Cover-Up," and "Did Turkey Play a Role in Benghazi Attack?;" and Admiral James Lyons' pieces appearing in the Washington Times, "Obama's Chain of Command Unravels Over Benghazi (October 2012)," "Obama needs to come clean on what happened in Benghazi" (October 2012), "The Key Benghazi Questions Still Unanswered" (January 2013), "A hard slog to get Benghazi answers" (January 2013), and "A call to Courage over Benghazi" (May 2013).

Neither AIM nor the individuals identified above have any "commercial interest" that would be furthered by the disclosure of the requested information, as that term has been interpreted by the courts under 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

Public Interest Fee Waiver. 5 U.S.C. § 552(a)(4)(A)(iii) provides that "[d]ocuments shall be furnished without any charge or at a charge reduced... if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."

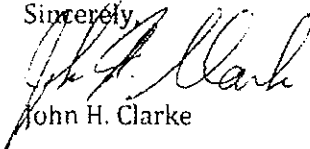
Here, the FOIA requesters do not have a commercial interest in the disclosure. Their purpose is to inform the public. The subject of the requested records concerns the operations or activities of the United States Government. The information sought is directed at finding out what information the government has about its failure to timely respond when its facilities came under attack. These FOIA Requests also concern what information the government did not provide to the public, as well as congressional investigators.

Upon disclosure of the records sought, AIM, as well as other several of the individual requesters, has concrete plans to make the information public, in accordance with AIM's news dissemination function. The information sought would be likely to contribute to an understanding of United States Government operations or activities, and disclosure will enhance public understanding of the Benghazi incident as compared with awareness prior to the disclosure. The interest of enhancing the public's understanding of the operations or activities of the U.S. Government is clear, and the records' connection to these government activities is direct.

Release of the information will contribute to an understanding of government operations or activities regarding the Benghazi issue, as compared with awareness prior to the disclosure. Thus, the requesters provide an adequate showing of their concrete plans to disseminate the requested information, and adequately demonstrate how disclosure of the requested documents meets the requirements for a public interest fee waiver.

Reply to Accuracy in Media. If you have any questions about handling this request, please ask via email, to JohnHClarke@earthlink.net. Otherwise, kindly respond, and produce records, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

Sincerely,

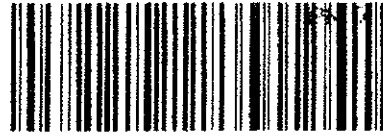


John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006

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OF THE RETURN ADDRESS, FOLD AT DOTTED LINE
CERTIFIED MAIL



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Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505



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EXHIBIT I

Central Intelligence Agency



Washington, D.C. 20505

3 November 2014

John H. Clarke, Esq.
1629 K Street, NW
Suite 300
Washington, DC 20006

Reference: F-2015-00060

Dear Mr. Clarke:

On 7 October 2014, the office of the Information and Privacy Coordinator received your 1 October 2014 Freedom of Information Act (FOIA) request, submitted on behalf of your clients, Accuracy in Media, Inc., and seven individuals, all whom serve as members of the "Citizens Commission on Benghazi, for:

- "1. Any and all reports, memoranda, correspondence, maps, diagrams, charts, printouts, whether or not recorded electronically, regarding allegations that Executive Branch personnel deleted, destroyed, erased, obliterated, or obscured, records of CIA activities in Libya in the aftermath of the September 11 and 12, 2012 attacks in Benghazi, Libya, including but not limited to records in the possession of the CIA Office of Inspector General.
2. Records of all communications generated in March of 2011 regarding Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication and exile out of Libya, by or to:
 - (a) Head of Qaddafi's personal security General Abdulqader Yusef Dibri;
 - (b) Rear Admiral (ret.) Chuck Kubic;
 - (c) AFRICOM personnel, including but not limited to:
 - (i) General Carter Ham; and
 - (ii) Lieutenant Commander Brian Linvill; and
 - (d) The CIA."

We have assigned your request the reference number above. Please use this number when corresponding so that we can identify it easily.

Our officers will review your request and will advise you should they encounter any problems or if they cannot begin the search without additional information. We have assigned your request the reference number above. Please use this number when corresponding with us so that we can identify it easily.

Sincerely,

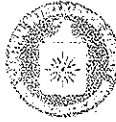
A handwritten signature in black ink, appearing to read "JG", with a long horizontal flourish extending to the right.

John Giuffrida

Acting Information and Privacy Coordinator

EXHIBIT J

Central Intelligence Agency



Washington, D.C. 20505

30 September 2015

John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006

Re: F-2015-00060; 14-cv-1589

Dear Mr. Clarke:

This letter is in response to your 1 October 2014 Freedom of Information Act (FOIA) request for:

- "1. Any and all reports, memoranda, correspondence, maps, diagrams, charts, printouts, whether or not recorded electronically, regarding allegations that Executive Branch personnel deleted, destroyed, erased, obliterated, or obscured, records of CIA activities in Libya in the aftermath of the September 11 and 12, 2012 attacks in Benghazi, Libya, including but not limited to records in the possession of the CIA Office of Inspector General.
2. Records of all communications generated in March of 2011 regarding Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication and exile out of Libya, by or to:
 - (a) Head of Qaddafi's personal security General Abdulqader Yusef Dibri;
 - (b) Rear Admiral (ret.) Chuck Kubic;
 - (c) AFRICOM personnel, including but not limited to:
 - (i) General Carter Ham; and
 - (ii) Lieutenant Commander Brian Linvill; and
 - (d) The CIA."

We processed your request in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the National Security Act, 50 U.S.C. § 3141, as amended.

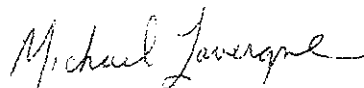
With regard to Item 1, we completed a thorough search for records responsive to your request and located twenty (20) documents. Eight (8) documents can be released in segregable form with redactions made on the basis of FOIA exemptions (b)(1), (b)(3), (b)(5), (b)(6), (b)(7)(c), (b)(7)(d), and (b)(7)(e). In addition, it has been determined that twelve (12) documents must be denied in their entirety on the basis of FOIA exemptions (b)(1), (b)(3), (b)(5), (b)(6), (b)(7)(c), and (b)(7)(d). Exemption (b)(3) pertains to Section 6 of the Central Intelligence Agency Act of 1949, 50 U.S.C. § 3507, noted as exemption "(b)(3)CIAAct" on the enclosed documents, and/or Section 102A(i)(1) of the National Security Act of 1947, 50 U.S.C. § 3024(i)(1), noted as exemption "(b)(3)NatSecAct" on the enclosed documents.

With regard to Items 2 (a) and (d), in accordance with section 3.6(a) of Executive Order 13526, the CIA can neither confirm nor deny the existence or nonexistence of records responsive to your request. The fact of the existence or nonexistence of such records is itself currently and properly classified and relates to CIA intelligence sources and methods information that is protected from disclosure by Section 6 of the CIA Act of 1949, 50 U.S.C. § 3507, and Section 102A(i)(1) of the National Security Act of 1947, 50 U.S.C § 3024(i)(1). Therefore, this portion of your request is denied pursuant to FOIA exemptions (b)(1) and (b)(3).

With regard to Items 2 (b) and (c) of your request, as noted in the acceptance letter, the information you seek would fall under the auspices of the Department of Defense.

This concludes our response to the above referenced request.

Sincerely,

A handwritten signature in cursive script that reads "Michael Lavergne".

Michael Lavergne
Information and Privacy Coordinator

Enclosures

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

DECLARATION OF ERIC F. STEIN

Pursuant to 28 U.S.C. § 1746, I, Eric F. Stein, declare and state as follows:

1. I am the Director of the Office of Information Programs and Services (“IPS”) of the United States Department of State (the “Department” or “State”) and have served in this capacity since January 22, 2017. Previously, I served as the Acting Director since October 16, 2016, and as the Acting Co-Director since March 21, 2016. I am the Department official immediately responsible for responding to requests for records under the Freedom of Information Act (the “FOIA”), 5 U.S.C. § 552, the Privacy Act of 1974, 5 U.S.C. § 552a, and other records access provisions. As the Director of IPS, I have original classification authority and am authorized to classify and declassify national security information. I make the following statements based upon my personal knowledge, which in turn is based upon information furnished to me in the course of my official duties. I am familiar with the efforts of Department personnel to process the subject request, and I am in charge of coordinating the agency’s search and recovery efforts with respect to that request.

2. The core responsibilities of IPS include: (1) responding to records access requests made by the public (including under the Freedom of Information Act, the Privacy Act, and the mandatory declassification review requirements of Executive Order No. 13,526, governing classified national security information), by members of Congress, by other government agencies, and those made pursuant to judicial process, such as subpoenas, court orders and discovery requests; (2) records management; (3) privacy protection; (4) national security classification management and declassification review; (5) corporate records archives management; (6) research; (7) operation and management of the Department's library; and (8) technology applications that support these activities.

3. Pursuant to the stipulations in the Joint Motion to Amend Briefing Schedule, this Declaration addresses the Department's search for documents responsive to that portion of Plaintiffs' FOIA requests referenced in ¶ 116(6) of the Second Amended Complaint¹ and the FOIA exemptions applied in processing 16 records that the Plaintiffs have identified. A *Vaughn* index (Exhibit 1) provides a detailed description of the information withheld by the Department and challenged by Plaintiffs and the justifications for those withholdings.

¹ The relevant portion of the Second Amended Complaint ¶ 116(6) reads in full:

6. "All records of Secretary Clinton's actions and communications for the 24-hour period beginning when first notified that the Benghazi Consulate was under attack. Responsive records include:

- (1) All records generated by Secretary Clinton, including all emails, memoranda, or notes;
- (2) Telephone logs or bills or other statements of all of her telephone calls placed or received"

...
[Item 6(3) withdrawn]

Item 6(3) previously read "All records generated by anyone about the Secretary's actions and communications."

I. PROCESSING OF PLAINTIFFS' FOIA REQUEST

4. By letter dated February 21, 2014 (Exhibit 2), Accuracy in Media, Inc., Roger L. Aronoff, Larry W. Bailey, Kenneth Benway, Richard F. Brauer, Jr., Clare Lopez, James A. Lyons, Jr., and Kevin Michael Shipp ("Plaintiffs"), along with Wayne Simmons, by and through Counsel, submitted a 15-part FOIA request to the Department seeking various records relating to activities at the U.S. Special Mission in Benghazi, Libya. By letter dated March 21, 2014 (Exhibit 3), IPS acknowledged receipt of Plaintiffs' FOIA request and assigned it Case Control Number F-2014-03625.

5. By letter dated May 5, 2014 (Exhibit 4), Plaintiffs withdrew portions of item 1 of their FOIA request.

6. By letter dated August 5, 2014 (Exhibit 5), Plaintiffs withdrew additional portions of their original FOIA request. *See* Am. Compl. ¶¶ 116-118, ECF No. 31 (June 24, 2015) (reiterating the withdrawal of certain portions of Plaintiffs' FOIA request).

7. The Department made ten (10) productions of responsive documents to Plaintiffs by letters dated March 16, 2015; May 11, 2015; July 6, 2015; August 31, 2015; October 26, 2015; December 4, 2015; December 21, 2015; March 21, 2016²; May 5, 2016; and July 8, 2016. (*See* Exhibits 6-15).

8. On October 20, 2017, and May 7, 2018, the Department made supplemental productions of records responsive to item 6 of the FOIA request. (*See* Exhibits 16-17).

II. THE SEARCH PROCESS

9. When the Department receives a FOIA request, IPS evaluates the request to determine which offices, overseas posts, or other records systems within the Department may

² Exhibit 13 was incorrectly date-stamped March 21, 2015. The actual send date was March 21, 2016.

reasonably be expected to contain the records requested. This determination is based on the description of the records requested and requires a familiarity with the holdings of the Department's records systems, applicable records disposition schedules, and the substantive and functional mandates of numerous Department offices and Foreign Service posts and missions.

10. Each office within the Department, as well as each Foreign Service post and mission, maintains files concerning foreign policy and other functional matters related to the daily operations of that office, post, or mission. These files consist generally of working copies of documents, information copies of documents maintained in the Central Foreign Policy Records collection, and other documents prepared by or furnished to the office in connection with the performance of its official duties, as well as electronic copies of documents and e-mail messages.

11. After reviewing that portion of Plaintiffs' FOIA request referenced in 116(6) of the Second Amended Complaint seeking "records of Secretary Clinton's actions and communications for the 24-hour period beginning when first notified that the Benghazi Consulate was under attack," IPS determined that the following offices or records systems were reasonably likely to have responsive documents: the State Archiving System, the Executive Secretariat, and the Department's collection of emails sent and received by Secretary Clinton, which includes both materials provided to the Department by former Secretary Clinton and by the Federal Bureau of Investigation. IPS concluded that no other offices or records systems were reasonably likely to maintain documents responsive to Plaintiff's request. IPS then conducted a review of the retrieved material to determine responsiveness and identify non-exempt material for release to Plaintiff. Where material was found to be exempt from disclosure, IPS reviewed this material to ensure that no non-exempt, segregable information was withheld.

12. When conducting a search in response to a FOIA request, the Department relies on the knowledge and expertise of the employees of each bureau/office/post to determine the files and locations reasonably likely to house responsive records and the best means of locating such records, as these employees are in the best position to know how their files are organized. Likewise, those employees are also in the best position to determine which search terms would yield potentially responsive records, because they are most knowledgeable about the organization of the records systems in use. It should be noted that some of the searches described below were constructed to return records responsive to multiple portions of Plaintiff's original FOIA request, not solely item 6.

State Archiving System

13. The State Archiving System ("SAS") provides the capability to query over 40 million records through a single interface. These records include those documents that discuss or define foreign policy, set precedents, or require action or use by more than one office. More specifically, SAS provides search capability and access to: (a) the official record copies of almost all incoming and outgoing cables between the Department and Foreign Service posts; (b) diplomatic notes; (c) correspondence to and from the White House, members of Congress, and other federal agencies; (d) position papers and reports; (e) memoranda of conversations; and (f) interoffice memoranda. The records contained within SAS are commonly referred to as the "Central Foreign Policy Files" or "Central File." SAS generally allows the Department to conduct full-text searches of records. For all documents in the Central File that are not directly full-text searchable through SAS, including some older correspondence, SAS will search the text of a customized reference index that directs a searcher to a full copy of the document. An IPS analyst with knowledge of both the request and the records system conducted a search of SAS

using the terms “tripoli” to or from “secstate” and (“protest” or “demonstrations” or “attacks”).

The time frame for this search was September 10, 2012, to September 17, 2012.

14. This search retrieved one document responsive to item 6 of the FOIA request.

The Executive Secretariat

15. The Executive Secretariat Staff (“S/ES-S”) is responsible for coordinating the work of the Department internally, serving as the liaison between the Department’s bureaus and the offices of the Secretary, the Deputy Secretary, and the Under Secretaries. S/ES-S manages the preparation of briefing materials for these Department officials and the records generated by these officials. It is generally responsible for coordinating search responses for the Office of the Secretary of State (“S”), the Office of the Deputy Secretary of State (“D”), the Office of the Under Secretary for Political Affairs (“P”), and the Counselor of the Department (“C”).

16. An S/ES-S Management Analyst, who was knowledgeable of both the FOIA request at issue and the S/ES records systems, conducted searches of the electronic records systems that were reasonably likely to contain responsive records. These systems are the Secretariat Tracking and Retrieval System (“STARS”),³ the Secretariat Telegram Processing System (“STePS”),⁴ and Top Secret (“TS”) files. The search capabilities of the enumerated

³ STARS is an automated system used to track, control, and record documents containing substantive foreign policy information passing to, from, and through the offices of the Secretary of State, the Deputy Secretaries of State, the Under Secretaries of State, and the Counselor of the Department. Original documents are indexed, scanned, and stored as images in STARS. Information in STARS covers the period 1988 to 2014. For searches of STARS, the search terms are applied to a descriptive abstract attached to each document. Each abstract is created by a Technical Information Specialist when the document is added to the database; this abstract is designed to capture the subject matter of the related document. The abstracts are the only portion of STARS database with searchable text.

⁴ STePS is designed to distribute cables among the Department’s principals. The full text of the documents in STePS is searchable.

electronic systems are wildcard-based, meaning that common variations of the keywords being searched would be retrieved (*e.g.*, a search for “directive” would also produce hits on the term “directives”). S/ES-S searched STARS and STePS using each of the following search terms: “Secretary Hillary Clinton,” or “Benghazi,” or “Libya,” or “Huma Abedin,” or “Cheryl Mills,” or “Secy-app,” or “Memcon.” The searches were designed to retrieve records created between September 11, 2012 and September 12, 2012.

17. The use of “or” between the search terms indicates that this was a disjunctive search; for example, the terms listed would have retrieved any documents containing the word “Benghazi” in the full text for STePS records, or in the abstract for STARS records, even if the document or abstract contained none of the other search terms.

18. Similarly, during the TS search, the search terms were applied to an index of TS files. Each TS index entry, along with key words and a topic description, was added by a Management Analyst into the index. This index, rather than the full text of the TS files themselves, can be searched.

19. This search retrieved three documents responsive to item 6 of the FOIA request.

S/ES Retired Electronic Files

20. An IPS Analyst, with knowledge of both the request and the relevant records systems, conducted a search of the electronic records retired by the Executive Secretariat Staff, which consist of shared electronic office folders that were available to employees within the Office of the Secretary during former Secretary Clinton’s tenure, as well as individual electronic folders of files belonging to Cheryl Mills and Jacob Sullivan. The IPS Analyst searched the retired electronic files using the following combination of search terms: (“Benghazi” or “Libya”)

AND “September w/5 2012”⁵ AND (“Clinton” or Secretary”); (“Clinton” or “Secretary”) AND (“9/11/2012” OR “9/12/2012” OR “9/11/12” OR “9/12/12” OR “September 11, 2012” OR “September 12, 2012”).

21. An IPS Program Analyst also manually searched the unclassified electronic shared drive folders described above for the schedules and call logs of former Secretary Clinton. Specifically, the Analyst searched the following electronic file folders: “Schedule-Final Copy/September 2012,” “Mini Schedules/September 2012,” “Call Grids/September 2012,” “Daily Files/2012/9 September 2012/11 DC,” “Daily Files/2012/9 September 2012/12 DC,” and “Call Log”. From this collection, documents covering the dates September 11 and September 12, 2012, were identified as responsive to this request.

22. These searches retrieved seven documents responsive to item 6 of the FOIA request.

S/ES Retired Paper Files

23. Throughout former Secretary Clinton’s tenure, her staff maintained a daily calendar for the Secretary in Microsoft Outlook, containing her public and private appointments. After her tenure, S/ES-S archived a copy of the calendar and her official schedules. The archive process entailed printing the electronic files and organizing the paper copies chronologically in a box, recording the contents of the box in a manifest, and turning those documents over to State’s Records Service Center, which stored them in an off-site archival records storage space. In July 2015, in connection with a separate FOIA request seeking copies of Secretary Clinton’s daily calendar of appointments, phone calls, and meetings, S/ES-S provided the record location

⁵ When the text “w/5” is included in between two terms, the search will return any documents in which those two terms appear within five words of each other.

number to IPS. An IPS Analyst retrieved the retired paper calendars and manually searched them for any documents responsive to Plaintiff's FOIA request. This search was limited to documents covering the dates September 11 and September 12, 2012. This search retrieved four documents responsive to item 6 of the FOIA request.

Secretary Clinton Email Collection

24. IPS maintains a collection of emails sent to and from Secretary Clinton drawn from two sources: materials provided to the Department by Secretary Clinton in 2014, and materials provided by the Federal Bureau of Investigations ("FBI") in 2016.⁶ Although not all of these materials were in the Department's possession and control at the time this FOIA request was made, the Department voluntarily agreed to conduct searches of the information transferred from the FBI to the Department for records responsive to Plaintiff's FOIA request, in the interest of reducing any issues to be litigated. An IPS Program Analyst, who was knowledgeable of both the FOIA request and the relevant records systems and collections of materials, conducted a full-text search of both collections of emails sent and received by Secretary Clinton using the following terms: "September 11, 2012," "September 12, 2012," "9-11-12," "9-12-12," "9-11-2012," or "9-12-2012." This search retrieved 48 responsive documents.

II. FOIA EXEMPTIONS CLAIMED

FOIA Exemption 1 – Classified Information

⁶ On December 5, 2014, former Secretary Clinton provided the Department with a collection of emails in response to its request that, if former Secretaries or their representatives were "aware or [were to] become aware in the future of a federal record, such as an email sent or received on a personal email account while serving as Secretary of State, that a copy of this record be made available to State." In July and August of 2016, in response to a request from the Department that it provide any work-related emails of Secretary Clinton retrieved during the course of its investigation into the use of a private email server, the FBI provided a set of materials to the Department for its determination of whether it contained any Department records.

25. 5 U.S.C. § 552(b)(1) states that the FOIA does not apply to matters that are:

(A) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order

26. Based upon my personal review of the documents and information furnished to me in the course of my official duties, I have determined that the information withheld under Exemption 1, 5 U.S.C. § 552(b)(1), in the Accountability Review Board (ARB) summaries, documents C06052236 and C06052339, and the video surveillance footage contained in record C05467917, continues to meet the classification criteria of E.O. 13526 and that the Department has not previously authorized or officially acknowledged public release of this information. This information includes information classified at the SECRET level. Section 1.2 of E.O. 13526 states:

“Secret” shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.

27. Section 6.1(l) of Executive Order 13526 defines “damage to the national security” as follows:

“Damage to the national security” means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, taking into consideration such aspects of the information as the sensitivity, value, utility, and provenance of that information.

28. Information withheld in this case under Exemption 1 is properly classified pursuant to Sections 1.4(c), 1.4(d), or 1.4(g) of E.O. 13526. Section 1.4 provides:

Information shall not be considered for classification unless . . . it pertains to one or more of the following: . . .(c) intelligence activities (including covert action), intelligence sources or methods, or cryptology; (d) foreign relations or foreign activities of

the United States, including confidential sources, . . .(g) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security

29. For information to be properly classified and withheld from disclosure pursuant to Exemption 1, the information must meet all of the following requirements set forth in Section 1.1(a) of E.O. 13526:

- (1) an original classification authority is classifying the information;
- (2) the information is owned by, produced by or for, or is under the control of the United States Government;
- (3) the information falls within one or more of the categories listed in section 1.4 of [E.O. 13526]; and
- (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

30. In my role as an original classification authority, I have determined that the information withheld pursuant to Exemption 1 is under the control of the U.S. Government, falls within one or more sections of E.O. 13526, and requires classification at the SECRET level because its unauthorized disclosure reasonably could be expected to cause serious damage to the national security.

Section 1.4(c) – Intelligence Activities and Intelligence Sources and Methods

31. The Department withheld certain information that relates directly to intelligence activities, sources, or methods on behalf of the Central Intelligence Agency (the “CIA”) in ARB interview summary C06052236 and video surveillance footage contained in C05467917. Disclosure of the intelligence information contained in ARB interview summary C06052236 could enable foreign governments or persons or entities opposed to U.S. foreign policy

objectives to identify U.S. intelligence activities, sources, or methods and to undertake countermeasures that could frustrate the ability of the U.S. Government to acquire information necessary to the formulation and implementation of U.S. foreign policy. The same is true with respect to the video surveillance footage contained in C05467917, which contains information related to U.S. intelligence activities and methods.

32. Intelligence methods include human assets, clandestine relationships, and the identity of CIA officers. Intelligence methods also include the physical security and force protection measures taken to protect CIA facilities and personnel, the CIA's security response strategies, and the tactics, techniques, and procedures used by CIA security personnel who react to threats. When a foreign intelligence service or adversary nation learns that the CIA uses certain methods to protect property and personnel, it will seek to glean from those methods what precautions the CIA took and why, how the CIA responded and why, and how the CIA could use those precautions to respond in different situations. To a hostile entity, the actions the CIA does not take in certain circumstances are just as valuable as actions the CIA takes. If foreign intelligence services or adversary nations were to discover the CIA's methods of protecting property or people, this information could be used against the CIA to thwart future intelligence operations, jeopardize ongoing human sources, and otherwise derail the CIA's intelligence activities.

33. Disclosure of the ARB interview summary and the video surveillance footage "reasonably could be expected to result in damage to the national security" and the information withheld in these documents is currently and properly classified pursuant to Section 1.4(c) of E.O. 13,526 is therefore exempt from release under Exemption 1, 5 U.S.C. § 552(b)(1).

Section 1.4(d) – Foreign Relations or Foreign Activities of the United States

34. In addition, information contained in the video surveillance footage in C05467917 is withheld in this case under Exemption 1 as properly classified under Section 1.4(d) of Executive Order 13526. Executive Order 13526 recognizes that certain information pertaining to U.S. foreign relations and foreign activities must be protected, because its disclosure has the potential to harm national security (which, in turn, is defined in the E.O. as the “national defense or foreign relations of the United States.”). The Department withheld the video surveillance footage contained in C05467917 under Section 1.4(d) on behalf of the CIA because this particular video surveillance footage contains information related to both confidential sources and sensitive aspects of U.S. foreign activities, including, in particular, activities relating to identifying potential threats to U.S. national security. Release of this classified information would expose intelligence activities and methods that took place on September 11, 2012, at the Department’s diplomatic facility, and could reasonably be expected to cause serious damage to national security. For these reasons, the Department withheld certain information in this case that is currently and properly classified at the SECRET level pursuant to Section 1.4(d) of E.O. 13526 and is therefore exempt from release under Exemption 1, 5 U.S.C. § 552(b)(1).

Section 1.4(g) – Capabilities or Vulnerabilities of Systems, Installations, Projects, or Plans Relating to the National Security

35. The Department withheld certain information in ARB interview summaries C06052236 and C06052339, which relates primarily to the security of U.S. diplomatic, consular, and other facilities abroad, the release of which could reasonably be expected to reveal vulnerabilities or capabilities of U.S. overseas missions. Disclosure of this information could reasonably be expected to cause damage to the U.S. national security by endangering the physical security of our missions and personnel overseas. As a result, the information contained

in ARB interview summaries C06052236 and C06052339, is properly classified at the SECRET level pursuant to E.O. 13526, section 1.4(g), and is therefore exempt from release under Exemption 1, 5 U.S.C. § 552(b)(1).

FOIA Exemption 3 – Exempt by Statute:

36. 5 U.S.C. § 552(b)(3) states that the FOIA does not apply to matters that are:

specifically exempted from disclosure by statute (other than section 552(b) of this title), if that statute—(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and (B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.

37. The Department withheld certain information in the ARB interview summary C06052236 and the video surveillance footage bates labeled C05467917 on behalf of the CIA under Exemption 3, as required by the National Security Act of 1947, 50 U.S.C. § 3024(i)(1) (the “National Security Act”). The National Security Act provides that the Director of National Intelligence “shall protect intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 3024(i)(1). Accordingly, the National Security Act constitutes a federal statute which both refers to particular types of matters to be withheld, and “requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue.” 5 U.S.C. § 552(b)(3). Under the discretion of the DNI pursuant to section 102A of the National Security Act, and consistent with section 1.6(d) of Executive Order 12333, the CIA is authorized to protect information relating to CIA sources and methods from unauthorized disclosure. The CIA withheld certain information in the ARB interview summary C06052236 and the video surveillance footage C05467917, as required by the National Security Act because the information, if released, could reasonably be expected to lead to the unauthorized disclosure of

intelligence sources and methods. The withheld document and video footage contain currently and properly classified information pertaining to intelligence activities, sources and methods and foreign relations and foreign activities of the United States (*see supra*, ¶¶ 32 & 34), which is protected by statute.

38. The ARB interview summary C06052236 and September 11, 2012, video surveillance record numbered C05467917 are also withheld on behalf of the CIA under Exemption 3, as required by the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. § 3507 (the “CIA Act”), because the interview summary and video footage, if disclosed, would reveal or disclose the functions of the CIA and identities of personnel employed by the Agency. The CIA Act provides that the CIA shall be exempted from the provisions of “any other law” (which includes the FOIA) that requires “the publication or disclosure of the organization, functions, names, official titles, salaries, or number of personnel.” The CIA Act therefore constitutes a federal statute which “establishes particular criteria for withholding or refers to particular types of material to be withheld.” 5 U.S.C. § 552(b)(3). Pursuant to Section 6 of the CIA Act, the CIA withheld the identities of CIA employees and information disclosing their duties or functions, including functions related to the protection of intelligence methods. Although no harm rationale is required by exemption (b)(3), the disclosure of this information would provide sensitive information about how the organization operates, its function, and identities of the CIA workforce that would be valuable to a hostile nation, including terrorist organizations, attempting to target the CIA or learn more about its activities. The ARB interview summary C06052236 and the video surveillance record C05467917 must therefore be withheld.

FOIA Exemption 5 – Privileged Information

39. 5 U.S.C. § 552(b)(5) states that the FOIA does not apply to:

inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency....

40. Exemption 5, 5 U.S.C. § 552(b)(5), protects from disclosure information that is normally privileged in the civil discovery context, including information that is protected by the deliberative process privilege. The deliberative process privilege protects the confidentiality of candid views and advice of U.S. Government officials in their internal deliberations related to policy formulation and administrative direction. The Department withheld three draft ARB interview summaries, C06052236, C06052239, and C06052240, pursuant to the deliberative process privilege. The release of the withheld information in the three ARB interviews, which is pre-decisional and deliberative and contains a selection and analysis of facts reflecting the judgment of the author, could reasonably be expected to chill the open and frank expression of ideas, recommendations, and opinions that occur when Department officials are formulating a strategy for official action in response to an international security matter. Disclosure of this information would also impede the ability of responsible Department officials to formulate and carry out executive branch programs by inhibiting candid internal discussion and the expression of recommendations and judgments regarding a preferred course of action. The withheld information is, accordingly, exempt from release under Exemption 5, 5 U.S.C. § 552(b)(5), pursuant to the deliberative process privilege.

FOIA Exemption 6 – Personal Privacy

41. 5 U.S.C. § 552(b)(6) states that the FOIA does not apply to:

...personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy....

42. The courts have interpreted the language of FOIA Exemption 6 broadly to encompass all information that applies to an individual without regard to whether it was located in a particular type of file. As described in the *Vaughn* index, the Department has withheld the identities of Department personnel, other U.S. Government employees, contractors, and other third parties under Exemption 6.

43. Inasmuch as information withheld under FOIA Exemption 6 identifies a specific individual, a personal privacy interest exists in the information. I am required, therefore, to determine whether there exists any public interest in disclosure and, if a public interest is implicated, to weigh any such interest against the privacy interest to determine whether disclosure would constitute a clearly unwarranted invasion of personal privacy.

44. In *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), the Supreme Court described two rules for determining public interest in disclosure of information involving a privacy interest: (1) whether disclosure would serve the “core purpose” for which Congress enacted the FOIA, i.e., to show “what the government is up to,” and (2) that public interest means the interest of the public in general, not particular interests of the person or group seeking the information. Accordingly, the identity of the requester as well as the purpose for which the information is sought is irrelevant in making the disclosure determination.

45. As for the information withheld pursuant to Exemption 6 in the call log (C05935290) the ARB interview summaries (C06042236, C06042239, C06042240), and a portion of the surveillance videos (C05467910, C05467913, C05467914, C05467915, C05467916, C05467917), I have concluded that (1) disclosure of the information withheld would result in a clearly unwarranted invasion of personal privacy; and (2) disclosure of the information

would not serve the “core purpose” of the FOIA, i.e., it would not disclose information about “what the government is up to.” Accordingly, I have determined that the privacy interests clearly outweigh any public interest in disclosure of such personal information. As a result, release of this information would constitute a clearly unwarranted invasion of personal privacy; it is therefore exempt from release under FOIA Exemption 6, 5 U.S.C. § 552(b)(6).

FOIA Exemption 7 – Law Enforcement Information

Exemption 7 Threshold – Compiled for Law Enforcement Purposes

46. Exemption 7 protections are available to all “records or information compiled for law enforcement purposes” the disclosure of which could be expected to cause one of the six harms outlined in the Exemption’s subparts. *See* 5 U.S.C. § 552(b)(7). The law to be enforced for Exemption 7 purposes includes administrative, regulatory, civil, and criminal law. Records pertaining to routine agency activities can qualify for Exemption 7 protection when those activities involve a law enforcement purpose. Although the records must be created for a law enforcement purpose, there is no requirement that the matter culminate in actual administrative, regulatory, civil, or criminal enforcement proceedings.

47. Before an agency can invoke any of the harms enumerated in Exemption 7, it must first demonstrate that the records or information at issue were compiled for law enforcement purposes. The Bureau of Diplomatic Security (“DS”) is the law enforcement arm of the Department and is responsible for providing a safe and secure environment for the conduct of U.S. foreign policy.⁷ Generally, DS’s statutory authorities are found in the Omnibus Diplomatic Security and Antiterrorism Act of 1986, 22 U.S.C. § 4801 et seq., as well as in Section 37 of the

⁷ A comprehensive list of the Bureau of Diplomatic Security’s investigative authorities can be found at <http://www.gpo.gov/fdsys/pkg/FR-2013-05-09/html/2013-11094.htm>.

State Department Basic Authorities Act of 1956, 22 U.S.C. § 2709, as amended. The Bureau of Diplomatic Security has a broad scope of global responsibilities, including the protection of people, information, and property as its top priorities. Every diplomatic mission in the world operates under a security program designed and maintained by the Bureau of Diplomatic Security, including the diplomatic mission that was attacked on September 11, 2012, in Benghazi, Libya. With respect to its overseas duties, the Bureau of Diplomatic Security develops and implements effective security programs to safeguard all personnel who work in every U.S. diplomatic mission around the world, including the mission in Benghazi, Libya, that is the focus of Plaintiff's FOIA request. As part of these responsibilities, in some cases DS maintains surveillance footage for security purposes, including the security footage described in the attached *Vaughn* Index. In the United States, DS protects the Secretary of State, the U.S. Ambassador to the United Nations, and foreign dignitaries below the head-of-state level who visit the United States. Additionally, DS develops and implements security programs to protect all domestic Department facilities as well as the residence of the Secretary of State.

48. In addition to protective responsibilities, DS has other law enforcement responsibilities, including investigating passport and visa fraud and conducting counterintelligence investigations. DS also trains foreign civilian law enforcement officers in disciplines designed to reduce the threat and repercussions of terrorism throughout the world. Finally, DS conducts investigations independent of and/or dependent on investigations run by other government agencies, including the Federal Bureau of Investigation ("FBI").

49. The surveillance videos (C05467904, C05467908, C05467910, C05467912, C05467913, C05467914, C05467915, C05467916, C05467917, C05467919, C05467920, C05467921) withheld under Exemption 7 were created by the Department either for a protective

security purpose or for a law enforcement investigation by DS and FBI, or both. As discussed in more detail below, the harms that could reasonably be expected to result from disclosure of this information concern interference with pending or prospective law enforcement investigations related to the September 11, 2012, attack of the Department's diplomatic facility in Benghazi, Libya, the invasion of personal privacy of witnesses and/or Department personnel, revealing sensitive law enforcement techniques and procedures with respect to the Department's security of its diplomatic mission in Benghazi, Libya, or endangering the life or physical safety of an individual.

50. Following the attack on U.S. Government facilities in Benghazi, Libya, DS began an investigation pursuant to its law enforcement responsibilities. Three other of responsive records are withheld in full (C06052236, C06052239, and C06052240) because they were compiled for DS's investigation of the September 11, 2012, Benghazi attack DS's investigation remains ongoing and DS is also supporting the FBI's ongoing investigations of the attack.

51. The FBI currently has multiple active investigations into the Benghazi attack. The FBI's declaration sets forth under what authority the FBI is investigating the attack. *See* April 26, 2018, Declaration of David M. Hardy ("Hardy Decl."), at ¶¶ 7-9. The Department, in addition to conducting its own investigation, is collaborating with the FBI in its investigations. All twelve videos withheld in full (C05467904, C05467908, C05467910, C05467912, C05467913, C05467914, C05467915, C05467916, C05467917, C05467919, C05467920, and C05467921) are also part of the FBI's investigations of the September 11, 2012, attack. *See* Hardy Decl. ¶5, n.1; ¶9.

52. All of the withheld video recordings were also created prior to and during the attack in connection with DS's protective security responsibilities at its mission in Benghazi, Libya.

FOIA Exemption 7(A) – Pending Law Enforcement Proceedings

53. 5 U.S.C. § 552(b)(7) states that the FOIA does not apply to:

records or information compiled for law enforcement purposes, but only to the extent that the production of such records or information ... (A) could reasonably be expected to interfere with enforcement proceedings ...

54. In this case, the Department has withheld twelve Department-originated surveillance videos (C05467904, C05467908, C05467910, C05467912, C05467913, C05467914, C05467915, C05467916, C05467917, C05467919, C05467920, and C05467921) that, if released, could reasonably be expected to interfere with current law enforcement activities of DS and the FBI. The information withheld under FOIA Exemption 7(A) relates to ongoing investigations by the FBI and DS into the September 11, 2012, attack of the Department's diplomatic facility in Benghazi, Libya. The release of this information would interfere with DS's and the FBI's active investigations by revealing critical evidence and leads vital to ongoing investigative operations and continuing efforts to develop cases for criminal prosecution including revealing suspects, the scope of the investigation, and the evidence collected to date. Because the videos show activity at the compound before and during the attacks, including the identities and movements of specific individuals, disclosure could further interfere with successful investigation and prosecution by revealing the images of potential witnesses to the crimes committed, including foreign nationals, and enabling them to be identified and intimidated prior to offering needed testimony. In addition, the FBI requested that the Department withhold this information because its release would interfere with the FBI's

ongoing investigation into the attacks. *See* Hardy Decl. ¶¶ 10-13. There is no information that implicates DS law enforcement equities that does not also implicate FBI law enforcement equities.

FOIA Exemptions 7(C) - Personal Privacy

55. When withholding information pursuant to Exemption 7(C),⁸ the Department is required to balance the privacy interests of the individuals whose information appears in the records against any public interest in disclosure. In asserting this exemption, the Department examined each video to determine the degree and nature of the privacy interest of the individuals whose likenesses appear in them. The public interest in disclosure of this information is determined by the extent to which information in question would inform the general public about the Department's performance of its mission.

56. In six of the videos (C05467910, C05467913, C05467914, C05467915, C05467916, and C05467917), the Department withheld information that is protected under FOIA Exemption 7(C), 5 U.S.C. § 552(b)(7)(C). In these records the Department withheld the images and identities of DS agents, government contractors, and local forces assisting in the protection of the Benghazi facility. Release of the images and information regarding these individuals could reasonably be expected to subject them to harassment and/or intimidation, which would constitute an unwarranted invasion of privacy. DS agents and support personnel conduct protective security operations for the U.S. Government, and it is possible for them to be targeted by individuals hostile to their mission. Some of these individuals may currently be serving at

⁸ 5 U.S.C. § 552(b)(7)(C) states that the FOIA does not apply to records or information compiled for law enforcement purposes, "but only to the extent that the production of such records or information . . . (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy."

other missions abroad where their identification as U.S. Government law enforcement agents would put them at particular risk. In addition, non-Americans currently living abroad who are identified as having aided the United States during the attacks are especially vulnerable to being targeted and harmed. Finally, the association of these individuals with a sensitive, ongoing investigation, through such a disclosure could itself result in intimidation or unsolicited and unwanted attention. As a result, these individuals maintain a substantial privacy interest in not having their images disclosed. After establishing this substantial privacy interest, I considered the public interest in disclosure and determined that because this identifying information would not shed light on the operations and activities of the Department and that the privacy interest of the individuals shown in the footage outweighed any interest the public may have in the disclosure of these records.

FOIA Exemption 7(E) – Investigative Techniques

57. On its own behalf and on behalf of the Federal Bureau of Investigation (the “FBI”) the Department withheld information in the 12 surveillance videos (C05467904, C05467908, C05467910, C05467912, C05467913, C05467914, C05467915, C05467916, C05467917, C05467919, C05467920, and C05467921) under Exemption 7(E) to protect against the disclosure of law enforcement “...techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E). The Department also exerted Exemption 7(E) to protect the written descriptions of security measures and techniques employed at the facility that appear in ARB interview notes C06052239, C06052240.

58. For all 12 of the surveillance videos, the Department has asserted Exemption 7(E) on the FBI's behalf to protect non-public investigative techniques and procedures used by the FBI to pursue its law enforcement and intelligence gathering missions, and also to protect non-public details about techniques and procedures that are otherwise known to the public. *See* Hardy Decl. ¶¶ 14-17.

59. The Department also asserted Exemption 7(E) on its own behalf to prevent circumvention of the law. The surveillance videos contain hours of synchronized footage from every camera angle available recording the Benghazi facility. This footage displays security measures and procedures, defensive capabilities, and counter-measures in place at the Benghazi facility, that are indicative of the protections currently in place at other current State Department facilities in other locations around the world. These include, for example, particular technologies or physical features in place, methods for covering an overall facility with camera surveillance, movements and responsive tactics of security personnel, and evacuation methods for such facilities. Analysis of the videos, especially when compared side by side with additional synchronized camera angles, would reveal the strategies utilized to protect diplomatic compounds, enabling future attempts to circumvent these techniques and procedures. The same concerns apply to the written descriptions of security measures and techniques employed at the facility that appear in ARB interview notes C06052239, C06052240, the disclosure of which would allow circumvention of those measures.

FOIA Exemption 7(F) – Physical Safety

60. Exemption 7(F) permits the withholding of law enforcement related information necessary to protect the physical safety of any individual when the disclosure could reasonably be expected to endanger their life or physical safety. Unlike Exemption 7(C), there is no

balancing of the need to protect the individual from harm against public interest in the information. Exemption 7(F) can be invoked as long as the risk of harm is reasonable.

61. The Department asserted Exemption 7(F), 5 U.S.C. § 552(b)(7)(F), on behalf of the FBI in all 12 of the surveillance videos (C05467904, C05467908, C05467910, C05467912, C05467913, C05467914, C05467915, C05467916, C05467917, C05467919, C05467920, and C0546792). *See* Hardy Decl. ¶¶ 18-19.

62. The Department asserted Exemption 7(F) on its own behalf with regard to six of the surveillance videos (C05467910, C05467913, C05467914, C05467915, C05467916, C05467917, C05467919) in order to protect DS agents, government contractors and local forces assisting in the protection of the Benghazi facility, as well as other third party individuals, including potential bystanders witnessing the September 11, 2012, attack. DS agents whose identities are revealed, some of whom are currently serving at posts abroad where identification as a U.S. law enforcement official may be particularly dangerous, may be targeted by individuals hostile to their mission. In addition, the release of the identities of non-Americans appearing in the footage could expose them to serious bodily harm or death due to perceived association with either the U.S. Government or local militias. The circumstances of the underlying subject matter in this case factually support the real risk of grave harm coming to any individual positively identified in these records. Libya has an unstable security environment and it is reasonable to expect that individuals identified as working for or against the U.S. Government could be targeted for retribution.

IV. CONCLUSION

63. In summary, the Department has carefully reviewed all of the documents addressed herein for reasonable segregation of non-exempt information and has implemented

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 10th day of May 2018, Washington, D.C.

A handwritten signature in black ink, appearing to read "Eric F. Stein", written over a horizontal line.

Eric F. Stein

Exhibit 1

Exhibit 1**Department of State *Vaughn* Index***Accuracy in Media, Inc., et al. v. Department of State, et al. (No. 1:14-cv-01589)*

<u>Doc No.</u>	<u>Doc. Type</u>	<u>Pages</u>	<u>Date/Date Range</u>	<u>From/To</u>	<u>Review Result</u>	<u>Exemptions Claimed</u>
C05935290	Call Log	1	Sept. 12, 2012	Department of State	Released in Part ("RIP")	(b)(6)
<p>DESCRIPTION: This document is a telephone log noting the time of calls and persons conversing with Secretary Clinton on September 12, 2012. It is currently designated UNCLASSIFIED. The Department withheld the names of two family members of victims of the Benghazi attacks under Exemption 6, 5 U.S.C. § 552(b)(6), because release of this information could subject the individuals to harassment, unwanted attention, or unsolicited communications and would not shed light on the operations of the U.S. Government. As a result, release of this information would constitute an unwarranted invasion of personal privacy and the information is exempt from disclosure under FOIA Exemption 6, 5 U.S.C. § 552(b)(6). The Department conducted a thorough review of the document and determined that there is no additional meaningful, non-exempt information that may be reasonably segregated and released.</p>						
C06052236	Draft Interview Summary	3	Dec. 3, 2012	Accountability Review Board Interview Summary	Denied in Full ("DIF")	(b)(1), 1.4(c), (g); (b)(3) National Security Act 50 U.S.C. § 3024(i)(1), Central Intelligence Agency Act 50 U.S.C. §3507; (b)(5) DPP, (b)(6)

<u>Doc No.</u>	<u>Doc. Type</u>	<u>Pages</u>	<u>Date/Date Range</u>	<u>From/To</u>	<u>Review Result</u>	<u>Exemptions Claimed</u>
<p>DESCRIPTION: This document is a draft summary of an interview conducted on December 3, 2012, by the Accountability Review Board (ARB), a group convened to analyze the facts and circumstance of the attack on the U.S. facilities in Benghazi, Libya, identify procedural vulnerabilities that allowed the attacks to occur, and recommend policy changes to prevent future similar events. It is marked “draft – pre-decisional and deliberative.”</p> <p>The Department withheld this document in full under FOIA Exemption 5, 5 U.S.C. § 552(b)(5), pursuant to the deliberative process privilege, because release of these interview notes, which contain a selection and analysis of facts reflecting the judgment of the author, and are pre-decisional and deliberative, could reasonably be expected to chill the open and frank expression of ideas, recommendations, and opinions that occur when Department officials are formulating a strategy for official action on an international security matter. The notes also reflect deliberative comments by the interviewee concerning the security measures or tactics that would be advisable at a diplomatic facility. Recommendations and impressions collected through the ARB interviews are pre-decisional with respect to the ARB’s determination of factors contributing to the attacks and recommendations for policy changes to address identified security vulnerabilities as well as the ultimate decisions by Department leadership concerning which recommendations to adopt. Disclosure of this information would impede the ability of responsible Department officials to formulate and carry out executive branch programs by inhibiting candid internal discussion and the expression of recommendations and judgments regarding a preferred course of action.</p> <p>The Department also withheld portions of this document under FOIA Exemption 1, 5 U.S.C. § 552(b)(1), on its own behalf and on behalf of the CIA, pursuant to E.O. 13526 sections 1.4(c) and (g), which pertain to intelligence activities (including covert action), intelligence sources or methods, or cryptology and vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security. This material was originally and is currently classified SECRET//NOFORN. Release of this material could compromise intelligence sources or methods by revealing the identities of CIA personnel who responded to the attacks, how they did or did not move or travel, the methods that they used in their response, and the nature and extent of their capabilities. Revealing this information would provide adversaries valuable insights into the CIA’s past overt and clandestine relationships with personnel, physical security and force protection measures, and security strategies, all of which could be exploited to reduce the effectiveness of the CIA’s ongoing intelligence operations. It could also reveal the capabilities or vulnerabilities of U.S. overseas missions, which could be exploited, endangering the physical security of those missions and personnel overseas.</p>						

<u>Doc No.</u>	<u>Doc. Type</u>	<u>Pages</u>	<u>Date/Date Range</u>	<u>From/To</u>	<u>Review Result</u>	<u>Exemptions Claimed</u>
<p>Portions of this document were also withheld under 5 U.S.C. § 552(b)(3) at the request of the CIA, pursuant to National Security Act, 50 U.S.C. § 3024(i)(1), because it contains information about intelligence sources and methods, and the Central Intelligence Agency Act, 50 U.S.C. § 3507, because it contains information disclosing the identities of CIA employees and their duties or functions, including functions related to the protection of intelligence methods.</p> <p>The names of CIA employees were also withheld under Exemption 6, 5 U.S.C. § 552(b)(6), because release of this information could subject the individuals to harassment, unwanted attention, and unsolicited communications, and would not shed light on the operations of the U.S. Government. As a result, release of this information would constitute an unwarranted invasion of personal privacy, and the information is exempt from disclosure under FOIA Exemption 6, 5 U.S.C. § 552(b)(6).</p>						
C06052239	Draft Interview Summary	4	Oct. 12, 2012	Accountability Review Board Interview Summary	DIF	(b)(1), 1.4(g); (b)(5) DPP, (b)(6), (b)(7)(C), (b)(7)(E)
<p>DESCRIPTION: This document is a draft summary of an interview conducted on October 12, 2012, by the ARB, a group convened to analyze the facts and circumstance of the attack on the U.S. facilities in Benghazi, Libya, identify procedural vulnerabilities that allowed the attacks to occur, and recommend policy changes to prevent future similar events. It is marked “draft – pre-decisional and deliberative.”</p> <p>The Department withheld this document in full under FOIA Exemption 5, 5 U.S.C. § 552(b)(5), pursuant to the deliberative process privilege, because release of these interview notes, which contain a selection and analysis of facts reflecting the judgment of the author, and are pre-decisional and deliberative, could reasonably be expected to chill the open and frank expression of ideas, recommendations, and opinions that occur when Department officials are formulating a strategy for official action on an international security matter. The notes also reflect deliberative comments by the interviewee concerning the security measures or tactics that would be advisable at a diplomatic facility. Recommendations and impressions collected through the ARB interviews are pre-decisional with respect to the ARB’s determination of factors contributing to the attacks and recommendations for policy changes to address identified security vulnerabilities as well as the ultimate decisions by Department leadership concerning which recommendations to adopt. Disclosure of this information would impede the ability of responsible Department officials to formulate and carry out executive</p>						

<u>Doc No.</u>	<u>Doc. Type</u>	<u>Pages</u>	<u>Date/Date Range</u>	<u>From/To</u>	<u>Review Result</u>	<u>Exemptions Claimed</u>
<p>branch programs by inhibiting candid internal discussion and the expression of recommendations and judgments regarding a preferred course of action.</p> <p>The Department also withheld certain descriptions of the security measures and techniques employed at the facility under FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E) because security measures and procedures, defensive capabilities, and counter-measures that were in place at the Benghazi facility are indicative of the protections currently in place at other current State Department facilities in other locations around the world. If released, this information could be exploited to circumvent security measures at Department facilities.</p> <p>The Department also withheld portions of the document under FOIA Exemption 1, 5 U.S.C. § 552(b)(1), pursuant to E.O. 13526 section 1.4(g), which pertains to vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security. This material was originally and is currently classified SECRET//NOFORN. Release of this material could reveal the capabilities or vulnerabilities of U.S. overseas missions, which could be exploited, endangering the physical security of those missions and personnel overseas.</p> <p>In addition, the Department withheld information revealing the identities of diplomatic security (DS) agents in these documents under FOIA Exemptions 6 and 7(C), 5 U.S.C. §§ 552(b)(6), (b)(7)(C), because the disclosure of this information would be reasonably likely to result in harassment and/or intimidation or other targeting of the individuals revealed due to their involvement in law enforcement or relationship to the controversial attacks. This information would not shed light on the operations of the U.S. Government and its release would constitute an unwarranted invasion of personal privacy.</p>						
C06052240	Draft Interview Summary	4	Oct. 12, 2012	Accountability Review Board Interview Summary	DIF	(b)(5) DPP, (b)(6), (b)(7)(C), (b)(7)(E)
<p>DESCRIPTION: This document is a draft summary of an interview conducted on October 12, 2012, by the ARB, a group convened to analyze the facts and circumstance of the attack on the U.S. facilities in Benghazi, Libya, identify procedural vulnerabilities that allowed the attacks to occur, and recommend policy changes to prevent future similar events. It is marked “draft – pre-decisional and deliberative.”</p>						

<u>Doc No.</u>	<u>Doc. Type</u>	<u>Pages</u>	<u>Date/Date Range</u>	<u>From/To</u>	<u>Review Result</u>	<u>Exemptions Claimed</u>
<p>The Department withheld this document in full under FOIA Exemption 5, 5 U.S.C. § 552(b)(5), pursuant to the deliberative process privilege, because release of these interview notes, which contain a selection and analysis of facts reflecting the judgment of the author, and are pre-decisional and deliberative, could reasonably be expected to chill the open and frank expression of ideas, recommendations, and opinions that occur when Department officials are formulating a strategy for official action on an international security matter. The notes also reflect deliberative comments by the interviewee concerning the security measures or tactics that would be advisable at a diplomatic facility. Recommendations and impressions collected through the ARB interviews are pre-decisional with respect to the ARB's determination of factors contributing to the attacks and recommendations for policy changes to address identified security vulnerabilities as well as the ultimate decisions by Department leadership concerning which recommendations to adopt. Disclosure of this information would impede the ability of responsible Department officials to formulate and carry out executive branch programs by inhibiting candid internal discussion and the expression of recommendations and judgments regarding a preferred course of action.</p> <p>The Department also withheld certain descriptions of the security measures and techniques employed at the facility under FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E) because security measures and procedures, defensive capabilities, and counter-measures that were in place at the Benghazi facility are indicative of the protections currently in place at other current State Department facilities in other locations around the world. If released, this information could be exploited to circumvent security measures at Department facilities.</p> <p>In addition, the Department withheld information revealing the identities of diplomatic security (DS) agents in these documents under FOIA Exemptions 6 and 7(C), 5 U.S.C. §§ 552(b)(6), (b)(7)(C), because the disclosure of this information would be reasonably likely to result in harassment and/or intimidation or other targeting of the individuals revealed due to their involvement in law enforcement or relationship to the controversial attacks. This information would not shed light on the operations of the U.S. Government and its release would constitute an unwarranted invasion of personal privacy.</p>						
C05467904 C05467908 C05467912 C05467919 C05467920	Video		Sept. 11-12, 2012	U.S. Special Mission in Benghazi	DIF	(b)(7)(A), (7)(E), (7)(F)

<u>Doc No.</u>	<u>Doc. Type</u>	<u>Pages</u>	<u>Date/Date Range</u>	<u>From/To</u>	<u>Review Result</u>	<u>Exemptions Claimed</u>
C05467921						
<p>DESCRIPTION: These records are surveillance video recordings containing sets of video feeds recorded at the State Department’s facility in Benghazi, Libya between September 11 and September 12, 2012. They are currently designated SENSITIVE BUT UNCLASSIFIED. The Department withheld these videos in full on its own behalf under FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A), because the premature disclosure of the surveillance video feeds would interfere with the active FBI and DS investigations by identifying suspects, the scope of the investigation, and the evidence collected to date, which would jeopardize the investigations. Disclosure could further interfere with successful investigation and prosecution by revealing the images of potential witnesses to the crimes committed, including foreign nationals, and enabling them to be identified and intimidated prior to offering needed testimony.</p> <p>The Department also withheld these records under FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E) because the videos indicate security measures and procedures, defensive capabilities, and counter-measures, in place at the Benghazi facility, that are indicative of the protections currently in place at other current State Department facilities in other locations around the world. These include, for example, particular technologies or physical features in place, methods for covering an overall facility with camera surveillance, movements and responsive tactics of security personnel, and evacuation methods for such facilities. Analysis of the videos, especially comparing the synchronized camera angles side by side, would reveal the strategies utilized to protect diplomatic compounds, enabling future attempts to circumvent these techniques and procedures.</p> <p>Furthermore, the FBI determined these records to be exempt from disclosure pursuant to FOIA Exemptions 7(A), 7(E), and 7(F), 5 U.S.C. §§ 552(b)(7)(A), (b)(7)(E), and (b)(7)(F). <i>See Hardy Decl.</i> ¶¶ 10-19. The Department, in consultation with the FBI, conducted a thorough review of the documents and determined that there is no meaningful, non-exempt information that may be reasonably segregated and released.</p>						
C05467910 C05467913 C05467914 C05467915 C05467916	Video		Sept. 11-12, 2012	U.S. Special Mission in Benghazi	DIF	(b)(6), (b)(7)(A), (7)(C), (7)(E), (7)(F)

<u>Doc No.</u>	<u>Doc. Type</u>	<u>Pages</u>	<u>Date/Date Range</u>	<u>From/To</u>	<u>Review Result</u>	<u>Exemptions Claimed</u>
<p>DESCRIPTION: These records are surveillance video recordings containing sets of surveillance video feeds recorded at the State Department's facility in Benghazi, Libya between September 11 and September 12, 2012. They are currently designated SENSITIVE BUT UNCLASSIFIED.</p> <p>The Department withheld these videos in full on its own behalf under FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A) because the premature disclosure of the surveillance video feeds would interfere with the active FBI and DS investigations by identifying suspects, the scope of the investigation, and the evidence collected to date, which would jeopardize the investigations. Disclosure could further interfere with successful investigation and prosecution by revealing the images of potential witnesses to the crimes committed, including foreign nationals, and enabling them to be identified and intimidated prior to offering needed testimony.</p> <p>The Department also withheld these records on its own behalf under FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E) because the videos indicate security measures and procedures, defensive capabilities, and counter-measures, in place at the Benghazi facility, that are indicative of the protections currently in place at other current State Department facilities in other locations around the world. These include, for example, particular technologies or physical features in place, methods for covering an overall facility with camera surveillance, movements and responsive tactics of security personnel, and evacuation methods for such facilities. Analysis of the videos, especially comparing the synchronized camera angles side by side, would reveal the strategies utilized to protect diplomatic compounds, enabling future attempts to circumvent these techniques and procedures. The FBI also determined these records to be exempt from disclosure pursuant to FOIA Exemptions 7(A) and 7(E), 5 U.S.C. §§ 552(b)(7)(A) and (b)(7)(E). <i>See Hardy Decl.</i> ¶¶ 10-17.</p> <p>In addition, the Department withheld certain information in these documents under FOIA Exemptions 6, 7(C), and 7(F), 5 U.S.C. §§ 552(b)(6), (b)(7)(C), and (b)(7)(F), because the disclosure of the identities of DS agents, contractors, other employees, and third parties, including foreign nationals, that are contained in the surveillance video feeds are reasonably likely to result in harassment and/or intimidation and physical harm to the individuals pictured due to their involvement in law enforcement or relationship to the controversial attacks. Some of the DS agents or other employees pictured may currently be placed at State Department posts abroad where their identification as U.S. Government law enforcement agents would place them at particular risk. In addition, non-Americans currently living abroad who are identified as having aided the United States during the attacks are especially vulnerable to being targeted and harmed. The FBI also determined these records to be exempt from disclosure pursuant to FOIA Exemption 7(F), 5 U.S.C. § 552(b)(7)(F). <i>See Hardy Decl.</i> ¶¶ 18-19.</p>						

<u>Doc No.</u>	<u>Doc. Type</u>	<u>Pages</u>	<u>Date/Date Range</u>	<u>From/To</u>	<u>Review Result</u>	<u>Exemptions Claimed</u>
<p>The Department, in consultation with the FBI, conducted a thorough review of the documents and determined that there is no meaningful, non-exempt information that may be reasonably segregated and released.</p>						
C05467917	Video		Sept. 11-12, 2012	U.S. Special Mission in Benghazi	DIF	(b)(1) 1.4(c), (d), (b)(3) National Security Act 50 U.S.C. § 3024(i)(1), Central Intelligence Agency Act 50 U.S.C. §3507, (b)(6), (b)(7)(A), (7)(C), (7)(E), (7)(F)
<p>DESCRIPTION: This record is a surveillance video recording containing sets of video feeds recorded at the State Department's facility in Benghazi, Libya between September 11 and September 12, 2012. It was originally designated SENSITIVE BUT UNCLASSIFIED and has subsequently been classified at the SECRET level by the CIA in accordance with Section 1.7(d) of E.O. 13526.</p> <p>The Department withheld these videos in full on its own behalf under FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A), because the premature disclosure of the surveillance video feeds would interfere with the active FBI and DS investigations by identifying suspects, the scope of the investigation, and the evidence collected to date, which would jeopardize the investigations. Disclosure could further interfere with successful investigation and prosecution by revealing the images of potential witnesses to the crimes committed, including foreign nationals, and enabling them to be identified and intimidated prior to offering needed testimony.</p>						

<u>Doc No.</u>	<u>Doc. Type</u>	<u>Pages</u>	<u>Date/Date Range</u>	<u>From/To</u>	<u>Review Result</u>	<u>Exemptions Claimed</u>
						<p>The Department also withheld these records on its own behalf under FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E) because the videos indicate security measures and procedures, defensive capabilities, and counter-measures, in place at the Benghazi facility, that are indicative of the protections currently in place at other current State Department facilities in other locations around the world. These include, for example, particular technologies or physical features in place, methods for covering an overall facility with camera surveillance, movements and responsive tactics of security personnel, and evacuation methods for such facilities. Analysis of the videos, especially comparing the synchronized camera angles side by side, would reveal the strategies utilized to protect diplomatic compounds, enabling future attempts to circumvent these techniques and procedures. The FBI also determined these records to be exempt from disclosure pursuant to FOIA Exemptions 7(A), and 7(E), 5 U.S.C. §§ 552(b)(7)(A) and (b)(7)(E). <i>See Hardy Decl.</i> ¶¶ 10-17.</p> <p>In addition, the Department withheld certain information in these videos under FOIA Exemptions 6, 7(C), and 7(F), 5 U.S.C. §§ 552(b)(6), (b)(7)(C), and (b)(7)(F) because the disclosure of the identities of DS agents, contractors, other employees, and third parties, including foreign nationals, that are contained in the surveillance video feeds are reasonably likely to result in harassment and/or intimidation and physical harm to the individuals pictured due to their involvement in law enforcement or relationship to the controversial attacks. Some of the DS agents or other employees pictured may currently be placed at State Department posts abroad where their identification as U.S. Government law enforcement agents would place them at particular risk. In addition, non-Americans currently living abroad who are identified as having aided the United States during the attacks are especially vulnerable to being targeted and harmed. The FBI also determined these records to be exempt from disclosure pursuant to FOIA Exemption 7(F), 5 U.S.C. § 552(b)(7)(F). <i>See Hardy Decl.</i> ¶¶ 18-19.</p> <p>Finally, the Department also withheld certain information in these surveillance video record on behalf of CIA under FOIA Exemptions 1 and 3. The CIA requested withholding of this set of recordings under 5 U.S.C. § 552(b)(1), pursuant to E.O. 13526 sections 1.4(c), intelligence sources or methods, and (d), foreign relations or foreign activities of the United States, including confidential sources. Release of this material could compromise intelligence sources and methods by revealing the identities of CIA personnel who responded to the attacks, how they did or did not move or travel, the methods that they used in their response, and the nature and extent of their capabilities. Revealing this information would provide adversaries valuable insights into the CIA's past overt and clandestine relationships with personnel, physical security and force protection measures, and security strategies, all of which could be exploited to reduce the effectiveness of the CIA's ongoing intelligence operations.</p>

<u>Doc No.</u>	<u>Doc. Type</u>	<u>Pages</u>	<u>Date/Date Range</u>	<u>From/To</u>	<u>Review Result</u>	<u>Exemptions Claimed</u>
<p>This information was also withheld under 5 U.S.C. § 552(b)(3) at the request of the CIA, pursuant to National Security Act, 50 U.S.C. § 3024(i)(1), because it contains information about intelligence sources and methods, and the Central Intelligence Agency Act, 50 U.S.C. § 3507, because it contains information disclosing the identities of CIA employees and their duties or functions, including functions related to the protection of intelligence methods. The Department, in consultation with the FBI and the CIA, conducted a thorough review of the documents and determined that there is no meaningful, non-exempt information that may be reasonably segregated and released.</p>						

Exhibit 2

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Washington, DC 20006
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Also Admitted in Virginia
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FAX: (202) 332-3030
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February 21, 2014

By Certified Mail — Return receipt Requested
Article Number 7010 3090 0000 0316 6505

FOIA REQUEST

Office of Information Programs and Services
A/GIS/IPS/RL
US DEPARTMENT OF STATE, SA-2
Washington, DC 20522-8100

Dear Ladies and Gentlemen:

This is a request for production of records under the Freedom of Information Act, 5 USC § 552, the "FOIA."

FOIA Requesters. I write on behalf of my clients, Accuracy in Media, Inc., a District of Columbia 501(c)(3) non-profit corporation, as well as the following seven individuals, all of whom serve as members of the "Citizens' Commission on Benghazi," an unincorporated, informal association of individuals, all working with Accuracy in Media. They are (1) Roger Aronoff, (2) Larry Bailey, (3) Kenneth Benway, (4) Dick Brauer, (4) Clare Lopez, (5) James A. Lyons, Jr., (5) Kevin Shipp, and (7) Wayne Simmons.

FOIA Requests. These requests are for the following records of activities in Libya, in the care, custody or control of the State Department, regardless of the source of the records:

1. All records of whatsoever nature regarding (1) the Benghazi consulate and (2) its CIA Annex, for the time period of January 1st, 2011, through September 30th, 2012. This request is all-inclusive for all records, however recorded, including emails, reports, memoranda, correspondence, teletypes, telephone calls, text messages, and audio and video recordings, regarding all uses of the Benghazi consulate and CIA Annex. Responsive records include those that disclose:

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 2

FEB 27 2014

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DS

- (1) The comings and goings of all persons, whether civilian, military, American or foreign, including any non-US personnel questioned, interrogated, detained, or transported through, the CIA Annex and Benghazi consulate;
 - (2) The descriptions and inventories of all weapons brought into the Annex;
 - (3) The sources of all such weapons;
 - (4) The descriptions and inventories of all weapons removed from the Annex,
 - (5) The intended destinations and recipients of all such weaponry, including
 - (i) All transfers of arms and equipment to Libyan resistance fighters, both before or after the United Nations recognized the National Transitional Council as the legal representative of Libya;
 - (ii) Transportation of arms and equipment from Libya into Turkey; and
 - (iii) US Government supply of weapons into Syria.
 - (6) All communication and cryptographic equipment at the CIA Annex and Benghazi consulate;
 - (7) The weaponry, communication, and cryptographic equipment, that may have been left in the Annex and Benghazi consulate when US personnel abandoned these facilities on September 11th and 12th, 2012;
 - (8) Information about the weapons recovered from fallen attackers at the Ambassador's compound as well as the CIA Annex during and after the attacks;
 - (9) Information about the identities and affiliations of any of those fallen fighters as well as the disposition of their bodies, alive or dead; and
 - (10) CIA situation reports, or "sitreps," sent, including on September 11th, 12th, and 13th.
2. Any and all videos depicting the United States Consulate in Benghazi, Libya (including the Special Mission Compound and the Annex) between September 10, 2012 and September 12, 2012. This request includes, but is not limited to (1) all videos and photographs obtained, transmitted, or recorded via any unmanned aerial vehicles (UAVs), and (2) video of closed-circuit television monitor at the Benghazi Mission facility's Tactical Operations Center on September 11th and 12th, 2013.

3. All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the survivors' accounts of the attack. N/A
4. All records of radio communications emanating from the Compound's Tactical Operations Center (TOC), on September 11th and 12th, 2012, whether made by Regional Security Officer (RSO) Alec Henderson or any other person. VS
5. All records of Secretary Panetta's actions and communications for the 24-hour period beginning when first notified that the Benghazi Consulate was under attack. Responsive records include: N/A
- (1) All records generated by Secretary Panetta, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
 - (3) All records generated by anyone about the Secretary's actions and communications
6. All records of Secretary Clinton's actions and communications for the 24-hour period beginning when first notified that the Benghazi Consulate was under attack. Responsive records include: N/A S/S
- (1) All records generated by Secretary Clinton, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of her telephone calls placed or received; and
 - (3) All records generated by anyone about the Secretary's actions and communications.
7. Any records reflecting the time, and substance, of the President's first notification that the Benghazi Consulate was under attack, and his actions, and communications, for the next 24 hours. N/A
8. All calendars, day books, journals, notes, memoranda, or other records reflecting Ambassador Stevens' schedule on September 11, 2012, including the Ambassador's diary, and all correspondence to or from the Ambassador regarding his meetings that day, including with the Turkish Consul General. N/A
9. All records of the purpose of Ambassador Stevens' meetings on September 11, 2012, including analysis or assessments of those meetings, whether written before or after September 11, 2012. N/A

NEA 10. All correspondence to or from Ambassador Stevens on September 10th and 11th, 2012.

- NEA 11. All notes, memoranda, and correspondence generated between January of 2007 and September 11, 2012, regarding meetings between Christopher Stevens or any other Tripoli Embassy official, and one or more of the following individuals:
- **Ahmed Abu Khattala**, a commander of the Libyan Ansar al-Shariah militia group
 - **Mustafa Abdul Jalil**, Chairman of the Libyan National Transitional Council from 5 March 2011-8 August 2012
 - **Mahmoud Jibril**, Interim Prime Minister of Libya and Chair of the Executive Board of the National Transitional Council from 5 March-23 October 2011
 - **Wissam bin Hamid**, a Libya Shield Brigade commander, supporter of the Libyan Muslim Brotherhood Justice & Construction Party, and veteran jihad fighter of Iraq & Afghanistan, who provided security for US representatives in Benghazi and was tentatively identified by the Library of Congress as the head of al-Qa'eda in Libya
 - **Abdelhakim Belhadj** (aka Abdallah al Sadeq), veteran jihad fighter of Iraq & Afghanistan, commander of the AQ franchise militia, Libyan Islamic Fighting Group (LIFG) (aka Libyan Islamic Movement for Change), post-revolution military commander of Tripoli, and Libyan delegation leader to the Syrian Free Army in late 2011
 - **Ismael al-Sallabi** (brother of Ali), commander of the Al-Qa'eda-linked al-Sahati Brigade during the revolution, and Benghazi Military Council commander afterwards, close ally of Abdelhakim Belhadj and Mustafa Jalil
 - **Ali al-Sallabi** (brother of Ismael), called the 'spiritual leader' of the Libyan revolution, Muslim Brotherhood links, led effort with Seif al-Qaddafi and US Embassy Tripoli to gain release of jihadi detainees from Libyan jails
 - **Mohammad al-Sallabi**, father of Ali and Ismael, among the founders of the Libyan Muslim Brotherhood in the 1960s
 - **Abu Sufian bin Qumu**, veteran jihad fighter in Afghanistan from Derna, Libya, captured in 2001, detained at GITMO, sent back to Libyan jail, released in 2010, led jihad vs Qaddafi in 2011, and led Benghazi Mission attack in Sep 2012.

- H
12. 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.
- INR
13. For the period of February 15th, 2011, through December 31st, 2012, all DOD and CIA or other intelligence community records of Congressional approval for CIA transport of arms to Syrian rebel forces.
- NCA
14. All records regarding Deputy National Security Adviser for Homeland Security and Counter-terrorism John Brennan's recommendations regarding the overthrow of Libyan leader Muammar Gaddafi.
- PA
15. Records of the names, and titles, of individuals indentified only as "Senior State Department Official Number One" and "Senior State Department Official Number Two" during the October 9, 2012, Background Briefing on Libya, given by the Office of the Spokesperson, the transcript of which was publicly disclosed, titled, "Background Conference Call With Senior State Department Officials."

Electronic Format. Kindly produce these records in electronic format. *See* e-FOIA amendment 5 U.S.C. § 552 (a)(3)(B), as amended, requiring Agency to "provide the record in any form or format requested . . . if the record is readily reproducible by the agency in that form or format." *See generally* FOIA Update Vol. XVII, No. 4, 1996.

Request for Waiver of Search and Review Fees. As a representatives of the news media, Accuracy in Media, Inc. ("AIM"), submits that it is entitled to a waiver of any fees associated with the search and review of records responsive to these FOIA Requests, under 5 U.S.C. § 552 (a)(4)(A)(ii)(II). AIM is organized and operated to publish or broadcast news to the public.

Kindly consider the six factors identified in 22 CFR 171.11(o), which, collectively, establish AIM's entitlement to "Representative of the News Media" status. First, the subject matter of the FOIA requests concern the operations or activities of the Department of State. Second, the requested information is not in the public domain.

Third, upon disclosure of the records sought, AIM has concrete plans to make the information public. Its ability and intent to disseminate the information requested, is beyond question. Accuracy in Media Articles on the subject include "The MSM and Benghazi: Will Their Coverage Harm Obama Administration?," "Shameful Media Coverage of Benghazi Scandal and Cover-up," "Media Embrace Obama's Controversial Picks for National Security Team," "New York Times Attempts to Blur Benghazi Scandal," "McClatchy Reporter Changes Tune on Benghazi," "CBS in Damage Control Over Error-Filled Benghazi Report," "'60 Minutes' Reveals Little New in Benghazi Exposé," "The Left's Continued Assault on the Truth About Benghazi," "Media Coverage of Benghazi Leans Toward Political Theater," "Conservative Leaders Call on Speaker Boehner: Form a Select Committee on Benghazi," "Further Proof That Obama Knew the Truth About Benghazi," "Blaming the Victim in Benghaziigate," "Obama and His Media Loyalists Still Spinning Benghazi," and Does Navy Map Alter the Benghazi Narrative?"

Fourth, several of the individual requesters have published articles about the matter, demonstrating, *inter alia*, the background, experience, and expertise of the FOIA requesters in the subject area of the requests. See, for examples, "Navy SEAL: 'There's guilt in this administration,'" by Captain Larry Bailey, published in WND.com in April of 2013; two articles by Clare Lopez appearing in Pundicity.com in October of 2012, "Benghazi: The Set-Up and the Cover-Up," and "Did Turkey Play a Role in Benghazi Attack?;" and Admiral James Lyons' pieces appearing in the Washington Times, "Obama's Chain of Command Unravels Over Benghazi (October 2012), "Obama needs to come clean on what happened in Benghazi" (October 2012), "The Key Benghazi Questions Still Unanswered" (January 2013), "A hard slog to get Benghazi answers" (January 2013), and "A call to Courage over Benghazi" (May 2013).

Fifth, AIM, as well as the individual FOIA requesters, intend to use the requested information in scholarly or other analytic work, for dissemination. Lastly, neither AIM nor the individuals identified above have any "commercial interest" that would be furthered by the disclosure of the requested information, as that term has been interpreted by the courts under 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

Public Interest Fee Waiver. 5 U.S.C. § 552(a)(4)(A)(iii) provides that "[d]ocuments shall be furnished without any charge or at a charge reduced... if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." Here, the FOIA requesters do not have a commercial interest in the disclosure. Their purpose is to inform the public. The subject of the requested records concerns the operations or activities of the United States Government. The information sought is directed at finding out what information the government has about its failure to timely respond when its facilities came under attack. These FOIA Requests also concern what information the government did not provide to the public, as well as congressional investigators.

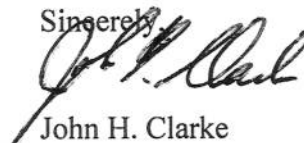
Upon disclosure of the records sought, AIM, as well as other several of the individual requesters, has concrete plans to make the information public, in accordance with AIM's news dissemination function. The information sought would be likely to contribute to an understanding of United States Government operations or activities, and disclosure will enhance public understanding of the Benghazi incident as compared with awareness prior to the disclosure. The interest of enhancing the public's understanding of the operations or activities of the U.S. Government is clear, and the records' connection to these government activities is direct.

Release of the information will contribute to an understanding of government operations or activities regarding the Benghazi issue, as compared with awareness prior to the disclosure. Thus, the requesters provide an adequate showing of their concrete plans to disseminate the requested information, and adequately demonstrate how disclosure of the requested documents meets the requirements for a public interest fee waiver.

Expeditious Handling. Because the information is urgently needed by an entity primarily engaged in publicizing information, in order to inform the public concerning actual or alleged government activity, the Requesters seek expeditious handling, in accordance with 22 CFR 171.12(b).

Reply to Accuracy in Media. If you have any questions about handling this request, please ask via email, to JohnHClarke@earthlink.net. Otherwise, kindly respond, and produce records, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

Sincerely,



John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

Exhibit 3



United States Department of State

Washington, D.C. 20520

MAR 21 2014

Dear Requester,

RE: Benghazi records 11/11 - 9/30/12

This is in response to your request dated 2/21/14. We have assigned Case Control Number F-2014-03625 and will begin the processing of your request based upon the information provided in your communication.

The cut-off date is the date the search is initiated unless you have provided a specific timeframe.

We have considered your request for a fee waiver. Based upon the information provided in your letter, your request for a fee waiver has been granted; therefore, your request will be processed at no charge to you.

Unusual circumstances (including the number and location of Department components involved in responding to your request, the volume of requested records, etc.) may arise that would require additional time to process your request.

Our published regulations regarding expedition, 22 C.F.R. § 171.12(b), require a specific showing of a compelling need. **Expedited processing is granted only in the following situations:** (1) *imminent threat to the life or physical safety of an individual;* (2) *urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity and the information is urgently needed in that a particular value of the information would be lost if not disseminated quickly;* (3) *substantial humanitarian reasons;* and (4) *loss of substantial due process rights.* Your request does not meet any of the established criteria. Regrettably, I must advise that you have not provided adequate justification for expedition. However, you may be assured that we will make every effort to process your request in as timely a manner as possible. For your convenience, I have enclosed a copy of the Department's expedited processing criteria.

If you wish to appeal the denial of expedition, you may write to the Requester Liaison Division, at the address below, within 30 days of receipt of this letter.

We will notify you as soon as responsive material has been retrieved and reviewed.

Should you want to contact us, you may call our FOIA Requester Service Center on (202) 261-8484 or send an email to FOIAstatus@state.gov. Please refer to the Case Control Number in any communication.

Sincerely,

Requester Communications Branch
Office of Information Programs & Services

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 3

Expeditious Processing Information Sheet

Expedited processing shall be granted to a requester after the requester requests such and demonstrates a compelling need for the information. A compelling need is deemed to exist where the requester can demonstrate one of the following:

1. **A Compelling Need** means that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.
2. **A Compelling Need** means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. An individual primarily engaged in disseminating information to the public. Representatives of the news media would normally qualify; however, other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public, not just to a particular segment or group.
 - (a) **Urgently Needed** means 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.
 - (b) **Actual or Alleged Federal Government Activity.** The 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.
3. **Substantial Due Process** rights of the requester would be impaired by the failure to process immediately; or
4. **Substantial Humanitarian** concerns would be harmed by the failure to process immediately.

A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of their knowledge.

Exhibit 4

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 332-3030
JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

May 5, 2014

By email: PerlowHT@state.gov

Mr. Howard Perlow
US DEPARTMENT OF STATE

Re: FOIA Request to the Department of State: F-2014-03625

Dear Mr. Perlow:

Thank you for your April 25 email regarding the captioned FOIA request. I look forward to reviewing the new State Department website where relevant unclassified, declassified, and fully or partially released documents will be posted.

I appreciate your suggestion that I narrow the request, and for including examples of where State is not the correct agency from which to seek documents. To answer to your question, yes, I have sought disclosure from other U.S. government agencies where many of the particular records originated.

I understand that records in State's custody that originated from the CIA may need to be referred to the CIA, and that State may need to coordinate with CIA where State records contain CIA information. But I will not be narrowing the request to exclude these records because we seek records that disclose the relationship between the Benghazi compound and the CIA annex, particularly records that show State's knowledge of these CIA activities.

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 4

I do, however, eliminate some records sought in the first item of the request. Request number one as currently written begins:

All records of whatsoever nature regarding (1) the Benghazi consulate and (2) its CIA Annex, for the time period of January 1st, 2011, through September 30th, 2012. This request is all-inclusive for all records, however recorded, including emails, reports, memoranda, correspondence, teletypes, telephone calls, text messages, and audio and video recordings, regarding all uses of the Benghazi consulate and CIA Annex. Responsive records include those that disclose...

Please note that we hereby narrow this item to exclude any records "regarding (1) the Benghazi consulate," leaving only records in State's custody regarding (2), the CIA annex. Thus, full disclosure under this item will still reveal the relationship between State and CIA activities at the annex, but will eliminate the necessity to produce numerous other records. Kindly forward this letter as necessary.

All other items remain requested as submitted. If you have any questions, please ask via email. As we noted in the FOIA request letters, we ask that State please produce records in electronic format, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

Sincerely,

/s/

John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

Exhibit 5

Law Office

John H. Clarke

1629 K Street, NW
Suite 300
Washington, DC 20006

(202) 332-3030

JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

August 5, 2014

Office of Information Programs and Services
A/GIS/IPS/RL
US DEPARTMENT OF STATE, SA-2
Washington, DC 20522-8100

And by email to Mr. Howard Perlow
PerlowHT@state.gov

Re: February 21, 2014 FOIA Request
State Department Case Control No. F-2014-03625

Dear Mr. Perlow:

This letter narrows the captioned request, by withdrawing eight of the requesters' initial 15 FOIA Requests. By May 5, 2014, letter, the requesters narrowed Request No. 1.


Please note that we further narrow the requests, and withdraw Request Nos. 1(10), 5, 7, 8, 10, 12, 13, and 14. Request 1(10) sought CIA situation reports. Request 5 sought "records of Secretary Panetta's actions and communications..." Request 7 asked for disclosure of records of "the President's first notification that the Benghazi Consulate was under attack..." Request 8 sought disclosure of records reflecting Ambassador Stevens' schedule on September 11, 2012. Request 10 sought disclosure Ambassador Stevens correspondence on September 10th and 11th, 2012. Request 12 sought "DOD and CIA... records shared with members of Congress regarding... collection, storage, transportation of arms and equipment in Libya." Request 13 asked that "DOD and CIA... records of Congressional approval for CIA transport of arms to Syrian rebel forces" be disclosed. Request 14 sought "records regarding Deputy National Security Adviser for Homeland Security and Counter-terrorism John Brennan's recommendations regarding the overthrow of Libyan leader Muammar Gaddafi."

'14 AUG 12 PM2:44

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 5

Thank you.

Sincerely



John H Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

Exhibit 6



United States Department of State

Washington, D.C. 20520

MAR 16 2015

Case No.: F-2014-03625

Segment: EAN-0005

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke:

In response to your request dated February 21, 2014, under the Freedom of Information Act (Title 5 USC Section 552), and your subsequent narrowing of the request in correspondence dated May 5, 2014, and August 5, 2014, we conducted searches of the following Department of State record systems: the Central Foreign Policy Records (the principal record system of the Department of State), the files of the Bureau of Near Eastern Affairs, the files of the Bureau of Diplomatic Security, the files of the Bureau of Intelligence and Research, the files of the Bureau of Public Affairs, the files of the Bureau of Political-Military Affairs, the files of the Office of Logistics Management, and the files of the Office of the Executive Secretariat.

The search of the records of the Central Foreign Policy Records is partially complete and has resulted in the retrieval of 45 documents responsive to your request. After reviewing these 45 documents we have determined that 7 may be released in part, 4 must be withheld in full, and that 34 documents either originated in, or require consultation with, other U.S. Government agencies. We have referred the latter 34 documents to the relevant agencies with a request to respond upon making a determination as to releasability. All released material is enclosed.

Where documents are released to you in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. Of the information withheld, all was withheld under FOIA Exemption 1,

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 6

- 2 -

5 U.S.C. § 552(b)(1). An enclosure provides information on FOIA exemptions and other grounds for withholding material.

We will keep you advised as your case progresses. If you have any questions, please contact Trial Attorney Megan Crowley at (202) 305-0754 or at Megan.A.Crowley@usdoj.gov.

Sincerely,

Susan A. Weism For

John F. Hackett, Acting Director
Office of Information Programs and Services

Enclosures: As stated

Exhibit 7



United States Department of State

Washington, D.C. 20520

MAY 11 2015

Case No.: F-2014-03625

Segment: EAN-0001, EAN-0003, EAN-0004,
& EAN-0005

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke:

I refer you to our letter dated March 10, 2015, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. §552.

The search of the Central Foreign Policy Records is partially complete and has resulted in the retrieval of eight documents responsive to your request. After reviewing these eight documents we have determined that five may be released in full and that three documents may be released in part. All released material is enclosed.

Where documents are released to you in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. An enclosure provides information on FOIA exemptions and other grounds for withholding material.

We will keep you advised as your case progresses. If you have any questions, please contact Trial Attorney Megan Crowley at (202) 305-0754 or at Megan.A.Crowley@usdoj.gov.

Sincerely,

A handwritten signature in black ink that reads "John F. Hackett" with a stylized flourish at the end.

John F. Hackett, Acting Director
Office of Information Programs and Services

Enclosures: As stated

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 7

Exhibit 8



United States Department of State

Washington, D.C. 20520

JUL - 6 2015

Case No.: F-2014-03625

Segment: EAN-0006 & EAN-0008

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke:

I refer you to our letter dated May 11, 2015, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. §552.

The search of the records of the Central Foreign Policy Records is partially complete and has resulted in the retrieval of 14 documents responsive to your request. After reviewing these 14 documents we have determined that 7 may be released in full, 1 may be released in part, and that 6 documents either originated in, or require consultation with, other U.S. Government agencies. We have referred the latter six documents to the relevant agencies with a request to respond upon making a determination as to releasability. All released material is enclosed.

Where documents are released to you in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. An enclosure provides information on FOIA exemptions and other grounds for withholding material.

We will keep you advised as your case progresses. If you have any questions, please contact Trial Attorney Megan Crowley at (202) 305-0754 or at Megan.A.Crowley@usdoj.gov.

Sincerely,

A handwritten signature in black ink that reads "John F. Hackett" with a stylized flourish at the end.

John F. Hackett, Director
Office of Information Programs and Services

Enclosures: As stated

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 8

Exhibit 9



United States Department of State

Washington, D.C. 20520

AUG 31 2015

Case No.: F-2014-03625

Segment: EAN-0006 & EAN-0007

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke:

I refer you to our letter dated July 6, 2015, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. §552.

The search of the records of the Central Foreign Policy Records is partially complete and has resulted in the retrieval of 10 documents responsive to your request. After reviewing these 10 documents we have determined that 3 may be released in full and that 7 may be released in part. All released material is enclosed.

Where documents are released to you in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. An enclosure provides information on FOIA exemptions and other grounds for withholding material.

We will keep you advised as your case progresses. If you have any questions, please contact Trial Attorney Megan Crowley at (202) 305-0754 or at Megan.A.Crowley@usdoj.gov.

Sincerely,

A handwritten signature in cursive script that reads "Karen M. Lunnegar for".

John F. Hackett, Director
Office of Information Programs and Services

Enclosures: As stated

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 9

Exhibit 10



United States Department of State

Washington, D.C. 20520

OCT 26 2015

Case No.: F-2014-03625

Segment: EAN-0009, EAN-0010, EAN-0011,
& NEA-0001

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke:

I refer you to our letter dated August 31, 2015, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. §552.

The search of the records of the Central Foreign Policy Records and the Bureau of Near Eastern Affairs is partially complete and has resulted in the retrieval of 86 documents responsive to your request. After reviewing these 86 documents we have determined that 12 may be released in full, 3 may be released in part, 2 must be withheld in full, and that 69 documents either originated in, or require consultation with, other U.S. Government agencies. We have referred the latter 69 documents to the relevant agencies with a request to respond to you directly or to advise the Department of State of any impediments to release. All released material is enclosed.

Where documents are released to you in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. An enclosure provides information on FOIA exemptions and other grounds for withholding material.

We will keep you advised as your case progresses. If you have any questions, please contact Trial Attorney Megan Crowley at (202) 305-0754 or at Megan.A.Crowley@usdoj.gov.

Sincerely,

A handwritten signature in cursive script that reads "Julia Navarro for".

John F. Hackett, Director
Office of Information Programs and Services

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 10

- 2 -

Enclosures: As stated

Exhibit 11



United States Department of State
Washington, D.C. 20520

DEC - 4 2015

Case No.: F-2014-03625
Segment: EAN-0012, NEA-0002,
& A/LM/AQM-0001

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke:

I refer you to our letter dated October 26, 2015, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552.

The search of the Central Foreign Policy Records, the files of the Bureau of Near Eastern Affairs, and the files of the Office of Logistics Management is partially complete and has resulted in the retrieval of six documents responsive to your request. After reviewing these six documents we have determined that three may be released in full and three may be released in part. All released material is enclosed.

Where documents are released to you in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. An enclosure provides information on FOIA exemptions and other grounds for withholding material.

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 11

- 2 -

We will keep you advised as your case progresses. If you have any questions, please contact Trial Attorney Megan Crowley at (202) 305-0754 or at Megan.A.Crowley@usdoj.gov.

Sincerely,

A handwritten signature in black ink that reads "Susan A. Weidner" followed by a stylized flourish.

John F. Hackett, Director
Office of Information Programs and Services

Enclosures: As stated

Exhibit 12



United States Department of State

Washington, D.C. 20520

DEC 21 2015

Case No.: F-2014-03625

Segment: EAN-0003, EAN-0004,
EAN-0006, EAN-0011, EAN-
0012, NEA-0001, NEA-0002, &
S/ES-0001

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke:

I refer you to our letter dated December 4, 2015, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552.

The search of the Central Foreign Policy Records, the files of the Bureau of Near Eastern Affairs, and the files of the Office of the Executive Secretariat is partially complete and has resulted in the retrieval of 25 documents responsive to your request.¹ After reviewing these 25 documents we have determined that 1 may be released in full, 10 may be released in part, 5 must be withheld in full, and that 9 documents either originated in, or require consultation with, other U.S. Government agencies. We have referred the latter nine documents to the relevant agencies with a request to respond upon making a determination as to releasability. All released material is enclosed.

¹ As noted in the Department's December 21, 2015 Unopposed Motion for Extension of Final Production Deadline, State has very recently located a source of potentially-responsive documents that has not previously been searched. State will file a status report on January 22, 2016, in which it will provide the Court with an update on the status of the search and production of any responsive, non-exempt documents from this new source.

- 2 -

Where documents are released to you in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. Of the information withheld in full, all was withheld under FOIA Exemptions 1 and 5, 5 U.S.C. § 552(b)(1) and § 552(b)(5) . An enclosure provides information on FOIA exemptions and other grounds for withholding material.

We will keep you advised as your case progresses. If you have any questions, please contact Trial Attorney Megan Crowley at (202) 305-0754 or at Megan.A.Crowley@usdoj.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "John F. Hackett for".

John F. Hackett, Director
Office of Information Programs and Services

Enclosures: As stated

Exhibit 13



United States Department of State

Washington, D.C. 20520

MAR 2 2015

Case No.: F-2014-03625

Segment: S/ES-0002, S/ES-0003, &
S/ES-0004

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke:

I refer you to our letter dated December 21, 2015, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552.

The search of the files of the Office of the Executive Secretariat has been completed and thus far resulted in the retrieval of seven documents responsive to your request. After reviewing these seven documents we have determined that one may be released in part and that six must be withheld in full. All released material is enclosed.

Where we have made excisions, the applicable exemptions are marked on each document. Where the information was withheld in full, all was withheld under FOIA Exemption 5, 5 U.S.C. § 552(b)(5). An enclosure provides information on the FOIA exemptions and other grounds for withholding material.

We will keep you advised as your case progresses. If you have any questions, please contact Trial Attorney Megan Crowley at (202) 305-0754 or at Megan.A.Crowley@usdoj.gov.

Sincerely,

A handwritten signature in cursive script that reads "Eric F. Stein" followed by the initials "EFS".

Eric F. Stein, Acting Co-Director
Office of Information Programs and Services

Enclosures: As stated

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 13

Exhibit 14



United States Department of State

Washington, D.C. 20520

May 5, 2016

Case No.: F-2014-03625

Segment: S/ES-0007

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke:

I refer you to our letter dated March 21, 2016, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. §552.

Eleven additional documents responsive to your request have been retrieved. After reviewing these 11 documents we have determined that 2 may be released in full, 5 may be released in part, 2 must be withheld in full, and 2 documents originated in other U.S. Government agencies. We have referred the latter two documents to the relevant agencies with a request to respond to you directly. All released material is enclosed.

Where documents are released to you in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. Where the information was withheld in full, all was withheld under FOIA Exemptions 1, 2, 3, 5, 6, and 7, 5 U.S.C. §§ 552(b)(1), (b)(2), (b)(3), (b)(5), (b)(6), and (b)(7). An enclosure provides information on the FOIA exemptions and other grounds for withholding material.

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 14

- 2 -

We will keep you advised as your case progresses. If you have any questions, please contact Trial Attorney Megan Crowley at (202) 305-0754 or at Megan.A.Crowley@usdoj.gov.

Sincerely,

Susan A. Weidner for

Eric F. Stein, Acting Co-Director
Office of Information Programs and Services

Enclosures: As stated

Exhibit 15



United States Department of State

Washington, D.C. 20520

July 8, 2016

Case No.: F-2014-03625

Segment: M/PRI-0001-M/PRI-0005

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke,

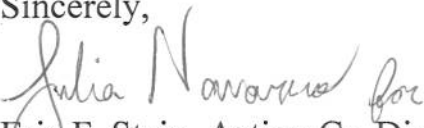
I refer you to our letter dated May 5, 2016, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552.

The search of the files of the Office of Management Policy, Rightsizing, and Innovation is complete and has resulted in the retrieval of 31 records responsive to your request. After reviewing these 31 records, we have determined that 2 may be released in full, 1 may be released in part, 21 must be withheld in full, and 7 originated in another U.S. Government agency. We have referred the latter seven documents to the relevant agency with a request to respond to you directly. All released material is enclosed.

Where documents are released to you in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. Of the information withheld in full, all was withheld under FOIA Exemptions 1, 3, 5, 6, and 7, 5 U.S.C. §§ 552(b)(1), (b)(3), (b)(5), (b)(6), and (b)(7). An enclosure provides information on FOIA exemptions and other grounds for withholding material.

The Department has now completed its processing of your request. If you have any questions, your attorney may contact Trial Attorney Megan Crowley at (202) 305-0754 or at Megan.A.Crowley@usdoj.gov.

Sincerely,


Eric F. Stein, Acting Co-Director
Office of Information Programs and Services

Enclosures: As stated

Exhibit 16



United States Department of State

Washington, D.C. 20520

October 20, 2017

Case No.: F-2014-03625

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke,

I refer you to our letter dated September 1, 2017, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552.

The Department has identified 60 additional documents responsive to your request, of which 31 have been released in part and 29 have been released in full. The vast majority of these documents have been previously released to the public under FOIA pursuant to other recent FOIA litigation cases, and most are available in the Department's online reading room of FOIA documents at <https://foia.state.gov/search>. However, for your convenience, we are enclosing all of the additional responsive documents here.

Where documents are released in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. An enclosure provides information on FOIA exemptions and other grounds for withholding material.

If you have any questions, your attorney may contact Trial Attorney Tamra Moore at (202) 305-8628 or at Tamra.Moore@usdoj.gov.

Sincerely,

A handwritten signature in black ink that reads "Susan P. Weikmar" followed by "Eric" in a smaller, less legible script.

Eric F. Stein, Director
Office of Information Programs and Services

Enclosures: As stated

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 16

Exhibit 17



United States Department of State

Washington, D.C. 20520

May 7, 2018

Case No.: F-2014-03625

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke,

I refer you to our letter dated October 20, 2017, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552.

The Department has identified two additional documents responsive to your request, both of which may be released in full. In addition, upon further review, the Department has decided to make a discretionary release of information previously withheld in two documents. All released material is enclosed.

Where documents are released in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. An enclosure provides information on FOIA exemptions and other grounds for withholding material.

If you have any questions, you may contact Trial Attorney Tamra Moore at (202) 305-8628 or at Tamra.Moore@usdoj.gov.

Sincerely,

A handwritten signature in cursive script that reads "Eric F. Stein for".

Eric F. Stein, Director
Office of Information Programs and Services

Enclosures: As stated

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 17

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ACCURACY IN MEDIA, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.	)	Case No.: 14-cv-1589 (EGS)
)	
DEPARTMENT OF DEFENSE, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**DECLARATION OF DAVID M. HARDY - DEPARTMENT OF
STATE CONSULTATION**

I, David M. Hardy, declare as follows:

(1) I am the Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), in Winchester, Virginia. I have held this position since August 1, 2002. Prior to my joining the Federal Bureau of Investigation (“FBI”), from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act (“FOIA”) policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 243 employees who staff a total of twelve (12) Federal Bureau of Investigation Headquarters (“FBIHQ”) units and two (2) field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to FBI records and

information pursuant to the FOIA as amended by the OPEN Government Act of 2007, the OPEN FOIA Act of 2009, the FOIA Improvement Act of 2016; the Privacy Act of 1974; Executive Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information pursuant to the provisions of the FOIA, 5 U.S.C. § 552 and the Privacy Act (“PA”) of 1974, 5 U.S.C. § 552a, including the procedures followed by the FBI for consultations with other agencies regarding FOIA requests.

Specifically, I am aware that in response to a FOIA request from Plaintiffs in connection with the September 11, 2012 attacks on U.S. government personnel and facilities in Benghazi, Libya, the U.S. Department of State (“DOS”) consulted with the FBI in making release determinations because of potential FBI equities in the information due to an ongoing FBI investigations related to those events.

(4) The FBI submits this declaration in support of Defendants’ Motion for Summary Judgment. This declaration provides justification for DOS’s withholding of information on behalf of the FBI pursuant to FOIA Exemptions 7(A), 7(E) and 7(F), 5 U.S.C. §§ 552, (b)(7)(A), (b)(7)(E) and (b)(7)(F).

PROCEDURAL HISTORY OF CONSULTATION FROM DOS

(5) Plaintiff submitted a FOIA request dated February 21, 2014, to DOS seeking a variety of records pertaining to the September 11, 2012 attacks on U.S. government personnel

and facilities in Benghazi, Libya. As a result of its search, DOS located responsive records. Aware of the FBI's investigations of the September 11, 2012 attacks on U.S. government personnel and facilities in Benghazi, Libya that resulted in the deaths of four Americans, DOS, in accordance with its FOIA regulations, consulted with the FBI regarding whether disclosure of information could jeopardize the FBI's investigations.¹

(6) Following review of the records, the FBI determined that the premature release of certain responsive information could potentially harm the pending investigations. The FBI requested that DOS assert FOIA Exemptions 7(A) and 7(E) to withhold certain information because release would interfere with the ongoing law enforcement investigations of the attacks on U.S. government personnel and facilities in Benghazi, Libya and would disclose techniques, guidelines and procedures for law enforcement investigations or prosecutions, the disclosure of which could reasonably be expected to risk circumvention of the law. The FBI also requested DOS assert FOIA Exemption 7(F) to withhold information to protect the physical safety of third-party individuals identified in the records.

JUSTIFICATION FOR NON-DISCLOSURE UNDER THE FOIA

EXEMPTION 7 THRESHOLD

(7) FOIA Exemption 7 exempts from mandatory disclosure records or information compiled for law enforcement purposes when disclosure could reasonably be expected to cause one of the harms enumerated in the subparts of the exemption. *See* 5 U.S.C. § 552(b)(7). In this

¹ DOS consulted with the FBI on the responsive records in 2013 in response to a separate FOIA litigation. In the instant action, the FBI determined the same records at issue still warrant being withheld in full due to the ongoing pending investigations. The records reviewed were DOS videos numbered: C05467904, C05467908, C05467910, C05467912, C05467913, C05467914, C05467915, C05467916, C05467917, C05467919, C05467920, and C05467921.

case, the harm that could reasonably be expected to result from disclosure concerns interfering with pending law enforcement proceedings, nullifying the effectiveness of sensitive law enforcement techniques or procedures, or risk the physical safety of third-party individuals.

(8) In order to assert Exemption 7, an agency first must demonstrate that the records or information it seeks to withhold were compiled for law enforcement purposes. Law enforcement agencies such as the FBI must demonstrate that the records at issue are related to the enforcement of federal laws and that the enforcement activity is within its law enforcement duties. In this case, certain responsive DOS records are an important part of the FBI's investigations of the attacks on U.S. government personnel and facilities in Benghazi, Libya, which resulted in the deaths of four American citizens, and the serious injuries of several others. The investigations are ongoing and within the law enforcement duties of the FBI to detect and undertake investigations into possible violations of Federal criminal and national security laws. For example, 28 U.S.C. § 540A[b]; 28 U.S.C. § 533; 28 C.F.R. § 0.85.

(9) The FBI's authority to investigate threats to the national security derives from the executive order concerning U.S. intelligence activities, from delegations of functions by the Attorney General, and from various statutory sources. E.O. 12333; 50 U.S.C. § 401 et seq. Activities within the definition of "threat to the national security" that are subject to investigation under the Attorney General's Guidelines for Domestic FBI Operations commonly involve violations or potential violations of federal criminal laws. Hence, investigations of such threats may constitute an exercise both of the FBI's criminal investigative authority and of the FBI's authority to investigate threats to the national security. As with criminal investigations generally, detecting and solving the crimes, and eventually arresting and prosecuting the perpetrators, are likely to be among the objectives of investigations relation to threats to the

national security. However, these investigations also often serve important purposes outside the ambit of normal criminal investigation and prosecution, by providing the basis for, and informing decisions concerning, other measures needed to protect the national security. The DOS videos implicate sensitive and evidentiary information concerning the terrorist group and network associated with the perpetrators of the September 11, 2012 attacks targeting U.S. interests abroad. Thus, the records DOS referred to the FBI for consultation as they pertain to open FBI investigations into the attacks on U.S. government personnel and facilities in Benghazi, Libya, were compiled for law enforcement purposes and readily meet the threshold for applying FOIA Exemption 7.

EXEMPTION 7(A) – PENDING ENFORCEMENT PROCEEDINGS

(10) FOIA Exemption 7(A) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings. 5 U.S.C. § 552(b)(7)(A).

(11) Application of this exemption requires: the existence of law enforcement records; a pending or prospective law enforcement proceeding; and a reasonable expectation that release of the information would interfere with the enforcement proceeding. The FBI requested that DOS withhold twelve videos pursuant to Exemption 7(A), because the premature release of this information could reasonably be expected to interfere with the FBI's ongoing investigations.

(12) Any release of information the FBI has identified in the DOS' material would be premature due to the harm which could ensue. The material includes images and footage of parties of investigative interest and cooperating witnesses in the investigations. Once material is released in the public domain, the information concerning the investigation could reach the

individuals who are under investigation, and thus risk the untimely revealing of the suspects' identities and potentially alert them to the fact that they are subject to law enforcement scrutiny. This would allow individuals to critically analyze the information in the records pertinent to the investigation of themselves. Such individuals possess the unique advantage of knowing the details surrounding the investigation, the identities of potential cooperating witnesses, direct and circumstantial evidence, *etc.*, and could use the released information to their advantage. In this regard, the following potential harms from the release of these records exist:

- a. The identification of individuals, sources, and potential witnesses who possess information relative to the investigation and possible harm to, or intimidation of these individuals;
- b. Prematurely alerting suspects under investigation to the fact that they are subject to law enforcement scrutiny;
- c. The use of information released to counteract evidence developed by investigators;
- d. The identification of third parties who are also under investigation;
- e. The identification of the subject matter concerning classified information;
and
- f. The locations in the United States, as well as foreign countries where the FBI is focusing the investigation and collection of investigative and source material.

(13) Furthermore, the release of this information to third parties not directly involved in these matters could allow these third parties to interfere with the pending proceedings by harassment, intimidation, and creation of false evidence dispensing facts discussed during the

FBI's investigation. Once a release is made to a set of plaintiffs under the FOIA, the use and dissemination of the information to third parties is unrestricted. For these reasons, the FBI has requested DOS to assert FOIA Exemption 7(A) to withhold in full the videos at issue.

EXEMPTION 7(E) – INVESTIGATIVE TECHNIQUES AND PROCEDURES

(14) Exemption 7(E) protects records or information compiled for law enforcement purposes when release “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E).

(15) DOS has asserted Exemption 7(E) on behalf of the FBI to protect non-public investigative techniques and procedures utilized by the FBI to pursue its law enforcement and intelligence gathering missions, and also to non-public details about techniques and procedures that are otherwise known to the public.

(16) The FBI requested that DOS assert Exemption 7(E) to protect sensitive intelligence gathering and investigative techniques. These techniques, particularly with respect to surveillance footage of the U.S. diplomatic mission abroad, implicate operational security force protection concerns and the U.S. government's ability to conduct relationships with and obtain information from foreign governments and foreign government services. Revealing these techniques would effectively reveal the blueprint for the security of a U.S. compound and the sophisticated surveillance capacity of the U.S. to protect the U.S. diplomatic mission in Libya from threats, thus risking the defeat of such security measures in the future. Release of the non-public details of these techniques and how they are utilized by the FBI would nullify their effectiveness, risk future criminal and terrorist activity, and make the FBI more vulnerable,

especially in context of continued and increased unrest in Libya. As a result, because release of information would enable terrorists to circumvent the law, this information has been protected pursuant to Exemption 7(E).

(17) The FBI also requested that DOS assert Exemption 7(E) to protect the FBI's strategy for using a particular type of evidence gathered during its investigations. The FBI's investigations are built around identifying individuals in photos and in images from security video footage of the U.S. diplomatic compound in Benghazi through an image by image review. Discerning the actions and determining the relationships between these individuals is critical to building the FBI's investigations and identifying who potentially led the attacks on the compound. The release of these images would lay out the strategy for the FBI's investigations concerning the attacks, would potentially reveal individuals charged in the investigations, and would enable others to access the same techniques used in these investigations. Revealing the utility of this type of information to the FBI would essentially instruct criminals on how best to maintain operational security when conducting their criminal activities. Disclosing how the FBI utilizes its effective investigative strategy would, in future investigations, allow criminals to become savvier at avoiding detection and disruption by the FBI, and enable criminals to circumvent the law. For these reasons, DOS has withheld this information in these videos on behalf of the FBI pursuant to Exemption 7(E).

EXEMPTION 7(F) – ENDANGERMENT OF THE LIFE OR PHYSICAL SAFETY OF ANY INDIVIDUAL

(18) 5 U.S.C. § 552(b)(7)(F) exempts from disclosure “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information...could reasonably be expected to endanger the life or physical safety of any individual.”

(19) A primary concern for the FBI when it was reviewing the material responsive to this request was the possibility of harassment and physical violent retaliation against not only the third-party individuals mentioned in the material but against their families as well. The FBI was also concerned with the potential for violence against third parties who are merely mentioned among the material. Accordingly, the FBI has requested DOS to also assert Exemption 7(F) to protect the names and identifying information concerning these third-party individuals. The violence associated with terrorists is known to the world through their numerous acts of aggression. The disclosure of the identities of the individuals who are mentioned in the responsive records, and which are part of the FBI's investigation into the 2012 Benghazi attacks, could lead to violent reprisal once it is learned that they may have cooperated with the FBI. Many of these individuals have assisted in the investigations by providing information that is singular in nature. Considering the nature of the violent terrorist acts associated with the FBI's investigation and the potential for violence, the FBI has determined that the disclosure of the names and identifying information of these individuals would endanger their lives and physical safety. Accordingly, DOS has withheld this information on behalf of the FBI pursuant to Exemption 7(F).

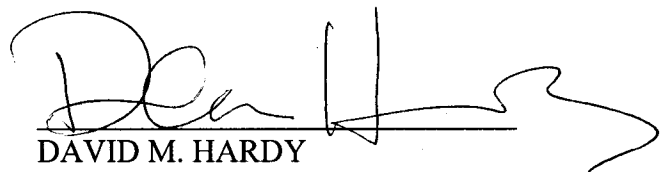
CONCLUSION

(20) As a result of the consultation with DOS regarding the records responsive to Plaintiff's request for information relating to the September 11, 2012 attacks on U.S. government personnel and facilities in Benghazi, Libya, the FBI has determined that the records are exempt from disclosure pursuant to FOIA Exemptions 7(A), 7(E) and 7(F), 5 U.S.C. §§ 552 (b)(7)(A), (b)(7)(E), and (b)(7)(F). The disclosure of any information from the specified records could reasonably be expected to interfere with ongoing investigations, as well as pending and

prospective prosecutions, reveal the details of non-public investigative techniques and procedures and/or non-public details about publicly-known techniques, or risk the physical safety of third party individuals.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of April, 2018.



DAVID M. HARDY
Section Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Winchester, Virginia

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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

DECLARATION OF ALESIA Y. WILLIAMS IN SUPPORT OF DEFENDANTS'

MOTION FOR SUMMARY JUDGMENT

I, Alesia Williams, do hereby declare the following to be true and correct:

1. I am the Chief of the Freedom of Information Act (FOIA) and Declassification Services Office for the Defense Intelligence Agency (DIA), Department of Defense (DoD). I have served as the Chief of the FOIA Office since June 2014. I previously served as the Chief, FOIA Services Section (an element within the DIA FOIA Office), from January 2008 to June 2014. Prior to that I was an administrative officer processing FOIA requests at DIA from November 2006 to December 2007, and I was a contractor assigned to DIA as a FOIA Senior Document Reviewer from January to November 2006. Prior to coming to DIA, throughout my career in the United States Air Force (“USAF”), one of my duties was to process FOIA requests. I also spent over five years supervising two USAF FOIA offices.

2. As Chief of the FOIA Office, I have been designated by the DIA Director as a declassification authority pursuant to Executive Order 13526 § 3.1. This authority extends to all

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information that is classified by, originated by, or that is otherwise under the declassification purview of DIA. I have also been designated by the Director as the Initial Denial Authority for responses to FOIA requests. My administrative duties include the management of day-to-day operations of DIA's FOIA program. The FOIA Office receives, processes, and responds to requests for DIA records under the FOIA and the Privacy Act. At my direction, DIA personnel are tasked to search Agency records systems under their control to identify records and other information which may be responsive to individual requests. They forward any potentially responsive records that are located to my office, which in turn determines whether responsive records should be withheld in whole or in part under any applicable statutory FOIA or Privacy Act exemptions. The activities of my staff are governed by the "DOD Freedom of Information Act Program Regulation," found at 32 C.F.R. Part 286, as supplemented by the "Defense Intelligence Agency (DIA) Freedom of Information Act" regulation, found at 32 C.F.R. Part 292.

3. In the course of my official duties at DIA, I have become personally familiar with the FOIA requests submitted by Accuracy in Media, Inc., ("AIM"). The statements made herein are based upon my personal knowledge, upon information made available to me in my official capacity, and upon determinations made by me in accordance therewith.

4. DIA's mission is to collect, analyze, and provide intelligence on the military capabilities of foreign military forces to the Secretary of Defense, the Joint Chiefs of Staff, and other DOD components. DIA also manages the Defense Attaché System for DOD. The DIA's organization and mission are more fully set out at 32 C.F.R. Part 385, "Defense Intelligence Agency." Because of its mission to collect, analyze, and provide foreign intelligence, the vast

majority of Agency records are classified in the interests of national security in accordance with Executive Order 13,526, "Classified National Security Information."

5. By letter dated April 7, 2014, AIM submitted a FOIA request to DIA for records of (1) maps depicting all assets within fifteen hundred miles of Benghazi, Libya on September 11 and 12, 2012; (2) DOD assets that were pre-positioned off the coast of Tripoli on October 18, 2011; and (3) records in calendar year 2012 of the threat to U.S. personnel because of al-Qaida or Ansar al-Shariah or other belligerent build-up in Benghazi.

6. By letter dated May 28, 2014, AIM submitted a Second FOIA request to DIA for records pertaining to (1) OPREP-3 PINNACLE report(s) used to provide any DOD division with notification of, or information about, the September 11 and 12 2012 attacks on U.S. facilities in Benghazi, Libya; and (2) for the period of July 1, 2012, through September 30, 2012, records of all directives, orders, and other communications regarding the readiness status of United States armed forces on the anniversary of the September 11, 2001 attacks on the World Trade Center, to or from: U.S. European Command; U.S. Central Command; U.S. Africa Command; U.S. Special Operations Command; Office of the Secretary of Defense and the Joint Staff; Naval Air Station Sigonella, Sicily; Spanish naval base Naval Station Rota, Spain; Aviano Air Base, Italy; and U.S. Special Operations Forces.

7. In response to AIM's FOIA requests, the DIA initiated a search for records responsive to AIM's requests. On June 30, 2016, DIA notified AIM that it had identified 148 records responsive to its FOIA requests and that, of those records, 92 were referred to other government agencies for their review and direct response to AIM. Of the remaining 56 records, DIA notified AIM that one record was a duplicate of a previously processed record, 25 records

were withheld in part and 30 were withheld in full pursuant to the authority of specific FOIA exemptions and Executive Order (E.O.) 13,526.

8. With respect to DIA, it is my understanding that AIM challenges only DIA's decision to withhold in full the records identified as V-11, V-19, V-45, and V-48 in DIA's *Vaughn* Index.¹ See Joint Mot. to Amend Briefing Schedule at 6, ECF No. 65. Accordingly, this declaration explains the DIA's basis for withholding information in these four records under FOIA Exemptions (b)(1) and (b)(3).

Portions of V-11, V-19, V-45, and V-48 Were Withheld Under 5 U.S.C. § 552 (b)(1), Which Allows the Withholding of Records Required By Executive Order to Be Kept Secret

9. The current basis for classification of national security information is found in E.O. 13,526. Section 1.1 of E.O. 13,526 authorizes an Original Classification Authority (OCA) to classify information owned, produced, or controlled by the United States government if it falls within one of the following eight classification categories specified in Section 1.4 of E.O. 13,526:

- (a) military plans, weapons systems, or operations;
- (b) foreign government information;
- (c) intelligence activities (including special activities), intelligence sources or methods, or cryptology;

¹ DIA also received several referrals from other government agencies in connection with AIM's related FOIA requests to those agencies. Since AIM is not challenging DIA's handling of these records, I have not addressed them in this declaration.

- (d) foreign relations or foreign activities of the United States, including confidential sources;
- (e) scientific, technological, or economic matters relating to the national security;
- (f) United States government programs for safeguarding nuclear materials or facilities;
- (g) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to national security; or
- (h) the development, production, or use of weapons of mass destruction.

10. Section 1.2 of E.O. 13,526 provides that information covered by one or more of these classification categories may be classified at one of three classification levels - Top Secret (TS), Secret (S) or Confidential (C) - depending on the degree of harm that would result from the unauthorized disclosure of such information. Information is classified at the Confidential level if unauthorized disclosure could reasonably be expected to cause damage to national security. Information is classified at the Secret level if its release could reasonably be expected to cause serious damage to the national security. Classification at the Top Secret level is maintained if its release could reasonably be expected to cause grave damage to national security.

11. Exercising the declassification authority delegated to me by the Director of DIA and pursuant to E.O. 13,526, I have determined that certain information within V-11, V-19, V-45, and V-48 remains currently and properly classified at the TOP SECRET and SECRET levels under E.O. 13,526 and that it is appropriately withheld under FOIA Exemption 1. Section 552(b)(1) of the FOIA statute allows for withholding of information required by Executive Order to be kept secret in the interest of national defense or foreign policy where that information is

properly classified. In this case, the withheld information in V-11, V-19, V-45, and V-48 is properly classified under E.O. 13,526 because certain information in these four records references intelligence sources and methods and/or relates to foreign relations/activities. This determination is within my authority as a declassification review official and is further supported by the opinions of the subject matter experts within DIA with knowledge of the national security topics covered who have reviewed these records.

1.4(c) -- Intelligence Sources and Methods

12. DIA withheld certain information in V-11, V-19, V-45, and V-48 under Exemption (b)(1) because the information contained in the withheld records relates to intelligence sources and methods, the disclosure of which could reasonably be expected to cause either serious damage or exceptionally grave damage to national security, and thus properly classified as Secret or Top Secret under Section 1.4(c) of E.O. 13,526. Section 1.4(c) recognizes that the disclosure of intelligence sources may cause damage to the national security. Intelligence sources may include individuals, foreign or American, foreign entities, and the intelligence and security services of foreign governments. Willing intelligence sources may be expected to furnish information only when confident that they are protected from retribution by the absolute secrecy surrounding their relationship to the United States government. Sources that are compromised become extremely vulnerable to retaliation from a variety of entities including their own governments or others having a stake in the confidentiality of the information provided by the source. In certain parts of the world, the consequences of public disclosure of the identity of an individual that has served as a U.S. source are often swift and far reaching, from economic reprisals to possible harassment, imprisonment, or even death.

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13. Section 1.4(c) of E.O. 13,526 also recognizes that the release of intelligence methods may cause damage to the United States' national security. Intelligence methods are the means by which (or the manner in which) an intelligence agency collects information to support military operations, assist in national policymaking, assess military threats, or otherwise accomplish its mission. Detailed knowledge of the methods and practices of an intelligence agency must be protected from disclosure because such knowledge would be of material assistance to those who would seek to penetrate, detect, prevent, avoid, or damage the intelligence operations of the United States.

14. Finally, disclosure of the intelligence sources or methods the U.S. government implements could reasonably be expected to enable persons and groups hostile to the United States to identify U.S. intelligence activities, methods or sources, and to design countermeasures to them. This would damage the ability of the U.S. government to acquire information that is often critical to the formulation of strategic plans and missions designed to safeguard the United States against our enemies. Based on the information provided to me in the course of my official duties, V-11, V-19, V-45, and V-48 contain information concerning intelligence sources and methods that must be protected:²

- V-11 is a finished intelligence product prepared by an analytic component of DIA. The product is an in-depth analysis related to the Benghazi consulate attack which is based on information obtained from classified sources and methods. In addition, this intelligence product contains a detailed statement summarizing the

² Because of the highly sensitive and classified nature of the withheld records, I am unable to disclose on the public record additional detail or information concerning any of these records without compromising information DIA has protected pursuant to its asserted exemptions.

sources upon which its analyses and assessments are based, and areas of intelligence gaps.

- V-19 is a finished intelligence product prepared by an analytic component of DIA providing analysis of multiple topics and regions. The responsive portion of this intelligence record contains information and analyses related to the Benghazi consulate attack which is based on classified sources and methods.³
- V-45 and V-48 are intelligence reports classified at the TOP SECRET level. The two intelligence reports contain information responsive to AIM's FOIA request. However, the release of the information in V-45 and V-48 would reveal specific areas of intelligence interest to the Intelligence Community and specific details about the sources and methods associated with obtaining the reported intelligence information.

15. DIA has not released intelligence contained in V-11, V-19, V-45, and V-48 because to do so would reveal classified sources and methods and impair the intelligence collection mission of the Intelligence Community. In particular, disclosure of the intelligence information in V-11, V-19, V-45, and V-48 would provide adversaries of the United States sufficient

³ V-19 is a finished intelligence product which contains multiple classified paragraphs addressing myriad intelligence topics. This is a typical format for many intelligence products in DIA, which is an all-source intelligence agency with multiple mission sets and customers. In addition to the paragraph containing specifically responsive information (which is exempt from release for reasons already discussed), it contains classified paragraphs that address issues and topics unrelated to AIM's FOIA requests. For example, hypothetically, one record may discuss drug activity in South America, another acquisition of new naval vessels by a foreign partner, and a third paragraph the political environment in Asia. DIA considers each paragraph to be a discrete record because each targets and is of interest to an entirely different customer, depending on the topic or issues addressed therein. Accordingly, DIA withheld those records addressing topics and issues that are not responsive to Plaintiff's FOIA request.

information about specific intelligence collection techniques utilized by the United States that adversaries could then use to develop countermeasures to resist such intelligence gathering techniques. This, in turn, would render useless the intelligence sources and methods upon which the United States' intelligence community relies. It is for this reason that the intelligence information contained in V-11, V-19, V-45, and V-48 remains currently and properly classified as SECRET or TOP SECRET under E.O. 13,526 and has been withheld by the DIA under FOIA exemption (b)(1).

1.4(d) – Foreign Relations or Foreign Activities of the United States, Including Confidential Sources

16. DIA also withheld certain information contained in V-11 (a finished intelligence report) and V-19 (a finished intelligence product) under Exemption (b)(1) because certain information in V-11 and V-19 relates to foreign relations or foreign activities of the United States, the disclosure of which could reasonably be expected to cause exceptionally grave damage to national security. Specifically, the responsive portions of V-11 and V-19 contain analyses related to the Benghazi consulate attack, including references to confidential sources and sensitive aspects of U.S. foreign relations. In order to protect this intelligence information from disclosure, V-11 and V-19 are classified under Section 1.4(d) of E.O. 13,526.

17. Moreover, if the DIA were compelled to disclose the properly classified intelligence information in the responsive portions of V-11 and V-19, it would have a chilling effect on current United States foreign relations with certain countries, and any future relations, inasmuch as potential associations might be precluded for fear of exposure, especially with sources that are confidential. As explained above, implicit in the Intelligence Community's

confidential relationships is the notion that identities and information provided will be afforded confidentiality. The United States government goes to great lengths to maintain effective foreign relations and even greater lengths to protect and maintain sources' confidentiality because it is an integral part of successful foreign relations policy. Release of the confidential information in V-11 and V-19 could reasonably be expected to damage our relations with governments whose cooperation is important to the United States' national security. The national security of the United States is clearly injured when other governments refuse to cooperate with the United States because they fear disclosure of the existence of that cooperation.

18. Relatedly, DIA also withheld certain information from V-11 and V-19 under Section 1.4(d) of E.O. 13,526 because V-11 and V-19 contain information regarding intelligence relationships and agreements that DIA has with certain foreign countries. Release of information concerning the United States' intelligence relationships and agreements with foreign governments would damage the United States' intelligence relationships with these particular nations and would hinder DIA's ability to collect and share intelligence. Further, release of the information in V-11 and V-19 would likely result in the loss of the United States' ability to obtain valuable national security information that the United States government cannot obtain from other sources or means. Because the information in V-11 and V-19 is currently and properly classified at either the Secret or Top Secret levels pursuant to Section 1.4(d) of E.O. 13526, the DIA has withheld in full these two documents under FOIA Exemption 1.

Portions of Records V-11, V-19, and V-48 Were Withheld Under 5 U.S.C. § 552(b)(3), Which Exempts From Disclosure Organizational and Personnel Information under 10 U.S.C. § 424

19. The DIA is also withholding responsive information in V-11, V-19, and V-48 under Subsection (b)(3) of the FOIA, which permits the withholding of records that are

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“specifically exempted from disclosure by statute provided that such statute . . . requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue . . .” DIA generally applies 10 U.S.C. § 424 when asserting Exemption 3. 10 U.S.C. § 424 states “(a) Exemption from disclosure--Except as required by the President or as provided in subsection (c), no provision of law shall be construed to require the disclosure of--(1) the organization or any function of an organization of the Department of Defense named in subsection (b); or (2) the number of persons employed by or assigned or detailed to any such organization or the name, official title, occupational series, grade, or salary of any such person.” DIA is a covered organization under section 424(b).

20. DIA withheld portions of V-11 (a finished intelligence report), V-19 (a finished intelligence product), and V-48 (an intelligence report classified as Top Secret) under Exemption 3, pursuant to the authority set forth in 10 U.S.C. § 424, because certain portions of these three records specifically identify the names, email addresses, office affiliations, and contact information of DIA personnel, as well as other information, such as countries with which DIA shares intelligence and information concerning DIA’s coordination with other government agencies, which would reveal DIA functions. Because release of this information would identify DIA employees, and would reveal part of DIA’s organizational structure, as well as sensitive DIA functions, disclosure of this information in V-11, V-19, and V-48 is strictly prohibited under 10 U.S.C. § 424.

Portions of Records V-11, V-19, V-45 and V-48 Were Withheld Under 5 U.S.C. § 552(b)(3), Which Exempts From Disclosure Intelligence Sources and Methods under 50 U.S.C. § 3024

21. A separate Exemption 3 statute, 50 U.S.C. § 3024 (i)(1), provides that “[t]he Director of National Intelligence shall protect intelligence sources and methods from

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unauthorized disclosure.” The National Security Act is an exemption (b)(3) withholding statute that refers to particular types of matters to be withheld, and “requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue.” 5 U.S.C. § 552(b)(3). DIA carries out its intelligence mission under guidance from the Director of National Intelligence and in accordance with the National Security Act. Therefore, to the extent that intelligence sources and methods are referenced in V-11, V-19, V-45, and V-48, 50 U.S.C. § 3024(i)(1) requires DIA to prevent the disclosure or release of this information.

22. DIA withheld certain information in V-11, V-19, V-45, and V-48 under Exemption 3 and 50 U.S.C. § 3024(i), because certain information in these four records would reveal intelligence sources and methods, as previously explained in this declaration, *see infra* ¶¶ 14-17. Although no showing of harm is required to justify the application of Exemption 3, it bears mentioning that disclosure of the intelligence sources and methods referenced in V-11, V-19, V-45, and V-48 would allow adversaries to employ countermeasures, thus reducing the effectiveness of the sources and methods as intelligence collection tools. Because 50 U.S.C. § 3024 prohibits DIA from disclosing the intelligence sources and methods contained in V-11, V-19, V-45, and V-48, the agency properly withheld the information under Exemption 3.

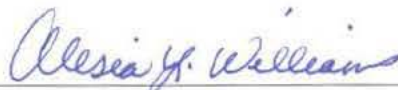
Non-Segregability of V-11, V-19, V-45, and V-48

23. As required under the FOIA, subject matter experts carefully reviewed the information set forth in V-11, V-19, V-45, and V-48 line-by-line to determine whether DIA could make any discretionary disclosures by segregating and releasing non-exempt information. Based on the recommendation of the subject matter experts, I have determined that each of the four documents being challenged was and still remains properly classified and that none of the

information contained in V-11, V-19, V-45, and V-48 may be segregated in any meaningful way without disclosing classified information.

I certify under penalty of perjury that the foregoing is true and correct.

Executed this 8th day of May, 2018



Alesia Y. Williams
Chief, Freedom of Information Act and
Declassification Services Office

Exhibit 1

Accuracy in Media, et al. v. DoD, et al., No. 14-CV-01589 (D.D.C)
 Defense Intelligence Agency Vaughn Index

Document # / Page #	Title/Summary	Date	Agency	Class	Comments/Exemptions
V-011 5 pages	DIA-09-1209-823	12 Sep 2012	DIA	Top Secret	<p>Document Description – Defense Intelligence Report</p> <p>Document Denied in Full– Exemptions (b)(1), (b)(3)</p> <p>Exemption (b)(1): The document contains information which, if publicly released, would reveal intelligence sources and methods and compromise the intelligence information collection mission effectiveness of the intelligence community. Further, the document contains information concerning foreign relations and/or foreign activities of the United States Government, the disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security. Accordingly, the information is to be accorded protection from mandatory release under Executive Order 13526, section 1.4(c) and 1.4(d).</p> <p>Exemption (b)(3): was used in conjunction with 10 U.S.C. 424 to withhold employee names and contact information, as well as office names/symbols and similar information, the release of which would reveal DIA's organizational structure. The statute was also asserted to withhold information that, if released, would reveal DIA functions. The same statute is also asserted where DIA withheld the countries with which it shared intelligence. Statute 50 U.S.C. 3024(i) also is asserted in conjunction with this exemption to sections of the document to protect intelligence sources and methods withheld since their release could potentially disclose the method or program in which the information was collected.</p>

Document # / Page #	Title/Summary	Date	Agency	Class	Comments/Exemptions
V-019 4 pages	SENSITIVE NON-RELEASABLE TITLE	12 Sep 12	DIA	Top Secret	<p>Document Description – Situation Report</p> <p>Document Denied in Full – Exemptions (b)(1), (b)(3)</p> <p>Exemption (b)(1): The document contains information which, if publicly released, would reveal intelligence sources and methods and compromise the intelligence information collection mission effectiveness of the intelligence community. Further, the document contains information concerning foreign relations and/or foreign activities of the United States Government, the disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security. Accordingly, the information is to be accorded protection from mandatory release under Executive Order 13526, section 1.4(c) and 1.4(d).</p> <p>Exemption (b)(3): was used in conjunction with 10 U.S.C. 424 to withhold office names/symbols and similar information, the release of which would reveal DIA's organizational structure. The statute was also asserted to withhold information that, if released, would reveal DIA functions. Email addresses from a classified network were also withheld. Release of this information would give computer savvy entities of hostile intent a tangible target and would compromise the nation's cyber security. The same statute is also asserted where DIA withheld the countries with which it shared intelligence and information concerning DIA's coordination with other government agencies. Statute 50 U.S.C. 3024(i) also is asserted in conjunction with this exemption to sections of the document to protect intelligence sources and methods withheld since their release could potentially disclose the method or program in which the information was collected.</p> <p>Non-Responsive: Portions of the document were not responsive to the request.</p>

Document # / Page #	Title/Summary	Date	Agency	Class	Comments/Exemptions
V-045 6 pages	CLASSIFIED TITLE	12 Sep 12	DIA	Top Secret	<p>Document Description – Intelligence Report</p> <p>Document Denied in Full – Exemptions (b)(1), (b)(3)</p> <p>Exemption (b)(1): The document contains information which, if publicly released, would reveal intelligence sources and methods and compromise the intelligence information collection mission effectiveness of the intelligence community. Accordingly, the information is to be accorded protection from mandatory release under Executive Order 13526, section 1.4(c).</p> <p>Exemption (b)(3): was used in conjunction with 50 U.S.C. 3024(i) to sections of the document to protect intelligence sources and methods withheld since their release could potentially disclose the method or program in which the information was collected.</p>
V-048 4 pages	CLASSIFIED TITLE	12 Sep 12	DIA	Top Secret	<p>Document Description – Intelligence Report</p> <p>Document Denied in Full – Exemptions (b)(1), (b)(3)</p> <p>Exemption (b)(1): The document contains information which, if publicly released, would reveal intelligence sources and methods and compromise the intelligence information collection mission effectiveness of the intelligence community. Accordingly, the information is to be accorded protection from mandatory release under Executive Order 13526, section 1.4(c).</p> <p>Exemption (b)(3): was used in conjunction with 10 U.S.C. 424 to withhold information the release of which would reveal DIA's organizational structure and function. Statute 50 U.S.C. 3024(i) also is asserted to sections of the document to protect intelligence sources and methods withheld since their release could potentially disclose the method or program in which the information was collected.</p>

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

DECLARATION OF REAR ADMIRAL JAMES J. MALLOY

Pursuant to 28 U.S.C. § 1746, I, James J. Malloy, Rear Admiral (upper half), United States Navy, hereby declare under penalty of perjury that the following is true and correct:

1. I am the Vice Director of Operations for the Joint Staff at the Pentagon and have served in this capacity since July 2017. In my capacity as the Vice Director of Operations, I assist in the execution of all Department of Defense (“DoD”) operational matters outside of the continental United States. As such, I coordinate and communicate frequently with the staffs of the Unified Combatant Commands, to include U.S. Africa Command, U.S. Central Command, U.S. European Command, U.S. Pacific Command, U.S. Southern Command, U.S. Strategic Command, U.S. Transportation Command and U.S. Special Operations Command, as well as with the Intelligence Community, to ensure on behalf of the Chairman of the Joint Chiefs of Staff that the President of the United States’ and Secretary of Defense’s direction and guidance are conveyed and executed, and that combatant command concerns are addressed by the Joint Staff. I evaluate and synthesize such concerns and advise and make recommendations to the Chairman of the Joint Chiefs of Staff regarding our worldwide military operations.

2. I make the following statements based upon my years of service and experience in the United States military, personal knowledge, and information made available to me in my official capacity. I have served in the United States Armed Forces for over thirty years at various levels of command and staff. In recent years, I have served as deputy director of operations, U.S. Central Command (J3), and commander, Carrier Strike Group 10. As the Vice Director of Operations, I receive and review daily operational plans and briefings, reports, and intelligence analyses from the Combatant Commands, the Joint Staff, and the Intelligence Community. I assist with the supervision of the National Military Command Center, which is responsible for monitoring worldwide events affecting national security and U.S. interests twenty-four hours a day, seven days a week. I have traveled in an official capacity to a number of countries where U.S. forces are conducting ongoing operations against al Qa'ida and associated terrorist groups, engaging with senior military and government officials. As a result of my experiences, I have extensive knowledge of our military forces and their capabilities, current operations, and the conventional and unconventional forces and capabilities of the enemies arrayed against us.

3. I am familiar with the FOIA request, dated March 31, 2014, submitted by Plaintiffs seeking categories of documents relating to the attack on US facilities in Benghazi, Libya, on September 11 and 12, 2012. The portion of the request relevant to this declaration sought “[m]aps depicting all assets that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of [sic] such maps were created before or after September 11, 2012.” A true and correct copy of the March 31, 2014, letter is attached as Exhibit A.

Responsive Records

4. The Joint Staff located 12 pages responsive to section 1 of Plaintiffs' request and provided a response on September 19, 2014, which stated that those records were withheld in full pursuant to Exemption 1, as they are currently and properly classified. A copy of that response is attached as Exhibit B. The purpose of this declaration is to detail the basis of that withholding. I understand through counsel that this withholding is the only redaction in DoD's production being challenged by Plaintiffs.

FOIA Exemption (b)(1)

5. FOIA exemption (b)(1) provides that FOIA does not require the production of records that are: "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b)(1).

6. In Section 1.3(a)(2) of Executive Order ("E.O.") 13526, the President authorized agency heads to designate officials that may classify information originally as TOP SECRET. In turn, and pursuant to Section 1.3(c) of E.O. 13526, the Deputy Secretary of Defense, acting pursuant to a delegation from the Secretary of Defense, has authorized me to exercise TOP SECRET and SECRET original classification authority.

7. Section 1.1(a) of E.O. 13526 provides that information may be originally classified under the terms of this order only if all of the following conditions are met: (1) an original classification authority is classifying the information; (2) the information is owned by, produced by or for, or is under the control of the U.S. Government, which these documents are; (3) the information falls within one or more of the categories of information listed in section 1.4 of Executive Order 13526; and (4) the original classification authority determines that the

unauthorized disclosure of the information reasonably could be expected to result in some level of damage to the national security, and the original classification authority is able to identify or describe the damage.

8. As relevant here, section 1.4(a) permits classification of information pertaining to military plans, weapons systems, or operations; 1.4(d) permits classification of information pertaining to, “foreign relations or foreign activities of the United States;” and 1.4(g) permits classification of vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security.

9. The 12 pages 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. These documents contain the numbers and locations of ships, submarines, response forces, and aircraft surrounding Benghazi, Libya. They further contain the numbers of military personnel located in particular countries during that time. Finally, they contain the transit time required for each available asset to reach Benghazi.

10. This information fits squarely within sections 1.4(a), 1.4(d), and 1.4(g) of E.O. 13526, as it details military operations conducted overseas, describes foreign activities of the United States, and provides transit times and a list of assets that demonstrate the capabilities of DoD’s plans and infrastructure.

11. This information is sensitive and classified at the Secret level, because the release of this information reasonably could be expected to cause serious damage to the national security. Even with the passage of time, how DoD’s forces are positioned at a particular time could provide potentially damaging and/or threatening insight to adversaries regarding DoD’s interests, intent,

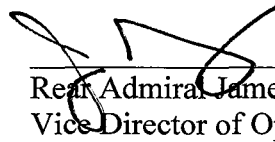
and potential operations in these volatile regions of the world. Tensions with hostile foreign governments could rise depending on the disclosure of such positioning. Terrorist organizations, violent extremist organizations, or hostile foreign governments could use transit time capability information to plan attacks within windows of perceived vulnerability. It is for this reason that this information is currently and properly classified and must not be released.

Review for Reasonably Segregable Information

12. Joint Staff has conducted a page-by-page and line-by-line review of the 12 pages at issue in this declaration. I can confirm that there is no reasonably segregable information contained in any of the records.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11th day of May 2018, in Arlington, VA.



Rear Admiral James J. Malloy, USN
Vice Director of Operations, J-3, Joint Staff

Exhibit A

14-F-0683

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 332-3030
JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

March 31, 2014

By Certified Mail — Return Receipt Requested
Article Number 7013 2630 0000 5201 4415

FOIA REQUEST

OSD/JS (Office of the Secretary of Defense and the Joint Staff)
FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

Re: **FOIA Requests**

Dear Ladies and Gentlemen:

This is a request for production of records under the Freedom of Information Act, 5 USC § 552, the "FOIA." I write on behalf of Accuracy in Media, Inc., a District of Columbia 501(c)(3) non-profit corporation, as well as the following eight individuals, all of whom serve as members of the "Citizens' Commission on Benghazi," an unincorporated, informal association of individuals, all working with Accuracy in Media. They are (1) Roger Aronoff, (2) Larry Bailey, (3) Kenneth Benway, (4) Dick Brauer, (5) Clare Lopez, (6) James A. Lyons, Jr., (7) Kevin Shipp, and (8) Wayne Simmons.

Requests. FOIA request Nos. 1, 2 and 3 are for disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012. Specifically, we seek production of:

1. **Maps.** Maps depicting all assets that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.

2. **Appeals for help.** Records of requests for help for the Special Mission Compound and the CIA Annex, to:
 - (a) The Turkish Consulate in Benghazi;
 - (b) The Italian Consulate in Benghazi; and
 - (c) The U.K. Security Team.

3. **Records concerning joint military contingency plans:**
 - (a) Plan Identification (PID) Number and title of the operation plan or plans prepared using Deliberate Planning procedures, found in Joint Publication 5-0, Joint Operation Plan, August 2011, **for use** by the supported combatant commander (1) to support military, diplomatic and interagency activities in Libya, through 2012, and (2) to support the military crisis response to the attacks on the Benghazi facilities on September 11 and 12, 2012.
 - (b) Operation plan or plans for use by the supported combatant commander to support military crisis response to the attacks on the Benghazi facilities on September 11 and 12, 2012.
 - (c) List of commands, organizations and agencies comprising the joint planning and execution community (JPEC), found in Joint Publication 5-0, Joint Operation Plan, August 2011, which developed, coordinated, and approved the operation plans referred to under (a) above.
 - (d) Supported combatant commander's Joint Intelligence Preparation of the Operational Environment (JIPOE), developed to support the plans referenced under (a) above.
 - (e) List of commands, organizations, agencies and offices comprising the supported combatant commander's joint interagency coordinating group (JIACG), established to support the plans referenced under (a) above.
 - (f) Copies of any combatant command commercial contracts established to support military, diplomatic and interagency activities at Tripoli and at Benghazi prior to the attacks on the Benghazi facilities on September 11 and 12, 2012.

4. **Military assets pre-positioned in October 2011.** In addition to records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, we also seek records identifying DoD assets pre-positioned off the coast of Tripoli on October 18, 2011, when Secretary Clinton visited Libya.

Kindly note that Request No. 1, seeking maps of assets, is also being simultaneously made to (a) HQ USEUCOM (U.S. European Command), (b) United States Central Command CCJ6-RDF (FOIA), and (c) HQ U.S. AFRICOM (U.S. Africa Command). Request No. 2, for records of requests for assistance from the Turkish or Italian Consulates or the U.K. Security Team, as well as Request No. 4, regarding records of military assets pre-positioned in October 2011 off Tripoli on October 18, 2011, is also being submitted to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), and (b) HQ U.S. AFRICOM (U.S. Africa Command).

Expedited Processing. These FOIA requests are subject to expedited processing under DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," 32 CFR Part 286. Specifically § C1.5.4.3 mandates expedited processing "to a requester after the requester requests such and demonstrates a compelling need for the information." Under § C1.5.4.3.2:

A compelling need also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.... Representatives of the news media (see paragraph C6.1.5.7., below) would normally qualify as individuals primarily engaged in disseminating information.

Accuracy in Media, Inc. ("AIM") is a "representatives of the news media," entitling it to a statutory fee waivers, as set forth below. Kindly accept this letter as a certification that the information contained herein is true and correct to the best of the requesters' knowledge, under § C1.5.4.3.3:

A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of their knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

Request for Waiver of Search and Review Fees. As a representatives of the news media, AIM submits that it is entitled to a waiver of any fees associated with the search and review of records responsive to these FOIA Requests, under 5 U.S.C. § 552 (a)(4)(A)(ii)(II). *See generally* DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," 32 CFR Part 286.

AIM is organized and operated to publish or broadcast news to the public, and has been doing so for more than 45 years. It clearly meets the standard of "representative of the news media" status. A "representative of the news media" is "a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *Nat'l Sec. Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

Upon disclosure of the records sought, AIM has concrete plans to make the information public. Its ability and intent to disseminate the information requested is beyond question. Accuracy in Media articles on the subject include, "The MSM and Benghazi: Will Their Coverage Harm Obama Administration?," "Shameful Media Coverage of Benghazi Scandal and Cover-up," "Media Embrace Obama's Controversial Picks for National Security Team," "New York Times Attempts to Blur Benghazi Scandal," "McClatchy Reporter Changes Tune on Benghazi," "CBS in Damage Control Over Error-Filled Benghazi Report," "'60 Minutes' Reveals Little New in Benghazi Exposé," "The Left's Continued Assault on the Truth About Benghazi," "Media Coverage of Benghazi Leans Toward Political Theater," "Conservative Leaders Call on Speaker Boehner: Form a Select Committee on Benghazi," "Further Proof That Obama Knew the Truth About Benghazi," "Blaming the Victim in Benghazigate," "Obama and His Media Loyalists Still Spinning Benghazi," and "Does Navy Map Alter the Benghazi Narrative?"

Additionally, several of the individual requesters have published a number of articles about the matter. *See, for examples*, "Navy SEAL: 'There's guilt in this administration,'" by Captain Larry Bailey, published in WND.com in April of 2013; two articles by Clare Lopez appearing in Pundicity.com in October of 2012, "Benghazi: The Set-Up and the Cover-Up," and "Did Turkey Play a Role in Benghazi Attack?;" and Admiral James Lyons' pieces appearing in the Washington Times, "Obama's Chain of Command Unravels Over Benghazi (October 2012), "Obama needs to come clean on what happened in Benghazi" (October 2012), "The Key Benghazi Questions Still Unanswered" (January 2013), "A hard slog to get Benghazi answers" (January 2013), and "A call to Courage over Benghazi" (May 2013).

Public Interest Fee Waiver. 5 U.S.C. § 552(a)(4)(A)(iii) provides that "[d]ocuments shall be furnished without any charge or at a charge reduced... if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."

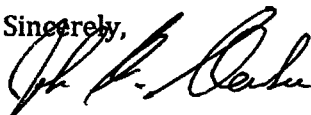
Here, the FOIA requesters do not have a commercial interest in the disclosure. Their purpose is to inform the public. The subject of the requested records concerns the operations or activities of the United States Government. The information sought is directed at finding out what information the government has about its failure to timely respond when its facilities came under attack. These FOIA Requests also concern what information the government did not provide to the public, as well as congressional investigators.

Upon disclosure of the records sought, AIM, as well as other several of the individual requesters, has concrete plans to make the information public, as demonstrated above. The information sought would be likely to contribute to an understanding of United States Government operations or activities, and disclosure will enhance public understanding of the Benghazi incident as compared with awareness prior to the disclosure. The interest of enhancing the public's understanding of the operations or activities of the U.S. Government is clear, and the records' connection to these government activities is direct.

Electronic Format. Kindly produce these records in electronic format. See e-FOIA amendment 5 U.S.C. § 552 (a)(3)(B), as amended, requiring Agency to "provide the record in any form or format requested . . . if the record is readily reproducible by the agency in that form or format." See FOIA Update Vol. XVII, No. 4, 1996.

Reply to Accuracy in Media. If you have any questions about handling this request, please ask via email, to JohnHClarke@earthlink.net. Otherwise, kindly respond, and produce records, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

Sincerely,



John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

Exhibit B



**DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

19 SEP 2014

Ref: 14-F-0683

Mr. John Clarke
John H. Clarke Law Office
1629 K Street, NW, Suite 300
Washington, DC 20006

Dear Mr. Clarke:

This is the final response to your Freedom of Information Act (FOIA) request dated March 31, 2014, which was received in this office on April 7, 2014. Twelve pages of records were located as responsive to section 1 of your request.

Mr. Mark S. Patrick, Chief, Information Management Division, Joint Staff (JS) has determined that the records responsive to your request, totaling 12 pages, are being denied in their entirety. The records denied in their entirety do not contain meaningful portions that are reasonably segregable. The information is currently and properly classified in accordance with Executive Order 13526, Section 1.4 (a) concerning military plans, weapons, or operations; Section 1.4 (d), concerning foreign relations or foreign activities of the United States, including confidential sources; and Section 1.4 (g) concerning vulnerabilities or capability of systems, installations, infrastructures, projects, plans or protection services relating to the national security. Accordingly, this information is denied pursuant to 5 USC § 552 (b)(1). The pages denied in their entirety do not contain meaningful portions that are reasonably segregable.

Mr. Mark S. Patrick, Chief, Information Management Division, Joint Staff (JS) a FOIA Initial Denial Authority (IDA), advised that based on the information provided in sections 2, 3, and 4 of your request and thorough searches of the paper and electronic records and files of the JS, no documents of the kind you described could be located. We believe that these search methods were appropriate and could reasonably be expected to produce the requested records if they existed. Mr. Patrick further certified that after making a good faith effort and conducting a thorough search of records using methods, detailed above, that could reasonably be expected to produce the information requested, there are no records, and that to the best of their knowledge, no such documents exist within the records of the JS.

There are no assessable fees associated with this response. If you are not satisfied with this action, you may appeal to the appellate authority, the Director of Administration and Management, Office of the Secretary of Defense, by writing directly to the Defense Freedom of Information Policy Office, Attn: Mr. James Hogan, 1155 Defense Pentagon, Washington, D.C. 20301-1155. Your appeal should be postmarked within 60 calendar days of the date of this letter,

should cite to case number 14-F-0683, and should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

for Charles P. Marge

Paul J. Jacobsmeyer
Chief

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.)	
<hr/>		

DECLARATION OF JOHN H. CLARKE

John H. Clarke hereby deposes and says:

1. The attached exhibits one through 10, consisting of (1) a selection of pages from Congressional transcripts, (2) excerpts of a Congressional report, and (3) Executive Branch records, are authentic.

	Bates
Exhibit 1: Sept 12, 2012 3:00 a.m. EXORD, European Command.	1-2
Exhibit 2: DOD Timeline, November 2013.	3-4
Exhibit 3: Leon Panetta January 8, 2016 closed-door testimony before <i>U.S. House of Representative Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi</i> , excerpts.	5-48
Exhibit 4: <i>Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi</i> Report, excerpts.	49-60
Exhibit 5: Deputy Chief of Mission Gregory Hicks testimony before <i>House Oversight and Government Reform Committee</i> , excerpt.	61-64
Exhibit 6: Plaintiffs' Interrogatory to DOD.	65-66
Exhibit 7: Testimony Secretary Clinton before Senate Committee on Foreign Relations, U.S. Senate, Jan. 2013, re "Benghazi: The Attacks and the Learned," excerpts, and testimony before <i>U.S. House of Representative Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi</i> , excerpts.	67-76
Exhibit 8: CIA Inspector General Records.	77-103
Exhibit 9: September 19, 2012, CIA Memorandum for the Record.	104-08
Exhibit 10: Leon Panetta Feb 7, 2013 testimony before U.S. Senate Committee on Armed forces, "Hearing to Receive Testimony on Department of Defense's Response	109-11

Exhibit 11: Time Conversion Chart. 112
Exhibit 12: Map of assets.113

2. This Declaration is submitted pursuant to Federal Rule of Civil Procedure 56(d),

which provides:

- (d) When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:
 - (1) defer considering the motion or deny it;
 - (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order.

Although plaintiffs believe that the DOD's Motion for Summary Judgment should be denied outright for the reasons set forth in their Memorandum, they submit this Declaration, averring that a review of the records attached hereto reveals that plaintiffs cannot present all facts essential to support their opposition to the DOD's dispositive motion. Summary Judgment is not appropriate at this juncture because plaintiffs have not been allowed to discover the facts of when, and by what means, communications with assets were first made.

3. On November 20, 2017, the Washington Post published, "After 7-week trial, Benghazi jury weighs \$7 million informant, surveillance video and phone traces." It included:

Surveillance video played at trial showed some of those men armed, one carrying a fuel can that prosecutors contend was used to ignite diplomatic vehicles, and another a looted map that prosecutors said showed the secret CIA annex's location not far from the diplomatic compound.

4. In late 2017, NBC Nightly News broadcast an excerpt of that video footage.

5. Under House Resolution 567, the *Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi* was "directed to conduct a full and complete investigation and study and issue a final report of its findings to the House regarding all... activities that contributed to the attacks... including any other relevant issues relating to the attacks...." The Committee will issue a final report "addressing the matters," which "may contain a classified

annex." H. Res. 36—113th Congress (2013-2014) INVESTIGATION AND REPORT ON THE EVENTS SURROUNDING THE 2012 TERRORIST ATTACK IN BENGHAZI, states:

- (a) The Select Committee is authorized and directed to conduct a full and complete investigation and study and issue a final report of its findings to the House regarding—
 - (1) all policies, decisions, and activities that contributed to the attacks...
 - * * *
 - (3) internal and public executive branch communications about the attacks on United States facilities in Benghazi, Libya, on September 11, 2012;
 - * * *
 - (9) any other relevant issues relating to the attacks, the response to the attacks, or the investigation by the House of Representatives into the attacks.
- (b) In addition to any final report addressing the matters in subsection (a), the Select Committee may issue such interim reports as it deems necessary.
- (c) Any report issued by the Select Committee may contain a classified annex.

6. "I make the following statements based upon my personal knowledge, which in tum is based upon information furnished to me in the course of my official duties" (DOS Decl. ECF 68-6). Prior to the publication of the *Select Committee* Report, six Congressional reports were issued on the matter:

- 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

Fifty security incidents in Benghazi was a "flashing red" warning, according to the Republican report. Failing to suspend or abandon the Benghazi facilities was a "grievous mistake." Key findings include State Department initial knowledge that the attack was preplanned and the absence of any protest, at least by September 15th. Report faults IC and open source reports for the account of a protest in Benghazi.

- 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

On "the same day and prior to" Ambassador Rice's talk show appearances, "a senior official on the ground in Libya informed senior leaders at the State Department that there was no demonstration prior to the attack." The Administration had altered its talking points to "remove references to the likely participation of Islamic extremists." The President and Secretary Clinton for appeared in a \$70,000 advertisement campaign in Pakistan disavowing the YouTube video. Also, "State Department personnel have testified that funding was not a reason for the drawdown of security levels in Benghazi."

- 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.

Under Secretary of Management at the Department of State Ambassador Kennedy personally oversaw the number staff at any time at the Special Mission Compound, decided to discontinue the Security Support Team, and approved the extension of the facility "as is."

All four State Department officials who were placed on administrative leave failed to receive due process from the State Department, three of whom were not permitted to see the charges against them for six months because the information was classified. Hillary Clinton selected four of the five Accountability Review Board members, Undersecretary Kennedy oversaw the selection of ARB staff, and the ARB failed to interview Clinton. Admiral Mullen gave Cheryl Mills a friendly "heads up" that Charlene Lamb would not be a good witness.

- 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

The bipartisan report holds the State Department responsible for inadequate security at the Mission in the face of an increased violence, and the tragedy "preventable." There were three diplomatic Security agents assigned to the Mission, whereas nine security officers were assigned at the CIA Annex. Itemization of security improvements at the CIA Annex is redacted, while the Mission failed to keep all surveillance cameras running or install its new cameras. The attacks were in three distinct phases, with probing attacks at the CIA Annex between 11:56 p.m. and 1:00 a.m.

This Report details the August 15, 2012 Emergency Action Committee Report and its corresponding classified cable: "A CIA officer 'briefed the EAC on the location of approximately ten Islamist militias and AQ training camps within Benghazi.'" "Individuals affiliated with terrorist groups, including AQIM, Ansar al- Sharia, AQAP, and the Mohammad Jamal Network, participated in the September 11, 2012, attacks." The FBI and CIA reviewed the closed circuit

television video from the Mission on September 18, 2012, and FBI intelligence reports regarding the interviews of the survivors were disseminated on September 20, 2012.

- February 7, 2014, BENGHAZI: WHERE IS THE STATE DEPARTMENT ACCOUNTABILITY?

Issued by Republican Majority of the House Foreign Affairs Committee Secretary Clinton was aware of the security problems in Libya and should have acted accordingly, according to this Republican report. Of the four reinstated employees who had been placed on leave (Charlene Lamb, Scott Bultrowicz, Ray Maxwell, and Eric Boswell), two retired with full benefits, and the other two have been reassigned to positions with commensurate pay and benefits. Elizabeth Dibble, Jake Sullivan, and Victoria Nuland, were all promoted. Patrick Kennedy was unaccountable, even after (1) "approv[ing] a one-year extension of the Benghazi SMC in December 2011," (2) telling "the Defense Department in July 2012 that the State Department would no longer need the U.S. military's 16-member SST," and (3) "terminat[ing] Embassy Tripoli's use of a DC-3 aircraft that provided logistical support to the SST" on May 3.

- February 10, 2014, MAJORITY INTERIM REPORT: BENGHAZI INVESTIGATION UPDATE, issued by Republican Majority of House Armed Services Committee

While this Republican report declares that there was no "stand down" order given and that the military acted appropriately given the resources available, the Committee questions the posture of military forces. Why didn't the Administration prioritize a violent Libya among the ongoing threats"? Why was the Commander's in Extremis Force training on September 11th? Why didn't General Ham know that the CIA had a facility in Benghazi?

The State Department was ultimately responsible for embassy security. The attack was "carefully planned," with a "scouted...scene beforehand."

Date: June 25, 2018.

I declare under penalty of perjury that the foregoing is true and correct.

/s/
John H. Clarke

~~SECRET//NONE~~

Subject: USEUCOM EXORD FOR COMMANDERS IN-EXTREMIS FORCE (CIF) DEPLOYMENT

Originator: EUCOM J3 DIRECTORATE(MC)

DTG: 120700Z Sep 12 Precedence: ROUTINE

To: SOCEUR(mc), COMUSNAVEUR NAPLES IT(sc), SOCEUR(mc), USAFECOMMANTCENTER(mc), USAREUR CG(mc), COMMARFOREUR(mc)

cc: SOCEUR J3 OPERATIONS DIRECTORATE(MC), EUCOM J1 DIRECTORATE(MC), EUCOM J37 Joint Readiness Training and Exercise Div(mc), EUCOM EPOC Antiterrorism Division(mc), EUCOM J4-Eddoc Eucom Deployment-Distribution Ops Ctr(mc), EUCOM J5-P Plans Div(mc), EUCOM J4-JLOC(mc), USCENTCOM COMMAND CENTER(mc), USAREUR G3(mc), EUCOM J2 DIRECTORATE(MC), EUCOM EPOC Operations Div(mc), EUCOM J4 DIRECTORATE(MC), EUCOM J5-J8 Directorate(mc), EUCOM J6 DIRECTORATE(MC), EUCOM J7 DIRECTORATE(mc), EUCOM J9 DIRECTORATE(mc), EUCOM PA Public Affairs(mc), EUCOM JA Judge Advocate Directorate(mc)

MSGID/ORDER/CDRUSEUCOM//
REF/A/PHONECON/CDRUSEUCOM/112228ZSEP12//

NARR/+(S) (b)(1) EO 13526 § 1.4(a)

ORDTYP/EXORD/CDRUSEUCOM//
TIMEZONE/Z//

NARR/+(S) (b)(1) EO 13526 § 1.4(a)

GENTEXT/SITUATION/

1. +(S)

(b)(1) EO 13526 § 1.4(a)

GENTEXT/MISSION/

2. +(S)

(b)(1) EO 13526 § 1.4(a)

GENTEXT/EXECUTION/

3. +(S)

(b)(1) EO 13526 § 1.4(a)

3.B. (U) TASKS.

3.B.1. (U) CDR, SOCEUR (CDRSOCEUR).

(b)(1) EO 13526 § 1.4(a)

~~SECRET//NONE~~

EXHIBIT 1

~~SECRET//NONE~~

3.B.1.B. ~~(S)~~ (b)(1) EO 13526 § 1.4(a)

3.B.2. (U) COMMANDER, NAVAL FORCES EUROPE (CDRNAVFEUR).

(b)(1) EO 13526 § 1.4(a)

3.B.4. (U) CDR, US ARMY EUROPE (CDRUSAREUR).

3.B.4.A. ~~(S)~~ (b)(1) EO 13526 § 1.4(a)

3.B.5. (U) CDR, US MARINE FORCES EUROPE (CDRUSMARFOREUR).

3.B.5.A. ~~(S)~~ (b)(1) EO 13526 § 1.4(a)

GENTEXT/ADMIN AND LOG/

(b)(1) EO 13526 § 1.4(a)

GENTEXT/COMMAND AND SIGNAL/

5. (U) COMMAND AND SIGNAL//

5.A. (U) COMMAND RELATIONSHIPS. CDRUSAFRICOM IS THE SUPPORTED COMBATANT COMMANDER FOR THIS MISSION. CDRUSEUCOM IS THE SUPPORTING COMBATANT COMMANDER. ALL OTHER COMPONENT COMMANDERS ARE SUPPORTING.

5.B. ~~(S)~~

(b)(1) EO 13526 § 1.4(a)

5.E (U) POINTS OF CONTACT.

(b)(3) 10USC 130b (b)(6)

Derived From: MULTIPLE SOURCES

Declassify On: 120700Z Sep 22

Date of Source: 010001Z Aug 08

~~SECRET//NONE~~

Timeline of Department of Defense Actions on September 11-12, 2012

All times are Eastern Daylight Time (EDT, Washington, DC)
and Eastern European Time (EET, Benghazi)

Tuesday, September 11, 2012

EDT // EET

- ~3:42 pm // 9:42 pm The incident starts at the facility in Benghazi.
- 3:59 pm // 9:59 pm An unarmed, unmanned, surveillance aircraft is directed to reposition overhead the Benghazi facility.
- 4:32 pm // 10:32pm The National Military Command Center at the Pentagon, after receiving initial reports of the incident from the State Department, notifies the Office of the Secretary of Defense and the Joint Staff. The information is quickly passed to Secretary Panetta and General Dempsey.
- 5:00 pm // 11:00pm Secretary Panetta and General Dempsey attend a previously scheduled meeting with the President at the White House. The leaders discuss potential responses to the emerging situation.
- 5:10 pm // 11:10 pm The diverted surveillance aircraft arrives on station over the Benghazi facility.
- ~5:30 pm // 11:30 pm All surviving American personnel have departed the facility.
- 6:00-8:00 pm //
12:00-2:00 am Secretary Panetta convenes a series of meetings in the Pentagon with senior officials including General Dempsey and General Ham. They discuss additional response options for Benghazi and for the potential outbreak of further violence throughout the region, particularly in Tunis, Tripoli, Cairo, and Sana'a. During these meetings, Secretary Panetta directs (provides verbal authorization) the following actions:
- 1) A Fleet Antiterrorism Security Team (FAST) platoon, stationed in Rota, Spain, to prepare to deploy to Benghazi, and a second FAST platoon, also stationed in Rota, Spain, to prepare to deploy to the Embassy in Tripoli.
 - 2) A EUCOM special operations force, which is training in Central Europe, to prepare to deploy to an intermediate staging base in southern Europe.
 - 3) A special operations force based in the United States to prepare to deploy to an intermediate staging base in southern Europe.
- During this period, actions are verbally conveyed from the Pentagon to the affected Combatant Commands in order to expedite movement of forces upon receipt of formal authorization.
- ~6:30 pm // 12:30 am A six-man security team from U.S. Embassy Tripoli, including two DoD personnel, departs for Benghazi.

EXHIBIT 2

- ~7:30 pm // 1:30 am The American security team from Tripoli lands in Benghazi.
- ~8:30pm // 2:30 am The National Military Command Center conducts a Benghazi Conference Call with representatives from AFRICOM, EUCOM, CENTCOM, TRANSCOM, SOCOM, and the four services.
- 8:39pm // 2:39 am 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.
- 8:53pm // 2:53 am 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.
- ~11:00 pm // 5:00 am A second, unmanned, unarmed surveillance aircraft is directed to relieve the initial asset still over Benghazi.
- ~11:15 pm // 5:15 am The second facility in Benghazi comes under mortar and rocket propelled grenade fire.

Wednesday, September 12, 2012

- 12:05 am // 6:05am AFRICOM orders a C-17 aircraft in Germany to prepare to deploy to Libya to evacuate Americans.
- ~1:40 am // 7:40 am The first wave of American personnel depart Benghazi for Tripoli via airplane.
- ~4:00 am // 10:00 am The second wave of Americans, including the fallen, depart Benghazi for Tripoli via airplane.
- 8:15 am // 2:15 pm The C-17 departs Germany en route Tripoli to evacuate Americans.
- 1:17 pm // 7:17 pm The C-17 departs Tripoli en route Ramstein, Germany with the American personnel and the remains of Ambassador Stevens, Sean Smith, Tyrone Woods, and Glen Doherty.
- 1:57 pm // 7:57 pm The EUCOM special operations force, and associated equipment, arrives at an intermediate staging base in southern Europe.
- 2:56 pm // 8:56 pm The FAST platoon, and associated equipment, arrives in Tripoli.
- 3:28 pm // 9:28 pm The special operations force deployed from the United States, and associated equipment, arrives at an intermediate staging base in southern Europe.
- 4:19 pm // 10:19 pm The C-17 arrives in Ramstein, Germany.

**INTERVIEW OF
SECRETARY OF DEFENSE
LEON PANETTA**

BEFORE THE

SELECT COMMITTEE ON BENGHAZI

HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

HELD IN WASHINGTON, DC, JANUARY 8, 2016

EXHIBIT 3

APPEARANCES

FOR THE SELECT COMMITTEE ON BENGHAZI

PHILIP G. KIKO, *Staff Director and General Counsel*
CHRIS DONESA, *Deputy Staff Director*
DANA CHIPMAN, *Chief Investigative Counsel*
CRAIG MISSAKIAN, *Deputy Chief Counsel*
MAC TOLAR, *Senior Counsel*
CARLTON DAVIS, *Investigator*
SHERIA CLARKE, *Counsel*
KIM BETZ, *Member Outreach Liaison and Counsel*
SUSANNE SACHSMAN GROOMS, *Minority Staff Director/General Counsel*
HEATHER SAWYER, *Minority Chief Counsel*
PETER KENNY, *Minority Senior Counsel*
SHANNON GREEN, *Minority Counsel*
LINDA COHEN, *Minority Senior Professional Staff*
LAURA RAUCH, *Minority Senior Professional Staff*

FOR LEON PANETTA

HOWARD M. SHAPIRO
WilmerHale
Wilmer Cutler Pickering Hale and Dorr LLP

FOR THE U.S. DEPARTMENT OF DEFENSE

BILL HUDSON
EDWARD RICHARDS

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Mr. Chipman. Let's go on the record.

(U) For the first time in the history of the Select Committee on Benghazi, we are starting precisely on time, on target, Mr. Secretary.

(U) This is a transcribed interview of Leon Panetta, who served as the Secretary of Defense from July 2011 to February 2013, conducted by the House Select Committee on Benghazi.

(U) This interview is being conducted voluntarily as part of the committee's investigations into attacks on U.S. diplomatic facilities in Benghazi, Libya, in September of 2012 and related matters pursuant to House Resolution 567 of the 113th Congress and House Resolution 5 of the 114th Congress.

(U) Sir, could you please state your full name for the record?

Mr. Panetta. (U) Leon Edward Panetta.

Mr. Chipman. (U) On behalf of the committee and Chairman Gowdy, we appreciate your time and willingness to come in and talk to us today.

(U) My name is Dana Chipman, and I am a counsel on the committee's staff. I would like to go around the room to ask everyone else in the room to introduce themselves as well.

Chairman Gowdy. (U) Trey Gowdy, South Carolina.

Mr. Jordan. (U) Jim Jordan.

Mr. Roskam. (U) Peter Roskam, Illinois.

Mr. Pompeo. (U) Mike Pompeo, Kansas.

Mr. Westmoreland. (U) Lynn Westmoreland, Georgia.

Mr. Hudson. (U) Bill Hudson from the Department of Defense Office of the General Counsel.

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Mr. Richards. (U) Edward Richards, DOD Office of General Counsel.

Mr. Shapiro. (U) Howard Shapiro, Wilmer Cutler Pickering Hale and Dorr, for Mr. Panetta.

Mr. Davis. (U) Carlton Davis. I work for Chairman Gowdy.

Mr. Donesa. (U) I'm Chris Donesa with the committee staff.

Mr. Kiko. (U) Philip Kiko with the committee.

Ms. Betz. (U) Kim Betz with the committee.

Mr. Missakian. (U) Craig Missakian, majority staff.

Ms. Clarke. (U) Sheria Clarke, majority staff.

Mr. Kenny. (U) Peter Kenny, minority staff.

Ms. Sachsman Grooms. (U) Susanne Sachsman Grooms, minority staff.

Ms. Rauch. (U) I am Laura Rauch, minority staff.

Ms. Green. (U) Shannon Green with the minority staff.

Ms. Cohen. (U) Linda Cohen, minority staff.

Ms. Duckworth. (U) Tammy Duckworth.

Mr. Chipman. (U) I would like to go over some of the ground rules and explain how the interview will proceed.

(U) Generally, the way the questioning proceeds is that a member from the majority staff will ask questions first for up to an hour, and then the minority will have an opportunity to ask questions for an equal period of time if they so choose.

(U) And I note that we have been joined by Martha Roby.

(U) Questions may only be asked by a member of the committee or

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of your trip to Tripoli?

A (U) Boy. That's not one I nailed down. But it was before -- it was soon after, I think, the transition had taken place. And it was a stop that I wanted to make to be able to talk with them and talk with the Defense officials, that they had to determine what kind of assistance we could help provide them.

(U) And it was also -- I used that as an opportunity to visit a graveyard in Tripoli that includes the remains of the Marines going back to the Barbary Coast days when a Marine ship was taken down and our Marines were buried in Tripoli. And I wanted to make sure that I paid my respects to them.

Q (U) And, sir, as I recall, on this trip, you did not make a specific visit to Benghazi?

A (U) No.

Q (U) Were you aware of a U.S. Government presence in Benghazi even during your trip to Tripoli, that particular trip?

A (U) I was aware that, you know, we had some segments of the government located in Benghazi.

Q (U) Were you aware of a single facility or more than one facility in that timeframe?

A (U) I was not aware of the number of facilities. I knew we had a presence there.

Q (U) And were you aware of the agencies that may have constituted that presence, whether State Department, CIA, or any other U.S. Government agency?

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[REDACTED]

A (U) Because of my old job, I knew that there was a CIA presence there.

[Panetta exhibit No. 3
Was marked for identification.]

[Panetta exhibit No. 4
Was marked for identification.]

Mr. Chipman. (U) And if I could pass out exhibit 3.

(U) And, for the record, exhibit 3 is an unclassified DOD timeline that is also part of the same Senate report which the committee has used in a number of interviews before.

(U) And then if I could also pass out exhibit 4.

(U) And I would like the record to note we have been joined by Congresswoman Susan Brooks.

Mrs. Brooks. (U) Hello, sir. Thank you.

Mr. Panetta. (U) How are you?

BY MR. CHIPMAN:

Q (U) So with respect to exhibit 4, for the record, what I have done is to try to make it in a larger font because I had difficulty reading the font that was on the original exhibit. But I have also added some events, and so I would like to ask a few questions juxtaposed with some additional events and decisions that were made during that relevant timeframe.

(U) And so, Mr. Secretary, what we have is -- and I will use all times -- Washington, D.C.'s times, since that is the center of the universe. I will use all times in Washington and not Benghazi, Libya,

[REDACTED]

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nor Croatia, nor anywhere else that might have been involved -- Stuttgart, Germany.

(U) And so what we have is an attack that occurred or that started at 3:42 on the 11th of September.

(U) Sir, where are you located or what were you doing, if you can recall, when you first learned of the attack?

A (U) My best recollection is that I was in the Secretary's office at the Pentagon, probably preparing for the meeting that we have with the President. I had a regularly scheduled meeting with the President that General Dempsey and I usually attended to discuss defense and national security issues.

Q (U) So the unclassified timeline reflects that at 3:42 the attack at the Benghazi Temporary Mission Facility begins and at 4:32 the National Military Command Center at the Pentagon notifies the Office of the Secretary of Defense.

(???) Who would the NMCC have notified both at OSD and at the Joint Staff? Would that be your military assistant? Would that be --

A (U) Well, yeah, I was going to say I don't specifically recall who actually mentioned the events that were taking place in Benghazi, but chances are pretty good that General Kelly, who was my Marine military aide, that he and probably Jeremy Bash both might have mentioned it to me as I was leaving. But I think the stronger likelihood is it would have been General Kelly. But I can't tell you for sure.

Q (U) Marine General Kelly, John Kelly, was a three-star. He

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was your military aide.

A (U) That's right.

Q (U) And Mr. Jeremy Bash was your chief of staff --

A (U) That's correct.

Q (U) -- as the Secretary?

A (U) That's correct.

Q (???) It appears that notice was given to you, or to the Office of the Secretary of Defense more precisely, by 4:32 that afternoon, but then, as you indicated, you were preparing or getting ready to depart for a regularly scheduled meeting with the President along with General Dempsey?

A (U) That's correct.

Q (U) And so, at 5:00 p.m. -- is that your recollection of the start of the meeting you had with President Obama?

A (U) Approximately. I think, at the time -- and, again, I'm doing this by best recollection. General Dempsey and I arrived at the White House, and I think we both kind of pulled aside into the National Security Council quarters there to see if there was any additional information that we could get with regards to what we were picking up about events in Benghazi. And we did not have -- I don't think we received any additional intelligence. But I wanted to make sure that we knew everything possible before meeting with the President. And then we proceeded upstairs to the Oval Office. And so the meeting approximately began about 5 o'clock.

Q (U) And prior to the beginning of that meeting with the

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President, had you had an opportunity to speak with General Ham, the combatant commander of Africa Command, or had you not heard anything from him as of that point?

A (U) I don't recall speaking with General Ham before that, going into that.

Q (U) Did General Dempsey indicate whether he had heard from General Ham that he relayed to you prior to you both journeying over to the White House?

A (U) I don't recall that.

Q (U) And so, when you began that meeting with the President, did you inform him of the incident in Benghazi that was ongoing?

A (U) As soon as we went into the Oval Office, took our seats on the couches that are next to the President's chair. And at the very beginning of that meeting, I mentioned to the President that we were picking up information about a potential attack that was taking place on our facilities in Benghazi and that we did not have information about the state of the situation and also the situation regarding our ambassador, that this was all very preliminary. We had just gotten these reports, but they clearly raised a concern.

Q (U) Was that news to the President? Had he heard this already before your arrival at the White House?

A (U) I don't believe so, but, you know, the head of the National Security Council, the National Security Director, Tom Donilon, I believe, participated in that meeting. He might have been given a heads-up, but I don't recall that.

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Q (U) And during the course of that meeting with the President, the unclassified timeline indicates that the leaders discussed potential responses to the emerging situation. Can you recall what you were directed as a result of that meeting to do when you left that meeting and returned to the Pentagon?

A (U) The President made clear -- you know, again, these were all very preliminary reports about what was happening there. But the President made clear that we ought to use all of the resources at our disposal to try to make sure we did everything possible to try to save lives there.

Q (U) And did you or General Dempsey discuss with the President what resources might be available during the course of that meeting?

A (U) We did not go into particulars about what resources would or would not be deployed because, frankly, at that point, we had to get back to the Pentagon in order to determine what steps ought to be taken to try to respond to the situation.

Q (U) Yes, sir. So, to the best of your recollection, the specific direction that you took away from that meeting with the President was what?

A (U) To do everything possible to try to make sure that we tried to save the lives of those that were involved in the attack.

Q (U) Can you recall roughly what time you may have returned to the Pentagon after that meeting?

A (U) The meeting itself with the President perhaps lasted

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about 15, 20 minutes, maybe a little longer, maybe a little less. But I remember immediately leaving the Oval Office, jumping into the vehicle, and heading right back to the Pentagon.

(U) And at the time I arrived back at the Pentagon, probably somewhere close to 6 o'clock, you know, if not before that, at that point immediately calling a meeting with General Dempsey, who was with me. Called them in. We added -- at that point realized General Ham, the AFRICOM commander, was not in Africa or in Europe but was there at the Pentagon, which was something I was not aware of, and asked General Ham to come in, as well.

(U) General Kelly was there. Admiral Winnefeld, who was the deputy to the Chairman, he also would come in and out as he was trying to get additional information. You know, I believe Jeremy Bash was also there.

(U) But my general approach to these things is to immediately have a meeting with the key principals that I could talk with to ask them, you know, get the best information. What is the situation? How do we respond? What steps can we take to make sure we are doing everything possible to respond to the situation?

(U) And, I mean, as a result of that meeting, you know, I ordered that, based on their recommendations, that we have our FAST teams, Marine FAST teams, respond, be prepared to -- you know, not only prepare to deploy but deploy into -- and be available to be able to go in. These are an elite force, as you probably know, of Marines who can quickly respond to those situations.

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[REDACTED]

(U) So I directed that we get those FAST teams in place. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) We also had an in-extremis team. This is a team whose principal responsibility is to respond to crises. And that team was in Europe. I think they were in exercises in the Balkans. And we told them to, again, move to an intermediate base -- and Sigonella would have been the base that they would have gone to -- in order to deploy, as well.

(U) And then the third team, because we were concerned about the state of the Ambassador at that point -- I mean, initially, the concern was that the Ambassador might well have been taken hostage at that point. I can't tell you we had information to that effect, but we just didn't know what was happening with the Ambassador. And so, because of that, we thought it might be very important to have a hostage rescue operation. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) So those were the orders that I gave. And I had the authority to give those orders. And those orders were carried out.

Q (U) And, sir, you had mentioned with respect to the FAST team and the In-extremis Force, the CIF, in the Balkans that you had

[REDACTED]

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the national security -- usually, the Vice President would participate, but I don't remember him participating in this meeting.

Q (U) And do you recall if there were any other principals at that meeting, whether the Director of Central Intelligence, the Director of National Intelligence, the Secretary of State?

A (U) No.

Q (U) Okay.

(U) So a meeting that occurred back at the Pentagon that resulted in a series of directives from you to prepare to deploy and deploy these various forces, can you recall the timeframe that that meeting took, that you met with Admiral Winnefeld, General Dempsey, General Kelly, Jeremy Bash?

Mr. Shapiro. (U) And General Ham.

Mr. Chipman. (U) And General Ham. Thank you.

Mr. Panetta. (U) I mean, we were meeting kind of on an ongoing basis, as you can imagine. I mean, I issued the orders with regards to those teams that ought to respond, but we continued to be there. And I think, you know, it was probably at least a couple hours where the principals were still kind of talking and continuing to talk to make sure that the steps that I had ordered were taking place and also, frankly, trying to get intelligence about what the hell was happening in Benghazi. I mean, it was very fragmented information about what was taking place there.

BY MR. CHIPMAN:

Q (U) And as best you can recall, in that timeframe between

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[Panetta exhibit No. 5
Was marked for identification.]

BY MR. CHIPMAN:

Q (U) And if I could pass out exhibit 5, please.

And I'd note for the record exhibit 5 is a document, STATE-SCB0060705, MOU. It's an email from Jeremy Bash to Jake Sullivan and others dated Tuesday, December 11, at 7:19 p.m.

(U) Sir, during your time as Secretary of Defense, were you a user of email?

A (U) No, and hell no.

(U) Actually, going back to when I was chief of staff to President Clinton, I made the decision not to use email at that time. I told people, if they wanted to talk to me, they came to my office and talked to me. And so I began that kind of approach going back to the time I was chief of staff, continued it when I was Director of the CIA and also as Secretary of Defense.

Q (U) So for purposes of --

A (U) So the answer is I did not use email.

Q (U) So for purposes of anyone who would wish to engage in email exchanges with the Secretary of Defense, would Jeremy Bash be the conduit for such emails?

A (U) He was my chief of staff both at the CIA and obviously at the Defense Department. And, you know, I always assumed that he was dealing with other staff using email.

Q (U) So you've already testified, sir, that you had this

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[REDACTED]

SOF element that was in Croatia, which could fly to Souda Bay, Crete; and a Marine FAST team out of Rota, Spain.

[REDACTED]

[REDACTED]

[REDACTED]

A (U) That's correct.

Q (U) -- the U.S.?

A (U) That's correct.

Q (U) And then the email continues with the following sentence: "Assuming principals agree to deploy these elements" -- who are the principals that would've had to agree to deploy the elements that you had identified?

A (U) No one. I had the authority to deploy those forces. And I ordered those forces to be deployed. And I didn't have to ask anybody's permission to get those forces in place.

Q (U) Sir, that is my understanding, as well, that the national command authority consists of two people, the President and the Secretary of Defense.

A (U) That's right.

Q (U) And if you, as the Secretary of Defense, ordered the deployment of military assets, that is all it takes.

A (U) That's correct.

Q (U) And so, when Mr. Bash asks of State Department colleagues, "We will ask State to secure the approval from host nation," is that, again, from the nation to which we sought to deploy these

[REDACTED]

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forces, whether that be Crete or Greece or Sigonella, Italy? Or is this Libya? Or do you have any recollection of what that might have referred to?

A (U) I don't know what he was referring to, but when you deploy a Marine FAST team, particularly going into Tripoli or elsewhere, you can't just drop these guys into a country without getting the permission of that country.

Q (U) And so it is consistent with your expectation that State would have been asked to secure the approval from the host nation, whatever that host nation would have been.

A (U) I assume that would have been the case.

Q (U) And then when Mr. Bash asked that an official from State convey that approval back to Mr. Miller or Admiral Winnefeld -- Mr. Miller was the Under Secretary for Policy --

A (U) That's correct.

Q (U) -- under your tenure?

(U) Was that an action that was predicate to your decision to deploy those forces, or were the forces ordered to be deployed regardless of this action ongoing at State?

A (U) My directions were very clear; those forces were to be deployed, period. And, you know, just because of the timeline involved, you know, my whole approach was we need to move them and move them as fast as we can in order to try to respond. And as I am sure you're all aware, we're dealing with a lot of time and distance in order to make it happen. So I wanted no interference with those orders to

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sense that you want to alert all of the commands to what was taking place and to make sure that all of the commands were prepared to take action if we should run into any other incident that could take place.

Q (U) And then there were orders issued, the formal orders, issued by the National Military Command Center at 8:39 p.m. and 8:53 p.m., respectively, reflected in the DOD unclassified official --

A (U) As you know, those are the -- somebody then types those orders out, in terms of a formal authorization. But, as I said, it was the oral directions that commenced the action for the task forces and the other units to move.

Q (U) And, sir, as I look back at the time sequence that occurred, so if I go back to page 1 of exhibit 4 or the unclassified timeline -- for me, it is easier for me to read exhibit 4 -- I look at an event that was known at least as of roughly 4:30 p.m., 4:32 p.m. to be precise. And your recollection is that somewhere between 6 o'clock that evening and 8 p.m. that evening you had already given the order to get these forces moving.

A (U) That's correct.

Q (U) And as part of the sequence to get those forces moving, are you familiar with the use of the term "N-hour" or "notification hour"?

A (U) Yes.

Q (U) Who sets that notification hour, if you know?

A (U) I assume it's set through the military chain, but, you know -- I obviously knew there was a notice-plus time to prepare these

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units, but, as to the specifics as to what that timeframe was, you know, it was not something, at least at that point, you know, that I was aware of.

(U) My point was these are elite units, and the purpose of those units is to move when I give the order to move. And that's what I expected.

Q (U) And, sir, as I look through this time sequence again, I look at roughly 4:30, the National Military Command Center is aware of the attack; at roughly 5 p.m. or shortly thereafter, the President is aware of the attack; roughly 6 p.m., somewhere between 6 and 7p.m. or 6 to 8 p.m., as the timeline reflects, you have already given the order to prep, deploy, and to move. And so it's still roughly 3 1/2 hours from notice of the attack to your decision to get them moving.

A (U) Right.

Q (U) And, in your experience and judgment, was that a reasonable timeframe to get these forces moving?

Mr. Shapiro. (U) I'm sorry. The 3 1/2 hours is to the outer end of that, to 8 o'clock, right?

Mr. Chipman. (U) The outer end.

BY MR. CHIPMAN:

Q (U) So, for purposes of the question, if it took all the way till 8 o'clock to get them moving -- although we know from the Jeremy Bash email that, as of 7:19 -- so somewhere short of 3 hours. Is that a reasonable timeframe to understand and work through the options?

A (U) Yeah, look, I believe it is. I mean, you know, it's

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[REDACTED]

a -- I think it's important to understand that when you face a crisis like this, first of all, you're operating with preliminary information. You don't know all the facts of what's taking place. We didn't have a great deal of intelligence about just specifically, you know, what was happening at Benghazi. So you have to take that into consideration.

(U) You've got to take into consideration the units that can quickly deploy, where they're located and where they go. And you've got to take into consideration that these are the right units to try to deal with the contingencies that they may have to confront once they're put on the ground.

(U) I think all of those factors need to be considered. But I have to tell you that, in this instance, we moved pretty quickly to try to get the units that we wanted deployed to move. And I would have to tell you that, in dealing with other crises similar to what we were dealing with, this is roughly the same kind of timeframe.

Q [REDACTED]

A (U) That makes sense.

Q (U) And my understanding, as well, from the same governing plan is that for that Commander's In-extremis Force, the one that was training in Croatia, [REDACTED]

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you've talked about this morning.

(U) And so, if I go to page 44, in the middle of the page, page 44, there's a question from Senator Graham. "My question is, did anybody leave any base anywhere to go to the aid of the people under attack in Benghazi, Libya, before the attack ended?" And Secretary Panetta responded, "No, because the attack ended before they could get off the ground."

A (U) Just to clarify the record, I was speaking specifically about the task forces that I had ordered to deploy. As you're aware, there was a security team that moved out of Tripoli on their own to be able to respond to what took place. I was not aware that that was taking place. But, clearly, there were some DOD personnel that were part of that team.

Q (U) Yes, sir. So the security personnel you were talking about were the people that were in Tripoli --

A (U) That's right.

Q (U) -- at the Embassy in Tripoli, two special operators that got on that flight --

A (U) That's right.

Q (U) -- from Tripoli down to Benghazi and performed to assist the mission.

A (U) Right.

Q (U) And, as well, just so the record's clear, DOD also directed a Predator, an armed drone, that was orbiting over Derna, Libya, to be transmitted to cover Benghazi. And do you recall that

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direction, as well?

A (U) Yeah, we had -- as you know, during the Libyan war, one of the things that we had deployed were UAVs to try to focus on targets for the NATO forces that were engaged in that operation. So we had some of those resources there, and I'm assuming that General Ham made use of those UAVs in order to get at least one of them over the target.

Q (U) And, Mr. Secretary, I'd like to take this opportunity to determine -- I know the members have a vote series that will be occurring shortly.

(U) And if you would like to ask questions during the remainder of this hour or if you would prefer to wait until the second hour.

Mr. Jordan. (U) How much time have we got?

Mr. Chipman. (U) We've got 10 minutes, sir, in this particular hour.

Chairman Gowdy. (U) I'll wait.

Mr. Jordan. (U) I've got a couple rounds.

Chairman Gowdy. (U) Go for it.

Mr. Jordan. (U) Okay.

(U) Thank you, Mr. Secretary, for being with us.

(U) Let's go back to the email from Mr. Bash. The email says, "We have identified the forces that could move to Benghazi. They include" -- and he mentions two. What other forces, again, were available?

Mr. Panetta. (U) Well, there were three that -- actually, four units that I had ordered. There were two FAST teams, Marine teams,

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[REDACTED]

to get them to deploy, one to Tripoli and one to Benghazi. The other was the In-extremis Force that was located in Europe, get them to go, as well. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Jordan. (U) But when he says "they include" and what you just described, was there other things that could have been used but weren't, that you decided not to deploy? Fixed-wing, armed drone, other assets?

Mr. Panetta. (U) The ones I ordered were based on the recommendations of General Dempsey and the team I had in the office. And this is what they recommended, and that's what I ordered. We did not discuss other areas that we --

Mr. Jordan. (U) So FAST team, the Special Ops, and the CIF team.

Mr. Panetta. (U) That's correct.

Mr. Jordan. (U) And when did the first DOD asset -- or those three groups that you deployed, when did they first arrive in Libya? When did they first get there?

Mr. Panetta. (U) Well, we obviously, you know, ordered them to deploy. The FAST team was -- one was ordered, obviously, to respond to Benghazi, the other to go to Tripoli. Because the attack moved so fast and was concluded, we did get the FAST team into Tripoli, and that was the one unit that did hit the ground.

Mr. Jordan. (U) My question is, when you deployed -- you said three elements were deployed. I want to know when the first one -- when

[REDACTED]

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of made it lowercase doesn't fix it. And the fact that he assumed it, there was nothing to assume. You had already told him to do it.

Mr. Panetta. (U) I had told our military people to do it. That's what counts.

Mr. Jordan. (U) Do you know what time that was then?

Mr. Panetta. (U) It would have been, you know --

Mr. Jordan. (U) 7:19?

Mr. Panetta. (U) It would have been, you know, soon after we got back to the Pentagon, because I knew we were dealing with something that was urgent and I wanted to get our forces in place as soon as we could.

Mr. Jordan. (U) Did you communicate --

Mr. Panetta. (U) So I'd say certainly within the hour I gave the orders.

Mr. Jordan. (U) Did you communicate with the President any further that evening?

Mr. Panetta. (U) I did not.

Mr. Jordan. (U) Okay.

(U) I've got some stuff that will take longer, Mr. Chairman.

Mr. Westmoreland. (U) I've just got one quick followup to what --

Mr. Chipman. (U) Yes, sir.

Mr. Westmoreland. (U) Mr. Secretary, when Mr. Bash sent this, as Mr. Gowdy pointed out, you had already given him this order. Had you already talked to the State Department about getting permission from some of these host countries about getting these assets rolling

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the -- and now we're at 11 o'clock and so forth. After you gave the order to deploy, why did you not check to see what was happening and what was moving?

Mr. Panetta. (U) I did. And, I mean, I continued to talk with General Dempsey and with Admiral Winnefeld and, obviously, General Kelly, my military aide, and continued to ask, "Give me updates," to make sure these people are on the move and ready to deploy. And, you know, they indicated things were moving.

Mrs. Brooks. (U) And so is that as specific as they were? "Things are moving"?

Mr. Panetta. (U) Yeah, I mean, my whole point as Secretary was to make sure that the units that I had ordered were moving. And I didn't go into, you know, particulars about the number of people, you know, et cetera. But I said, I want to make sure that they are moving and that we are getting them deployed as soon as possible.

Mrs. Brooks. (U) Did they raise any obstacles with you as to any challenges they were having --

Mr. Panetta. (U) No.

Mrs. Brooks. (U) -- in moving?

Mr. Panetta. (U) No. No. You know, the problem is, as always, is that, you know, you've got these elite units; obviously, they're located in places -- I'm aware of the fact, having been both in the military and as Secretary, that, you know, it's not like they're wearing their backpack and ready to jump on a plane. They've got to prepare, they've got to get their backpacks ready, they've got to get all of

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[REDACTED]

(U) But when you're dealing with the kind of elite units we're talking about here, my expectation is that they move as fast as they can.

Mr. Jordan. (U) So you knew it took time. You didn't realize it was going to be 23 hours. Did you convey that to anyone else in our government -- White House, Department of State -- that it's going to take a while to get people there and we may never get them actually to Benghazi? Because the facts are we never did get people to Benghazi; we only got them to Tripoli. Did you convey that to anyone else in our government?

Mr. Panetta. (U) I assumed that, you know, obviously, there were continuing contacts between the staffs as to what was taking place, and I think everybody understood that there's a timeframe involved here in order to get these units in place. But the bottom line was that, you know, this attack moved pretty fast, and it was --

Mr. Jordan. (U) Let me ask one --

Mr. Panetta. (U) -- going to be tough to get them there under any circumstance.

Mr. Jordan. (U) Did you specifically talk with Secretary Clinton and say -- well, first of all, did you talk with Secretary Clinton that night?

Mr. Panetta. (U) I did not.

Mr. Jordan. (U) Did you talk with anyone at the State Department and say, it's going to take some time to get folks there?

Mr. Panetta. (U) I did not.

[REDACTED]

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Chairman Gowdy. (U) We're out of time. I just want to make sure this portion of the record is fair to you and that your testimony has the clarity that I think it has, but I'm going to give you an opportunity if I'm wrong.

(U) You did not issue an order to prepare to deploy. You issued an order to deploy.

Mr. Panetta. (U) That's correct.

Mr. Jordan. (U) So no one would have been waiting on you to issue a subsequent order.

Mr. Panetta. (U) That's correct.

Mr. Jordan. (U) You were clear the first time.

Mr. Panetta. (U) Absolutely.

Chairman Gowdy. (U) All right.

Mr. Chipman. (U) Off the record.

[Recess.]

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Mr. Panetta. (U) Not at all. I was -- first of all, I would never have allowed that to happen. But secondly, I was not aware of anyone contradicting the orders to get these units deployed as quickly as possible.

Mr. Schiff. (U) So when my colleagues were asking you about the Jeremy Bash email, I think the implication is that some other principal ordered a standdown, notwithstanding your order to deploy. Are you aware of anyone doing that?

Mr. Panetta. (U) I am not.

Mr. Schiff. (U) Did anyone in the Defense Department, Mr. Bash, or anyone else, ever come to you and say, Mr. Secretary, they are ignoring your order to deploy?

Mr. Panetta. (U) No. Not at all. On the contrary. They were assuring me that the forces were moving into place.

Mr. Schiff. (U) There has been a similar urban myth surrounding the efforts by those at the Annex to rescue those at the diplomatic facility. That is, that the people at the Annex were ordered to stand down and not come to the assistance of those at the diplomatic facility. The Republican lead and bipartisan House Intelligence Committee debunked that myth, General Petraeus came in again yesterday and debunked that myth.

(U) Are you aware of any evidence from your involvement in this that there was any standdown order of those at the temporary -- at the Annex CIA facility to come to the rescue of those at the diplomatic facility?

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Mr. Panetta. (U) No, not at all.

Mr. Schiff. (U) Mr. Secretary, I apologize I have to break up my questions. I have got to go.

Mr. Panetta. (U) I understand having been there.

Mr. Schiff. (U) We got a speech from the Speaker yesterday saying that he intends to enforce the time limits.

Mr. Panetta. (U) Oh, no kidding.

Mr. Schiff. (U) He will not be the first Speaker to try. He will be the first to succeed if he does.

Mr. Panetta. (U) Yeah, but I'm sure he will look at the bottom line before he makes that decision.

Mr. Schiff. (U) I will see you later. Thank you.

EXAMINATION

BY MS. SACHSMAN GROOMS:

Q (U) I want to talk a little bit about the different forces that we were talking about in the last round. You said you weren't aware that the team from Tripoli, which was a DOD-led team, had moved to Benghazi in order to provide support and help save lives until the day after, and that they had left on their own. [REDACTED]

[REDACTED]

A (U) I don't know the particulars in the chain of command, you know, how it works there. But that team was not under my direction, or my authority at that point.

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or maybe we shouldn't do this, I think shows a lack of understanding of the fundamental principles that these people operate by. They operate by the principle that you do your job, and you do it as quickly as you can in order to do what's necessary to protect this country and protect American lives. And I don't think -- I don't think it's a good thing to send a message to the world that we are any different in terms of our approach.

Q (U) And is it your understanding that your staff and the National Military Command Center was in continual communications with the national security staff and the White House on the night of the attack?

A (U) I'm sorry, say that again.

Q (U) I'm sorry. Is it your understanding that your staff at DOD, the National Military Command Center, that they were all in continual communications with the staff at the White House, the national security staff, and others?

A (U) That was my understanding. I mean, I knew that the White House was being kept informed of what steps we were taking.

Q (U) And was it your sense that your staff and your military generals were doing everything in their power to respond to the situation in Libya?

A (U) Absolutely, absolutely.

Q (U) Was it also your sense that the personnel from across the interagency were doing everything they could to assist in the crisis?

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Mr. Jordan. (U) So let me first start with, Secretary, your -- when did you first talk with General Ham on the night of the attack?

Mr. Panetta. (U) He was at the Pentagon.

Mr. Jordan. (U) Right.

Mr. Panetta. (U) And General Dempsey made me aware that he was present there, and that's -- I asked him to come up to my office as soon as I got back from the White House.

Mr. Jordan. (U) So around, I think the time --

Mr. Panetta. (U) Sometimes around 6.

Mr. Jordan. (U) Sometime around 6 o'clock. So you met with General Ham around 6 o'clock. And did you talk with him several times during the evening, or you sort of --

Mr. Panetta. (U) Yeah.

Mr. Jordan. (U) And General Ham, just to be clear, he did not go with you to meet with the President --

Mr. Panetta. (U) No.

Mr. Jordan. (U) -- even though he was in Washington? And you had not talk to him prior to your meeting with the President?

Mr. Panetta. (U) That's correct.

Mr. Jordan. (U) When you got information of the attack, just so I'm clear, did that come from up through the chain of command to you at the Pentagon? How did you, at the Pentagon, get that information? Did it come through General Ham, and then someone at the Pentagon, General Kelly or Mr. Bash tell you, or how did that work?

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[REDACTED]

Dempsey had informed you of all of the assets that were there, but yet you did not know that you had two DOD people in Tripoli. Is that correct?

Mr. Panetta. (U) We have DOD people assigned to embassies around the world, and so I mean, obviously, I think I could have assumed that there were DOD personnel there. But as to what they did and how they responded, they were obviously, at that point, under the chain of command of the Embassy.

Mrs. Brooks. (U) Were you told how many people, how many DOD people were there?

Mr. Panetta. (U) No.

Mrs. Brooks. (U) Is there a standard number that would be in a place like Tripoli?

Mr. Panetta. (U) Normally one or two, but it just depends on the embassy.

Mrs. Brooks. (U) Thank you. I have nothing further.

Mr. Chipman. (U) Mr. Westmoreland.

Mr. Westmoreland. (U) Secretary, this video that you saw, was this from the Predator feed?

Mr. Panetta. (U) You know, I know I saw it, and I think it was presented to the intelligence committees, and I know others have looked at it. I'll ask you guys.

Mr. Shapiro. (U) Your question was what he saw that night?

Mr. Panetta. (U) No, no. It's not from that night. This was several weeks afterwards.

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Panetta. (U) No. At the time in talking with General Dempsey, my question was what resources can we deploy as quickly as possible in order to save lives. In that discussion, they talked about, obviously, our fast units. They talked about our in extremis units, [REDACTED] and those were the primary things that were discussed.

Mr. Westmoreland. (U) Let's just play what-if. Would we have had to get permission to be able to arm those aircrafts there?

Mr. Panetta. (U) I think the problem is that although we used UAVs in the area, that you have to get permission from those countries to be able to arm.

Mr. Westmoreland. (U) You said, in your previous testimony, that if there was American lives in danger, you would getting permission.

Mr. Panetta. (U) Yeah, I know.

Mr. Westmoreland. (U) Would we have used them or not?

Mr. Panetta. (U) I guess we're all speculating here, my sense, it was never brought to my attention; and I assume the reason it wasn't is because General Ham didn't think it was a practical way.

Mr. Westmoreland. (U) Thank you.

[REDACTED]

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Mr. Chipman. (U) Mr. Pompeo.

Mr. Pompeo. (U) Secretary Panetta, you said lessons learned, that we wanted to have good intelligence going on. That doesn't seem like a new lesson to me.

Mr. Panetta. (U) It's a lesson we keep repeating.

Mr. Pompeo. (U) I don't think that was a lesson learned. Was there an intelligence failure here? That's what you described.

Mr. Panetta. (U) Yes.

Mr. Pompeo. (U) You said we didn't have intelligence adequate intelligence?

Mr. Panetta. (U) Yeah, sure.

Mr. Pompeo. (U) Your judgment was there was an intelligence failure?

Mr. Panetta. (U) That's right.

Mr. Pompeo. (U) You talked about the video you saw afterwards. Did you have real-time video that evening that you were seeing?

Mr. Panetta. (U) No, no.

Mr. Pompeo. ██████████

██████████ Right?

Mr. Panetta. (U) I didn't see it, no.

Mr. Pompeo. ██████████

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Mr. Panetta. (U) That's interesting.

Mr. Pompeo. (U) Okay. You said you didn't talk to the President

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that night. When did you next talk to the President after the meeting that you had in the White House? Do you recall?

Mr. Panetta. (U) I don't recall.

Mr. Pompeo. (U) You said shortly after the attack, you said quote -- these are your words, and we can go find them: "You don't deploy forces into harm's way without knowledge of what's going on," end of quote. And because we didn't have real-time information, quote, "we couldn't put forces at risk." Do you stand by that statement?

Mr. Panetta. (U) Yes.

Mr. Pompeo. (U) But that's not true. We put folks in harm's way all the time without perfect real-time information. You did it, in fact, as the Secretary of Defense multiple times. So help me --

Mr. Panetta. (U) We had pretty good information. You don't drop people into a situation unless you have some idea what you're getting into.

Mr. Pompeo. (U) When there's a life at risk, sir, I just fundamentally disagree with you about that. I think we do it all the time to rescue folks, and we would and we should, in fact, do that. That night, you said you were there at the Pentagon. Did you stay there the whole evening?

Mr. Panetta. (U) Again, I can't recall specifically, but normally, I didn't get out of the Pentagon until 11 or 12 o'clock at night.

Mr. Pompeo. (U) Were you there until such time as all the personnel were removed from Benghazi to Tripoli, or did you depart the

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[REDACTED]

there are patrols that go out and people die.

Mr. Pompeo. (U) Yes, sir.

Mr. Panetta. (U) That's a tragedy. But in Afghanistan, for all the equipment, for all the planes, for all the F-16s, for all the stuff we had in Afghanistan, people still died because we weren't able to get there in time.

Mr. Pompeo. (U) All right. I don't disagree. But I still can't figure out why the decisionmakers that night chose not to co-locate to make real good real-time decisions to try and save Ambassador Stevens. There's your explanation, I guess, so if you'd like to add anything else, that's great. But I still am --

Mr. Panetta. (U) When American lives are lost, it is tragic, and this was a tragedy.

Mr. Pompeo. (U) Yes, sir, it was.

Mr. Panetta. (U) And I guess my hope is that we learn from that tragedy and try to make sure that it never happens again.

Mr. Pompeo. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Panetta. (U) My understanding, and, again, almost every week I used to sit down with a whole set of deployment orders on all kinds of units, and I'd go through and sign orders on all kinds of deployments. In this instance, it was based on the State Department request, if there's a State Department request to basically reduce the size of that

[REDACTED]

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would you find to be tolerable as the answer to what X is -- reasonable, excuse me, not tolerable, reasonable?

Mr. Panetta. (U) Let me tell you, it would be nice to do it in 30 minutes, but that's not practical.

Mr. Pompeo. (U) No, sir, I am deeply sympathetic to resource constraints and decisions in risk analysis. In that risk analysis, you have to eventually apply hard math to reach a decision.

Mr. Panetta. (U) Sure.

Mr. Pompeo. (U) Tell me what would be reasonable. I want to look at this going forward, because we have got to protect these State Department workers.

Mr. Panetta. (U) I understand what you're saying, but assuming that you're operating from the bases where we can operate from, which is either Rota in Spain, or Sigonella in Italy, which are the main bases we have because we don't have that capability in Africa to be able to deploy, you're still talking about 9 to 12 hours in transit time. You can, in the very least, ought to be able to cut that down to at least an hour or two preparation and then get on the plain and move.

Mr. Pompeo. (U) That's just an important question for we, the resource granters, to think about what's feasible, what's reasonable, what we ought to shoot for, and you've had a lot of experience in this, so thank you.

Mr. Chipman. (U) We're 5 minutes over our time. Mr. Jordan has --

Mr. Jordan. (U) Just a few quick ones if I could, with the

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Benghazi talking points?

A (U) No. And he's not the kind of person that would do that.

Q (U) Do you have any evidence that the CIA Deputy Director, Mike Morell, altered the talking points provided to Congress for political reasons?

A (U) No.

Q (U) It has been alleged that Ambassador Susan Rice made a quote, "intentional misrepresentation," end quote, when she spoke on the Sunday talk shows about the Benghazi attacks.

(U) Do you have any evidence that Ambassador Rice intentionally misrepresented facts about the Benghazi attacks on the Sunday talk shows?

A (U) No.

Q It has been alleged that the President of the United States was, quote, "virtually AWOL as Commander in Chief," end quote, on the night of the attacks and that he was missing in action.

(U) Do you have any evidence to support the allegation that the President was virtually AWOL as Commander in Chief or missing in action on the night of the attacks?

A (U) No, I do not.

Q (U) It has been alleged that a team of four military personnel of Embassy Tripoli on the night of the attacks who were considering flying on a plane to Benghazi were ordered by their superiors to stand down, meaning to cease all operations. Military officials have stated that those four individuals were instead ordered

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to remain in place in Tripoli to provide security and medical assistance in their current location.

(U) A Republican staff report issued by the House Armed Services Committee found that, quote, "there was no stand-down order issued to U.S. military personnel in Tripoli who sought to join the fight in Benghazi," end quote.

(U) Do you have any evidence to contradict the conclusion of the House Armed Services Committee that there was no stand-down order issued to U.S. military personnel in Tripoli who sought to join the fight in Benghazi?

A (U) No, I do not.

Q (U) It has been alleged that the military failed to deploy assets on the night of the attack that would have saved lives.

(U) However, former Republican Congressman Howard "Buck" McKeon, the former chairman of the House Armed Services Committee, conducted a review of the attacks, after which he stated, quote, "Given where the troops were, how quickly the thing all happened, and how quickly it dissipated, we probably couldn't have done more than we did," end quote.

(U) Do you have any evidence to contradict Congressman McKeon's conclusion?

A (U) No, I don't.

Q (U) Do you have any evidence that the Pentagon had military assets available to them on the night of the attacks that could have saved lives but that the Pentagon leadership intentionally decided not

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to deploy those assets?

A (U) Absolutely not.

Ms. Sachsman Grooms. (U) That's what I have for now. Let's go off the record.

[Recess.]

Mr. Chipman. (U) Okay. Back on the record.

BY MR. DAVIS:

Q (U) Sir, just one quick question. During the last hour and earlier in the day, you had talked about a meeting with all the national security principals where you questioned Director Petraeus' analysts. That occurred the day after the attack. Is that right?

A (U) Yes.

Q (U) And when you say "the day after the attack," was that Wednesday, September 12, or was it Thursday, September 13?

A (U) You know, I'm working by my recollection, but I think it -- at least my memory is that it was soon after -- it could've gone into the next day, but I -- you know, whenever it was, it was the first meeting at the National Security Council to discuss what had happened there.

Q (U) And you're not sure whether that was the 12th or the 13th?

A (U) I'm not, no.

Mr. Davis. (U) Okay. That's it.

Mr. Chipman. (U) And no exhibit used?

BY MR. CHIPMAN:

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[REDACTED]

A (U) That is correct.

Q (U) -- 225,000 civilians and 2.5 million servicemembers.

A (U) You got it.

Q (U) Yes, sir.

Q (U) So, when that occurred, then we have the sequence directed. And so, in response to an earlier question, it was exhibit 7, and it said -- this is a question on page 59 that I believe the minority posed, and it is General Dempsey. "Once we started moving forces, nothing stopped us, nothing slowed us." And if you could refer back to that.

A (U) Right.

Q (U) And I think that, from my perspective, Mr. Secretary, I would agree with you that that is an accurate assessment. But it's that idea of "started moving forces" that I think is worthy of some discussion.

(U) And so, if you don't start moving forces until the 11 o'clock order is issued, then you're going to build in some more time. So there is time from the incident to notification to liftoff. There is time from liftoff to arrival. And what I think I would take issue with, at least in part, from this particular statement, is that we seem to have a significant time from the incident to notification to deploy.

(U) And so, if I go back to exhibit 3, again, knowing that --
Mr. Shapiro. (U) Timeline?

Mr. Chipman. (U) The timeline.

[REDACTED]

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BY MR. CHIPMAN:

Q (U) -- knowing that the incident was notified to the Office of SecDef at 4:30, it's that time, between 4:30 and 11, that would cause me to wonder, were we moving out as smartly as you, Mr. Secretary, directed personally.

(U) Is that a fair question? Is that a fair observation?

A (U) You know, I think it's a -- obviously, it's a fair question, but it's not one that I can answer, because, frankly, my view was, "Go," and I assumed that they were moving as expeditiously as they could.

Q (U) Yes, sir. And so one of the things that we as a Nation do is we resource these capabilities you've talked about, these elite forces, these elite units, and we expect a certain level of readiness --

A (U) Right.

Q (U) -- and ability to deploy on the timeline directed.

And so, from the perspective of those who have stopped me to ask about Benghazi, the folks with whom I served in these commands, they say, "Look, we know the timeline. The timeline was not met. Why is that?"

(U) Would you understand that to be a fair question?

A (U) Yeah, I think that's a fair question, you know, as to how these units move and get in place and move out. And, you know, again, from my perspective as Secretary of Defense, I had every confidence that they were moving out as quickly as they could.

Q (U) Yes, sir. And you made it clear that you directed that

[REDACTED]

in your meetings with General Dempsey and with General Ham.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A Right.

Q (U) -- and it would also include the CINCs or the Commander's In-extremis Force, the folks that were then training in Croatia. Does that comport with your recollection?

A (U) That's correct.

Q [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A (U) It makes sense to me. But, you know, again, as to the specific timeline, I was not -- you know, the Secretary is not really aware of the specific timeline. My view was: Get them going as quickly as you can.

Q (U) Sir, and, you know, the forces that maintain that alert posture, they do have a required alert capability. Does that seem reasonable?

A (U) Right.

Q [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A (U) That's correct.

Q [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

A (U) You know, the specifics of what they do or do not have, you know, it's not something I'm that familiar with. But, clearly, my viewpoint was: These are elite forces. When you order them to go, they go.

Q [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

A (U) Correct.

Q (U) Exhibit 4 is, in essence, a series of times and dates and activities, added to by majority counsel, in trying to get a compilation of what appears to be supported by other evidence and by other witnesses we have talked to and by message traffic. So there are no citations on this document, and we can certainly supplement the record, should we need to, with what we are basing these times on.

(U) But it appears that General Ham's guidance was issued certainly by 8:02 p.m., and the EUCOM SOF in Croatia learned then that they might have the potential to deploy into Benghazi.

(U) Sir, we have interviewed that CIF commander, and that is where

[REDACTED]

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[REDACTED]

Q (U) And so you knew of there -- you'd already identified the risks in Sana'a and Yemen and Khartoum and Tripoli and Cairo. And so I think the concern that I have had in reviewing these documents is, why wouldn't we go ahead and move those forces as quickly as we can to get them postured? Would you agree with that?

A (U) That's correct.

Q [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A (U) That's correct.

Q (U) And so we interviewed that young CIF commander, who said, at about 02, I was notified to get ready for a deployment. By 5 o'clock that morning, my team and I were assembled and ready to roll, 3 hours later.

(U) Does that seem like a reasonable timeframe to get ready for a deployment?

A (U) Yes, it does.

Q Well, that same unit then had to wait for aircraft till about, if you look at the timeline here, 10:21 a.m.

(U) So that N-hour that was set at 11 o'clock east coast time on the night of the 11th, it was not until 11 hours later that EUCOM CIF was actually transported down to Sigonella from Croatia.

(U) Does that timeframe seem reasonable to you, given what you thought might be occurring in the region?

[REDACTED]

House Calendar No. 163

114TH CONGRESS }
2d Session

HOUSE OF REPRESENTATIVES

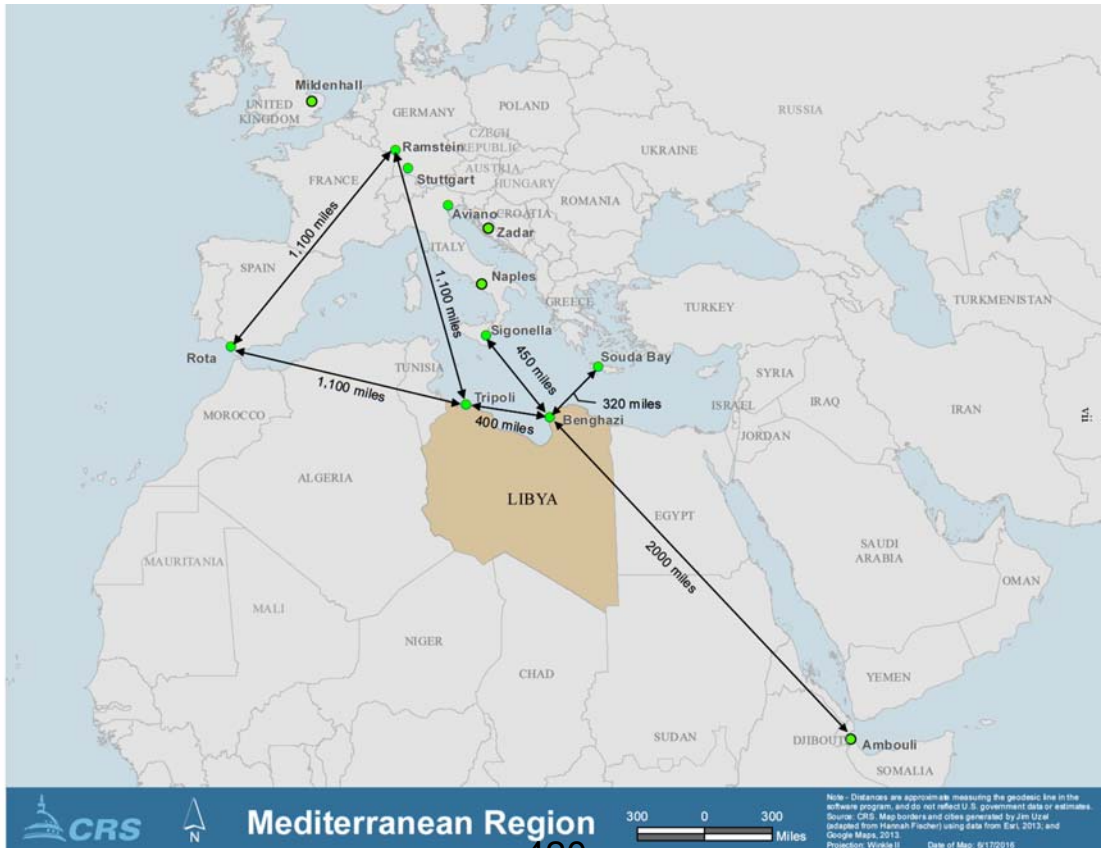
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114-848

F I N A L R E P O R T
OF THE
SELECT COMMITTEE ON
THE EVENTS SURROUNDING
THE 2012 TERRORIST
ATTACK IN BENGHAZI
HOUSE OF REPRESENTATIVES
together with
ADDITIONAL AND MINORITY VIEWS



DECEMBER 7, 2016.—Referred to the House Calendar and ordered to be printed

EXHIBIT 4



veillance of the Mission.⁵⁰ The Diplomatic Security Agent in charge reported the incident to the head security officer in country at the Embassy in Tripoli and to staff at both the Benghazi Mission compound and the Annex, including Stevens.⁵¹ The Diplomatic Security Agent described the incident:

We received word from our local guards that this morning they observed a member of the police force assigned to the Mission at a construction site across the street from our main gate taking pictures of our compound. I briefed the Ambo and provided him drafts of letters notifying the [Libyan Ministry of Foreign Affairs] and police. Will let you know any further details.⁵²

In Benghazi, the Supreme Security Council was the “most prominent” official police force, “assembled from former members of the various militias as an interim security measure.”⁵³ It was “designed to be an interim security measure” following the revolution but had not coalesced into an established force and had little impact on the security incidents in Benghazi.⁵⁴

Stevens’ last meeting of the day was with the Turkish Consul General. He escorted the Turkish diplomat to the front gate of the compound that evening at 7:39 p.m. [1:39 p.m. in Washington D.C.].⁵⁵

Stevens’ last entry in his personal journal, dated September 11, 2012, read: “Never ending security threats . . . ”⁵⁶

A Protest Begins at the U.S. Embassy in Cairo, Egypt on September 11

In the hours preceding the attacks in Benghazi, a protest of approximately 2,000 demonstrators assembled outside the U.S. Embassy in Cairo, Egypt.⁵⁷ Cairo is some 600 miles east of Benghazi. Plans for a demonstration in Cairo first began to coalesce in late August 2012 with the designated terrorist organization, Jamaa Islamiya, calling upon its supporters to protest the continued incarceration of its leader, Sheikh Omaar abdel Rahman, also known as the “Blind Sheik.”⁵⁸ Rahman is serving a life prison sentence for his role in the 1993 World Trade Center bombing.⁵⁹ Additionally, in the days preceding the September 11 demonstration in Cairo, an

⁵⁰ Email from Diplomatic Sec. Agent 2 (Sept. 11, 2012, 5:00 PM) (on file with the Committee, C05271656).

⁵¹ *Id.*; see also Diplomatic Sec. Agent 5 Testimony at 104–105; Diplomatic Sec. Agent 2 Testimony at 80.

⁵² Email from a Diplomatic Sec. Agent (Sept. 11, 2012, 5:00 PM) (on file with the Committee, C05271656).

⁵³ U.S. Dep’t of State, Cable, The Guns of August: security in eastern Libya (Aug. 8, 2012) (on file with the Committee, C055782149).

⁵⁴ *Id.*

⁵⁵ Comprehensive Timeline of Events—Benghazi (on file with the Committee, SCB0047843).

⁵⁶ J. Christopher Stevens, U.S. Ambassador to Libya, Personal Diary, Unofficial Transcript prepared by Patrick F. Kennedy, *et al.* (Sept. 10, 2012) (on file with the Committee, SCB0048881).

⁵⁷ Email to Susan E. Rice, U.S. Permanent Representative to the U.N. (Sept. 11, 2012, 7:55 PM) (on file with the Committee, C05390691) (re: FOR SER INFO: More on Cairo Embassy Attack).

⁵⁸ See Larry Bell, *Muslim Brotherhood Fox Was Hired To Protect Our Benghazi Consulate Henhouse*, FORBES (Dec. 2, 2012), <http://www.forbes.com/sites/larrybell/2012/12/02/muslim-brotherhood-fox-was-hired-to-protect-our-benghazi-consulate-henhouse-interview>.

⁵⁹ *Id.*

via radio with the other Americans at the second compound. And I keep Tripoli on speakerphone almost the whole time as we are working through and relaying what is going on.¹²⁶

Meanwhile, Stevens, Smith, and one Diplomatic Security Agent retreated to the safe haven of Villa C, a dedicated area within the Villa that was reinforced with a metal barred-door.¹²⁷ The Diplomatic Security Agent who was with Stevens and Smith described what happened:

I remember hearing the chants. I mean, they were fairly close already. I mean, yelling distance, which is pretty close especially in a city setting. So my impression is that I don't have much time. So I ran right to my room, you know, put my helmet on, put my vest on, grabbed my weapons, my additional weapons, and I turned to lock the gate, and basically, it was a jail cell door with three locks on it. I locked all three locks. And at about that time Ambassador Stevens and Sean Smith were coming out to their rooms. Sean Smith was already, you know, donning his helmet and vest. I guided them both into the safe haven, and set myself up in the safe haven with—I was holding my M4.”¹²⁸

Two other Diplomatic Security Agents attempted to “go back to Villa C to also provide protection for Stevens, but not to shoot at this large group.”¹²⁹

The agents in Villa B attempted to go to Villa C, but they were met with a very large hostile force of 7 to 10 attackers with “AKs and RPGs.”¹³⁰ The two agents made the tactical decision not to shoot at this large group because, “if we would have taken one of them out at the time, it could have gone substantially worse.”¹³¹ The Agents believed the attackers would have been “out for blood” and it would have inflamed an already bad situation.¹³²

Because of this concern, the agents chose to return to Villa B, which also served as the cantina or cafeteria for the Mission compound.¹³³ After seeking refuge, one of the agents in Villa B then contacted the TOC in Tripoli and the other agent contacted the State Department's Diplomatic Security Command Center [DSCC] in Washington D.C. at 9:49 p.m. Benghazi time [3:49 p.m. in Washington, DC].¹³⁴

Unknown to the Diplomatic Security Agents on the Mission compound, the attackers were a mix of local extremist groups, including the Benghazi-based Ansar al-Sharia, al-Qaeda in the Lands of

¹²⁶Diplomatic Sec. Agent 3 Testimony at 141; Diplomatic Sec. Agent 4 Testimony at 128–29.

¹²⁷Diplomatic Sec. Agent 3 Testimony at 141; *see also* Diplomatic Sec. Agent 5 Testimony at 114.

¹²⁸Diplomatic Sec. Agent 5 Testimony at 114.

¹²⁹Diplomatic Sec. Agent 3 Testimony at 142.

¹³⁰Diplomatic Sec. Agent 1 Testimony at 58.

¹³¹*Id.*

¹³²Diplomatic Sec. Agent 3 Testimony at 142.

¹³³*Id.* at 141–142.

¹³⁴Diplomatic Sec. Agent 2 Testimony at 86; *see also*, Email from the Diplomatic Sec. Command Ctr. to the Special Assistants for the Secretary, *et al.* (page 1) (Subject: Benghazi—Attack on Compound—09112012) (Sept. 11, 2012, 6:34 PM) (on file with the Committee, C05578314).

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A: That's when they left to go on the rescue.¹⁶²

The Chief of Base was adamant that he never told the Annex team members to "stand down."

You said that you let them go. Did you give them an affirmative order for them to go?

A: I think I was working with [the Team Lead] the whole time—

Q: Okay.

A: —in an effort to get them to get them gone, to have them go. So whether or not I gave an affirmative order, but I wanted them to go. They were cleared to go. And they went.

Q: When you say they were cleared to go, is that you giving the clearance?

A: Yes.

Q: Did you have any discussions—do you recall having any discussions with the deputy chief of base about allowing the guys to go?

A: I don't recall any. It was never—I never had any doubt about the GRS people going to the State Department compound. I had great concerns and great worry about it but I did not, I did not tell anybody to stand down.¹⁶³

The Chief of Base acknowledged he may have told the team to wait while he was attempting to secure additional resources for them.

I may have said wait because we were trying to get this technical truck that the team lead wanted. But it wasn't 10 minutes, or 5 minutes. It was a short period of time. And the only time I remember ever talking to [Annex team member] was when he came up, and I said I'm trying to get a technical truck for [the Team Lead]. There was nobody, myself or anybody else in Benghazi, that did anything to hold up the GRS deploying. The team lead was always cleared to go.¹⁶⁴

He further added:

People were coming and going the entire time. But I did not issue a stand-down order. And if there was a delay, there was a very short delay, basically the team lead we have to try to get this gun truck.

* * *

I was doing everything, and to my knowledge, everybody on that base was doing everything. I think I carried an ammo can at one time to get those guys out the door.

¹⁶² *Id.* at 29.

¹⁶³ *Id.* at 31–32.

¹⁶⁴ *Id.* at 58–59.

into North Africa. It's a big place. We've constantly reminded State while I was the Vice Chairman and also, you know, National Security Council staff, gently, politely, that if you're counting on reactive forces from DOD to pull your fat out of the fire, basically, when there's an event going on, you're kidding yourselves. It's just too hard to get there. Usually, an event is over fairly quickly, and even in the best alert posture we can be in, it's going to be a couple of hours, two or three hours, before we can be someplace.

So what you should really be counting on is using these forces to either preemptively reinforce an area, like an embassy, or preemptively evacuate an area, like an embassy. Don't count on us to drop in in the middle of the night and stop a situation that's going on.

Now that won't prevent us from trying, certainly. If there's an event in a place that—you know, like a Benghazi and if we're postured in order to get there, we'll certainly try, we'll always try, but I've made it very clear to them—and they understand this—that they need to be very careful in their risk assessments. And it's a lot easier to reinforce and get out early than it is to save something that's under fire. And that has a lot to do not only with the tyranny of distance and how long it takes to get there, but you know, it's not easy to take a force and just drop it into the middle of an unknown area at night, and it's even harder when you're under fire. You know, V-22s don't like to fly when they're under fire, that sort of thing. So we've tried to make it very, very clear to [State], try, please, please, to do good risk assessment and evacuate or reinforce so that we don't have to rescue you in the middle of a firefight.²⁷⁴

The President's Directive and The Secretary's Order

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 to attend a previously scheduled 5:00 p.m. meeting at the White House with President Obama and National Security Advisor Thomas E. Donilon.²⁷⁵ The Secretary recalled two details about the attack on the U.S. facility in Benghazi: a building was on fire and Stevens was missing.²⁷⁶ As the Secretary and Dempsey briefed the President on the evolving situation in Benghazi, Libya, the Secretary recalled the following guidance:

The President made clear that we ought to use all of the resources at our disposal to try to make sure we did everything possible to try to save lives there.²⁷⁷

Immediately following the meeting with the President, at roughly 6:00 p.m., the Secretary and Dempsey returned to the Pentagon

²⁷⁴ Winnefeld Testimony at 74–75.

²⁷⁵ Panetta Testimony at 22.

²⁷⁶ *Id.* at 22–23.

²⁷⁷ *Id.* at 24.

and convened a meeting that included Ham, who was in Washington D.C. at the time, and relevant members of the Secretary's staff and the Joint Staff.²⁷⁸

During the meeting, three distinct capabilities were identified to deploy in response to the attacks in Benghazi: two FAST platoons, the CIF, and the U.S. SOF, capable of response to crises worldwide.²⁷⁹ Again, the Secretary was not aware, and was not told, of any assets in Tripoli.

The Defense Department provided copies of maps identifying assets present in European Command, AFRICOM, and Central Command's areas of responsibility on September 11, September 12, and September 13 to the Committee. The assets identified on the maps were purportedly considered during this meeting, although the Joint Staff at the time did not keep a daily updated list of assets and their locations.²⁸⁰ During its investigation, the Committee determined the maps failed to include assets that actually were deployed in response to Benghazi. For example, a C-17 medical airplane was deployed to Tripoli on September 12 to evacuate the wounded, deceased, and other American citizens. That asset was not identified on the maps provided by the Defense Department to the Committee. Given this discrepancy, the Committee requested it confirm whether there were any additional assets not identified on the maps or any assets withheld due to special access programs restrictions. It did not respond to the Committee's request. This failure to respond unnecessarily and unadvisedly leaves questions the Defense Department can easily answer, and it is in the public interest that it do so.

According to the Secretary, within an hour of his return to the Pentagon, he issued an order to deploy the identified assets.²⁸¹ The testimony of record is that the President's direction that night was clear: use all of the resources available to try to make sure we did everything possible to try to save lives there.²⁸² When asked whether he expected or needed the President to later extrapolate, clarify, or reissue that order, the Secretary said "no."²⁸³ The Secretary insisted he understood the President's directive and no further communication with the President was necessary. Nor did any further communication with the President take place.

Similarly, the Secretary insists his own intentions and actions that night, in the aftermath of the President's orders, were also clear: deploy the identified assets immediately. The Secretary said his orders were active tense. "My orders were to deploy those forces, period. . . . [I]t was very clear: They are to deploy."²⁸⁴ He did not order the preparation to deploy or the planning to deploy or the contemplation of deployment. His unequivocal testimony was that he ordered the identified assets to "deploy."²⁸⁵

By 7:00 p.m. in Washington [1:00 a.m. in Benghazi], nearly three hours after the attacks began, the Secretary issued what he be-

²⁷⁸ *Id.* at 22.

²⁷⁹ *Id.* at 24-25.

²⁸⁰ See Winnefeld Testimony at 45.

²⁸¹ Panetta Testimony at 25-26.

²⁸² *Id.* at 23.

²⁸³ *Id.* at 49.

²⁸⁴ *Id.* at 26.

²⁸⁵ *Id.*

lieved, then and now, to be the only order needed to move the FAST platoons, the CIF, and the U.S. SOF.²⁸⁶ Yet nearly two more hours elapsed before the Secretary's orders were relayed to those forces. Several more hours elapsed before any of those forces moved. During those crucial hours between the Secretary's order and the actual movement of forces, no one stood watch to steer the Defense Department's bureaucratic behemoth forward to ensure the Secretary's orders were carried out with the urgency demanded by the lives at stake in Benghazi. For much of the evening of September 11, principals in Washington D.C. considered Stevens to be missing and reliable information about his whereabouts was difficult to come by. For those on the ground and in the fight in Libya, the reality of a second American death was sinking in.

THE SECOND ATTACK ON THE COMPOUND

Evacuation to Annex

In Benghazi, the Diplomatic Security Agents determined Stevens would not have survived the fire in Villa C, and they were now engaged in a recovery mission.²⁸⁷ According to Diplomatic Security Agent 4, "[W]e were unable to find Stevens. I was very—at that point, I think it was decided that this was probably a recovery mission. We were looking to recover his body."²⁸⁸

At 11:10 p.m. [5:10 p.m. in Washington], an explosive device detonated several meters inside the back gate, starting the second wave of attacks at the Benghazi Mission compound.²⁸⁹ Around the same time, the drone arrived on station over the compound.²⁹⁰ GRS officers returned fire after being fired on by the attackers, while the Diplomatic Security Agents loaded their vehicle and departed the compound under fire at 11:16 p.m. [5:16 p.m.].²⁹¹ Prior to leaving the compound, the Diplomatic Security Agents did not fire their weapons during the attacks. As one Diplomatic Security Agent explained:

I feel now, and I felt then at the time, that I had the support. At that time there was no opportunity to shoot. There was a situation, it was a moment where it was myself and [another Diplomatic Security Agent], and we were very close quarters with an overwhelming force of armed combatants, and at that situation it would not have been the smart thing, it would not have been the tactical thing to fire your weapon at that time.²⁹²

The Diplomatic Security Agents loaded Sean Smith's body in their vehicle and departed the compound through the main gate. One Diplomatic Security Agent described what they saw as they exited the compound:

²⁸⁶ *Id.* at 49.

²⁸⁷ Diplomatic Sec. Agent 4 Testimony at 137–138.

²⁸⁸ *Id.*

²⁸⁹ Video: DVR Footage of the Mission (Sept. 11, 2012, 2310).

²⁹⁰ See U.S. Dep't of Defense Timeline ("[At 11:10 PM EET t]he diverted surveillance aircraft arrives on station over the Benghazi facility.")

²⁹¹ Committee analysis of DVR Footage of the Mission (Sept. 11, 2012, 2210 to 2216).

²⁹² Diplomatic Sec. Agent 2 Testimony at 156.

ploy and said “go,” one U.S. facility in Libya had already been attacked, Sean Smith had been killed, Chris Stevens was missing, and the U.S. Embassy in Tripoli was facing threats of another attack. The fact that nearly 24 hours elapsed until those forces actually arrived in Tripoli to reinforce the security there belies the expectations of the American people that the U.S. Military can and will move expeditiously. The Secretary said this on the time it took for forces to arrive in Libya:

Q: Mr. Secretary, did you know it was going to take 23 hours to get the first assets in country?

A: No.

Q: So what did you expect it was going to take?

A: I knew it was going to take some time, just because of the preparedness for the units and then the time and distance involved. You know, you’ve heard the term “tyranny of time and distance,” and it’s tough in this area.

* * *

But I didn’t—and I assumed these units moved as quickly as possible and that, you know, we can get them in place as quickly as possible, recognizing that there is a time element that’s involved. And, you know, I understand the time element involved here just because of the nature of moving the military.

I mean, as Secretary, I used to sit down with deployment orders all the time of units. And you go through a whole series of discussions about, you know, units that have to be deployed. And, normally, the timeframe to get these units deployed—it takes time. It takes time to put them on a plane. It takes time for them to locate, I understand that. But when you’re dealing with the kind of elite units we’re talking about here, my expectation is that they move as fast as they can.⁴⁵⁸

The Commander of the FAST Platoon testified he first became aware of the attack on the Mission compound in Benghazi through reports on Fox News.⁴⁵⁹ At the time, the FAST Platoon was stationed in Rota, Spain.

So, that evening, I recall I was actually talking to my dad on Skype, watching the Armed Forces Network news channel, which rotates through news affiliates, and I think it was Fox News that night. And all of a sudden we see a consulate building on fire.

As soon as I hung up with him, I got on the phone with my commanding officer, and we had a short talk. . . . And he said something more or less in the lines of, “Make sure you do your laundry and you got enough soap.”

⁴⁵⁸ Panetta Testimony at 47–48.

⁴⁵⁹ FAST Commander Testimony at 26.

WITNESSES

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BENGHAZI: EXPOSING FAILURE AND RECOGNIZING COURAGE

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

MAY 8, 2013

Serial No. 113-30

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EXHIBIT 5

military and/or security assets to the airport to assist our response team. At this point this response team looks like it may be a hostage rescue team, that they are going to—we are going to need to send them to try to save the Ambassador, who was in a hospital that is, as far as we know, under enemy control. Our contacts with the government in Tripoli are telling us that the Ambassador is in a safe place, but they imply that he is with us in the annex in Benghazi, and we keep telling them, No, he is not with us, we do not have his—we do not have him.

At about 12:30, at the same time that we see the Twitter feeds that are asserting that Ansar al-Sharia is responsible for the attack, we also see a call for an attack on the embassy in Tripoli, and so we begin to—we had always thought that we were under threat, but we now have to take care of ourselves, and we begin planning to evacuate our facility. When I say our facility, I mean the State Department residential compound in Tripoli and to consolidate all of our personnel in—at the annex in Tripoli. We have about 55 diplomatic personnel in the two annexes.

On that night, if I may go back, I would just like to point out that with Ambassador Stevens and Sean Smith in Benghazi there are five diplomatic security agents, assistant regional security officers. With us in, at our residential compound in Tripoli we have the RSO John Martinec, three assistant regional security officers protecting 28 diplomatic personnel. In addition, we also have four Special Forces personnel who are part of the training mission.

During the night I'm in touch with Washington, keeping them posted of what's happening in Tripoli and to the best of my knowledge what I'm being told in Benghazi. I think at about 2 p.m.—2 a.m., sorry, the Secretary, Secretary of State Clinton called me, along with her senior staff, we're all on the phone, and she asked me what was going on, and I briefed her on developments. Most of the conversation was about the search for Ambassador Stevens. It was also about what we were going to do with our personnel in Benghazi, and I told her that we would need to evacuate, and that was—she said that was the right thing to do.

At about 3 a.m. I received a call from the Prime Minister of Libya. I think it's the saddest phone call I've ever had in my life. He told me that Ambassador Stevens had passed away.

Mr. HICKS. I immediately telephoned Washington that news afterwards and began accelerating our efforts to withdraw from the villas compound and move to the annex.

Excuse me. I will take a glass of water.

Our team responded with amazing discipline and courage in Tripoli in organizing our withdrawal. I have vivid memories of that. I think the most telling, though, was of our communications staff dismantling our communications equipment to take with us to the annex and destroying the classified communications capability.

Our office manager, Amber Pickens, was everywhere that night, just throwing herself into some task that had to be done. First, she was taking a log of what we were doing. Then she was loading magazines, carrying ammunition to the—carrying our ammunition supply to our vehicles. Then she was smashing hard drives with an axe.

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Mr. HICKS. They remained in Tripoli with us. The medic went with the nurse to the hospital to lend his skills to the treatment and care of our wounded.

Mr. CHAFFETZ. How did the personnel react to being told to stand down?

Mr. HICKS. They were furious. I can only say—well, I will quote Lieutenant Colonel Gibson. He said, “This is the first time in my career that a diplomat has more balls than somebody in the military.”

Mr. CHAFFETZ. So the military is told to stand down, not engage in the fight. These are the kind of people willing to engage. Where did that message come down, where did the stand-down order come from?

Mr. HICKS. I believe it came from either AFRICOM or SOCAFRICA.

Mr. CHAFFETZ. Now, my understanding is that General Ham was actually not in Stuttgart, where AFRICOM is headquartered, but he was in Washington, D.C. Is that correct?

Mr. HICKS. I don’t know the whereabouts of General Ham on that night.

Mr. CHAFFETZ. Mr. Chairman, this is something that we are going to have to continue to explore.

I need to move quickly now to Mr. Thompson, if I could.

You were the leader there at the what is called the F.E.S.T. within the State Department. According to the State Department Web site, the F.E.S.T. is the Foreign Emergency Support Team, the U.S. Government’s only interagency, on-call, short-notice team poised to respond to terrorist attacks worldwide.

I want to read to you an excerpt of an email sent by you to Kathleen Austin-Ferguson on Tuesday, September 11th, 2012, at 9:58 p.m. Could you help me understand, who is Kathleen Austin-Ferguson?

Mr. THOMPSON. She is Under Secretary Kennedy’s deputy.

Mr. CHAFFETZ. You wrote, “I am told that Pat Kennedy participated in a very senior conference call with the White House and discouraged the F.E.S.T. option. To remind, F.E.S.T. has dedicated aircraft able to respond in 4 hours, is Department of State-led, and provides the below skills. When FBI was contacted, they responded that this situation would be better addressed via a F.E.S.T. response. Thus, there are others who are thinking the same way. Ready to discuss further as needed. Mark.”

Two questions—

Chairman ISSA. Can the gentleman suspend for a moment?

Earlier, there was one document that had not been placed in the record because it hadn’t been provided through official channels. And I would ask that we get that. I think it came from Mr. Gowdy.

And then, Mr. Chaffetz, if you could make your document available so we could make copies.

And then for any other Members on either side of the dais, if you plan to use a document that is not currently committee record—and I realize, since we have gotten very little, there is very little committee records—please do us the favor of having copies so they can be distributed at or prior to the beginning of the questioning.

I am sorry to interrupt.

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ing what we know today. So I want to thank all three of you gentlemen for your service to the American people and to our government. And I want to say to you that the tough treatment you have gotten as a result not only on that day in September but since then is a horrible tragedy.

I want to go back to Mr. Gowdy's line of questions here. Mr. Hicks was there a protocol within the consulate in the event of a protest?

Mr. HICKS. Yes, there was.

Mr. MCHENRY. Was there any evidence when you were there in Libya on that day that this was a protest?

Mr. HICKS. No, there was none. And I am confident that Ambassador Stevens would have reported a protest immediately if one appeared on his door. The protocol of course was for us to evacuate immediately from the consulate and move to the annex.

Mr. MCHENRY. Okay. Was there anything in connection to a YouTube video, was there any awareness that the events occurred because of a YouTube video?

Mr. HICKS. The YouTube video was a non-event in Libya.

Mr. MCHENRY. Okay. And did you know about that within a couple of days or the day of?

Mr. HICKS. Yes.

Mr. MCHENRY. Okay. And so did you report to anyone in Washington within the first couple of days that there was anything in connection—a protest in connection to a YouTube video?

Mr. HICKS. No. The only report that our mission made through every channel was that there had been an attack on a consulate.

Mr. MCHENRY. Not a protest?

Mr. HICKS. No protest.

Mr. MCHENRY. You can leave your microphone off. I'm going to come back to you a few times.

Mr. Gowdy mentioned this earlier, but on September 16th Ambassador Susan Rice went on the Sunday shows, recited a whole group of talking points. Were you a part of those talking points.

Mr. HICKS. No, I had no role in that preparation.

Mr. MCHENRY. Okay. So one month later we had an Under Secretary Kennedy. Let's play his statement:

"Always made clear from the very beginning that we are giving out the best information we have at the time we are giving it out. That information has evolved over time. For example, if any administration official, including any career official, had been on television on Sunday, September 16, they would have said the same thing that Ambassador Rice said. She had information at that point from the intelligence community, and that is the same information I had and I would have made exactly the same point. Clearly we know more today, but we knew what we knew when we knew it."

By September 16th, did you know what you know what you know, which is apparently what Susan Rice said? Let me rephrase that actually. Let me actually make that a question, if you will.

Ambassador Rice recited a set of facts. A month later they defended—the State Department defends that. You are a career State Department official. Would you have said the things that Ambassador Rice said?

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' INTERROGATORY TO
DEFENDANT DEPARTMENT OF DEFENSE

Plaintiffs propound the following interrogatory to Defendant Department of Defense, under Rule 33 of the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

- A. The Interrogatory is to be answered fully.
- B. Provide not only such information that is in your possession, but also information that is reasonably available. In the event that you are able to provide only part of the information called for by any particular Interrogatory, please provide all the information you are able to provide and state the reason for your inability to provide the remainder.
- C. If you object to or otherwise decline to answer any portion of the Interrogatory, please provide all information called for by that portion of the Interrogatory to which you do not object or to which you do not decline to answer. For those portions of an Interrogatory to which you object or to which you do not decline to answer, state the reason for such objection or declination.



D. The Interrogatory is regarding your communications on September 11 and 12, 2012, regarding the attack on U.S. facilities in Benghazi Libya. The times are Eastern Daylight Time.

Interrogatory No. 1: State the times of all electronic, verbal, and written, communications, from 3:32 p.m., through 3:00 a.m., by and among all DOD components, the total number of individuals on the communication, their titles and locations, and the substance of that communication. Include in your answer a description of all records, in any form, containing, reflecting, or otherwise corroborating, that communication.

Date: June 25, 2018.

Respectfully submitted,

/s/

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S. HRG. 113-184

BENGHAZI: THE ATTACKS AND THE LESSONS LEARNED

HEARING

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS

UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

JANUARY 23, 2013

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EXHIBIT 7

COMMITTEE ON FOREIGN RELATIONS

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LESTER E. MUNSON III, *Republican Staff Director*

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(III)

My understanding is that the discussion of the location of Mission Benghazi was an ongoing one and that the ultimate conclusion of Ambassador Stevens was that we needed to be in Benghazi, the cradle of the Libyan revolution. That, while he was continuously reviewing other location options, it was his conclusion—as well as that of security personnel in the State Department—that the current mission site was the best choice despite a higher price tag because it was more secure than returning to the hotel where there had been a bomb and bomb threats or moving closer to the annex because it was closer to the road.

Can you give us your insights on the decisionmaking process regarding the location of the Benghazi Mission? And as part of your answer can you touch upon what actions were you and your staff taking the night of September 11 and into September the 12th?

Secretary CLINTON. Well, first, you are right, Mr. Chairman, that there was an ongoing discussion. When Chris first landed in Benghazi, he stayed in a hotel, along with other representatives of different nations. There were attacks in the vicinity, including the parking lot of the hotel.

The decision was made to move. The compound was selected as being a much better location in terms of security than the alternatives. But there was an ongoing discussion between Chris and others in the Embassy in Tripoli, those going in and out of Benghazi, about how best to situate our post there.

I did see some overnight reporting about a document. I am not sure what it is, but I would observe that there were a lot of ongoing efforts because it was important that we were constantly asking what was the best place. As you said, in general, Chris was committed to not only being in Benghazi, but to the location. The professionals in Washington paid close attention to Chris's judgment, based on his experience and his firsthand knowledge.

And so, we stayed. We continued to try to upgrade the facility that was attacked. Obviously, as the ARB has pointed out, there were inadequacies in the response, and those are the specific kinds of recommendations that we are currently implementing.

Regarding what I was doing on September 11, I was at the State Department all day and late into the night. During most of the day prior to getting notice of the attack on our compound at Benghazi, we were very focused on our Embassy in Cairo. That was under assault by a group of protesters.

We were assessing the security of our Embassy, which is, as those of you who have been there, certainly well defended. But there were crowds that were intent upon trying to scale the wall, and we were in close communication with our team in Cairo.

I was notified of the attack shortly after 4 p.m. Over the following hours, we were in continuous meetings and conversations, both within the Department, with our team in Tripoli, with the inter-agency, and internationally. I instructed our senior Department officials and our diplomatic security personnel to consider every option, to just break down the doors of the Libyan officials to get as much security support as we possibly could, to coordinate with them.

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I spoke to the National Security Adviser, Tom Donilon, several times. I briefed him on developments. I sought all possible support from the White House, which they quickly provided. Tom was my first call.

I spoke with our chargé in Tripoli to get situation updates. I spoke with former CIA Director Petraeus to confer and coordinate, given the presence of his facility, which, of course, was not well known but was something that we knew and wanted to make sure we were closely lashed up together. I talked with the then-Libyan National Congress President to press him on greater support not only in Benghazi, but also in Tripoli.

I participated in a secure video conference of senior officials from the intelligence community, the White House, and DOD. We were going over every possible option, reviewing all that was available to us, any actions we could take. We were reaching out to everyone we could find to try to get an update about Ambassador Chris Stevens, also our information specialist, Sean Smith. So it was a constant, ongoing discussion and sets of meetings.

I spoke with President Obama later in the evening to bring him up to date, to hear his perspective. Obviously, we kept talking with everyone during the night. Early in the morning on the 12th, I spoke with General Dempsey, again with Tom Donilon.

The two hardest calls that I made were obviously to the families of Ambassador Stevens and Sean Smith. And they, I have to say, were extraordinary in their responses, in their understanding of the pride we had in both men and gratitude we had for their service.

I would also just quickly add, Mr. Chairman, that while this was going on and we were trying to understand it, get on top of it, we were continuing to face protests, demonstrations, violence across the region and as far as India and Indonesia. There were so many protests happening, and thousands of people were putting our facilities at risk.

So we were certainly very determined to do whatever we could about Benghazi. We were relieved when we finally got the last of the Americans out of Benghazi, but then we were turning around, dealing with the very serious threats facing so many of our other facilities.

Senator MENENDEZ. Thank you very much. My time has expired.
Senator Corker.

Senator CORKER. Thank you, Mr. Chairman.

Madam Secretary, I agree with you when people go into the field to do the things they do, they do it knowing of the risk, and I agree with you one of the untold stories here is that of the heroic nature of many in Libya and what they did to save lives. I met several of the JSOC folks and others that risked their lives saving others.

But I also have to say, in reading all the cables and that many of us have done, there were systemic deficiencies. And I know you know that. And I would like for you to just speak to that for a moment.

To my knowledge, no one has been held accountable. Our staff had a meeting with one of the State Department officials, and I hate to use this word again, but it was nothing short of bizarre as they talked about the communications. These officials were scream-

HEARING 4

HEARING 4

BEFORE THE
SELECT COMMITTEE ON
THE EVENTS SURROUNDING
THE 2012 TERRORIST
ATTACK IN BENGHAZI
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTEENTH CONGRESS
FIRST SESSION

HELD IN WASHINGTON, DC, OCTOBER 22, 2015

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SUSANNE SACHSMAN GROOMS, *Minority Staff Director*

HEARING 4

THURSDAY, OCTOBER 22, 2015

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON BENGHAZI,
Washington, DC.

The committee met, pursuant to call, at 10:01 a.m., in Room 1100, Longworth House Office Building, Hon. Trey Gowdy [chairman of the committee] presiding.

Present: Representatives Gowdy, Brooks, Jordan, Pompeo, Roby, Roskam, Westmoreland, Cummings, Smith, Schiff, Sanchez, and Duckworth.

Staff Present: Philip G. Kiko, Staff Director and General Counsel; Chris Doneso, Deputy Staff Director; Dana Chipman, Chief Investigative Counsel; Sharon Jackson, Deputy Chief Counsel; Craig Missakian, Deputy Chief Counsel; Mark Grider, Deputy General Counsel; Mac Tolar, Senior Counsel; Carlton Davis, Investigator; Sara Barrineau, Investigator; Sheria Clarke, Counsel; Paige Oneto, Clerk; Kim Betz, Member Outreach Liaison; Paul Bell, Minority Press Secretary; Krista Boyd, Minority Senior Counsel; Linda Cohen, Minority Senior Professional Staff; Ronak Desai, Minority Counsel; Shannon Green, Minority Counsel; Susanne Sachsman Grooms, Minority Staff Director and General Counsel; Jennifer Werner, Minority Communications Director; Peter Kenny, Minority Senior Counsel; Erin O'Brien, Minority Detailee; Laura Rauch, Minority Senior Professional Staff; Dave Rapallo, Minority Senior Advisor to the Ranking Member; Daniel Rebnord, Minority Professional Staff; Mone Ross, Minority Staff Assistant; Heather Sawyer, Minority Chief Counsel; and Brent Woolfork, Minority Senior Professional Staff.

Chairman GOWDY. Good morning. The committee will come to order, and the chair notes the presence of a quorum.

Good morning. Welcome, Madam Secretary.

Welcome to each of you.

This is a public hearing of the Benghazi Select Committee.

Just a couple of quick administrative matters before we start, Madam Secretary.

There are predetermined breaks, but I want to make it absolutely clear, we can take a break for any reason or for no reason. If you or anyone would just simply alert me, then we will take a break, and it can be for any reason or for no reason.

To our guests, we are happy to have you here. The witness deserves to hear the questions, and the members deserve to hear the answers. So proper decorum must be observed at all times. No reaction to questions or answers, no disruptions. Some committees

(1)

Lindsey Graham tweeted, “Where the hell were you on the night of the Benghazi attack?”

Those appear to be based on the testimony of witnesses and the documentation that we have obtained in this committee and other previous committees. They seem to run counter to the truth, because the testimony we have received states pretty much that you were deeply engaged the night of the attacks.

So can you describe for us what the initial hours of that night were like for you and how you learned about the attacks and what your initial thoughts and actions were?

Mrs. CLINTON. Well, Congresswoman, I learned about attacks from a State Department official rushing into my office shortly after or around 4 o’clock to tell me that our compound in Benghazi had been attacked. We immediately summoned all of the top officials in the State Department for them to begin reaching out. The most important quick call was to try to reach Chris himself. That was not possible. Then to have the Diplomatic Security people try to reach their agents. That was not possible. They were, obviously, defending themselves along with the Ambassador and Sean Smith.

We reached the second in command in Tripoli. He had heard shortly before we reached him from Chris Stevens telling him that they were under attack. We began to reach out to everyone we could possibly think who could help with this terrible incident. During the course of the, you know, following hours, obviously, I spoke to the White House. I spoke to CIA Director Petraeus. I spoke to the Libyan officials, because I hoped that there were some way that they could gather up and deploy those who had been part of the insurgency to defend our compound. I had conference calls with our team in Tripoli. I was on a, what’s called a SVTC, a, you know, video conference with officials who had operational responsibilities in the Defense Department, in the CIA, at the National Security Council.

It was just a swirl and whirl of constant effort to try to figure out what we could do, and it was deeply—it was deeply distressing when we heard that the efforts by our CIA colleagues were not successful, that they had had to evacuate the security officers, our Diplomatic Security officers, that they had recovered Sean Smith’s body. And they could not find the Ambassador. We didn’t know whether he had escaped and was still alive or not.

Ms. SANCHEZ. If I may, because my time is running short, I just want to point out that you spoke with folks on the ground, you spoke with folks in the White House, the CIA, the Libyan President of the General National Congress.

Now, interestingly enough, former Director of the CIA David Petraeus has not been before this committee and has not spoken with this committee, but he did testify before the House Intelligence Committee in 2012, and he said that you personally called him and asked him for help that night.

And I just want to end on this quote. “When Secretary Clinton called me later that afternoon to indicate that Ambassador Stevens was missing and asked for help, I directed our folks to ensure that we were doing everything possible. And that is, of course, what they were doing that night.” Is that correct?

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Mrs. CLINTON. I talked to the survivors when they came back to the United States, and one, who was for many months in Walter Reed, on the telephone.

Mrs. ROBY. Okay. And——

Mrs. CLINTON. You know——

Mrs. ROBY [continuing]. Going back to Panetta and Dempsey, you had stated that they were the decisionmakers——

Mrs. CLINTON. Uh-huh.

Mrs. ROBY [continuing]. But you never spoke with them while your people were on the ground?

Mrs. CLINTON. I'm sorry.

Mrs. ROBY. I want to make sure this is clear. Panetta and Dempsey were the decisionmakers when it came to response. We've already talked about the FEST, so I'm not going to get back into that, but what I'm trying to clarify is that they were the decisionmakers, your people were on the ground in harm's way, and you never had a conversation with them.

Mrs. CLINTON. I did not need to. During the turmoil of that afternoon and into the evening, we knew the President had personally told them both in the Oval Office that he expected them to do everything they possibly could do. And I knew that they would then turn to those officers responsible for carrying out that order. They were represented on that SVTC. That's why I sat in it.

And remember, too, Congresswoman, we had a lot of other threats coming in. We were still worried about Cairo. We had——

Mrs. ROBY. Well, I understand, but you had your people on the ground that were being attacked.

I want to get back to the survivors in the little time I have left. Did you talk to the survivors directly at all——

Mrs. CLINTON. Yes, I did.

Mrs. ROBY [continuing]. At any point? Can you tell us when?

Mrs. CLINTON. It was kind of a rolling series of conversations. When they came back to the State Department, I met with and talked with them. As you know, their names have never been made public. I don't intend to today.

Mrs. ROBY. Can you give me a month?

Mrs. CLINTON. I'm sorry. What?

Mrs. ROBY. A month?

Mrs. CLINTON. It was—for some of them, it was less time than that, and for one of them, I did not—I talked with him on the phone. I did not get to physically see him until he'd been released from the hospital, and that was early in 2013.

Mrs. ROBY. I think, Mr. Chairman, there's two messages here. I think the first message is that—is the message that you sent to your personnel the night of the attack, that you went home. They all stayed there, and you didn't go back till the next morning. I think the second message that is sent is that you used the FBI's inquiry as an excuse not to check in with your agents who were on the ground who survived that horrible night just to ask them how they were.

And I yield back.

Mrs. CLINTON. Well, if I could respond, Congresswoman. I think that, again, is part of a theory that you and your colleagues are attempting to weave.

Central Intelligence Agency



Washington, D.C. 20505

30 September 2015

John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006

Re: F-2015-00060; 14-cv-1589

Dear Mr. Clarke:

This letter is in response to your 1 October 2014 Freedom of Information Act (FOIA) request for:

- “1. Any and all reports, memoranda, correspondence, maps, diagrams, charts, printouts, whether or not recorded electronically, regarding allegations that Executive Branch personnel deleted, destroyed, erased, obliterated, or obscured, records of CIA activities in Libya in the aftermath of the September 11 and 12, 2012 attacks in Benghazi, Libya, including but not limited to records in the possession of the CIA Office of Inspector General.
2. Records of all communications generated in March of 2011 regarding Colonel Muammar Gaddafi’s expressed interest in a truce and possible abdication and exile out of Libya, by or to:
 - (a) Head of Qaddafi’s personal security General Abdulqader Yusef Dibri;
 - (b) Rear Admiral (ret.) Chuck Kubic;
 - (c) AFRICOM personnel, including but not limited to:
 - (i) General Carter Ham; and
 - (ii) Lieutenant Commander Brian Linvill; and
 - (d) The CIA.”

We processed your request in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the National Security Act, 50 U.S.C. § 3141, as amended.

With regard to Item 1, we completed a thorough search for records responsive to your request and located twenty (20) documents. Eight (8) documents can be released in segregable form with redactions made on the basis of FOIA exemptions (b)(1), (b)(3), (b)(5), (b)(6), (b)(7)(c), (b)(7)(d), and (b)(7)(e). In addition, it has been determined that twelve (12) documents must be denied in their entirety on the basis of FOIA exemptions (b)(1), (b)(3), (b)(5), (b)(6), (b)(7)(c), and (b)(7)(d). Exemption (b)(3) pertains to Section 6 of the Central Intelligence Agency Act of 1949, 50 U.S.C. § 3507, noted as exemption “(b)(3)CIAAct” on the enclosed documents, and/or Section 102A(i)(1) of the National Security Act of 1947, 50 U.S.C § 3024(i)(1), noted as exemption “(b)(3)NatSecAct” on the enclosed documents.

EXHIBIT 8

With regard to Items 2 (a) and (d), in accordance with section 3.6(a) of Executive Order 13526, the CIA can neither confirm nor deny the existence or nonexistence of records responsive to your request. The fact of the existence or nonexistence of such records is itself currently and properly classified and relates to CIA intelligence sources and methods information that is protected from disclosure by Section 6 of the CIA Act of 1949, 50 U.S.C. § 3507, and Section 102A(i)(1) of the National Security Act of 1947, 50 U.S.C § 3024(i)(1). Therefore, this portion of your request is denied pursuant to FOIA exemptions (b)(1) and (b)(3).

With regard to Items 2 (b) and (c) of your request, as noted in the acceptance letter, the information you seek would fall under the auspices of the Department of Defense.

This concludes our response to the above referenced request.

Sincerely,

A handwritten signature in cursive script that reads "Michael Lavergne".

Michael Lavergne
Information and Privacy Coordinator

Enclosures

(b)(3) NatSecAct

~~SECRET~~ / ~~NOFORN~~

Central Intelligence Agency



Washington, D.C. 20505

Inspector General

(b)(3) CIAAct

3 December 2013

The Honorable Dianne Feinstein
 Chairman
 Select Committee on Intelligence
 United States Senate
 Washington, D.C. 20510

The Honorable Saxby Chambliss
 Vice Chairman
 Select Committee on Intelligence
 United States Senate
 Washington, D.C. 20510

Dear Madam Chairman and Mr. Vice Chairman:

1. (U//~~FOUO~~) Thank you for your letter of 26 November 2013 regarding information a Central Intelligence Agency officer had asked the Office of Inspector General (OIG) to provide to the Director, CIA (DCIA) in November 2012, pertaining to the 11 September 2012 attacks in Benghazi, Libya.

2. (U//~~FOUO~~) In response to your request, "Please provide any information related to the complaint, in its entirety, and any information related to your office's response or investigation of the complaint?" we provide the following documents:

A) (U//~~FOUO~~) A copy of the 1 November 2012 internal email sent by the CIA officer to my office.

I have redacted any identifying information regarding the officer in accordance with 50 USC 3517, and because of the officer's specific request for confidentiality.

B) (U//~~FOUO~~) A copy of my 2 November 2012 internal email to then Director Petraeus forwarding, at the officer's request, concerns raised by the CIA

Upon Removal of Enclosures,
 This Document is ~~SECRET~~

(b)(3) NatSecAct

~~SECRET~~ / ~~NOFORN~~

(b)(3) NatSecAct

(b)(3) NatSecAct
~~SECRET~~ / [redacted] / ~~NOFORN~~

The Honorable Dianne Feinstein
 The Honorable Saxby Chambliss

officer. Please note that all of the text below my signature was taken directly from the 1 November 2012 internal email sent by the CIA officer to the OIG. In the 1 November 2012 email, the officer's main concern was for the information to be provided to the DCIA for his situational awareness. The officer wanted to remain unidentified and apparently determined that the best way to get the information to the DCIA anonymously was through my office. As you will note, we accomplished that by means of my 2 November 2012 internal email to the DCIA. I informed the DCIA in the email that I was not planning any further inquiry by my office but was prepared to conduct any inquiry into the concerns raised by the CIA officer if the Director so requested. Director Petraeus did not make any such request.

C) (U//FOUO) The Interview Report dated 8 November 2012 documenting the interview of the CIA officer conducted on 5 November 2012 by OIG investigators [redacted] and [redacted] (b)(3) CIAAct. I have again redacted any identifying information regarding the officer.

3. (S) In response to your question, "Why did you decide not to make this complaint into a more formal "full case"?" There were several reasons. First, I was aware that the FBI was conducting a criminal investigation into the attacks. Second, I was aware that the officer's concerns were largely matters that would fall within the purview of issues that would be addressed by the Accountability Review Board, as required under 22 U.S.C. §§4031 et seq. That statutory provision requires the Secretary of State to convene an accountability review board in any case of serious injury, loss of life, or significant destruction of property at a U.S. Government mission abroad. I did not see sufficient value-added for an investigation by my office that would offset the potential disruption an additional parallel investigation might cause to the ongoing FBI and State Department investigations.

4. (S) In response to your question, "Separate from this complaint, did you consider opening an investigation into the attacks in Benghazi? Why or why not?" I did, but elected not

2

~~SECRET~~ / [redacted] / ~~NOFORN~~
 (b)(3) NatSecAct

(b)(3) NatSecAct
SECRET/ [redacted] NOFORN

The Honorable Dianne Feinstein
The Honorable Saxby Chambliss

to, chiefly for the same reasons cited above. [redacted]

[redacted] (b)(1)
(b)(3) NatSecAct

We included this topic in our Fiscal Year 2014 Work Plan in response to the tragic events in Benghazi as well as the recent shooting at the Washington Navy Yard.

5. (U//~~FOUO~~) Lastly, in response to your question, "In our staff's discussions with your office, your staff made several references to a "Director's investigation" or "Director's internal investigation" into Benghazi. What is your understanding of this investigation and who was in charge of it?" The OIG officers that met with your staff members on 20 November 2013 have informed me that they were referring to an interview team then Director Petraeus was putting together to interview Agency personnel [redacted] I do not have any additional information. I recommend you contact the CIA Office of Congressional Affairs for information regarding any review or investigation that was conducted at the direction of then Director Petraeus or then Acting Director Morell.

(b)(1)
(b)(3)
NatSecAct

6. (U) If you have any additional questions, please contact me or the OIG counsel, [redacted] (b)(3) CIAAct

Sincerely,

[redacted] (b)(6)
David B. Buckley

Enclosures: As Stated

3
SECRET/ [redacted] NOFORN
(b)(3) NatSecAct

(b)(3) NatSecAct

SECRET / [redacted] / NOFORN

[redacted] (b)(3) NatSecAct



From: [redacted] (b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(7)(c)
Date: 11/01/2011 (b)(7)(d)

Subject: Comments on the Benghazi Attacks
To: DIR-OIG-Investigations

This message is digitally signed.

History: This message has been replied to and forwarded.

Classification: SECRET (b)(3) NatSecAct NOFORN

[redacted] (b)(3) NatSecAct

It has come to my attention on 01 November 2012 that the CIA has not been provided full details regarding the events that took place during the 11/12 September attacks on the U.S. Mission (Consulate) in Benghazi and Benghazi Base. For the record, all my accounts herein are second/third-hand [redacted]

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(7)(c)
(b)(7)(d)

[redacted] however, I have talked with multiple officers on site that evening [redacted] (b)(1) making me privy to numerous meetings/discussions regarding the events. [redacted] (b)(3) NatSecAct that the correct information be made available to Ag [redacted] numerous officers [redacted] were surprised that the CIA did not appear to know the chain of events which is crucial as this information helps him and other leaders make operational decisions, and respond to policy related questions.

[Large redacted block containing the main body of the email text]

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(7)(c)
(b)(7)(d)

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(b)(3) NatSecAct

(b)(3) NatSecAct
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(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(7)(c)
(b)(7)(d)

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(b)(3) NatSecAct

(b)(3) NatSecAct

~~SECRET~~ [redacted] ~~NOFORN~~

	(b)(1)
	(b)(3) CIAAct
	(b)(3) NatSecAct
	(b)(7)(c)
	(b)(7)(d)

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~~SECRET~~ [redacted] ~~NOFORN~~

(b)(3) NatSecAct

(b)(3) NatSecAct
~~SECRET~~ / [redacted] ~~NOFORN~~

[redacted] (b)(3) NatSecAct



From: David B. Buckley
Inspector General
Central Intelligence Agency
Date: 11/02/2012 03:52 PM
Subject: Allegation pertaining to Benghazi (U)
To: David H. Petraeus
Cc: Michael J. Morell, V. Sue Bromley, [redacted]
Bcc: [redacted] (b)(3) CIAAct
David B.
Buckley/STF/AGENCY@WMA

(b)(3) NatSecAct
Classification: ~~SECRET~~ / [redacted] ~~NOFORN~~

[redacted] (b)(3) NatSecAct

Director,

(b)(6)

(b)(7)(c)

(b)(7)(d)

- IG received an allegation from an officer [redacted] based on your comments made [redacted] officers, you may have not been provided with all the details regarding the attack in Benghazi and subsequent response. (b)(1) (b)(3) NatSecAct
- The officer asked that the information below be provided to you. I have redacted the officer's identity in compliance with 50 USC 403q.
- The officer acknowledges that the information provided is second and third hand. However, given the sensitivities concerning this issue, I am providing this information directly to you for your action as you deem appropriate. I informed DDCIA.
- The officer calls into question some actions and decisions made by the Chief of Base, Benghazi.

While we plan to conduct a preliminary interview of the officer, we are not planning further work on this issue by my office. However, we stand ready to conduct any inquiry you may request, if indicated.

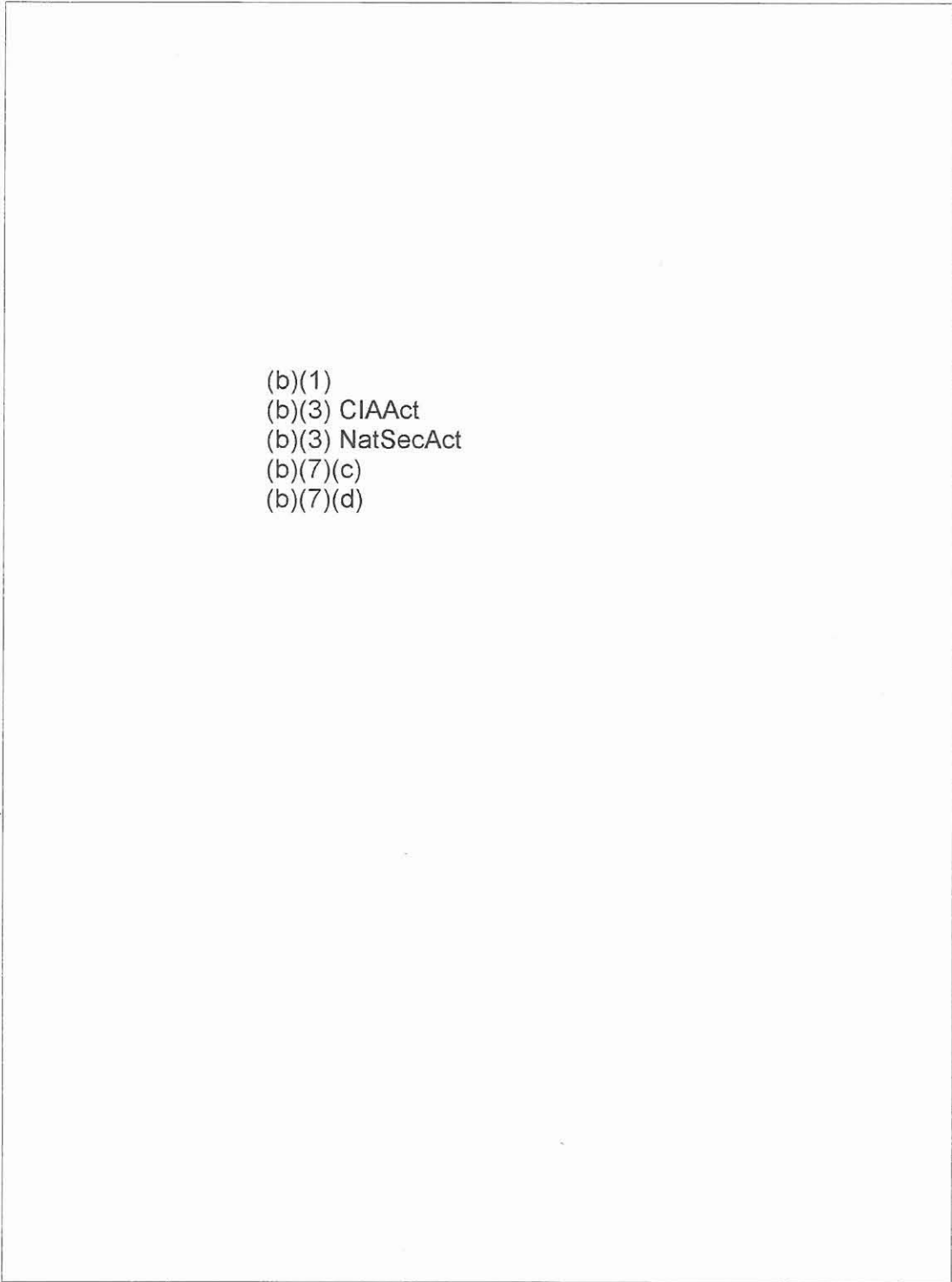
Safe travels,

David Buckley

I request the following information be provided to the DCIA for his situational awareness:

~~SECRET~~ / [redacted] ~~NOFORN~~
(b)(3) NatSecAct

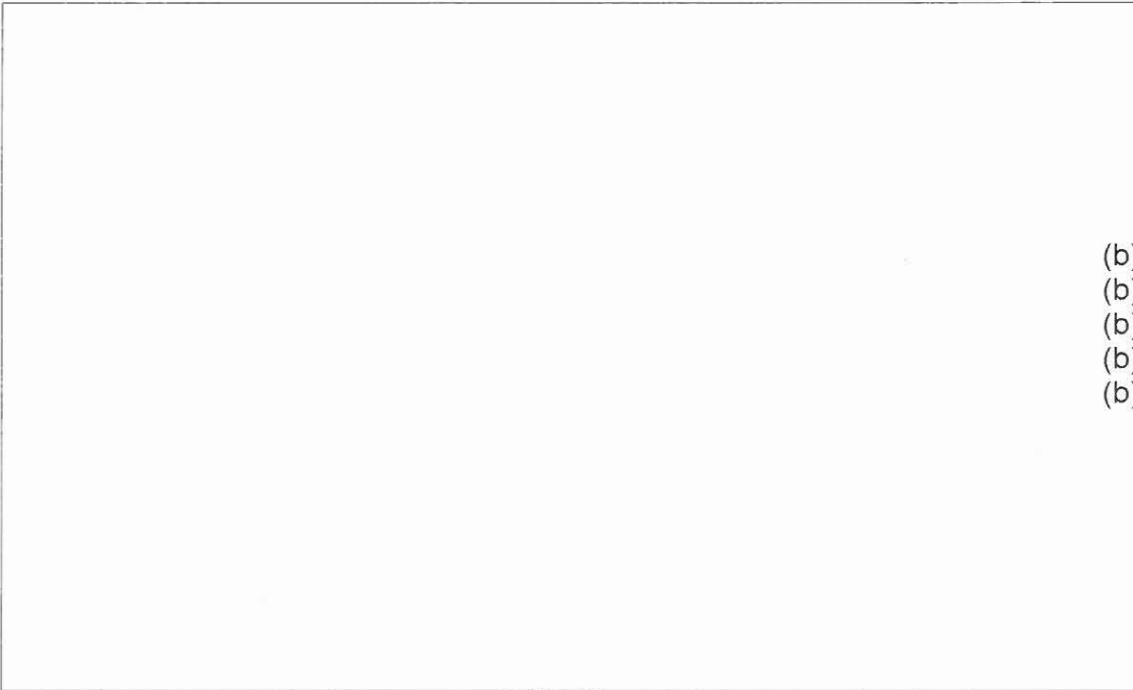
~~SECRET~~ (b)(3) NatSecAct
[redacted] ~~NOFORN~~



(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(7)(c)
(b)(7)(d)

~~SECRET~~ (b)(3) NatSecAct
[redacted] ~~NOFORN~~

(b)(3) NatSecAct
~~SECRET~~ / [redacted] ~~NOFORN~~



(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(7)(c)
(b)(7)(d)

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Classification: ~~SE~~(b)(3) NatSecAct ~~NOFORN~~

~~SECRET~~ / [redacted] ~~NOFORN~~
(b)(3) NatSecAct

(b)(3) NatSecAct

~~SECRET~~ ~~NOFORN~~

8 November 2012

INTERVIEW REPORT

INTERVIEWEE: [redacted] (b)(3) CIAAct (b)(6) (b)(7)(c)

PREPARED BY: (b)(3) CIAAct

CASE: (b)(3) CIAAct **Benghazi Attacks, 11-12 September 2012**

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(6)
(b)(7)(c)
(b)(7)(d)

(b)(3) NatSecAct (b)(3) NatSecAct
1. (S [redacted] NOFORN) On 5 November 2012, Office of Inspector General (OIG), Investigations Staff (INV), Special Agents (S(b)(3) NatSecAct(b)(3) NatSecAct [redacted] telephonically interviewed [redacted] contacted SAs [redacted]. The interview took place from 1800 to 1940 hours. The interview was conducted at [redacted] request because of [redacted] concern that the Director of CIA, David H. Petraeus, had been misinformed concerning the events surrounding the attacks on the US Consulate and the CIA Base in Benghazi, Libya, on 11 and 12 September 2012.

(b)(3) CIAAct
(b)(6)
(b)(7)(c)

(b)(3) NatSecAct
2. (S [redacted] NOFORN) At the beginning of the interview, [redacted] was informed of the following:

(b)(7)(c)
(b)(3) CIAAct
(b)(6)
(b)(7)(c)

- On 2 November 2012, OIG provided to Director Petraeus the information [redacted] had provided to OIG via Lotus Notes e-mail on 2 November 2012.
- Director Petraeus wanted [redacted] to know he appreciates having the information [redacted] provided.
- Director Petraeus is not aware of [redacted] identity.

[redacted] (b)(1) (b)(3) NatSecAct

[redacted] (b)(3) NatSecAct

~~SECRET~~ ~~NOFORN~~

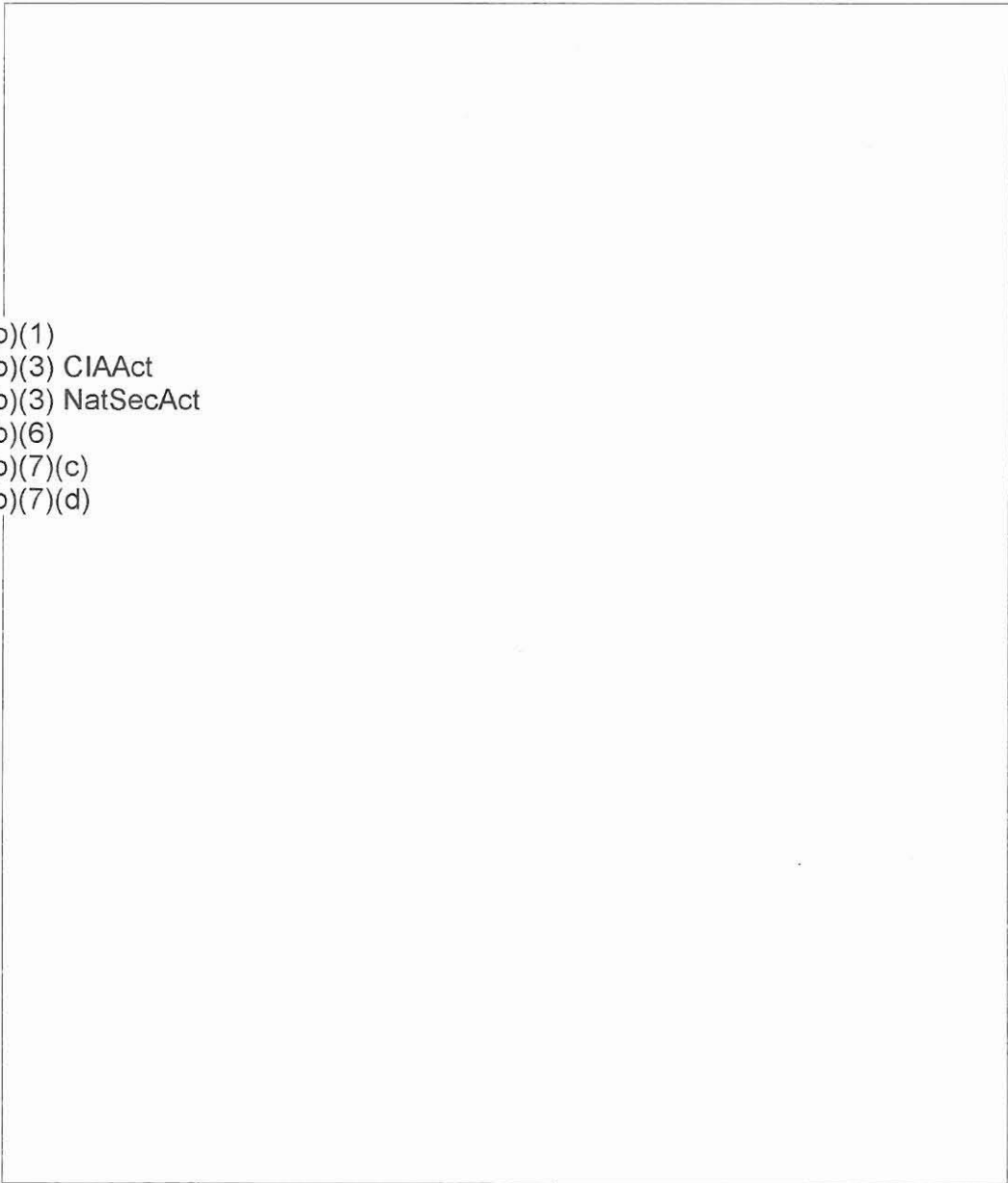
(b)(3) NatSecAct

(b)(3) NatSecAct

~~SECRET~~ [redacted] ~~NOFORN~~

(b)(3) CIAAct
(b)(6)
(b)(7)(c)
(b)(7)(d)

INTERVIEWEE: [redacted]



(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(6)
(b)(7)(c)
(b)(7)(d)

(b)(3) NatSecAct. ~~(S)~~ [redacted] ~~NOFORN~~ [redacted] said that the information from [redacted] 2 November 2012 Lotus Notes e-mail, and the information [redacted] would provide to OIG about the attacks during this telephone interview, is second-hand information [redacted] learned while

(b)(3) CIAAct
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(b)(7)(c)
(b)(7)(d)

~~SECRET~~ ² [redacted] ~~NOFORN~~

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C06354620

Approved for Release: 2015/09/30 C06354620

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(b)(3) NatSecAct
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Approved for Release: 2015/09/30 C06354620

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(b)(3) CIAAct
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Approved for Release: 2015/09/30 C06354620

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Approved for Release: 2015/09/30 C06354620

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(b)(3) NatSecAct
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(b)(3) NatSecAct

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Approved for Release: 2015/09/30 C06354620

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(b)(3) CIAAct
(b)(3) NatSecAct
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(b)(7)(d)

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(b)(3) NatSecAct

Approved for Release: 2015/09/30 C06354620

(b)(3) NatSecAct

~~SECRET~~ ~~NOFORN~~

(b)(1)
 (b)(3) CIAAct
 (b)(3) NatSecAct
 (b)(7)(c)
 (b)(7)(d)

Special Agent

Attachment: Lotus Note e-mail from to
 OIG(b)(3) CIAAct dated 2 November 2012

(b)(3) CIAAct
 (b)(6)
 (b)(7)(c)
 (b)(7)(d)

COPY

7

~~SECRET~~ ~~NOFORN~~

(b)(3) NatSecAct

(b)(3) NatSecAct

~~SECRET~~ / ~~NOFORN~~

(b)(3) NatSecAct



From: (b)(3) CIAAct
Assistant Inspector General for
Investigations
(b)(3) CIAAct

Subject: **Benghazi Timeline re Contact with OIG**
To: (b)(3) CIAAct
Cc:

Date: 11/15/2013 01:13 PM

[**** Document has been archived. Click "Retrieve" button to retrieve document contents and attachments. ****]

(b)(3) NatSecAct

- 1 November 2012-- An Agency employee contacted the OIG via LN, to express a concern that the D/CIA had not been provided with "fulsome details" regarding the events of 11-12 September 2012, and the attack on the US compounds in Benghazi, Libya.

The officer stated that his/her information was entirely second hand, based upon his/her subsequent discussions [redacted]
The officer expressed concern that the information provided to the D/CIA by official channels was not complete, and requested that the OIG ensure that his/her information was provided to D/CIA.
[redacted]

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(6)
(b)(7)(c)
(b)(7)(d)

- 2 November 2012 - The 1 November letter minus the identity of the complainant, was forwarded to the D/CIA, DD/CIA, ADD/CIA, and [redacted] by the IG, via LN. The identity of the complainant was not provided, IAW 50 USC 403q. (b)(3) CIAAct

- 5 November 2012 - The officer was interviewed telephonically by SA (b)(3) CIAAct and SA (b)(3) CIAAct

The officer provided further details to the LN provided to the OIG on 1 November. The officer also requested confidentiality regarding his/her identity.

(b)(3) NatSecAct

We have no record that anyone affiliated [redacted] ever contacted the Hotline or Investigations concerning the events in Benghazi in September 2012.

=====
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(b)(3) NatSecAct

~~SECRET~~ (b)(3) NatSecAct ~~NOFORN~~

(b)(3) NatSecAct

~~SECRET~~ / [redacted] ~~NOFORN~~

[redacted] (b)(3) NatSecAct



From: (b)(3) CIAAct Subject: Re: Benghazi Timeline re Contact with OIG
Date: 11/15/2013 01:41 PM To: [redacted] (b)(3) CIAAct
Cc: [redacted]

This message is digitally signed.

[***** Document has been archived. Click "Retrieve" button to retrieve document contents and attachments. *****]

(b)(3) NatSecAct

Classification: ~~SECRET~~ [redacted] ~~NOFORN~~

[redacted] (b)(3) NatSecAct

(b)(3) CIAAct

Thanks for your quick response.
The Hill hasn't contacted our offices as yet.
Let's make sure that our staff knows to route any such calls to the FO—goes without saying.

[redacted] (b)(3) CIAAct

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If you believe that you received this email in error, please permanently delete it and any attachments, and do not save, copy, disclose, or rely on any part of the information.

Contact the OIG at (b)(3) CIAAct if you have any questions or to let us know that you received this email in error.

[redacted]

The officer stated that his/her information was entirely second hand, based upon his/her subsequent discussions [redacted]

(b)(1)

The officer expressed concern that the information provided to the D/CIA by official channels was not complete, and requested that the OIG ensure that his/her information was provided to D/CIA.

(b)(3) CIAAct

(b)(3) NatSecAct

(b)(6)

(b)(7)(c)

(b)(7)(d)

The officer provided further details to the LN provided to the OIG on 1 November.

The officer also requested confidential (b)(3) NatSecAct identity.

We have no record that anyone affiliated [redacted] ever contacted the Hotline or Investigations concerning the events in Benghazi in September 2012.

~~SECRET~~ / [redacted] ~~NOFORN~~

(b)(3) NatSecAct

(b)(3) CIAAct

From: David Buckley
Sent: Thursday, January 16, 2014 1:22 PM
To: [Redacted]
Cc: [Redacted]
Subject: Immediate Action: Alleged Complaints related Benghazi
Importance: High

*****This message has been archived. Double-Click the message to view the contents.*****

Classification: UNCLASSIFIED

=====

All,

The Vice Chairman of the Senate Select Committee on Intelligence, along with several other Senators, included in their "Additional Views" of the SSCI Report on the Review of the Terrorist Attacks on U.S. Facilities in Benghazi, Libya, September 11-12, 2012, dated January 15, 2014:

"At the same time, the Committee has learned that the CIA Inspector General did not investigate complaints relating to the Benghazi attacks from CIA whistleblowers. Whether these complaints are ultimately substantiated or dismissed is irrelevant. On a matter of this magnitude involving the deaths of four Americans, the Inspector General has a singular obligation to take seriously and fully investigate any allegation of wrongdoing. His failure to do so raises significant questions that we believe the Committee must explore more fully."

Since the attack, I have repeatedly inquired of Investigations and the Hotline of the receipt of any such complaints. And, in preparation for a response to a SSCI inquiry in November 2013, we again searched the INV and Hotline files regarding the receipt of any Benghazi related complaint or issues that have been made to the OIG. There was one identified matter. I replied to the SSCI on December 3, 2013 regarding that one issue. Notwithstanding that response, however, the Report's Additional Views contained the statement above.

Accordingly, in further due diligence, I am requiring you all to check your files for any such complaints.

COPY 69

Double check your records and identify to me any and all complaints relating to the Benghazi attacks. Please conduct the records check immediately and report the results to me in writing as soon as possible but no later than tomorrow, COB.

Thank you,

David

David B. Buckley

Inspector General

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(b)(3) CIAAct

=====
Classification: UNCLASSIFIED

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I searched my Lotus Notes and have 9 emails dated between 2 Nov 2012 and 14 Nov 2012 related to an allegation INV received concerning the Benghazi attack on 11-12 Sep 2012. They are related to INV case [redacted], and INV should have the complete case file. Please let me know if you would like me to forward my LNs.

(b)(3)
CIAAct

From: [redacted]
To: [redacted] (b)(3) CIAAct
Cc: [redacted]
Date: 01/22/2014 12:32 PM
Subject: RE: Benghazi documents

Classification: ~~SECRET~~

[redacted] (b)(3) NatSecAct

=====
What the IG is looking for specifically is complaints made by officers about the Benghazi events. I hope this will narrow down the search.

From: [redacted] (b)(3) CIAAct
Sent: Wednesday, January 22, 2014 10:13 AM
To: [redacted] (b)(3) CIAAct
Cc: [redacted]
Subject: Fw: Benghazi documents

Classification: ~~SECRET~~

[redacted] (b)(3) NatSecAct

=====
In response to your request for Benghazi materials, I had sent the the note below to [redacted] in regard to information [redacted]. [redacted] I will check my records for any other materials and get back to you by the 2pm. due date.

(b)(3) CIAAct

----- Forwarded by [redacted] (b)(3) CIAAct on 01/22/2014 10:09 AM -----

(b)(1)
(b)(3) NatSecAct
(b)(7)(e)

~~SECRET~~

From: [redacted] (b)(3) CIAAct
Date: 01/16/2014 04:38 PM
Subject:
Fw: Benghazi documents
To:

COPY 43

(b)(3) CIAAct

Classification: ~~SECRET~~

(b)(3) NatSecAct

(b)(3) CIAAct

-- The list below is a partial listing of the Benghazi documents that have been collected

[Redacted]

Please advise if it is necessary to search with that granularity. Additionally, I will review my LNs on Friday to see if I have potentially relevant material from my former days.

(b)(1)
(b)(3) NatSecAct
(b)(7)(e)

----- Forwarded by (b)(3) CIAAct on 01/16/2014 04:27 PM

From: (b)(3) CIAAct
To:
Cc:
Date: 01/16/2014 03:09 PM
Subject: Benghazi documents

Classification: ~~SECRET~~

(b)(3) NatSecAct

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(7)(e)

44

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(7)(e)

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Classification: ~~SECRET~~

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UNCLASSIFIED//~~ATUO~~



From: [redacted] (b)(3) CIAAct
Chief of Staff (b)(3) CIAAct
Office of Inspector General
Date: 11/27/2013 08:51 AM

Subject: URGENT ACTION: SSCI QFRs re Benghazi - draft response due 12N TODAY

To:
Cc:

[redacted]

(b)(3) CIAAct

This message is digitally signed.

[***** Document has been archived. Click "Retrieve" button to retrieve document contents and attachments. *****]

Classification: UNCLASSIFIED//~~ATUO~~

=====
Good Morning --

This LN is just to document the urgent action cited above.
To recap, the IG received a memo dated 26Nov13 signed by SSCI Chair/Vice Chair with the following questions re a complaint received by OIG on or around 1 November from a CIA employee related to the 11 September 2012 terrorist attacks in Benghazi, Libya:

Please provide any information related to the complaint in question including the substance of the complaint, in its entirety, and any information related to your office's response or investigation of the complaint?

Why did you decide not to make this complaint into a more formal "full case"?

Separate from this complaint, did you consider opening an investigation into the attacks on Behghazi?

Why or why not?

In our staff's discussion with your office, your staff made several references to a "Director's investigation" or "Director's internal investigation" into Behghazi.

What is your understanding of this investigation and who was in charge of it?

While written response is requested no later than Wednesday, 4 December -- Dave would like to see a draft response by 12 noon today.

Thank you!

(b)(3) CIAAct [redacted] Chief of Staff Office of Inspector General [redacted] (b)(3) CIAAct

=====
Classification:
UNCLASSIFIED//~~ATUO~~

UNCLASSIFIED//~~ATUO~~

~~SECRET~~ [redacted] ~~NOFORN~~

REQUEST1-004056

Memorandum for the Record

Events of 11-12 SEP 2012 at Benghazi Base, Libya

DCOB [redacted] (b)(3) CIAAct [redacted]
[redacted] (b)(6)

19 SEP 2012

Note all times local, approximate unless specifically noted.

[redacted] (b)(3) CIAAct [redacted]
[redacted] (b)(6)
(b)(3) CIAAct [redacted]
(b)(6)

At circa 2140 hrs local 11 SEP, I was sitting in the Base SCIF working on a cable when GRS T/L [redacted] entered the SCIF and asked me to come into the (b)(3) NatSecAct [redacted] room. [redacted] advised he had just received a call from the State compound indicating they had been penetrated and were taking fire. He strongly recommended taking the available GRS personnel then on base, himself and five other personnel [redacted] I found the COB and we apprised him of the situation. He authorized the move, and began to call local security and militia contacts to render assistance to the DoS compound. At the same time, we had [redacted] be (b)(3) NatSecAct to advise COS Tripoli and HQS of the evolving situation. The six GRS officers and the Base linguist departed Base at circa 2150. Base continued to maintain contact with ARSO personnel (b)(6) who reported he was with the Ambassador, an (b)(6) who was in the TOC. Calls from (b)(6) in the compound became increasingly urgent as the GRS team was enroute, noting the main building had been set on fire (b)(3) NatSecAct and smoke/heat conditions were becoming increasingly difficult.

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(6)

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct

[redacted] (b)(1) [redacted] (b)(3) CIAAct
[redacted] (b)(3) NatSecAct [redacted] (b)(6) and COB were
[redacted] attempting to contact [redacted]

(b)(1)
(b)(3) NatSecAct

[redacted] to assist. Circa 15-20 minutes after the GRS departed base, one of the ARSOs (b)(6) advised via radio he had been separated from the Ambassador. The GRS T/L copied this transmission, and shortly thereafter we heard via radio he had initiated a search with GRS personnel of building C in the mission. Various other reports via radio indicated the GRS team was taking fire, and moving to locate RSO personnel. The GRS T/L radioed base approximately one hour after their departure from Base to advise they had located all ARSOs, one other State employee who was KIA, but could not locate the Ambassador despite multiple searches. They advised they were returning to

EXHIBIT 9

~~SECRET~~ ~~NOFORN~~

REQUEST1-004057

Base. ARSOs, in a separate vehicle, called base shortly thereafter to advise they were inbound to Base, and had taken heavy fire nearby the Mission. Personnel on the base prepared for their arrival, and received them shortly before 2200. The ARSO vehicle had obviously taken heavy gunfire. (b)(1) One ARSC (b)(6) suffered serious smoke inhalation, and another (b)(6) had a severe gash in his left arm. GRS officer (b)(6) who had arrived back at base at circa 2230 and other Base personnel initiated treatment of (b)(6) wound, cleaning and bandaging it. Base did not have O2 available to provide (b)(6) to assist with his smoke inhalation. The GRS team arrived shortly thereafter.

(b)(3) CIAAct
(b)(6)

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct

Shortly before 0000 12 SEP, Base began taking fire which was returned by GRS. After this initial attack, which lasted for 15-20 minutes, petering out into sporadic gunfire, the GRS T/L recommended to COB that Base personnel prepare for evacuation of the compound. By this point, Base had been advised by Tripoli that they had chartered an aircraft and were deploying four GRS and two TF operators to Benghazi.

(b)(1)
(b)(3) NatSecAct

(b)(3) CIAAct (b)(1)
(b)(6) (b)(3) NatSecAct

(b)(3) CIAAct
(b)(6)

At several other points during the night Base took fire from surrounding areas. Efforts continued by COB, (b)(6) and (b)(6) to determine who was behind the attacks against the Mission, to determine the location of the Ambassador, and to secure security assistance for the Base. By this point we were coordinating ISR coverage of the area around the base attempting to identify the source of the attacks. This proved to be of limited utility in identifying specific threats. (b)(1)

(b)(3) NatSecAct

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct

SECRET [redacted] **NOFORN**

REQUEST1-004058

(b)(1)
(b)(3) NatSecAct

At circa 0200 Base was advised the GRS / TF group from Tripoli had arrived at Benghazi airport, but were unable to secure transportation. GRS at Base were resupplied, and positions were rotated. ARSC (b)(6) pinned GRS on the roof of one of the Base buildings, while ARSO (b)(6) maintained contact with DoS Washington, and (b)(6) attempted to recover from smoke inhalation (b)(6) was close to losing consciousness at several points in the evening, and Base officers stayed close by him to ensure he was getting fluids and staying awake. After about 3.5 hours he appeared to recover to the point he was sitting upright and was more alert. ARSC (b)(6) and (b)(6) TDY with the Ambassador from Tripoli, also assisted with Base defensive positions.

[redacted]
(b)(1)
(b)(3) NatSecAct

[redacted]
(b)(1)
(b)(3) NatSecAct

Sometime after 0330 hrs Base GRS T/L was advised, and conveyed to COB and I, that the Tripoli GRS/TF officers had secured transportation and were enroute to Base. At this point, Base had not received fire for circa 90 minutes.

[redacted]
(b)(1)
(b)(3) NatSecAct

The Tripoli GRS/TF team arrived at circa 0430, and immediately took up defensive positions.

[redacted]
(b)(1)
(b)(3) NatSecAct

In the midst of these discussions, 15-20 minutes after the Tripoli GRS/TF team arrived, Base came under attack again from what I later learned was mortar fire. I heard several explosions which became increasingly louder culminating in two very loud explosions which were direct hits on Building 3

[redacted]
(b)(1)
(b)(3) NatSecAct

SECRET [redacted] **NOFORN**

REQUEST1-004059

Within two-three minutes of this attack, (b)(6) was carried into the main interior room of Building 3 with a chest wound, and severe wounds to his arms. He was suffering additional wounds to his legs from shrapnel fragments. I and other Base personnel initiated first aid, which was assisted and directed by Tripoli GRS officer [redacted]. After treating (b)(6) immediate wounds and providing morphine, he was moved to a couch and ARSO (b)(6) who had been on the roof of Building 3 with (b)(6) was brought into the same room suffering from a severe wound.

(b)(3) CIAAct
(b)(6)

(b)(6)

Working under [redacted] direction, [redacted]

(b)(3) CIAAct
(b)(3) CIAAct
(b)(3) CIAAct
(b)(6)

(b)(3) CIAAct [redacted] myself and two of the RSOs attempted to address (b)(6) injuries. [redacted] started a plasma (b)(6) IV, and we provide (b)(6) with two morphine shots about 10 minutes apart. [redacted] (b)(6) (b)(6) It was clear (b)(6) was bordering on shock, and had lost a significant amount of blood. We continued to treat both injured officers for approximately one hour while security for the move was coordinated.

Shortly after the mortar attack it was decided all personnel would evacuate the Base as soon as possible.

[Large redacted block]

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(6)

We then departed the compound.

(b)(1)
(b)(3) NatSecAct

It took about 25 minutes to reach the airport.

(b)(3) CIAAct [redacted] After arrival at the airport, we loaded the two wounded, GRS Officer [redacted] and ARSO (b)(6) onto the aircraft.

(b)(1) [redacted]
(b)(3) CIAAct [redacted] The plane departed at circa 0815 hrs.

(b)(3) NatSecAct [redacted] (b)(1)
(b)(6) [redacted] (b)(3) NatSecAct
(b)(6)

COMMENT: Without the efforts of the Benghazi GRS contingent to enter the DoS compound and recover the personnel there, I have no doubt the surviving ARSOs would have

Approved for Release: 2017/02/28 C06631277
(U)(S) NatSecAct

~~SECRET~~ [redacted] ~~NOFORN~~

REQUEST1-004060

been killed or taken captive. The actions of the six Base GRS personnel, who entered this situation without hesitation and with the full knowledge they were outnumbered and out-gunned, was a heroic action. This team's professionalism in recovering successfully the ARSO personnel, conducting repeated searches for the Ambassador in extremely hazardous conditions, entering a building fully involved in smoke and fire while taking fire, was an incredible act of bravery. This same group then established effective, sustained defense against superior forces attempting to attack our Base, and deterred these attacks successfully. GRS T/L

(b)(3) CIAAct [redacted] conduct throughout the 11-12 SEP recovery operation and subsequent attacks
(b)(6) was exemplary.

The actions of the GRS/TF team from Tripoli were also exemplary, and enabled us to successfully and in a controlled manner evacuate from our compound

[redacted] (b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(6)

Finally, all members of the Base staff performed to the highest possible level, continuing to collect intelligence, provide reporting, attend to the wounded, account for sensitive equipment and funds, support base defense, and successfully execute destruction procedures. There were no/no examples of officers panicking or losing composure, even following the mortar attack. It was a privilege to serve with this team of officers.

HEARING TO RECEIVE TESTIMONY ON DEPARTMENT OF DEFENSE'S RESPONSE TO THE ATTACK ON U.S. FACILITIES IN BENGHAZI, LIBYA, AND THE FINDINGS OF ITS INTERNAL REVIEW FOLLOWING THE ATTACK

THURSDAY, FEBRUARY 7, 2013

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The committee met, pursuant to notice, at 10:05 a.m. in room SDG-50, Dirksen Senate Office Building, Senator Carl Levin (chairman) presiding.

Committee members present: Senators Levin, Reed, Nelson, McCaskill, Udall, Hagan, Manchin, Shaheen, Gillibrand, Blumenthal, Donnelly, Hirono, Kaine, King, Inhofe, McCain, Chambliss, Wicker, Ayotte, Graham, Vitter, Blunt, Lee, and Cruz.

Committee staff members present: Richard D. DeBobes, staff director; Leah C. Brewer, nominations and hearings clerk; and Barry C. Walker, security officer.

Majority staff members present: Joseph M. Bryan, professional staff member; Jonathan D. Clark, counsel; Richard W. Fieldhouse, professional staff member; Michael J. Kuiken, professional staff member; Peter K. Levine, general counsel; Jason W. Maroney, counsel; Thomas K. McConnell, professional staff member; William G.P. Monahan, counsel; Michael J. Noblet, professional staff member; John H. Quirk V, professional staff member; and Russell L. Shaffer, counsel.

Minority staff members present: Adam J. Barker, professional staff member; Christian D. Brose, professional staff member; Thomas W. Goffus, professional staff member; Anthony J. Lazarski, professional staff member; Daniel A. Lerner, professional staff member; and Lucian L. Niemeyer, professional staff member.

Staff assistants present: Jennifer R. Knowles, Kathleen A. Kulenkampff, Brian F. Sebold, and Lauren M. Gillis.

Committee members' assistants present: Carolyn Chuhta, assistant to Senator Reed; Jeffrey Fatora, assistant to Senator Bill Nelson; Jason Rauch, assistant to Senator McCaskill; Brian Nagle, assistant to Senator Hagan; Mara Boggs, assistant to Senator Manchin; Chad Kreikemeier, assistant to Senator Shaheen; Elana Broitman, assistant to Senator Gillibrand; Ethan Saxon, assistant to Senator Blumenthal; Marta McLellan Ross, assistant to Senator

(1)

had that knowledge—and I recognize that is a hypothetical, but if we had that knowledge—what military options would there have been to prevent that loss of life and to stop that attack at the annex?

Secretary PANETTA. Senator, as you said, it's tough to respond to a hypothetical. As long as we're talking about hypotheticals, the best that would have happened here is that we would have had a heads-up and we would have had troops on the ground to protect that facility. That's the best scenario and that's what works the best.

Once an attack takes place, the biggest problem you have is getting accurate information about exactly what is taking place in order to then develop what response you need to do it. You can't just willy-nilly send F-16s there and blow the hell out of a place without knowing what's taking place. You can't send AC-130s there and blow the hell out of a target without knowing what's taking place. You've got to be able to have good information about what is taking place in order to be able to effectively respond.

Senator CRUZ. So in your judgment, if I understand you correctly, the most effective means would have been to have boots on the ground?

Secretary PANETTA. That's correct.

Senator CRUZ. If—and again this is a hypothetical—at 9:42 p.m. you had received a direct order to have boots on the ground to defend our men and women there, what is the absolute fastest that could have been carried out?

General DEMPSEY. Well, based on the posture, our posture at the time, it would have been N plus 6 plus transit time with the closest ground force available. So you're looking at something best case between 13 and 15 hours.

Senator CRUZ. So if I understand your testimony correctly, in your military judgment there was no way conceivably to get troops on the ground sooner than 13 to 15 hours?

General DEMPSEY. That's correct.

Senator CRUZ. How about assets like an AC-130. If you had received an order at the outset to deploy an aircraft like an AC-130, what would have been the absolute fastest it could have arrived at Benghazi?

General DEMPSEY. I don't even know exactly where they were, but I know there were no AC-130s anywhere near North Africa that night.

Senator CRUZ. I'd like to also spend a few moments on the decisionmaking as this crisis unfolded. I take it neither of you received the hypothetical order at any point to get boots on the ground immediately?

Secretary PANETTA. No, that's right.

Senator CRUZ. Now, both of you mentioned that at 5 p.m. D.C. time you met with President Obama for a regularly scheduled meeting, during which you discussed the attack at Benghazi that had happened about an hour and 20 minutes earlier. You said the total meeting lasted roughly 30 minutes. How much of the meeting would you estimate covered Benghazi?

Secretary PANETTA. We teed up that issue when we walked into the Oval Office, so I would say that the first 15 or 20 minutes was

spent on the concern about that, as well as Cairo and what might happen there.

Senator CRUZ. After that 15 or 20 minutes discussion of Benghazi, do I understand your testimony correct that neither of you had any subsequent conversations with the President the rest of that day and that evening?

Secretary PANETTA. We continued to talk. I think we teed up some other issues that we were dealing with at the time to inform the President, and then once that concluded we both went back to the Pentagon and immediately I ordered the deployment of these forces into place.

Senator CRUZ. In between 9:42 p.m. Benghazi time when the first attack started and 5:15 a.m. when Mr. Doherty and Mr. Woods lost their lives, what conversations did either of you have with Secretary Clinton?

Secretary PANETTA. We did not have any conversations with Secretary Clinton.

Senator CRUZ. General Dempsey, the same is true for you?

General DEMPSEY. Yes.

Senator CRUZ. One final question because my time has expired. Senator Lee asked you about securing the compound and noted that it took some 23 days to do so, and I think to the astonishment of many viewers, we had CNN News crews discovering what appeared to be sensitive documents, rather than U.S. forces or law enforcement.

I just want to make sure I understood your answer correctly, in that you said that you were not requested to secure the compound and had you been requested to secure the compound in your judgment the U.S. military could have done so and it could have done so effectively?

Secretary PANETTA. Yes.

Senator CRUZ. Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Cruz.

Senator Hagan.

Senator HAGAN. Thank you, Mr. Chairman.

Secretary Panetta, as I'm sure everybody said, this is your last time before this committee. We certainly want to take an opportunity to thank you for your extraordinary service as Secretary and all the other accolades and services that you have provided to the people of the United States. So I too want to echo my sincere thanks.

General Dempsey, thank you too for your continued service as we go forward.

The September 11 attack drew attention to the use of local militia by the Department of State for protection in Benghazi. On the night of the attack, security consisted of three armed militia members as well as four locally hired unarmed guards and five armed Diplomatic Security agents. I understand that the three militia personnel were members of the February 17th Martyrs Brigade, which is a local militia that participated in the anti-Qaddafi uprising.

Documents recovered from the post indicated that, while the local militias trained with U.S. officials for this role, militia mem-

TIME CONVERSION CHART

EASTERN STANDARD TIME				EASTERN DAYLIGHT TIME			
LOCAL <u>12 HR</u>	LOCAL <u>24 HR</u>	"ZULU" <u>UTC</u>		LOCAL <u>12 HR</u>	LOCAL <u>24 HR</u>	"ZULU" <u>UTC</u>	
12:00 AM	0000	0500		12:00 AM	0000	0400	
1:00 AM	0100	0600		1:00 AM	0100	0500	
2:00 AM	0200	0700		2:00 AM	0200	0600	
3:00 AM	0300	0800		3:00 AM	0300	0700	
4:00 AM	0400	0900		4:00 AM	0400	0800	
5:00 AM	0500	1000		5:00 AM	0500	0900	
6:00 AM	0600	1100		6:00 AM	0600	1000	
7:00 AM	0700	1200		7:00 AM	0700	1100	
8:00 AM	0800	1300		8:00 AM	0800	1200	
9:00 AM	0900	1400		9:00 AM	0900	1300	
10:00 AM	1000	1500		10:00 AM	1000	1400	
11:00 AM	1100	1600		11:00 AM	1100	1500	
12:00 PM	1200	1700		12:00 PM	1200	1600	
1:00 PM	1300	1800		1:00 PM	1300	1700	
2:00 PM	1400	1900		2:00 PM	1400	1800	
3:00 PM	1500	2000		3:00 PM	1500	1900	
4:00 PM	1600	2100		4:00 PM	1600	2000	
5:00 PM	1700	2200		5:00 PM	1700	2100	
6:00 PM	1800	2300		6:00 PM	1800	2200	
7:00 PM	1900	2400	<i>next day</i>	7:00 PM	1900	2300	
8:00 PM	2000	0100	<i>next day</i>	8:00 PM	2000	2400	<i>next day</i>
9:00 PM	2100	0200	<i>next day</i>	9:00 PM	2100	0100	<i>next day</i>
10:00 PM	2200	0300	<i>next day</i>	10:00 PM	2200	0200	<i>next day</i>
11:00 PM	2300	0400	<i>next day</i>	11:00 PM	2300	0300	<i>next day</i>
12:00 AM	2400	0500	<i>next day</i>	12:00 AM	2400	0400	<i>next day</i>

HF Bands:

Start	CW | Phone	End
3.500	3.600	4.000
7.000	7.125	7.300
10.100	10.150	-
14.000	14.150	14.350
18.065	18.110	18.168
21.000	21.200	21.450
24.890	24.930	24.990
28.000	28.300	29.300

60 Meter:
"channels":

1	5.330.5
2	5.346.5
3	5.366.5
4	5.371.5
5	5.403.5

CB frequencies:

26.965 = Ch. 1
27.065 = Ch. 9
27.185 = Ch. 19
27.225 = Ch. 23
27.265 = Ch. 26
27.305 = Ch. 30
27.375 = Ch. 37
27.405 = Ch. 40

... (29.3 - 29.5.10 Satellite) ... 29.5 -29.7 FM (-split)

EXHIBIT 11

Assets, Flight Times

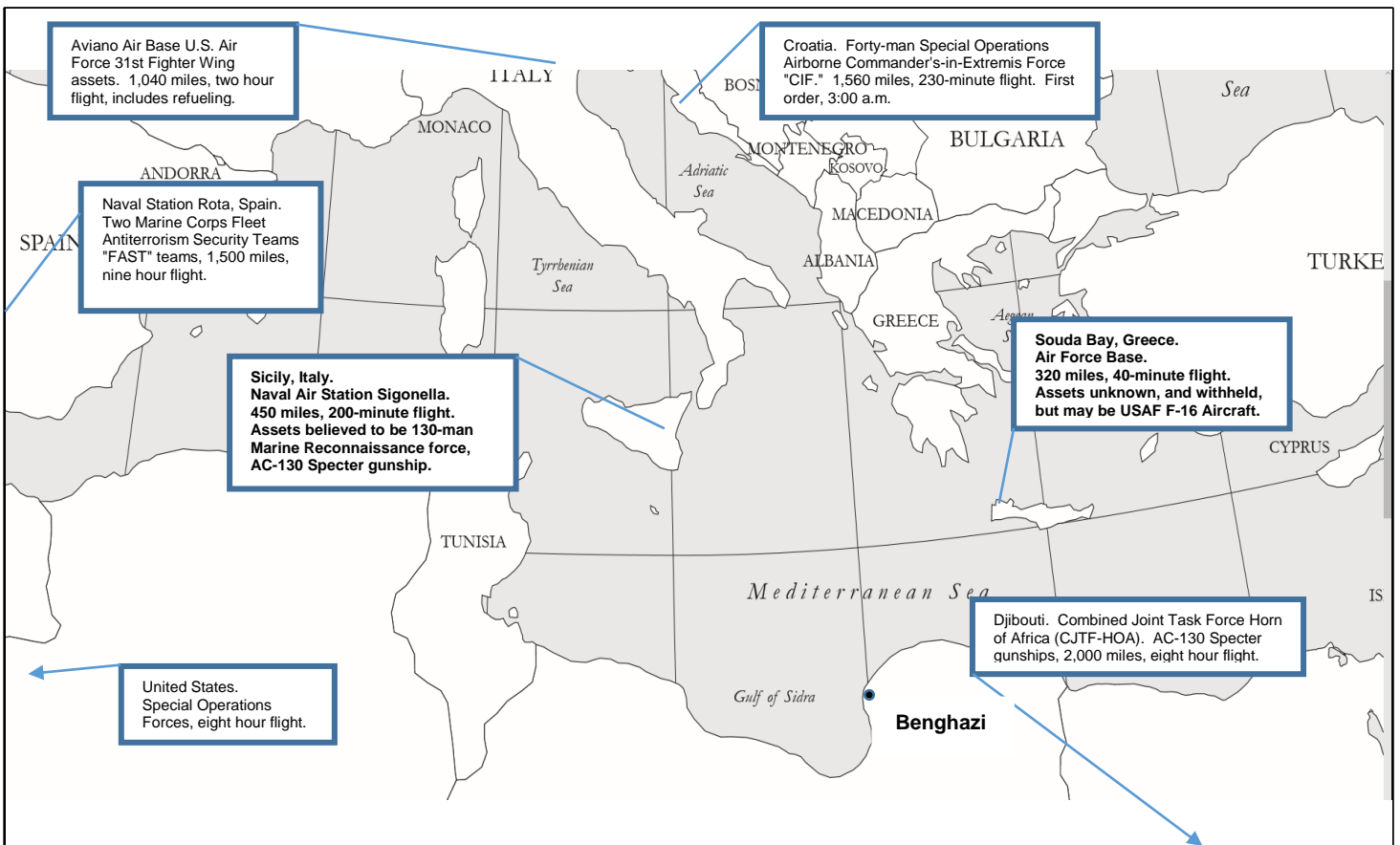


EXHIBIT 12

NOT YET SCHEDULED FOR ORAL ARGUMENT

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.)
)
_____)

JOINT APPENDIX

VOLUME 2 OF 2

On Appeal from the United States District Court for the
District of Columbia, Hon. Loren L. Alikhan, District Judge

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., et al.,)
)
 Plaintiffs,)
)
 v.)
)
 DEPARTMENT OF DEFENSE, et al.,)
)
 Defendants.)
_____)

Case No. 14-1589 (EGS)

AFFIDAVIT OF ADMIRAL JAMES A. LYONS, JR. USN (Ret)

Admiral James A. Lyons, Jr., USN, (Ret), hereby deposes and says:

1. I am a retired four-star admiral, former Commander-in-Chief of the U.S. Pacific Fleet, father of the Navy Seal Red Cell Program, Senior U.S. Military Representative to the UN, and Deputy Chief of Naval Operations, where I was the principal advisor to the Joint Chiefs of Staff. My commands included the U.S. Second Fleet, the NATO Striking Fleet, the Seventh Fleet Logistic Force, and several ship commands. I have appeared on Fox Business News several times, and have regularly contributed to the Op Ed Section of the Washington Times, where eight of my pieces concerning Benghazi have been published.

2. The sole purpose of this affidavit is to set forth my opinion on the Department of Defense's withholding of maps, on national security grounds, in response to FOIA requests for records of DOD assets available to respond to the September 11, 2012 attacks on U.S. facilities in Benghazi,

3. The DOD withheld 12 pages of maps said to depict assets that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and

12th, 2012. Vice Director of Operations for the Joint Staff at the Pentagon, Rear Admiral

James J. Malloy, wrote:

The 12 pages 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. These documents contain the numbers and locations of ships, submarines, response forces, and aircraft surrounding Benghazi, Libya. They further contain the numbers of military personnel located in particular countries during that time. Finally, they contain the transit time required for each available asset to reach Benghazi.

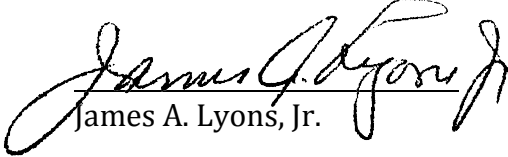
This information is sensitive and classified at the Secret level, because the release of this information reasonably could be expected to cause serious damage to the national security. Even with the passage of time, how DoD's forces are positioned at a particular time could provide potentially damaging and/or threatening insight to adversaries regarding DoD's interests, intent, and potential operations in these volatile regions of the world. Tensions with hostile foreign governments could rise depending on the disclosure of such positioning. Terrorist organizations, violent extremist organizations, or hostile foreign governments could use transit time capability information to plan attacks within windows of perceived vulnerability. It is for this reason that this information is currently and properly classified and must not be released.

4. In my opinion, the locations of ships, submarines, response forces, and aircraft surrounding Benghazi, the locations and numbers of military personnel, and the transit time required for each available asset to reach Benghazi, in September of 2012, could not reasonably be expected to cause damage to the national security.

5. 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. Disclosure of this information could not provide adversaries with information that could harm national security. The U.S. deployment in the region almost six years ago could be of no value to an adversary.

Date: June 25, 2018.

I declare under penalty of perjury that the foregoing is true and correct.


James A. Lyons, Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
ACCURACY IN MEDIA, INC., <i>et al.</i>)	
	)	Civil Action No.
Plaintiffs,	)	14-cv-1589 (EGS)
)	
v.)	
)	
DEPARTMENT OF DEFENSE, <i>et al.</i>)	
)	
Defendants.)	
_____)	

SUPPLEMENTAL DECLARATION OF MARK H. HERRINGTON

Pursuant to 28 U.S.C. § 1746, I, Mark H. Herrington, hereby declare under penalty of perjury that the following is true and correct:

1. I am an Associate Deputy General Counsel in the Office of General Counsel (“OGC”) of the United States Department of Defense (“DoD”). OGC provides legal advice to the Secretary of Defense and other leaders within the DoD. I am responsible for, among other things, overseeing Freedom of Information Act (“FOIA”) litigation involving DoD. I have held my current position since March 2007. My duties include coordinating searches across DoD to ensure thoroughness, reasonableness, and consistency, and also coordinating productions of responsive documents, including the appropriate redaction of some of those documents.

2. The statements in this declaration are based upon my personal knowledge, my review of information available to me in my official capacity, including information provided to me from individuals who were tasked with searching for records responsive to Plaintiffs’ FOIA request. Specifically, I am the OGC counsel currently assigned to this case.

3. This declaration provides further details of the search conducted by Africa Command (“AFRICOM”) in response to Plaintiffs’ request for:

Records of... March of 2011... Gaddafi’s expressed interest in a truce and possible abdication and exile out of Libya, by or to: (a) ...General Abdulqader Yusef Dibri; (b) Rear Admiral (ret.) Chuck Kubic; (c) AFRICOM personnel, including... (i) General Carter Ham; and (ii) Lieutenant [Colonel] *sic* Brian Linvill; and (d) The CIA.

4. I understand that, among other issues, Plaintiffs claim that AFRICOM’s search was deficient because 1) it “located no responsive records,” 2) it “was limited to electronic records,” 3) it did not specify spelling variants of the term “Gaddafi,” 4) it did not specify whether Colonel Linvill searched his paper files for responsive records, and 5) it did not specify “whether it searched General Carter Ham’s records.” I address each of these issues below.

DOD’s release of records it located in response to Plaintiffs’ FOIA request

5. In my first declaration, I described the manner in which AFRICOM conducted its search for records responsive to Plaintiffs’ request but did not state whether AFRICOM produced records responsive to this request. *See* Herrington Decl. ¶¶ 25-26. As Plaintiffs are likely aware, in response to Plaintiffs’ request, AFRICOM released records that it located as a result of its search. Those records include documents from March 2011 detailing reports, such as “Libya’s Foreign Minister announced that his government has agreed to an immediate ceasefire per UNSCR 1973 in order to safeguard its citizens and property,” and the events of March 2011 generally. A sample of such records is attached as Exhibit 1.

The searches conducted by Colonel Linvill and General Carter Ham

6. As I previously explained, “AFRICOM personnel directed COL Brian Linvill to conduct a search of his electronic and paper files because Plaintiffs specifically mentioned him in the request.” Herrington Decl. ¶ 25. Plaintiffs claim that the declaration does not specify whether

Colonel Linvill actually conducted a search of his paper files. In order to clarify this issue, I recently contacted and spoke to Colonel Linvill to clarify the scope of his search for records responsive to Plaintiffs' request.

7. Colonel Linvill, informed me that in March 2011 (the timeframe referenced in Plaintiffs' request), he was serving as the defense attaché at the U.S. Embassy Tripoli, which was evacuated and shut down in February 2011 during the Arab Spring. As a result of his February 2011 evacuation from the U.S. Embassy in Tripoli, he was temporarily posted at AFRICOM headquarters in Germany from the time of the evacuation in February 2011 until early May 2011, when he returned to the United States.

8. In 2014, three years after his temporary post in AFRICOM headquarters, Colonel Linvill was contacted by AFRICOM personnel, who directed him to search for records responsive to Plaintiffs' FOIA request and to do so in the manner described in the first Herrington Declaration. *See* Herrington Decl. ¶¶ 25-26. Colonel Linvill explained that AFRICOM personnel directed him to search both his electronic and paper files.

9. Because of the length of time that had passed since his temporary post at AFRICOM headquarters in Germany, Colonel Linvill contacted AFRICOM's information technology personnel in order to determine whether any of the electronic records that he had generated during his March 2011 temporary post had been archived such that he (or information personnel) could conduct a search of his electronic records. Colonel Linvill was told that as a result of AFRICOM's record retention policy, AFRICOM did not have any electronic records generated during his March 2011 temporary assignment and thus those records could not be searched.

10. With respect to the search of paper files, Colonel Linvill informed me that during his March 2011 temporary posting, it was not his practice to maintain paper files. Consequently, he

had no need to request that AFRICOM store his paper files (classified or otherwise) after his departure from his temporary posting. Colonel Linvill reiterated that he did not have any paper files responsive to Plaintiffs' request.

11. Plaintiffs also claim that DOD failed to state whether General Carter Ham searched his files, paper and electronic, for records responsive to Plaintiffs' request. As I explained in my first declaration, AFRICOM personnel searched, among other offices, the Office of the Commander. *See* Herrington Decl. ¶ 25. During the March 2011 timeframe referenced in Plaintiffs' FOIA request, the head of this office was then-Commander, General Carter Ham. In order to clarify any confusion regarding the nature of the search that AFRICOM personnel conducted in the Office of the Commander, I recently confirmed that AFRICOM's search of the Office of the Commander included a search of the paper and electronic files of General Ham and other personnel in that office during the relevant time period. With respect to AFRICOM personnel's search of electronic files in the Office of the Commander, AFRICOM personnel conducted its search of electronic records using the search terms set forth in the first Herrington Declaration, *see* Herrington Decl. ¶ 26, and the spelling variants discussed herein. *See infra* ¶ 13.

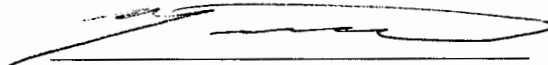
12. As noted above, AFRICOM has produced all of the records that it located in its search for records responsive to Plaintiffs' request. *See supra* ¶ 5.

Spelling Variants of Gaddafi

13. Finally, I have confirmed through AFRICOM personnel that the following spelling variants of the term "Gaddafi" were used in its search of electronic records: "Gaddafi," "Gadhafi," "Kadafi," "Khadafi," and "Qaddafi."

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th day of July, 2018, in Arlington, VA.

A handwritten signature in black ink, appearing to read "Mark H. Herrington", written over a horizontal line.

Mark H. Herrington, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., et al.,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY, et
al.,

Defendants.

Case No. 1:14-CV-01589 (EGS)

SUPPLEMENTAL DECLARATION OF
ANTOINETTE B. SHINER,
INFORMATION REVIEW OFFICER FOR THE
LITIGATION INFORMATION REVIEW OFFICE,
CENTRAL INTELLIGENCE AGENCY

I, ANTOINETTE B. SHINER, hereby declare and state:

I. INTRODUCTION

1. I continue to serve as the Information Review Officer ("IRO") for the Litigation Information Review Office ("LIRO") at the Central Intelligence Agency ("CIA" or "Agency"). I respectfully refer the Court to the CIA's previous public declaration filed on 10 May 2018 (ECF No. 68-5, hereinafter "the Shiner Declaration") for my background as well as a detailed account of the requests and the procedural history of this case.

2. Through the exercise of my official duties, I remain familiar with this civil action and the underlying FOIA requests. I make the following statements based upon my personal knowledge and information made available to me in my

official capacity. I am submitting this Supplemental Declaration in support of Defendants' Combined Reply and Opposition to Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, Cross-Motions for Summary Judgment and Motion for Leave to Propound Interrogatory to DOD (ECF No. 71, hereinafter "Plaintiffs' Motion"), to be filed by the United States Department of Justice in this proceeding.

3. The purpose of this Supplemental Declaration is to clarify that the IG Documents (identified as document number C06354620 and found in Exhibit 8 to Plaintiffs' Motion) are not operational files and therefore were not exempt from search and review. In addition, this Supplemental Declaration clarifies the bases for certain redactions and withholdings explained and justified in the Shiner Declaration.

II. PLAINTIFFS' MOTION ERRONEOUSLY RAISES THE OPERATIONAL FILE EXEMPTION AND EXCEPTIONS THERETO.

4. 50 U.S.C. § 3141,¹ as amended, exempts CIA operational files from the search, review, publication, and disclosure requirements of FOIA, with certain exceptions. 50 U.S.C. § 3141(c) states that "exempted *operational files* shall continue to be subject to search and review for information *concerning* . . . the specific subject matter of an investigation by the congressional intelligence committees" (emphasis added).

¹ Plaintiffs citation to 50 U.S.C. § 431 refers to the statute transferred in 2013 and re-codified as 50 U.S.C. § 3141.

5. Operational files are defined as certain files of the National Clandestine Service (since renamed the Directorate of Operations), the Directorate of Science and Technology, and the Office of Personnel Security.² Records of the Office of Inspector General - including the IG Documents - do not meet this definition of operational files. Thus, the CIA did not rely on the operational file exemption in its search, review, and release determinations regarding the IG Documents. Indeed, there is no mention in the Shiner Declaration of the operational file exemption.

III. AS EXPLAINED IN THE SHINER DECLARATION, CIA PROPERLY REDACTED PORTIONS OF THE IG DOCUMENTS PURSUANT TO MULTIPLE FOIA EXEMPTIONS.

6. As explained at length in the Shiner Declaration (see Shiner Decl., pp. 11-23), in evaluating the IG Documents, the CIA conducted a page-by-page and line-by-line review, and released all reasonably segregable, non-exempt information, including the subject matter of the IG's investigation.

7. For example, Exhibit 8 to Plaintiffs' Motion discloses multiple references to the subject matter and genesis of the IG complaint:

- Information concerning the complaint is found on the document bates stamped 000082. The subject of the

² See 50 U.S.C. § 3141(b).

emailed complaint is "Comments on the Benghazi Attacks," and the complaint is introduced as addressing the concern that the Director of the CIA ("DCIA") had "not been provided fulsome details regarding the events that took place during the 11/12 September attacks on the U.S. Mission (Consulate) in Benghazi and Benghazi Base." The complainant wanted the "correct information [to] be made available to Agency leadership as numerous officers . . . were surprised that the DCIA did not appear to know the chain of events which is crucial as this information helps him and other leaders make operational decisions, and respond to policy related questions."

- Document bates stamped 000085 is an email to then-Director Petraeus, where the CIA IG summarizes the complaint as "call[ing] into question some actions and decisions made by the Chief of Base, Benghazi." The complainant was alleging that Director Petraeus had "not been provided with all the details regarding the attack in Benghazi and subsequent response."
- The interview report bates stamped 000088 makes clear that the subject of the complaint addressed whether "the Director of CIA . . . had been misinformed concerning the events surrounding the attacks on the

US Consulate and the CIA Base in Benghazi, Libya, on 11 and 12 September 2012.”

- Additional IG documents included in Plaintiffs’ Exhibit 8 include the email bates stamped 000095, which summarizes the genesis and subject matter of the complaint as being “concern that the information provided to the D/CIA by official channels was not complete.”

8. CIA redacted the specific substance - as opposed to the subject - of the IG complaint pursuant to FOIA exemptions (b)(1), (b)(3), (b)(6), and/or (b)(7). I respectfully refer the Court to the explanations and justification provided in the Shiner Declaration addressing each cited exemption in turn.

9. In addition, where CIA redacted elements of the IG complaint that are neither classified nor exempt pursuant to the CIA Act or National Security Act, it did so because such information is protected from disclosure pursuant to FOIA exemption (b)(7)(D), which, as stated in the Shiner Declaration, the CIA asserts to protect not only the individuals providing information to the OIG but also the specific information provided.

IV. CONCLUSION

10. In conclusion, CIA did not invoke the operational file exemption statute as a basis for its treatment of the IG

Documents. I reaffirm the explanations and justifications provided in the Shiner Declaration regarding the proper treatment of the IG Documents, and further explain that the released information does identify the subject and genesis of the complaint underlying the IG Documents.

* * *

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of July 2018.



Antoinette B. Shiner
Information Review Officer
Litigation Information Review Office
Central Intelligence Agency

IN THE 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.)	
)	
_____)	

JOINT STATUS REPORT

COME NOW Plaintiffs and Defendants, by their respective undersigned counsel, and, in accordance with the Court's March 14, 2009, Minute Order directing the parties to file, jointly, a report including "all changes in status from the time briefing commenced in this matter," respectfully submit the following.

1. Sadly, on December 12, 2018, Admiral James A. Lyons, Jr., USN (Ret.), one of the seven individual Plaintiffs, passed away, at the age of 91. Admiral Lyons had been a former four-star admiral, Commander-in-Chief of the U.S. Pacific Fleet, Father of the Navy Seal Red Cell Program, Senior US Military Representative to the UN, and Deputy Chief of Naval Operations where he was the principal advisor to the Joint Chiefs of Staff. His commands include the US Second Fleet, NATO Striking Fleet, Seventh Fleet Logistic Force, and several ship commands.

2. In response to Plaintiffs' FOIA request to the State Department for "[a]ny and all videos depicting the United States Consulate in Benghazi, Libya (including the Special Mission Compound and the Annex) between September 10, 2012 and September 12,

2012... includ[ing]... video of closed circuit television monitor at the Benghazi Mission facility's Tactical Operations Center... (Complaint, ECF 31 ¶ 116 (2)), the government produced 54 video clips, totaling 52 minutes, 37 seconds.

3. In addition, as set forth in Plaintiffs' Opposition to Defendants' Motion for Summary Judgment and Cross-Motion for Summary Judgment (ECF No. 71 n. 10 at 3), the government's Motion for Summary Judgment (ECF No. 58-2 at 12) identifies several issues that the plaintiffs do not contest. Plaintiffs do not challenge (1) withholdings of confidential sources under Exemption 7(D), (2) information protected by privacy afforded by Exemptions 6 and 7(C), (3) the search for records responsive to the portion of plaintiffs' FOIA request to the State Department cited in ¶ 116(6) of the Second Amended Complaint, (4) whether the State Department properly withheld in full or part a call log and three interview summaries, (5) the CIA's *Glomar* assertion in response to plaintiffs' request for records of Gaddafi's expressed interest in a truce and possible abdication and exile out of Libya, (6) the CIA's search for records in response to the request for all records of CIA Director Petraeus's and Deputy Director Morell's actions and communications for the 24-hour period beginning when first notified, and (7) the DIA's withholding of four September 12, 2012, records—three intelligence reports and one situation report.

Dated: March 21, 2019.

Respectfully submitted,

/ s/

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Attorneys for Defendants

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ACCURACY IN MEDIA, INC., *et al.*,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, *et al.*,

Defendants.

Civil Action No. 14-1589
EGS/DAR

REPORT AND RECOMMENDATION

This case arises from a number of requests made pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for information related to the 2012 attack on the United States Embassy in Benghazi, Libya. *See* Am. Compl., ECF No. 31. This action was referred to the undersigned United States Magistrate Judge for full case management. *See* 01/07/2019 Referral; *see also* 01/07/2019 Minute Order. Pending for consideration by the undersigned are Defendants’ Motion for Summary Judgment, Plaintiffs’ Cross Motion for Summary Judgment, and Plaintiffs’ Motion for Leave to Propound Interrogatory to the Department of Defense. ECF Nos. 68, 71, 73. Upon consideration of the motions, and the memoranda and attachments in support thereof and in opposition thereto, the undersigned will recommend that Defendants’ Motion for Summary Judgment be granted and that Plaintiffs’ Cross Motion for Summary Judgment be denied. The undersigned will also recommend that Plaintiffs’ Motion for Leave to Propound Interrogatory to the Department of Defense be denied.

Accuracy in Media, Inc. et al. v. Department of Defense, et al.

I. BACKGROUND

This case involves more than 40 FOIA requests related to the 2012 attack on the United States Embassy in Benghazi, Libya. Plaintiffs, Accuracy in Media, Inc., and seven individuals,¹ directed these requests towards Defendants, the United States Department of Defense (“DoD”), Department of State, Federal Bureau of Investigation (“FBI”),² and Central Intelligence Agency (“CIA”). *See* Am. Compl. ¶¶ 1-16.

Plaintiffs allege that Defendants failed to conduct a reasonable search for some documents, and improperly held certain responsive documents. Pls.’ Opp., Cross-Mot. Summ. J., Mot. Discovery (“Pls.’ Mem.”), ECF No. 71. Defendants maintain that they reasonably searched for responsive records and withheld only those records which are exempt under FOIA. Defs.’ Mem. Supp. Defs.’ Mot. Summ. J. (“Defs.’ Mem.”), ECF No. 68-2.

During the pendency of this action, the parties narrowed the number of issues in dispute.³ The remaining issues raised in the instant motions are (1) whether the searches for responsive documents regarding initial communications and orders from DoD leadership to military components abroad conducted by the DoD were reasonable; (2) whether the DoD permissibly

¹ These individuals are Roger Aronoff, Captain Larry Bailey (Ret.), Lieutenant Colonel Kenneth Benway (Ret.), Colonel Richard Brauer (Ret.), Claire Lopez, Admiral James Lyons (Ret.), and Kevin Michael Shipp. Mr. Lyons has since passed. Joint Status Report, ECF No. 81 ¶ 1.

² The Department of Justice is responsible for the FBI’s compliance with FOIA and is properly named as a Defendant. The undersigned will nonetheless directly refer to the FBI herein.

³ Therefore, though argued in the initial motions for summary judgment, the following documents are no longer in dispute: “Plaintiffs do not challenge (1) withholdings of confidential sources under Exemption 7(D), (2) information protected by privacy afforded by Exemptions 6 and 7(C), (3) the search for records responsive to the portion of plaintiffs’ FOIA request to the State Department cited in ¶ 116(6) of the Second Amended Complaint, (4) whether the State Department properly withheld in full or part a call log and three interview summaries, (5) the CIA’s *Glomar* assertion in response to plaintiffs’ request for records of Gaddafi’s expressed interest in a truce and possible abdication and exile out of Libya, (6) the CIA’s search for records in response to the request for all records of CIA Director Petraeus’s and Deputy Director Morell’s actions and communications for the 24-hour period beginning when first notified, and (7) the DIA’s withholding of four September 12, 2012, records—three intelligence reports and one situation report.” Joint Status Report, ECF 81, ¶ 3. Additionally, the government has produced 54 video clips depicting the United States Consulate in Benghazi, Libya between September 10, 2012, and September 12, 2012, which resolves this initially disputed issue. Joint Status Report, ECF No. 81 ¶ 2.

Accuracy in Media, Inc. et al. v. Department of Defense, et al.

withheld information concerning military assets available to deploy in Benghazi; (3) whether the CIA permissibly redacted information responsive to the Plaintiffs' requests regarding the CIA Inspector General's investigation of the Benghazi attack, and (4) whether the FBI's *Glomar* response to requests for reports and notes of interviews the FBI allegedly conducted following the Benghazi attack was permissible. *See* ECF No. 65 at 3-6; Joint Status Report ¶ 3. Plaintiffs also moved for leave to propound an interrogatory to the DoD related to the DoD's initial orders and communications immediately following the attack. ECF No. 73.

II. APPLICABLE STANDARDS

A. Federal Rule of Civil Procedure 56

Summary judgment is appropriate where “there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “A genuine issue of material fact is one that would change the outcome of the litigation.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.”).

Courts typically decide FOIA cases on motions for summary judgment. *See Brayton v. Office of U.S. Trade Rep.*, 641 F.3d 521, 527 (D.C. Cir. 2011). Where the action is a challenge to an agency's withholding of certain records, “the agency is entitled to summary judgment if no material facts are in dispute and if it demonstrates that each document that falls within the class requested . . . is wholly exempt from [FOIA's] disclosure requirements.” *Shapiro v. DOJ*, 34 F. Supp. 3d 89, 94 (D.D.C. 2014). A court may grant summary judgment based solely on information provided in an agency's affidavits or declarations when those affidavits or

Accuracy in Media, Inc. et al. v. Department of Defense, et al.

declarations “describe the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.” *Larson v. Dep’t of State*, 565 F.3d 857, 862 (D.C. Cir. 2009) (citation omitted); *see also Hayden v. NSA*, 608 F.2d 1381, 1386-87 (D.C. Cir. 1979). “Generally, agency’s justification for invoking a FOIA exemption is sufficient if it appears logical or plausible.” *Shapiro v. DOJ*, 893 F.3d 796, 799 (D.C. Cir. 2018) (citation and internal quotation marks omitted).

After a party has moved for summary judgment, the nonmovant may show by affidavit or declaration that it lacks essential facts to respond in opposition to the motion. Fed. Civ. P. 56(d). If the nonmoving party makes a sufficient showing, a court may “(1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order.” *Id.* An affidavit or declaration offered in support of a Rule 56(d) request must meet three requirements: “(1) [I]t must outline the particular facts [the non-movant] intends to discover and describe why those facts are necessary to the litigation, (2) it must explain why [the non-movant] could not produce the facts in opposition to the motion for summary judgment, . . . and (3) it must show the information is in fact discoverable[.]” *U.S. ex rel. Folliard v. Gov’t Acquisitions, Inc.*, 764 F.3d 19, 26 (D.C. Cir. 2014) (citations and internal quotation marks omitted).

B. The Freedom of Information Act

FOIA generally provides for the disclosure of federal government records to anyone who requests them. 5 U.S.C. § 552. “Congress enacted the FOIA in order to ‘pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.’” *Morley v.*

Accuracy in Media, Inc. et al. v. Department of Defense, et al.

CIA, 508 F.3d 1108, 1114 (D.C. Cir. 2007) (quoting *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1976)) (internal quotation marks omitted). Certain agency documents are exempt from FOIA requests pursuant to nine statutory exemptions, but generally, “FOIA mandates a ‘strong presumption in favor of disclosure.’” *ACLU v. DOJ*, 655 F.3d 1, 5 (D.C. Cir. 2011) (quoting *Nat'l Ass'n Home Builders v. Norton*, 309 F.3d 26, 32 (D.C. Cir. 2002)). FOIA also requires that “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.” 5 U.S.C. § 552(b). “The court has an affirmative duty to ensure that this requirement is satisfied, even if it must do so *sua sponte*.” *Roseberry-Andrews v. DHS*, 299 F. Supp. 3d 9, 19 (D.D.C. 2018); *Morley*, 508 F.3d at 1123. FOIA contains nine exemptions to disclosure. 5 U.S.C. § 552. Exemptions 1, 3, and 7 are at issue here.

1. Exemption 1

Exemption 1 protects from disclosure any information classified “under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and . . . are in fact properly classified pursuant to such Executive order[.]” 5 U.S.C. § 522(b)(1). The current, operative Executive Order is Executive Order 13,526, which allows classification if the following conditions are met:

- (1) an original classification authority is classifying the information;
- (2) the information is owned by, produced by or for, or is under the control of the United States Government;
- (3) the information falls within one or more of the categories of information listed in section 1.4 of this order; and
- (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

Accuracy in Media, Inc. et al. v. Department of Defense, et al.

§ 1.1(a).

Section 1.4 lists categories of classified information, including “(a) military plans, weapons systems, or operations; (b) foreign government information; (c) intelligence activities (including covert action), intelligence sources or methods, or cryptology; (d) foreign relations or foreign activities of the United States, including confidential sources; (e) scientific, technological, or economic matters relating to the national security . . . (g) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security; or (h) the development, production, or use of weapons of mass destruction.”

Under Exemption 1, an agency “bears the burden of proving the applicability of claimed exemptions.” *Am. Civil Liberties Union v. DoD* (“*ACLU I*”), 628 F.3d 612, 619 (D.C. Cir. 2011). In the national security context, a court “must accord substantial weight to an agency’s affidavit concerning the details of the classified status of the disputed record.” *Id.* (quoting *Wolf v. CIA*, 473 F.3d 370, 374 (D.C. Cir. 2007)). Courts in this Circuit “have consistently deferred to executive affidavits predicting harm to the national security, and have found it unwise to undertake searching judicial review.” *Ctr. for Nat. Sec. Studies v. DOJ*, 331 F.3d 918, 927 (D.C. Cir. 2003). Accordingly, an agency will be entitled to summary judgment if the agency submits an affidavit or declaration that “describes the justifications for withholding the information with specific detail, demonstrates that the information withheld logically falls within the claimed exemption, and is not contradicted by contrary evidence in the record or by evidence of the agency’s bad faith.” *Id.* (citing *Larson v. Dep’t of State*, 565 F.3d 857, 865 (D.C. Cir. 2009)). These justifications will be upheld if “logical or plausible.” *Shapiro*, 893 F.3d at 799 (citations omitted).

Accuracy in Media, Inc. et al. v. Department of Defense, et al.

2. Exemption 3

Exemption 3 protects from disclosure any information “specifically exempted from disclosure by statute.” 5 U.S.C. § 552(b)(3). An agency invoking Exemption 3 must meet two requirements. *See CIA v. Sims*, 471 U.S. 159, 167-68 (1985). First, the invoked statute must qualify as an exempting statute under Exemption 3. *See id.* To qualify as an exempting statute under Exemption 3, a statute must be one which “(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld.” 5 U.S.C. § 552(b)(3)(A). Second, the withheld material must be the kind of material covered by the statute. *See Sims*, 471 U.S. at 167-68.

3. Exemption 7

Exemption 7 protects from disclosure certain records “compiled for law enforcement purposes.” 5 U.S.C. § 552(b)(7). In determining the threshold question of whether the records were compiled for law enforcement purposes, the “focus is on how and under what circumstances the requested files were compiled, and whether the files sought relate to anything that can fairly be characterized as an enforcement proceeding.” *Jefferson v. DOJ*, 284 F.3d 172, 176-77 (D.C. Cir. 2002) (citations and internal quotations omitted). If an agency satisfies that threshold question, the agency must demonstrate that a subsection of Exemption 7 applies.

Exemption 7(A) protects records which “could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A). Under 7(A), an agency must “show that the material withheld ‘relates to a concrete prospective law enforcement proceeding.’” *Juarez v.*

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DOJ, 518 F.3d 54, 58 (D.C. Cir. 2008) (quoting *King v. DOJ*, 830 F.2d 210, 217 (D.C. Cir. 1987).

Exemption 7(D) protects records compiled for law enforcement purposes if release of the records “could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis.” 5 U.S.C. § 552(b)(7)(D). This exemption applies to both the identity and identifying information of a confidential source in addition to information from a confidential source. *See Roth v. DOJ*, 642 F.3d 1161, 1185 (D.C. Cir. 2011). An agency invoking Exemption 7(D) must demonstrate that a source, in either express or implied terms, expected confidentiality. *See id.* at 1184.

III. MOTIONS FOR SUMMARY JUDGMENT

Considering each Defendant in turn, the undersigned concludes that Defendants acted consistently with FOIA’s requirements. Specifically, the undersigned finds that (1) the DoD conducted an adequate search and properly withheld records of available military assets pursuant to Exemption 1; (2) the CIA properly redacted CIA Inspector General files pursuant to Exemptions 1, 3, 6, and 7, and (3) the FBI properly issued a *Glomar* response after receiving a request for witness interview reports of U.S. personnel following the Benghazi attack pursuant to Exemption 7(A).

A. The Department of Defense Conducted an Adequate Search for Records and Properly Withheld Records Related to Military Assets

1. The Department of Defense Conducted an Adequate Search

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An agency that has received a FOIA request must “conduct a search reasonably calculated to uncover all relevant documents.” *Truitt v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990) (quoting *Weisberg v. DOJ*, 705 F.2d 1344, 1351 (D.C. Cir. 1983)) (noting that the actual recovery of every existing document is not significant; the relevant issue is “whether the government’s search for responsive documents was adequate”). An adequate search is one that is reasonable, and the agency must demonstrate that its search was reasonable “beyond material doubt.” *Id.* For a court to grant an agency’s motion for summary judgment, “the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.” *Oglesby v. Dep’t of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990) (holding that the agency is not required to search every record system, but must search the systems “likely to turn up the information requested”). “There is no requirement that an agency search every record system[;]” however, an agency is required to “explain in its affidavit that no other record system was likely to produce responsive documents.” *Id.* To meet this standard, an agency can produce “[a] reasonably detailed affidavit, setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials (if such records exist) were searched.” *Reporters Comm. for Freedom of Press v. FBI*, 877 F.3d 399, 402 (D.C. Cir. 2017) (quoting *Oglesby*, 920 F.2d at 68). An agency meeting this burden is “accorded a presumption of good faith, which cannot be rebutted by purely speculative claims about the existence and discoverability of other documents.” *SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1200 (D.C. Cir. 1991) (citation and quotation marks omitted).

The DoD is entitled to such a presumption because it submitted a “reasonably detailed” declaration from Mark Herrington, the Associate Deputy General Counsel in the DoD Office of

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General Counsel, explaining how the searches for responsive records were conducted. *Id.*; *see* Herrington Decl., ECF No. 68-4. As is relevant for the instant motions, Mr. Herrington details how, after the Defense Intelligence Agency (“DIA”), European Command (“EUCOM”), Navy, and Marine Corps received FOIA requests related to “[a]ll communications with, and orders to . . . personnel to get ready to deploy, and if applicable, to deploy” in the wake of the Benghazi attack, those components searched all relevant databases and offices for those records.⁴ *See id.* ¶¶ 8-15 *see also* Herrington Decl, Ex. 1, at 1 (requesting such communications and orders from the Navy). These DoD components collectively searched Record Message Traffic databases, safes, email accounts, network shared drives, offices, sub-offices, and shared portals with, where applicable, reasonable search terms and date ranges. *See id.* The DoD subsequently found and partially released an Execution Order (“EXORD”), which is “the initial written order directing EUCOM to execute an action” as well as “Fragmentary Orders, which are written orders issued after the initial EXORD” and a “two-page timeline of DoD actions[.]” *Id.* ¶¶ 17-19.

Africa Command (“AFRICOM”), in response to Plaintiffs’ requests for records from March 2011 related to “Colonel Muammar Gaddafi’s expressed interest in a truce and possible abdication and exile out of Libya,” directed various, relevant personnel to search electronic and paper files in specific AFRICOM offices using various search terms and different spellings for “Gaddafi.” Herrington Decl. ¶¶ 25-26; Herrington Suppl. Decl., ECF No. 77-1 ¶¶ 1-13. Specifically, the search included the paper and electronic files of all AFRICOM’s then-Commander, General Carter Ham, and an unsuccessful attempt to locate the files of Colonel Brian Linvill, who at one point served as the defense attaché at the United States Embassy in Tripoli, Libya. Herrington Suppl. Decl. ¶¶ 1-13. Ultimately, AFRICOM released some records

⁴ Plaintiffs also requested “OPREP-3 PINNACLE report(s)” from DIA. *See id.* ¶ 8.

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as a result of its search, but none reference the kind of truce offer that Plaintiffs believe took place. *Id.*; Pls.’ Mem. at 31-32.

In an effort to overcome the presumption of good faith owed to these “reasonably detailed” declarations, Plaintiffs offer “purely speculative claims about the existence and discoverability of other documents.” *Reporters Comm. for Freedom of Press*, 877 F.3d at 402 (citation omitted); *SafeCard Servs.* 926 F.2d at 1200.

a. Plaintiffs Fail to Rebut a Presumption of Good Faith Accorded to AFRICOM’s Search for Gaddafi-Related Records

Plaintiffs’ concerns about AFRICOM’s search have less to do with the adequacy of the search and more to do with AFRICOM’s failure to produce records which would substantiate Plaintiffs’ beliefs. Pls.’ Mem. at 31-32 (detailing purported conversations between Libyan officials and AFRICOM). As this Circuit has repeatedly held, “the adequacy of a search is determined not by the fruits of the search, but by the appropriateness of [its] methods.” *Reporters Comm. for Freedom of Press*, 877 F.3d at 408 (citations and internal quotation marks omitted). Here, the DoD explained in great detail how the search for records related to Plaintiffs’ request took place. After Plaintiffs argued that the DoD’s declaration was insufficient, the DoD filed a supplemental declaration addressing some of those issues, which Plaintiffs do not appear to dispute. *Compare, e.g.*, Pls.’ Mem. at 31-33 (stating that the DoD did not “relate whether it searched General Carter Ham’s records”) with Herrington Suppl. Decl. ¶ 11 (affirming that General Ham’s records were searched); *see generally* Pls.’ Reply, ECF No. 80 (declining to dispute the supplemental declaration).

Plaintiffs offer an affidavit which includes the affiant’s belief about Gaddafi’s willingness to negotiate a truce, as well as certain conversations and actions that occurred within

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AFRICOM. Pls.’ Mem. at 31-33. Even if the undersigned took everything in this affidavit as true,⁵ Plaintiffs still do not call into question the DoD’s “methods” but instead state disbelief at the “fruits of the search[.]” *Reporters Comm. for Freedom of Press*, 877 F.3d at 408 (citations omitted). This affidavit is therefore insufficient to overcome a presumption of good faith here.⁶

The undersigned can find only one issue that Plaintiffs raise about the methods of the DoD’s search that was not addressed in the DoD’s supplemental declaration—the DoD’s failure to use the search term “CIA.” Pls.’ Mem. at 32. One extra search term may have produced more responsive records, but this contention is “speculative.” *SafeCard Servs.*, 926 F.2d at 1200. While Plaintiffs believe that the CIA was involved in a truce negotiation attempt, it stands to reason that a search involving the terms “Gaddafi” and the others that the DoD used would “turn up” those records. Herrington Decl. ¶ 26; Herrington Suppl. Decl. ¶ 13; *Oglesby*, 920 F.2d at 68. The undersigned therefore recommends granting Defendants’ motion as it relates to the adequacy of the DoD’s search for these records.

b. Congressional Testimony Does Not Rebut the Presumption of Good Faith

⁵ Defendants submit that these affidavits do not conform with Rule 56(c) and therefore should be stricken at least in part. The undersigned does not need to reach this question, however, because, if fully credited and based on personal knowledge, these affidavits offer no real material facts tending to undercut the reasonableness of DoD’s search. *See* Kubic. Aff., ECF No. 71-3 ¶¶ 3-9 (stating only that the affiant had several conversations, not that any records were created). In the alternative, the undersigned would recommend striking paragraphs three through nine because the affiant relies on hearsay, states facts that are not based on the affiant’s personal knowledge, and provides information that is not relevant. *See id.*; *Hall v. CIA*, 538 F. Supp. 2d 64, 72 (D.D.C. 2008) (granting motion to strike paragraphs of certain affidavits because the statements were conclusory and contained no foundation). As explained later in this Report and Recommendation, the affidavit of retired Admiral James Lyons also has no impact on the court’s weighing of the material facts here because he merely states his opinion, instead of any facts, about current national security risks. *See* Lyons Aff., ECF No. 71-2 ¶ 2 (“The sole purpose of this affidavit is to set forth my opinion . . .”); *Waldie v. Schlesinger*, 509 F.2d 508, 510 (D.C. Cir. 1974) (holding that a court may not rely on affidavits consisting of “conclusory opinions” in summary judgment context). In the alternative, the undersigned recommends striking Admiral Lyons’ opinions because they are not based on personal knowledge and are not relevant. Lyons Aff. ¶¶ 2-5.

⁶ For the same reason, the existence or non-existence of a “PINNACLE OPREP-3” Report, a version of which was actually released to Plaintiff, is beside the point and does not overcome a presumption of good faith here. *See* Pls.’ Mem. at 30-31.

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Plaintiffs also challenge the adequacy of the DoD's search for responsive documents related to initial orders and communications from DoD leadership to DoD components abroad following the attack because "the DoD's unequivocal position is that the records do not exist, even while it has a history of unequivocally representing to Congress, and to the public, that the records do exist." Pls.' Mem. at 4. In reviewing the testimony, the undersigned does not find grounds to overcome the presumption of good faith accorded to the DoD.

Former Secretary of Defense, Leon Panetta, testified before a House Select Committee that he received word of the attack in Benghazi around 4:32 pm EST on September 11, 2012. *See* Clarke Decl., ECF No. 71-1, Ex. 3 ("Panetta Test.") at 12. After speaking to President Obama in the Oval Office and returning to the Pentagon for further informational meetings, Secretary Panetta issued orders to "not only prepare to deploy but deploy." *See id.* at 15. He testified that these orders were verbal and later released in the written EXORD, the first written order, at 3:00 am. *Id.* 15-16. Defendants released the EXORD record as well as a timeline of all communications following the initial knowledge of the attack. *See* Herrington Decl. ¶ 18.

Plaintiffs insist that there must have been earlier written orders and communications, but this contention is speculative. Secretary Panetta conveyed his initial orders verbally, and it appears likely that he did not immediately reduce them to written form. *See* Panetta Test. at 12. Any gap in time between these verbal orders and the creation of the EXORD record that the DoD released may have simply been the result of administrative delay. *See id.* at 45 ("[M]y view was, 'Go,' and I assumed that they were moving as expeditiously as they could."); *see also* Clarke Decl., Ex. 4 ("Select Committee Report") at 56 ("During those crucial hours between the Secretary's order and the actual movement of forces, no one stood watch to steer the Defense Department's bureaucratic behemoth forward to ensure the Secretary's orders were carried out

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with the urgency demanded by the lives at stake in Benghazi.”). Secretary Panetta’s testimony and the timeline of communications provided by the DoD to Plaintiffs all support the idea that no written records or communications were created prior to the 3:00 a.m. EXORD. *See* Herrington Decl. ¶ 18. (“This EXORD that EUCOM produced to Plaintiffs is the first written order.”); *see* Clarke Decl., Ex. 1 at 3 (explaining that at approximately 6:00 p.m. to 8:00 p.m. “Secretary Panetta directs (provides verbal authorization) for the following actions: [to direct forces and assets to prepare to deploy]” and that the EXORD was issued at approximately 3:00 a.m.).

Plaintiffs’ main contention is that this official timeline of events is doubtful; however, the undersigned finds that this contention is of little significance. *See, e.g.,* Pls.’ Mem. at 14 (expressing skepticism that Secretary Panetta could have travelled from a meeting in the White House to the Pentagon in 30 minutes). Plaintiffs must instead point to concrete evidence of the existence of particular records that the DoD failed to produce. *See SafeCard Servs.*, 926 F.2d at 1200. Setting aside Plaintiffs’ argument that the DoD’s timeline is inaccurate, the undersigned can only find two allegations of specific, actual records which, according to Plaintiffs, must exist.⁷ *See* Pls.’ Mem. at 6-7 (referencing an “Ops Alert” and a record of a conference call). Even if there were an “Ops Alert” from the State Department in writing and in the DoD’s possession,⁸ Plaintiffs do not show how this record would be responsive to Plaintiffs’ request for “communications with, and orders to . . . personnel to get ready to deploy, and if applicable, to deploy” if the record is an inter-agency communication describing the attack rather than a communication with personnel about deployment. *See* Herrington Decl, Ex. 1, at 1. Plaintiffs’

⁷ Plaintiffs allege certain other orders and communications but, even if they existed in some sense, Plaintiffs do not point to evidence of records that would exist in the physical possession of the DoD. *See e.g.,* Pls.’ Mem. at 30-32 (alleging stand down orders that were relayed over the phone).

⁸ To be clear, Plaintiffs do not specifically allege, and the record does not establish, that the Ops Alert was in writing and in DoD’s possession.

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allegation of a record from a conference call fares little better because Plaintiffs do not point to any concrete evidence suggesting that a record memorializing the call was created. Thus, assertions that these records exist amount to “purely speculative claims about the existence and discoverability of other documents.” *SafeCard Servs.* 926 F.2d at 1200.

Moreover, even if some records of earlier initial orders or communications exist, there is no evidence that the DoD failed to search for them in good faith. *See* Herrington Decl. ¶ 18; *see* Pls.’ Mem. at 4 (noting that “plaintiffs are not in a position to dispute the particulars of the DoD’s search”). FOIA requires only that agencies reasonably search for responsive records, but “[a]n agency’s ‘failure to turn up a particular document or mere speculation that as yet uncovered documents might exist,’ . . . does not undermine the determination that the agency conducted an adequate search for the requested records.” *Bigwood v. DoD*, 132 F. Supp. 3d 124, 143 (D.D.C. 2015) (citation omitted). Thus, the undersigned finds that the DoD’s search was reasonable and therefore adequate.

2. The DoD Properly Withheld Records Related to Military Assets Pursuant to Exemption 1

Plaintiffs challenge the DoD’s decision to withhold records of DoD assets that were available to deploy to Benghazi. In the course of the parties’ briefing, Plaintiffs narrowed their challenge to the DoD’s withholding of “[m]aps depicting all assets that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012[.]” *See* Defs.’ Mem. at 2; Pls.’ Mem. at 2 n.7, 27-28 (citation omitted). These maps include “the numbers and locations of ships, submarines, response forces, and aircraft surrounding Benghazi, Libya” as well the “numbers of military personnel located in particular countries during that time” and “the transit time required for each available asset to reach

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Benghazi.” Malloy Decl., ECF No. 69-1 ¶ 9. The DoD explains that this information remains classified at the “Secret” level because, “[e]ven with the passage of time, how the DoD’s forces are positioned at a particular time could provide potentially damaging and/or threatening insight to adversaries.” *Id.* ¶ 11. The DoD classified the maps pursuant to Sections 1.4(a), 1.4(d), and 1.4(g) of Executive Order 13,526 because the information in the maps includes “military operations conducted overseas, describes foreign activities of the United States, and provides transit times and a list of assets that demonstrate the capabilities of the DoD’s plans and infrastructure. *Id.* ¶ 10.

The undersigned must give this explanation “substantial weight.” *ACLU I*, 628 F.3d at 619 (citation omitted). In doing so, the undersigned finds that the application of Exemption 1 to these maps is both “logical” and “plausible.” *Shapiro*, 893 F.3d at 799 (citation omitted). There is no reason to doubt that past maps of military assets “could provide potentially damaging and/or threatening insight to adversaries regarding the DoD’s interests, intent, and potential operations in these volatile regions of the world.” Malloy Decl, ¶ 11. In the national security context, where courts “lack the expertise necessary to second-guess such agency opinions[,]” “searching judicial review” of this potential future harm is inappropriate. *ACLU I*, 628 F.3d at 619 (citation omitted); *Ctr. for Nat. Sec. Studies*, 331 F.3d at 927.

Plaintiffs’ argument that these maps should no longer be classified is unavailing. Relying on an affidavit from retired Admiral Lyons, Plaintiffs argue that information about military assets in 2012 no longer poses national security concerns because the location and number of military assets have changed since then. *See* Pls.’ Mem. at 27-30. However, the Lyons Affidavit fails to create a genuine dispute of material fact regarding whether these maps fall under Exemption 1. Admiral Lyons was retired for several years prior to submitting his affidavit, so his opinion about

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the nature of current or future military assets is limited at best. *See Lyons Aff.*, ECF No. 71-2 ¶ 1. As Admiral Lyons effectively acknowledged, he offered an “opinion” based on his experience, but this opinion is not based on personal knowledge of these records or the present risks to the military, so the undersigned accords these opinions little weight.⁹ *See id.* ¶ 2 (“The sole purpose of this affidavit is to set forth my opinion”); *Waldie*, 509 F.2d at 510 (holding that a court may not rely on affidavits consisting of “conclusory opinions” in summary judgment context).

Plaintiffs’ argument that these maps should not be confidential because some information is in the public domain fares little better. Pls.’ Mem. at 29-30 (referencing some, limited public information about aircraft in Europe). This Circuit “has repeatedly rejected the argument that the government’s decision to disclose some information prevents the government from withholding other information about the same subject.” *ACLU I*, 628 F.3d at 625. Plaintiffs do not attempt to demonstrate, as this Circuit requires under these circumstances, that the following criteria is satisfied: “(1) the information requested must be as specific as the information previously released; (2) the information requested must match the information previously disclosed; and (3) the information requested must already have been made public through an official and documented disclosure.” *Id.* at 620-21 (citations omitted). In any event, as Plaintiffs point out, the DoD has steadfastly resisted release of this information, so the third prong of this test cannot be satisfied. *See* Pls.’ Mem. at 29-30 (noting that the DoD did not cooperate with the Select Committee in its requests for information about available military assets). Thus, the undersigned recommends granting Defendants’ motion with respect to the DoD.¹⁰

⁹ As previously discussed, the undersigned alternatively recommends striking this declaration instead of according it little weight.

¹⁰ While Plaintiffs do not challenge the DoD’s segregability analysis, the undersigned has “an affirmative duty to ensure that this requirement is satisfied, even if it must do so *sua sponte*.” *Roseberry-Andrews*, 299 F. Supp. 3d at

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B. The CIA Properly Withheld CIA Inspector General Files

Plaintiffs challenge the CIA's redaction of records related to a complaint sent to the CIA Inspector General David Buckley ("IG") following the Benghazi attack. The CIA has released 25 redacted pages of responsive records (the "IG Files") about the complaint, starting with an email to the CIA IG stating that "the CIA has not been provided fulsome details regarding" the Benghazi attack. *See* Clarke Decl., Ex. 8 ("IG Files") at 82. These records also include an email from the IG to other CIA personnel summarizing some of the information, which was "second and third hand[,] and an interview report. *Id.* at 85-94.

The CIA contends these redactions were proper pursuant to Exemptions 1, 3, 6, and 7, and that it has disclosed all other reasonably segregable portions of the IG Files to Plaintiffs. *See* Shiner Decl., ECF 68-5 ¶ 1. Plaintiffs emphasize that they do not seek identifying information of any CIA personnel, but instead seek the "specific subject matter" underling the complaints, which, according to Plaintiffs, the CIA is required to provide by law. Pls.' Mem. at 37.

Plaintiffs' main contention fails on multiple fronts. The law which Plaintiffs cite as imposing this requirement¹¹ applies to "operational files," a status that the CIA has never asserted for the records in question. 50 U.S.C. § 3141(c)(3); *see* Shiner Suppl. Decl., ECF No. 77-2 ¶¶ 4-5. Further, to the extent that FOIA broadly imposes an obligation to produce non-exempt portions of records like the subject matter of a record, the subject matter of these records is apparent from the face of them. These records reveal a complaint to the CIA IG concerning an

19. The undersigned finds that the DoD has fulfilled this requirement because of the classified nature of the map and the fact that a map is not as readily segregable as other kinds of records. *See also* Malloy Decl. ¶ 12 (affirming that the DoD reviewed the maps for segregable, non-exempt information).

¹¹ Plaintiffs cite 50 U.S.C. § 431, which has since been re-codified at 50 U.S.C. § 3141.

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individual's belief that the CIA did not have accurate and full information about the Benghazi attack. Plaintiffs, by their own admission, instead seek the "details" of the IG Files which, as the undersigned will now explain, are protected from disclosure by Exemptions 1, 3, and 7. *See* Pls.' Reply at 3-4 ("What 'fulsome details' had Director Petraeus not been told?").

1. The CIA Properly Withheld Portions of the IG Files Pursuant to Exemption 1

The CIA has adequately demonstrated that some information in the IG Files is protected pursuant to Exemption 1 because the CIA has proffered "a plausible assertion that information is properly classified." *Morley*, 508 F.3d at 1124. The CIA has offered the affidavit of its Information Review Officer, Antoinette B. Shiner, which includes the explanation that Section 1.1(a) of Executive Order 13,526 is satisfied because Ms. Shiner is qualified to classify information, the information is owned and controlled by the federal government, and that Section 1.4(c) of Executive Order 13,526 is satisfied because the "Secret" information concerns "intelligence activities (including covert action), [or] intelligence sources or methods," which "could reasonably be expected to result in serious damage to the national security" should the information be released. Shiner Decl. ¶ 34. Specifically, the redacted information contains "code words, locations, names of covert personnel, as well as references to classified Agency programs, functions, assets, and activities unrelated to the September 2012 attacks." *Id.* ¶ 35. Such disclosure can "permit foreign intelligence services and other groups to fit disparate pieces of information together to discern or deduce the identity of the source or nature of the project or location for which the code word stands," thereby injuring national security interests. *Id.* ¶ 37. The undersigned finds that the CIA has "describe[d] the justifications for withholding the information with specific detail [and] demonstrate[d] that the information withheld logically falls

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within the claimed exemption[.]” *Ctr. for Nat. Sec. Studies*, 331 F.3d at 927 (citation omitted). Moreover, Plaintiffs point to no “evidence in the record or . . . evidence of the agency’s bad faith.” *Id.* Thus, while Plaintiffs assert that the substance of the IG Files cannot be protected under FOIA, the undersigned finds that, to the extent the CIA withheld substantive information concerning “programs, functions, assets, and activities[.]” such information is classified and protected under Exemption 1. Pls.’ Mem. at 37; Shiner Decl. ¶ 35. The undersigned therefore recommends granting Defendants’ motion as it relates to the CIA’s Exemption 1 withholdings.

2. The CIA Properly Withheld Identifying Information and Code Words Pursuant to Exemption 3

Plaintiffs agree with Defendants that disclosure of identifying information of CIA personnel would damage national security. Pls.’ Mem. at 37. Additionally, Plaintiffs no longer dispute “privacy”-related withholdings pursuant to Exemption 6. Joint Status Report, ECF No. 81 ¶ 2. The extent to which Plaintiffs concede the similar applicability of Exemption 3 is unclear. Nonetheless, in fully reviewing the CIA’s withholdings pursuant to Exemption 3, the undersigned finds that the CIA offers plausible explanations.

To support its withholdings under Exemption 3, the CIA must first point to a statute which “(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld.” *Id.* § 552(b)(3)(A); *Sims*, 471 U.S. at 167-68. The CIA asserts that two such statutes apply: Section 6 of the Central Intelligence Agency Act of 1949 (the “CIA Act”) and Section 102A(i)(1) of the National Security Act of 1947. Shiner Decl. ¶¶ 41, 43. The undersigned finds, and Plaintiffs do not dispute, that these are exempting statutes under

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Exemption 3. *See, e.g., Halperin v. CIA*, 629 F.2d 144, 147 (D.C. Cir. 1980) (noting that this Circuit has “consistently held” that both are exempting statutes which the CIA can invoke).

Section 6 of the CIA Act, 50 U.S.C. § 3507, provides that the CIA shall be exempt from the provisions of “any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency.” 50 U.S.C. §3507. Thus, “[t]he CIA Act does not protect *all* information about CIA functions generally; it more narrowly protects information that would reveal that a given function is one “of personnel employed by the Agency.” *Nat’l Sec. Counselors v. CIA* (“*Nat’l Sec. Counselors IP*”), 960 F. Supp. 2d 101, 179-80 (D.D.C. 2013). Here, the undersigned is satisfied that the CIA’s withholdings comport with the narrow scope of the CIA Act because, pursuant to this law, the CIA has only withheld “information concerning the organization, names, or official titles of personnel employed by the CIA[.]” Shiner Decl. ¶ 41.

Under the National Security Act, the Director of National Intelligence “shall protect intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 3024(i)(1). Courts in this Circuit construe this provision broadly to protect information that “*relates to intelligence sources and methods*” and information which “can reasonably be expected to lead to unauthorized disclosure of intelligence sources and methods.” *Leopold v. Cent. Intelligence Agency*, 380 F. Supp. 3d 14, 28 (D.D.C. 2019) (“*Leopold IP*”) (citations and internal quotation marks omitted). This provision grants the CIA “very broad authority to protect all sources of intelligence information from disclosure.” *Sims*, 471 U.S. at 168-69. It is a “near-blanket FOIA exemption” which covers public and non-public information because “bits and pieces of data may aid in piecing together bits of other information even when the individual piece is not of obvious importance in itself.” *Leopold v. Cent. Intelligence Agency*, 106 F. Supp. 3d 51, 57-58

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(D.D.C. 2015) (“*Leopold I*”) (citing *Whalen v. U.S. Marine Corps*, 407 F. Supp. 2d 54, 59 n. 5 (D.D.C. 2005)). The CIA has invoked the National Security Act to protect the same “code words and names of covert personnel” for which the CIA has also invoked Exemption 1. Shiner Decl. ¶ 44. This information easily qualifies as “intelligence sources and methods” under the National Security Act. 50 U.S.C. § 3024(i)(1). Thus, the undersigned recommends granting Defendants’ motion as it relates to the CIA’s withholdings pursuant to Exemption 3.

3. The CIA Properly Invoked Exemption 7 to Protect the Substance of the IG Files

Exemption 7(D) authorizes the withholding of information compiled for law enforcement purposes if release of the information “could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis.” 5 U.S.C. § 552(b)(7)(D). Here, this exemption applies to both the identity and identifying information of the confidential source in addition to information from the confidential source. *See Roth*, 642 F.3d at 1185. The information here relates to “an investigation pertaining to the September 2012 attacks in Benghazi, Libya.” Shiner Decl. ¶ 54. The source was a “confidential source” because the CIA offered explicit or implicit assurances that his or her identity would not be revealed. *See id.*; *Roth*, 642 F.3d at 1184. The underlying subject matter of the initial complaint would tend to provide enough information to reveal the identification of the reporting individual, which is why the CIA has a policy of refusing to disclose both identification of the individual and the substance of their statements. *See id.* Thus, not only is the identification of the source of the complaint to the IG protected, the information provided is also covered by Exemption 7(D) because the information would tend to reveal a confidential source’s identity. The undersigned

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recommends granting Defendants' motion as it related to the CIA's withholdings pursuant to Exemption 7(D).¹²

C. The FBI Fails to Adequately Explain its “Glomar Response” But Has Not Officially Acknowledged Witness Interview Reports

Through a “*Glomar* response,” an agency “neither confirms nor denies the existence of the requested records.” *Roth*, 642 F.3d at 1171. FOIA typically requires that an agency “acknowledge the existence of information responsive to a FOIA request and provide specific, non-conclusory justifications for withholding that information[.]” *Id.* at 1178 (citation omitted). A *Glomar* response is allowed only if “confirming or denying the existence of records would itself cause harm cognizable under an FOIA exception[.]” *Id.* (citation and internal quotation marks omitted). A party can challenge a *Glomar* response either by challenging the agency's contention that “confirming or denying the existence of records would cause harm under the FOIA exception invoked by the agency[.]” or by demonstrating that the agency has already “officially acknowledged the existence of the record[.]” *James Madison Project v. DOJ*, 302 F. Supp. 3d 12, 20 (D.D.C. 2018) (citation omitted); *Moore v. CIA*, 666 F.3d 1330, 1333 (D.C. Cir. 2011) (citation omitted).

At issue here is the FBI's response that, pursuant to Exemption 7(A), the FBI will neither confirm or nor deny the existence of responsive records regarding certain witness interview reports that Plaintiffs allege were created during witness interviews of United States personnel in Germany following the Benghazi attack. Hardy Decl., ECF No. 68-7 ¶¶ 13-16. These reports,

¹² Beyond asserting that the substance of the IG Files is subject to disclosure, Plaintiffs do not otherwise challenge the CIA's segregability analysis. Nonetheless, the undersigned has “an affirmative duty to ensure that this requirement is satisfied, even if it must do so *sua sponte*.” *Roseberry-Andrews*, 299 F. Supp. 3d at 19. In reviewing the IG Files, the undersigned finds that the CIA has partially released all reasonably segregable information. *See also* Shiner Decl. ¶ 49 (affirming that the CIA reviewed the IG Files for segregable, non-exempt information).

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known as “FD-302s” or 302 reports, are forms used by FBI agents “to record information which they obtain through witness interviews, . . . grand jury subpoenas, proffer agreements and immunity statements, and from other federal agencies.” *Citizens for Resp. and Ethics in Wash. v. DOJ*, 746 F.3d 1082, 1089 (D.C. Cir. 2014). The FBI explains that it is “actively investigating the Benghazi attacks” and that confirming or denying the existence of these records “undermines the integrity of the ongoing investigations.” Hardy Decl. ¶¶ 13-16. Thus, according to the FBI, confirming or denying the existence of these records “could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A).

Plaintiffs do not contest that these 302 reports would be compiled for a law enforcement purpose, and that the enforcement proceedings are ongoing. Plaintiffs challenge this *Glomar* response by arguing that witness accounts are already public and that the targets of any investigation already have the information within the 302 reports. Pls.’ Mem. at 42-45. It is unclear whether Plaintiffs assert that the FBI’s acknowledgement or denial would not “cause harm under the FOIA exception invoked by the agency” or that the FBI has already “officially acknowledged the existence of the record[.]” *James Madison Project*, 302 F. Supp. 3d at 20 (citation omitted); *Moore*, 666 F.3d at 1333 (citation omitted). Regardless, “the burden is on the agency to sustain its action,” so the undersigned must determine whether the FBI’s explanation of its *Glomar* response is “logical or plausible.” *Am. Civil Liberties Union v. CIA*, (“*ACLU IP*”) 710 F.3d 422, 427 (D.C. Cir. 2013) (citations and internal quotation marks omitted).

1. While the FBI Explains Harms That Would Result from the Disclosure of 302 Reports, the FBI Fails to Explain Harms That Would Result From Not Issuing a *Glomar* Response

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The FBI offers reasonably detailed potential harms that would result from disclosing any substance associated with the 302 reports. Specifically, a witness or survivor may face retaliation or harassment if a witness has or has not cooperated with the FBI. Hardy Decl. ¶ 16. Moreover, disclosure of any information related to the “direction, scope, pace, particular witness statements and focus of the investigations” would harm “the integrity of the ongoing investigations.” *Id.* ¶ 15. To be sure, these are harms that are recognized under Exemption 7(A). *Manning v. DOJ*, 234 F. Supp. 3d 26, 36 (D.D.C. 2017) (holding that such harms are covered under Exemption 7(A)); *see also Tipograph v. DOJ*, 83 F. Supp. 3d 234, 239 (D.D.C. 2015) (holding that the 7(A) exemption protects against “destruction of evidence, chilling and intimidation of witnesses, and revelation of the scope and nature of the Government’s investigation).

It does not necessarily follow, however, that “confirming or denying the existence of records would itself cause harm” that is protected by Exemption 7(A). *ACLU II*, 710 F.3d at 426 (quoting *Roth*, 642 F.3d at 1178). The FBI maintains that confirming or denying the existence of 302 reports would confirm or deny whether specific witnesses participated. Hardy Decl. ¶ 16. All of the FBI’s predictions of harm seem to share this premise. *See id.* ¶¶ 13-16 (stating, *inter alia*, that “the FBI can neither confirm nor deny the existence of any specific witness accounts”). It does not appear that Plaintiffs requested the 302 report associated with any particular witness. *See Am. Compl.* at 50 (requesting “September 15th or 16th FBI 302 Interview Reports, and corresponding handwritten notes, of interviews conducted in Germany of United States personnel who had been in the Benghazi mission and the Benghazi CIA annex during the September 11th and 12th attacks on those facilities”). The premise that acknowledging the existence of any 302 report would necessarily reveal the existence of specific 302 reports may

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well be true, but it is unexplained. The undersigned is mindful that the FBI's predictions of harm are owed significant deference, but the undersigned cannot ignore this gap in the FBI's explanation. Thus, the undersigned recommends denying Defendants' motion without prejudice with respect to the FBI's *Glomar* response so that Defendants can offer a more "logical or plausible" explanation. *ACLU II*, 710 F.3d at 427 (citation omitted); *see Santos v. DEA*, 357 F. Supp. 2d 33, 38 (D.D.C. 2004) (ordering supplementation where previous agency affidavit did not provide sufficient explanation).

2. The FBI Has Not Officially Acknowledged the 302 Reports

Plaintiffs' other challenge to the FBI's *Glomar* response—that the FBI has already officially acknowledged the 302 reports in question—is unconvincing. "[T]o overcome an agency's *Glomar* response when relying on an official acknowledgement, 'the requesting plaintiff must pinpoint an agency record that both matches the plaintiff's request and has been publicly and officially acknowledged by the agency.'" *James Madison Project*, 302 F.Supp.3d at 21 (quoting *Moore*, 666 F.3d at 1333). For this "official acknowledgement" doctrine to apply, this Circuit requires that: "(1) the information requested must be as specific as the information previously released; (2) the information requested must match the information previously disclosed; and (3) the information requested must already have been made public through an official and documented disclosure." *ACLU I*, 628 F.3d at 620-21 (citations omitted).

There is no indication that the 302 reports in question "have been made public through an official and documented disclosure." *Id.* The FBI asserts that it has "never acknowledged the existence of the alleged FBI 302s, which are the subject of Plaintiffs' request. Nor has the FBI ever made the alleged FBI 302s or the information purportedly contained therein available to the

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public.” Hardy Decl. ¶ 7. The closest that Plaintiffs get to official acknowledgement is a reference to FBI interviews in a Senate Committee Report:

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. The U.S. personnel who were interviewed saw no indications that there had been a protest prior to the attack. Information from those interviews was shared on a secure video teleconference on the afternoon of the 16th with FBI and other IC officials in Washington; it is unclear whether the question of whether a protest took place was discussed during this video conference.

“Flashing Red: A Special Report On The Terrorist Attack At Benghazi,” United States Senate Committee On Homeland Security And Governmental Affairs (“Senate Committee Report”) 28 (Dec.30, 2012). A footnote reveals that the Report’s authors obtained this information from a “Committee member briefing[.]” *Id.* There is no indication that this briefing was open to the public, so any interviews could not have been “publicly and officially acknowledged by the agency.” *Moore*, 666 F.3d at 1333. Plaintiffs’ reference to a book-turned-movie concerning the Benghazi attack is even less compelling because there is no indication that the FBI itself released anything through the book or movie. *See Wolf*, 473 F.3d at 378 (“An agency’s official acknowledgment of information by prior disclosure, however, cannot be based on mere public speculation, no matter how widespread.”).

Even if the FBI had acknowledged the existence of some interviews, confirming or denying the existence of the 302 reports would still not “match the information previously disclosed[.]” *ACLU I*, 628 F.3d at 620-21. There is a difference between acknowledging the existence of interviews and acknowledging the existence of 302 reports about the same interviews. “This is not hair-splitting” because courts in this Circuit must have an “insistence on exactitude” in this context. *James Madison Project*, 302 F. Supp. 3d at 29; *Wolf*, 473 F.3d at 378. In *Nat’l Sec. Counselors v. CIA* (“*Nat’l Sec. Counselors I*”), 898 F. Supp. 2d 233 (D.D.C.

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2012), the court was faced with a similar question—whether an agency could issue a *Glomar* response for “processing notes” that were associated with “referral memoranda and correspondence” for the same practice. *Id.* at 289. The court concluded that even if the agency acknowledged “referral memoranda and correspondence,” the agency could issue a *Glomar* response for the “processing notes” even if both sets of documents related to the same underlying information because these were still “separate documents.” *Id.* Thus, there is no “match” here because a Congressional briefing which references interviews is “separate” from any possible 302 reports about interviews. *ACLU I*, 628 F.3d at 620-21; *Nat’l Sec. Counselors I*, 898 F. Supp. 2d at 289. For the same reasons as discussed above, there is even less of a “match” between a book-turned-movie about the Benghazi attacks and any possible 302 reports. *ACLU I*, 628 F.3d at 620-21. Thus, while undersigned recommends denying Defendants’ motion as it relates to the FBI’s *Glomar* response, the undersigned does not recommend the official acknowledgment doctrine as a basis for doing so.

IV. MOTION TO PROPOUND INTERROGATORY TO DOD

“It is well established that discovery is rare in FOIA cases.” *Cole v. Rochford*, 285 F. Supp. 3d 73, 76 (D.D.C. 2018). Discovery is only appropriate if a FOIA plaintiff “raises a sufficient question as to the agency’s good faith in searching for or processing documents” or “agency affidavits do not provide information specific enough to enable [the plaintiff] to challenge the procedures utilized.” *Id.* (citations and internal quotation marks omitted) If a FOIA plaintiff rests its request for discovery on “highly speculative criticism” of an agency’s search, the request must be denied. *Accuracy in Media, Inc. v. Nat’l Park Serv.*, 194 F.3d 120, 125 (D.C. Cir. 1999). In the rare event that discovery is appropriate, courts limit such discovery

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to the adequacy of an agency's search. *See Landmark Legal Found. v. EPA*, 959 F. Supp. 2d 175, 184 (D.D.C. 2013) (approving "limited" discovery into whether agency excluded agency leaders from search); *Bangoura v. Dep't of Army*, Civ. No 05-0311, 2006 WL 3734164, at *6 (approving "limited discovery regarding the adequacy of Defendant's search"); *Citizens for Responsibility & Ethics in Washington v. DOJ*, Civ. No. 05-2078(EGS), 2006 WL 1518964, at *6 (D.D.C. June 1, 2006) (approving "limited discovery" including depositions of those involved in processing the request at issue). Thus, even where a FOIA plaintiff demonstrates bad faith, the scope of discovery is limited to "the actions of the individuals who conducted the search." *In re Clinton*, No. 20-5056, -- F.3d --, 2020 WL 4745104, at *6 (D.C. Cir. Aug. 14, 2020).

In addition to moving for summary judgment on all issues, Plaintiffs have moved for leave to propound the following interrogatory to the DoD pursuant to Federal Rule of Civil Procedure 56(d):

State the times of all electronic, verbal, and written, communications, from 3:32 p.m., through 3:00 a.m., by and among all DoD components, the total number of individuals on the communication, their titles and locations, and the substance of that communication. Include in your answer a description of all records, in any form, containing, reflecting, or otherwise corroborating, that communication.

See Pls.' Mem. at 35.

Plaintiffs do not deny that the affidavits submitted by the government were lacking in any detail regarding the sufficiency of the DoD's search for responsive records. *Id.* at 33. Instead, Plaintiffs contend that "plaintiffs have not been allowed to discover the facts of when, and by what means, communications with assets were first made." *Id.*

The undersigned has already concluded that the DoD is entitled to "presumption of good faith" because of its detailed explanation of its search and withholdings. *Reporters Comm. for Freedom of Press*, 877 F.3d at 402 (citation omitted). In addition, the undersigned has

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concluded that Plaintiffs have not overcome this presumption of good faith. In the discovery context, Plaintiffs' contentions fare no better, particularly because Plaintiffs concede that they do not "dispute the particulars of the DoD's search[.]" Pls.' Mem. at 4. This concession alone is fatal to Plaintiffs' discovery request because it shows that regardless of Secretary Panetta's actions or the exact timeline of events following the Benghazi attack, Plaintiffs do not "raise[] a sufficient question as to the agency's good faith in *searching for or processing documents*" or provide any basis to conclude that "agency affidavits do not provide information specific enough to enable [the plaintiff] to *challenge the procedures utilized.*" *Cole*, 285 F. Supp. 3d at 76 (citations omitted) (emphasis added).

Moreover, to the extent that Plaintiffs allege that the DoD acted in bad faith as a general matter, these claims are "highly speculative." *Accuracy in Media*, 194 F.3d at 125. It is unclear whether Plaintiffs actually allege bad faith issue because the words "bad faith" do not appear anywhere in Plaintiffs' briefing. Plaintiffs nonetheless come close in doubting the DoD's official version of events. As the undersigned has observed, "[f]ew cases in this Circuit address what is sufficient to demonstrate 'bad faith.' Many more cases address what is not bad faith." *Khatchadourian v. Def. Intelligence Agency*, No. 1:16-CV-311-RCL/DAR, -- F. Supp. 3d --, 2020 WL 1309941, at *42 (D.D.C. Mar. 19, 2020) (collecting cases).

Plaintiffs' contentions about the DoD's inaccurate timeline of events do not meet this Circuit's standard because Plaintiffs' claims amount to a "mere allegation of agency misrepresentation[.]" *Id.* (quoting *Hayden v. NSA/Cent. Sec. Serv.*, 608 F.2d 1381, 1387 (D.C. Cir. 1979)). According to Plaintiffs, Secretary Panetta and others must have given orders prior to 3:00 am, and these orders must have been in writing. ECF No. 75 at 2-3. Plaintiffs' assertion rests on the assumption that, when Secretary Panetta said that his orders were later reduced to

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writing, he could not have been referencing the EXORD record that Plaintiffs have already received. *Id.* Thus, according to Plaintiffs, there are “orders and communications that the DOD now claims never existed” and these orders and communications must be in writing. *Id.*; Pls.’ Mem. at 4. In the absence of specific evidence to the contrary, Plaintiffs’ insistence that their assumptions and speculative assertions are true cannot rebut a presumption of good faith. *Accuracy in Media*, 194 F.3d at 125. The undersigned notes that Plaintiffs’ version of events is particularly speculative because, even according to Plaintiffs’ account, many orders prior to the EXORD were not in written form. *See e.g.*, Pls.’ Mem. at 30-32 (alleging stand-down orders that were relayed over the phone). Thus, the undersigned recommends denial of Plaintiffs’ Rule 56(d) request because Plaintiffs have not pointed to concrete evidence of “bad faith or illegality with regard to the underlying activities which generated the documents at issue” or bad faith “in searching for or processing documents[.]” *Khatchadourian*, 2020 WL 1309941, at *42 (quoting *Jones v. FBI*, 41 F.3d 238, 242 (6th Cir. 1994)).

Even if Plaintiffs could demonstrate that some discovery is appropriate here, Plaintiffs’ proposed interrogatory is not “limited discovery regarding the adequacy of Defendant’s search[.]” *Bangoura*, 2006 WL 3734164, at *6. Plaintiffs do not seek relevant information concerning “the actions of the individuals who conducted the search.” *In re Clinton*, 2020 WL 4745104, at *6. Instead, Plaintiffs seek the same information they sought in their prior FOIA requests, in addition to information concerning “verbal” communications. Pls.’ Mem. at 35. With respect to all information that Plaintiffs sought through their original requests, this discovery would be inappropriate because “courts must not grant FOIA plaintiffs discovery that would be tantamount to granting the final relief sought.” *Tax Analysts v. I.R.S.*, 410 F.3d 715, 722 (D.C. Cir. 2005) (citation and internal quotation marks omitted). Discovery regarding verbal

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communications would be especially inappropriate because FOIA does not require agencies to create records of verbal communications. *Wilson v. Dep't of Transp.*, 730 F. Supp. 2d 140, 150 (D.D.C. 2010) (“FOIA does not require agencies to create or retain documents.”). Thus, even if some discovery were appropriate, the undersigned would nonetheless recommend denial of Plaintiffs’ Rule 56(d) request.

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V. CONCLUSION

It is therefore, on this 27th day of August, 2020,

RECOMMENDED that Defendants' Motion for Summary Judgment (ECF. No. 68) be **DENIED WITHOUT PREJUDICE** with respect to the FBI's *Glomar* Response, and **GRANTED** in all other respects; and it is

FURTHER RECOMMENDED that Plaintiffs' Cross Motion for Summary Judgment (ECF No. 71) be **DENIED** with respect to all issues except the FBI's *Glomar* Response; and it is

FURTHER RECOMMENDED that Defendants be **ORDERED** to produce a supplemental declaration explaining the basis of the FBI's *Glomar* Response; and it is

FURTHER RECOMMENDED that Plaintiffs' Motion to Propound Discovery (ECF No. 73) be **DENIED**.

DEBORAH A. ROBINSON
United States Magistrate Judge

Within fourteen days, any party may file written objections to this report and recommendation. The objections shall specifically identify the portions of the findings and recommendations to which objection is made and the basis of each such objection. In the absence of timely objections, further review of issues addressed herein may be deemed waived.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ACCURACY IN MEDIA, INC., et al.,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, et al.,

Defendants.

Civil Action No. 14-1589 (EGS/DAR)

**DEFENDANTS' NOTICE REGARDING
REPORT AND RECOMMENDATION**

On August 27, 2020, Magistrate Judge Deborah A. Robinson issued a Report and Recommendation in this Freedom of Information Act (FOIA) case. *See* ECF No. 83. The Report and Recommendation recommended (1) denying Plaintiffs' motion to propound discovery, and (2) granting summary judgment to the government on all issues except for the FBI's assertion of a *Glomar* response regarding certain documents. *Id.* at 33. The Report and Recommendation further recommended that Defendants be ordered to produce a supplemental declaration providing additional support for the FBI's *Glomar* response.

Defendants hereby provide notice that they do not intend to file written objections to the Report and Recommendation. *See* Local Rule 72.3(b). Further, the FBI states that it no longer intends to maintain its prior *Glomar* assertion. Instead, the FBI intends to conduct a search for responsive records that would have been covered by the *Glomar* assertion. Should responsive records exist, the FBI will process the records subject to FOIA. Because the FBI's *Glomar* response concerned a request for records relating to the ongoing investigation into the 2012 attack on the U.S. Embassy in Benghazi, Libya, the FBI may ultimately determine that many or all of the records fall within FOIA's exemptions and are not appropriate for release.

Nonetheless, the FBI intends to begin searching for potentially responsive records and will then determine appropriate redactions.

DATED: September 10, 2020

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF DEFENSE, *et al.*,

Defendants.

Civ. Action No. 14-1589
(EGS/DAR)

MEMORANDUM OPINION

I. Introduction

Plaintiffs Accuracy in Media, Inc.; Roger L. Aronoff; Captain Larry W. Bailey, USN (Ret.); Lieutenant Colonel Kenneth Benway, USA (Ret.); Colonel Richard F. Brauer, Jr., USA (Ret.); Clare M. Lopez; Admiral James A. Lyons, Jr., USN (Ret.); and Kevin Michael Shipp (collectively, "Plaintiffs") have made a series of requests for information related to the 2012 attack on the United States Embassy in Benghazi, Libya. *See generally* Am. Compl., ECF No. 31.¹ They now sue U.S. Department of Defense and its components ("DOD"); U.S. Department of State ("State

¹When citing electronic filings throughout this Opinion, the Court refers to the ECF page numbers, not the page numbers of the filed documents.

Department"); U.S. Department of Justice ("DOJ") and its component the Federal Bureau of Investigation ("FBI"); and the Central Intelligence Agency ("CIA") (collectively, "Defendants") under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, to obtain that information. See *id.*

Pending before the Court are Defendants' Motion for Summary Judgment, see Defs.' Mot. for Summ. J., ECF No. 68; and Plaintiffs' Cross-Motion for Summary Judgment, see Pls.' Opp'n Defs.' Mot. Summ. J., Cross-Mot. for Summ. J., & Mot. Leave Propound Interrog. to DOD, ECF No. 71. Also pending before this Court is Plaintiffs' Motion for Leave to Propound Interrogatory to DOD. See *id.*; ECF No. 73. On January 7, 2019, the Court referred the case to a magistrate judge for a Report and Recommendation ("R. & R.") on these pending motions, and the case was randomly referred to Magistrate Judge Deborah A. Robinson. See generally Docket for Civ. Act. No. 14-1589. On August 27, 2020, Magistrate Judge Robinson issued her R. & R. recommending that the Court grant in part and deny in part Defendants' Motion for Summary Judgment, ECF No. 68; grant in part and deny in part Plaintiffs' Cross-Motion for Summary Judgment, ECF No. 71; and deny Plaintiffs' Motion for Leave to Propound Interrogatory to DOD, ECF No. 73. See R. & R., ECF No. 83 at 33.

Plaintiffs raise several objections to Magistrate Judge Robinson's R. & R. See generally Pls.' Obj. Magistrate Judge's R. & R. ("Pls.' Objs."), ECF No. 87. Upon careful consideration of the R. & R., the objections and opposition thereto, the applicable law, and the entire record herein, the Court hereby **ADOPTS** Magistrate Judge Robinson's R. & R., ECF No. 83; **GRANTS IN PART** and **DENIES IN PART** Defendants' Motion for Summary Judgment, ECF No. 68; **GRANTS IN PART** and **DENIES IN PART** Plaintiffs' Cross-Motion for Summary Judgment, ECF No. 71; and **DENIES** Plaintiffs' Motion for Leave to Propound Interrogatory to DOD, ECF No. 73.

II. Background

A. Factual

In 2014, Plaintiffs submitted over 40 separate FOIA requests to Defendants to obtain records related to the 2012 attack on the United States Embassy in Benghazi, Libya. See generally Am. Compl., ECF No. 31. Plaintiffs initiated this litigation on September 19, 2014 to resolve those FOIA requests, see Compl., ECF No. 1; and on March 2, 2018, the parties agreed to narrow the issues, see Joint Mot. to Amend Briefing Schedule, ECF No. 65.

The Court briefly recounts the FOIA requests that are currently at issue below.

1. DOD

Plaintiffs sent two letters to the Defense Intelligence Agency ("DIA") on April 7, 2014 and May 28, 2014. See Pls.' Counter-Statement of Material Facts as to Which There is a Genuine Issue ("SOMF"), ECF No. 71-5 ¶ 2. The first letter requested "records of (1) maps depicting all assets within fifteen hundred miles of Benghazi, Libya on September 11 and 12, 2012; (2) DOD assets that were pre-positioned off the coast of Tripoli on October 18, 2011; and (3) records in calendar year 2012 of the threat to U.S. personnel because of al-Quaida or Ansar al-Shariah or other belligerent build-up in Benghazi." *Id.* ¶ 31. The second letter requested "(1) OPREP-3 PINNACLE report(s) used to provide any DOD division with notification of, or information about, the September 11 and 12, 2012 attacks on the U.S. facilities in Benghazi, Libya"; and (2) "records of all directives, orders, and other communications regarding the readiness status of United States armed forces on the anniversary of the September 11, 2001 attacks on the World Trade Center" between July 1, 2012 and September 30, 2012. *Id.* ¶ 32.

The DIA conducted two searches of its Record Message Traffic database. *Id.* ¶ 8. The agency identified 148 responsive records, referred 92 records to other agencies for review, and determined that it would withhold 25 records in part and 30 records in full pursuant to various FOIA exemptions. *Id.* ¶¶ 33-

34. The DIA's process included an unfruitful search for the OPREP-3 PINNACLE reports, even though it "is not the unit responsible for issuing" the requested reports. *Id.* ¶¶ 6-7.

On March 31, 2014, Plaintiffs sent a FOIA request to the Navy, Marine Corps, and European Command ("EUCOM") for "orders to, NAVSTA Rota personnel to get ready to deploy, and if applicable, to deploy"; "orders [to an airborne special operations unit in Croatia] to deploy to NAS Sigonella"; and "orders to, NAS Sigonella personnel to get ready to deploy, and if applicable, to deploy." *Id.* ¶ 4. On October 1, 2014, Plaintiffs sent a FOIA request to the African Command ("AFRICOM") for "records of all communications generated in March of 2011, regarding Gaddafi's expressed interest in a truce and possible abdication and exile out of Libya." *Id.* ¶ 5.

These DOD units conducted extensive searches for responsive records. *See id.* ¶¶ 12-24. As relevant here, EUCOM produced a redacted copy of the Executive Order ("EXORD") from 3:00 A.M. September 12, 2012, which "is the initial written order directing EUCOM to execute an action in response to the September 11, 2012 attack on the United States mission in Benghazi, Libya." *See id.* ¶¶ 24-25. DOD also located 12 pages of maps responsive to Plaintiffs' April 7, 2014 request, but determined that it would withhold these records in full pursuant

to Executive Order 13,526 and FOIA Exemption 1. *See id.* ¶¶ 38-40.

2. CIA

On February 24, 2014 and October 1, 2014, Plaintiffs submitted two FOIA requests to the CIA. *Id.* ¶ 41. The CIA conducted extensive searches for responsive records. *See id.* ¶¶ 46-59. As relevant here, the CIA determined that several records from the Inspector General ("IG") were responsive to Plaintiffs' October 2014 request. *Id.* ¶ 55. The agency concluded that it could redact certain information in those IG files pursuant to Section 6 of the Central Intelligence Agency Act of 1949 and Section 102(A)(i)(1) of the National Security Act of 1947. *Id.* ¶ 57. It also withheld information pursuant to various FOIA exemptions. *See id.* ¶¶ 56-59.

3. FBI

On February 21, 2014, Plaintiffs requested from the FBI accounts from survivors about the September 11, 2012 attack in Benghazi, including the FBI's 302 Interview Reports. *See id.* ¶ 81. The FBI has never made these alleged reports public. *Id.* ¶ 83.

B. Procedural

On May 10, 2018, Defendants moved for summary judgment. *See* Defs.' Mot. for Summ. J., ECF No. 68. Plaintiffs filed their opposition to Defendants' Motion for Summary Judgment as well as

their Cross-Motion for Summary Judgment on June 25, 2018. See Pls.' Opp'n Defs.' Mot. Summ. J., Cross-Mot. for Summ. J., & Mot. Leave Propound Interrog. to DOD, ECF No. 71. Defendants filed a brief in response on July 27, 2018, see Defs.' Reply Supp. Defs.' Mot. Summ. J. & Opp'n Pls.' Cross-Mot. Summ. J., ECF No. 77; and Plaintiffs filed their reply on August 27, 2018, see Pls.' Mem. Reply Defs.' Opp'n Pls.' Mot. Summ. J., ECF No. 80.

Plaintiffs also moved for leave to propound an interrogatory to DOD. See Pls.' Opp'n Defs.' Mot. Summ. J., Cross-Mot. for Summ. J., & Mot. Leave Propound Interrog. to DOD, ECF No. 71. Defendants filed a brief in opposition on July 9, 2018, see Defs.' Opp'n Pls.' Mot. Leave Propound Discovery Against Def. DOD, ECF No. 74; and Plaintiffs filed their reply on July 16, 2018, see Pls.' Reply Def. DOD Opp'n Mot. Leave Propound Interrog., ECF No. 75.

On January 7, 2019, the Court referred the case to a magistrate judge for a Report and Recommendation ("R. & R.") on these pending motions, and the case was randomly referred to Magistrate Judge Deborah A. Robinson. See *generally* Docket for Civ. Act. No. 14-1589. On August 27, 2020, Magistrate Judge Robinson issued her R. & R. recommending that the Court grant Defendants' Motion for Summary Judgment except as to the FBI's

Glomar response and deny Plaintiffs' motions except as to the *Glomar* issue. See R. & R., ECF No. 83 at 33.

On September 23, 2020, Plaintiffs filed objections to the R. & R. See Pl.'s Objs., ECF No. 87. Defendants filed a notice informing the Court that (1) it would not raise objections to the R. & R.; and (2) the FBI was withdrawing its *Glomar* response and had commenced a search for responsive records. See Defs.' Notice Regarding R. & R., ECF No. 86. Defendants also filed a brief in opposition to Plaintiffs' objections on November 23, 2020. See Defs.' Response Pls.' Objs. Magistrate's R. & R. ("Defs.' Opp'n"), ECF No. 91.

The motions are now ripe and ready for adjudication.

III. Legal Standard

A. Objections to a Magistrate Judge's Report and Recommendation

Pursuant to Federal Rule of Civil Procedure 72(b), a party may file specific written objections once a magistrate judge has entered a recommended disposition. Fed. R. Civ. P. 72(b)(1)-(2). A district court "may accept, reject, or modify the recommended disposition." Fed. R. Civ. P. 72(b)(3); see also 28 U.S.C. § 636(b)(1)(C) ("A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge."). A district court "must determine de novo any part of the magistrate judge's disposition

that has been properly objected to.” Fed. R. Civ. P. 72(b)(3). “If, however, the party makes only conclusory or general objections, or simply reiterates his original arguments, the Court reviews the [R. & R.] only for clear error.” *Houlahan v. Brown*, 979 F. Supp. 2d 86, 88 (D.D.C. 2013) (citation and internal quotation marks omitted). “Under the clearly erroneous standard, the magistrate judge’s decision is entitled to great deference” and “is clearly erroneous only if on the entire evidence the court is left with the definite and firm conviction that a mistake has been committed.” *Buie v. Dist. of Columbia*, No. CV 16-1920 (CKK), 2019 WL 4345712, at *3 (D.D.C. Sept. 12, 2019) (citing *Graham v. Mukasey*, 608 F. Supp. 2d 50, 52 (D.D.C. 2009)) (internal quotation marks omitted).

Objections must “specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for the objection[s].” LCvR 72.3(b). “[O]bjections which merely rehash an argument presented and considered by the magistrate judge are not ‘properly objected to’ and are therefore not entitled to de novo review.” *Shurtleff v. EPA*, 991 F. Supp. 2d 1, 8 (D.D.C. 2013) (quoting *Morgan v. Astrue*, No. 08-2133, 2009 WL 3541001, at *3 (E.D. Pa. Oct. 30, 2009)). The Court reviews Plaintiffs’ objections de novo.

B. Summary Judgment

Federal Rule of Civil Procedure 56 provides that summary judgment motions must be granted if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). The moving party bears the initial burden "of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *see also* Fed. R. Civ. P. 56(c)(1). This burden "may be discharged by 'showing' . . . that there is an absence of evidence to support the nonmoving party's case." *Celotex*, 477 U.S. at 325.

A party opposing a summary judgment motion must show that a genuine factual issue exists by "(A) citing to particular parts of materials in the record . . . or (B) showing that the materials cited do not establish the absence . . . of a genuine dispute." Fed. R. Civ. P. 56(c). Any factual assertions in the moving party's affidavits will be accepted as true unless the opposing party submits his own affidavits or other documentary evidence contradicting the assertion. *See Neal v. Kelly*, 963

F.2d 453, 456 (D.C. Cir. 1992). However, "the inferences to be drawn from the underlying facts . . . must be viewed in the light most favorable to the party opposing the motion."

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (citation and internal quotation marks omitted).

C. FOIA

FOIA is based on the recognition that an informed citizenry is "vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). It was enacted to "pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny," and it favors "full agency disclosure." *Dep't of the Air Force v. Rose*, 425 U.S. 352, 360-61 (1976) (quoting *Rose v. Dep't of the Air Force*, 495 F.2d 261, 263 (2d Cir. 1974)).

Although FOIA is aimed toward "open[ness] . . . of government," *Jud. Watch, Inc. v. U.S. Dep't of Com.*, 375 F. Supp. 3d 93, 97 (D.D.C. 2019); Congress acknowledged that "legitimate governmental and private interests could be harmed by release of certain types of information," *Critical Mass Energy Project v. Nuclear Regul. Comm'n*, 975 F.2d 871, 872 (D.C. Cir. 1992) (citation and internal quotation marks omitted). As

such, pursuant to FOIA's nine exemptions, an agency may withhold certain requested information. 5 U.S.C. § 552(b)(1)-(9).

However, "because FOIA establishes a strong presumption in favor of disclosure, requested material must be disclosed unless it falls squarely within one of the nine exemptions." See *Burka v. U.S. Dep't of Health & Hum. Servs.*, 87 F.3d 508, 515 (D.C. Cir. 1996) (citations omitted).

FOIA cases are usually and appropriately resolved on motions for summary judgment. *Brayton v. Off. of the U.S. Trade Rep.*, 641 F.3d 521, 527 (D.C. Cir. 2011). An agency has the burden of demonstrating that "each document that falls within the class requested either has been produced, is unidentifiable, or is wholly [or partially] exempt from the Act's inspection requirements." *Goland v. CIA*, 607 F.2d 339, 352 (D.C. Cir. 1978) (citation and internal quotation marks omitted).

In reviewing a summary judgment motion in the FOIA context, the court must conduct a de novo review of the record, see 5 U.S.C. § 552(a)(4)(B); but may rely on agency declarations, see *SafeCard Servs. v. SEC*, 926 F.2d 1197, 1200 (D.C. Cir. 1991). Agency affidavits or declarations that are "relatively detailed and non-conclusory" are accorded "a presumption of good faith, which cannot be rebutted by purely speculative claims about the existence and discoverability of other documents." *Id.* (citation and internal quotation marks omitted). The Court may award

summary judgment solely on the basis of information provided by the agency in declarations when the declarations describe "the documents and the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith." *Mil. Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981) (citation and internal quotation marks omitted).

IV. Analysis

A. Magistrate Judge Robinson Correctly Concluded that DOD Conducted an Adequate Search

To prevail on summary judgment, an agency must show "beyond material doubt . . . that it has conducted a search reasonably calculated to uncover all relevant documents." *Weisberg v. DOJ*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). It must demonstrate "that it made a good faith effort" to perform this search, "using methods which can be reasonably expected to produce the information requested." *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). If a FOIA requester challenges the adequacy of the agency's search, "the agency may meet its burden by providing 'a reasonably detailed affidavit, setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials . . . were

searched." *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 313-14 (D.C. Cir. 2003). These affidavits "are accorded a presumption of good faith." *SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1200 (D.C. Cir. 1991).

A court may not grant summary judgment to the agency "if the record raises substantial doubts regarding the agency's efforts, 'particularly in view of well[-]defined requests and positive indications of overlooked materials.'" *Heartland All. for Hum. Needs & Hum. Rts. v. U.S. Immigr. & Customs Enf't*, 406 F. Supp. 3d 90, 110 (D.D.C. 2019) (quoting *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C. Cir. 1999)). The burden is on the FOIA requester to produce "countervailing evidence" creating a genuine dispute of material fact, *id.* (quoting *Morley v. C.I.A.*, 508 F.3d 1108, 1116 (D.C. Cir. 2007)); and the requester "can only . . . rebut[]" the agency's affidavits "with clear evidence of bad faith," *Bigwood v. U.S. Dep't of Def.*, 132 F. Supp. 3d 124, 136 (D.D.C. 2015). "[T]he fact that a particular document was not found does not demonstrate the inadequacy of a search." *Boyd v. Crim. Div. of U.S. Dep't of Just.*, 475 F.3d 381, 391 (D.C. Cir. 2007). Similarly, "[m]ere speculation that as yet uncovered documents may exist does not undermine the finding that the agency conducted a reasonable search for them." *SafeCard Servs.*, 926 F.2d at 1201.

Here, Magistrate Judge Robinson determined that DOD is entitled to a presumption of good faith as to the adequacy of its search because "it submitted a 'reasonably detailed' declaration from Mark Herrington, the Associate Deputy General Counsel in the DoD Office of General Counsel" ("Mr. Herrington") that sufficiently "explain[ed] how the searches for responsive records were conducted." R. & R., ECF No. 83 at 9-10. Plaintiffs object to this conclusion, arguing that the agency's search was inadequate because: (1) DOD is not entitled to a presumption of good faith; and (2) DOD failed to produce certain responsive records. For the reasons explained below, the Court rejects both arguments and **ADOPTS** the R. & R. with respect to the adequacy of DOD's search.

1. Plaintiffs Have Not Overcome the Presumption of Good Faith Owed DOD

Plaintiffs raise two objections as to Magistrate Judge Robinson's conclusion that DOD's affidavit is entitled to a presumption of good faith. Plaintiffs first object that Magistrate Judge Robinson did not consider DOD's misrepresentations regarding the timing of the orders transmitted on September 11 and 12, 2012 after the attack on Benghazi. See Pls.' Objs., ECF No. 87 at 9-18. To support their objection, they cite testimony from former Secretary of Defense Leon Panetta ("former Secretary Panetta") to a House Select

Committee that the first order following the attack was transmitted at 8:39 P.M. on September 11, 2012. See Pls.' Objs., ECF No. 87 at 9-18. Plaintiffs argue that these statements are "evidence of bad faith" because the earliest order DOD produced in this case was the 3:00 A.M. EXORD. *Id.* at 16.

Plaintiffs' objection fails because the evidence they cite is entirely consistent with DOD's representations. In the congressional testimony, former Secretary Panetta explained that the National Military Command Center issued a formal order at 8:39 P.M. that was "the oral direction[] that commenced the action for the task forces and the other units to move." Clarke Decl., Ex. 3 ("Panetta Test."), ECF No. 71-1 at 15-16. Similarly, in the affidavit DOD submitted, Mr. Herrington explains that the 3:00 A.M. EXORD was "the first written order" and that "the initial orders were conveyed verbally" earlier in the night. Herrington Decl., ECF No. 68-4 ¶¶ 16-22. DOD also submitted an accompanying exhibit that details the timeline of orders even more clearly. Specifically, the timeline states that former Secretary Panetta "provide[d] verbal authorization" for various military units to prepare to deploy between 6:00 P.M. and 8:00 P.M. on September 11, 2012. See Timeline of Dep't of Def. Actions on September 11-12, 2012 ("Timeline"), ECF No. 87-1 at 1. It explains that "[d]uring this period, actions [we]re verbally conveyed from the Pentagon to the affected Combatant

Commands in order to expedite movement of forces upon receipt of formal authorization." *Id.* The timeline further records that at 8:39 P.M., the National Military Command Center "transmit[ted] formal authorization" to move certain military units. *Id.* at 2.

Plaintiffs' objection thus fails to address the factual record in this case. The evidence from both parties supports DOD's claim that the order issued at 8:39 P.M. was a verbal order. Plaintiffs have not offered any evidence that this order was also reduced to writing that could have been produced here, and indeed, the evidence suggests that it never was. *Cf.* Panetta Test., ECF No. 71-1 at 15-16; Herrington Decl., ECF No. 68-4 ¶¶ 16-22. Because Plaintiffs have not pointed to any actual discrepancy between former Secretary Panetta's public statements and DOD's FOIA production, their argument about the 8:39 P.M. order cannot overcome the presumption of DOD's good faith.

Plaintiffs also object that Magistrate Judge Robinson did not appropriately consider certain other details in the Final Report of the Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi, H. Rep. No. 114-848 (2016). See Pls.' Objs., ECF No. 87 at 9-22. They explain that the following constitutes evidence of bad faith: former Secretary Panetta's "testimony [before Congress] conflicted with known facts"; "his actions [on the night of the attack] were contradictory"; he "professed initial ignorance of the

particulars of the siege"; and his "subordinates had assured him that forces were moving when no such order had been transmitted." *Id.* at 16.

The Court agrees with Magistrate Judge Robinson that this information "is of little significance." R. & R., ECF No. 83 at 14. Plaintiffs are attempting to cast doubt on DOD's search by questioning the reliability of former Secretary Panetta's testimony to a House Select Committee. See Pls.' Objs., ECF No. 87 at 9-22. Plaintiffs' misgivings about that testimony are, at most, "[h]azy allegations of administrative malfeasance," which "may sound incriminating" but are not the "concrete, specific challenges to the sufficiency of [an agency's] search [required by the Court] in order to deny the agency summary judgment.'" *Am. Oversight v. U.S. Dep't of Just.*, 401 F. Supp. 3d 16, 37 (D.D.C. 2019) (quoting *Competitive Enter. Inst. v. U.S. Env't Prot. Agency*, 12 F. Supp. 3d 100, 111 (D.D.C. 2014)). Plaintiffs therefore have failed to meet their burden to produce "countervailing evidence" of DOD's alleged bad faith in conducting its FOIA search. *Heartland All. for Hum. Needs & Hum. Rts.*, 406 F. Supp. 3d at 110.

2. DOD's Search Was Adequate Even Though It Could Not Locate Certain Records

Plaintiffs also object to Magistrate Judge Robinson's conclusion that DOD's search was adequate because they claim

that she did not address four records DOD failed to locate. See Pls.' Objs., ECF No. 87 at 22-25. The first three records are a series of orders issued at 8:02 P.M., 8:39 P.M., and 11:00 P.M. on September 11, 2012. See *id.* at 22-23. To support their argument that these records must exist, Plaintiffs cite questions and notes from the Chief Investigative Counsel of the House Select Committee on the Benghazi attack and testimony from former Secretary Panetta before that Committee. This evidence is not persuasive. The Chief Investigative Counsel discussed only that the orders were conveyed and never indicated that the three orders were written down. See Pls.' Objs., ECF No. 87 at 23 n.29; *Id.* at 23 n.30. More pointedly, former Secretary Panetta testified that these orders were "oral directions." Panetta Test., ECF No. 71-1 at 16. Plaintiffs' repeated claims that written records of these orders exist are "purely speculative" and are insufficient to rebut DOD's affidavit. *SafeCard Servs.*, 926 F.2d at 1200 (citation omitted).

Plaintiffs also claim that DOD's search was inadequate because the agency did not produce a "PINNACLE OPREP-3 Report." See Pls.' Objs., ECF No. 87 at 23-25. In their Complaint, they explain that they requested these reports from the DIA in their May 28, 2014 FOIA request. See Compl., ECF No. 1 ¶¶ 19, 98. DOD explained that, although the DIA "conducted [a search] in response to this request," it was unable to locate the reports

because “the OPREP 3 report would come from [AFRICOM],” not the DIA. Herrington Decl., ECF No. 68-4 ¶¶ 23-24. As Magistrate Judge Robinson explained in her R. & R., Plaintiffs have not provided any countervailing evidence to rebut this affidavit and suggest that the DIA should have been able to locate the reports among its records. See R. & R., ECF No. 83 at 12 n.6; *cf. Reps. Comm. for Freedom of Press v. Fed. Bureau of Investigation*, 877 F.3d 399, 408 (D.C. Cir. 2017). Without any evidence to overcome the presumption of good faith owed DOD, Plaintiffs’ “speculati[on] about the existence and discoverability of” the PINNACLE OPREP-3 reports within the DIA fails. *SafeCard Servs.*, 926 F.2d at 1200 (citation omitted).

Accordingly, the Court rejects Plaintiffs’ arguments; **ADOPTS** this portion of the R. & R.; **GRANTS** Defendants’ Motion for Summary Judgment regarding the adequacy of DOD’s search; and **DENIES** Plaintiffs’ Cross-Motion for Summary Judgment on the issue.

B. Magistrate Judge Robinson Correctly Concluded that DOD’s Maps are Protected from Disclosure Under Exemption 1

Plaintiffs next challenge Magistrate Judge Robinson’s conclusion that DOD appropriately withheld in full 12 pages of maps containing “the numbers and locations of ships, submarines, response forces, and aircraft surrounding Benghazi, Libya”; the “numbers of military personnel located in particular countries

during that time"; and "the transit time required for each available asset to reach Benghazi." R. & R., ECF No. 83 at 15-16 (quoting Malloy Decl., ECF No. 69-1 ¶ 9). For the reasons that follow, the Court rejects Plaintiffs' arguments and **ADOPTS** this portion of the R. & R.

FOIA Exemption 1 protects from disclosure information that is "specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy" and is "in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b)(1). The current executive order governing classification is Executive Order 13,526, see Exec. Order 13,526, 75 Fed. Reg. 707, 707 (Dec. 29, 2009); which authorizes information to be classified if certain conditions are met, *id.*; see also *Lindsey v. Fed. Bureau of Investigation*, 490 F. Supp. 3d 1, 11 (D.D.C. 2020).

The agency "bears the burden of proving the applicability of claimed exemptions." *Am. C.L. Union v. U.S. Dep't of Def.*, 628 F.3d 612, 619 (D.C. Cir. 2011). In the national security context, a court "must accord substantial weight to an agency's affidavit concerning the details of the classified status of the disputed record." *Id.* (quoting *Wolf v. C.I.A.*, 473 F.3d 370, 374 (D.C. Cir. 2007)). Courts "have consistently deferred to executive affidavits predicting harm to the national security, and have found it unwise to undertake searching judicial

review.” *Ctr. for Nat. Sec. Studies v. DOJ*, 331 F.3d 918, 927 (D.C. Cir. 2003) (collecting cases).

Plaintiffs do not dispute that DOD classified the maps pursuant to Sections 1.4(a), 1.4(d), and 1.4(g) of Executive Order 13,526. *See generally* Pls.’ Objs., ECF No. 87. They instead object that disclosure is appropriate because the information in DOD’s records “implicate[s] no national security interest.” *Id.* at 22. To support this argument, Plaintiffs cite an affidavit from retired Admiral Lyons. *See* Lyons Decl., ECF No. 71-2. The Court will not consider this evidence, though. The declarant “merely states his opinion, instead of any facts, about current national security risks,” *R. & R.*, ECF No. 83 at 12 n.5 (citing Lyons Decl., ECF No. 71-2 ¶ 2 (“The sole purpose of this affidavit is to set forth my opinion.”)); and affidavits consisting of “conclusory opinions” are insufficient on motions for summary judgment, *Waldie v. Schlesinger*, 509 F.2d 508, 510 (D.C. Cir. 1974).

However, even if it were appropriate for the Court to weigh this evidence, Plaintiffs’ assertion would fail. Retired Admiral Lyons’ “opinion about the nature of current or future military assets is limited at best” because he is currently retired and does not know DOD’s current national security concerns. *R. & R.*, ECF No. 83 at 16-17. DOD, by contrast, has explained that “[e]ven with the passage of time, how DOD’s forces are

positioned at a particular time could provide potentially damaging and/or threatening insight to adversaries regarding DoD's interests, intent and potential operations." Malloy Decl., ECF No. 69-1 ¶ 11. Magistrate Judge Robinson found "no reason to doubt" DOD's assessment, which must be given "'substantial weight,'" R. & R., ECF No. 83 at 16 (quoting *Am. C.L. Union*, 628 F.3d at 619); and neither does the Court.

Plaintiffs also object to the R. & R. because the information they requested is already publicly available through a map published by the Congressional Research Service ("CRS") and another map they created. See Pls.' Objs., ECF No. 87 at 19-22. A FOIA requester may compel disclosure of classified information otherwise protected pursuant to Exemption 1 if he can establish the following: "(1) the information requested must be as specific as the information previously released; (2) the information requested must match the information previously disclosed; and (3) the information requested must already have been made public through an official and documented disclosure." *Am. C.L. Union*, 628 F.3d at 620-21 (citations omitted).

The maps Plaintiffs cite do not meet this standard because "the information requested" does not "match the information previously disclosed." *Id.* at 620.² The CRS map shows only the

² Plaintiffs also argue that disclosure is appropriate because "[t]he Congressional record on this issue is replete with

distances between Benghazi and other locations in the Mediterranean region. See Clarke Decl., ECF No. 71-1 at 55. Plaintiffs' map provides only their estimates of travel times to Benghazi from other locations in the Mediterranean region. See *id.* at 118. Neither map details all of the information Plaintiffs asked for in their FOIA requests, such as the official positions of the military assets or the types of assets at those locations. See Am. Compl., ECF No. 31 ¶¶ 30, 67, 75, 80, 95, 105. Controlling caselaw requires that the Court "insist[] on exactitude." *Am. C.L. Union*, 628 F.3d at 621. Thus, because there are substantive differences between the information requested and the information disclosed,³ the Court agrees with Magistrate Judge Robinson's conclusion that disclosure is not required.

The Court therefore **ADOPTS** this portion of the R. & R.; **GRANTS** Defendants' Motion for Summary Judgment regarding the withholding of DOD's maps pursuant to FOIA Exemption 1; and **DENIES** Plaintiffs' Cross-Motion for Summary Judgment on the issue.

discussions of the assets, travel times, and available personnel and aircraft, and this information has been extensively reported by the media." Pls.' Objs., ECF No. 87 at 21. They provide no citations on this point, and so the Court rejects this argument. ³ Additionally, Plaintiffs' map is not "an official and documented disclosure." *Am. C.L. Union*, 628 F.3d at 621.

C. The CIA Appropriately Redacted Portions of the Inspector General's Files

Plaintiffs next object to Magistrate Judge Robinson's determination that the CIA appropriately redacted records related to a complaint sent to the CIA Inspector General David Buckley. See R. & R., ECF No. 83 at 18. For the reasons below, the Court **ADOPTS** the R. & R. as to the redaction of the CIA IG files.

FOIA Exemption 3 allows an agency to withhold records that are "specifically exempted from disclosure by statute" if the statute "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3); see also *C.I.A. v. Sims*, 471 U.S. 159, 167 (1985). The CIA has invoked two exempting statutes to protect portions of the IG files from disclosure: Section 6 of the Central Intelligence Agency Act of 1949 (the "CIA Act") and Section 102A(i)(1) of the National Security Act of 1947. See R. & R., ECF No. 83 at 20; *Halperin v. CIA*, 629 F.2d 144, 147 (D.C. Cir. 1980) (explaining that both statutes are exempting statutes under Exemption 3).

Plaintiffs object to Magistrate Judge Robinson's application of the CIA Act here. They argue that the CIA must

produce redacted portions of the records because “‘the specific subject matter of an investigation by . . . the Office of Inspector General of the Central Intelligence Agency,’ unlike most other CIA operational records, is subject to the FOIA.” Pls.’ Objs., ECF No. 87 at 26 (quoting 50 U.S.C. § 3141(c)(3)). This argument is unconvincing because the CIA never invoked Section 3141 to protect any part of the IG files from disclosure. See Shiner Decl., ECF No. 68-5 ¶¶ 41, 43. Indeed, the CIA clarified in its response to Plaintiffs’ Cross-Motion for Summary Judgment that it has never relied on Section 3141 to try to prevent disclosure of the IG files. See Shiner Suppl. Decl., ECF No. 77-2 ¶¶ 4-5; Defs.’ Opp’n, ECF No. 91 at 19.

Plaintiffs also object in passing to the following: “that ‘the subject matter of these records is apparent from the face of them,’ that disclosure of the specifics of the wrongdoing alleged could lead to the disclosure of the whistleblower’s identity, and that nondisclosure is justified as the information ‘relates to intelligence sources and methods.’” Pls.’ Objs., ECF No. 87 at 29-30 (footnotes omitted). The Court need not consider these objections as Plaintiffs have not made any argument or cited any law to support these bare points. See *Berry L. PLLC v. Kraft Foods Grp., Inc.*, No. CV 13-0475 (RBW), 2013 WL 12061613, at *5 (D.D.C. Dec. 11, 2013) (“The Court need not consider unsupported, cursory arguments.”).

Accordingly, the Court **ADOPTS** this portion of the R. & R.; **GRANTS** Defendants' Motion for Summary Judgment as to the withholding of the CIA IG records; and **DENIES** Plaintiffs' Cross-Motion for Summary Judgment on the issue.

D. The Issue of the FBI's *Glomar* Response is Moot

Magistrate Judge Robinson recommended denying Defendants' Motion for Summary Judgment with respect to the FBI's *Glomar* response because the agency failed to provide a "logical" or "plausible" explanation as to why "acknowledging the existence of any 302 report would necessarily reveal the existence of specific 302 reports." R. & R., ECF No. 83 at 25-26; see *Am. C.L. Union v. C.I.A.*, 710 F.3d 422, 427 (D.C. Cir. 2013) (citations omitted). In lieu of raising objections to the R. & R., Defendants filed a Notice stating that that the FBI "no longer intends to maintain its prior *Glomar* assertion" and will now "conduct a search for responsive records that would have been covered by the *Glomar* assertion." Defs.' Notice Regarding R. & R., ECF No. 86 at 1.

Because of the FBI's changed position, the Court need not evaluate the R. & R.'s recommendation as to the *Glomar* response. See *Edelman v. Sec. & Exch. Comm'n*, 172 F. Supp. 3d 133, 156 (D.D.C. 2016) (determining that the court need not resolve the appropriateness of an agency's *Glomar* response after the agency withdrew its *Glomar* response and searched for responsive

records). Accordingly, the Court **DENIES** Defendants' Motion for Summary Judgment regarding the FBI's *Glomar* response as moot.

E. Plaintiffs Have Not Met the Standard for Discovery

"It is well established that discovery is rare in FOIA cases." *Cole v. Rochford*, 285 F. Supp. 3d 73, 76 (D.D.C. 2018). Courts permit discovery in these cases "only in exceptional circumstances," *id.*: "when [the FOIA] plaintiff has made a sufficient showing that the agency acted in bad faith, has raised a sufficient question as to the agency's good faith, or when a factual dispute exists and the plaintiff has called the affidavits submitted by the government into question," *Citizens for Resp. & Ethics in Wash. v. U.S. Dep't of Just.*, No. CIV. 05-2078(EGS), 2006 WL 1518964, at *3 (D.D.C. June 1, 2006) (citations omitted).

Plaintiffs object to Magistrate Judge Robinson's recommendation that the Court deny their Rule 56(d) request to propound an interrogatory to DOD. See Pls.' Objs., ECF No. 87 at 16, 31. Specifically, they claim that DOD made certain misrepresentations to Congress and the public, which establish the agency's bad faith and therefore support their discovery request. *Id.* at 9-16; 31. However, as the Court explained *supra*, Plaintiffs have not demonstrated that DOD acted in bad faith or otherwise raised a question about DOD's good faith in responding to the FOIA requests at issue in this case. See *Citizens for*

Resp. & Ethics in Wash., 2006 WL 1518964, at *3. This failure is fatal to their discovery request. See *Am. Oversight v. U.S. Dep't of Just.*, 401 F. Supp. 3d 16, 29 (D.D.C. 2019); *Cole*, 285 F. Supp. at 76.

The Court therefore **ADOPTS** this portion of the R. & R. and **DENIES** Plaintiffs' Rule 56(d) request.

V. Conclusion

For the foregoing reasons, the Court **ADOPTS** Magistrate Judge Robinson's R. & R., ECF No. 83; **GRANTS IN PART** and **DENIES IN PART** Defendants' Motion for Summary Judgment, ECF No. 68; **GRANTS IN PART** and **DENIES IN PART** Plaintiffs' Cross-Motion for Summary Judgment, ECF No. 71; and **DENIES** Plaintiffs' Motion for Leave to Propound Interrogatory to DOD, ECF No. 73.

An appropriate Order accompanies this Memorandum Opinion.

SO ORDERED.

Signed: Emmet G. Sullivan
United States District Judge
November 28, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., *et al.*,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, *et al.*,

Defendants.

Civil Action No. 14-1589 (EGS/DAR)

JOINT STATUS REPORT

Pursuant to the Court’s November 28, 2022 Order, Plaintiffs Accuracy in Media, Inc., *et al.*, and Defendants Department of Defense, *et al.*, hereby submit this Joint Status Report in this Freedom of Information Act (“FOIA”) case.

I. Ongoing Disputes

On November 28, 2022, the Court adopted Magistrate Judge Robinson’s Report and Recommendation, granted in part and denied in part Defendants’ motion for summary judgment, and denied Plaintiffs’ motion to propound an interrogatory to the Department of Defense. ECF No. 93 (order); *see also* ECF No. 92 (opinion). Specifically, the Court granted summary judgment in favor of Defendants on all issues except as to the status of certain FD-302s. *See* ECF No. 92. With respect to the FD-302s, Defendants had initially issued a *Glomar* response, but later withdrew that *Glomar* response and informed the Court that Defendants would search for and process the documents. *See id.* at 27-28. In its Order, the Court required “that the parties shall submit, by no later than January 20, 2023, a Joint Status Report explaining whether any dispute remains regarding the FD-302s.” ECF No. 93.

Defendants report that they processed the relevant documents and determined that they should be withheld in full. Counsel for Defendants conferred with counsel for Plaintiffs, who indicated that Plaintiffs would challenge Defendants' withholdings of the FD-302s. Defendants are currently in the process of determining the amount of time necessary to compile the declarations that Defendants expect to file in support of their anticipated motion for summary judgment relating to this final category of documents.

II. Next Steps

The parties intend to meet and confer about a briefing schedule, and respectfully propose that they file a joint status report no later than February 16, 2023, in which the parties will set out their proposed briefing schedule.

DATED: January 20, 2023

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., et al.,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, et al.,

Defendants.

Civil Action No. 14-cv-1589 (EGS)

DECLARATION OF MICHAEL G. SEIDEL

I, Michael G. Seidel, declare as follows:

1. I am the Section Chief of the Record/Information Dissemination Section (RIDS), Information Management Division (IMD), Federal Bureau of Investigation (FBI), Winchester, Virginia. I joined the FBI in September 2011, and prior to my current position, I was the Assistant Section Chief of RIDS from June 2016 to July 2020; Unit Chief, RIDS Litigation Support Unit, from November 2012 to June 2016; and an Assistant General Counsel, FBI Office of the General Counsel, Freedom of Information Act (FOIA) Litigation Unit, from September 2011 to November 2012. In those capacities, I had management oversight or agency counsel responsibility for FBI FOIA and Privacy Act (FOIPA) litigation cases nationwide. Prior to joining the FBI, I served as a Senior Attorney, U.S. Drug Enforcement Administration (DEA), from September 2006 to September 2011, where among myriad legal responsibilities, I advised on FOIPA matters and served as agency counsel representing the DEA in FOIPA suits nationwide. I also served as a U.S. Army Judge Advocate General's Corps Officer in various

assignments from 1994 to September 2006 culminating in my assignment as Chief, General Litigation Branch, U.S. Army Litigation Division, where I oversaw FOIPA litigation for the U.S. Army. I am an attorney licensed in the State of Ohio and the District of Columbia.

2. In my official capacity as Section Chief of RIDS, I supervise approximately 239 FBI employees, supported by approximately 107 contractors, who staff a total of nine (9) Federal Bureau of Investigation Headquarters (FBIHQ) units and two (2) field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to FBI records and information pursuant to the Freedom of Information Act (FOIA) as amended by the OPEN Government Act of 2007, the OPEN FOIA Act of 2009, and the FOIA Improvement Act of 2016; the Privacy Act (PA) of 1974; Executive Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

3. Because of the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. §552a. Specifically, I am aware of the FBI's handling of Plaintiffs' FOIA request that is the subject of this litigation.

4. This declaration is my first public declaration, and the fourth declaration filed in this case. This declaration incorporates and supplements the declaration of David M. Hardy dated March 3, 2015, at ECF No. 18-1 (hereinafter "First Hardy Declaration"); the declaration of David M. Hardy dated June 8, 2015, at ECF No. 29-1 (hereinafter "Second Hardy Declaration");

and the declaration of David M. Hardy dated May 10, 2018, at ECF No. 68-7 (hereinafter “Third Hardy Declaration”).

5. In response to Plaintiffs’ narrowed request for accounts from survivors about the September 11-12, 2012 attacks on U.S. facilities in Benghazi, Libya, including FD-302 Interview Reports and corresponding handwritten notes of interviews conducted on September 15-16, 2012 in Germany of U.S. personnel who had been in the Benghazi mission and the Benghazi CIA annex during the attacks , the FBI initially asserted a *Glomar* response, neither confirming nor denying the existence of any FD-302 report. Since then, the FBI filed a Notice that it no longer intends to maintain its prior *Glomar* response and would conduct a search for responsive records that would have been covered by the *Glomar* assertion. *See* Defs.’ Notice Regarding R.&R., ECF No. 86 at 1.

6. The FBI submits this declaration in support of Defendants’ renewed motion for summary judgment and to provide the Court with the procedures used to search for and review responsive records; and in accordance with *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), provide the FBI’s justification for withholding information in full pursuant to FOIA Exemption (b)(7)(A) and in part pursuant to FOIA Exemptions (b)(3), (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E).

ADMINISTRATIVE HISTORY OF PLAINTIFFS’ REQUEST

FBI REQUEST NUMBER 1256410-0

7. The full administrative history related to the handling of Plaintiffs’ request is discussed the First Hardy Declaration, ¶¶ 5-13, ECF No. 18-1. **(Ex. A.)**

8. Additionally, by letter dated February 17, 2021, the FBI informed Plaintiffs that it had reviewed documents responsive to its request and it had determined that all documents

responsive to its request were exempt in full pursuant to Exemptions 1, 3, 5, 6, 7(A), 7(C), 7(E), and 7(F). Additionally, the FBI advised that redactions were made by the Department of State and the Central Intelligence Agency. Finally, the FBI informed Plaintiffs that it could appeal the FBI's response to the DOJ, Office of Information Policy (OIP) within ninety (90) days, contact the FBI's public liaison, or seek dispute resolution services by contacting the Office of Government Information Services (OGIS). (Ex. B.)

ADEQUACY OF SEARCH

9. The procedures for the FBI's search are explained in ¶¶ 21 through 24 of the First Hardy Declaration. Using the results of the FBI's initial search of its databases for responsive records, the FBI identified the pending investigative files pertaining to the Benghazi attacks. After a review of the contents of these files, the FBI was able to locate responsive FD-302 Interview Reports of witnesses within the files previously located in the FBI's search. Additionally, given the passage of time between the FBI's initial search and the change in the FBI's *Glomar* position, the FBI confirmed with its Counterterrorism Division that all responsive FD-302 Interview Reports and attachments, including handwritten notes, had been located.

JUSTIFICATION FOR NONDISCLOSURE UNDER THE FOIA

PART 1

JUSTIFICATION FOR WITHHOLDING RESPONSIVE RECORDS PURSUANT TO EXEMPTION 7(A)

EXEMPTION 7 THRESHOLD

10. Before an agency can invoke any of the harms enumerated in Exemption (b)(7), it must first demonstrate that the records or information at issue were compiled for law enforcement purposes. Pursuant to 28 USC §§ 533, 534, and Executive Order 12,333 as

implemented by the Attorney General's Guidelines for Domestic FBI Operations (AGG-DOM) and 28 CFR § 0.85, the FBI is the primary investigative agency of the federal government with authority and responsibility to investigate all violations of federal law not exclusively assigned to another agency, to conduct investigations and activities to protect the United States and its people from terrorism and threats to national security, and further the foreign intelligence objectives of the United States. Under this investigative authority, the responsive records herein were compiled in furtherance of the FBI's investigation of federal laws falling within its law enforcement mission to investigate attacks on U.S. Government personnel and facilities in Benghazi, Libya. Considering these records were compiled to document the FBI's investigation of potential crimes and/or possible threats to national security, the FBI determined they were compiled for a law enforcement purpose.

Exemption 7(A) - Pending Law Enforcement Proceedings

11. 5 U.S.C. § 552 (b)(7)(A) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings.

12. Application of this exemption requires: the existence of law enforcement records; a pending or prospective law enforcement proceeding; and a determination that release of the information could reasonably be expected to interfere with the enforcement proceeding. Often, the FBI asserts Exemption 7(A) categorically to withhold a variety of different documents in an investigative file, which the FBI then groups into functional categories and describes in greater detail.

13. Through searches of its records, the FBI located pending investigative files pertaining to the FBI's investigation into the Benghazi attacks. Included in the investigative files are one or more FD-302 Interview Reports with attachments, including handwritten notes, of interviews conducted on September 15-16, 2012, in Germany of United States personnel who had been in the Benghazi mission and the Benghazi CIA annex during the September 11-12, 2012, attacks on those facilities. The FBI, via RIDS, contacted the case agents for the responsive investigative files to determine whether the release of the information within these files, including the specific volume of responsive records and a more detailed description of their contents, would cause harm to pending investigation and anticipated enforcement proceedings. The FBI's case agents advised that the harm associated with the potential release of the records is that the information and evidence contained within the FBI's investigatory files, including records related to interviews of witnesses, could be used in the government's future prosecution of those involved in the Benghazi attacks. The FBI's case agents specifically noted that "The investigation into the 2012 Benghazi Attack remains ongoing. The FBI continues to pursue all logical leads to identify and investigate those individuals who helped perpetuate, assist, or otherwise support the 2012 attack. The widespread disclosure of information to the public through the FOIA process could potentially damage these ongoing FBI investigative activities."

14. In this case, the FBI asserted Exemption 7(A) to protect the FBI's ongoing investigation into the attacks on U.S. Government personnel and facilities in Benghazi, Libya. The release of the responsive FD-302 Interview Reports and attachments, including handwritten notes, would reveal unknown information concerning pending enforcement investigations, and the release of this information could reasonably be expected to interfere with the FBI's ongoing investigations into the attacks on U.S. Government personnel and facilities in Benghazi, Libya,

as detailed above. The FBI determined release of any of this material would provide criminals with information about the government's investigation/enforcement strategies in ongoing matters, allow them to predict and potentially thwart these strategies, and/or allow them to discover/tamper with witnesses and/or destroy evidence. Additionally, release of this information would alert specific individuals to the fact that they are of investigative interest to the FBI. While some information pertaining to the Benghazi attacks has been made public, the FBI has not disclosed the identities of the individuals that were interviewed within the scope of the investigation or revealed specific investigative information related to the focus and content of these interview reports. As such, revealing this information could reasonably be expected to interfere with pending enforcement proceedings. Thus, the FBI has applied Exemption 7(A) to protect this information.

Types of Documents Protected by FOIA Exemption (b)(7)(A)

15. Providing a document-by-document description or listing of the records responsive to Plaintiffs' request would undermine the very interests that the FBI seeks to protect under FOIA exemption (b)(7)(A). Specifically, release of the volume and/or scope of the responsive records may reveal what leads the FBI is pursuing and the scope of the investigation into the Benghazi attacks, permitting groups or individuals to change their behavior and avoid scrutiny. In order to protect these interests, the FBI has described the type of responsive records from the pending investigative files, which are being categorically withheld pursuant to FOIA exemption (b)(7)(A). The pending investigative files contain the following types of documents:

(i) Interview Forms (Form FD-302): FD-302s are internal FBI forms in which evidence is often documented, usually the results of FBI interviews. Such evidence and/or interview information may later be used as testimony or evidence in court proceedings/trials.

Additionally, these evidence/interview forms are often incorporated in other FBI documents which disseminate intelligence/investigative information, and can be utilized to set leads in furtherance of the FBI's investigative efforts.

(ii) Attachments to Interview Forms: These attachments include handwritten notes and other documents attached to FD-302s. Handwritten notes usually memorialize the recollections of a Special Agent during an interview and are later used to draft the interview summary in an official FD-302. Attachments to FD-302s are often documents pertaining to the topic of an interview or may be documents provided by the individual being interviewed.

Functional Category of Information Protected Under FOIA Exemption (b)(7)(A)

16. The FBI has reviewed each responsive record and grouped the records into a functional category for purposes of demonstrating why the information is exempt from disclosure under FOIA exemption (b)(7)(A). Each responsive document that was withheld falls into the functional category described in the following paragraph. Here, the primary functional category includes:

Evidentiary/Investigative Materials

17. Information Concerning Physical and Documentary Evidence: Information concerning physical and documentary evidence in this file may include records obtained through and/or summarizing information gathered through witness interviews. To more fully describe these records could reasonably lead to disclosure of the scope and focus of the pending investigative efforts related to the ongoing Benghazi investigation. Such a disclosure could be detrimental to success of the pending investigation and prospective enforcement proceedings by permitting subjects to estimate the scope of the FBI's investigation and judge whether their activities are likely to be detected; allowing investigative subjects to discern the FBI's

investigative strategies and employ countermeasures to avoid detection and disruption by law enforcement; and/or allow investigative targets to formulate strategies to contradict evidence to be presented in Court proceedings.

Reasonable Expectation of Interference

18. In processing requests, the FBI has established procedures to implement the FOIA as efficiently as possible. When the FBI receives a request for records regarding a pending investigation, it commonly asserts FOIA exemption (b)(7)(A) to protect the pending investigation and/or any related prospective investigations and prosecutions. Nonetheless, the FBI reviews the records to identify and release any reasonably segregable information contained in the responsive file that would not jeopardize any ongoing or future investigations or enforcement proceedings. The FBI has reviewed all responsive records and concluded that it cannot release or provide any specific information about the responsive records without potentially jeopardizing current or prospective investigations and/or prosecutions related to the Benghazi attacks.

19. The FBI is relying on FOIA exemption (b)(7)(A) to not only prevent interference with the ongoing proceedings, but to avoid disruption to prospective prosecutions that may arise as a result of the FBI's investigative efforts. Specifically, the potential harm from the release of this information in the midst of the pending investigation is as follows:

- (a) Would allow for identification of individuals, sources of information, witnesses, potential witnesses who possess information relative to the investigation, FBI/ other law enforcement personnel, i.e., local, state, and federal, and individuals otherwise associated with the investigation who could then be targeted for potential intimidation and/or physical harm;
- (b) Individuals and other third parties could improperly utilize the information to counteract evidence developed by investigators, alter or destroy potential evidence and/or create false evidence;

- (c) Individuals and other third parties could circumvent investigators if the targets and focus of the investigation were revealed, and suspects may be able to evade detection based on this information.

20. Moreover, once this information is released to the plaintiffs and in the public domain, its use and dissemination is unrestricted. Thus, the FBI concluded that a reasonable expectation of interference in the ongoing investigation of the Benghazi attacks and prospective prosecutions exists, and it asserted Exemption 7(A) to withhold the requested FD-302 Interview Reports.

PART II

JUSTIFICATION FOR WITHHOLDING CERTAIN INFORMATION PURSUANT TO OTHER APPLICABLE FOIA EXEMPTIONS

FOIA EXEMPTION (b)(3) – INFORMATION PROTECTED BY STATUTE

21. Exemption (b)(3) exempts from disclosure information “specifically exempted from disclosure by statute . . . if that statute (A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (A)(ii) establishes particular criteria from withholding or refers to particular types of matters to be withheld.” 5 U.S.C. § 552 (b)(3). The OPEN FOIA Act of 2009 established an additional requirement that any statute “enacted after the date of enactment of the OPEN FOIA Act of 2009, [must] specifically cite[] to this paragraph” in order to qualify under Exemption 3.

(b)(3): NATIONAL SECURITY ACT OF 1947, 50 U.S.C. § 3024 (i)(1)

22. The FBI asserted Exemption (b)(3) to withhold certain information pursuant to Section 102A(i)(1) of the National Security Act of 1947 (NSA), as amended by the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA). 50 U.S.C. § 3024(i)(1) provides that the

Director of National Intelligence (DNI) “shall protect from unauthorized disclosure intelligence sources and methods.” As relevant to 5 U.S.C. § 552(b)(3)(B), the National Security Act of 1947 was enacted before the date of enactment of the OPEN FOIA Act of 2009. On its face, this federal statute leaves no discretion to agencies about withholding from the public information about intelligence sources and methods. Thus, the protection afforded to intelligence sources and methods by 50 U.S.C. § 3024(i)(1) is absolute. See *CIA v. Sims*, 471 U.S. 159 (1985).

23. In order to fulfill its obligation of protecting intelligence sources and methods, the DNI is authorized to establish and implement guidelines for the Intelligence Community (IC) for the classification of information under applicable laws, Executive Orders, or other Presidential Directives, and for access to and dissemination of intelligence. 50 U.S.C. § 3024(i)(1). In implementing this authority, the DNI promulgated Intelligence Community Directive 700, which provides that IC elements shall protect “national intelligence and intelligence sources and methods and activities from unauthorized disclosure. The FBI is one of 17 member agencies comprising the IC, and as such must protect intelligence sources and methods.

24. Given the plain Congressional mandate to protect the IC’s sources and methods of gathering intelligence, the FBI has determined that intelligence sources and methods would be revealed if any of the withheld information is disclosed to Plaintiffs. The FBI protected material within the responsive FD-302s that, if disclosed, would reveal intelligence sources and methods used across the IC. Disclosure of the intelligence gained through interviews of the survivors of the Benghazi attack would reveal multi-faceted intelligence pertinent across the IC and crucial to the FBI’s ongoing investigation regarding the Benghazi attacks. Therefore, the FBI is prohibited from disclosing such information under 50 U.S.C. § 3024(i)(1).

EXEMPTION (b)(5) - PRIVILEGED INFORMATION

25. Exemption 5 of the FOIA exempts from mandatory disclosure “inter-agency” or “intra-agency” memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5).

26. Exemption 5 has been construed to exempt documents or information normally privileged in the civil discovery context, and incorporates the attorney work product and attorney-client privileges. Generally, the attorney work product privilege protects documents and other memoranda prepared by an attorney or under the direction of an attorney as part of, or in reasonable anticipation of litigation. The attorney-client privilege protects confidential communications from a client to an attorney and from an attorney to a client for the purpose of seeking and providing legal advice. The privilege covers client-supplied information and opinions given by an attorney based on and reflecting that information. The deliberative process privilege protects predecisional deliberative communications that are part of a process by which agency decisions are made. It protects opinions, advice, evaluations, deliberations, proposals, or recommendations that form part of an agency decision-making process, as well as the selection and sorting of factual information relied upon as part of the decision-making process.

27. In order to apply Exemption 5, agencies must first satisfy the threshold requirement – i.e., show that the information protected was “inter-agency or intra-agency.” Once the threshold is satisfied, agencies must satisfy the elements of the pertinent privilege. With respect to the attorney work product privilege, agencies must show that the withheld information was created by, or for, an attorney in reasonable anticipation of litigation. With respect to the attorney-client privilege, agencies must show that the withheld information concerns confidential information shared by a client with an attorney for the purpose of obtaining legal advice or

assistance, or legal advice or assistance provided by an attorney to a client reflecting confidential information. With respect to the deliberative process privilege, agencies must show that the withheld information was both predecisional – i.e., antecedent to a final agency decision – and deliberative – i.e., part of the process in which the agency engaged in an effort to reach a final decision (whether or not any final decision was ever reached).

(b)(5): DELIBERATIVE PROCESS PRIVILEGE

28. Pursuant to Exemption (b)(5), the FBI protected privileged, deliberative materials. The deliberative process privilege protects the internal deliberations of the government by insulating recommendations, analyses, opinions, and other non-factual information comprising the decision-making process. In turn, Exemption 5 allows for the withholding of such privileged material – i.e., material that contains, or was prepared in connection with the formulation of, opinions, advice, evaluations, deliberations, policies, proposals, conclusions, or recommendations. The privilege also protects records and information that if disclosed, would reveal the agency’s collection of multitudinous facts, and the sorting, evaluation, and analysis of those facts in order to make recommendations or reach a final agency decision. Exemption 5, when asserted in conjunction with the deliberative process privilege, is predicated on the recognition that release of this privileged information would inhibit the government’s development of policy and stifle its decision-making process. Furthermore, exempting such documents from disclosure also protects against public confusion that might result from preliminary disclosure of opinions and information that do not, in fact, reflect the final views or policies of the FBI. The exemption and privilege together protect not only documents but also the integrity of the deliberative process itself where exposure of the process would result in harm. The FBI invokes Exemption 5 and the deliberative process privilege because FBI

employees would hesitate to offer their candid and conscientious opinions to superiors or coworkers if they knew that their opinions of the moment might be made a matter of public record at some future date, and because such self-censorship would, in turn, degrade the quality of agency decisions by depriving the decision-makers of fully explored options developed from robust debate.

29. The FBI relied on Exemption 5 and the deliberative process privilege to protect internal draft documents, to include investigative handwritten interview notes attached to FD-302s. In compliance with the FOIA Improvement Act of 2016, all of this material was created less than 25 years before the submission of Plaintiffs' request.

Draft Materials

30. The FBI asserted Exemption 5, deliberative process privilege, to withhold draft documents. Draft documents, such as internal investigative handwritten interview notes, are inherently part of the deliberative process. They contain the Special Agent's shorthand notes containing thoughts, ideas, impressions and interpretations of the verbal interview of a third-party individual, as well as the information conveyed during the interview the Special Agent determined should be noted for purposes of further analysis and consideration. These thoughts, ideas, impressions, interpretations, and information are then fleshed out and distilled during the editorial process for the creation of the official FD-302 interview report, which reflects the FBI's final decision regarding the relevance of the impressions and information gleaned during the interview. The handwritten notes taken by a Special Agent during an interview may not reflect the entire scope of information covered during the interview as additional information may be added to the official FD-302 during the editing phase. Likewise, there could also be information contained within the handwritten interview notes that is not included in the official FD-302.

Information not appearing in the official FD-302 may be imperative to note at the time of interview for purposes of later analysis and consideration but may not necessarily be placed in the official record (i.e. final FD-302) if the Special Agent ultimately concludes during the FD-302 editorial process that the information is not pertinent to the investigation.

31. Agents rely heavily on individual assistance through interview, whether the person is an upstanding citizen or a criminal, and must have the freedom to take notes freely and quickly without the fear of release to the general public causing an opportunity to distort and/or misconstrue the words the special agent has penned. Accordingly, release of the handwritten interview notes would result in the following foreseeable harm: First, it would have a chilling effect on special agents' willingness to document their thoughts, impressions, interpretations, and in some instances, investigative strategies, which is imperative to their ability to prepare the official FD-302 interview report memorializing the interview. Such a result would lead to FD-302 reports that are less comprehensive and thus less helpful to the FBI's investigative process. Second, release of the handwritten interview notes would reveal special agents' internal deliberations and sorting of a multitude of ideas and, at times, investigative strategies considered at the time of the interview, but later determined not relevant or ineffective. Finally, release of the handwritten interview notes would also create public confusion as it will reveal information noted in the handwritten interview notes that special agents later determined was not necessary for inclusion in the final, official FD-302 interview report. Additionally, the handwritten interview notes, because they are not finalized, are considered a draft document, and until finalized in the official record FD-302, can change as the document is being edited. The handwritten interview notes predate the final agency decisions and reflect the give and take of deliberations, through the editing process, which leads to final, refined products. In the instances

where the FBI withheld draft material pursuant to Exemption 5, the FBI found the draft material was shared intra-agency, was pre-decisional (predated the final product), was deliberative (the material was shared to solicit feedback/edits), and release could potentially harm agency deliberations.

Conclusion on Exemption 5 – Deliberative Process Privilege

32. For the reasons discussed above, the FBI properly protected deliberative materials described under Exemption 5, in conjunction with the deliberative process privilege.

FOIA EXEMPTIONS (b)(6) AND (b)(7)(C) UNWARRANTED INVASION OF PERSONAL PRIVACY¹

33. Exemption 6 exempts from disclosure “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). All information that applies to a particular person falls within the scope of Exemption 6.

34. Exemption 7(C) similarly exempts from disclosure “records or information compiled for law enforcement purposes [when disclosure] could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C).²

¹ See the Exemption 7 Threshold at ¶ 10, *supra*.

² The practice of the FBI is to assert Exemption 6 in conjunction with Exemption 7(C). Although the balancing test for Exemption 6 uses a “would constitute a clearly unwarranted invasion of personal privacy” standard and the test for Exemption 7(C) uses the lower standard of “could reasonably be expected to constitute an unwarranted invasion of personal privacy,” the analysis and balancing required by both exemptions is sufficiently similar to warrant a consolidated discussion. The privacy interests are balanced against the public’s interest in disclosure under both exemptions.

35. When withholding information pursuant to these two exemptions, the FBI is required to balance the privacy interests of the individuals mentioned in these records against any public interest in disclosure. In asserting these exemptions, each piece of information was scrutinized to determine the nature and strength of the privacy interest of every individual whose name and/or identifying information appears in the documents at issue. When withholding the information, the individual's privacy interest was balanced against the public's interest in disclosure. For purposes of these exemptions, a public interest exists only when information about an individual, their name, or their identifying information³ would shed light on the FBI's performance of its mission to protect the American people and uphold the Constitution of the United States, and its function to: protect the United States from terrorist attack; protect the United States against foreign intelligence, espionage, and nefarious cyber operations; combat significant criminal cyber activity, public corruption, transnational criminal enterprises, white-collar crime, and violent crime; and protect civil rights. In each instance wherein information was withheld pursuant to Exemptions 6 and 7(C), the FBI determined that the individuals' privacy interests outweighed any public interest in disclosure.

36. Furthermore, considering privacy concerns are typically obviated once an individual is deceased,⁴ when processing FOIPA requests, the FBI takes several steps to ascertain the current life/death status of the individuals whose names are withheld. The FBI uses

³ Hereafter, identifying information includes the following: dates of birth, places of birth, social security numbers, work addresses, and work numbers.

⁴ In some circumstances, surviving relatives of a deceased individual retain privacy interests in their information, even after the individual's death. *See generally National Archives v. Favish*, 124 S. Ct. 1570 (2004).

the birth date and/or the date of the investigation to determine whether an individual is living or deceased, to the extent either or both of these pieces of information are discernable from the file. The date of birth is used to apply the judicially-recognized “100-year rule,” i.e., if the individual was born more than 100 years ago, the FBI presumes that he or she is dead and the name is released. The FBI also uses institutional knowledge gained from prior FOIA requests or internal records. By using institutional knowledge, the FBI can identify with sufficient certainty the life/death status of certain individuals. If the FBI is unable to determine the life/death status of an individual through the use of these methods, the name of the individual is withheld pursuant to Exemptions 6 and 7(C), when it finds disclosure would constitute an unwarranted invasion of those individuals' privacy should they still be living and no public interest would be served in releasing the names. It is also the FBI's policy to release all names of high-ranking FBI officials in policy-making positions, as well as individuals in public positions, as they do not have privacy rights while acting in their official capacity. This policy is applied to the individual's position at the time of the document, and not the present.

(b)(6) AND (b)(7)(C): NAMES AND IDENTIFYING INFORMATION OF FBI SPECIAL AGENTS AND PROFESSIONAL STAFF

37. Pursuant to Exemptions (b)(6) and (b)(7)(C), the FBI protected the names and identifying information of FBI Special Agents (SAs) and professional staff. These FBI SAs and professional staff were responsible for conducting, supervising, and maintaining the investigation related to the Benghazi attacks, as reflected in the documents responsive to Plaintiffs' request. These responsibilities included, but are not limited to, the following: coordinating/completing tasks in support of the FBI's investigative and administrative functions, compiling information, conducting interviews, and/or reporting on the status of the investigations.

38. Assignments of SAs to any particular investigation are not by choice. Publicity, adverse or otherwise, arising from a particular investigation and use of specific FBI investigative techniques, may seriously prejudice their effectiveness in conducting other investigations or performing their day-to-day work. The privacy consideration is also applied to protect FBI SAs, as individuals, from unnecessary, unofficial questioning as to the conduct of this or other investigations/investigative activities, whether or not they are currently employed by the FBI. FBI SAs conduct official inquiries into various criminal and national security violation cases. The publicity associated with the release of an SA's identity in connection with a particular investigation could trigger hostility toward a particular SA. During the course of an investigation, an SA may engage with all strata of society, conducting searches and making arrests, both of which result in reasonable but nonetheless serious disturbances to people and their lives. Persons targeted by such investigations, and/or those sympathetic to those targeted, could seek to inflict violence on an SA based on their participation in an investigation. This is because an individual targeted by such law enforcement actions may carry a grudge against those involved with the investigation, which may last for years. These individuals may seek revenge on SAs and other federal employees involved in a particular investigation. There is no public interest served by disclosing the SAs' identities because their identities would not, themselves, significantly increase the public's understanding of the FBI's operations and activities. Rather, the FBI has determined that these SAs maintain a substantial privacy interest. Thus, disclosure of this information would constitute a clearly unwarranted invasion of their personal privacy; and the FBI properly withheld the names and identifying information of FBI SAs pursuant to Exemptions 6 and 7(C).

39. The FBI also withheld the names and identifying information of FBI professional staff pursuant to Exemptions 6 and 7(C). These FBI professional staff were assigned to handle tasks related to the investigation into the Benghazi attacks. Similar to FBI SAs, these FBI employees could be targeted for reprisal based on their involvement in specific investigations. Furthermore, these FBI professional staff were, and possibly are, in positions of access to information regarding official law enforcement investigations, and therefore could become targets of harassing inquiries for unauthorized access to investigations if their identities were released. Thus, these individuals maintain substantial privacy interests in not having their identities disclosed. In contrast, the FBI concluded that no public interest would be served by disclosing the identities of these FBI professional staff to the general public because their identities would not, themselves, significantly increase the public's understanding of the FBI's operations and activities. Accordingly, after balancing these professional staff employees' substantial privacy interests against the non-existent public interest, the FBI determined disclosure of their identities would constitute a clearly unwarranted invasion of their personal privacy. Therefore, the FBI properly withheld the names and identifying information of FBI professional staff pursuant to Exemptions 6 and 7(C).

(b)(6) AND (b)(7)(C): NAMES AND IDENTIFYING INFORMATION OF PERSONNEL FROM NON-FBI,
FEDERAL AGENCIES

40. Pursuant to Exemptions (b)(6) and (b)(7)(C), the FBI withheld the names and identifying information of personnel from non-FBI, federal, government agencies who provided information to or otherwise assisted the FBI in the investigation of the Benghazi attacks. The rationale for protecting the identities of other government employees is the same as the rationale for protecting the identities of FBI employees. See ¶¶ 37-39, supra. Publicity, adverse or

otherwise, concerning the assistance of these other agency employees in an FBI investigation would seriously impair their effectiveness in assisting or participating in future FBI investigations. The privacy consideration also protects these individuals from unnecessary, unofficial questioning as to the FBI investigation. It is possible for a person targeted by law enforcement action to carry a grudge which may last for years, and to seek revenge on the personnel involved in the investigation at issue in these FBI records. The publicity associated with the release of their names and identifying information in connection with these investigations could trigger hostility towards them by such persons. Therefore, these employees maintain substantial privacy interests in not having their identities disclosed in this context. In contrast, there is no public interest to be served by the disclosure of these employees' names and/or identifying information because their identities, by themselves, would not demonstrate how the FBI performed its statutory mission and thus, would not significantly increase the public's understanding of the FBI's operations and activities. Accordingly, the FBI properly protected these employees' privacy interests pursuant to FOIA Exemptions (b)(6) and (b)(7)(C).

(b)(6) AND (b)(7)(C): NAMES AND IDENTIFYING INFORMATION OF THIRD PARTIES MERELY MENTIONED

41. Pursuant to Exemptions (b)(6) and (b)(7)(C), the FBI withheld the names and identifying information of third parties who were merely mentioned in the investigative records responsive to Plaintiffs' request. The FBI has information about these third parties in its files because these individuals were tangentially mentioned in conjunction with FBI investigative efforts. These individuals were not of investigative interest to the FBI. These third parties maintain substantial and legitimate privacy interests in not having this information disclosed and thus, being connected with FBI law enforcement matters. Considering the FBI is an investigative

and intelligence agency, disclosure of these third parties' names and/or identifying information in connection with FBI records carries an extremely negative connotation. Disclosure of their identities would subject these individuals to possible harassment or criticism and focus derogatory inferences and suspicion on them. The FBI then considered whether there was any public interest that would override these privacy interests, and concluded that disclosing information about individuals who were merely mentioned in an FBI investigative file would not significantly increase the public's understanding of the operations and activities of the FBI. Accordingly, the FBI properly protected these individuals' privacy interests pursuant to FOIA Exemptions (b)(6) and (b)(7)(C).

(b)(6) AND (b)(7)(C): NAMES AND IDENTIFYING INFORMATION OF PERSONS OF INVESTIGATIVE INTEREST

42. Pursuant to Exemptions (b)(6) and (b)(7)(C), the FBI protected the names and identifying information of third parties who were of investigative interest to the FBI. Being identified as a subject of FBI investigative interest carries a strong negative connotation and a stigma, whether or not these individuals ever committed criminal acts. Release of the identities of these individuals to the public could subject them to harassment or embarrassment, as well as undue public attention. Furthermore, it could result in professional and social repercussions, due to resulting negative stigmas. Accordingly, the FBI determined these individuals maintain substantial privacy interests in not having their identities disclosed. In contrast, disclosing personal information about these individuals would not significantly increase the public's understanding of the FBI's performance of its mission and so the FBI concluded that there was no public interest here sufficient to override these individuals' substantial privacy interests. For these reasons, the FBI properly withheld this information pursuant to Exemptions 6 and 7(C).

(b)(6) AND (b)(7)(C): NAMES AND IDENTIFYING INFORMATION OF LOCAL LAW ENFORCEMENT
PERSONNEL

43. Pursuant to Exemptions (b)(6) and (b)(7)(C), the FBI withheld the names and identifying information of local law enforcement employees. These employees were acting in their official capacities and aided the FBI in the law enforcement investigative activities reflected in the records responsive to Plaintiffs' requests. The rationale for protecting the identities of FBI SAs and professional staff discussed in ¶¶ 37-39, supra, applies equally to the names and identifying information of these local law enforcement employees. Release of the identities of these law enforcement employees could subject them as individuals to unnecessary and unwelcome harassment that would invade their privacy, and could cause them to be targeted for reprisal. In contrast, disclosure of this information would serve no public interest because it would not shed light on the operations and activities of the FBI. Accordingly, the FBI properly withheld this information pursuant to Exemptions 6 and 7(C).

EXEMPTION (b)(7)(E)
INVESTIGATIVE TECHNIQUES AND PROCEDURES

44. FOIA Exemption (b)(7)(E) provides protection for:

law enforcement records [which]...would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

5 U.S.C. § 552(b)(7)(E).

45. Exemption (b)(7)(E) has been asserted to protect information from these records, the release of which would disclose techniques and/or procedures for law enforcement

investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

46. Within the responsive documents, the FBI applied Exemption (b)(7)(E) to non-public investigative techniques and procedures utilized by the FBI to pursue its law enforcement mission, and also to non-public details about techniques and procedures that are otherwise known to the public. Specifically, the FBI asserted Exemption (b)(7)(E) to protect the following categories of information.

(b)(7)(E): Sensitive Investigative File Numbers

47. Pursuant to Exemption (b)(7)(E), the FBI protected sensitive investigative file numbers. The FBI determined this exemption is appropriate for protecting these file numbers as the release of file numbering convention identifies the investigative interest or priority given to such matters. The file numbers the FBI protected are not known to the general public. These file numbers contain three separate portions. The first portions of these file numbers consist of FBI file classification numbers which indicate the types of investigative/intelligence gathering programs to which these files pertain. Many of the FBI's classification numbers are public, which makes disclosure of this information even more telling. Release of known file classification numbers in the context of investigative records would immediately reveal the types of investigations being pursued, and thus the types of investigative techniques and procedures available to FBI investigators, and/or non-public facets of the FBI's investigative strategies. For example, revealing the FBI has a money laundering investigative file on a subject who was only known to be investigated for crimes related to public corruption, would reveal key non-public information about the FBI's investigative strategies and gathered evidence. Additionally, releasing non-public FBI file classification numbers would reveal critical information about non-

public investigative techniques and procedures, and provide criminals and foreign adversaries the ability to discern the types of highly sensitive investigative strategies the FBI is pursuing whenever such file classification numbers are present within these and other sensitive FBI investigative records.

48. The protected investigative file numbers also contain two letter office of origin codes, indicating which FBI field office or overseas FBI legal attaché originated the investigations at issue. Providing this information, in many instances, would provide critical information about where and how the FBI detected particular criminal behaviors or national security threats, and reveal key pieces about the FBI's non-public FBI investigations or intelligence/evidence gathering sources and methods. Revealing this information could also risk disclosing unknown FBI investigations or intelligence gathering initiatives, by revealing interests in varying areas of FBI investigative responsibility. Releasing this information could also possibly provide significant information about the FBI's failure to detect certain types of criminal behavior. For example, a criminal operating out of San Francisco, California with ties to a criminal organization under investigation in the FBI's Seattle Field Office, could request the FBI's Seattle Field Office's investigative file. If the FBI were to reveal all of the originating office codes in the investigative files present in Seattle's file, and there was no indication the FBI ever pursued an investigation in San Francisco, the criminal could reasonably assume the FBI failed to locate any evidence of their wrongdoing, emboldening them to continue their activities, undeterred.

49. The third portion of these investigative files consists of the numbers given to the unique investigative initiatives these files were created to memorialize. Releasing these singular file numbers would provide criminals and foreign adversaries with a tracking mechanism by

which they can place particular files/investigations within the context of larger FBI investigative efforts. Continued release of sensitive investigative file numbers would provide criminals with an idea of how FBI investigations may be interrelated and when, why, and how the FBI pursued different investigative strategies. This would provide criminals with a means of judging where the FBI allocates its limited investigative resources, how the FBI responds to different investigative circumstances, what the FBI knows and when/how they obtained the knowledge, and if there are knowledge-gaps in the FBI's gathered intelligence.

50. In summary, repeatedly releasing sensitive FBI investigative file numbers would allow determined criminals and foreign adversaries to obtain an exceptional understanding of the body of investigative intelligence available to the FBI; and where, who, what and how it is investigating certain detected activities. Release of this information would enable these criminals and foreign adversaries to predict FBI investigations and structure their behavior to avoid detection and disruption by FBI investigators, enabling them to circumvent the law. Accordingly, the FBI properly asserted FOIA Exemption 7(E) to protect this type of information.

(b)(7)(E): Focus of Specific Investigations

51. Pursuant to Exemption (b)(7)(E), the FBI protected the specific focuses of the investigation into the Benghazi attacks. These focuses have not been publicly disclosed. Revealing this information to investigative targets would alert them to the FBI's interest in their activities, allowing them to take active measures to conceal/destroy evidence or modify their behavior to avoid future investigative scrutiny. Additionally, release of this information in the context of the investigative records at issue would provide criminal elements, terrorists, and/or foreign adversaries a preview of how the FBI will respond to similar investigative situations,

allowing them to preemptively deploy countermeasures to disrupt FBI investigative efforts of their own, unrelated activities.

52. Release of this type of information would also reveal key information about FBI intelligence gathering capabilities. Revealing when and why the FBI pursues or shifts investigative focuses would reveal key information about the types of investigative intelligence the FBI possessed at particular points in time, and possibly when and how such information was obtained. This could enable terrorists to discover non-public details about FBI intelligence/evidence gathering methods, and help them determine how they might modify their operational security to deprive the FBI of such critical intelligence/evidence.

53. In summary, releasing the focus of specific FBI counterterrorism investigations would allow targets of these investigations to thwart FBI efforts to investigate their activities; stunt the FBI's broader strategies for pursuing interrelated investigations; provide key information about FBI investigative strategies for pursuing counterterrorism investigations; and reveal key information about the FBI's intelligence gathering capabilities. Therefore, as release of this information would enable criminals to circumvent the law, the FBI withheld this information pursuant to Exemption 7(E).

(b)(7)(E): Surveillance Techniques

54. Pursuant to Exemption (b)(7)(E), the FBI protected information concerning the targets, locations, and monitoring utilized in surveillance operations conducted by the FBI in relation to the investigation at issue here. The FBI utilized these surveillance operations to obtain investigative intelligence relevant to the investigation into the Benghazi attacks. The law enforcement techniques used to conduct these surveillance operations are the same techniques utilized by the FBI in current criminal and national security investigations. Certainly, it is

publicly known the FBI and other law enforcement agencies engage in different types of surveillance in investigations. However, disclosure of non-public details about who, when, how, and under what circumstances the FBI conducts surveillance would allow current and future subjects of FBI investigations and other potential criminals to develop and utilize countermeasures to defeat or avoid different types of surveillance operations, thus rendering the techniques useless to the FBI and other law enforcement agencies. This is especially true because the success of investigative surveillance hinges on investigators' abilities to remain undetected. Revealing any non-public details about the FBI's methodology for conducting surveillance could potentially jeopardize the FBI's ability to operate surveillance covertly, and risks circumvention of the law. Accordingly, the FBI properly asserted Exemption 7(E) to withhold this information.

FORESEEABLE HARM STANDARD

55. The FOIA Improvement Act of 2016 generally adopted the foreseeable harm standard and made it statutory, advising that agencies shall withhold information under the FOIA only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption or disclosure is prohibited by law. Accordingly, the FBI's analysis of records responsive under the FOIA is a two-part process. First, the FBI determines whether a record (or a portion of a record) is exempt pursuant to one or more FOIA exemptions. Second, if the record (or portion thereof) is exempt pursuant to one or more FOIA exemptions, the FBI then considers whether foreseeable harm would result from disclosure of the record (or portion thereof). In each of the withheld records at issue here (or portions of withheld records), the FBI conducted this two-part analysis and only withheld records (or portions of records) where it determined the withheld record (or portion) met both of these criteria. The foreseeable harm is more fully described under each exemption justification.

CONSULTATIONS WITH OTHER GOVERNMENT AGENCIES

56. The FBI consulted with Department of State concerning the records requested and the FBI asserted Exemptions (b)(1), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(E), and (b)(7)(F) to withhold the records on the Department's behalf. The Declaration of Timothy J. Kootz, attached hereto as **Exhibit C**, will address these withholdings.

57. The FBI consulted with the Central Intelligence Agency (CIA) concerning the records requested and the FBI asserted Exemptions (b)(1), (b)(3), and (b)(6) to withhold the records on the CIA's behalf. The Declaration of Vanna Blaine, attached hereto as **Exhibit D** will address these withholdings.

SEGREGABILITY

58. The FBI reviewed all responsive records for any segregable, public source information and determined that there was no segregable, public source information that could be released to Plaintiffs.

CONCLUSION

59. The FBI performed adequate and reasonable searches for responsive records and reviewed those records for segregable public source information. Information was properly withheld pursuant to FOIA Exemptions 3, 5, 6, 7(A), 7(C), and 7(E). The FBI carefully examined the documents and determined the information withheld from Plaintiffs in this case, if disclosed, would reveal statutorily protected information; would reveal privileged information; could reasonably be expected to interfere with pending or prospective enforcement proceedings; would cause a clearly unwarranted invasion of personal privacy, or could reasonably be expected to constitute an unwarranted invasion of personal privacy; and would disclose techniques and procedures for law enforcement investigations. After extensive review of the documents at issue,

the FBI determined that there is no non-exempt information that can be reasonably segregated and released without revealing exempt information.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that Exhibits A through D attached hereto are true and correct copies.

Executed this 29th day of June 2023.

A handwritten signature in blue ink, appearing to read 'M. G. Seidel', written over a horizontal line.

MICHAEL G. SEIDEL
Section Chief
Record/Information Dissemination Section
Information Management Division
Federal Bureau of Investigation
Winchester, Virginia

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., et al.,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, et al.,

Defendants.

Civil Action No. 14-cv-1589 (EGS)

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., *et al.*,)
)
 Plaintiffs,)
)
 v.)
)
 DEPARTMENT OF DEFENSE, *et al.*,)
)
 Defendants.)
)

Case No. 14-1589 (EGS)

DECLARATION OF DAVID M. HARDY

I, David M. Hardy, declare as follows:

(1) I am currently the Section Chief of the Federal Bureau of Investigation (“FBI”) Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), in Winchester, Virginia. I have held this position since August 1, 2002. Prior to joining the FBI, from May 1, 2001 to July 21, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act (“FOIA”) policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the state of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 228 employees who staff a total of ten (10) Federal Bureau of Investigation Headquarters (“FBIHQ”) units and two (2) field operational service center units whose collective mission is to effectively

plan, develop, direct, and manage responses to requests for access to FBI records and information pursuant to the FOIA, amended by the OPEN Government Act of 2007 and the Open FOIA Act of 2009; the Privacy Act of 1974; Executive Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and other Presidential and Congressional directives. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, I am aware of the FBI's handling of Plaintiffs' February 21, 2014 FOIA request submitted to FBIHQ for records on the FBI's investigation into the Benghazi attacks.

(4) This declaration has been submitted in support of the FBI's unopposed Motion for an Order Preserving Certain Allegations. It will provide a brief administrative history of Plaintiffs' FOIA request, a general description of the FBI's recordkeeping system, and an overview of our search efforts.

ADMINISTRATIVE HISTORY OF PLAINTIFFS'
FOIA REQUEST

(5) By letter dated February 21, 2014, John H. Clarke, on behalf of his clients ("plaintiffs"), submitted a FOIA request to FBIHQ requesting information pertaining to the FBI's investigation into the Benghazi attacks. Among other things, plaintiffs requested :

All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the survivors' accounts of the attack.

September 15th or 16th FBI 302 Interview Reports, and corresponding handwritten notes, of interviews conducted in Germany of United States personnel who had been in the Benghazi mission and the Benghazi CIA annex during the September 11th and 12th attacks on those facilities.

Records of the video teleconference on the afternoon of the September 16th, 2012, between the FBI and other IC officials in Washington, regarding FBI interviews with U.S. personnel who had been on the compounds in Benghazi during the attack. . . .

Additionally, plaintiffs requested the records be provided in electronic format and a fee waiver under 5 U.S.C. §552(a)(4)(A)(ii)(II). (**See Exhibit A**).

(6) In a letter dated March 14, 2014, the FBI acknowledged receipt of plaintiffs' request. The FBI informed plaintiffs that it had assigned the request FOIPA Request Number 1256410-000. The FBI advised plaintiffs that records pertaining to third party individuals cannot be released absent express authorization and consent of the third party, proof that the subject of the request is deceased, or a clear demonstration that the public interest in disclosure outweighs the personal privacy interest, and that significant public benefit would result from the disclosure of the requested records, since release of these records would result in an unwarranted invasion of personal privacy. The FBI attached a "Certification of Identity" form to the letter for the third party individual to complete. The FBI also advised plaintiffs of their right to appeal to the Department of Justice ("DOJ") Office of Information Policy ("OIP"). (**See Exhibit B**).

(7) By letter dated March 31, 2014, plaintiffs filed an appeal with the DOJ OIP arguing "[i]n sum, there were no personal privacy interest in the records sought that could not be protected by proper redaction and segregation, and the absence of any third party releases does not justify the FBI's blanket withholding." (**See Exhibit C**).

(8) In a letter dated April 11, 2014, OIP acknowledged receipt of plaintiffs' appeal and assigned it appeal number AP-2014-02409. (**See Exhibit D**).

(9) By letter dated July 8, 2014, OIP advised plaintiffs that it was remanding plaintiffs' request for a search for responsive records. OIP informed plaintiffs of their right to file a lawsuit in federal district court if they were dissatisfied with its action. (*See Exhibit E*).

(10) By letter dated July 10, 2014, plaintiffs submitted a request for fee waivers and expedited processing. Plaintiffs provided extensive details/information of the attacks in Benghazi on September 11, 2012 and provided approximately 195 pages of exhibits referencing the Benghazi attacks from reports, news articles, etc. (*See Exhibit F*).

(11) By letter dated August 5, 2014, plaintiffs informed the FBI and OIP of their decision to narrow the scope of their original FOIA request. (*See Exhibit G*).

(12) By letter dated August 19, 2014, OIP acknowledged Plaintiffs' new appeal, assigning it appeal number AP-2014-04211.¹ (*See Exhibit H*).

(13) On or about September 19, 2014, Plaintiffs' filed this action in the United States District Court of Columbia.

EXPLANATION OF THE CENTRAL RECORDS SYSTEM

(14) The Central Records System ("CRS") is an extensive system of records consisting of applicant, investigative, intelligence, personnel, administrative, and general files compiled and maintained by the FBI in the course of fulfilling its integrated missions and functions as a law enforcement, counterterrorism, and intelligence agency to include performance of administrative and personnel functions. The CRS spans the entire FBI organization and encompasses the records of FBI Headquarters ("FBIHQ"), FBI Field Offices, and FBI Legal Attaché Offices ("Legats") worldwide.

¹ The FBI believes OIP interpreted plaintiffs' August 5, 2014 letter as a new appeal. However, a review of this letter reflects plaintiffs' intention to narrow the scope of their request.

(15) The CRS consists of a numerical sequence of files, called FBI “classifications,” which are organized according to designated subject categories. The broad array of CRS file classification categories include types of criminal conduct and investigations conducted by the FBI, as well as categorical subjects pertaining to counterterrorism, intelligence, counterintelligence, personnel, and administrative matters. For identification and retrieval purposes across the FBI, when a case file is opened, it is assigned a Universal Case File Number (“UCFN”) consisting of three sequential components: (a) the CRS file classification number, (b) the abbreviation of the FBI Office of Origin (“OO”) initiating the file, and (c) the assigned individual case file number for that particular subject matter.² Within each case file, pertinent documents of interest are “serialized,” or assigned a document number in the order which the document is added to the file, typically in chronological order.

THE CRS GENERAL INDICES AND INDEXING

(16) The general indices to the CRS are the index or “key” to locating records within the enormous amount of information contained in the CRS. The CRS is indexed in a manner which meets the FBI’s investigative needs and priorities, and allows FBI personnel to reasonably and adequately locate pertinent files in the performance of their law enforcement duties. The general indices are arranged in alphabetical order and comprise an index on a variety of subject matters to include individuals, organizations, events, or other subjects of investigative interest that are indexed for future retrieval. The entries in the general indices fall into two category types:

- a. Main entry. This entry pertains to records indexed to the main subject(s) of a file, known as “main file” records. The “main” entry carries the name of an

² For example, in a fictitious file number of “11Z-HQ-56789,” the “11Z” component indicates the file classification, “HQ” indicates that FBI Headquarters is the FBI OO of the file, and “56789” is the assigned case specific file number.

individual, organization, or other subject matter that is the designated subject of the file.

- b. Reference entry. This entry, or a “cross-reference,” pertains to records that merely mention or reference an individual, organization, or other subject matter that is contained in a “main” file record about a different subject matter.

(17) FBI Special Agents (“SA”) and/or designated support personnel may index information in the CRS by individual (persons), by organization (organizational entities, places, and things), and by event (*e.g.*, a terrorist attack or bank robbery). Indexing information in the CRS is based on operational necessity, and the FBI only indexes that information considered relevant and necessary for future retrieval. Accordingly, the FBI does not index every individual name or other subject matter in the general indices.

AUTOMATED CASE SUPPORT

(18) Automated Case Support (“ACS”) is an electronic, integrated case management system that became effective for FBIHQ and all FBI Field Offices and Legats on October 1, 1995. As part of the ACS implementation process, over 105 million CRS records were converted from automated systems previously utilized by the FBI into a single, consolidated case management system accessible by all FBI offices. ACS has an operational purpose and design to enable the FBI to locate, retrieve, and maintain information in its files in the performance of its myriad missions and functions.³

(19) The Universal Index (“UNI”) is the automated index of the CRS and provides all offices of the FBI a centralized, electronic means of indexing pertinent investigative information to FBI files for future retrieval via index searching. Individual names may be recorded with

³ ACS and the next generation Sentinel system are relied upon by the FBI daily to fulfill essential functions such as conducting criminal, counterterrorism, and national security investigations; background investigations; citizenship and employment queries, and security screening, to include Presidential protection.

applicable identifying information such as date of birth, race, sex, locality, Social Security Number, address, and/or date of an event. Moreover, ACS implementation built upon and incorporated prior automated FBI indices; therefore, a search employing the UNI application of ACS encompasses data that was already indexed into the prior automated systems superseded by ACS. As such, a UNI index search in ACS is capable of locating FBI records created before its 1995 FBI-wide implementation to the present day in both paper and electronic format.⁴ Currently, UNI consists of approximately 109.6 million searchable records and is updated daily with newly indexed material.

ACS and SENTINEL

(20) Sentinel is the FBI's next generation case management system that became effective FBI-wide on July 1, 2012. Sentinel provides a web-based interface to FBI users, and it includes the same automated applications that are utilized in ACS. After July 1, 2012, all FBI generated records are created electronically in case files via Sentinel; however, Sentinel did not replace ACS and its relevance as an important FBI search mechanism. Just as pertinent information was indexed into UNI for records generated in ACS before July 1, 2012, when a record is generated in Sentinel, information is indexed for future retrieval. Moreover, there is an index data sharing nexus between the Sentinel and ACS systems whereby components of information indexed into Sentinel are also replicated or "backfilled" into ACS. In sum, the Sentinel case management system builds on ACS and shares its operational purpose; Sentinel provides another portal to locate information within the vast CRS for FBI records generated on

⁴ Older CRS records that were not indexed into UNI as a result of the 1995 ACS consolidation remain searchable by manual review of index cards, known as the "manual indices." A search of the manual indices is triggered for requests on individuals if the person was born on or before January 1, 1958; and for requests seeking information about organizations or events on or before January 1, 1973. Records created after these dates would be captured through a UNI search.

or after July 1, 2012.

ADEQUACY OF SEARCH

(21) Index Searching. To locate CRS information, RIDS employs an index search methodology. Index searches of the CRS are reasonably expected to locate responsive material within the vast CRS since the FBI indexes pertinent information into the CRS to facilitate retrieval based on operational necessity. Given the broad range of indexed material in terms of both time frame and subject matter that it can locate in FBI files, the automated UNI application of ACS is the mechanism RIDS employs to conduct CRS index searches. If a request seeks records that may have been generated on or after July 1, 2012, an overlapping search of ACS via the UNI application and a Sentinel index search are performed at the litigation stage to ensure adequacy of the CRS index search.

(22) CRS Search and Results. In response to plaintiffs' request, RIDS conducted a CRS index search for responsive records employing the UNI application of ACS and a Sentinel index search by utilizing a string search and a three-way phonetic breakdown of the following search terms: "Benghazi Attack," "Benghazi," "Benghazi Special Mission and Annex Attacks," "Attack Consulate Benghazi," "Attack Benghazi," "Benghazi Assault," "John Christopher Stevens," and "Christopher Stevens." The FBI used information on plaintiffs' request letter to facilitate the identification of potentially responsive records.

(23) As a result of these search efforts, the FBI located records responsive to plaintiffs' request consisting of pending main file(s) and several pending cross references originated in the New York and Washington Field Offices along with several Legat offices. The total number of potentially responsive records located and subject to the FOIPA is voluminous.⁵

⁵ The FBI cannot publicly disclose details with regard to the total volume of these records because they pertain to ongoing/pending investigation(s). Disclosing the total number of records involved would reveal exempt information

(24) The FBI is in the process of ordering all of the main files and cross references from the Field Offices and Legats and is will begin reviewing the material as soon as the files arrive. At this time, the FBI is unable to determine the exact number of pages or total work involved until all material is reviewed for responsiveness; however, the FBI is doing its best to provide the plaintiffs and the Court with a quick and reasonable processing schedule.

PROPOSED PROCESSING SCHEDULE

(25) Under 5 U.S.C. § 552(b)(7)(A), an agency may categorically deny access to records if the records were compiled for law enforcement purposes and the production of such records could reasonably be expected to interfere with law enforcement proceedings. In this case, the potentially responsive records the FBI located are indexed in pending main file(s) and cross-references. As a result, the FBI is categorically denying access to these records pursuant to 5 U.S.C. § 552(b)(7)(A) (“Exemption 7(A)”), because the production of these records could interfere with the pending investigation(s).⁶

(26) When asserting FOIA Exemption 7(A) at the litigation stage, an agency is required to search for, locate, and conduct a review of all responsive documents. During this categorical review of documents, other than documents that can be segregated for release because they trigger no 7(A) harm, each document is reviewed and assigned a functional category whereby release of the document will trigger one or more harms to an ongoing investigation or pending prosecution. The process of reviewing the Exemption 7(A) material for additional underlying exemptions transforms the review process from a categorical document-by-document review, to a much lengthier page-by-page review to identify additional, underlying exemptions for assertion despite the blanket coverage of Exemption 7(A).

about the investigation(s), to include the nature, scope and intensity of the investigation(s).

⁶ The pending investigation(s) at issue here are expected to continue for a lengthy and undetermined amount of time.

(27) At this time, the FBI requests an order permitting it to move for summary judgment based on the applicability of Exemption 7(A) to certain records covered by that exemption without waiving any allegation that those records are exempt from release for other reasons. If the Court grants the FBI's motion for this order, Exemption 7(A) would be litigated given its categorical applicability, and in the event that Exemption 7(A) would expire during the pendency of this FOIA litigation – or if the Court rejects the FBI's withholdings under Exemption 7A – the underlying exemptions would be preserved.⁷ If the FBI's motion is granted, the FBI, taking plaintiffs' request for expedited processing into consideration, proposes a time period of a six (6) months, namely, until August 31, 2015, in which to process and release to plaintiffs all non-exempt material, identify documents for withholding under functional Exemption 7(A) categories, and propose a time period of thirty (30) additional days, namely, until September 30, 2015 to prepare and file the *Vaughn* declaration fully explaining its assertion of Exemption 7(A).⁸ The FBI will provide plaintiffs with interim responses/status reports every eight (8) weeks beginning on April 30, 2015.

(28) If the FBI's motion is denied, then an additional ten (10) months, namely, until June 30, 2016, will be needed to complete review and processing of the responsive records, assert all applicable underlying exemptions, and propose a time period of thirty (30) additional days, namely, until July 29, 2016, to prepare and file the *Vaughn* declaration. Based on our experience in Exemption 7(A) cases of this nature, the additional time required to complete a page-by-page review for underlying exemptions doubles the amount of time that is required to complete a categorical document review under 7(A). For example, without the requested order, the records will require a classification review to identify any and all FOIA Exemption (b)(1)

⁸ For FY 2015, thus far (October 2014 through today), there are a total of 4,936 pending requests, consisting of 4.94 million pages of information, currently assigned to the five FOIPA Disclosure Units for review.

issues. Then, the material must undergo a page-by-page review to identify and assert all underlying FOIA Exemptions. While performing these additional reviews, the FBI will issue to plaintiffs interim responses/status reports every eight (8) weeks beginning on April 30, 2015. Lastly, the FBI will prepare and file a *Vaughn* declaration on July 29, 2016 that not only details the FBI's FOIA Exemption 7(A) assertion, but also explains and justifies our assertion of each underlying FOIA Exemption.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that Exhibits A through H attached hereto are true and correct copies.

Executed this 3rd day of March, 2015.

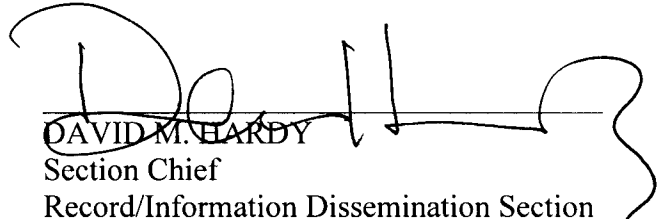

DAVID M. HARDY
Section Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Winchester, Virginia

Exhibit A

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February 21, 2014

By Certified Mail — Return receipt Requested
Article Number 7010 3090 0000 0316 6499

FOIA REQUEST

Federal Bureau of Investigation
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

Dear FOIA Officer:

This is a request for production of records under the Freedom of Information Act, 5 USC § 552, the "FOIA."

FOIA Requesters. I write on behalf of my clients, Accuracy in Media, Inc., a District of Columbia 501(c)(3) non-profit corporation, as well as the following seven individuals, all of whom serve as members of the "Citizens' Commission on Benghazi," an unincorporated, informal association of individuals, all working with Accuracy in Media. They are (1) Roger Aronoff, (2) Larry Bailey, (3) Kenneth Benway, (4) Dick Brauer, (4) Clare Lopez, (5) James A. Lyons, Jr., (5) Kevin Shipp, and (7) Wayne Simmons.

FOIA Requests. These requests are for the following records of activities in Libya, in the care, custody or control of the FBI, regardless of the source of the records:

10 MAR 2014

1. All records describing or defining the purpose, scope, jurisdiction, and power of the FBI's investigation into the Benghazi attacks, including the identity of government official(s) requesting or ordering the probe.
2. All records of the Bureau's findings in its investigation into the Benghazi attacks. Responsive records include those that regard (1) the identities of any non-US personnel questioned, interrogated, detained, or transported through, the Annex, (2) weapons brought into, and removed from, the Annex, as well as such weaponry's destinations including whether abandoned on September 12, 2012, (3) communication and cryptographic equipment left in the Consulate and Annex when US personnel abandoned the facilities on September 12, 2012, and (4) any probe into the meetings from January 2007 through September 2012 between Tripoli Embassy officials, including Christopher Stevens, and the individuals identified in the following Request 3 below.
3. All notes, memoranda, and correspondence generated between January of 2007 and September 11, 2012, regarding meetings between Christopher Stevens or any other Tripoli Embassy official, and one or more of the following individuals:
 - **Ahmed Abu Khattala**, a commander of the Libyan Ansar al-Shariah militia group
 - **Mustafa Abdul Jalil**, Chairman of the Libyan National Transitional Council from 5 March 2011-8 August 2012
 - **Mahmoud Jibril**, Interim Prime Minister of Libya and Chair of the Executive Board of the National Transitional Council from 5 March-23 October 2011
 - **Wissam bin Hamid**, a Libya Shield Brigade commander, supporter of the Libyan Muslim Brotherhood Justice & Construction Party, and veteran jihad fighter of Iraq & Afghanistan, who provided security for US representatives in Benghazi and was tentatively identified by the Library of Congress as the head of al-Qa'eda in Libya
 - **Abdelhakim Belhadj** (aka Abdallah al Sadeq), veteran jihad fighter of Iraq & Afghanistan, commander of the AQ franchise militia, Libyan Islamic Fighting Group (LIFG) (aka Libyan Islamic Movement for Change), post-revolution military commander of Tripoli, and Libyan delegation leader to the Syrian Free Army in late 2011
 - **Ismael al-Sallabi** (brother of Ali), commander of the Al-Qa'eda-linked al-Sahati Brigade during the revolution, and Benghazi Military Council commander afterwards, close ally of Abdelhakim Belhadj and Mustafa Jalil

- **Ali al-Sallabi** (brother of Ismael), called the 'spiritual leader' of the Libyan revolution, Muslim Brotherhood links, led effort with Seif al-Qaddafi and US Embassy Tripoli to gain release of jihadi detainees from Libyan jails
 - **Mohammad al-Sallabi**, father of Ali and Ismael, among the founders of the Libyan Muslim Brotherhood in the 1960s
 - **Abu Sufian bin Qumu**, veteran jihad fighter in Afghanistan from Derna, Libya, captured in 2001, detained at GITMO, sent back to Libyan jail, released in 2010, led jihad vs Qaddafi in 2011, and led Benghazi Mission attack in Sep 2012.
4. Any other records of whatsoever nature regarding (1) the Benghazi consulate and (2) its CIA Annex, for the time period of January 1st, 2011, through September 30th, 2012. This request is all-inclusive for all records, however recorded, including emails, reports, memoranda, correspondence, teletypes, telephone calls, text messages, and audio and video recordings, regarding all uses of the Benghazi consulate and CIA Annex.
 5. All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the survivors' accounts of the attack.
 6. All calendars, day books, journals, notes, memoranda, or other records reflecting Ambassador Stevens' schedule on September 11, 2012, including the Ambassador's diary, and all correspondence to or from the Ambassador regarding his meetings that day, including with the Turkish Consul General.
 7. All records of the purpose of Ambassador Stevens' meetings on September 11, 2012, including analysis or assessments of those meetings, whether written before or after September 11, 2012.
 8. September 15th or 16th FBI 302 Interview Reports, and corresponding handwritten notes, of interviews conducted in Germany of United States personnel who had been in the Benghazi mission and the Benghazi CIA annex during the September 11th and 12th attacks on those facilities.

Speaker Boehner: Form a Select Committee on Benghazi," "Further Proof That Obama Knew the Truth About Benghazi," "Blaming the Victim in Benghazi," "Obama and His Media Loyalists Still Spinning Benghazi," and "Does Navy Map Alter the Benghazi Narrative?"

Additionally, several of the individual requesters have published articles about the matter, demonstrating, *inter alia*, the background, experience, and expertise of the FOIA requesters in the subject area of the requests. See, for examples, "Navy SEAL: 'There's guilt in this administration,'" by Captain Larry Bailey, published in WND.com in April of 2013; two articles by Clare Lopez appearing in Pundicity.com in October of 2012, "Benghazi: The Set-Up and the Cover-Up," and "Did Turkey Play a Role in Benghazi Attack?;" and Admiral James Lyons' pieces appearing in the Washington Times, "Obama's Chain of Command Unravels Over Benghazi (October 2012), "Obama needs to come clean on what happened in Benghazi" (October 2012), "The Key Benghazi Questions Still Unanswered" (January 2013), "A hard slog to get Benghazi answers" (January 2013), and "A call to Courage over Benghazi" (May 2013).

AIM, as well as the individual FOIA requesters, intend to use the requested information in scholarly or other analytic work, for dissemination. Neither AIM nor the individuals identified above have any "commercial interest" that would be furthered by the disclosure of the requested information, as that term has been interpreted by the courts under 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

Public Interest Fee Waiver. 5 U.S.C. § 552(a)(4)(A)(iii) provides that "[d]ocuments shall be furnished without any charge or at a charge reduced... if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."

Here, the FOIA requesters do not have a commercial interest in the disclosure. Their purpose is to inform the public. The subject of the requested records concerns the operations or activities of the United States Government. The information sought is directed at finding out what information the government has about its failure to timely respond when its facilities came under attack. These FOIA Requests also concern what information the government did not provide to the public, as well as congressional investigators.

9. Records of the video teleconference on the afternoon of the September 16th, 2012, between the FBI and other IC officials in Washington, regarding FBI interviews with U.S. personnel who had been on the compounds in Benghazi during the attack. For your reference, the following is an 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:"

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. The U.S. personnel who were interviewed saw no indications that there had been a protest prior to the attack. Information from those interviews was shared on a secure video teleconference on the afternoon of the 16th with FBI and other IC officials in Washington; it is unclear whether the question of whether a protest took place was discussed during this video conference.

10. Complete Autopsy Reports of each of the victims of the September 11th and 12th, 2012, Benghazi attacks of the Ambassador's compound, and the CIA Annex.

Electronic Format. Kindly produce these records in electronic format. *See* e-FOIA amendment 5 U.S.C. § 552 (a)(3)(B), as amended, requiring Agency to "provide the record in any form or format requested . . . if the record is readily reproducible by the agency in that form or format." *See generally* FOIA Update Vol. XVII, No. 4, 1996.

Request for Waiver of Search and Review Fees. As a representatives of the news media, Accuracy in Media, Inc. ("AIM"), submits that it is entitled to a waiver of any fees associated with the search and review of records responsive to these FOIA Requests, under 5 U.S.C. § 552 (a)(4)(A)(ii)(II). AIM is organized and operated to publish or broadcast news to the public.

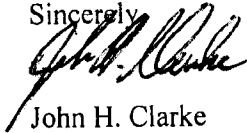
Upon disclosure of the records sought, AIM has concrete plans to make the information public. Its ability and intent to disseminate the information requested, is beyond question. Accuracy in Media Articles on the subject include "The MSM and Benghazi: Will Their Coverage Harm Obama Administration?," "Shameful Media Coverage of Benghazi Scandal and Cover-up," "Media Embrace Obama's Controversial Picks for National Security Team," "New York Times Attempts to Blur Benghazi Scandal," "McClatchy Reporter Changes Tune on Benghazi," "CBS in Damage Control Over Error-Filled Benghazi Report," "'60 Minutes' Reveals Little New in Benghazi Exposé," "The Left's Continued Assault on the Truth About Benghazi," "Media Coverage of Benghazi Leans Toward Political Theater," "Conservative Leaders Call on

Upon disclosure of the records sought, AIM, as well as other several of the individual requesters, has concrete plans to make the information public, in accordance with AIM's news dissemination function. The information sought would be likely to contribute to an understanding of United States Government operations or activities, and disclosure will enhance public understanding of the Benghazi incident as compared with awareness prior to the disclosure. The interest of enhancing the public's understanding of the operations or activities of the U.S. Government is clear, and the records' connection to these government activities is direct.

Release of the information will contribute to an understanding of government operations or activities regarding the Benghazi issue, as compared with awareness prior to the disclosure. Thus, the requesters provide an adequate showing of their concrete plans to disseminate the requested information, and adequately demonstrate how disclosure of the requested documents meets the requirements for a public interest fee waiver.

Reply to Accuracy in Media. If you have any questions about handling this request, please ask via email, to JohnHClarke@earthlink.net. Otherwise, kindly respond, and produce records, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

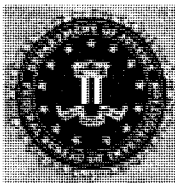
Sincerely



John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

Exhibit B



Federal Bureau of Investigation
Washington, D.C. 20535

March 14, 2014

MR. JOHN H. CLARKE / LAW OFFICE OF JOHN H. CLARKE
SUITE 300
1629 K STREET, NW
WASHINGTON, DC 20006

FOIPA Request No.: 1256410-000
Subject: ARONOFF, ROGER ET AL
(CITIZENS' COMMISSION ON BENGHAZI)

Dear Mr. Clarke:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the FBI. The FOIPA number listed above has been assigned to your request.

You have requested records concerning one or more third party individuals. Because you have requested information about a third party and the FBI recognizes an important privacy interest in that information, to help us process your request we ask that you provide one of the following: (1) an authorization and consent from the individual(s) (*i.e.*, express authorization and consent of the third party); (2) proof of death (*i.e.*, proof that your subject is deceased); or (3) a justification that the public interest in disclosure outweighs personal privacy (*i.e.*, a clear demonstration that the public interest in disclosure outweighs personal privacy interests). In the absence of such information, the FBI can neither confirm nor deny the existence of any records responsive to your request, which, if they were to exist, would be exempt from disclosure pursuant to FOIA Exemptions (b)(6) and (b)(7)(C), 5 U.S.C. §§ 552 (b)(6) and (b)(7)(C).

Express authorization and consent. If you seek disclosure of any existing records on this basis, enclosed is a Certification of Identity form. You may make additional copies of this form if you are requesting information on more than one individual. The subject of your request should complete this form and then sign it. Alternatively, the subject may prepare a document containing the required descriptive data and have it notarized. The original certification of identity or notarized authorization with the descriptive information must contain a legible, original signature before FBI can conduct an accurate search of our records.

Proof of death. If you seek disclosure of any existing records on this basis, proof of death can be a copy of a death certificate, Social Security Death Index, obituary, or another recognized reference source. Death is presumed if the birth date of the subject is more than 100 years ago.

Public Interest Disclosure. If you seek disclosure of any existing records on this basis, you must demonstrate that the public interest in disclosure outweighs personal privacy interests. In this regard, you must show that the public interest sought is a significant one, and that the requested information is likely to advance that interest.

Fax your request to the Work Process Unit at (540) 868-4997, or mail to 170 Marcel Drive, Winchester, VA 22602. If we do not receive a response from you within 30 days from the date of this letter, your request will be closed. You must include the FOIPA request number with any communication regarding this matter.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). As such, this response is limited to those records, if any exist, that are subject to the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number in any correspondence to us for proper identification of your request.

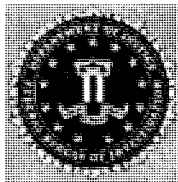
Enclosed for your information is a copy of the FBI Fact Sheet and a copy of the Explanation of Exemptions.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", with a stylized flourish at the end.

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

Enclosure(s)



FBI FACT SHEET

- **The primary functions of the FBI are national security and law enforcement.**
- **The FBI does not keep a file on every citizen of the United States.**
- **The FBI was not established until 1908 and we have very few records prior to the 1920s.**
- **FBI files generally contain reports** of FBI investigations of a wide range of matters, including counterterrorism, counter-intelligence, cyber crime, public corruption, civil rights, organized crime, white collar crime, major thefts, violent crime, and applicants.
- **The FBI does not issue clearances or non-clearances for anyone other than its own personnel or persons having access to FBI facilities.** Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should contact that entity. Most government agencies have websites which are accessible on the internet which have their contact information.
- **A criminal history summary check or “rap sheet” is NOT the same as an “FBI file.”** It is a listing of information taken from fingerprint cards and related documents submitted to the FBI in connection with arrests, federal employment, naturalization or military service. The subject of a “rap sheet” may obtain a copy by submitting a written request to FBI, Criminal Justice Information Services (CJIS) Division, Record Request, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306. Along with a specific written request, the individual must submit a new full set of his/her fingerprints in order to locate the record, establish positive identification, and ensure that an individual’s records are not disseminated to an unauthorized person. The fingerprint submission must include the subject’s name, date and place of birth. There is a required fee of \$18 for this service, which must be submitted by money order or certified check made payable to the Treasury of the United States. A credit card payment option is also available. Forms for this option and additional directions may be obtained by accessing the FBI Web site at www.fbi.gov/about-us/cjis/background-checks/background_checks.
- **The National Name Check Program (NNCP)** conducts a search of the FBI’s Universal Index (UNI) to identify any information contained in FBI records that may be associated with an individual and provides the results of that search to a requesting federal, state or local agency. Names are searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both “main” and “cross reference” files. A main file is an entry that carries the name corresponding to the subject of a file, while a cross reference is merely a mention of an individual contained in a file. The results from a search of this magnitude can result in several “hits” and “idents” on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine if it is applicable to the individual in question.
- **The Record/Information Dissemination Section (RIDS)** searches for records and provides copies of FBI files responsive to Freedom of Information or Privacy Act (FOIPA) requests for information. RIDS provides responsive documents to requesters seeking “reasonably described information.” For a FOIPA search, the subject’s name, event, activity, or business is searched to determine whether there is an associated investigative file. This is called a “main file search” and differs from the **NNCP** search.

FOR GENERAL INFORMATION ABOUT THE FBI, VISIT OUR WEBSITE AT
www.fbi.gov

EXPLANATION OF EXEMPTIONS**SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552**

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

U.S. Department of Justice

Certification of Identity



FORM APPROVED OMB NO. 1103-0016
EXPIRES 10/31/13

Privacy Act Statement. In accordance with 28 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester ¹ _____

Citizenship Status ² _____ Social Security Number ³ _____

Current Address _____

Date of Birth _____ Place of Birth _____

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature ⁴ _____ Date _____

OPTIONAL: Authorization to Release Information to Another Person

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:

Print or Type Name

¹ Name of individual who is the subject of the record(s) sought.

² Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

³ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

⁴ Signature of individual who is the subject of the record sought.

FORM DOJ-361

FBI/DOJ

Exhibit C

FOIA
A
FBI

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 332-3030
JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

March 31, 2014

FOIA APPEAL

David Hardy, Director
Office of Information Policy (OIP)
U.S. Department of Justice
1425 New York Ave., NW
Suite 11050
Washington, D.C. 20530-0001

RECEIVED
APR 07 2014
Office of Information Policy

Re: FOIA Request No.: 1256410-000

Dear Mr. Hardy:

This is an appeal of the FBI's March 14, 2014 denial of the captioned FOIA request. The Bureau responded that it would "neither confirm nor deny the existence of any records responsive to your request," in the absence of "express authorization and consent" by third parties, or proof of death, or, alternatively, a demonstration that the public interest in disclosure outweighs personal privacy interests. However, withholdings under FOIA Exemptions (b)(6) and (b)(7)(C) cannot justify the FBI's blanket denial.

Request 1, seeking records of the FBI's jurisdiction in its Benghazi probe and the identity of government officials ordering the probe, implicates no personal privacy interests.

Any privacy interests that would be affected by release of records sought in Requests 2 and 3, for the Bureau's findings in its investigation, could be vitiated by redacting names. The FOIA requires agencies to release non-exempt information, segregated from exempt material. Records of the meetings between Christopher Stevens, who is deceased, and the individuals identified, could be avoided by segregating the records. Nor should the FBI protect the privacy interests of any non-US personnel detained at the CIA Annex. Also, Request 2's "communication and cryptographic equipment left in the Consulate and Annex when US personnel abandoned the facilities" cannot be withheld on privacy grounds.

Similarly, privacy interests implicated by release of records of the Benghazi facilities, under Request 4, would be avoided by redactions. So too for the personal privacy of the survivors, in the records sought by Requests 5 and 8. Records reflecting Ambassador Stevens' schedule on September 11, 2012, and the substance of his meetings that day, sought in Requests 6 and 7, do not implicate personal privacy interests. And senior government officials who participated in the video teleconference on September 16th, 2012, the subject of Request 9, have little, if any, cognizable personal privacy interests in non-disclosure.

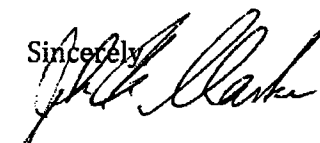
Insofar as the request for complete autopsy reports of the victims of the September 11th and 12th, 2012 Benghazi attacks, the subject of Request 10, we agree that personal privacy interests justifies their non-disclosure, at least in the absence of a release by the primary next-of-kin. However, these FOIA requests seek to reveal, among other things, whether the FBI is conducting a thorough investigation. Thus, whether this murder probe includes any review of the autopsy reports should be disclosed, and almost any response, even one withholding the reports, would suffice.

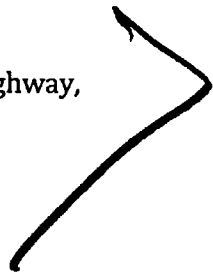
In sum, there are no personal privacy interests in the records sought that could not be protected by proper redaction and segregation, and the absence of any third-party releases does not justify the FBI's blanket withholding.

Moreover, the public interest in disclosure outweighs any cognizable personal privacy interests that may otherwise justify non-disclosure. The Benghazi tragedy and its aftermath is subject of numerous congressional probes and widespread, ongoing, publicity. The information sought is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and its inner workings. Disclosure will show the degree to which the Executive Branch has complied in good faith with relevant law, and whether it accurately informed Congress and the public about the Benghazi tragedy.

Kindly produce the records, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

Sincerely,


John H. Clarke



cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

Exhibit D



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

April 11, 2014

John H. Clarke, Esq.
Suite 300
1629 K Street, NW
Washington, DC 20006
JohnHClarke@earthlink.net

Re: Request No. 1256410

Dear Mr. Clarke:

This is to advise you that your administrative appeal from the action of the Federal Bureau of Investigation was received by this Office on April 7, 2014.

The Office of Information Policy has the responsibility of adjudicating such appeals. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number **AP-2014-02409**. Please mention this number in any future correspondence to this Office regarding this matter. Please note that if you provide an e-mail address or another electronic means of communication with your appeal, this Office may respond to your appeal electronically even if you submitted your appeal to this Office via regular U.S. Mail.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal, you may contact me at the number above. If you have submitted your appeal through this Office's online electronic appeal portal, you may also obtain an update on the status of your appeal by logging into your portal account.

Sincerely,

A handwritten signature in black ink, appearing to read "Priscilla Jones".

Priscilla Jones
Supervisory Administrative Specialist

Exhibit E



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

July 8, 2014

John H. Clarke, Esq.
Suite 300
1629 K Street, NW
Washington, DC 20006
JohnHClarke@earthlink.net

Re: Appeal No. AP-2014-02409
Request No. 1256410
ADW:CDT

VIA: E-mail

Dear Mr. Clarke:

You appealed on behalf of your clients, Accuracy in Media, Inc. and other individuals, from the action of the Federal Bureau of Investigation on your clients' request for access to records concerning certain activities in Libya.

After carefully considering your appeal, and as a result of discussions between FBI personnel and this Office, I am remanding your clients' request for a search for responsive records. If the FBI locates releasable records, it will send them to you directly, subject to any applicable fees. You may appeal any future adverse determination made by the FBI. If you would like to inquire about the status of this remand, please contact the FBI directly.

If your clients are dissatisfied with my action on your appeal, the Freedom of Information Act permits them to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552 (a)(4)(B).

Sincerely,

Sean R. O'Neill
Chief
Administrative Appeals Staff

By: *Anne D. Work*

Anne D. Work
Senior Counsel
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Exhibit F

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July 10, 2014

Federal Bureau of Investigation
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

Re: February 21, 2014 FOIA request
Request No. 1256410-000
Expedited processing and fee waivers
March 31, 2014 administrative appeal, remanded July 8
Appeal No. AP-2014-02409

Dear FOIA Officer:

This letter is submitted in support of prayers for fee waivers and expedited processing for the captioned request. This letter was submitted on July 7 for inclusion in the record on appeal, but, on July 9, I received a letter by email that the case had been remanded on July 8. The FOIA requesters are a group of eight private citizens, joined by a news media organization, Accuracy in Media, Inc., or "AIM." The individuals are a group of highly accomplished former military and Central Intelligence Agency personnel, all of whom are students of the Benghazi tragedy, and all of whom are members of an informal association, the Citizens' Commission on Benghazi, or "CCB" or "Commission." The CCB is a group of concerned Americans working with AIM to unearth and disseminate the truth of the Benghazi tragedy. AIM hosts a page devoted to the CCB on its website, <http://www.aim.org/benghazi/>.

Benghazi siege. On Tuesday, September 11, 2012 at 6:43 a.m. local time, just after sunrise in Benghazi, a private, unarmed security guard on duty at the State Department's Special Mission Compound, a 13-acre walled facility ("the Mission"), noticed a Libyan policeman on the roof of a building across the street, taking photographs, and talking into a cell phone. The policeman photographer had arrived in an official police vehicle, and was part of a police unit whose job supposedly included protecting the Mission. From his vantage, he could see and photograph all four of the Mission's buildings. After being spotted, he joined two other men in a car that then drove away. It was reconnaissance, and a bad omen.

That evening, at 9:02 p.m. a Toyota Hilux "gun truck," bearing the black banner of a local militia, Ansar Al Sharia, drove up to the main gate of the Mission, parked, and turned off its lights. In the next half hour, other gun trucks arrived. Around 9:30 p.m., a dozen or so armed men jumped out and began milling around outside the compound's gated main entrance. Seven Libyan guards, three of whom were armed, protected that entrance. At the time, the Mission housed seven Americans.

The siege began abruptly, at 9:42 p.m. Dozens of attackers, armed with assault rifles and anti-tank rocket-propelled-grenades, swarmed the main gate, and at least one other, and overcame all security. Several guards ran away. One attacker shouted, "We're here to kill Americans, not Libyans."

Attackers lobbed a grenade into the militia's command post and fired AK-47's into the main doorway. Within minutes, Ambassador Chris Stevens called the Deputy Chief of Mission in Tripoli, Greg Hicks, and barked, "Greg, we're under attack," whereupon the phone went dead. Stevens' last words in his diary entry of that evening had been, "Never ending security threats." Hicks called the CIA Chief of base (COB) at the Benghazi "CIA Annex," the CIA facility about a mile away, to ask whether the COB had dispatched reinforcements to evacuate the Mission, in accordance with the emergency plan in place, called a "REACT" plan. The COB replied that he was mobilizing reinforcements, but that they were not yet en route.

After giving up trying to break through the steel door protecting a safe area inside the residence, at 10:07 p.m. the attackers set buildings on fire, including the one with the REACT plan's "safe room," where Ambassador Stevens had taken refuge with State Department Regional Security Officer Scott Wickland, as well as Sean Smith, the Ambassador's Information Management Officer.

Using cans of diesel fuel that had been on hand to power a new generator, the attackers ignited parked cars, and soaked the furniture in the residence. When ignited, the furniture gave off thick noxious fumes that poured through the steel-reinforced security gate, choking Smith, Wickland, and Stevens. They likely recognized that the fire would kill them if they did not escape.

Sean Smith was a thirty-four year old computer specialist and former Air Force Sergeant, in Benghazi on temporary duty, providing IT services at the Mission. Sean had been online when the violence began. His last known words were "F—k, gunfire." Earlier that day, Smith had ended an email, "Assuming we don't die tonight. We saw one of our 'police' that guard the compound taking pictures." His last minutes were probably spent destroying cryptographic equipment and other sensitive materials. Whatever he didn't destroy likely fell into enemy hands.

Minutes after the attack began, a cable had come into the CIA Annex, notifying personnel there that 30 or more terrorists were attacking the Mission. It was clearly a disciplined, military style assault. The CIA Annex was staffed with a Quick Reaction Force (QRF), whose mission was to support, or rescue, CIA "assets" in Benghazi.

The CIA Annex force included members of the Libyan "February 17th Martyrs Brigade" militia, an ostensibly friendly armed force that had been contracted by the State Department to augment security at the Mission. The head of this militia was Fawzi Abu Kataf, a Libyan with close links to the Muslim Brotherhood.

At 10:07 p.m., Tyrone Woods and a seven-man QRF, plus a translator, left the CIA Annex, in two armored SUVs, at high speed, bound for the Mission, even after being denied permission to leave three times by the CIA Chief-of-Base. Ty Woods did not ask permission a fourth time. Woods was a member of the Global Response Staff (GRS), CIA-contracted personnel providing protection. Many GRS are former top-tier Navy SEALs or Army Special Forces. Woods was a forty-one year old, had been a Navy SEAL for twenty years, and had served multiple tours of duty in Somalia, Iraq and Afghanistan.

An earlier departure by Woods and his team may have saved Chris Stevens and Sean Smith, according to one estimate. But the CIA Chief wanted to first recruit Libyans to help in the response, even while retaining sufficient forces at the CIA Annex to defend it from any attack. That concern was well-founded: The Annex would later suffer from probing attacks and, finally, a highly sophisticated, accurate, deadly mortar assault.

Chris Stevens used Scott Wickland's cell phone to make desperate calls to the embassy in Tripoli, and probably to local consulates and the February 17th Martyrs Brigade, pleading for help. Minutes before the CIA Annex team arrived at the Mission, Wickland tried to lead Ambassador Stevens and Sean Smith out of the burning building, but was separated from them in the thick, noxious smoke. While repeatedly trying to find Stevens and Smith, Wickland was nearly overcome by smoke and fumes. The CIA Annex team, now numbering ten after adding three Libyan militiamen, finally arrived at the Mission, at 10:25. They were met with gunfire. After an intense 15-minute firefight, at 10:40, the team entered the Mission.

The CIA Annex force immediately joined Mission staff, and, in less than five minutes, the group found Sean Smith, dead, but could not find Chris Stevens, even after repeatedly searching the burning building. By 10:45 p.m., this first attack had subsided. But, shortly after 11:00, as the number of attackers grew rapidly, they regrouped and initiated another attack against the now 14 defenders—six GRS

shooters, five Diplomatic Security Agents, and the three Libyan militiamen. The GRS snipers and DS agents, shooting from behind sandbags, picked off a number of attackers, at a distance of about 400 feet.

At 11:10, an unarmed MQ-1 Predator reconnaissance drone, which had been diverted by Africa Command from Derna, Libya, arrived over the Mission, providing control agencies worldwide "eyes" on the attacks, in real time.

After 15 minutes of constant shooting, running low on ammunition, and with the attacking force still growing in number, the Americans decided to make a break for it, to flee to the CIA Annex. They gathered the survivors, Sean Smith's body, and finally departed the Mission around 11:15, in three armored SUVs. Ambassador Stevens was still missing. Exhausted and suffering from acute smoke inhalation and cyanide poisoning from the petroleum-based fire, one of the RSOs, David Ubben, made a wrong turn, and his vehicle came under heavy fire. The group fled to the CIA Annex, arriving around 11:35 p.m., via a circuitous route, with two cars of heavily armed attackers in hot pursuit.

The assault renewed at 11:55, now targeting the CIA Annex. It began with Rocket Propelled Grenades hitting the perimeter wall. That was followed by another intense firefight, during which time Tyrone Woods and his team killed over 60 attackers, maybe as many as 100. Multiple command and control agencies worldwide watched events unfold in real time, via the reconnaissance drone directly overhead.

Meanwhile, in Tripoli, just a few minutes after midnight, GRS agent and former SEAL Glen Doherty and his seven-man Tripoli Task Force team—two military Active Duty Special Operations "shooters" and five other GRS personnel—took off from Tripoli in a Libyan C-130 and landed at Benghazi's Benina Airport at approximately 1:15 a.m. Glen Anthony Doherty, 42, had joined the Navy in 1995. He was a paramedic, and sniper, in SEAL Team THREE, and served two combat tours in Iraq. In 2005 Glen left the SEALs to serve as a contractor providing security for the US intelligence community in Afghanistan, Pakistan, Yemen, and, finally, in Tripoli.

At 1:00 a.m., Libyan "casuals" brought Ambassador Stevens' body to the Benghazi Medical Center, which may have been under the control of Ansar Al Sharia. (The "casuals" were young unarmed men dressed in T-shirts and designer jeans, not militiamen.) At 2:00 a.m., a call was received from Libyan physician Dr. Abu Zeid, that he had an "unresponsive male" that matched Chris Stevens' description. Dr. Zeid reported that he had worked on the Ambassador for 45 minutes, but that he had died apparently from the effects of inhaling smoke and carbon monoxide.

The various competing militias that controlled Benghazi's Benina Airport delayed Glen Doherty and his team for over three hours. The militias argued among themselves about which militias would assist, as well as logistics, such as which militias would provide the transportation, who would serve as escorts, and which vehicle would lead. They also argued over payment.

After the delay, Glen Doherty and his team finally departed the airfield, at 4:30 a.m., and arrived at the CIA Annex at 5:00 a.m. By that time, Annex personnel were well along destroying computer hard drives, cryptographic equipment, and classified files. Doherty and his team took up defensive positions, guarding over 30 American personnel at the Annex. Between 5:15 and 5:30, the attackers fired 82-mm Soviet-produced mortars, from 800 to 1,000 yards from the Annex. This weapon, which fires seven-pound shells through a 120-pound tube, requires a highly trained crew of four-to-six men to operate. The attackers employed military tactics and techniques, including hand signals that enabled them to maneuver in silence. They were highly trained, obviously.

Aimed with the use of a hidden spotter providing corrections, the attackers fired three "registration" rounds, to adjust the aim, each of which hit the CIA Annex grounds. One of the defenders on the Annex roof shouted "Incoming" when he heard the distinctive pop of a mortar round being fired. The fourth round hit the roof of the building precisely where Tyrone Woods was defending with an automatic weapon, killing him instantly. A fifth round hit the roof close to Glen Doherty, also instantly killing him. Shrapnel from one of rounds hit DS agent David Ubben as he was getting off the ladder to join Woods and Doherty, nearly severing one of his legs. Ubben would remain an inpatient at Walter Reed Army Hospital for over a year.

With sunrise, the assailants lost the tactical advantage of darkness, and the attack ended. Fleeing the CIA Annex at 6:15 a.m., 32 CIA and State Department survivors, with four American casualties, drove to Benina Airport, and departed at 7:30 a.m., bound for Tripoli on a C-130 transport aircraft.

When the Benghazi facilities were attacked, a 130-man Marine Force Reconnaissance was stationed in Sigonella, Sicily, about an hour's flight from the Mission. US aircraft at Aviano Air Base, in northeastern Italy, were about two hours away. Two Marine Corps Fleet Antiterrorism Security Teams were stationed three-and-a-half to four hours away, in Rota, Spain. Also about three-and-a-half hours away, in Croatia, a forty-man Special Operations Commander's-in-Extremis Force was conducting counterterrorism exercises. And, in the United States, Special Operations forces were eight hours air time away. Yet, when US personnel finally fled Benghazi, eight-and-a-half hours after the attack began, no U.S. assets were airborne.

Initial Administration narrative. For the first ten days following the attacks, the administration repeated, over and over again, that the attack was spontaneous.¹ This narrative was false and misleading, and known to be false.²

¹ See statements advancing spontaneous attack version by Secretary Clinton, the President, Jay Carney, Susan Rice, Victoria Nuland, David Petraeus, and Michael Morell, appearing verbatim, at endnote 1.

² Evidence of knowledge of the falsity of spontaneous attack account, by Secretary Clinton, the President, Jay Carney, Susan Rice, Victoria Nuland, David Petraeus, Michael Morell:

- September 11: "I personally [General Carter Ham], and I think the command very quickly got to the point this was not a demonstration, this was a terrorist attack." Exhibit 4 General Ham testimony at Bates 15.
- Ham immediately notified Joint Chiefs of Staff Martin Dempsey and Secretary of State Leon Panetta.. " Exhibit 4 General Ham testimony at Bates 15.
- Shortly after 5:00 p.m., Panetta briefed the President. Exhibit 15 Secretary Panetta and General Ham testimony at Bates 53.
- At 6:07 p.m., a State Department staff member emailed the Executive Office of the President and the FBI: "Update 2: Ansar al-Sharia Claims Responsibility for Benghazi Attack (SBU)." Exhibit 26 State Dept emails Sept 11, 2012, at Bates 79.
- Brigadier General Robert Lovell, deputy head of intelligence for AFRICOM, testified that AFRICOM linked the attacks to Ansar al Sharia "[w]hen we were still in the very early, early hours of this activity."
- At 8:00 p.m., Libyan Deputy Chief of Mission Gregory Hicks briefed Secretary Clinton and staff, by phone. "The only report that our mission made, through every channel," Hicks testified, "was that there had been an attack on a consulate... No protest." Exhibit 2 Gregory Hicks testimony at Bates 7.
- September 12: At 12:46 p.m., a staffer [name redacted] emailed Victoria Nuland, Cheryl Mills, and Jake Sullivan, "Re Libya update from Beth Jones," relating Jones' conversation with Libyan Ambassador Aujali, "When he said his [the Libyan] government suspected that former Qaddafi regime elements carried out the attacks, I told him that the group that conducted the attacks— Ansar Al Sharia—is affiliated with Islamic extremists." Exhibit 27 Emails Victoria Nuland, Patrick Kennedy etc, Sept 11 and 12, 2012, at Bates 80.
- At 5:42 p.m., Susan Rice received an email from Payton L. Knopf with the timeline "4 pm EST Compound begins taking fire from Libyan extremists." It also recites, "Responding to a question about whether the attack was linked to the Mohammed video, she [Victoria Nuland] said that she could not confirm a connect as we simply don't know—and we won't know until
(continued endnote 2)

Grounds for expedition. Given the Administration's history regarding this matter, there is no doubt that the government will not produce many of the records sought absent a court order to do so. Litigation, at both the trial and appellate levels, will be necessary. If the CCB's FOIA requests are processed in the regular course, the records would be disclosed only after the 2016 Presidential election. The particular value of the information will be lost if not disclosed by the summer 2016, when Mrs. Clinton will likely be nominated to run for President. If so, it would deprive the American people of the opportunity to meaningfully participate in this debate. Thus, the circumstances mandate expedited processing.

Subsequent narratives. The Administration has advanced several different versions of the facts. On April 2, 2014, Deputy CIA Director Michael Morell, now retired from government,³ testified before the House Select Intelligence Committee, chaired by Mike Rogers (who is also leaving public service⁴). 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." *Wall Street J.* "More Obfuscation on Benghazi," April 6, 2014, M. Mukasey. But this mea culpa "doesn't make sense," as Representative Mac Thornberry observed.⁵ Moreover, 18 months

³ See "'Revolving door'? Ties between consultancy, Gov't Raise Questions About Benghazi Probe," *Fox News*, March 24, 2014, C. Herridge, relating Morell's employment by consulting firm Beacon Global Strategies, whose "founders and managing directors... know more about the Benghazi terrorist attack and the Obama administration's response... [with] deep ties to former Secretary of State Hillary Clinton and others involved in the controversy..."

⁴ See "GOP Benghazi Probe Leader Has Huge Conflict Of Interest," Dick Morris, April 8, 2014: "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?"

⁵ April 2, 2014 testimony CIA Deputy Director Michael Morell, House Permanent Select Committee on Intelligence:

Q. Representative Mac Thornberry: To me it seems like you're more interested in protecting the State Department than the State Department is and... that doesn't make sense to me. Can you explain the motivation?

A. Michael Morell: 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... 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...

ago, Mr. Morell misled Congress about his involvement in crafting the official narrative, when he feigned ignorance of the source of the changes to the "talking points," by remaining silent when Director of National Intelligence James Clapper was asked about the changes in closed door session, in November of 2012.⁶ Later that same month, Mr. Morell told senators that the FBI had been responsible for changing the talking points.⁷

Disclosure will settle issues. In any event, the Administration's most recent story, even if true, would not solve the mystery of why the government failed to try to rescue its personnel. The appropriateness of the Administration's efforts to rescue is one of the central issues in the case, and production of records responsive to the CCB's FOIA requests would resolve it. The Commission seeks disclosure of records confirming or refuting Secretary Panetta's claim that he ordered a response,⁸ as well as General Dempsey's statement that it would have taken five hours for U.S. forces to get airborne, and 13 hours for the arrival of any rescue

⁶ See "Rep. Peter King: Morell 'Not Truthful' on Benghazi" *NewsMax* April 3, 2014: "[A]t the [November 2012] Intelligence Committee hearing... [James Clapper said] we drafted different talking points.... [and we] don't know who changed them... Morell sat there as if he, you know, this was something totally foreign to him."

⁷ See "Lawmakers: CIA #2 Lied to Us About Benghazi," *Weekly Standard S.* Hayes, March 3, 2014:

On November 27, 2012, Morell accompanied U.N. ambassador Susan Rice to Capitol Hill to meet with senators...The first question of the meeting was simple: "Who changed the talking points?" Morell responded, telling the senators that the FBI had made the revisions.... So Graham called FBI leadership to ask why the bureau would have withheld such important information from the CIA. "They went apeshit," says Graham, and offered an unequivocal denial.

⁸ Summary of FOIA Requests to FBI, State, DoD, and CIA:

- Records of Secretary Panetta's orders to (1) the 130-man Marine Force Reconnaissance Team in Naval Air Station Sigonella in Sicily, (2) the two Marine Corps Fleet Antiterrorism Security Teams ("FAST") at the Spanish Naval Station Rota, (3) Special Operations Forces in the United States, and (4) the Commanders In-extremis Force in Croatia. Additionally, we have asked for records disclosing the readiness status of assets at those locations, including aircraft, and including Italian aircraft at Sigonella that could have transported the 130-man
(continued endnote 8)

force.⁹ The Administration baldly claims that it reacted with all due dispatch, even while the record reflects a delay of around two hours before Secretary Panetta allegedly gave orders. Panetta and Generals Dempsey and Ham learned of the attack shortly after 4:00 p.m. An hour later, just after 5:00 p.m., Panetta and Dempsey briefed the President, in person (just as an unarmed drone diverted by AFRICOM was arriving over the Benghazi compound¹⁰). After that White House meeting, and after returning to the Pentagon, in rush hour traffic, only then did Secretary Panetta order forces to deploy.¹¹

On the issue of when and how the State Department responded, disclosure will reveal whether Secretary Clinton was truthful when she claimed to have sought help from American allies.¹²

⁹ "Well, based on the posture, our posture at the time, it would have been n plus 6 plus transit from, with the closest ground force available, and so you're looking at something best case between 13 and 15 hours." Exhibit 15 Secretary Panetta and General Ham testimony, Bates 53.

¹⁰ Panetta testified, "Once an attack takes place, the biggest problem you have is getting accurate information about exactly what is taking place in order to then develop what response you need... You've got to be able to have good information about what is taking place in order to be able to effectively respond." Exhibit 15 at Bates 53.

¹¹ Panetta testified that he "[c]ontinued to talk [with the President]. I think we teed up some other issues that we were dealing with at the time to inform the President, and then once that concluded we both went back to the Pentagon and immediately I ordered the deployment of these forces into place." Exhibit 15 at Bates 54.

¹² 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." Exhibit 3 Secretary Clinton testimony Bates 9-10.

See April 7 2014 State Dept 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.

Already the available record would appear to refute the Administration's position that it gave no "stand-down" order or its equivalent: At the May 8, 2013 Hearing before the House Oversight and Government Reform Committee, Congressman Chaffetz asked Gregory Hicks, "How did the [Tripoli] personnel react to being told to stand down?" Hicks responded, "They were furious. I can only say—well, I will quote Lieutenant Colonel Gibson. He said, 'This is the first time in my career that a diplomat has more balls than somebody in the military.'" Again, disclosure of the records sought would settle the matter.¹³

Arms trafficking. The CCB's FOIA requests to State, CIA, FBI, and DoD, cumulatively, are aimed at revealing the facts of the Benghazi tragedy, and facts regarding the bigger picture. Arms trafficking cannot be ignored. Was CIA arms trafficking the only reason that State maintained diplomatic facilities in Benghazi?¹⁴ Did the Administration submit a "finding" to eight members of Congress before the CIA engaged in covert gun-running,¹⁵ or did the CIA classify the mission as a liaison

¹³ See footnote 33 for CCB FOIA requests to the FBI.

¹⁴ See "The Red Line and the Rat Line," *London R. of Books*, April 17, 2014, S. Hersh: "The consulate's only mission was to provide cover for the moving of arms... 'It had no real political role.'" See also "Mainstream Media on Benghazi: It Was About Gun-running," *The New American*, Aug. 7, 2013: "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. *** He [Ambassador Stevens] 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. See also, "Analysis: CIA role in Benghazi underreported," *CNN*, May 15th, 2013.

See also April 7, 2014 CCB FOIA Request No. 3 to State Department: "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."

¹⁵ See Feb 24, 2014 CIA FOIA Request Nos. 12 and 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 [and] transport of arms to Syrian rebel forces."

operation with the British to circumvent that law, as Sy Hersh reported?¹⁶ Did the President really decline to implement CIA Director Petraeus' plan to supply weapons to Syrian revolutionaries, against the counsel of Joint Chiefs Chairman Dempsey, and Secretaries Panetta and Clinton,¹⁷ as Panetta testified, or did the President, in fact, authorize these arms transfers of Libyan munitions? Secretary Clinton testified that Libya has been "awash with weapons"¹⁸ since the February 2011 Libyan Revolution. Also beyond dispute is that the CIA played a significant role in retrieval and storage of weapons in Libya, as well as to later transfers to Syrian rebels via Turkey. Press reports refer to Congressional approval of covert CIA supply of arms to Syrian rebels in 2013, but what about in 2012?¹⁹ Whatever

¹⁶ April 17, 2014, "The Red Line and the Rat Line," *London R. of Books*, S. Hersh.

¹⁷ April 7, 2014, CCB FOIA Request Nos. 1 and 2 to State Department:

Records generated from August 2009, through October of 2011, regarding Secretary of State Clinton's recommendations regarding U.S. support to those seeking to oust forces loyal to Colonel Muammar Gaddafi and his government. Records generated from March of 2011 through September of 2012, regarding Secretary of State Clinton's recommendations to support those seeking to oust forces loyal to the government of Bashar al-Assad.

¹⁸ Testimony of Mrs. Clinton on January 23, 2013, before the Senate Committee on Armed Services, Exhibit 3 at Bates 11: "Libya was awash in weapons before the revolution. Obviously, there were additional weapons introduced... and have made their way out of Libya into other countries in the region, and have made their way to Syria, we believe...."

See also February 2014 UN Security Council "Final report of the Panel of Experts established pursuant to resolution 1973 (2011) concerning Libya" Exhibit 29 at Bates 90: "[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. Bates 89. "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.... Transfers of arms and ammunition from Libya were among the first batches of weapons and ammunition to reach the Syrian opposition...," and "Syrian Arab Republic had become a preeminent destination for Libyan weapons..." *Id.* ¶ 64 Bates 90.

¹⁹ CCB FOIA Requests include intelligence community records shared with Congress regarding CIA transport of arms to Syrian rebel forces.

the truth of the arms transfers out of Libya, Secretary Clinton, an ardent champion of both the Libyan and Syrian revolutions, was surely aware of it. Her claim that she had "no information" about CIA arms trafficking out of Libya²⁰ is plainly not credible.

Public interest. Here, the public interest in disclosure is enormous. The Commission expects these FOIA-requested records to reveal answers to questions raised by the Administration's cover-up of the true catalyst for the attack, as well as the issue of why no rescue assets were deployed. Americans know almost nothing of the facts of the Benghazi tragedy. Was the attack an attempt to kidnap Ambassador Stevens, as Admiral Lyons' source inside the FBI reported? Was it an attempt to free CIA-held Libyan prisoners, as Director Petraeus apparently told Ms. Broadwell?²¹ Why was the American flag the last foreign flag still flying in Benghazi? Indeed, the very reason for maintaining CIA facilities in Benghazi still

²⁰ Testimony of Mrs. Clinton on February 7, 2013, before the Senate Committee on Armed Services:

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...

Exhibit 3 Secretary Clinton testimony at Bates 12-13.

²¹ See October 26, 2012 YouTube Paula Broadwell talk: "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."

remains shrouded in government secrecy.²² Perhaps this is because "U.S. leadership decided to facilitate the provision of weapons to jihadist militias known to be affiliated with al-Qa'eda and the Muslim Brotherhood in order to bring down a brutal dictator," as Commission member Clare Lopez observed in her April 22, 2014 AIM column, *Material Support to Terrorism: The Case of Libya*. Are Administration officials concerned about charges of violations of The Arms Export Control Act,²³ or even materially supporting terrorists?²⁴

²² The State Department's public reason for the existence of a diplomatic facility in Benghazi appears in its December 27, 2011, three page "Action Memo for Under Secretary Kennedy," 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." Exhibit 28 Action Memo for Under Secretary Kennedy, Dec 27, 2011, Bates 86. 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.

²³ *Material Support to Terrorism: The Case of Libya*. C. Lopez, April 22, 2014, *AIM Column*: The Arms Export Control Act is another law that makes it illegal for the U.S. government to export "munitions" to any country determined by the Secretary of State to have "repeatedly provided support for acts of international terrorism"^[1]." While this provision applies specifically to those countries—Cuba, North Korea, Iran, and Syria—that are designated as state sponsors of terrorism, the case of Libya stands out nevertheless. Removed from the State Department's list of state sponsors of terrorism in 2006, Libya by early 2011 was swarming with al-Qa'eda and Muslim Brotherhood militias and affiliates fighting to overthrow Muamar Qaddafi's regime.

²⁴ *Material Support to Terrorism...* C. Lopez, April 22, 2014, *AIM Column*: "United States law is quite explicit about providing material support to terrorists: it's prohibited. Period. 18 U.S. Code § 2339A and 18 U.S. Code § 2339B address Providing Material Support to Terrorists or Designated Foreign Terrorist Organizations. Together, these two sections outlaw the actions of any U.S. person who attempts or conspires to provide, or actually does provide, material support to a foreign terrorist organization knowing that it has been designated a foreign terrorist organization or engages, or has engaged, in 'terrorism' or 'terrorist activity.'"

The U.S. media were not so silent regarding these covert matters in October of 2012, as Ms. Lopez observed at the time:

* * *

According to media reporting, Benghazi was staffed by CIA operatives whose job may have been not just to secure and destroy dangerous weapons (like RPGs and SAMs) looted from former Libyan dictator Muammar Qaddafi's stockpiles during and after the 2011 revolution, but also perhaps to facilitate their onward shipment to the Al-Qaeda- and Muslim Brotherhood-dominated Syrian opposition.

* * *

President Barack Obama signed an intelligence finding sometime in early 2012 that authorized U.S. support for the Syrian rebels and by mid-June 2012, CIA operatives reportedly were on the Turkish-Syrian border helping to steer weapons deliveries to selected Syrian rebel groups. According to an Oct. 14, 2012 *New York Times* article, most of those arms were going to "hard-line Islamic jihadists."

One of those *jihadis* may well be Abdelhakim Belhadj, former leader of the Al-Qa'eda-linked Libyan Islamic Fighting Group (LIFG) and head of the Tripoli Military Council after Qaddafi's ouster. During the 2011 revolt in Libya, Belhadj was almost certainly a key contact of the U.S. liaison to the Libyan opposition, Christopher Stevens.

In November 2011, Belhadj was reported to have met with Syrian Free Army (SFA) leaders in Istanbul, Turkey, as well as on the Turkish-Syrian border. Further, Belhadj's contact with the SFA comes in the context of *official policy* adopted by the post-Qaddafi Libyan "government," which sent a delegation to Turkey to offer arms and possibly fighters to the Turkish-backed Syrian rebels. "There is something being planned to send weapons and even Libyan fighters to Syria," according to a Libyan source quoted in a November, 2011 *Telegraph* report.

"Benghazi: The Set-Up and the Cover-Up," Oct 30, 2012, C. Lopez, *Pundicity.com*.

Congressional oversight. Congressional probes and reports demonstrate the State Department's gross negligence: State knew of the significant threat,²⁵ received requests for more protection,²⁶ but Secretary Clinton and Undersecretary Kennedy refused to increase security.²⁷ As illuminating as the six reports²⁸ by five different Committees²⁹ are in detailing the State Department's negligence, all such reports are silent on the issue of motive for the absence of an immediate DoD response. The Commission has every confidence in Congressman Trey Gowdy's skills, and bone fides, and the CCB seeks to help the Select Committee in any way it can.

Commission investigation. In an effort to assist the Select Committee, on May 20, 2014, the CCB submitted to Mr. Gowdy's office three documents, copies of which are enclosed; a 14-page timeline, a three-page "Executive Summary & Key Findings," and a three-page "Questions for the Select Committee on Benghazi," posing 23 questions. Six of these 23:

- Where were Secretary of Defense Leon Panetta and Chairman of the JCS General Martin Dempsey during the crisis and what inputs, recommendations and decisions did they make?

²⁵ See endnote 25 for examples of intelligence community analytic reports warning of intent to strike US and Western facilities and personnel in Libya.

²⁶ Endnote 26 contains the specifics of six requests for protection.

²⁷ See April 19, 2012: "[T]he response cable from... Secretary Clinton... [to Ambassador Cretz's request for more security] instead articulates a plan to scale back security assets for the U.S. Mission in Libya, including the Benghazi Mission." Exhibit 7 Republican majorities' April 23, 2013 INTERIM PROGRESS REPORT..., at Bates 26. See also July 13, 2012: "State Department Undersecretary Patrick Kennedy refused the Defense Department offer and thus Chris's July 9 request. His rationale was that Libyan guards would be hired to take over this responsibility." Exhibit 14 "Gregory Hicks: Benghazi and the Smearing of Chris Stevens," *Wall Street J.*, Jan 22, 2014 Bates 48.

²⁸ See endnote 28 regarding the six Congressional reports.

²⁹ (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.

- Why was President Obama not in the Situation Room that night, as Tommy Vietor has recalled?
- Where were the National Security Advisor, Tom Donilon, and his Deputies, Denis McDonough and John Brennan; and where was Valerie Jarrett during the attacks and more importantly, what inputs and recommendations (if any) did any of them make to Obama?
- Who made the decision not to deploy the joint/interagency Foreign Emergency Support Team (FEST) and why?
- What specifically was the relationship between Official U.S. Envoy and later Ambassador Christopher Stevens with the known al-Qa'eda and Muslim Brotherhood figures, groups, and militias who led the 2011 revolution against Muammar Qaddafi?³⁰
- Who made the decision to allow ships full of weapons from Qatar to pass through the NATO blockade in 2011 to be delivered to Libyan Muslim Brotherhood and/or al-Qa'eda rebels?

Search and review fees. The CCB qualifies as a "member of the news media" under the FOIA, entitling it to a waiver of search and review fees that otherwise might be incurred. AIM is a 501(c)(3) Corporation, organized to distribute news to the American public, which it has been doing for almost 45 years. Its 1971 Articles of Incorporation is attached. AIM's semi-monthly newsletter, *The AIM Report*, has gone out without fail for 42 years. AIM has over 5,000 subscribers. Its other publications include AIM columns, *Briefings* (opinions), *Special Reports*, and *Guest Columns*. AIM's principals have published three books on the subject of the news media: *Media Mischief and Misdeeds* 1984; *Profiles in Deception* 1990; and *News Manipulators* 1993. AIM has also produced several nationally distributed documentaries, including (1) *Television's Vietnam*, (2) *The Clinton Legacy*, (3) *TWA 800: The Search for the Truth*, and (4) *Confronting Iraq*. More than 100,000 people visit AIM's website nearly every month. Newspapers and websites around the country oftentimes pick up *The AIM Report's* stories. Due to its many efforts, AIM enjoys the ability to convey information to a broad public audience.

To be entitled to news media status under 5 U.S.C. § 552 (a)(4)(A)(ii)(II), the FOIA requester must (1) gather information of potential interest to the general public, (2) use its editorial skills to turn the raw materials into a distinct work, and (3) have concrete plans to distribute that work to its audience. Here, AIM has already published twenty articles about Benghazi, one in 2012, eight in 2013, and eleven in the first five months of 2014.³¹

³⁰ See endnote 30 for Feb 24, 2014 CCB FOIA Request to FBI, CIA, and State for records "generated between January of 2007 and September 11, 2012, regarding meetings between Christopher Stevens or any other Tripoli Embassy official, and one or more of the following [nine] individuals..."

³¹ Endnote 31 list 20 AIM articles on Benghazi, by title, date, and author.

Even if AIM were the only FOIA requester here entitled to be treated as a member of the news media, these requests would still have to be accorded news media status. But AIM is not the only "member of the news media" here. Roger Aronoff is Editor of Accuracy in Media, and hosts of AIM's show on BlogTalkRadio, "Take AIM." Mr. Aronoff has worked as a journalist, TV producer, director, and writer, including the syndicated 2009 PBS show, "Think Tank with Ben Wattenberg." He has written and directed award-winning documentaries, *Confronting Iraq: Conflict and Hope*, *The Clinton Legacy* and *TWA 800: The Search for the Truth*. He has appeared as a guest commentator on National Public Radio, Air America, CNN, Fox News, CNBC's "Kudlow & Company," Court TV, Russia Today, and Canadian TV, among others. Mr. Aronoff himself wrote 12 of the 20 aforementioned Benghazi articles published by AIM.

James "Ace" Lyons is a former four-star admiral, Commander-in-Chief of the U.S. Pacific Fleet, and the Father of the Navy Seal Red Cell Program. His other commands include U.S. Second Fleet, NATO Striking Fleet, as well as the Seventh Fleet Logistic Force, plus several ship commands. As the Deputy Chief of Naval Operations from 1983 to 1985, he was principal advisor on all Joint Chiefs of Staff matters. He also served as Senior U.S. Military Representative to the United Nations. He is a graduate of the U.S. Naval Academy and has received post-graduate degrees from the U.S. Naval War College and the U.S. National Defense University. Admiral Lyons has appeared on Fox Business News several times and is a regular contributor to the Op Ed Section of the Washington Times, which has published seven of his pieces about the Benghazi tragedy:

- "Obama's Chain of Command Unravels Over Benghazi Murders," Oct 18, 2012;
- "Obama needs to come clean on what happened in Benghazi," Oct 28, 2012;
- "The Key Benghazi Questions Still Unanswered," Jan 11, 2013;
- "A hard slog to get Benghazi answers," Jan 30, 2013;
- "A call to Courage over Benghazi," May 1, 2013;
- "Benghazi demands a select committee in Congress," Jan 16, 2014;
- "Benghazi was a planned tragedy," March 3, 2014.

Clare Lopez is a strategic policy and intelligence expert with a focus on national defense, Islam, Iran, and counterterrorism issues. Currently Vice President for Research and Analysis at the Center for Security Policy, and senior fellow at The Clarion Project, Gatestone Institute, and the Canadian Meighen Institute and vice president of the Intelligence Summit, she formerly was a career operations officer with the Central Intelligence Agency, a professor at the Centre for Counterintelligence and Security Studies, Executive Director of the Iran Policy Committee from 2005-2006, and has served as a consultant, intelligence analyst,

and researcher for a variety of defense firms. She was named a Lincoln Fellow at the Claremont Institute in 2011. Clare's publications on Benghazi include "Did Turkey Play a Role in Benghazi Attack?" *Clarion Project*, Oct 31, 2012, and "Benghazi: The Set-Up and the Cover-Up," *Pundicity.com*, Oct 30, 2012; "Material Support to Terrorism: The Case of Libya," *Accuracy in Media*, April 22, 2014.

Wayne Simmons spent 27 years working with the CIA to combat terrorism, narco-terrorism and narcotics trafficking, arms smuggling, counterfeiting, cyber-terrorists, and industrial and economic espionage. He sits on the Advisory Council for the Intelligence Summit, and is a contributor to the conservative publication *Human Events*. Simmons has served as a terrorism analyst for the Fox News Channel since 2002, where he has opined on the Benghazi tragedy approximately a half-dozen times since September 11, 2012.

Three of the FOIA requesters, Captain Larry Bailey, Lieutenant Colonel Kenneth Benway, and Colonel Richard F. ("Dick") Brauer Jr. USAF, (Ret), are all co-founders of *Special Operations Speaks* ("SOS"), an organization that speaks out on defense-related issues, particularly those involving special operations forces. SOS is focused on Benghazi. Ten of the eleven news articles posted on the SOS homepage are about Benghazi.³²

Captain Larry Bailey is a 27-year U.S. Navy SEAL veteran. Obtaining his commission from Navy Officer Candidate School in 1962, he was first assigned to the

³² See SOS homepage <http://specialoperationsspeaks.com/welcome> linking:

- "Dear Rep. Gowdy," *SOS*, May 30, 2014.
- "Was the Benghazi video story the brainchild of Hillary Clinton?" *Family Security Matters*, May 5, 2014.
- "Father of Navy SEAL Killed in Benghazi Speaks Out and Shreds the Administration's Lies," *Fox News* May 3, 2014.
- "Breaking News: Speaker Boehner Announces Vote On Select Committee," *SOS* May 2, 2014.
- "'Smoking gun' Benghazi email prompts renewed push for select committee," *Fox News* May 1, 2014.
- "Top Intel Chief Testifies: 'We Should Have Sent Help For Americans in Benghazi,'" *Town Hall* May 1, 2014.
- "Judicial Watch: Benghazi Documents Point to White House on Misleading Talking Points," *SOS* April 29, 2014.
- "Benghazi attack could have been prevented if US hadn't 'switched Sides in the War on Terror,'" *Daily Mail* April 23, 2014.
- "House Intel member: Two flags flew at Benghazi—al-Qaeda and the U.S." *United Liberty* April 4, 2014.
- "Fox News Poll: Voters say Obama covering up on Benghazi, want Congress to keep investigating," *Fox News* April 17, 2014.

destroyer USS LEARY before receiving orders to Underwater Demolition Team training in Little Creek, VA. After a year in UDT-22, he was assigned to SEAL Team TWO, where he spent almost five years and with whom he participated in the Dominican Republic invasion, and deployed to Vietnam, where he led the first East Coast SEAL platoon into combat. Included in Captain Bailey's duty stations were the Philippines, Panama, Bolivia, and Scotland. He commanded Naval Special Warfare Center, where all SEALs are trained, for three years and retired in 1990 from the U.S. Special Operations Command in Tampa, Florida. Since 2007, Captain Bailey has been involved in issues of national policy and has chaired Gathering of Eagles. Captain Bailey is the author of "Navy SEAL: 'There's guilt in this administration,'" *WND*, April 8, 2013.

Lieutenant Colonel Kenneth Benway enlisted in the U.S. Army as a parachute infantryman in 1966. He underwent Army Special Forces training and deployed to Vietnam, serving from 1967-68, as a Special Forces medic with a Chinese Nung Company of the I Corps Mobile Strike Force, 5th Special Forces Group. In 1970, he was commissioned as Second Lieutenant of Infantry, serving in leadership assignments in both Germany and Italy with the 509th Parachute Infantry. Over the course of 27 years in uniform, he served with the 3d, 5th and 10th Special Forces Groups, with the Special Operations Command (Europe), as an exchange program officer with the Susa Alpine Infantry Battalion (Italian Army) in northwest Italy, and with the US Army JFK Special Warfare Center and School. On retiring in 1993, he served as senior special operations analyst, program manager and corporate director in a variety of contracted support arrangements with the U.S. Army Special Operations community.

Colonel Richard F. ("Dick") Brauer Jr. USAF, (Ret) amassed 5,200 hours of worldwide flying, attaining the aeronautical rating of Master Navigator. His tours of flying duty and deployments include Southeast Asia/Vietnam (1967-68), Europe, Central and South America (1968- 1971) and Australia (1971-1973), where he represented the USAF and the United States as an Exchange Officer, flying as an instructor in the Royal Australian Air Force (RAAF). Following his Pentagon tour he was selected to be the 12th Commandant of the United States Air Force Special Operations School (Hurlburt Field, FL) and served the joint SOF, conventional and interagency communities in that education leadership position from 1986 until his retirement in 1991, having completed 26 years of active duty military service. In 2010 Colonel Brauer was inducted into the Air Commando Hall of Fame.

Kevin Shipp, a former CIA Officer and Antiterrorism expert, held several high level positions in the CIA. He was assigned as a protective agent for the Director of Central Intelligence, a counterintelligence investigator, a Counter Terrorism Center officer, a team leader protecting sensitive CIA assets from assassination, a manager of high-risk protective operations, a lead instructor for members of allied

governments, an internal staff security investigator, and a polygraph examiner. He was tasked with protecting the CIA from foreign agent penetration and the chief of training for the CIA federal police force. Mr. Shipp functioned as program manager for the Department of State, Diplomatic Security, and Anti Terrorism Assistance global police-training program. He is the recipient of two CIA Meritorious Unit Citations, three Exceptional Performance Awards and a Medallion for overseas covert operations. He is the author of the book, *From the Company of Shadows—CIA Operations and the War on Terrorism*.

Reproduction costs. "Documents shall be furnished without any charge or at a charge reduced... if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The CCB is entitled to such a waiver, because they have concrete plans to make the information public, which is likely to contribute to an understanding of government operations and activities. Moreover, the CCB seeks disclosure in electronic format. See e-FOIA amendment 5 U.S.C. § 552 (a)(3)(B), as amended, requiring Agency to "provide the record in any form or format requested . . . if the record is readily reproducible by the agency in that form or format."

The public has a right to disclosure of records that would answer the many questions posed by the facts of the Benghazi attacks—*before* the next presidential election. Any denial of expedited processing should include an explanation of whether the FBI anticipates producing all records sought,³³ and, if so, when.

³³ **May 28, 2014 FOIA Request to FBI:**

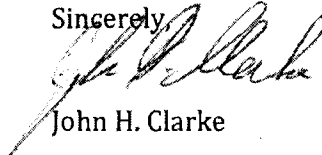
1. All records describing or defining the purpose, scope, jurisdiction, and power of the FBI's investigation into the Benghazi attacks, including the identity of government official(s) requesting or ordering the probe.
2. All records of the Bureau's findings in its investigation into the Benghazi attacks. Responsive records include those that regard (1) the identities of any non-US personnel questioned, interrogated, detained, or transported through, the Annex, (2) weapons brought into, and removed from, the Annex, as well as such weaponry's destinations including whether abandoned on September 12, 2012, (3) communication and cryptographic equipment left in the Consulate and Annex when US personnel abandoned the facilities on September 12, 2012, and (4) any probe into the meetings from January 2007 through September 2012 between Tripoli Embassy officials, including Christopher Stevens, and the individuals identified in the following Request 3 below.

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3. All notes, memoranda, and correspondence generated between January of 2007 and September 11, 2012, regarding meetings between Christopher Stevens or any other Tripoli Embassy official, and one or more of the following individuals... Abu Khattala, a commander of the Libyan Ansar al-Shariah militia group... Mustafa Jalil, Chairman of the Libyan National Transitional Council... Mahmoud Jibril, Interim Prime Minister of Libya and Chair of the Executive Board of the National Transitional Council ... Wissam bin Hamid, a Libya Shield Brigade commander... who provided security for US representatives in Benghazi and was tentatively identified by the Library of Congress as the head of al-Qa'eda in Libya... Abdelhakim ...veteran jihad fighter... Libyan delegation leader to the Syrian Free Army... Ismael al-Sallabi... Benghazi Military Council commander... Ali al-Sallabi ... the 'spiritual leader' of the Libyan revolution ... Mohammad al-Sallabi...among the founders of the Libyan Muslim Brotherhood ...Abu Sufian bin Qumu, veteran jihad fighter ... led Benghazi Mission attack in Sep 2012.
 4. Any other records of whatsoever nature regarding (1) the Benghazi consulate and (2) its CIA Annex, for the time period of January 1st, 2011, through September 30th, 2012. This request is all-inclusive for all records, however recorded, including emails, reports, memoranda, correspondence, teletypes, telephone calls, text messages, and audio and video recordings, regarding all uses of the Benghazi consulate and CIA Annex.
 5. All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the survivors' accounts of the attack.
 6. All calendars, day books, journals, notes, memoranda, or other records reflecting Ambassador Stevens' schedule on September 11, 2012, including the Ambassador's diary, and all correspondence to or from the Ambassador regarding his meetings that day, including with the Turkish Consul General.
 7. All records of the purpose of Ambassador Stevens' meetings on September 11, 2012, including analysis or assessments of those meetings, whether written before or after September 11, 2012.
 8. September 15th or 16th FBI 302 Interview Reports, and corresponding handwritten notes, of interviews conducted in Germany of United States personnel who had been in the Benghazi mission and the Benghazi CIA annex during the September 11th and 12th attacks on those facilities.
 9. Records of the video teleconference on the afternoon of the September 16th, 2012, between the FBI and other IC officials in Washington...
 10. Complete Autopsy Reports of each of the victims of the September 11th and 12th, 2012, Benghazi attacks of the Ambassador's compound, and the CIA Annex.
See also CCB FOIA requests to CIA, FBI, and DoD at <http://www.aim.org/benghazi/freedom-of-information-act-requests/>

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Please feel free to contact me if you need any additional information, or documentation. Kindly produce the records in electronic format, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

Sincerely,

A handwritten signature in black ink, appearing to read "John H. Clarke", written over a horizontal line.

John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

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ENDNOTES:**Endnote 1:**

Statements advancing spontaneous attack version by Secretary Clinton, the President, Jay Carney, Susan Rice, Victoria Nuland, David Petraeus, and Michael Morell:

- **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." **Exhibit 18** Bates 59.
- 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." **Exhibit 17** Remarks by President, Office of White House Press Secretary, Sept 12, 2012, Bates 58.
- The DoD issued a Press Release that General Dempsey telephoned Pastor Terry Jones and asked Jones to stop endorsing "Innocence of Muslims." **Exhibit 17** Remarks by President, Sept 12, 2012, Bates 55.
- **September 13:** Press Secretary Jay Carney stated that "[t]he protests we're seeing around the region are in reaction to this movie." **Exhibit 30** Press briefing Jay Carney, Sept 13, 2012, Bates 92.
- **September 14:** Carney stated that the Administration was not aware of any actionable intelligence indicating that an attack on the U.S. mission in Benghazi was planned or imminent." **Exhibit 31** Press briefing Jay Carney Sept 14, 2012, Bates 97.
- CIA Director David Petraeus testified in a closed-door session before the Senate Intelligence Committee that that the attacks were spontaneous, according to Representative Peter King. **Exhibit 33** "Ex-CIA chief Petraeus testifies Benghazi attack was al Qaeda-linked terrorism," Nov 16, 2012, *CNN Wire*: "[W]hat he told us on September 14,' King said. '... was that the overwhelming amount of evidence was that it arose out of a spontaneous demonstration, and was not a terrorist attack.'"
- **September 15:** Clinton assured Tyrone Woods' father at funeral that "Innocence of Muslims" maker would be "prosecute[d]." See transcript October 25 2012 radio interview Charles Woods.
- **September 16, 2012:** 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."

Exhibit 34 "'This Week' Transcript: U.S. Ambassador to the United Nations Susan Rice," *ABC News*, Sept 16, 2012.

- 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."

Exhibit 35 "Amb. Susan Rice, Rep. Mike Rogers discuss violence against Americans in the Middle East," *Fox News*, Sept 16, 2012.
- 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."

Exhibit 36 "Benjamin Netanyahu, Susan Rice, Keith Ellison, Peter King, Bob Woodward, Jeffrey Goldberg,," *NBC News*, Sept 16, 2012.
- CNN State of the Union: "[S]ome mob was hijacked ultimately by a handful of extremists, the United States is extremely popular..."

Exhibit 37 "State of the Union with Candy Crowley," *CNN* Sept 16, 2012.
- 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." Exhibit 20 Victoria Nuland Press Briefing, Sept 17, 2012, Bates 63.
- September 18: Carney stated that "it was the video that caused the unrest in Cairo, and the video and the unrest in Cairo that helped—that precipitated some of the unrest in Benghazi." Exhibit 19 Press briefing Jay Carney, Sep 18, 2012 Bates 61.
- September 19: Carney stated that the administration had "no evidence of a pre-planned or premeditated attack." Exhibit 25 Briefing by Press Secretary Jay Carney, Sept 19, 2012, Bates 76.
- 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." Exhibit 24 "Obama: Extremists used video as 'excuse' to Attack," BigStory.org, K. Thomas Sept 20, 2012, Bates 73.

Endnote 2:

Evidence of knowledge of the falsity of any spontaneous Attack, by Secretary Clinton, the President, Jay Carney, Susan Rice, Victoria Nuland, David Petraeus Michael Morell:

- September 11: "I personally [General Carter Ham], and I think the command very quickly got to the point this was not a demonstration, this was a terrorist attack." Exhibit 4 General Ham testimony at Bates 15.
- Ham immediately notified Joint Chiefs of Staff Martin Dempsey and Secretary of State Leon Panetta.. " Exhibit 4 General Ham testimony at Bates 15.
- Shortly after 5:00 p.m., Panetta briefed the President. Exhibit 15 Secretary Panetta and General Ham testimony at Bates 53.
- At 6:07 p.m., a State Department staff member emailed the Executive Office of the President and the FBI: "Update 2: Ansar al-Sharia Claims Responsibility for Benghazi Attack (SBU)." Exhibit 26 State Dept emails Sept 11, 2012, at Bates 79.
- Brigadier General Robert Lovell, deputy head of intelligence for AFRICOM, testified that AFRICOM linked the attacks to Ansar al Sharia "[w]hen we were still in the very early, early hours of this activity."
- At 8:00 p.m., Libyan Deputy Chief of Mission Gregory Hicks briefed Secretary Clinton and staff, by phone. "The only report that our mission made, through every channel," Hicks testified, "was that there had been an attack on a consulate... No protest." Exhibit 2 Gregory Hicks testimony at Bates 7.
- September 12: At 12:46 p.m., a staffer [name redacted] emailed Victoria Nuland, Cheryl Mills, and Jake Sullivan, "Re Libya update from Beth Jones," relating Jones' conversation with Libyan Ambassador Aujali, "When he said his [the Libyan] government suspected that former Qaddafi regime elements carried out the attacks, I told him that the group that conducted the attacks—Ansar Al Sharia—is affiliated with Islamic extremists." Exhibit 27 Emails Victoria Nuland, Patrick Kennedy etc, Sept 11 and 12, 2012 at Bates 80.
- At 5:42 p.m., Susan Rice received an email from Payton L. Knopf with the timeline "4 pm EST Compound begins taking fire from Libyan extremists." It also recites, "Responding to a question about whether the attack was linked to the Mohammed video, she [Victoria Nuland] said that she could not confirm a connect as we simply don't know—and we won't know until there's an investigation." Exhibit 9 Sept 12, 14-15, 2012 emails to Susan Rice, Bates 42-43.
- September 13: McClatchy issued an article featuring an interview with an eyewitness, who reported that there was no protest. Exhibit 22 "No protest before Benghazi attack, wounded Libyan guard says," McClatchy Newspapers, Sept 13, 2012, Bates 68.
- September 14: CIA Tripoli Station released a report, widely disseminated throughout the intelligence community, recounting that there was no protest. Exhibit 1 Bates 2.

- At 7:39 p.m., State Department spokesperson Victoria Nuland wrote, "[W]hy do we want Hill to be fingering Ansar al Sharia, when we aren't doing that ourselves until we have investigation results..." Deputy National Security Advisor Ben Rhodes was a recipient of the 7:39 p.m. email. Exhibit 5 White House emails re talking points, Sept 14, 2012 at Bates 17.
- Minutes later, Rhodes emailed Jay Carney regarding "Prep call with Susan: Saturday at 4:00 p.m. ET," writing that one goal was "[t]o underscore that these protests are rooted in an Internet video, and not a broader failure of policy." Exhibit 9 Sept 12, 14-15, 2012 emails to Susan Rice. Bates 34.
- September 15, 2012: That day, the Annex team reported there were no protests. The CIA Chief of Station Tripoli sent a message to CIA staff stating that the Benghazi attacks were "not/not an escalation of protests." Deputy CIA Director Michael Morell has stated that he read this as part of his daily briefing and passed this on to analysts. Exhibit 1 Michael Morell testimony, Bates 3.
- Morell testified that "Near the end of the [morning] email was a reference to the COS's assessment that the Benghazi attack was 'not an escalation of protests.' I read the email as part of my morning reading on 15 September...." Exhibit 1 Michael Morell testimony, Bates 3.
- 1:23 p.m., Eric J. Pelofsky emailed Susan Rice (the day before her five Sunday talk show appearances): "On the SVTS [secure video teleconference], Morell noted that these points were not good and he had taken a heavy editing hand to them.... I spoke to Jake immediately after the SVTS and noted that you were doing the Sunday morning shows and would need to be aware of the final posture that these points took..." Exhibit 9 Sept 12, 14-15, 2012 emails to Susan Rice, Bates 41.
- September 16: "Information from those [eyewitness] interviews was shared on a secure video teleconference on the afternoon of the 16th with FBI and other IC officials in Washington." SENATE FLASHING RED RPT at Bates 31.
- Rice's Sunday CBS Face the Nation appearance was immediately preceded by Libyan President Mohamed Yousef Magariaf, who said the attack was "was planned by foreigners, by people who—who entered the country a few months ago, and they were planning this criminal act since their—since their arrival." Exhibit 9 Sept 12, 14-15, 2012 emails to Susan Rice, Bates 66.
- September 18: Responding to question whether "there [was] any rioting in Benghazi reported prior to the attack," Diplomatic Security Agent wrote, "Zip, nothing, nada." Exhibit 8 FLASHING RED: A SPECIAL REPORT... Senate Committee on Homeland Security and Governmental Affairs, Dec 30, 2012, Bates 32.

Endnote 8:

Summary of records sought from (1) the DoD, (2) CIA, (3) State Department, and (4) FBI:

- Records of Secretary Panetta's orders to (1) the 130-man Marine Force Reconnaissance Team in Naval Air Station Sigonella in Sicily, (2) the two Marine Corps Fleet antiterrorism Security Teams ("FAST") at the Spanish Naval Station Rota, (3) Special Operations Forces in the United States, and (4) the Commanders In-extremis Force in Croatia. Additionally, we have asked for records disclosing the readiness status of assets at those locations, including aircraft, and including Italian aircraft at Sigonella that could have transported the 130-man Marine Team.
- Radio communications from the Compound's Tactical Operations Center, communications from AFRICOM Joint Operations Center, the drone video, closed circuit videos of the Benghazi facilities, and the survivors' accounts of the attacks, including their non-disclosure agreements.
- Records of Panetta's actions and communications for the first 24-hours of notification of the attack, as well similar records for CIA Director David Petraeus, Deputy CIA Director Michael Morell, and Secretary Clinton. For Mrs. Clinton, we've specifically asked for records that would confirm her claim of seeking help from allies.
- Communications of Secretary Clinton's decision to maintain a "permanent constituent post" in Benghazi, specifically including the extent to which the Benghazi facilities in any way facilitated the existence and operations of the CIA Annex. Other records regarding Mrs. Clinton include those that concern her recommendations to support those seeking to oust forces loyal to the government of Bashar al-Assad, her position on U.S. support for those seeking to oust forces loyal to Colonel Gaddafi, as well as her correspondence regarding the prepositioning of military assets off the coast of Tripoli October 2011 when she visited Libya.
- The written description of the FBI's jurisdiction in the matter, including the purpose and scope of its probe.
- Records generated on the eve of the attacks include Chris Stevens' correspondence on September 10th and 11th, and any analysis or assessment of his September 11th meeting with Turkish Consul General.

- Presumably classified records, including (1) all records of the CIA Annex, including situation reports, records of comings and goings of all persons at the facility, all weapons and cryptographic equipment brought in or out, and information of fallen attackers and their weapons, (2) 2012 intelligence reports and photographs of threats to U.S. personnel in Benghazi from al-Qaida or Ansar al-Shariah build-up, (3) intelligence community records shared with Congress regarding collection and distribution of arms in Libya, as well as CIA transport of arms to Syrian rebel forces, and (4) Deputy National Security Adviser for Homeland Security and Counter-terrorism John Brennan's recommendations regarding Gaddafi's overthrow.
- 2007 through 2012 records of meetings between Chris Stevens or any other Tripoli Embassy officials and one or more of nine named individuals, including (1) a commander of the Libyan Ansar al-Shariah militia group, (2) the Chairman of the Libyan National Transitional Council, (3) the Interim Prime Minister of Libya, (4) a supporter of the Libyan Muslim Brotherhood and veteran jihad fighter and perhaps the head of al-Qaeda in Libya, and five other individuals.

Endnote 25:

Examples of intelligence community "analytic reports warning of... intent to strike US and Western facilities and personnel in Libya." Exhibit 6 Report of Senate Select Committee on Intelligence REVIEW OF THE TERRORIST ATTACKS... Jan 15, 2014, Bates 20.

"The RSO in Libya compiled a list of 234 security incidents in Libya between June 2011 and July 2012, 50 of which took place in Benghazi." Exhibit 8 FLASHING RED: A SPECIAL REPORT... Senate Committee on Homeland Security and Governmental Affairs, Dec 30, 2012, Bates 30.

- April 6, 2012: "A gelatina bomb (traditional homemade explosive device used for fishing) is thrown over the SMC [Special Mission Compound] north wall." Exhibit 32 State Dept Report of Accountability Review Board, Dec 19, 2012, Bates 110.
- May 22, 2012: "The Benghazi International Committee of the Red Cross (ICRC) building struck by rocket propelled grenades (RPGs)." Dec 20 2012. Exhibit 32 State Dept Report of Accountability Review Board, Dec 19, 2012, Bates 110.

- June 1, 2012: "A car bomb exploded outside the Tibesti Hotel, and shortly thereafter a credible threat against the Special Envoy mission prompted Stevens to move to the Annex..." Exhibit 32 State Dept Report of Accountability Review Board, Dec 19, 2012, Bates 110.
- June 6, 2012: "An attack on the SMC [by] IED... blew a large hole in the compound's exterior wall." Exhibit 32 State Dept Report of Accountability Review Board, Dec 19, 2012, Bates 111.
- June 11, 2012: "While in Benghazi, the British Ambassador's convoy is attacked with an RPG and possible AK-47s... the UK closes its mission in Benghazi the following day." Exhibit 32 State Dept Report of Accountability Review Board, Dec 19, 2012, Exhibit 32 State Dept Report of Accountability Review Board, Dec 19, 2012, Bates 111.
- June 18, 2012: "Protestors storm the Tunisian consulate in Benghazi." Exhibit 32 State Dept Report of Accountability Review Board, Dec 19, 2012, Bates 111.
- August 6, 2012: "[T]wo special forces team members in a diplomatic vehicle were forced off the road in Tripoli and attacked." Exhibit 14 Gregory Hicks: Benghazi and the Smearing of Chris Stevens," Wall Street Journal Jan 22, 2014, Bates 49.

Endnote 26:

Six requests to the State Department for increased protection:

- March 28, 2012: Cable from then ambassador to Libya Gene Cretz (political officer in Syria from 1986-88, served in Tel Aviv from 1991-94 responsible for Arab affairs including Gaza Strip) asking Secretary Clinton for five Diplomatic Security "agents for 45-60 day rotations in Benghazi;" Exhibit 13 March 28, 2012 Embassy Tripoli cable re security, at Bates 47.
- June 2012: "Ambassador Stevens made a personal plea for an increase in security... [emailing] 'would feel much safer if we could keep two MSD teams with us...'" in Benghazi. Exhibit 7 Report of Republican Majority of five House committees INTERIM PROGRESS REPORT...April 23, 2013, Bates 27.
- July 9, 2012: "Embassy Tripoli requests continued TDY security support for an additional 60-days, through mid-September 2012." Cable from Embassy Tripoli to State Dept. Exhibit 12 July 9, 2012 Embassy Tripoli cable re security, Bates 46.

- August 2, 2012: Embassy Tripoli cabled the State Department asking for 11 bodyguards describing "security conditions in Libya [as]... unpredictable... and violent." Exhibit 11 Aug 2, 2012 Embassy Tripoli cable re security, Bates 45.
- August 8, 2012: Embassy Tripoli wrote to State, "a series of violent incidents has dominated the political landscape," and described this violence as "targeted and discriminate attacks." Cable re "The Guns of August: security in eastern Libya" Exhibit 38.
- August 16, 2012: Benghazi consulate wrote the state department that it could "not withstand a sustained attack." Exhibit 6 Report of Senate Select Committee on Intelligence REVIEW OF THE TERRORIST ATTACKS... Jan 15, 2014, Bates 24.

Endnote 28:
Six Congressional Reports:

- 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

Fifty security incidents in Benghazi was a "flashing red" warning, according to the Republican report. Failing to suspend or abandon the Benghazi facilities was a "grievous mistake." Key findings include State Department initial knowledge that the attack was preplanned and the absence of any protest, at least by September 15th. Report faults IC and open source reports for the account of a protest in Benghazi.

- 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

On "the same day and prior to" Ambassador Rice's talk show appearances, "a senior official on the ground in Libya informed senior leaders at the State Department that there was no demonstration prior to the attack." The Administration had altered its talking points to "remove references to the likely participation of Islamic extremists." The President and Secretary Clinton for appeared in a \$70,000 advertisement campaign in Pakistan disavowing the YouTube

video. Also, "State Department personnel have testified that funding was not a reason for the drawdown of security levels in Benghazi."

- 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.

Under Secretary of Management at the Department of State Ambassador Kennedy personally oversaw the number staff at any time at the Special Mission Compound, decided to discontinue the Security Support Team, and approved the extension of the facility "as is."

All four State Department officials who were placed on administrative leave failed to receive due process from the State Department, three of whom were not permitted to see the charges against them for six months because the information was classified. Hillary Clinton selected four of the five Accountability Review Board members, Undersecretary Kennedy oversaw the selection of ARB staff, and the ARB failed to interview Clinton. Admiral Mullen gave Cheryl Mills a friendly "heads up" that Charlene Lamb would not be a good witness before Congress.

- 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

The bipartisan report holds the State Department responsible for inadequate security at the Mission in the face of an increased violence, and the tragedy "preventable." There were three diplomatic Security agents assigned to the Mission, whereas nine security officers were assigned at the CIA Annex. Itemization of security improvements at the CIA Annex is redacted, while the Mission failed to keep all surveillance cameras running or install its new cameras. The attacks were in three distinct phases, with probing attacks at the CIA Annex between 11:56 p.m. and 1:00 a.m.

This Report details the August 15, 2012 Emergency Action Committee Report and its corresponding classified cable: "A CIA officer 'briefed the EAC on the location of approximately ten Islamist militias and AQ training camps within Benghazi.'" "Individuals affiliated with terrorist groups, including AQIM, Ansar al- Sharia, AQAP, and the Mohammad Jamal Network, participated in the September 11, 2012, attacks." The FBI and CIA reviewed the closed circuit television video

from the Mission on September 18, 2012, and FBI intelligence reports regarding the interviews of the survivors were disseminated on September 20, 2012.

- February 7, 2014, BENGHAZI: WHERE IS THE STATE DEPARTMENT ACCOUNTABILITY? issued by Republican Majority of the House Foreign Affairs Committee Secretary Clinton was aware of the security problems in Libya and should have acted accordingly, according to this Republican report. Of the four reinstated employees who had been placed on leave (Charlene Lamb, Scott Bultrowicz, Ray Maxwell, and Eric Boswell), two retired with full benefits, and the other two have been reassigned to positions with commensurate pay and benefits. Elizabeth Dibble, Jake Sullivan, and Victoria Nuland, were all promoted. Patrick Kennedy was unaccountable, even after (1) "approv[ing] a one-year extension of the Benghazi SMC in December 2011," (2) telling "the Defense Department in July 2012 that the State Department would no longer need the U.S. military's 16-member SST," and (3) "terminat[ing] Embassy Tripoli's use of a DC-3 aircraft that provided logistical support to the SST" on May 3.
- February 10, 2014, MAJORITY INTERIM REPORT: BENGHAZI INVESTIGATION UPDATE, issued by Republican Majority of House Armed Services Committee

While this Republican report declares that there was no "stand down" order given and that the military acted appropriately given the resources available, the Committee questions the posture of military forces. Why didn't the Administration prioritize a violent Libya among the ongoing threats"? Why was the Commander's in Extremis Force training on September 11th? Why didn't General Ham know that the CIA had a facility in Benghazi?

The State Department was ultimately responsible for embassy security. The attack was "carefully planned," with a "scouted...scene beforehand."

Endnote 30:**CCB FOIA Request to CIA, State, and FBI, excerpt:**

All notes, memoranda, and correspondence generated between January of 2007 and September 11, 2012, regarding meetings between Christopher Stevens or any other Tripoli Embassy official, and one or more of the following individuals:

- **Ahmed Abu Khattala**, a commander of the Libyan Ansar al-Shariah militia group
- **Mustafa Abdul Jalil**, Chairman of the Libyan National Transitional Council from 5 March 2011-8 August 2012
- **Mahmoud Jibril**, Interim Prime Minister of Libya and Chair of the Executive Board of the National Transitional Council from March-23 October 2011
- **Wissam bin Hamid**, a Libya Shield Brigade commander, supporter of the Libyan Muslim Brotherhood Justice & Construction Party, and veteran jihad fighter of Iraq & Afghanistan, who provided security for US representatives in Benghazi and was tentatively identified by the Library of Congress as the head of al-Qa'eda in Libya
- **Abdelhakim Belhadj** (aka Abdallah al Sadeq), veteran jihad fighter of Iraq & Afghanistan, commander of the AQ franchise militia, Libyan Islamic Fighting Group (LIFG) (aka Libyan Islamic Movement for Change), post-revolution military commander of Tripoli, and Libyan delegation leader to the Syrian Free Army in late 2011
- **Ismael al-Sallabi** (brother of Ali), commander of the Al-Qa'eda-linked al-Sahati Brigade during the revolution, and Benghazi Military Council commander afterwards, close ally of Abdelhakim Belhadj and Mustafa Jalil
- **Ali al-Sallabi** (brother of Ismael), called the 'spiritual leader' of the Libyan revolution, Muslim Brotherhood links, led effort with Seif al-Qaddafi and US Embassy Tripoli to gain release of jihadi detainees from Libyan jails
- **Mohammad al-Sallabi**, father of Ali and Ismael, among the founders of the Libyan Muslim Brotherhood in the 1960s
- **Abu Sufian bin Qumu**, veteran jihad fighter in Afghanistan from Derna, Libya, captured in 2001, detained at GITMO, sent back to Libyan jail, released in 2010, led jihad vs Qaddafi in 2011, and led Benghazi Mission attack in Sep 2012.

Endnote 31:**20 Accuracy in Media articles on Benghazi:**

- "MSNBC Seeks to Discredit Benghazi Investigation," *Accuracy in Media*, May 25, 2014, R. Aronoff.
- "Infiltration of the U.S. Government, Part One," *Accuracy in Media*, May 5, 2014, C. Kincaid.
- "Media Hits and Misses Covering Benghazi Press Conference," *Accuracy in Media*, April 28, 2014, R. Aronoff.
- "Citizens' Commission on Benghazi Releases Interim Report," *Accuracy in Media*, April 24, 2014.
- "Material Support to Terrorism: The Case of Libya," *Accuracy in Media*, April 22, 2014, C. Lopez.
- "Protecting Hillary Trumps Benghazi Investigation," *Accuracy in Media*, March 31, 2014, B. Stotts.
- "Does Navy Map Alter the Benghazi Narrative?" *Accuracy in Media*, Feb 16, 2014, R. Aronoff.
- "Obama and His Media Loyalists Still Spinning Benghazi," *Accuracy in Media*, Feb 6, 2014, R. Aronoff.
- "Blaming the Victim in Benghazi," *Accuracy in Media*, Jan 22, 2014, R. Aronoff.
- "Further Proof That Obama Knew the Truth About Benghazi," *Accuracy in Media*, Jan 14, 2014, R. Aronoff and B. Stotts.
- "Conservative Leaders Call on Speaker Boehner: Form a Select Committee on Benghazi," *Accuracy in Media*, Jan 7, 2014, R. Aronoff.
- "New York Times Attempts to Blur Benghazi Scandal," *Accuracy in Media*, December 31, 2013, R. Aronoff and B. Stotts.
- "McClatchy Reporter Changes Tune on Benghazi," *Accuracy in Media*, December 18, 2013, B. Stotts.
- "CBS in Damage Control Over Error-Filled Benghazi Report," *Accuracy in Media*, November 8, 2013, R. Aronoff.
- "'60 Minutes' Reveals Little New in Benghazi Exposé," *Accuracy in Media*, Oct 31, 2013, R. Aronoff.
- "The Left's Continued Assault on the Truth About Benghazi," *Accuracy in Media*, October 28, 2013, R. Aronoff.
- "Media Coverage of Benghazi Leans Toward Political Theater," *Accuracy in Media*, October 4, 2013, B. Stotts.
- "Media Embrace Obama's Controversial Picks for National Security Team," *Accuracy in Media*, June 6, 2013, R. Aronoff.

- "The MSM and Benghazi: Will Their Coverage Harm Obama Administration?," *Accuracy in Media*, May 10, 2013, R. Radosh.
- "Shameful Media Coverage of Benghazi Scandal and Cover-up," *Accuracy in Media*, November 6, 2012, R. Aronoff.

A-P-P-E-N-D-I-X

MAY 20, 2014 CCB SUBMISSION TO SELECT COMMITTEE:

Citizens' Commission on Benghazi
Executive Summary & Key Findings
For Rep. Trey Gowdy & the U.S. House of
Representatives Select Committee on Benghazi
(3 Pages)

Questions for the Select Committee on Benghazi
Citizens' Commission on Benghazi
(3 Pages)

Benghazi: A Timeline
The Citizens' Commission on Benghazi
(14 Pages)

ACCURACY IN MEDIA ARTICLES OF INCORPORATION
(4 Pages)

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**Citizens' Commission on Benghazi
Executive Summary & Key Findings
For Rep. Trey Gowdy & the U.S. House of Representatives Select Committee on Benghazi
20 May 2014**

Executive Summary

The Citizens' Commission on Benghazi (CCB) formed in 2013 under the leadership of Roger Aronoff, editor of Accuracy in Media (AIM), a media watchdog group. We were concerned that the various official U.S. government (USG) investigations – whether the State Department's Accountability Review Board (ARB) or the several congressional committee efforts – were not pursuing the evidence as aggressively or in as organized a manner as necessary to get to the bottom of U.S. failures in Benghazi. We at the CCB believe those senior USG officials who were derelict in their professional responsibilities, who provided duplicitous testimony to Congress, and who deliberately lied to the American public must be held to account by name and face the full weight of legal consequences for their behavior.

In the months since our first press conference in September 2013, at which Rep. Frank Wolf (R-VA) spoke strongly for the formation of a congressional Select Committee to coordinate and unify the investigation, we have pursued an independent citizens' investigation of what happened regarding Benghazi and Libya in the time before, during, and after the attacks of 11 September 2012. We are convinced that a comprehensive approach is the only way to understand why certain decisions were taken and not taken that might have resulted in lives saved and injuries avoided on the night of the attacks itself. Additionally, a number of individuals have approached the CCB with information related to events in Libya that has not been made public by any other investigation to date. Some of these contacts have stated their readiness to be introduced to the Select Committee to provide their evidence in person, and the CCB is prepared to effect such introductions as convenient and desired.

The CCB's findings fall into several general topic categories: 1) official USG involvement in providing material support to known terrorists affiliated with the Libyan al-Qa'eda and Muslim Brotherhood; 2) USG refusal to respond to Libyan dictator Muammar Qaddafi's request for talks about abdication and exile; 3) USG failure to prepare adequately for the likelihood of terror attack against our Benghazi mission by al-Qa'eda-linked militias despite plentiful advance indicators and warning; 4) White House and administration failure to direct an urgent military response to the 11 September 2012 attack on the sovereign territory of our diplomatic mission or even attempt to come to the aid of besieged American defenders at our Benghazi mission; and 5) a White House-directed campaign of deliberate deception to blame protests about a YouTube video for the Benghazi attacks.

Details of our Key Findings and Sources follow. An extensive Timeline of Events and CCB member biographic summaries are provided separately.

Key Findings

- **Finding:** Senior levels of the Obama administration and U.S. Intelligence Community organized a “Zero Footprint” campaign of material support to known affiliates of Libyan al-Qa’eda militias, including direct facilitation of the delivery of weapons to them.
 - Source: American citizen FBI Confidential Informant with direct access
 - Source: Retired USN Rear Admiral businessman with direct access
 - Source: American citizen arms dealer with direct access, currently under sealed indictment by the Department of Justice
 - Source: Forensic investigation on shell casings, mortar fragments, and any weapons or weapons parts recovered from the Special Mission Compound and CIA Annex (subject of CCB FOIA request)

- **Finding:** Muammar Qaddafi sought a 72-hr. white flag of truce in March 2011 to discuss abdication and exile. His officials were in direct telephonic communication with AFRICOM headquarters in Stuttgart, Germany, but Gen. Carter Ham was forced to cut off these discussions on orders from the highest levels of the Obama administration.
 - Source: Retired USN Rear Admiral who was directly involved in the telephonic communications between Stuttgart, Germany and Tripoli, Libya

- **Finding:** Senior members of the U.S. administration in the Department of Defense, Department of State, and Intelligence Community knew that al-Qa’eda-affiliated militias in Benghazi repeatedly attacked Western facilities and targets (including our own) through 2012. Al-Qa’eda often marks key dates like 9/11 with more attacks and Ayman al-Zawahiri issued an explicit 10 September 2012 video call to attack Americans in Libya. And yet, the Dept. of State had refused repeated AMEMB Tripoli requests to provide adequate security to our Benghazi mission, methodically stripped away security that had been assigned there previously, and allowed Ambassador Stevens to visit Benghazi on 11 September without adequate security.
 - Source: Active duty Special Forces commander of the Libyan Site Security Team
 - Source: Congressional testimony, congressional investigation committee reports, and the open source record

- **Finding:** Even though the White House, Intelligence Community, Pentagon and all major combatant commands knew within minutes that the 11 September 2012 attack on our Benghazi mission was a military-style terrorist assault, there was no military response or even an attempted response. U.S. military assets were available both in-country and in multiple locations around the Western Mediterranean and undoubtedly had sprung to the highest level of readiness immediately upon receipt of the attack reports. Yet, over the 7+-hr. duration of the attack, no order was given for a U.S. military response.

- Source: Congressional testimony, voluminous congressional committee investigations reports, the open source record
 - Source: Active duty Special Forces LTC commander of the Libyan Site Security Team
 - Source: Confidential source on the presence of several dozen U.S. Special Operations Command troops in/near Tripoli the night of 11 Sep 2012
- **Finding:** The White House directed a campaign of deliberate deception to blame protests on the “Innocence of Muslims” YouTube video for the Benghazi attacks.
 - Source: Judicial Watch emails
 - Sources: Currently-serving FBI agents with direct access to White House directives to the FBI on aligning FBI intelligence reporting with the White House narrative about the YouTube video
 - Source: U.S. citizen with access to information that the National Security Agency (NSA) took possession of a cell phone dropped by an attacker at the CIA Annex and exploited its contents to discover extensive details about the Ansar al-Shariah and other al-Qa’eda network in Benghazi that was responsible for the attacks on our mission
 - Source: A comprehensive CCB report on the elements and sequence of the post-Benghazi attack cover-up
 - **Finding:** Sensitive materials (likely communication and cryptographic equipment and possibly documents) were removed from the CIA Annex in Benghazi on 12 September 2012 by Libyans. Consequences may include the killing of a number of Libyans connected to the FBI investigation on Benghazi.
 - Source: Thomas Joscelyn, writing in the *Weekly Standard* on 7 January 2014 and citing “two U.S. intelligence officials,” reported that sensitive material was personally couriered to Pakistan (al-Qa’eda) by Faraj al-Chalabi, a known jihadi
 - Source: The *Wall Street Journal* reported on 1 November 2012 that the CIA tasked “local Libyan agents” to “destroy” sensitive materials at the Annex on 12 September 2012
 - Source: According to the 15 January 2014 report of the Senate Select Committee on Intelligence, former FBI Director Robert Mueller testified on 16 May 2013 before the Senate Appropriations Subcommittee on Commerce, Justice and Science that “as many as 15 individuals supporting the investigation or otherwise helpful to the United States” had been killed in Benghazi since the September 2012 attack.

Questions for the Select Committee on Benghazi
Citizens' Commission on Benghazi
May 20, 2014

- 1) Why did the U.S. keep the diplomatic mission open after two attacks earlier in 2012 against the U.S. mission? Why was the U.S. flag the last one flying in Benghazi after the British and the Red Cross had left?
- 2) Why was Ambassador Stevens' August 16, 2012, request for additional security, in a cable to the U.S. State Department, denied? This cable followed an August 15 "emergency meeting" in Benghazi where diplomatic staff learned that there were 10 jihadist militias and Al Qaeda training camps in the city.
- 3) Why were military assets not brought to bear during the seven or more hours that this attack lasted, both in the Special Mission Compound and the CIA Annex approximately one mile away, especially given that military commanders did not know when the attacks would end?
- 4) Were any troops or security personnel ordered to not leave Tripoli, Libya that night to go to Benghazi to participate in any rescue efforts, and if so, why?
- 5) Where exactly was President Obama that night? With whom did he communicate about the events in Benghazi and what were his orders? Did he communicate with any of our allies with a presence in or near Benghazi and request assistance?
- 6) Does the failure to bring military assets to bear in a way that might have saved some of those lives constitute a dereliction of duty?
- 7) What was the origin of the story that the attack in Benghazi was sparked by a spontaneous demonstration related to a video about Muhammad on YouTube, and which had actually sparked demonstrations in Egypt and other countries in the region?
- 8) Did the various statements from the administration reflect a belief that this was a spontaneous demonstration that got out of hand, or a deliberate, planned terrorist attack with al-Qaeda involvement?
- 9) Why does the military maintain that they called it a terrorist attack from September 11 onward, yet the administration publicly called it a spontaneous demonstration at the same time?
- 10) Who prepared then-UN Ambassador Susan Rice's original talking points, and who directed the changes to those talking points, which served to

eliminate the fact that this was an al-Qaeda event, before her five Sunday talk-show appearances on the Sunday after the September 11th attack?

- 11) Who and what motivated Susan Rice to appear on the five Sunday talk shows?
- 12) Why do Administration officials continue to insist that they received no contradictory reports regarding a protest in Benghazi when numerous reports have shown that a) there was no protest, and b) that officials learned well before Susan Rice's Sunday appearances that there was no protest?
- 13) Why did the intelligence community's reports outweigh testimony from those on the ground?
- 14) Where were Secretary of Defense Leon Panetta and Chairman of the JCS General Martin Dempsey during the crisis and what inputs, recommendations and decisions did they make?
- 15) Why was President Obama not in the Situation Room that night, as Tommy Vietor has recalled?
- 16) Where were the National Security Advisor, Tom Donilon, and his Deputies, Denis McDonough and John Brennan; and where was Valerie Jarrett during the attacks and more importantly, what inputs and recommendations (if any) did any of them make to Obama?
- 17) Who made the decision not to deploy the joint/interagency Foreign Emergency Support Team (FEST) and why?
- 18) Why are so many agencies now requiring that their personnel who were involved in or have access to information regarding the events that took place in Benghazi to sign non-disclosure agreements?
- 19) Why weren't U.S. Air Force fighter jets scrambled from land bases, such as F-16's based in Aviano, Italy, which is just over 1000 miles and less than 2 hours away? When, and by whom, was the decision made to not employ the air assets?
- 20) What specifically was the relationship between Official U.S. Envoy and later Ambassador Christopher Stevens with the known al-Qa'eda and Muslim Brotherhood figures, groups, and militias who led the 2011 revolution against Muammar Qaddafi?
- 21) Who made the decision to allow ships full of weapons from Qatar to pass through the NATO blockade in 2011 to be delivered to Libyan Muslim Brotherhood and/or al-Qa'eda rebels?

- 22) What exactly was the involvement of the CIA Base of Operations and Special Mission Compound in Benghazi in the outward shipment of weapons during 2012 from Libya destined for the Syrian rebels? With whom were those operations coordinated?
- 23) Why were DSS agents assigned to the SMC in Benghazi ordered to keep their gear and weapons in a separate building location from where they were posted on the night of 11 September 2012?

Benghazi: A Timeline
The Citizens' Commission on Benghazi
May 2014

Jihadis Out of Afghanistan

- 1989: Afghan War Ended
- Libyan Fighters Return Home
- Early 1990s: Libyan Islamic Fighting Group established
- 1990-1995: Qaddafi Defeated LIFG
- Key LIFG Leadership Moved to Sudan w/Usama Bin Laden (UBL)
- 1993 Lockerbie bombing wrongly blamed on Qaddafi
- 1995: Assassination attempt vs Egyptian President Mubarak
- 1995: LIFG assassination attempt vs Qaddafi w/MI6 support

Enter Blue Mountain Security Solutions Ltd.

- 26 Feb 1999: Blue Mt. Security Solutions Limited incorporated; located in Carmarthenshire, Wales, UK
- Previously known as: Pilgrim Elite Training Ltd. (13 April 2000); Pilgrim Elite Training (10 April 2008)

MI 6 & LIFG

- 1995: Abu Anas al-Libi, other LIFG flee Sudan for UK; UBL returned to Afghanistan
- 1995-2000: LIFG live in UK safehaven
- 2000: Discovery of the Manchester Document
- 2000: LIFG members fled UK back to Afghanistan

9/11 Attacks & Aftermath

- September 11, 2001
- Post 9/11: some LIFG picked up, detained
- 2002 (?): Abu Sufian bin Qumu captured, sent to GITMO
- 2004: Abu Anas al-Libi & Abdelhakim Belhadj captured
- Mid-2000s: GITMO detainees released to home countries

- 2005: Qaddafi pressured by US Emb Tripoli & son Seif to begin “reconciliation process”
- 2005: LIFG/Muslim Brotherhood (MB) cleric Ali Mohammad Al-Sallabi is key mediator
- 2008: Christopher Stevens appointed DCM Tripoli, Libya
- 2008-10: Key LIFG leadership released from Libyan prisons
- 2008: Abdelhakim Belhadj released from jail
- Abu Sufian bin Qumu returns to Derna

Islamic Uprising Begins

- 15 Feb 2011: Mubarak fell, MB took power
- 17 Feb 2011: Libyan revolt began
- 21 Feb 2011: Yousef al-Qaradawi *fatwa* to kill Qaddafi
- 25 Feb 2011: USEMB Tripoli Econ Counselor John Godfrey email/phone SJ re: exile for Qaddafi
- Last week Feb 2011: SJ contacted Imad Saiss, Q’s financier, Gen. Yousef Orbri, Security Chief, & Chief of Staff

Enter Marc Turi

- Last week Feb 2011: Marc Turi rec’d expression of interest to supply Libyan rebels from – [Unknown]
- Late Feb 2011: Gen. Fatah Younis defected to rebels
- Early Mar 2011: MT began to work DoS, USEMB Tripoli contacted to offer munitions for Libyan rebels
- 12 Mar 2011: Michael Kostiw, Staff Director, Senate Armed Services Committee & Sen. John McCain’s staff, contacted David Manners
- Kostiw told DM, MT Sen. McCain wanted personal cell phone #s for Gen. Younis, Falah Saloma, Xenois. MT gave them to him
- 12 Mar 2011: MT 1st application to DoS for license to broker weapons to Libyan rebels (#2 request to correct error)

U.S. Throws in with Al-Qa’eda & Muslim Brotherhood

- 14 Mar 2011: SecState Hillary Clinton met w/Mahmoud Jibril in Paris
- 15 Mar 2011: Mustafa Jalil flew out of Libya w/120 rebel leaders

- 16 March 2011: French President ordered his fighter jets to bomb Gaddafi's convoys in advance of UN resolution
- 17 Mar 2011: UNSC Resolution 1973 for "No Fly Zone" to protect civilians
- 18 Mar 2011: SecState Hillary Clinton in London announced USG support to TNC rebels, Mustafa Jalil
- 18 Mar 2011: Christopher Stevens, in London w/SecState Clinton, named USG Liaison to Libyan rebels
- 19 Mar 2011: US-NATO bombing began—"Operation Freedom Falcon" under AFRICOM Gen. Ham
- US Navy fired 220 Tomahawk missiles vs Qaddafi forces over course of conflict

Truce Talks

- 20 Mar 2011: SJ, Adm. Chuck Kubic begin email, telephone contact between Tripoli & AFRICOM Stuttgart re: white flag of truce
- 20-21 Mar 2011: Qaddafi expressed interest in truce, possible abdication & exile; pulled forces back as sign of 'good faith'
- Adm. CK called LTC Brian Linvill, former Tripoli Emb. MILATT office, now w/AFRICOM Stuttgart
- Maj. Mark Colbursum, USEMB Rabat also in contact loop
- 21 Mar 2011: SJ, LTC Linvill, Imad Saiss: 'Gen. Ham has no green light'
- Qaddafi office called LTC Linvill, promised military pull-back fm cities
- 21 Mar 2011 (?): Gen. Ham on U.S. TV noted Q pullback
- 21-22 Mar 2011: Talks ended because Gen. Ham gets no permission to proceed
- Late Mar 2011: Responsibility for U.S. military support to Libyan rebels transferred from AFRICOM to EUCOM/NATO
- 'Operation *United Protector*'??
- 24 Mar 2011: *Qaddafi provided 'intelligence report' on rebel opposition to U.S. intelligence & WH??*

Marc Turi Stymied, But Weapons Flow Anyway

- 28 Mar 2011: Qatar recognized Libyan rebels—Transitional National Council (TNC)

- 29 Mar 2011: MT submitted request #3 & #4 to DoS--to supply weapons to Qatar
- Switch to Qatar MT's own idea--no one else suggested it
- Warehouse Distribution Agreement
- **29 March 2011: Pres. Obama signed Presidential Finding for covert ops support to Libyan rebels**
- 30 Mar 2011: NYT, "fierce debate on arming Libyan rebels"
- 31 Mar 2011: NATO took control of all military ops in Libya; all ships subject to inspection
- 1st week Apr 2011: MT submitted docs to Asst. Secty. State Don Yamamoto to help expedite process
- 6 Apr 2011: MT emailed CS re: earlier 1st/2nd (corrected) request to supply rebels
- Early April 2011: MT sought contacts in Qatar MD but 'unsuccessful'
- 22 Apr 2011: Sen. John McCain visited Benghazi rebels together w/Chris Stevens--called them "my heroes"
- 5 May 2011: DoS approved MT's request to supply weapons to Qatar as end user
- 13 Jun 2011: MT request to DoS to broker weapons/ammo to UAE end user
- 15 July 2011: USG formally recognized TNC
- 28 July 2011: *Gen. Younis killed by Abu Khattala on orders of Mustafa Jalil after finding out MB-Jalil weapons sale to Qaddafi ????*

DoD/DHS Come After Marc Turi

- 26 Jul 2011: DoD/DHS **raided** MT home, Scottsdale, AZ
- 27 July 2011: MT made 3rd application for license to supply weapons to Libyan TNC

Curt Weldon's Libya Trip

- 4-6 Aug 2011: Former Rep. Curt Weldon (R-PA) visited Tripoli--'private mission' to ask Qaddafi step aside--Q wouldn't see him--too late
- Curt.Weldon@yahoo.com--Jenkins Hill Int'l.--1 (484) 340-9944
- After war, CW contacted MT for his Libya & UAE contacts

- Trip paid for by 2 TX oil lobbyists: Houston attorney Brian Ettinger (former aide to then-Sen. Joe Biden) & **former Bush aide Steve Payne, both of Worldwide Strategic Energy????**

Marc Turi Still Trying Through Channels

- Late Aug 2011: 3rd application for weapons to Libyan TNC denied
- Aug 2011: all MT seized equipment ret'd in Starbucks parking lot
- 21 Sep 2011: Broker request to DoS for UAE denied
- 20 Oct 2011: Qaddafi killed
- Oct 2011: TNC took command
- 1 Nov 2011: Black flag of Islamic jihad spotted flying over Benghazi courthouse
- Nov 2011: Abdelhakim Belhadj led Libyan delegation to meet Syrian Free Army (SFA) & offer fighters, weapons

Aegis Defense Services

- Nov 2011-Dec 2012: **Kristi M. Rogers founded/led Aegis Defense Services LLC**; registered Delaware, hqs. in Arlington, VA
- Aegis won **5-yr., \$10b contract under DoS Worldwide Protective Services (WPS) program**
- Sources: <http://www.manatt.com/KristiRogers.aspx> & www.linkedin.com/pub/kristi-rogers/4/658/aa3
- Nov 2011: **Blue Mt. 'joined forces' w/ 'local outfit'—Eclipse Group, Dewey Clarridge ??????**
- Dec 2011: **Blue Mt. security firm rec'd a 'no-objection certificate' from new Libyan govt. ??**
- "Already had been working w/Western companies in Libya 'for several months'"
- Source: http://www.upi.com/Business_News/Security-Industry/2011/12/09/Security-firms-hustle-in-lawless-Libya/UPI-75871323450621

Benghazi Security Deteriorates

- Jan 2012: ***SJ????*** joined UAE delegation to Tripoli to collect \$1 billion for weapons delivered
- Jan 2012: SJ learned from Mazen Ramadan re: weapons diversion, MB pocketing money, July 2011 execution of *Gen. Younis*
- March 2012: DoS contract for local guard services, Benghazi took effect
- **28 Mar 2012: U.S. Amb. Cretz sent cable to SecState Clinton requesting additional security assets**
- **6 Apr 2012: IED thrown over SMC wall**
- **19 Apr 2012: DoS cable to Amb. Cretz signed by SecState Clinton refused request for more security**
- **3 May 2012: DoS signed security contract w/Blue Mountain for \$783,284**
- **3 May 2012: DoS turned down request from Amb. security team for DC-3 airplane**
- **Sometime in 2012: Blue Mt. sub-contracted Amb. Compound security to 17 February Martyrs Brigade**
- **May 2012: CK & SJ visited Benghazi**
- **22 May 2012: International Red Cross hit by 2 RPGs**
- **22 May 2012: J. Christopher Stevens appointed Ambassador to Libya**
- **1 June 2012: Car bomb exploded outside hotel where UK Amb staying**
- **6 Jun 2012: IED blew hole in SMC outer perimeter wall**
- **7 Jun 2012: Stevens presented credentials in Tripoli**
- **7 Jun 2012: Amb. Stevens requested keep 2 mobile security teams for personal protection, but DoS refused request**
- **10 Jun 2012: UK Amb convoy hit by RPG attack**
- **10 Jun 2012: AQ staged open rally in Benghazi**
- **15 Jun 2012: DoS official Charlene Lamb told RSO Nordstrom Site Security Team (SST) contract would not be renewed**
- **17 Jun 2012: UK closed its Benghazi consulate**
- **17 Jun 2012: International Red Cross closed Benghazi office**
- **19 Jun 2012: Tunisian consulate stormed by Ansar al-Shariah**
- **22 Jun 2012: Amb. Stevens warned 'extremist groups' operating openly in Benghazi, and in Libya as a whole**

Blind Sheikh Release Campaign & a YouTube Video

- **21 Jun 2012: Hani Nour Eldin, Gama'at al-Islamiyya official/Egyptian MP, met in WDC w/NSC Denis McDonough to request release of Blind Sheikh**
- **29 Jun 2012: Morsi pledged to work for release of Blind Sheikh**
- **2 Jul 2012: "Innocence of Muslims" 14 min. trailer posted to YouTube by Sam Bacile**
- **Intent: arouse anti-Islam protests by 11 Sep 2012**

Benghazi Methodically Stripped of Security

- **6 Jul 2012: DoS official Lamb demanded Tripoli not make formal request for SST extension or MSD security team**
- **9 Jul 2012: USEMB Tripoli requested cont'd security support for 60 days, but rec'd no reply from DoS**
- **21 Jul 2012: RSO Nordstrom warned DoS risk to U.S. officials in Libya is "HIGH"**
- **2 Aug 2012: Amb Stevens requested 11 additional personal security bodyguards--turned down**
- **5 Aug 2012: DoS ordered removal of Amb. Stevens' 16-man SST**
- **8 Aug 2012: 11 of 16 members of SST departed Libya**
- **15 Aug 2012: USEMB Tripoli emergency meeting on security**
- **16 Aug 2012: Amb. Stevens/RSO sent cable to DoS, said SMC could not withstand coordinated assault**
- **Late Aug 2012: DoS withdrew 16-man Site Security Team under LTC Andrew Wood over Embassy & LTC Wood objections**
- **AFRICOM offered additional security, but Stevens turned it down as DoS had refused all his requests**

Competing Narratives: Blind Sheikh & 'Innocence of Muslims'

- **2 Aug 2012: Egypt made formal request that U.S. release Blind Sheikh**
- **30 Aug 2012: Gama'at al-Islamiyya called for 11 Sep 2012 protests at USEMB Cairo**

- 4 Sep 2012: Film producer phoned al-Youm al Sabaa (7th Day) WDC Coptic daily; emailed copy of film trailer
- 6 Sep 2012: Gamel Girgis wrote 3-para article, called film 'shocking'
- 8 Sep 2012: Gama'at al-Islamiyya & EIJ joint statement threatening burn USEMB Cairo unless Blind Sheikh released
- 8 Sep 2012: Libyan officials met w/Amb. compound reps--said unable to control militias
- 9 Sep 2012: Arabic-language forum posted statement inciting Egyptians target USEMB Cairo re: Blind Sheikh release
- 9 Sep 2012: Egyptian TV host aired clip of film, invited outrage
- 9 Sep 2012: Al-Azhar Mufti condemned clip for 'insulting the prophet'
- 9 Sep 2012: Facebook pages appeared, calling for 9/11 protests; callers to USEMB Cairo (still clueless re: video)
- 10 Sep 2012: Ayman al-Zawahiri videotape called for Libyan revenge for June 2012 CIA drone killing of Abu Yahya al-Libi in Afghan-Pakistan region

10 September 2012

- 10 Sep 2012: Amb. Chris Stevens traveled from Tripoli to Benghazi, along with Sean Smith and 5 DSS officers

11 September 2012

- 11 Sep 2012: Amb. Stevens warned DoS via cable re: deteriorating security situation in Benghazi
- 11 Sep 2012: CNN Nic Robertson outside USEMB Cairo interviewing protesters, Mohamed al-Zawahiri re: Blind Sheikh
- 11 Sep 2012, later: CNN began to push film narrative
- 11 Sep 2012 (0643): Sean Smith saw uniformed Libyan police in bldg. across street taking photos of compound
- (12:54:09 PM) *vile_rat: assuming we don't die tonight. We saw one of our 'police' that guard the compound taking pictures*
- 11 Sep 2012: Anti-film protests broke out in Cairo, other places
- 11 Sep 2012: Cairo Emb perimeter breached, US flag torn down/burned; black jihad flag raised in its place

- 11 Sep 2012: Cairo Emb tweeted apologies for film
- 11 Sep 2012 (1930-2030): Turkish Consul General Akin dinner mtng w/Amb. Stevens
- 11 Sep 2012 (NLT 2000): Ansar al-Shariah forces set up cordon
- **11 Sep 2012 (NLT 2000): Neighbors told AP they could not move in or out of neighborhood after this time**
- 11 Sep 2012 (ca 2000?): *Brits dropped off equipment at Amb. compound*
- 11 Sep 2012 (ca 2030): Turkish ConGen departed SMC, left neighborhood, no problem, no warning to Amb. Stevens
- 11 Sep 2012 (ca 2100): Amb. Stevens & Sean Smith retire for evening
- 11 Sep 2012 (2140): attackers w/rifles, RPGs stormed Amb. Compound
- 11 Sep 2012 (2140): Amb. Stevens phoned DCM Greg Hicks at USEMB Tripoli to tell him “We’re being attacked”
- 11 Sep 2012 (1600 EST/2200 LT): Unarmed Predator drone diverted from Derna mission by RADM Landolt (AFRICOM J-3, Director of Operations)
- **11 Sep 2012 (4:22 p.m. 1622 Washington time EST): SecDef Panetta, Chm JCS Gen. Dempsey, AFRICOM CMDR Ham informed of attack**
- **11 Sep 2012 (10:30 p.m. Benghazi time 2330 LT): Glenn Doherty, 2 members SST, 2 USMC departed Tripoli in leased C-130**
- 11 Sep 2012 (1654 p.m. EST): DoS email said firing at SMC stopped
- 11 Sep 2012 (1700 p.m. EST): Panetta, Dempsey met BHO, VP Biden at WH
- 11 Sep 2012: Pentagon, combatant commands all learned of “terrorist attack”
- 11 Sep 2012 (1700 p.m. EST / 2300 p.m. LT): Drone arrives overhead Benghazi–video coverage from this point onward
- 11 Sep 2012 (1700 p.m. EST/2300 p.m. LT): SMC abandoned
- 11 Sep 2012 (1740 p.m. EST): UnderSecState Patrick Kennedy refused request sent FEST to Libya
- 11 Sep 2012 (1807 p.m. EST): DoS Ops Center email to WH, Pentagon, FBI re: Ansar al-Shariah claim of credit on FB, Twitter
- 11 Sep 2012 (1900-2000 p.m. EST): Pres. Obama spoke w/Israeli PM Netanyahu about a political issue

- 11 Sep 2012, ca 2000 p.m. EST: DCM Greg Hicks spoke by phone w/SecState Clinton & advisors
 - Hicks told them it was a terrorist attack, video was a “non-event” in Libya
 - 11 Sep 2012, ca 2200 p.m. EST: SecState Clinton on phone w/BHO
- 11 Sep 2012, shortly after 2200 p.m. EST: DoS press release blamed video for Benghazi attack

12 September 2012

- 12 Sep 2012 (0100 LT): Amb. Stevens’ body found at SMC by Libyan casuals/looters, taken to hospital
- 12 Sep 2012 (ca. midnight LT): Five members LTC Andy Wood’s Site Security Team at Base 27 outside Tripoli learn of attack
- 12 Sep 2012 (early hours): Two of the five (SF Glenn Doherty, one Marine) join 3 others from Tripoli Embassy, leased C-130 plane, flew to Benghazi
- 12 Sep 2012 (0130): Tripoli rescue crew arrived Benghazi airport, where they are held up pending transportation for 3 hours by members of Libya Shield
- 12 Sep 2012 (0430): Tripoli rescue crew arrived CIA Annex and joined fight
- 12 Sep 2012 (0500): Final Ansar al-Shariah attack w/mortar; Ty Woods, Glenn Doherty killed on the roof; others gravely injured
- 12 Sep 2012 (0615): 31 survivors, 3 bodies, depart Annex for Benghazi airport

The Day After: Cover-Up Begins

- 12 Sep 2012 (0605): DoD prepared C-17 for Libya
- 12 Sep 2012 (1415): C-17 departed Germany
- 12 Sep 2012 (1917): C-17 departed Tripoli en route Germany w/Benghazi survivors/wounded
- 12 Sep 2012 (2319): C-17 arrived Ramstein Airbase, Germany

- 12 Sep 2012: Attacker cell phone found on Annex compound
- 12 Sep 2012: CIA sent local Libyan agents to remove sensitive materials
- Faraj al-Chalabi flew from Libya to Pakistan to meet w/AQ

- 12 Sep 2012: Pres. Obama in Rose Garden: 'no act of terror...'
- 12 Sep 2012: Fleet Antiterrorism Support Team (FAST) based in Rota, Spain arrived Tripoli, Libya—ca. 50 Marines “trained in crisis response operations”—after being forced to deplane, change out of uniforms
- 13 Sep 2012: Pres. Obama phoned Morsi re: protests, need to protect USEMB Cairo
- 13 Sep 2012: VTC—Morell told Libya Chief Of Station (COS)/Chief of Base demonstration preceded attack—burden of proof on COS
- 14 Sep 2012: Jay Carney “protests were in reaction to a video”
- 14 Sep 2012: CNN found Amb. Stevens’ journal on floor of compound
- 14 Sep 2012: Ty Woods’ funeral—SecState Clinton tells father “we’re going to arrest & prosecute” the man who made the video
- 14 Sep 2012: POTUS notified Congress re: FAST deployment to Libya as per War Powers Act
- FAST = Fleet Antiterrorism Security Team
- 14 Sep 2012: Ben Rhodes Email outlining cover-up points on video
- 15 Sep 2012: Mike Morrell, Chief CTC/CIA, rec’d email from COS Tripoli—no demonstrations
- 15 Sep 2012: Deputies Committee Mtng; McDonough/NSC, DoS wanted changes in talking points
- 15 Sep 2012: Morrell edited talking points for Amb. Susan Rice, took out ‘AQ’, ‘terror attack,’ left in ‘demonstration’
- 15-17 Sep 2012: FBI interviewed survivors—all called it ‘terrorist attack’
- 16 Sep 2012: Libyan Pres. Mohamed Magariaf told Bob Schieffer, ‘Face the Nation’: “...no doubt...preplanned...pre-meditated months ago...”
- 16 Sep 2012: Amb. Susan Rice lied to the nation on 5 Sunday talk shows re: film as cause of Benghazi attack
- 17 Sep 2012: Tariq Ramadan condemned/blamed film for Benghazi at American Muslim website
- 17 Sep 2012: Ahmed Rehab, ExecDir CAIR-Chicago on local radio re film, blamed film for anti-American protests
- 18 Sep 2012: CIA, FBI reviewed CCTV video from Ambassador’s compound—no protests

- 18 Sep 2012: FBI arrived in Tripoli to investigate (but did not go to Benghazi)
- 18 Sep 2012: Jay Carney—"it was the video...precipitated some of the unrest in Benghazi"
- 19 Sep 2012: Jay Carney—"do not yet have indication that it was pre-planned"
- 19 Sep 2012: Matt Olson, NCTC to Senate Homeland Scty & Govt. Affair Chm. Sen. Joe Lieberman: "They were killed in the course of a terrorist attack on our embassy"

- 12-19 Sep 2012: NSA exploited attacker cell phone
- By 19 Sep 2012, NSA mapped entire Ansar al-Shariah attacker network, pre/during/post attack
- Sep 2012-present: NSA monitoring Libyan Ansar al-Shariah cell phone network

OIC & U.S. Muslim Brotherhood Agenda: Restrict Free Speech

- 20 Sep 2012: American Muslim website published US-MB statements vs film, free speech
- 20 Sep 2012: Pres. Obama in Univision TV interview blamed the video
- 20 Sep 2012: Jay Carney admitted terrorism
- 21 Sep 2012: SecState Clinton admitted terrorism, abandons video narrative
- 24 Sep 2012: Pres. Obama appeared on *The View* & blamed the video
- 25 Sep 2012: Pres. Obama UN speech cited film multiple times
- 25 Sep 2012: Pres. Obama bowed to Islamic Law on slander: "The future must not belong to those who slander the prophet of Islam"
- 25 Sep 2012: Pakistani PM Ali Zardari condemned freedom of expression
- 26 Sep 2012: Egyptian Pres. Morsi rejected free speech, implied speech causes violence
- 28 Sep 2012: Turkish FoMin Ahmet Davutoglu cited 'Islamophobia...can no longer be tolerated under guise of freedom of expression...'
- 29 Sep 2012: OIC SecGen Ekmeleddin Ihsanoglu addressed Foreign Ministers at UN, blamed Benghazi on film, called to criminalize incitement to imminent violence based on religion or belief

Fall-Out Proceeds

- Oct 2012: John Brennan visited Libya
- Oct 2012: CK & SJ visited Tripoli
- 4 Oct 2012: SecState Clinton established Accountability Review Board
- ARB instructed to avoid fixing blame for Benghazi failures
- 6 Nov 2012: Obama re-elected
- Nov 2012: Dir CTC/CIA Mike Morrell & Amb. Susan Rice in closed door mtng w/Sen. Lindsey Graham (R-SC)—Morrell blamed FBI for altering talking points
- Sen. Graham phoned FBI, which “went ballistic”—w/in 24 hrs., CIA admitted responsibility
- 20 Nov 2012: Gen. David Petraeus resigned as CIA Director as Paula Broadway scandal broke open
- Diane Feinstein, Chair Senate Select Committee on Intelligence, complained that FBI Petraeus probe not briefed to Congress

2013

- 23 Jan 2013: SecState Clinton testified before Senate Foreign Relations Committee—“what difference does it make?”
- 1 Feb 2013: Hillary Clinton resigned as SecState; John Kerry sworn in
- Mar 2013: Faraj al-Chalabi returned to Libya from Pakistan; arrested
- June 2013: Faraj al-Chalabi released for ‘lack of evidence’ even though USG has evidence he was involved in Benghazi attack planning

Clinton Team Gathers

- 2013: Beacon Global Strategies LLC founded in WDC by J. Michael Allen (former HPSCI staff director), Jeremy Bash, Philippe Reines, Andrew Shapiro
- Mike Morrell, former CIA CTC Director, joined firm in July 2013
- All principals have close ties to former SecState Hillary Clinton

- Source: http://www.weeklystandard.com/print/articles/benghazi-cover-cont_782749.html
- 21 Jun 2013: Judicial Watch sued administration for Benghazi docs
- 26 Jun 2013: Gen. Carter Ham testified behind closed doors to closed session of House Armed Services Subcommittee on Oversight & Investigation
- Gen. Ham said he got phone call of “terrorist attack” & told Gen. Dempsey immediately
- Aug 2013: House Committee on Oversight & Govt. Reform requested Benghazi emails

2014

- 4 Mar 2014: Rep. Jason Chaffetz (R-UT), House Oversight Committee, sent letter to Atty. Gen. Holder asking why FBI investigation of Gen. David Petraeus remains open 18 mos. after initiated
- 2 Apr 2014: Mike Morell testified before HPSCI he removed “Islamic terror” attack to avoid “inflaming” Muslim world
- 18 Apr 2014: Federal court ordered administration to turn over Benghazi docs to Judicial Watch
- 2 May 2014: Speaker John Boehner announced vote to form Select Committee on Benghazi

711373

OFFICE OF RECORDER OF DEEDS, D. C.

Corporation Division
Sixth and D Streets, N. W.
Washington, D. C. 20001

CERTIFICATE

THIS IS TO CERTIFY that all provisions of the District of Columbia
Non-profit Corporation Act have been complied with and ACCORD-
INGLY this Certificate of Incorporation

is hereby issued to the ACCURACY IN MEDIA

as of the date hereinafter mentioned.

Date June 17, 1971



PETER S. RIDLEY,
Recorder of Deeds, D. C.

Alfred Goldstein
Alfred Goldstein
Superintendent of Corporations

OFFICE OF RECORDER OF DEEDS, D.C.
 CORPORATION DIVISION
 SIXTH AND D STREETS, N.W.
 WASHINGTON, D.C. 20001

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NON-PROFIT CORPORATION
 ARTICLES
 OF
 INCORPORATION

We, the undersigned natural persons of the age of twenty-one years or more, acting as incorporators of a corporation adopt the following Articles of Incorporation for such corporation pursuant to the District of Columbia Non-profit Corporation Act:

FIRST: The name of the corporation is
 ACCURACY IN MEDIA

SECOND: The period of duration is Perpetual

THIRD: The purpose or purposes for which the corporation is organized is/are: To promote, encourage, sponsor, support, finance and facilitate communication, education and cooperation among individuals and organizations working in the mass communications media and to conduct, promote, encourage, sponsor, support, finance, and facilitate research, education and information activities and public discussion groups, forums, panels, lectures and other educational and informational processes in connection with the mass communication media and public understanding thereof with the aim of improving the accuracy of news reporting in the mass communication media and to work for the adoption by editors and publishers of codes setting forth good journalistic practice relating to accuracy in reporting and the correction of errors.

FILED

JUN 17 1971

BY: *[Signature]*

FOURTH: (A) The corporation will not have members.

~~(B) The corporation shall have the following members:~~

~~xxxxxx The corporation shall have the following members: the
xxxxxx of the corporation shall be the members of the corporation and the
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xxxxxx of the corporation shall be the members of the corporation and the~~

FIFTH: The directors shall be elected or appointed as shall be provided in the bylaws.

SIXTH: Provisions for the regulation of the internal affairs of the corporation, including provisions for distribution of assets on dissolution or final liquidation shall be provided in the bylaws.

SEVENTH: The address, including street and number, of its initial registered office is Suite 1012, 501-13th St. N.W., Washington, D.C.
Suite 1012, 501-13th Street, N.W., Washington, D.C.

and the name of its initial registered agent at such address is A.H.K. Robert S. McBlellan
ABRAHAM H. KALISH, Executive Secretary

EIGHTH: The number of directors constituting the initial board of directors is 3 and the names and addresses, including street and number of the persons who are to serve as the initial directors until the first annual meeting or until their successors be elected and qualified are:

NAME	ADDRESS
<u>Paul J. Quinn</u>	<u>11120 Nichols Rd., Silver Spring, Md.</u>
<u>John K. McLean</u>	<u>317 Mancini Dr Alexandria, Va</u>
<u>Abraham H. Kalish</u>	<u>10807 E Nolcrest Dr. Silver Spring, Md.</u>

*Execute only (A) or (B) and strike other provision.

NINTH: The names and addresses, including street and number, of each incorporator is:

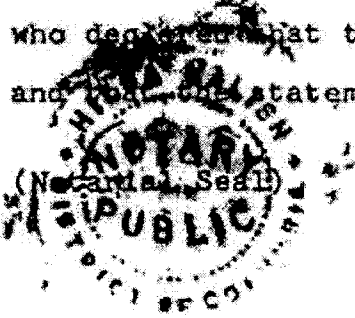
NAME	ADDRESS
<u>Reed J. Irvine</u>	<u>1120 N. Glebe Dr., Silver Spring, Md.</u>
<u>John K. McLean</u>	<u>317 Mansion Dr. Alexandria, Va.</u>
<u>Abraham H. Kalish</u>	<u>10807 E. Nolens Dr. Silver Spring, MD</u>

Date June 15, 19 71

DISTRICT OF COLUMBIA
WASHINGTON

}
see:

I, Hilda Kalish, a Notary Public, hereby certify that on the 15th day of June, 1971, personally appeared before me REED J. IRVINE, JOHN K. McLEAN, and ABRAHAM H. KALISH, who declared that they signed the foregoing document as incorporators, and that the statements therein contained are true.



Hilda Kalish
Notary Public, D.C.

My commission expires
Oct 14, 1974

Written Statement for the Record
Michael Morell
Former Acting Director and Deputy Director of the CIA
House Permanent Select Committee on Intelligence
2 April 2014

Introduction

Chairman Rogers, Ranking Member Ruppertsberger, and Members of the Committee,

Thank you very much for inviting me to testify today on Benghazi. As an officer of the Central Intelligence Agency (CIA) for 33 years, I always valued the ability to communicate directly with Congress in general and with this Committee in particular.

I am especially grateful for this opportunity because I am deeply troubled by allegations – made by several members of Congress as well as by certain media outlets – that I inappropriately altered and influenced CIA’s classified analysis and its unclassified talking points about what happened in Benghazi, Libya in September 2012 and that I covered up those actions. These allegations accuse me of taking these actions for the political benefit of President Obama and then Secretary of State Clinton. These allegations are false.

I am very appreciative that the Committee decided to conduct this hearing in open session. As the Committee is aware, I have testified three previous times on Benghazi in classified sessions – twice before this Committee and once before the Senate Select Committee on Intelligence (SSCI). Today, I appreciate the opportunity to speak directly to the American people about the facts on what really happened.

Before I get into the details, I want to emphasize to the Committee – and to the American people – something that we must remember above all else: on the night of 11 September 2012 and in the early morning hours of 12 September, terrorists in Benghazi killed four American patriots – Ambassador Chris Stevens, communications officer Sean Smith, and two security officers, Tyrone Woods and Glen Doherty. My prayers are with

EXHIBIT 1

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The first indication that there may not have been a protest arrived on 14 September in the form of an intelligence report from Tripoli Station offering the account by one of the officers from the CIA Base in Benghazi who had responded to the State Department facility's call for help. This report was disseminated broadly in the intelligence and policy communities. This officer said that there was no sign of a large gathering or protest when he arrived at the State Department facility. I do not remember seeing this report – it was not sent to me directly nor was it in my morning reading package.

Nevertheless, the analysts' reaction to the report was that, by itself, it was not enough to alter their judgment about a protest because the author of the report did not reach the State Department facility until well after the attack began – almost an hour. The analysts judged that the protest could have dissipated once the State Department facility was assaulted. (I will cover Chief of Station Tripoli's views on the issue of whether or not there was a protest later in this statement).

CIA published another analysis on Benghazi on the morning of 15 September. This was written jointly with the National Counterterrorism Center (NCTC) and again coordinated within the Intelligence Community. It reinforced two judgments from the piece on 13 September – that extremists with ties to al-Qa'ida participated in the attack and that the attacks were inspired by that day's breach of our Embassy in Cairo. The piece also added a new possible motivation – al-Qa'ida leader Ayman Zawahiri's public statement late on 10 September calling on the Libyan people to avenge the death in Pakistan of senior al-Qa'ida leader Abu Yahya al-Libi, a Libyan national. Again, the piece made no reference to the video defaming the Prophet Muhammad as a motivation for the attack in Benghazi.

It was not until 18 September, when CIA received the Libyan Government's assessment of video footage from the State Department facility's security cameras that showed the front of the facility just before the attack – with no sign of protesters – that it became clear that we needed to revisit our analysis. It is important to note that on 18 September, the Libyans did not provide the video; they only provided their assessment of the video.

Analysts refined their analysis, and on 22 September, CIA – in coordination with the Intelligence Community – published a joint piece with NCTC that

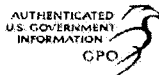
The first allegation is that I knew that there had not been a protest when I edited the talking points on 15 September. This allegation flows from an email sent by our Chief of Station (COS) in Tripoli to my staff – and to a number of other officials at CIA -- on the morning of 15 September. The email was the latest in a series of daily reports updating the security situation in Libya (these had been requested by HQS and other COSs were doing the same). Near the end of the email was a reference to the COS's assessment that the Benghazi attack was "not/not an escalation of protests." I read the email as part of my morning reading on 15 September.

The COS' view on the issue of the protest jumped out at me immediately. Why? Because it contradicted what the analysts believed at that time and what they had written just two days before for senior policymakers. Because of this, I asked my Executive Assistant to request that the COS provide supporting information and logic for his view that there was no protest. My Executive Assistant sent this request at roughly 10:40 am on 15 September.

The COS' view was significant to me for two reasons. First, I took the views of any COS seriously because Chiefs of Station are the Agency's senior officers on the ground. They are closest to the action. And, secondly, I had a lot of confidence in COS Tripoli. I had worked closely with him when he worked at headquarters prior to his field assignment, and I found him to be an outstanding intelligence officer in every respect.

In his initial email, the COS provided two data points as to why he thought there was no protest, but neither seemed convincing to me. His first point was that local press reports said there was no protest (this was not compelling because there were other press reports saying that there was a protest). His second point was that the CIA security officers who responded to the call for help from the State Department facility from the separate CIA base on the night of the attacks did not see a protest when they arrived (again, this was not compelling because these officers did not arrive until almost an hour after the attack started and the protesters could have dispersed by them). Also, in my mind at the time, was the fact that Tripoli Station – just the day before – disseminated an intelligence report indicating that there was a protest. In any case, I felt the analysts needed more from the COS if they were going to refine their judgment regarding a protest.

I want to be clear that I read the email from the COS before I edited the talking points. To guide my editing, I used what the analysts assessed at the



BENGHAZI: EXPOSING FAILURE AND RECOGNIZING COURAGE

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

MAY 8, 2013

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Exhibit 2

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military and/or security assets to the airport to assist our response team. At this point this response team looks like it may be a hostage rescue team, that they are going to—we are going to need to send them to try to save the Ambassador, who was in a hospital that is, as far as we know, under enemy control. Our contacts with the government in Tripoli are telling us that the Ambassador is in a safe place, but they imply that he is with us in the annex in Benghazi, and we keep telling them, No, he is not with us, we do not have his—we do not have him.

At about 12:30, at the same time that we see the Twitter feeds that are asserting that Ansar al-Sharia is responsible for the attack, we also see a call for an attack on the embassy in Tripoli, and so we begin to—we had always thought that we were under threat, but we now have to take care of ourselves, and we begin planning to evacuate our facility. When I say our facility, I mean the State Department residential compound in Tripoli and to consolidate all of our personnel in—at the annex in Tripoli. We have about 55 diplomatic personnel in the two annexes.

On that night, if I may go back, I would just like to point out that with Ambassador Stevens and Sean Smith in Benghazi there are five diplomatic security agents, assistant regional security officers. With us in, at our residential compound in Tripoli we have the RSO John Martinec, three assistant regional security officers protecting 28 diplomatic personnel. In addition, we also have four Special Forces personnel who are part of the training mission.

During the night I'm in touch with Washington, keeping them posted of what's happening in Tripoli and to the best of my knowledge what I'm being told in Benghazi. I think at about 2 p.m.—2 a.m., sorry, the Secretary, Secretary of State Clinton called me, along with her senior staff, we're all on the phone, and she asked me what was going on, and I briefed her on developments. Most of the conversation was about the search for Ambassador Stevens. It was also about what we were going to do with our personnel in Benghazi, and I told her that we would need to evacuate, and that was—she said that was the right thing to do.

At about 3 a.m. I received a call from the Prime Minister of Libya. I think it's the saddest phone call I've ever had in my life. He told me that Ambassador Stevens had passed away.

Mr. HICKS. I immediately telephoned Washington that news afterwards and began accelerating our efforts to withdraw from the villas compound and move to the annex.

Excuse me. I will take a glass of water.

Our team responded with amazing discipline and courage in Tripoli in organizing our withdrawal. I have vivid memories of that. I think the most telling, though, was of our communications staff dismantling our communications equipment to take with us to the annex and destroying the classified communications capability.

Our office manager, Amber Pickens, was everywhere that night, just throwing herself into some task that had to be done. First, she was taking a log of what we were doing. Then she was loading magazines, carrying ammunition to the—carrying our ammunition supply to our vehicles. Then she was smashing hard drives with an axe.

Mr. HICKS. They remained in Tripoli with us. The medic went with the nurse to the hospital to lend his skills to the treatment and care of our wounded.

Mr. CHAFFETZ. How did the personnel react to being told to stand down?

Mr. HICKS. They were furious. I can only say—well, I will quote Lieutenant Colonel Gibson. He said, “This is the first time in my career that a diplomat has more balls than somebody in the military.”

Mr. CHAFFETZ. So the military is told to stand down, not engage in the fight. These are the kind of people willing to engage. Where did that message come down, where did the stand-down order come from?

Mr. HICKS. I believe it came from either AFRICOM or SOCAFRICA.

Mr. CHAFFETZ. Now, my understanding is that General Ham was actually not in Stuttgart, where AFRICOM is headquartered, but he was in Washington, D.C. Is that correct?

Mr. HICKS. I don't know the whereabouts of General Ham on that night.

Mr. CHAFFETZ. Mr. Chairman, this is something that we are going to have to continue to explore.

I need to move quickly now to Mr. Thompson, if I could.

You were the leader there at the what is called the F.E.S.T. within the State Department. According to the State Department Web site, the F.E.S.T. is the Foreign Emergency Support Team, the U.S. Government's only interagency, on-call, short-notice team poised to respond to terrorist attacks worldwide.

I want to read to you an excerpt of an email sent by you to Kathleen Austin-Ferguson on Tuesday, September 11th, 2012, at 9:58 p.m. Could you help me understand, who is Kathleen Austin-Ferguson?

Mr. THOMPSON. She is Under Secretary Kennedy's deputy.

Mr. CHAFFETZ. You wrote, “I am told that Pat Kennedy participated in a very senior conference call with the White House and discouraged the F.E.S.T. option. To remind, F.E.S.T. has dedicated aircraft able to respond in 4 hours, is Department of State-led, and provides the below skills. When FBI was contacted, they responded that this situation would be better addressed via a F.E.S.T. response. Thus, there are others who are thinking the same way. Ready to discuss further as needed. Mark.”

Two questions—

Chairman ISSA. Can the gentleman suspend for a moment?

Earlier, there was one document that had not been placed in the record because it hadn't been provided through official channels. And I would ask that we get that. I think it came from Mr. Gowdy.

And then, Mr. Chaffetz, if you could make your document available so we could make copies.

And then for any other Members on either side of the dais, if you plan to use a document that is not currently committee record—and I realize, since we have gotten very little, there is very little committee records—please do us the favor of having copies so they can be distributed at or prior to the beginning of the questioning.

I am sorry to interrupt.

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ing what we know today. So I want to thank all three of you gentlemen for your service to the American people and to our government. And I want to say to you that the tough treatment you have gotten as a result not only on that day in September but since then is a horrible tragedy.

I want to go back to Mr. Gowdy's line of questions here. Mr. Hicks was there a protocol within the consulate in the event of a protest?

Mr. HICKS. Yes, there was.

Mr. MCHENRY. Was there any evidence when you were there in Libya on that day that this was a protest?

Mr. HICKS. No, there was none. And I am confident that Ambassador Stevens would have reported a protest immediately if one appeared on his door. The protocol of course was for us to evacuate immediately from the consulate and move to the annex.

Mr. MCHENRY. Okay. Was there anything in connection to a YouTube video, was there any awareness that the events occurred because of a YouTube video?

Mr. HICKS. The YouTube video was a non-event in Libya.

Mr. MCHENRY. Okay. And did you know about that within a couple of days or the day of?

Mr. HICKS. Yes.

Mr. MCHENRY. Okay. And so did you report to anyone in Washington within the first couple of days that there was anything in connection—a protest in connection to a YouTube video?

Mr. HICKS. No. The only report that our mission made through every channel was that there had been an attack on a consulate.

Mr. MCHENRY. Not a protest?

Mr. HICKS. No protest.

Mr. MCHENRY. You can leave your microphone off. I'm going to come back to you a few times.

Mr. Gowdy mentioned this earlier, but on September 16th Ambassador Susan Rice went on the Sunday shows, recited a whole group of talking points. Were you a part of those talking points.

Mr. HICKS. No, I had no role in that preparation.

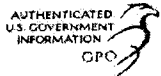
Mr. MCHENRY. Okay. So one month later we had an Under Secretary Kennedy. Let's play his statement:

"Always made clear from the very beginning that we are giving out the best information we have at the time we are giving it out. That information has evolved over time. For example, if any administration official, including any career official, had been on television on Sunday, September 16, they would have said the same thing that Ambassador Rice said. She had information at that point from the intelligence community, and that is the same information I had and I would have made exactly the same point. Clearly we know more today, but we knew what we knew when we knew it."

By September 16th, did you know what you know what you know, which is apparently what Susan Rice said? Let me rephrase that actually. Let me actually make that a question, if you will.

Ambassador Rice recited a set of facts. A month later they defended—the State Department defends that. You are a career State Department official. Would you have said the things that Ambassador Rice said?

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S. HRG. 113-184

BENGAZI: THE ATTACKS AND THE LESSONS LEARNED

HEARING

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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Exhibit 3

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plane carrying the words "United States of America" touches down in some far-off capital, I feel again the honor it is to represent the world's indispensable nation. And I am confident that with your help, we will keep the United States safe, strong, and exceptional.

So I want to thank this committee for your partnership and your support of diplomats and development experts. You know the importance of the work they do, day in and day out. You know that America's values and vital national security interests are at stake.

And I appreciate what Ranking Member Corker just said. It is absolutely critical that this committee and the State Department, with your new Secretary and former chairman, work together to really understand and address the resources, support, and changes that are needed to face what are increasingly complex threats.

I know you share my sense of responsibility and urgency. And while we may not agree on everything, let us stay focused on what really matters—protecting our people and the country we love. And thank you for the support you personally have given to me over the last 4 years.

I now would be happy to take your questions.

[The prepared statement of Secretary Clinton follows:]

PREPARED STATEMENT OF SECRETARY OF STATE HILLARY RODHAM CLINTON

Mr. Chairman, Ranking Member, Members of the Committee, thank you for this opportunity.

The terrorist attacks in Benghazi on September 11, 2012, that claimed the lives of four brave Americans—Chris Stevens, Sean Smith, Tyrone Woods, and Glen Doherty—are part of a broader strategic challenge to the United States and our partners in north Africa. Today, I want to offer some context for this challenge and share what we've learned, how we are protecting our people, and where we can work together to honor our fallen colleagues and continue to champion America's interests and values.

Any clear-eyed examination of this matter must begin with this sobering fact: Since 1988, there have been 19 Accountability Review Boards investigating attacks on American diplomats and their facilities. Benghazi joins a long list of tragedies, for our Department and for other agencies: hostages taken in Tehran in 1979, our Embassy and Marine barracks bombed in Beirut in 1983, Khobar Towers in Saudi Arabia in 1996, our Embassies in East Africa in 1998, consulate staff murdered in Jeddah in 2004, the Khost attack in 2009, and too many others.

Of course, the list of attacks foiled, crises averted, and lives saved is even longer. We should never forget that our security professionals get it right 99 percent of the time, against difficult odds all over the world. That's why, like my predecessors, I trust them with my life.

Let's also remember that administrations of both parties, in partnership with Congress, have made concerted and good faith efforts to learn from the tragedies that have occurred, to implement recommendations from the Review Boards, to seek necessary resources, and to better protect our people from constantly evolving threats. That's what the men and women who serve our country deserve. And it's what we are doing again now, with your help. As Secretary, I have had no higher priority, and no greater responsibility.

As I have said many times since September 11, I take responsibility. Nobody is more committed to getting this right. I am determined to leave the State Department and our country safer, stronger, and more secure.

Taking responsibility meant moving quickly in those first uncertain hours and days to respond to the immediate crisis and further protect our people and posts in high-threat areas across the region and the world. It meant launching an independent investigation to determine exactly what happened in Benghazi and to recommend steps for improvement. And it meant intensifying our efforts to combat terrorism and support emerging democracies in north Africa and beyond.

Let me share some of the lessons we have learned, the steps we have taken, and the work we continue to do.

First, let's start on the night of September 11 itself and those difficult early days. I directed our response from the State Department and stayed in close contact with

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officials from across our Government and the Libyan Government. So I saw firsthand what Ambassador Thomas Pickering and former Chairman of the Joint Chiefs of Staff, Admiral Mike Mullen, called “timely” and “exceptional” coordination. No delays in decisionmaking. No denials of support from Washington or from the military. And I want to echo the Review Board’s praise for the valor and courage of our people on the ground—especially the security professionals in Benghazi and Tripoli. The Board said our response saved American lives in real time—and it did.

The very next morning, I told the American people that “heavily armed militants assaulted our compound” and vowed to bring them to justice. And I stood with President Obama as he spoke of “an act of terror.”

You may recall that in that same period, we also saw violent attacks on our Embassies in Cairo, Sanaa, Tunis, and Khartoum, as well as large protests outside many other posts where thousands of our diplomats serve.

So I immediately ordered a review of our security posture around the world, with particular scrutiny for High Threat Posts. We asked the Department of Defense to join Interagency Security Assessment Teams and to dispatch hundreds of additional Marine Security Guards. I named the first Deputy Assistant Secretary of State for High Threat Posts, so missions in dangerous places get the attention they need. And we reached out to Congress to help address physical vulnerabilities, including risks from fire, and to hire additional Diplomatic Security personnel.

Second, even as we took these steps, I also appointed the Accountability Review Board led by Ambassador Pickering and Admiral Mullen so that we could more fully understand what went wrong and how to fix it.

I have accepted every one of their recommendations—and I asked the Deputy Secretary for Management and Resources to lead a task force to ensure that all 29 of them are implemented quickly and completely . . . as well as to pursue additional steps above and beyond those in the Board’s report.

Because of the effort we began in the days after the attacks, work is already well underway. And, as I pledged in my letter to you last month, implementation has now begun on all 29 recommendations. Our task force started by translating the recommendations into 64 specific action items. All of these action items were assigned to specific bureaus and offices, with clear timelines for completion. Fully 85 percent are on track to be completed by the end of March, with a number completed already.

We are taking a top-to-bottom look, and rethinking how we make decisions on where, when, and how our people operate in high threat areas, and how we respond to threats and crises.

As part of our effort to go above and beyond the Review Board’s recommendations, we are initiating an annual High Threat Post Review chaired by the Secretary of State, and ongoing reviews by the Deputy Secretaries, to ensure pivotal questions about security reach the highest levels. And we will regularize protocols for sharing information with Congress.

All of these actions are designed to increase the safety of our diplomats and development experts and reduce the chances of another Benghazi happening again.

Now, in addition to the immediate action we took and the Review Board process, we have been moving forward on a third front: addressing the broader strategic challenge in north Africa and the wider region.

Because Benghazi didn’t happen in a vacuum. The Arab revolutions have scrambled power dynamics and shattered security forces across the region. And instability in Mali has created an expanding safe haven for terrorists who look to extend their influence and plot further attacks of the kind we saw just last week in Algeria.

And let me offer my deepest condolences to the families of the Americans and all the people from many nations who were killed and injured in the recent hostage crisis. We remain in close touch with the Government of Algeria and stand ready to provide assistance if needed. We are seeking to gain a fuller understanding of what took place so that we can work together to prevent terrorist attacks like this in the future.

Concerns about terrorism and instability in north Africa are not new. Indeed they have been a top priority for our entire national security team. But after Benghazi, we accelerated a diplomatic campaign to increase pressure on Al Qaeda in the Islamic Maghreb and other terrorist groups across the region.

In the first hours and days, I conferred with the President of Libya and the Foreign Ministers of Tunisia and Morocco. Two weeks later, I met with regional leaders at the United Nations General Assembly and held a special meeting focused on Mali and the Sahel. In October, I flew to Algeria to discuss the fight against AQIM. In November, I sent Deputy Secretary Bill Burns to follow up in Algiers. And then in December, he cochaired the Global Counterterrorism Forum in Abu Dhabi and a meeting in Tunis of leaders working to build new democracies and reform security services.

I want to follow up on one area of northern Africa. You point out the risk factors that we currently have in northern Africa. Algeria is a reminder of the global security concerns. We do not know, as Senator Risch pointed out, the individuals who may have been involved in Libya may have been in Algeria. We do not know that. But we do know there are reports from the United Nations and others that weapons have gotten from Libya into Algeria, which points out our need, as we look at transitions occurring in that region, Syria, Assad is not going to be there we think much longer. There are a lot of weapons in Syria.

Do we have a strategy to make sure as we go through transition in countries that their weapons are—we are mindful that these weapons could end up harming U.S. interests. And it needs to be part of our strategy to make sure as we support alternative governments and the rebels, that there is a strong priority in protecting the source of these weapons not ending up harming Americans or harming our interests.

Secretary CLINTON. Well, Senator, you are 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 man pads 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 Gaddafi warehouses and were, as they were saying, liberated and then went on the black market, were seized by militias, 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.

It is a redline for this administration with respect to Syria concerning the use of chemical weapons. Syria, as you probably know, in addition to having the fourth-largest army before this revolution, has a very significant supply of chemical and biological weapons.

Given the instability in Syria right now, what we are trying to do is to coordinate closely with a number of like-minded nations, neighbors, and partners to be able to work to try to prevent those from falling into the wrong hands—jihadist hands, Hezbollah hands—but also to try to work with the internal opposition for them to understand the dangers that are posed.

So this Pandora's box, if you will, of weapons coming out of these countries in the Middle East and North Africa is the source of one of our biggest threats. There is no doubt that the Algerian terrorists had weapons from Libya. There is no doubt that the Malian remnants of AQIM have weapons from Libya. So we just have to do a much better job.

The final thing I would say about this is, you know, AFRICOM was stood up about 10 years ago. I think a lot of people at the time wondered why would we have another command in the world and why in Africa. I now think we need to pay much more attention to AFRICOM, to its capacity inside Africa. It is based in Stuttgart, Germany, for all kinds of complicated logistical and political reasons. Carter Ham has been a very dedicated leader of AFRICOM during his time there.

facilities that are either unable to collocate or legislatively authorized not to be collocated. Any facilities in this second group that lack a waiver will be required to submit requests for collocation waivers.

Senator UDALL. Thank you, Madam Secretary.

Senator MENENDEZ. Senator Paul.

Senator PAUL. Thank you for appearing, Secretary Clinton, and I am glad to see your health is improving.

One of the things that disappointed me most about the original 9/11 was no one was fired. We spent trillions of dollars, but there were a lot of human errors. These are judgment errors, and the people who make judgment errors need to be replaced, fired, and no longer in a position of making these judgment calls.

So we have a review board. The review board finds 64 different things we can change. A lot of them are common sense and should be done, but the question is, it is a failure of leadership that they were not done in advance and four lives were lost because of this.

I am glad that you are accepting responsibility. I think that ultimately with your leaving, you accept the culpability for the worst tragedy since 9/11, and I really mean that. Had I been President at the time and I found that you did not read the cables from Benghazi, you did not read the cables from Ambassador Stevens, I would have relieved you of your post. I think it is inexcusable.

The thing is, is that, you know, we can understand that you are not reading every cable. I can understand that maybe you are not aware of the cable from the Ambassador in Vienna that asked for \$100,000 for an electrical charging station. I can understand that maybe you are not aware that your Department spent \$100,000 on three comedians who went to India on a promotional tour called "Make Chai Not War."

But I think you might be able to understand and might be aware of the \$80 million spent on a consulate in Mazar-e-Sharif that will never be built. I think it is inexcusable that you did not know about this and that you did not read these cables.

I would think by anybody's estimation, Libya has to have been one of the hottest of hot spots around the world. Not to know of the request for security really I think cost these people their lives. Their lives could have been saved had someone been more available, had someone been aware of these things, more on top of the job.

And the thing is, is I do not suspect you of bad motives. The review board said, well, these people were not willfully negligent. I do not think you were willful. I do not suspect your motives of wanting to serve your country.

But it was a failure of leadership not to be involved. It was a failure of leadership not to know these things.

And so, I think it is good that you are accepting responsibility because no one else is. And this is—there is a certain amount of culpability to the worst tragedy since 9/11, and I am glad you are accepting this.

Now my question is, Is the United States involved with any procuring of weapons, transfer of weapons, buying, selling, anyhow transferring weapons to Turkey out of Libya?

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

Senator PAUL. It has been in news reports that ships have been leaving from Libya and that they may have weapons. And what I would 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?

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

Senator PAUL. You are saying you do not know?

Secretary CLINTON. I do not know. I do not have any information on that. And you know, with respect to personnel, Senator, you know, first, that is why we have independent people who review the situation as we did with the Pickering and Mullen ARB, and all four individuals identified in the ARB have been removed from their jobs. Second, they have been placed on administrative leave while we step through the personnel process to determine the next steps.

[The written information supplied by the State Department follows:]

The United States is not involved with any transfer of weapons from Libya to Turkey.

Secretary CLINTON. Third, both Ambassador Pickering and Admiral Mullen specifically highlighted the reason why this is complicated because under Federal statute and regulations, unsatisfactory leadership is not grounds for finding a breach of duty. The ARB did not find these four individuals breached their duty. So I have submitted legislation to this committee, to the Congress, to fix this problem so future ARBs will not face this situation.

Senator PAUL. But here is the problem. The review board has all these recommendations, but there is one thing they failed to address and I think you have failed to address, and it sets us up for another tragedy like this. They should have never been sent in there without a military guard.

This should have been an embassy like in Baghdad in a war zone, and it should have been under military guard, significant military guard, Defense Department command. I do not think the State Department is capable of being in a war zone and protecting these people. I still do not think that.

I think another tragedy could happen. I think another tragedy could happen in another war zone around the world. I think someone needs to make an executive decision, someone needs to take leadership, and with that leadership should be you should not send them in with no Marines. You should not send them in with Marines who are to guard records, not people. You should not send them in with the same kind of Ambassador or Embassy staff that you have in Paris.

I think that is inexcusable.

Secretary CLINTON. Well, Senator, the reason I am here today is to answer questions the best I can. I am the Secretary of State, and the ARB made very clear that the level of responsibility for the failures that they outlined was set at the Assistant Secretary level and below.

[REDACTED]

RPTS DEAN

DCMN BURRELL

Classification Key

Unclassified

[REDACTED]

AFRICOM AND SOCAFRICA AND THE
TERRORIST ATTACKS IN BENGHAZI,
LIBYA ON SEPTEMBER 11, 2012
House of Representatives,
Committee on Armed Services,
Subcommittee on Oversight and Investigations,
Washington, D.C.
Wednesday, June 26, 2013

The subcommittee met, pursuant to call, at 9:00 a.m., in room 2118,
Rayburn House Office Building, Hon. Martha Roby [chairman of the
subcommittee] presiding.

Exhibit 4

[REDACTED]

000014

General?

General Ham. Yes, sir. But I am not privy to those conversations. Mine were with the Chairman of the Joint Chiefs and with the Secretary. And I think we were pretty clear on, you know, pretty shortly thereafter kind of the nature of the attack.

Dr. Wenstrup. Because as a military person, I am concerned that someone in the military would be advising that this was a demonstration. I would hope that our military leadership would be advising this was a terrorist attack.

General Ham. Again, sir, I think, you know, there was some preliminary discussion about, you know, maybe there was a demonstration. But I think at the command, I personally and I think the command very quickly got to the point this was not a demonstration, this was a terrorist attack.

Dr. Wenstrup. And you would have advised as such if asked. Would that be correct?

General Ham. Well, and with General Dempsey and Secretary Panetta, that is the nature of the conversation we had, yes, sir.

Dr. Wenstrup. Thank you very much. I appreciate it. And I yield back.

Mrs. Roby. Dr. Heck.

Dr. Heck. Thank you, Madam Chair. And General Ham, thank you for your long service and for agreeing to appear before us. Even in retirement, it is much appreciated. I agree that I think with one of your opening comments that probably one of the most important things

~~TOP SECRET//NOFORN~~

[Redacted]



From: [Redacted] Subject: Due-Outs from HPSCI Coffee
Office of Congressional Affairs [Redacted]
Secure: [Redacted]
Open: [Redacted]
Date: 09/14/2012 11:29 AM Cc: [Redacted]

This message is digitally signed.

Classification: ~~TOP SECRET//NOFORN~~

[Redacted]

For the Committee:

- 1) "White Paper" on press guidance (OPA, OGC, DI, NE)
**We've already spoken to OPA who will be coordinating with the WH as well
- 2) Paper on motivations for Green on Blue violence (OSA)
- 3) Contact State Leg Affairs for questions on document destruction at consulate (OCA)

For DCIA:

- 1) Cable(s) to [Redacted] warning of protests linked to the film and response (NE)
- 2) Cable(s) to stations on 9/11 security (DS, NCS)

Please send Committee responses to OCA for 7th floor coord.

Please send DCIA responses to ODCIA.

Thank you!

[Redacted]
Office of Congressional Affairs
Secure: [Redacted]
Open: [Redacted]

Classification: ~~TOP SECRET//NOFORN~~

~~TOP SECRET//NOFORN~~

Exhibit 5

000016

CIA
[Redacted]

From: Nuland, Victoria J [nulanovj]
Sent: Friday, September 14, 2012 7:39 PM
To: Nuland, Victoria J; NSC Deputy Press Secretary; [Redacted] Shawn S Turner; [Redacted] Rhodes, Benjamin J.; [Redacted]
Cc: [Redacted] Sullivan, Jacob J; Adams, David S
Subject: RE: Revised HPSCI Talking Points for Review

I just had a convo with [Redacted] and I now understand that these are being prepared to give to Members of Congress to use with the media.

On that basis, I have serious concerns about all the parts highlighted below, and arming members of Congress to start making assertions to the media that we ourselves are not making because we don't want to prejudice the investigation.

In same vein, why do we want Hill to be fingering Ansar al-Sharia, when we aren't doing that ourselves until we have investigation results... and the penultimate point could be abused by Members to beat the State Department for not paying attention to Agency warnings so why do we want to feed that either? Concerned...

+Jake Sullivan, Dave Adams here

This email is UNCLASSIFIED.

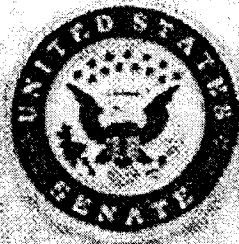
From: Nuland, Victoria J
Sent: Friday, September 14, 2012 7:16 PM
To: NSC Deputy Press Secretary; [Redacted] Shawn Turner; [Redacted] Rhodes, Benjamin J.; [Redacted]
Subject: RE: Revised HPSCI Talking Points for Review

Are these for open or closed hearing? If open, the line about "knowing" there were extremists among the demonstrators will come back to us at podium -- how do we know, who were they, etc... So I'll need answers to those if we deploy that line, tx.

This email is UNCLASSIFIED.

From: Vietor, Tommy [mailto:Thomas_F_Vietor]
Sent: Friday, September 14, 2012 6:48 PM
To: [Redacted] Shawn Turner; [Redacted] Rhodes, Benjamin J.; [Redacted]

37



**U.S. Senate Select Committee on
INTELLIGENCE**

**REVIEW
of the
TERRORIST ATTACKS ON U.S. FACILITIES
IN BENGHAZI, LIBYA, SEPTEMBER 11-12, 2012**

together with
ADDITIONAL VIEWS

January 15, 2014

SENATE SELECT COMMITTEE ON INTELLIGENCE

United States Senate

113th Congress

Exhibit 6

000018

[REDACTED]

At approximately 1:15 a.m. Benghazi time, a seven-man reinforcement team of additional U.S. security personnel from Tripoli landed at the Benghazi airport and began to negotiate with the local Libyan militias for transportation and a security convoy.³¹ Upon learning Ambassador Stevens was still missing and that the situation at the Annex had calmed, the team focused on locating the Ambassador and trying to obtain information on the security situation at the Benghazi Medical Center where he was said to be.³² An individual at the hospital made calls from the Ambassador's cell phone to numbers stored in the phone, including to some numbers in Tripoli and to one of the RSOs. After an exchange of calls between the individual in possession of Stevens's phone and some of the Americans, the Americans became concerned that the caller could be luring U.S. personnel into an ambush at the hospital and concluded it was too risky to go to the hospital.

After more than three hours of negotiations and communications with Libyan officials who expressed concern about the security situation at the hospital, the Libyan government arranged for the Libyan Shield Militia to provide transportation and an armed escort from the airport.³³ After learning that Ambassador Stevens was almost certainly dead and that the security situation at the hospital was uncertain, the team opted to go to the Annex to support the other U.S. personnel.³⁴ The security team from Tripoli departed the airport for the Annex at approximately 4:30 a.m. Benghazi time.³⁵

3. Attack on the CIA Annex at Approximately 5:15 a.m.

At approximately 5:00 a.m. Benghazi time, the security team from Tripoli arrived at the Annex just moments before the third attack that night. At approximately 5:15 a.m. Benghazi time, mortar rounds began to hit the Annex. Two security officers, Tyrone Woods and Glen Doherty, were killed when they took direct mortar fire as they engaged the enemy from the roof of the Annex.³⁶ The mortar fire also seriously injured one other security officer and one DS special

³¹ NCTC and FBI, *The 11-12 September Attacks on US Facilities in Benghazi*, November 13, 2012, p. 6.

³² E-mail from CIA OCA staff to Staff Director, HPSCI, et al., "Background Points used on 1 Nov," November 2, 2012, p. 1.

³³ SSCI Transcript, *Benghazi Follow Up with Staff*, May 22, 2013, p. 34.

³⁴ E-mail from CIA OCA staff to Staff Director, HPSCI, et al., "Background Points used on 1 Nov," November 2, 2012, p. 1.

³⁵ SSCI Transcript, *Benghazi Follow Up with Staff*, May 22, 2013, p. 34.

³⁶ NCTC and FBI, *The 11-12 September Attacks on US Facilities in Benghazi*, November 13, 2012, p. 6.

[REDACTED]

agent, necessitating the evacuation of the Annex.³⁷ That attack lasted only 11 minutes, then dissipated.³⁸ The mortar fire was particularly accurate, demonstrating a lethal capability and sophistication that changed the dynamic on the ground that night. According to testimony by the Chief of Base, it was only after this third wave of attacks, when the mortars hit, that he decided it was necessary to evacuate the personnel from the Annex.³⁹

Less than an hour later, a heavily-armed Libyan militia unit arrived to help evacuate the Annex of all U.S. personnel to the airport. The Ambassador's body, which had been secured by a local Libyan coordinating with the State Department, was also transported from the Benghazi Medical Center to the airport. By approximately 10:00 a.m. Benghazi time, all U.S. personnel and the bodies of the four dead Americans departed from Benghazi to Tripoli.⁴⁰

IV. FINDINGS AND RECOMMENDATIONS

Warnings Before the Attacks and Failures to Provide Security

FINDING #1: In the months before the attacks on September 11, 2012, the IC provided ample strategic warning that the security situation in eastern Libya was deteriorating and that U.S. facilities and personnel were at risk in Benghazi.

The IC produced hundreds of analytic reports in the months preceding the September 11-12, 2012, attacks, providing strategic warning that militias and terrorist and affiliated groups had the capability and intent to strike U.S. and Western facilities and personnel in Libya. For example:

- On June 12, 2012, the Defense Intelligence Agency (DIA) produced a report entitled, "Libya: Terrorists Now Targeting U.S. and Western Interests." The report noted recent attacks against the U.S. Mission compound in Benghazi,

³⁷ SSCI Transcript, *Member and Staff Interview of former Chief of Base*, December 20, 2012, p. 42.

³⁸ E-mail from CIA OCA staff to Staff Director, HPSCI, et al., "Background Points used on 1 Nov," November 2, 2012, p. 1.

³⁹ SSCI Transcript, *Member and Staff Interview of former Chief of Base*, December 20, 2012, p. 42, in which the Chief of Base said: "Until the mortar attack, we were pretty comfortable that we could stave off any type of ground assault on the Annex."

⁴⁰ NCTC and FBI, *The 11-12 September Attacks on US Facilities in Benghazi*, November 13, 2012, p. 7.

[REDACTED]

the growing ties between al-Qa'ida (AQ) regional nodes and Libya-based terrorists, and stated: "We expect more anti-U.S. terrorist attacks in eastern Libya [REDACTED], due to the terrorists' greater presence there.... This will include terrorists conducting more ambush and IED [improvised explosive device] attacks as well as more threats against [REDACTED]." ⁴¹

- On June 18, 2012, the Pentagon's Joint Staff produced a slide in its daily intelligence report entitled, "(U) Terrorism: Conditions Ripe for More Attacks, Terrorist Safe Haven in Libya." In the slide, the Joint Staff assessed: "[REDACTED] support will increase Libyan terrorist capability in the permissive post-revolution security environment. Attacks will also increase in number and lethality as terrorists connect with AQ associates in Libya. Areas of eastern Libya will likely become a safe haven by the end of 2012 [REDACTED]" ⁴²

- On July 2, 2012, DIA produced a report that discussed the founding of Ansar al-Sharia (AAS) entitled, [REDACTED]. The report stated: [REDACTED] ⁴³ [REDACTED] ⁴⁴

- On July 6, 2012, CIA produced a report entitled, "Libya: Al-Qa'ida Establishing Sanctuary." In the report, CIA stated: "Al-Qa'ida-affiliated groups and associates are exploiting the permissive security environment in Libya to enhance their capabilities and expand their operational reach. This year, Muhammad Jamal's Egypt-based network, al-Qa'ida in the Arabian Peninsula (AQAP), and al-Qa'ida in the Lands of the Islamic Maghreb (AQIM) have conducted training, built communication networks, and

⁴¹ DIA, "Libya: Terrorists Now Targeting U.S. and Western Interests," Defense Intelligence Report, June 12, 2012.

⁴² Joint Staff, "Terrorism: Conditions Ripe for More Attacks, Terrorist Safe Haven in Libya," J-2 Intelligence Update, June 18, 2012.

⁴³ Qumnu was released from Guantanamo Bay in 2007.

⁴⁴ DIA, "[REDACTED]," Defense Intelligence Digest, July 2, 2012.

[REDACTED]

[REDACTED]

facilitated extremist travel across North Africa from their safe haven in parts of eastern Libya.”⁴⁵

- On August 19, 2012, the Pentagon’s Joint Staff produced a slide in its daily intelligence report entitled, “(U) Libya: Terrorists to Increase Strength During Next Six Months.” In the slide, the Joint Staff stated: “There are no near-term prospects for a reversal in the trend towards a terrorist safe haven in Libya, and areas of eastern Libya will likely become a broader safe haven by the end of 2012. The conditions in Libya will allow terrorists to increase attacks against Western and Libyan interests in the country, as well as attempt attacks in the region and possibly Europe in the next six months.”⁴⁶
- On September 5, 2012, AFRICOM produced a Theater Analysis Report entitled, “(U) Libya: Extremism in Libya Past, Present, and Future.” The report contained a map showing how “[REDACTED] are actively exploiting the open operating environment in Libya.” (The map is located in Appendix IV of this report). The report also noted: “Disarray in Libya’s security services, and a likely focus by authorities on pursuit of Qadhafi loyalists is likely allowing jihadists in Libya freedom to recruit, train, and facilitate the movement of fighters and weapons. The threat to Western and U.S. interests and individuals remains high, particularly in northeast-Libya.”⁴⁷
- On September 7, 2012, DIA produced a report entitled, “[REDACTED]” that stated: “[REDACTED]”
[REDACTED]

FINDING #2: The State Department should have increased its security posture more significantly in Benghazi based on the deteriorating security situation on the ground and IC threat reporting on the prior attacks against

⁴⁵ CIA, “Libya: Al-Qa’ida Establishing Sanctuary,” WIRe, July 6, 2012.
⁴⁶ Joint Staff, “Libya: Terrorists to Increase Strength During Next Six Months,” J-2 Intelligence Update, August 19, 2012.
⁴⁷ United States Africa Command, “Libya: Extremism in Libya Past, Present, and Future,” United States Africa Command Theater Analysis Report, September 5, 2012.
⁴⁸ DIA, “[REDACTED],” Defense Intelligence Digest, September 7, 2012.

[REDACTED]



- On July 9, 2012, Stevens sent a cable to State Department headquarters requesting a minimum of 13 “Temporary Duty” (TDY) U.S. security personnel for Libya, which he said could be made up of DS agents, DoD Site Security Team (SST) personnel, or some combination of the two.⁶¹ These TDY security personnel were needed to meet the requested security posture in Tripoli and Benghazi. The State Department never fulfilled this request and, according to Eric Nordstrom, State Department headquarters never responded to the request with a cable.⁶²
- In an August 16, 2012, cable to State headquarters, Stevens raised additional concerns about the deteriorating security situation in Benghazi following an Emergency Action Committee (EAC) meeting held on August 15, 2012, in Benghazi. The EAC is an interagency group convened periodically in U.S. embassies and other facilities in response to emergencies or security matters. In this case, the head State Department officer in Benghazi, called the Principal Officer, convened the meeting “to evaluate Post’s tripwires in light of the deteriorating security situation in Benghazi.”⁶³ The cable summarizing this EAC included the following points:
 - (1) The Principal Officer “remarked that the security situation in Benghazi was ‘trending negatively’” and “that this daily pattern of violence would be the ‘new normal’ for the foreseeable future, particularly given the minimal capabilities of organizations such as the Supreme Security Council and local police.”
 - (2) A CIA officer “briefed the EAC on the location of approximately ten Islamist militias and AQ training camps within Benghazi.”
 - (3) The Principal Officer and a CIA officer “expressed concerns with the lack of host nation security to support the U.S. Mission [facility].”

⁶¹ State 12 TRIPOLI 690, July 9, 2012.

⁶² SSCI Transcript, *Member and Staff Interview of Eric Nordstrom*, June 27, 2013, pp. 32 and 60.

⁶³ State 12 TRIPOLI 55, August 16, 2012.



[REDACTED]

(4) A CIA officer “expressed concerns with Post’s relationship with the [REDACTED] [local militia], particularly in light of some of the actions taken by the brigade’s subsidiary members.”

(5) The Regional Security Officer “expressed concerns with the ability to defend Post in the event of a coordinated attack due to limited manpower, security measures, weapons capabilities, host nation support, and the overall size of the compound.”

[REDACTED]

Despite the clearly deteriorating security situation in Benghazi and requests for additional security resources, few significant improvements were made by the State Department to the security posture of the Temporary Mission Facility. Although the Mission facility met the minimum personnel requirements for Diplomatic Security agents as accepted by the U.S. Embassy in Tripoli at the time of the August 15 EAC meeting (specifically, the three Diplomatic Security agents were assigned to guard the Mission compound), the Committee found no evidence that significant actions were taken by the State Department between August 15, 2012, and September 11, 2012, to increase security at the Mission facility in response to the concerns raised in that meeting.⁶⁵

According to the report of the ARB, “there appeared to be very real confusion over who, ultimately, was responsible and empowered to make decisions based on both policy and security concerns” at the State Department’s Bureau of Diplomatic Security, Bureau of Near Eastern Affairs, the U.S. Embassy in Tripoli, and the Mission facility in Benghazi.⁶⁶ The Independent Panel on Best Practices, which the ARB recommended State establish to identify best practices from other

⁶⁴ State 12 TRIPOLI 55, August 16, 2012.

⁶⁵ The Committee recognizes that there were communications between State Department employees in Libya regarding security during this time period, including an August 22, 2012, document entitled, “Security Requests for U.S. Mission Benghazi” that was sent from DS agents in Benghazi to the RSO in Tripoli that included specific requests for (1) physical security, (2) equipment, and (3) manpower. There is no indication those requests were passed on to State Department Headquarters in the form of a cable.

⁶⁶ Unclassified Report of the ARB, December 18, 2012, p. 30.

INTERIM PROGRESS REPORT *for the*
Members of the House Republican Conference
on the Events Surrounding the September 11, 2012
Terrorist Attacks in Benghazi, Libya



Chairman Howard P. "Buck" McKeon, Committee on Armed Services
Chairman Ed Royce, Committee on Foreign Affairs
Chairman Bob Goodlatte, Committee on the Judiciary
Chairman Darrell Issa, Committee on Oversight & Government Reform
Chairman Mike Rogers, Permanent Select Committee on Intelligence

April 23, 2013

Exhibit 7

reduced security footprint was of significant concern to U.S. Ambassador to Libya Gene Cretz, who had requested the continued deployment of both MSD teams, or at least additional DS agents to replace them, and the full five DS agents for the Benghazi Mission that the December 2011 Kennedy memorandum documented would be stationed in Benghazi. His successor, Ambassador Christopher Stevens – who replaced him in May 2012 – shared Ambassador Cretz’s concerns.

Critical Cables

During 2012, in numerous communications with the State Department, officials from the U.S. Mission in Libya stress both the inadequacy of security as well as the need for additional personnel. Two critical cables warrant specific mention:

- On **March 28, 2012**, Ambassador Cretz sends a cable to Secretary Clinton requesting additional security assets.
- On **April 19, 2012**, the response cable from the Department of State to Embassy Tripoli, bearing Secretary Clinton’s signature, acknowledges Ambassador Cretz’s request for additional security but instead articulates a plan to scale back security assets for the U.S. Mission in Libya, including the Benghazi Mission.

In addition, the April 2012 cable from Secretary Clinton recommended that the State Department’s Bureau of Diplomatic Security and the U.S. Mission in Libya conduct a “joint reassessment of the number of DS agents requested for Benghazi.”¹⁴ This prompted one frustrated Embassy Tripoli employee to remark to her colleagues that it “looks like no movement on the full complement of [five DS] personnel for Benghazi, but rather a reassessment to bring the numbers lower.”¹⁵

In May 2012, Ambassador Stevens replaced Ambassador Cretz and continued to make requests for additional security. In an email in early June, he told a State Department official that with national elections occurring in Libya in July and August, the U.S. Mission in Libya “**would feel much safer if we could keep two MSD teams with us through this period [to support] our staff and [personal detail] for me and the [Deputy Chief of Mission] and any VIP visitors.**”¹⁶ The State Department official replied that due to other commitments and limited resources, “unfortunately, MSD cannot support the request.”¹⁷

¹⁴ 12 STATE 38939, April 19, 2012, Signature: CLINTON.

¹⁵ Email from Jennifer A. Larson to Eric Nordstrom, Ambassador Gene Cretz, et al., April 21, 2012, 1:57 p.m., Subject: Re: Tripoli – Request for DS DTY and FTE Support.

¹⁶ Email chain between Ambassador Chris Stevens and John Moretti, June 7, 2012, 3:34 a.m., Subject: MSD/Tripoli.

¹⁷ *Id.*

Appendix II: Consolidated Timeline of Events

March-October 2011

The Libyan revolution was supported by the United States most directly in the form of NATO air operations, which lasted from March through October of 2011.

Tuesday, December 27, 2011

A State Department memorandum circulated at the end of 2011 recommended that U.S. personnel remain in Benghazi. It explained that many Libyans were “strongly” in favor of a U.S. outpost in Benghazi, in part because they believed a U.S. presence in eastern Libya would ensure that the new Tripoli-based government fairly considered eastern interests.

Wednesday, March 28, 2012

Ambassador Cretz sent a cable to Secretary Clinton requesting additional security assets. Specifically, he asked for the continued deployment of both Mobile Security Detachment (MSD) teams, or at least additional DS agents to replace them, as well as the full five DS agents which the December 2011 memorandum claimed would be stationed in Benghazi.

Friday, April 6, 2012

The Temporary Mission Facility (TMF) in Benghazi came under attack when disgruntled Libyan contract guards allegedly threw a small improvised explosive device (IED) over the perimeter wall. No casualties were reported.

Thursday, April 19, 2012

State responded to Ambassador Cretz’s request for additional security assets. The cable response to Tripoli bears Secretary Clinton’s signature, and specifically acknowledges Ambassador Cretz’s March 28 request for additional security. Despite the Ambassador’s March request, the April cable from Clinton stipulates that the plan to drawdown security assets will proceed as planned. The cable further recommends that State’s Bureau of Diplomatic Security and the U.S. Mission in Libya conduct a “joint re-assessment of the number of DS agents requested for Benghazi.”

Wednesday, June 6, 2012

The TMF was attacked again by unknown assailants who used an IED powerful enough to blow a hole in the perimeter wall. Again, no casualties were reported.

Thursday, June 7, 2012

Ambassador Stevens made a personal plea for an increase in security. In a June 2012 email, he told a Department official that with national elections in July and August, the Mission “would feel much safer if we could keep two MSD teams with us through this period [to support] our staff and [personal detail] for me and the [Deputy Chief of Mission] and any VIP visitors.” The

Department official replied that due to other commitments and limited resources, “unfortunately, MSD cannot support the request.”

Monday, July 9, 2012

A July 2012 cable from Ambassador Stevens stressed that security conditions in Libya had not met the requisite benchmarks established by the Department and the U.S. Mission in Libya to initiate a security drawdown, and requested that security personnel, including the MSD teams, be permitted to stay. After being apprised of this pending request, Deputy Assistant Secretary Charlene Lamb exclaimed: “NO I do not [I repeat] not want them to ask for the MSD team to stay!” The MSD team was withdrawn, though it is unclear whether the Department ever formally rejected the Ambassador’s July request.

Monday, June 11, 2012

Britain’s ambassador to Libya was in a convoy of cars attacked in the eastern city of Benghazi. The convoy was hit by a rocket-propelled grenade (RPG). Two protection officers were injured.

Monday, August 27, 2012

U.S. officials were aware that Libya remained volatile. They were particularly concerned with the numerous armed militias that operated freely throughout the country. In August 2011, the State Department warned U.S. citizens against traveling to Libya, explaining that “inter-militia conflict can erupt at any time or any place.”

- The security environment in Benghazi was similarly deteriorating throughout 2012. From June 2011 to July 2012, then-Regional Security Officer (RSO) for Libya Eric Nordstrom, the principal security adviser to the U.S. Ambassador to Libya, compiled a list of over 200 security incidents in Libya, 50 of which took place in Benghazi. These included violent acts directed against diplomats and diplomatic facilities, international organizations, and third-country nationals, as well as large-scale militia clashes.
- In spite of these mounting security concerns, for most of 2012 the Benghazi Mission was forced to rely on fewer than the approved number of DS agents. Specifically, while the State Department memorandum signed by Under Secretary Kennedy claimed that five agents would be provided, this was only the case for 23 days in 2012. Reports indicate the Benghazi Mission was typically staffed with only three agents, and sometimes as few as one or two.

Monday, September 10, 2012

Ambassador Stevens travelled to Benghazi on September 10, 2012, both to fill staffing gaps between principal officers in Benghazi, and to allow the Ambassador to reconnect with local contacts. There were also plans for him to attend the establishment of a new American Corner at a local Benghazi school.

Flashing Red: A Special Report On The Terrorist Attack At Benghazi

By

Joseph I. Lieberman, Chairman
Susan M. Collins, Ranking Member



United States Senate Committee On
Homeland Security And
Governmental Affairs

December 30, 2012

Exhibit 8

000029

Key Findings and Recommendations

Finding 1. In the months leading up to the attack on the Temporary Mission Facility in Benghazi, there was a large amount of evidence gathered by the U.S. Intelligence Community (IC) and from open sources that Benghazi was increasingly dangerous and unstable, and that a significant attack against American personnel there was becoming much more likely. While this intelligence was effectively shared within the Intelligence Community (IC) and with key officials at the Department of State, it did not lead to a commensurate increase in security at Benghazi nor to a decision to close the American mission there, either of which would have been more than justified by the intelligence presented.

Security decisions concerning U.S. facilities and personnel overseas are informed by several different types of information, including classified threat reporting from the IC; cables and spot reports from U.S. diplomatic posts, which describe local incidents and threats; and publicly available information. Prior to the attack, the IC and the Department of State were aware of the overall threat landscape in Libya and the challenges facing the new Libyan government in addressing those threats. This understanding evolved over time, consistent with broader changes in the nature of the threat, and also based on reported incidents and attacks in Benghazi and other parts of Libya in 2012.

The Committee has reviewed dozens of classified intelligence reports on the evolution of threats in Libya which were issued between February 2011 and September 11, 2012. We are precluded in this report from discussing the information in detail, but overall, these intelligence reports (as the ARB similarly noted) provide a clear and vivid picture of a rapidly deteriorating threat environment in eastern Libya—one that we believe should have been sufficient to inform policy-makers of the growing danger to U.S. facilities and personnel in that part of the country and the urgency of them doing something about it. This information was effectively shared by the IC with key officials at the Department of State. For example, both the Deputy Assistant Secretary of State for International Programs in the Bureau of Diplomatic Security, Charlene Lamb, who was responsible for the security at more than 275 diplomatic facilities, and former Regional Security Officer (RSO) for Libya Eric Nordstrom, who was the principal security adviser to the U.S. Ambassador in Libya from September 21, 2011 to July 26, 2012, told the Committee that they had full access to all threat information from the IC about eastern Libya during the months before the attack of September 11, 2012.² Yet the Department failed to take adequate action to protect its personnel there.

This classified intelligence reporting was complemented by open-source reporting on attacks and other incidents targeting western interests in Libya during the months prior to the September 11, 2012 attack. The RSO in Libya compiled a list of 234 security incidents in Libya between June 2011 and July 2012, 50 of which took place in Benghazi.³ The document describes an array of incidents, including large-scale militia clashes, protests involving several hundred people, and the temporary detention of non-governmental organization (NGO) workers and of U.S. diplomatic personnel in Benghazi. Under Secretary for Management Patrick Kennedy noted in a

² Charlene Lamb and Eric Nordstrom, interviews with Committee staff, December 2012.

³ U.S. Embassy Tripoli, Libya, Regional Security Office, "Security Incidents since June 2011."

We anticipate that the ongoing investigation into these attacks by the FBI will provide important new details about exactly which violent Islamist extremists carried out the attack, the extent to which it was planned, and their precise motivations. But as everyone now acknowledges, there is no doubt that Benghazi was indeed a deliberate and organized terrorist attack on our nation. If the fact that Benghazi was indeed a terrorist attack had been made clear from the outset by all Administration and Executive Branch spokespeople, there would have been much less confusion and division in the public response to what happened there on September 11, 2012.

Much of the public discussion about the Benghazi attack has focused on whether a protest took place in Benghazi prior to the attack. While the IC worked feverishly in the days after the attack to identify the perpetrators of the attack, they did not place a high priority on determining with certainty whether a protest had in fact occurred. The IC's preliminary conclusion was that there had been a protest outside of the mission prior to the attack, making this assessment based on open source news reports and on other information available to intelligence agencies. The IC later revised its assessment and the Accountability Review Board has since "concluded that no protest took place before the Special Mission and Annex attacks."¹¹³

The unnecessary confusion in public statements about what happened that night with regards to an alleged protest should have ended much earlier than it did. Key evidence suggesting the absence of a protest was not widely shared as early as it could have been, creating or contributing to confusion over whether this was a peaceful protest that evolved into something more violent or a terrorist attack by an opportunistic enemy looking for the most advantageous moments to strike.

As early as September 15th, the Annex team that had been in Benghazi during the attack reported there had been no protest.¹¹⁴ This information was apparently not shared broadly, and to the extent that it was shared, it apparently did not outweigh the evidence described above that there was a protest. The next day, the President of Libya's General National Congress, Mohamed Yousef el-Magariaf, also stated on the CBS News show *Face the Nation* that the attack was planned and involved Al Qaeda elements.

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. The U.S. personnel who were interviewed saw no indications that there had been a protest prior to the attack. Information from those interviews was shared on a secure video teleconference on the afternoon of the 16th with FBI and other IC officials in Washington; it is unclear whether the question of whether a protest took place was discussed during this video conference.¹¹⁵

Information from those interviews was written into FBI FD-302 interrogation reports and sent back to the FBI headquarters. Nearly a week later, on or around September 22nd, key information from those interrogation reports was disseminated by the FBI in Intelligence Information Reports (IIRs) to other agencies within the IC.¹¹⁶ By that date, however, the IC had

¹¹³ Accountability Review Board, Department of State, December 19, 2012, 4.

¹¹⁴ Acting Director Michael Morell, briefing Senator Collins, November 28, 2012.

¹¹⁵ Committee member briefing, November 29, 2012.

¹¹⁶ Ibid.

already received conclusive proof via other means that there had been no protest prior to the attack, in the form of video evidence from the facility's CCTV cameras.

We also found documentation that one DS agent apparently concluded there had been no protest as early as September 18th.¹¹⁷ On that date, a State Department DS agent who had seen national press reporting about the attacks asked an agent at the DS Command Center in an email, "Was there any rioting in Benghazi reported prior to the attack?" The reply from the Command Center agent: "Zip, nothing, nada."

Recommendation: When terrorists attack our country, either at home or abroad, Administration officials should speak clearly and consistently about what has happened. While specific details and a full accounting cannot be provided until the government has completed its investigation, the fact that a terrorist attack occurred must be communicated with clarity.

Finding 10. As discussed earlier, the talking points about the September 11th attack in Benghazi which were issued by the Intelligence Community on September 14th in response to a request by the House Permanent Select Committee on Intelligence, were the subject of much of the confusion and division in the discussion of the attack. That confusion and division were intensified by the fact that the talking points were issued before the IC had a high degree of confidence about what happened in Benghazi and in the midst of a national political campaign.

Recommendation: While the Intelligence Community's primary mission is to inform the appropriate officials of the executive and legislative branches of our government about events that affect our security, it is not the responsibility of the IC to draft talking points for public consumption – especially in the heat of a political campaign – and we therefore recommend that the IC decline to do so in the future.

Conclusion

The deaths of Ambassador Stevens and three other Americans at the hands of terrorists is a tragic reminder that the fight our country is engaged in with Islamist extremists and terrorists is not over. U.S. and Western diplomats, and other personnel operating in the Middle East and other countries where these terrorists use violence to further their extremist agenda and thwart democratic reforms are increasingly at risk.

We hope this report will help contribute to the ongoing discussion that our nation must have about how best to protect the brave men and women who serve our country abroad and how to win this war that will continue for years to come. We owe it to our public servants abroad to protect them as they work to protect us. The government of the U.S. failed tragically to fulfill that responsibility in Benghazi on September 11, 2012. We hope the findings and recommendations we have made in this Special Report will help ensure that such a failure never happens again.

¹¹⁷ REDACTED, e-mail message on September 18, 2012.

Obtained by Judicial Watch, Inc. via FOIA



United States Department of State
Washington, D.C. 20520

APR 17 2014

Case No. F-2012-38774

Ms. Kate Bailey
Judicial Watch
425 Third Street SW, Suite 800
Washington, DC 20024

Dear Ms. Bailey:

I refer to our letter dated February 24, 2014, regarding the release of certain Department of State records under the Freedom of Information Act, 5 U.S.C. § 552.

We have identified 41 additional documents that are responsive to your request. Of these documents, we have determined that 25 may be released in full and 16 may be released with excisions pursuant to FOIA exemptions (b)(1), (b)(3), (b)(5) and (b)(6). Additionally, upon further consideration, we have determined that additional information may be released in 3 documents that were previously released in part. An enclosure explains Freedom of Information Act exemptions and other grounds for withholding material. All released material is enclosed.

Review of records of the United States Mission to the United Nations is now complete. If you have any questions, you may contact Department of Justice attorney Robert Prince at (202) 305-3654. Please be sure to refer to the case number, F-2012-38774, and the civil action number, 13-951, in all correspondence about this case.

Sincerely,

A handwritten signature in cursive script, appearing to read "John H. Hackett".

John H. Hackett, Acting Director
Office of Information Programs and Services

Enclosures:
As stated.

Exhibit 9

000033

UNCLASSIFIED U.S. Department of State Case No. F-2012-38774 Doc No. C05415285 Date: 04/17/2014

Obtained by Judicial Watch, Inc. via FOIA

Ryu, Rexion Y

From: Rhodes, Benjamin J. [Benjamin.J.Rhodes@]
Sent: Friday, September 14, 2012 8:09 PM
To: Vega, Dag; NSC Deputy Press Secretary; Plouffe, David; Pfeiffer, Dan; Carney, Jay; Palmieri, Jennifer; Earnest, Joshua R.; Govashiri, Ferial; Ledbetter, Howli J.; Selak, Dawn; Brundage, Daniel; Pelton, Erin; Alhassani, Mehdi K.
Subject: RE: PREP CALL with Susan: Saturday at 4:00 pm ET

B6

RELEASED IN PART B6Goals:

- To convey that the United States is doing everything that we can to protect our people and facilities abroad;
- To underscore that these protests are rooted in an Internet video, and not a broader failure of policy;
- To show that we will be resolute in bringing people who harm Americans to justice, and standing steadfast through these protests;
- To reinforce the President and Administration's strength and steadiness in dealing with difficult challenges.

Top-lines:

- Since we began to see protests in response to this Internet video, the President has directed the Administration to take a number of steps. His top priority has been the safety and security of all Americans serving abroad.
- First, we have significantly increased security at our diplomatic posts around the globe, with additional resources from across the government. The safety and security of our personnel is paramount and under constant review.
- Second, we have reached out to governments in the region to make sure they are cooperating closely with us, and meeting their obligations to protect diplomatic facilities as best they can. For instance, we've seen cooperation from Yemen and Egypt cooperate significantly after President Obama called those leaders.
- Third, we've made our views on this video crystal clear. The United States government had nothing to do with it. We reject its message and its contents. We find it disgusting and reprehensible. But there is absolutely no justification at all for responding to this movie with violence. And we are working to make sure that people around the globe hear that message.
- Fourth, we've encouraged leaders around the globe to speak out against the violence, and you've seen very important statements in the Muslim world by people like Prime Minister Erdogan of Turkey, President Morsi of Egypt, and others who have condemned the violence and called for a peaceful response.
- I think that people have come to trust that President Obama provides leadership that is steady and statesmanlike. There are always going to be challenges that emerge around the world, and time and again he's shown that we can meet them.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

1

UNCLASSIFIED U.S. Department of State Case No. F-2012-38774 Doc No. C05415285 Date: 04/17/2014 000034

UNCLASSIFIED U.S. Department of State Case No. F-2012-38774 Doc No. C05415285 Date: 04/17/2014
Obtained by Judicial Watch, Inc. via FOIA

Q: Are you concerned that our relationship with Egypt and other Muslim countries is quickly deteriorating? Is the Arab Spring now about hatred of America? Did President Obama lose the Arab World?

I think we need to step back a bit. The Arab Spring was about people across the region rising up to demand their basic rights. The protests we've seen these last few days were sparked by a disgusting and reprehensible video.

The fact is, this is a time of extraordinary change in the Arab World. But we've been able to build cooperative relationships with these new governments.

You saw that in Libya, where there's been full cooperation with the United States and an outpouring of support for Chris Stevens and the work that he did.

You saw that in Egypt, where President Obama was able to call President Morsi directly, which led to the Egyptians calling for calm and providing much more security at our Embassy.

So this part of the world has been faced with unrest many times in recent decade. But we're going to keep moving forward, and we believe that strong U.S. leadership can lead to a region that is more stable and more responsive to the people.

Q: Have you failed to articulate a policy for dealing with the Arab Spring?

You have heard the President articulate a very consistent set of principles and support for universal rights as the Arab Spring has unfolded. We support the process of nonviolent political and economic change and reform in the region. Of course, that process will look different in different countries.

There are countries where that transition has occurred, like Egypt, Yemen and Tunisia, and we're working to help them consolidate their democracies, deal with security needs, and stabilize their economies.

In other places like Syria that are still in throes of revolution, we have opposed the brutality of the regime and are supporting the aspirations of the people.

While this process unfolds, this President has left no doubt that he will continue to protect our other interests -- destroying al Qaeda, bringing our men and women in uniform home from Afghanistan, and strengthening our leadership in the world.

But the Arab Spring is going to take time to play out. This is an enormous change. And that is why we need to stay focused and firm on behalf of our principles, as the President has done.

Q: What's your response to the Independent story that says we have intelligence 48 hours in advance of the Benghazi attack that was ignored? Was this an intelligence failure?

We are not aware of any actionable intelligence indicating that an attack on the U.S. Mission in Benghazi was planned or imminent. The currently available information suggests that the demonstrations in Benghazi were spontaneously inspired by the protests at the US Embassy in Cairo and evolved into a direct assault against the US Consulate and subsequently its annex.

Q: Can you explain to us again the President's comment about why Egypt was not an ally?

Egypt is a critical partner of the United States. As you know, the President had an important conversation with President Morsi about the need to protect our embassy and personnel in Cairo, and the need to denounce the violence.

President Morsi expressed his condolences for the tragic loss of American life in Libya and emphasized that Egypt would honor its obligation to ensure the safety of American personnel. The President is very appreciative for the statement President Morsi made and for the actions he's taken to date to secure our Embassy.

This was not an effort to change our relationship with Egypt in any way. We have had a long-standing partnership with Egypt, and have supported their transition to democracy. We are now working to build our relationship with what is obviously a new government.

If Pressed: I'm not here to get into a long exchange about diplomatic terminology. The President has made it clear that Egypt is a close partner of the United States, and that we have expectations that the Egyptian government will meet its obligations to protect our facilities.

Q: Romney's advisor said that these protests wouldn't have happened under President Romney?

Well I'm not here to talk politics. Events abroad are unpredictable. Foreign policy challenges emerge no matter who is President. And I think that people have come to expect steady, statesmanlike leadership from this President on national security, and his response to these protests is no different

Israel / Iran

IRAN

Q: Is there a split between the United States and Israel on redlines? What are the U.S. redlines with Iran?

The President has been clear that he is determined to prevent Iran from acquiring a nuclear weapon and that all options are on the table in pursuit of that goal. We share the same objective as the Israelis, and there is no daylight between us on that matter of stopping Iran from obtaining a nuclear weapon.

The question of when we would consider a resort to military action involves multiple variables and would be shaped by conditions on the ground. We will continue our unprecedented security consultation and cooperation with the Israelis as we move forward.

This President is not going to take military action unless it is absolutely necessary. But I think the Iranians know full well that he is committed to preventing them from obtaining a nuclear weapon.

Q: Did the President rebuff Prime Minister Netanyahu's request for a red line?

The President has always been clear about his red line. He is determined to prevent Iran from acquiring a nuclear weapon and that all options are on the table in pursuit of that goal. We share the same objective as the Israelis, and there is no daylight between us on that matter of stopping Iran from obtaining a nuclear weapon.

Q: Why did the President refuse to meet with Prime Minister Netanyahu at UNGA?

President Obama is in frequent contact with the Prime Minister, as you would expect given his commitment to Israel's security and the range of challenges in the region. And when they need to speak to each other – they do so. We also talk regularly to our Israeli counterparts at all levels of government.

UNCLASSIFIED U.S. Department of State Case No. F-2012-38774 Doc No. C05415285 Date: 04/17/2014
Obtained by Judicial Watch, Inc. via FOIA

Just the other day, when reports of tension came up in the press, the President was able to pick up the phone and call the Prime Minister and speak to him for an hour. They agreed on their commitment to prevent Iran from obtaining a nuclear weapon. And they agreed to stay in close contact in the days to come.

They did look at whether it would be possible to meet. But the fact is, they're just not going to be in New York at the same time – the President will be there at the beginning of the week, Bibi will be there at the end of the week. So their schedules just don't match up.

If pressed: Did he seek a meeting in Washington?

My understanding is there wasn't a request to meet in Washington. What I know is that they're not in New York at the same time during UNGA. I don't have any other scheduling updates, but I am certain that they'll remain in close contact.

From: Vega, Dag

Sent: Friday, September 14, 2012 7:11 PM

To: Rhodes, Benjamin J.; Vietor, Tommy; Plouffe, David; Pfeiffer, Dan; Corney, Jay; Palmieri, Jennifer; Earnest, Joshua R.; Govashiri, Ferial; Ledbetter, Howli J.; Selak, Dawn; Brundage, Daniel; PeltonE@state.gov; Alhassani, Mehdi K.

Subject: PREP CALL with Susan: Saturday at 4:00 pm ET

We plan to hold a call on Saturday at 4:00 PM ET to help prepare Susan for her interviews on the Sunday shows. She will appear on all of them.

Here are the numbers:

Phone Number: 202-395-6392

Access Code: 498-3561

Here are the promos.

NBC MEET THE PRESS

Obama's Foreign Policy Test

The race between President Obama and Governor Romney has entered new territory as the deadly attack on a U.S. consulate and the continuing anti-American protests overseas have forced foreign policy back into the spotlight. How does the Obama administration plan to respond? Plus, is the U.S. still a reliable ally to Israel against Iran? U.S. Ambassador to the United Nations Susan Rice will join us.

ABC THIS WEEK

After four Americans were killed Tuesday, including U.S. ambassador to Libya Christopher Stevens, in an assault on the U.S. consulate in Benghazi, questions remain about what sparked the violence – a controversial anti-Islamic film, or a planned attack by Al Qaeda militants? As American embassies throughout the region remain under fire, did the U.S. do enough to prevent attacks in Libya, Egypt, and Yemen? How will the ongoing protests and violence across the region impact U.S. relations and standing in the Middle East?

U.S. Ambassador to the United Nations Susan Rice speaks to ABC News senior White House correspondent Jake Tapper, Sunday on "This Week."

CBS FACE THE NATION

U.S. Ambassador to the U.N. Susan Rice

The latest on what's happening abroad and what it means for the region and the international community with U.S. Ambassador to the United Nations Susan Rice.

UNCLASSIFIED U.S. Department of State Case No. F-2012-38774 Doc No. C05415285 Date: 04/17/2014
Obtained by Judicial Watch, Inc. via FOIA

FOX NEWS SUNDAY

Anti-US protests are spreading across the Arab world days after a deadly attack on the consulate in Libya. What should the US involvement be in the trouble region? Chris Wallace discusses the situation with Susan Rice, the U.S. Ambassador to the U.N.

UNCLASSIFIED U.S. Department of State Case No. F-2012-38774 Doc No. C05415286 Date: 04/17/2014

Din, Susan W

From: Pelton, Erin
Sent: Saturday, September 15, 2012 2:21 PM
To: Ryu, Rexon Y; Pelofsky, Eric J
Subject: Re: SBU/CLOSEHOLD: 0800 SVTS on Movie Protests/Violence

Please do--I have not reached out.

Best,
Erin

RELEASED IN PART
B1,B5,1.4(G),1.4(D)

From: Ryu, Rexon Y
Sent: Saturday, September 15, 2012 02:15 PM
To: Pelofsky, Eric J; Pelton, Erin
Subject: Re: SBU/CLOSEHOLD: 0800 SVTS on Movie Protests/Violence

I'm going to email Jake on the libya points eric references below unless either of you are linked in to this effort. Pls let me know.

Classified by DAS, A/GIS, DoS 4-17-2014 ~ Class: CONFIDENTIAL ~ Reason: 1.4(B), 1.4(D), 1.4(G), B1 ~ Declassify on: 09/15/2027

From: Pelofsky, Eric J
Sent: Saturday, September 15, 2012 01:23 PM
To: Rice, Susan E (USUN); Ryu, Rexon Y; DiCarlo, Rosemary A (USUN); Ahmed, Salman (USUN); Pelton, Erin
Cc: Rangarajan, Taara A
Subject: SBU/CLOSEHOLD: 0800 SVTS on Movie Protests/Violence

B5

[Redacted]

[Redacted]

1.4(D)
1.4(G)
B1
B5

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

UNCLASSIFIED U.S. Department of State Case No. F-2012-38774 Doc No. C05415286 Date: 04/00/2014

UNCLASSIFIED U.S. Department of State Case No. F-2012-38774 Doc No. C05415286 Date: 04/17/2014
Obtained by Judicial Watch, Inc. via FOIA

B5

[Redacted]

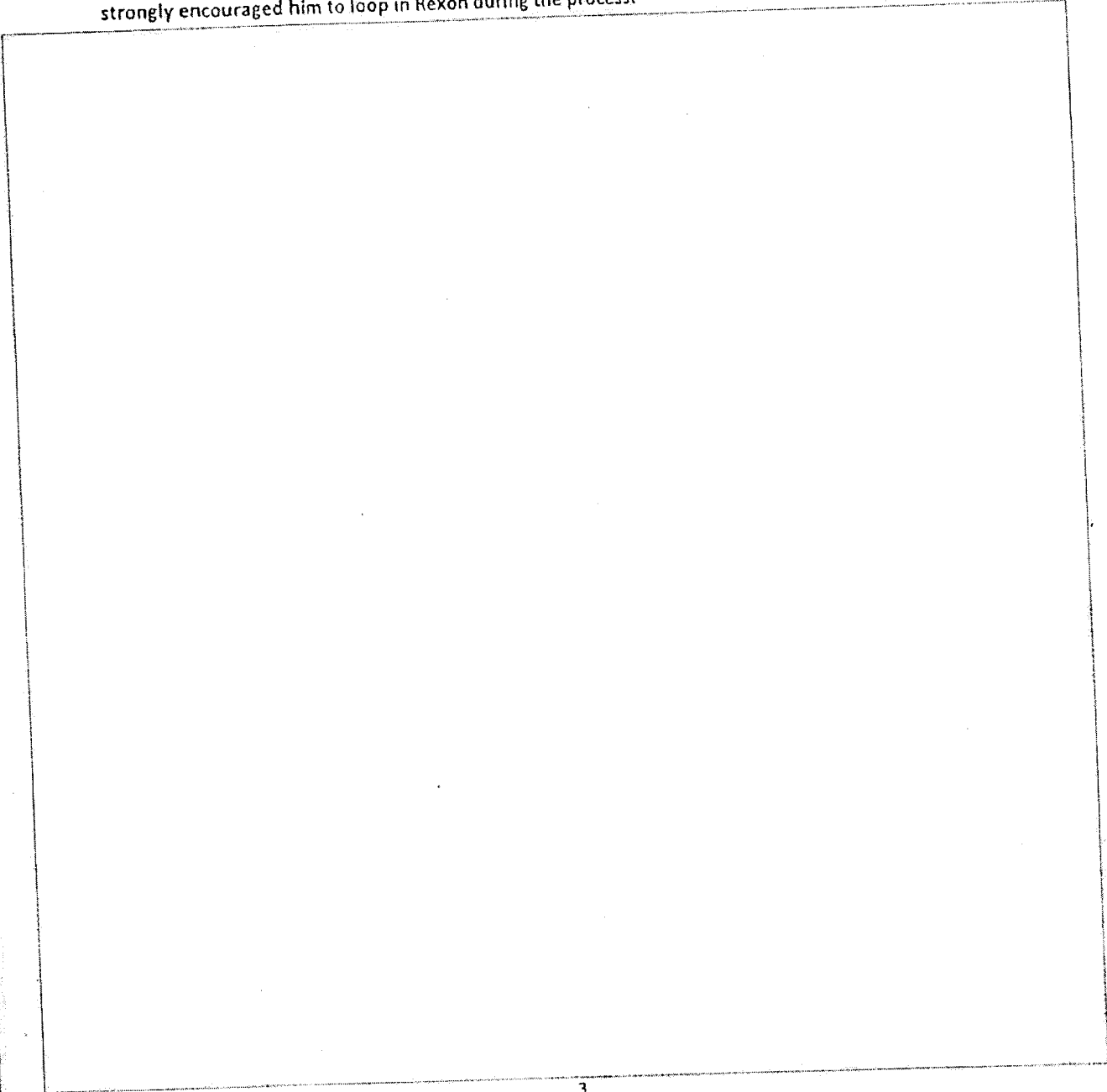
1.4(D)
1.4(G)
B1
B5

Libya:

[Redacted]

1.4(D)
1.4(G)
B1
B5

UNCLASSIFIED U.S. Department of State Case No. F-2012-38774 Doc No. C05415286 Date: 04/17/2014
 HPSCI request. Late this week, CIA Director Petraeus gave the FBI a notes spots briefing and was asked for unclassified talking points that its members could use about incident in Benghazi. (Apparently NCTC Director Matt Olson received a similar committee from a congressional committee.) The first draft apparently seemed unsuitable (based on conversations on the SVTS and afterwards) because they seemed to encourage the reader to infer incorrectly that the CIA had warned about a specific attack on our embassy. On the SVTS, Morell noted that these points were not good and he had taken a heavy editing hand to them. He noted that he would be happy to work with Jake Sullivan and Rhodes to develop appropriate talking points. McDonough, on Rhodes's behalf, deferred to Sullivan. It was agreed that Jake would work closely with the intelligence community (within a small group) to finalize points on Saturday that could be shared with HPSCI. I spoke to Jake immediately after the SVTS and noted that you were doing the Sunday morning shows and would need to be aware of the final posture that these points took. He committed to ensure that we were updated in advance of the Sunday shows. I specifically mentioned Erin Pelton as the one coordinating your preparations for the shows and also strongly encouraged him to loop in Rexon during the process.



B5

UNCLASSIFIED U.S. Department of State Case No. F-2012-38774 Doc No. C05415781 Date: 04/17/2014
Obtained by Judicial Watch, Inc. via FOIA**Din, Susan W**

From: Knopf, Payton L (USUN)
Sent: Wednesday, September 12, 2012 5:42 PM
To: Rice, Susan E (USUN); DiCarlo, Rosemary A (USUN); Ahmed, Salman (USUN); DeLaurentis, Jeffrey A; Pascal, Alexander J (USUN); Pan, Michael (USUN); Ryu, Rexion Y; Pelofsky, Eric J; Singh, Priya (USUN); Rangarajan, Taara A; Finerty, Tressa R (USUN); Ried, Curtis R (USUN)
Cc: Pellon, Erin; Cooper, Kurtis A; McPhillips, Alex (USUN)
Subject: Toria Nuland backgrounder on Libya

RELEASED IN
FULL

Toria Nuland and DoD spokesman George Little did a background briefing for press a few minutes ago. I thought folks might find some of the details interesting—particularly the tick-tock—even if some of it has come via other channels, so a non-verbatim summary is below.

4pm EST: Compound begins taking fire from Libyan extremists. Two buildings on compound: a main building and an annex.

4:15pm EST: Extremists gain access and began firing into main building, setting it on fire. Libyan guard force and US security personnel respond. Three people inside building at that time: RSO, Stevens, and Smith. The three became separated while trying to evacuate due to the smoke. RSO made it outside and then he and security personnel returned to rescue Stevens and Smith. Found Smith dead and pulled him from building; were unable to locate Stevens before they were drawn from building because of smoke and small arms fire.

4:45pm EST: Security personnel again tried to gain access to main building but had to return to annex because of fire.

5:30pm EST: Security personnel made another attempt, gained access, and secured the main building. They evacuated rest of personnel into safe haven zones.

7:00pm EST: Annex came under fire for 2 hours; during that time, 2 additional U.S. personnel were killed and 2 wounded.

8:30pm EST: Libyan security forces were able to assist in regaining control of the compound. At some point (we don't know when), Stevens got out of the building and was taken to the hospital. The body was later returned to U.S. personnel at Benghazi airport.

Q & A: **REVIEW AUTHORITY: Archie Bolster, Senior Reviewer**

--Toria declined to go into details about how Stevens' personal security detail responded because we don't discuss security operations.

--When asked if she could confirm if Stevens was alive when he was left the compound and was taken to the hospital and if the cause of death was smoke inhalation, Toria reiterated that we are not clear on the circumstances between when Stevens was separated from the group inside the building and when we were notified that his body was in a Benghazi hospital. We were not able to see his body until it was returned at the airport. Toria said that we can't comment on the cause of death until an autopsy can be performed.

--Responding to a question about whether it was an organized terror attack, Toria said that she couldn't speak to the identity of the perpetrators but that it was clearly a complex attack. There will be a full investigation with which the FBI is assisting.

UNCLASSIFIED U.S. Department of State Case No. F-2012-38774 Doc No. C05415781 Date: 04/17/2014 000042

UNCLASSIFIED U.S. Department of State Case No. F-2012-38774 Doc No. C05415781 Date: 04/17/2014

that he was brought to the hospital by Libyans who found him. She said no Americans were responsible for taking him to the hospital and no US personnel saw him there.

-When asked when Embassy Cairo issued its statement, Toria said that she could unequivocally say that it was not coordinated with Washington and was therefore taken down. She said that it was her understanding that it was initially issued around noon Cairo time, which was before the protests in Cairo began.

-Responding to a question about whether the attack was linked to the Mohammed video, she said that she could not confirm a connect as we simply don't know—and we won't know until there's an investigation.

-George Little confirmed that Gen. Dempsey spoke to Pastor Jones today and asked him to withdraw his support for the video. Jones was non-committal.

-Responding to a question about when Stevens died, Toria said we don't know. She said that we've seen Libyan reports that he was unconscious when first found, was taken to the hospital, and then later passed.

CLASSIFICATION: UNCLASSIFIED
Page 1 of 2

From: [REDACTED]
Sent: 8/2/2012 8:33:16 AM
To: [REDACTED]
Subject: REQUEST TO ADD LES AMBASSADOR PROTECTIVE DETAIL BODYGUARD POSITIONS IN US EMBASSY TRIPOLI

UNCLASSIFIED
SBU



MRN: 12 TRIPOLI 944
Date/DTG: Aug 02 2012 / 021250Z AUG 12
From: AMEMBASSY TRIPOLI
Action: SECSTATE WASHDC ROUTINE
E.O.: 13526
TAGS: ASEC AMGT AFIN
Captions: SENSITIVE
Reference: 12 TRIPOLI 890
Pass Line: DSHPINEA, NEANSCA, AMEMBASSY TRIPOLI, MGT, FMO
Correction Reason: CORRECTED COPY 2. SUBJECT LINE CORRECTED
Subject: REQUEST TO ADD LES AMBASSADOR PROTECTIVE DETAIL BODYGUARD POSITIONS IN US EMBASSY TRIPOLI

(SBU) Summary and Action Request: Embassy Tripoli requests 11 LES bodyguard positions be added to the current roster of 24 APD members. The augmented roster will fill the vacuum of security personnel currently at Post on TDY status who will be leaving within the next month and will not be replaced. These TDY officers include members of DS MSD, SST, and DS TDY special agents. Due to the level of threat in regards to Crime, Political Violence, and Terrorism, Post feels this is an appropriate number of LES security personnel needed to further Embassy diplomatic outreach missions performed by Foreign Service (FSO) and other USG officers. Post appreciates ongoing efforts by DS to meet and fulfill our security standards. End summary and action request.

(SBU) The security condition in Libya remains unpredictable, volatile, and violent. Though certain goals have been successfully met, such as the national election for a representative Parliament who will draft the new Libyan Constitution, violent security incidents continue to take place due to the lack of a coherent national Libyan security force and the strength of local militias and large numbers of armed groups.

(SBU) Post has made several procedural security and physical upgrades to the interim US Embassy compounds. However, host nation security support is lacking and cannot be depended on to provide a safe and secure environment for the diplomatic mission of outreach performed by FSO and other USG personnel on the ground.

Exhibit 11

CLASSIFICATION: UNCLASSIFIED
Page 1 of 2

000045

CLASSIFICATION: UNCLASSIFIED
Page 1 of 3

From: [REDACTED]
Sent: 7/8/2012 9:15:05 AM
To: evs@STATE.TECS.OPDS
Subject: TRIPOLI - Request for extension of TDY security personnel
Attachments: Metadata

UNCLASSIFIED
SBU



MRN: 12 TRIPOLI 650
Date/DTG: JUL 09, 2012 / 091318Z JUL 12
From: AMEMBASSY TRIPOLI
Action: WASHDC, SECSTATE ROUTINE
E.O.: 13526
TAGS: ASEC AMGT, MARR, LY
Captions: SENSITIVE
References: A) 12 TRIPOLI 551 - INTERIOR MINISTER DISCUSSES BILATERAL RELATIONSHIP AND SECURITY CONCERNS
B) 12 TRIPOLI 522 ? LIBYA'S FRAGILE SECURITY DETERIORATES
C) 12 TRIPOLI 585 ? TRIPOLI - SAC - 08/20/2012
D) 12 TRIPOLI 37 ? TRIPOLI EAC
E) 12 TRIPOLI 512 ? TRIPOLI EAC
F) 12 TRIPOLI 59 ? TRIPOLI EAC
G) 12 TRIPOLI 634 - MISSION LIBYA- UPDATED TRIPWIRE
Subject: TRIPOLI - Request for extension of TDY security personnel

1. (SBU) Summary and Action Request: Embassy Tripoli requests continued TDY security support for an additional 60-days, through mid-September 2012. Post assesses a minimum of 13 TDY U.S. security personnel, either DS MSD, domestically assigned HT trained DS agents, DS SPS, or DOD/SST personnel or a combination of these personnel, are required to maintain current transportation security and incident response capability while we transition to a locally based security support structure. Post also requests continued TDY support of 2 DS agents until the RSO reaches a planned full-time staffing level of five (5) agents. These TDY security needs do not include MSD security personnel involved exclusively in training the local guard force (LGF) and LES close protection team/bodyguards. Post understands and appreciates ongoing efforts by DS to identify and deploy TDY resources to meet our security needs during the next 60-90 days. End summary and action request.

2. (SBU) Conditions in Libya have not met prior benchmarks established by Post, the Department, and AFRICOM, for a complete drawdown of TDY security personnel. Overall security conditions continue to be unpredictable, with large numbers of armed groups and individuals not under control of the central government, and frequent clashes in Tripoli and other major population centers. National parliamentary elections have been delayed from 6/19 to 7/7, with post expecting an increased likelihood of election related political violence during and after the election period.

3. (SBU) While post has made a number of procedural security enhancement and physical security upgrades, our

CLASSIFICATION: UNCLASSIFIED
Page 1 of 3

Exhibit 12

000046

From: [REDACTED]
Sent: 3/28/2012 3:15:03 AM
To: SvcSMART@TSPOPS
Subject: REQUEST FOR DS TDY AND FTE SUPPORT
Attachments: Metadata.txt

UNCLASSIFIED
SBU



MRN: 12 TRIPOLI 13E
Date/DTG: Mar 28, 2012 1250549Z MAR 12
From: AMEMBASSY TRIPOLI
Action: WASHDC, SECSTATE/RODAS
E.O.: 13526
TAGS: ASSEC AMGT, LY
Captions: SENSITIVE
References: M, TRIPOLI/EA
Pass Line: STATE FOR DS/AFIN/EA AND NEA/EX
Correction Reason: CORRECTED COPY. Refel added.
Subject: REQUEST FOR DS TDY AND FTE SUPPORT

1. (SBU) SUMMARY AND ACTION REQUEST: As Tripoli seeks to transition from emergency to normalized security operations, post and the RSO face a considerable workload in a constantly evolving environment. Accomplishment of RSO's core objectives -- essential support for movement security, including continuing high volume of senior-level visits; rebuilding and expanding post's PSA Local Guard Force (LGF); managing major physical security projects; creating a locally engaged bodyguard force; and establishing traditional RSO programs -- requires continued TDY support from the Department, as well as an increase in the number of our permanently assigned RSO staff. In order to transition successfully from the current MSD and SST-based security model to one that incorporates more locally based and non-emergency assets, post requests: 12 TDY DS agents for 45-60 day rotations in Tripoli (to replace our two departing MSD teams); 5 TDY DS agents for 45-60 day rotations in Benghazi; continued deployment of one MSD team through completion of training of our second LES bodyguard team (o/a July 1); one TDY ARSO from April 1 til July 1; and one WAE TDY'er to assist with LGF program development and emergency planning. In addition, post requests an increase in full-time staffing for RSO Tripoli to include: one RSO, one Deputy RSO, and four ARSOs. Post is extremely grateful for the extraordinary support provided by DS as we transition to normalized security operations. End summary and action request.

2. (SBU) As noted in our EAC reports and regular DS spot reports, the security environment in Tripoli remains uncertain and unstable. Although there has been a marked decrease in the number of militia checkpoints around Tripoli, the Transitional National Council (TNC) has not yet succeeded in demobilizing the multiple militias or bringing them into a centralized command and control structure. This uncertain environment is likely to continue through the entire transition cycle, which as outlined in the TNC's constitutional charter, is

Exhibit 13

000047

Gregory Hicks: Benghazi and the Smearing of Chris Stevens - WSJ

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Gregory Hicks: Benghazi and the Smearing of Chris Stevens

Shifting blame to our dead ambassador is wrong on the facts. I know--I was there.

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By GREGORY N. HICKS

Jan. 22, 2014 7:18 p.m. ET

Last week the Senate Select Committee on Intelligence issued its report on the Sept. 11, 2012, terrorist attacks in Benghazi, Libya. The report concluded that the attack, which resulted in the murder of four Americans, was "preventable." Some have been suggesting that the blame for this tragedy lies at least partly with Ambassador Chris Stevens, who was killed in the attack. This is untrue: The blame lies entirely with Washington.

The report states that retired Gen. Carter Ham, then-commander of the U.S. Africa Command (Africom) headquartered in Stuttgart, Germany, twice offered to "sustain" the special forces security team in Tripoli and that Chris twice "declined." Since Chris cannot speak, I want to explain the reasons and timing for his responses to Gen. Ham. As the deputy chief of mission, I was kept informed by Chris or was present throughout the process.

On Aug. 1, 2012, the day after I arrived in Tripoli, Chris invited me to a video conference with Africom to discuss changing the mission of the U.S. Special Forces from protecting the U.S. Embassy and its personnel to training Libyan forces. This change in mission would result in the transfer of authority over the unit in Tripoli from Chris to Gen. Ham. In other words, the special forces would report to the Defense Department, not State.

Chris wanted the decision postponed but could not say so directly. Chris had requested on July 9 by cable that Washington provide a minimum of 13 American security professionals for Libya over and above the diplomatic security complement of eight assigned to Tripoli and Benghazi. On July 11, the Defense Department, apparently in response to Chris's request, offered to extend the special forces mission to protect the U.S. Embassy.

However, on July 13, State Department Undersecretary Patrick Kennedy refused the Defense Department offer and thus Chris's July 9 request. His rationale was that Libyan guards would be hired to take over this responsibility. Because of Mr. Kennedy's refusal, Chris had to use diplomatic language at the video conference, such as expressing "reservations" about the transfer of authority.

Chris's concern was significant. Transferring authority would immediately strip the

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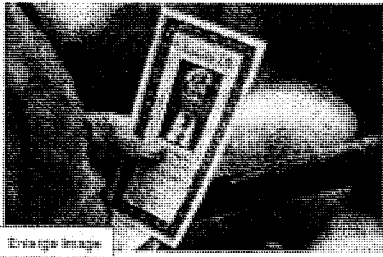
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http://online.wsj.com/news/articles/SB10001424052702304302704579332732276330284

Exhibit 14

000048



At a memorial service for U.S. Ambassador Chris Stevens in San Francisco, Oct. 16, 2012. Reuters

special forces team of its diplomatic immunity. Moreover, the U.S. had no status of forces agreement with Libya. He explained to Rear Adm. Charles J. Leidig that if a member of the special forces team used weapons to protect U.S. facilities, personnel or themselves, he would be subject to Libyan law. The law would be administered by judges appointed to the bench by Moammar Gadhafi or, worse, tribal judges.

Chris described an incident in Pakistan in 2011 when an American security contractor killed Pakistani citizens in self-defense, precipitating a crisis in U.S.-Pakistani relations. He also pointed out that four International Criminal Court staff, who had traveled to Libya in June 2012 to interview Gadhafi's oldest son, Saif al-Islam al-Qadhafi, were illegally detained by tribal authorities under suspicion of spying. This was another risk U.S. military personnel might face.

During that video conference, Chris stressed that the only way to mitigate the risk was to ensure that U.S. military personnel serving in Libya would have diplomatic immunity, which should be done prior to any change of authority.

Chris understood the importance of the special forces team to the security of our embassy personnel. He believed that by explaining his concerns, the Defense Department would postpone the decision so he could have time to work with the Libyan government and get diplomatic immunity for the special forces.

According to the National Defense Authorization Act, the Defense Department needed Chris's concurrence to change the special forces mission. But soon after the Aug. 1 meeting, and as a complete surprise to us at the embassy, Defense Secretary Leon Panetta signed the order without Chris's concurrence.

The Senate Intelligence Committee's report accurately notes that on Aug. 6, after the transfer of authority, two special forces team members in a diplomatic vehicle were forced off the road in Tripoli and attacked. Only because of their courage, skills and training did they escape unharmed. But the incident highlighted the risks associated with having military personnel in Libya unprotected by diplomatic immunity or a status of forces agreement. As a result of this incident, Chris was forced to agree with Gen. Ham's withdrawal of most of the special forces team from Tripoli until the Libyan government formally approved their new training mission and granted them diplomatic immunity.

Because Mr. Kennedy had refused to extend the special forces security mission, State Department protocol required Chris to decline Gen. Ham's two offers to do so, which were made after Aug. 6. I have found the reporting of these so-called offers strange, since my recollection of events is that after the Aug. 6 incident, Gen. Ham wanted to withdraw the entire special forces team from Tripoli until they had Libyan government approval of their new mission and the diplomatic immunity necessary to perform their mission safely. However, Chris convinced Gen. Ham to leave six members of the team in Tripoli.

When I arrived in Tripoli on July 31, we had over 30 security personnel, from the State Department and the U.S. military, assigned to protect the diplomatic mission to Libya. All were under the ambassador's authority. On Sept. 11, we had only nine diplomatic security agents under Chris's authority to protect our diplomatic personnel in Tripoli and Benghazi.

I was interviewed by the Select Committee and its staff, who were professional and

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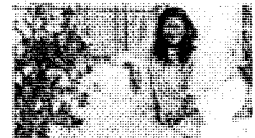
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Gregory Hicks: Benghazi and the Smearing of Chris Stevens – WSJ

thorough. I explained this sequence of events. For some reason, my explanation did not make it into the Senate report.

To sum up: Chris Stevens was not responsible for the reduction in security personnel. His requests for additional security were denied or ignored. Officials at the State and Defense Departments in Washington made the decisions that resulted in reduced security. Sen. Lindsey Graham stated on the Senate floor last week that Chris "was in Benghazi because that is where he was supposed to be doing what America wanted him to do: Try to hold Libya together." He added, "Quit blaming the dead guy."

Mr. Hicks served as Deputy Chief of Mission at the U.S. Embassy in Tripoli from July 31 to Dec. 7, 2012.

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HEARING TO RECEIVE TESTIMONY ON DEPARTMENT OF DEFENSE'S RESPONSE TO THE ATTACK ON U.S. FACILITIES IN BENGHAZI, LIBYA, AND THE FINDINGS OF ITS INTERNAL REVIEW FOLLOWING THE ATTACK

THURSDAY, FEBRUARY 7, 2013

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The committee met, pursuant to notice, at 10:05 a.m. in room SDG-50, Dirksen Senate Office Building, Senator Carl Levin (chairman) presiding.

Committee members present: Senators Levin, Reed, Nelson, McCaskill, Udall, Hagan, Manchin, Shaheen, Gillibrand, Blumenthal, Donnelly, Hirono, Kaine, King, Inhofe, McCain, Chambliss, Wicker, Ayotte, Graham, Vitter, Blunt, Lee, and Cruz.

Committee staff members present: Richard D. DeBobes, staff director; Leah C. Brewer, nominations and hearings clerk; and Barry C. Walker, security officer.

Majority staff members present: Joseph M. Bryan, professional staff member; Jonathan D. Clark, counsel; Richard W. Fieldhouse, professional staff member; Michael J. Kuiken, professional staff member; Peter K. Levine, general counsel; Jason W. Maroney, counsel; Thomas K. McConnell, professional staff member; William G.P. Monahan, counsel; Michael J. Noblet, professional staff member; John H. Quirk V, professional staff member; and Russell L. Shaffer, counsel.

Minority staff members present: Adam J. Barker, professional staff member; Christian D. Brose, professional staff member; Thomas W. Goffus, professional staff member; Anthony J. Lazarski, professional staff member; Daniel A. Lerner, professional staff member; and Lucian L. Niemeyer, professional staff member.

Staff assistants present: Jennifer R. Knowles, Kathleen A. Kulenkampff, Brian F. Sebold, and Lauren M. Gillis.

Committee members' assistants present: Carolyn Chuhta, assistant to Senator Reed; Jeffrey Fatora, assistant to Senator Bill Nelson; Jason Rauch, assistant to Senator McCaskill; Brian Nagle, assistant to Senator Hagan; Mara Boggs, assistant to Senator Manchin; Chad Kreikemeier, assistant to Senator Shaheen; Elana Broitman, assistant to Senator Gillibrand; Ethan Saxon, assistant to Senator Blumenthal; Marta McLellan Ross, assistant to Senator

(1)

Exhibit 15

000052

had that knowledge—and I recognize that is a hypothetical, but if we had that knowledge—what military options would there have been to prevent that loss of life and to stop that attack at the annex?

Secretary PANETTA. Senator, as you said, it's tough to respond to a hypothetical. As long as we're talking about hypotheticals, the best that would have happened here is that we would have had a heads-up and we would have had troops on the ground to protect that facility. That's the best scenario and that's what works the best.

Once an attack takes place, the biggest problem you have is getting accurate information about exactly what is taking place in order to then develop what response you need to do it. You can't just willy-nilly send F-16s there and blow the hell out of a place without knowing what's taking place. You can't send AC-130s there and blow the hell out of a target without knowing what's taking place. You've got to be able to have good information about what is taking place in order to be able to effectively respond.

Senator CRUZ. So in your judgment, if I understand you correctly, the most effective means would have been to have boots on the ground?

Secretary PANETTA. That's correct.

Senator CRUZ. If—and again this is a hypothetical—at 9:42 p.m. you had received a direct order to have boots on the ground to defend our men and women there, what is the absolute fastest that could have been carried out?

General DEMPSEY. Well, based on the posture, our posture at the time, it would have been N plus 6 plus transit time with the closest ground force available. So you're looking at something best case between 13 and 15 hours.

Senator CRUZ. So if I understand your testimony correctly, in your military judgment there was no way conceivably to get troops on the ground sooner than 13 to 15 hours?

General DEMPSEY. That's correct.

Senator CRUZ. How about assets like an AC-130. If you had received an order at the outset to deploy an aircraft like an AC-130, what would have been the absolute fastest it could have arrived at Benghazi?

General DEMPSEY. I don't even know exactly where they were, but I know there were no AC-130s anywhere near North Africa that night.

Senator CRUZ. I'd like to also spend a few moments on the decisionmaking as this crisis unfolded. I take it neither of you received the hypothetical order at any point to get boots on the ground immediately?

Secretary PANETTA. No, that's right.

Senator CRUZ. Now, both of you mentioned that at 5 p.m. D.C. time you met with President Obama for a regularly scheduled meeting, during which you discussed the attack at Benghazi that had happened about an hour and 20 minutes earlier. You said the total meeting lasted roughly 30 minutes. How much of the meeting would you estimate covered Benghazi?

Secretary PANETTA. We teed up that issue when we walked into the Oval Office, so I would say that the first 15 or 20 minutes was

spent on the concern about that, as well as Cairo and what might happen there.

Senator CRUZ. After that 15 or 20 minutes discussion of Benghazi, do I understand your testimony correct that neither of you had any subsequent conversations with the President the rest of that day and that evening?

Secretary PANETTA. We continued to talk. I think we teed up some other issues that we were dealing with at the time to inform the President, and then once that concluded we both went back to the Pentagon and immediately I ordered the deployment of these forces into place.

Senator CRUZ. In between 9:42 p.m. Benghazi time when the first attack started and 5:15 a.m. when Mr. Doherty and Mr. Woods lost their lives, what conversations did either of you have with Secretary Clinton?

Secretary PANETTA. We did not have any conversations with Secretary Clinton.

Senator CRUZ. General Dempsey, the same is true for you?

General DEMPSEY. Yes.

Senator CRUZ. One final question because my time has expired. Senator Lee asked you about securing the compound and noted that it took some 23 days to do so, and I think to the astonishment of many viewers, we had CNN News crews discovering what appeared to be sensitive documents, rather than U.S. forces or law enforcement.

I just want to make sure I understood your answer correctly, in that you said that you were not requested to secure the compound and had you been requested to secure the compound in your judgment the U.S. military could have done so and it could have done so effectively?

Secretary PANETTA. Yes.

Senator CRUZ. Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Cruz.

Senator Hagan.

Senator HAGAN. Thank you, Mr. Chairman.

Secretary Panetta, as I'm sure everybody said, this is your last time before this committee. We certainly want to take an opportunity to thank you for your extraordinary service as Secretary and all the other accolades and services that you have provided to the people of the United States. So I too want to echo my sincere thanks.

General Dempsey, thank you too for your continued service as we go forward.

The September 11 attack drew attention to the use of local militia by the Department of State for protection in Benghazi. On the night of the attack, security consisted of three armed militia members as well as four locally hired unarmed guards and five armed Diplomatic Security agents. I understand that the three militia personnel were members of the February 17th Martyrs Brigade, which is a local militia that participated in the anti-Qaddafi uprising.

Documents recovered from the post indicated that, while the local militias trained with U.S. officials for this role, militia mem-

Defense.gov News Article: Panetta Strongly Condemns Benghazi Attack



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NEWS ARTICLE

Panetta Strongly Condemns Benghazi Attack

By Cheryl Pellerin
American Forces Press Service

WASHINGTON, Sept. 12, 2012 – Defense Secretary Leon E. Panetta condemned yesterday’s attack on the U.S. Consulate in Benghazi in the “strongest possible terms,” a senior government official said today.

“The secretary also extends his deepest sympathies to the families of the victims and to the entire State Department family,” the official said.

Panetta joined President Barack Obama and Secretary Hillary Rodham Clinton in condemning the attacks that killed U.S. Ambassador to Libya J. Christopher Stevens, Foreign Service information management officer Sean Smith and two others whose names are being withheld until State Department officials notify their families. Three other Americans were wounded in the attack.

“The Department of Defense is ready to respond with additional military measures as directed by the president,” the official added.

Army Gen. Carter F. Ham, commander of the U.S. Africa Command based in Stuttgart, Germany, briefed Panetta last night on the situation in Benghazi, the official said. The secretary has since received regular updates.

“DOD is working closely with the White House and the State Department to provide all necessary resources to support the security of U.S. personnel in Libya,” the official said.

“This support includes a Marine Corps fleet antiterrorism security team based out of Europe,” he said, adding that the team’s mission is to secure the U.S. Embassy in Tripoli and protect U.S. citizens.

DOD is also providing support to evacuate American personnel and casualties out of Libya, the official added.

“Those individuals and the remains of our fallen colleagues will arrive, if they haven’t already done so, at Ramstein [Air Base] and Landstuhl [Regional Medical Center] in Germany,” the official said.

This morning, the official said, Army Gen. Martin E. Dempsey, chairman of the Joint Chiefs of Staff, placed a call to Pastor Terry Jones about a film by a U.S. producer that is insulting to the Prophet Mohammed.

Jones, pastor of the fundamentalist Christian Dove World Outreach Center in Gainesville, Fla., is known for his 2010 plan to burn Qur’ans, the scripture of the Islamic religion, on the 10th anniversary of the Sept. 11 attacks. According to news reports, he also supports the recent film.

The film also was reported to have caused protests by angry crowds yesterday at the U.S. Embassy in Cairo.

“I can confirm that the chairman of the Joint Chiefs, Gen. Martin Dempsey, spoke by phone this morning with Pastor Jones,” the official said.

“This was a brief call in which Gen. Dempsey expressed his concerns over the nature of the film, the tensions it could inflame and the violence it could cause, and he asked Mr. Jones to consider withdrawing his support for the film,” he said.

Jones did listen to the chairman’s concerns but was noncommittal, the official said.

Contact Author

Biographies:
Leon E. Panetta
Army Gen. Martin E. Dempsey

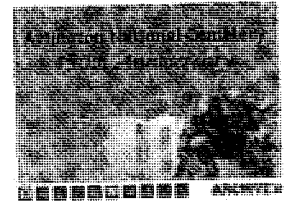
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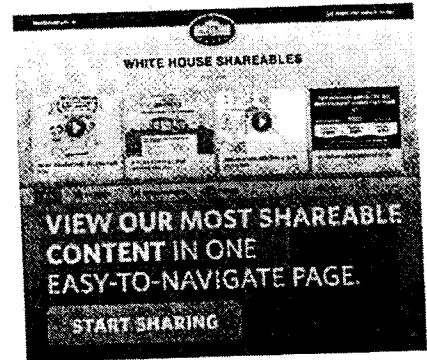
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THE PRESIDENT: Good morning. Every day, all across the world, American diplomats and civilians work tirelessly to advance the interests and values of our nation. Often, they are away from their families. Sometimes, they brave great danger.

Yesterday, four of these extraordinary Americans were killed in an attack on our diplomatic post in Benghazi. Among those killed was our Ambassador, Chris Stevens, as well as Foreign Service Officer Sean Smith. We are still notifying the families of the others who were killed. And today, the American people stand united in holding the families of the four Americans in our thoughts and in our prayers.

The United States condemns in the strongest terms this outrageous and shocking attack. We're working with the government of Libya to secure our diplomats. I've also directed my administration to increase our security at diplomatic posts around the world. And make no mistake, we will work with the Libyan government to bring to justice the killers who attacked our people.

Since our founding, the United States has been a nation that respects all faiths. We reject all efforts to denigrate the religious beliefs of others. But there is absolutely no justification to this type of senseless violence. None. The world must stand together to unequivocally reject these brutal acts.

Already, many Libyans have joined us in doing so, and this attack will not break the bonds between the United States and Libya. Libyan security personnel fought back against the attackers alongside Americans. Libyans helped some of our diplomats find safety, and they carried Ambassador Stevens's body to the hospital, where we tragically learned that he had died.

It's especially tragic that Chris Stevens died in Benghazi because it is a city that he helped to save. At the height of the Libyan revolution, Chris led our diplomatic post in Benghazi. With characteristic skill, courage, and resolve, he built partnerships with Libyan revolutionaries, and helped them as they planned to build a new Libya. When the Qaddafi regime came to an end, Chris was there to serve as our ambassador to the new Libya, and he worked tirelessly to support this young democracy, and I think both Secretary Clinton and I relied deeply on his knowledge of the situation on the ground there. He was a role model to all who worked with him and to the young diplomats who aspire to walk in his footsteps.

Along with his colleagues, Chris died in a country that is still striving to emerge from the recent experience of war. Today, the loss of these four Americans is fresh, but our memories of them linger on. I have no doubt that their legacy will live on through the work that they did far from our shores and in the hearts of those who love them back home.

Of course, yesterday was already a painful day for our nation as we marked the solemn memory of the 9/11 attacks. We mourned with the families who were lost on that day. I visited the graves of troops who made the ultimate sacrifice in Iraq and Afghanistan at the hallowed grounds of Arlington Cemetery, and had the opportunity to say thank you and visit some of our wounded warriors at Walter Reed. And then last night, we learned the news of

<http://www.whitehouse.gov/the-press-office/2012/09/12/remarks-president-deaths-us-embassy-staff-libya>

Exhibit 17

000057

5/30/14, 11:17 AM

Remarks by the President on the Deaths of U.S. Embassy Staff in Libya | The White House

this attack in Benghazi.

As Americans, let us never, ever forget that our freedom is only sustained because there are people who are willing to fight for it, to stand up for it, and in some cases, lay down their lives for it. Our country is only as strong as the character of our people and the service of those both civilian and military who represent us around the globe.

No 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. Today we mourn four more Americans who represent the very best of the United States of America. We will not waver in our commitment to see that justice is done for this terrible act. And make no mistake, justice will be done.

But we also know that the lives these Americans led stand in stark contrast to those of their attackers. These four Americans stood up for freedom and human dignity. They should give every American great pride in the country that they served, and the hope that our flag represents to people around the globe who also yearn to live in freedom and with dignity.

We grieve with their families, but let us carry on their memory, and let us continue their work of seeking a stronger America and a better world for all of our children.

Thank you. May God bless the memory of those we lost and may God bless the United States of America.

END
10:48 A.M. EDT

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Statement on the Attack in Benghazi

Press Statement:

Hillary Rodham Clinton
Secretary of State
Washington, DC
September 11, 2012

I condemn in the strongest terms the attack on our mission in Benghazi today. As we work to secure our personnel and facilities, we have confirmed that one of our State Department officers was killed. We are heartbroken by this terrible loss. Our thoughts and prayers are with his family and those who have suffered in this attack.

This evening, I called Libyan President Magariaf to coordinate additional support to protect Americans in Libya. President Magariaf expressed his condemnation and condolences and pledged his government's full cooperation.

Some have sought to justify this vicious behavior as a response to inflammatory material posted on the Internet. The United States deplores any intentional effort to denigrate the religious beliefs of others. Our commitment to religious tolerance goes back to the very beginning of our nation. But let me be clear: There is never any justification for violent acts of this kind.

In light of the events of today, the United States government is working with partner countries around the world to protect our personnel, our missions, and American citizens worldwide.

PRN: 2012/1421

Exhibit 18

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Office of the Press Secretary

For Immediate Release

September 18, 2012

Press Briefing by Press Secretary Jay Carney, 9/18/2012

James S. Brady Press Briefing Room

11:33 A.M. EDT

MR. CARNEY: Well, hello, ladies and gentlemen. Thanks for being here this morning -- still morning. I appreciate, as ever, you coming to the briefing. I don't have any announcements, so we'll go straight to questions.

Ben.

Q Thanks, Jay. Has the President seen the video that's caused a lot of people to be talking this morning -- the 47 percent video? And if so, what's his reaction to it?

MR. CARNEY: Let me say this. The campaign has put out a statement and I'm sure others from the campaign will be asked about and will address it. So I'll limit what I say in response to questions about it. What I'll say is this: When you're President of the United States you are President of all the people, not just the people who voted for you. You've heard the President say so many times because he deeply believes it that we're in this together, all of us. From the time he began his career in public service, from the time that those of us in this room first heard of him in 2004, his message has been about the fact that what unites us as Americans is far greater than the things that divide us. And that's fundamental to who this President is, and it's fundamental to what guides him as he makes decisions.

When he made the decision against the advice of many to take action to save the auto industry, the President did not ask whether the 1.1 million Americans whose jobs would be saved had voted for him or against him. When he pressed for 18 small business tax cuts he didn't ask if small businessmen and women were Democrat or Republican. When he fought to pass health care reform he didn't wonder whether the 129 million Americans with preexisting conditions who would be helped by this reform, who would be given security through the reform, were likely to be with him or against him in 2012. That's just not how he thinks.

And I think the way you have to approach the job is with a keen understanding that you're out there fighting for every American. And this President's agenda has always been about building the middle class, strengthening the middle class, bringing people up into the middle class. And that's what it will be going forward.

Q Has the President actually watched the video?

MR. CARNEY: I don't -- haven't asked him.

Q One other follow on this. One of the comments from Governor Romney in the fundraiser was that 47 percent who support President Obama believe they are victims. Putting aside just the campaign politics if you need to, does the White House think that that kind of statement has policy implications that would affect how Governor Romney would run the country?

MR. CARNEY: Well, again, setting aside what Governor Romney thinks, I can tell you that the President certainly doesn't think that men and women on Social Security are irresponsible or victims; that students are irresponsible or victims. He certainly doesn't think that middle-class families are paying too little in taxes.

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Press Briefing by Press Secretary Jay Carney, 9/18/2012 | The White House

Q I can read the whole thing for you if you want.

MR. CARNEY: I think the President, then candidate, addressed this at the time -- this was four years ago -- and I think the broader point is that his message there and everywhere in 2008, and going back to 2004, and every day since, has been consistent, which is that we're in this together, all of us, and that his interest is in moving the entire country forward in ways that benefit senior citizens on Social Security, students who are getting student loans, combat veterans -- I mean, combat troops as well as veterans -- everybody in this country is I think working towards the same goal, which is advance moving the country forward.

And the vast majority of people, this President believes, are hardworking, responsible, committed to their families and committed to their country. And that's the animating principle behind his politics and his policies.

Q Will the President mention it in his fundraisers tonight, the Romney remarks?

MR. CARNEY: I don't have any previews for you on the President's remarks.

Q I wanted to go back to the conflict between -- the conflicting reports I guess between the administration and Libyan officials over what happened. On Friday, you seemed to cite that the videos were definitely part of it, but I get the sense that you're backing away from that a little bit today. Is there something that you've learned since?

MR. CARNEY: No, no. I think what I am making clear and what Ambassador Rice made clear on Sunday is that reaction to the video was the precipitating factor in protests in violence across the region. And what I'm also saying is that we have -- we made that assessment based on the evidence that we have, and that includes all the evidence that we have at this time.

I am not, unlike some others, going to prejudge the outcome of an investigation and categorically assert one way or the other what the motivations are or what happened exactly until that investigation is complete. And there are a lot of suppositions based on the number of weapons and other things about what really happened in Benghazi and I'd rather wait, and the President would rather wait, for that investigation to be completed.

Q So you're not ruling out that --

MR. CARNEY: Of course not. I'm not ruling out -- if more information comes to light, that will obviously be a part of the investigation and we'll make it available when appropriate. But at this time, as Ambassador Rice said and as I said, our understanding and our belief based on the information we have is it was the video that caused the unrest in Cairo, and the video and the unrest in Cairo that helped -- that precipitated some of the unrest in Benghazi and elsewhere. What other factors were involved is a matter of investigation.

Q Can you talk a little bit about is this going to prompt any --

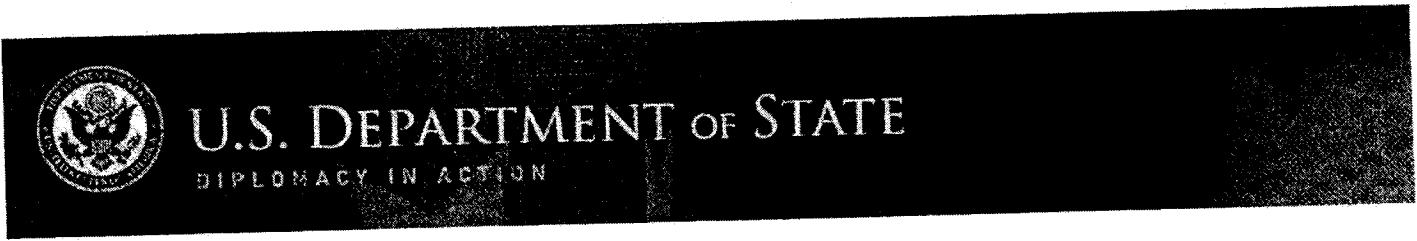
MR. CARNEY: I'd refer you to the FBI for that. I don't keep timelines, FBI timelines at the ready.

Q You mentioned aid with Egypt and working with the Hill. Is this going to prompt any revisions or any review, I guess, of the President's policies toward the Arab Spring?

MR. CARNEY: Look, the President's policy towards the Arab Spring is that we support the democratic aspirations of the people of the region. And the upheavals that you've seen in the region over the past several years have been in reaction to oppressive governments that do not respect the basic rights of their citizens. In cases like in Tunisia and Libya and elsewhere, democratic transitions are underway. They are in early stages, and there is a lot of volatility in these countries -- Egypt as well, of course.

And our policy is geared towards supporting that transition in a way that enhances the prospects of democracy in the region and enhances the prospects that the countries in the region will continue to be -- either will continue to be or will grow to be supportive of the United States and our interests in the region and around the world. And that policy hasn't changed.

Q Jay, there's going to be a lot of attention on the Supreme Court next week because they'll consider taking up several pending marriage cases related to both the Defense of Marriage Act and California's Proposition 8. The Justice Department has already made its views known on the DOMA cases, but given the President's previously supported -- previously stated opposition to Prop 8 and support for marriage equality, does the administration want the Supreme Court to take up the Prop 8 case, making some national ruling on same-sex marriage? Or as claimants in the case have requested, would you prefer that the Court allow the lower court ruling to stand and



Victoria Nuland
Spokesperson
Daily Press Briefing
Washington, DC
September 17, 2012

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Daily Press Briefing – September 17, 2012

MS. NULAND: Yeah. Usually. Usually. Yeah.

Please.

QUESTION: Toria, in Friday's briefing, Friday evening, you essentially stated that all questions concerning any aspect of the Benghazi attack – the circumstances surrounding it, the outcome of it, et cetera – would henceforth be directed by you to the FBI since it's their investigation.

And yet, on five Sunday shows yesterday, Ambassador Rice, who works for the same agency as you, was giving the latest U.S. assessment of how this event unfolded, specifically by saying we don't believe it was premeditated or preplanned, and by saying that those with heavy arms and so forth showed up, in essence, as she put it, to hijack an ongoing demonstration.

So my first question for you is: Given that Ambassador Rice is out there talking publicly about it and not referring Bob Schieffer and Chris Wallace and the rest to the FBI, may we consider that we can again begin asking you questions at this podium about the circumstances of the attack? If it's fair for the Ambassador to discuss it, it should be fair in this room, correct?

MS. NULAND: Well, let me start by reminding you that Ambassador Rice outranks me, as does my own boss, so she is often at liberty to say more than I am. And I guess that's going to continue to be the case.

What I will say, though, is that Ambassador Rice, in her comments on every network over the weekend, was very clear, very precise, about what our initial assessment of what happened is. And this was not just her assessment. It was also an assessment that you've heard in comments coming from the intelligence community, in comments coming from the White House. I don't have anything to give you beyond that.

She also made clear, as I had on Friday, that there is an ongoing FBI investigation. So frankly, I'm not sure that it's useful to go beyond that. I'm not capable of going beyond that, and we'll have to just see what the FBI investigation brings us.

QUESTION: You would acknowledge, however, that the account of the events, the preliminary account of the events that Ambassador Rice offered, diverges starkly from the account offered by the Libyan President, correct?

MS. NULAND: Well, we've heard a number of different things from Libya. I would simply say that what – the comments that Ambassador Rice made accurately reflect our government's initial assessment.

QUESTION: And one last question, if I might, because Ambassador Rice spoke to this. She suggested that there had been an ongoing demonstration outside the Consulate or in the proximity of the Consulate in Benghazi that was, in essence, hijacked by more militant elements who came armed to the affair. I just want to nail this down with you. You are – you stand by this notion that there was, in fact, an ongoing demonstration?

MS. NULAND: I'd simply say that I don't have any information beyond what Ambassador Rice shared with you and that her assessment does reflect our initial assessment as a government.

Please.

QUESTION: The Libyan Interior Minister said today that he dismissed two security officers in relation to the attack on the Consulate in Benghazi. Is this something that you are expecting? Do you think this is a step in the right direction? And do you think that the Libyans should have taken more fully a responsibility for protecting the Embassy in Benghazi? And how close are you in terms of cooperation with the investigation? I mean, what level, I mean?

MS. NULAND: Well, we talked about this a little bit last week, and I'm going to stand by what I said, which is obviously the Libyans are leading an investigation. We have our own FBI investigation. We also have close FBI and Libyan cooperation as we both pursue these. But I'm not going to get into the back and forth of who's arrested, what we think, what we know about any of this. And the investigation is obviously going to lead us to the appropriate conclusions about precisely what happened and how it happened.

QUESTION: Can you confirm at least that there's two security officers have been dismissed because of that?

MS. NULAND: I'm going to refer you to the Libyans, because this appears to be – you're – appear to be giving me backaction that they may have taken.

QUESTION: Do you have confidence in the Libyans' ability to do a prompt and thorough investigation?

MS. NULAND: I would say that we are already working well with the Libyans, as we have throughout this very difficult period. And – but with regard to the precise aspects of how we're cooperating on the investigation, I'm going to send you to the investigating agency.

QUESTION: You've had – there's been other investigations that the Libyans were supposed to have done that they've struggled, I guess, to finish, one being the circumstances of Qadhafi's death, I think, in October. And I think it's 11 months and you guys have no information, if that's correct.

MS. NULAND: I frankly don't know what the status of the Libyan investigation on that is. But with regard to --

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By CBSNEWS / CBS NEWS / September 16, 2012, 2:39 PM

"Face the Nation" transcripts, September 16, 2012: Libyan Pres. Magariaf, Amb. Rice and Sen. McCain



Egyptian protesters tear down the US flag at the US embassy in Cairo on September 11, 2012 during a demonstration against a film deemed offensive to Islam. Thousands of angry Egyptian demonstrators protested against the film made by an Israeli-American who describes Islam as a "cancer" as an armed mob attacked the US mission in Benghazi killing an official. AFP PHOTO/STR (Photo credit should read -AFP/GettyImages)

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(CBS News) Below is a transcript of "Face the Nation" on September 16, 2012, hosted by CBS News' Bob Schieffer. Guests include: Libyan President Mohamed Magariaf, U.N. Ambassador Susan Rice, Senator John McCain, R-Ariz., and a roundtable of Israeli Ambassador Martin Indyk, New York Times Columnist Tom Friedman, and Richard Haass, President of the Council on Foreign Relations.

BOB SCHIEFFER: Today on FACE THE NATION on the anniversary of 9/11, an attack in Libya takes the life of our ambassador there and three other Americans. And a new attack in Afghanistan today leaves four U.S. service members dead.

From CBS News



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Exhibit 21

As the anti-American protests over a U.S.-made anti-Muslim film spread across the Arab world from Africa to Afghanistan to Australia. Here at home, big questions remain about the safety of U.S. personnel overseas. And how all this will affect Campaign 2012. We will cover it all from all sides with the President of Libya's General National Congress Mohamed Yousef Magariaf; U.N. ambassador Susan Rice; and Republican Senator John McCain.

For analyses, we'll look to former U.S. ambassador to Israel, Martin Indyk; the president of the Council on Foreign Relations, Richard Haass; and New York Times columnist Tom Friedman.

Plus, we'll talk to the chief Washington correspondent of The Times, David Sanger; TIME magazine deputy international editor Bobby Ghosh; and CBS News political director, John Dickerson.

This is FACE THE NATION.

ANNOUNCER: From CBS News in Washington, FACE THE NATION with Bob Schieffer.

BOB SCHIEFFER: Good morning again and here is the latest news from overnight. Four American military people have been killed in an attack in Southern Afghanistan. This happened when at least one Afghan police officer opened fire on them at a checkpoint. The State Department has ordered all nonessential U.S. embassy personnel to leave Tunisia and Sudan, and protests against Americans continue in at least twenty countries.

But we're going to start this morning with Libya and the latest on Tuesday's attack. We spoke a little earlier this morning with the president of Libya's National Congress, Mohamed Magariaf. How many people have now been arrested, Mister President?

MOHAMED YOUSEF EL-MAGARIAF (President, Libya's General National Congress): Oh, few scores, I think the number reached about fifty.

BOB SCHIEFFER: About fifty people have been arrested. And who are these people?

MOHAMED YOUSEF EL-MAGARIAF (voice overlapping): Yeah.

BOB SCHIEFFER: You have said that they were connected to al Qaeda. Are they all foreigners?

MOHAMED YOUSEF EL-MAGARIAF: Yes, few of them are.

BOB SCHIEFFER: And who are the others?

MOHAMED YOUSEF EL-MAGARIAF: The others are affiliates and maybe sympathizers.

BOB SCHIEFFER: Where do you think the foreigners are from, Mister President?

MOHAMED YOUSEF EL-MAGARIAF: They entered Libya from different directions and some of them definitely from Mali and Algeria.

BOB SCHIEFFER: You have said that this does not-- this attack did not reflect anti-American feelings by the vast majority of people in your country. Tell us about that.



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MOHAMED YOUSEF EL-MAGARIAF: Yes, these ugly deeds, criminal deeds against direct-- were directed against them, Late Ambassador Chris Stevens and his colleagues do not resemble any way, in any sense, the aspirations, the feelings of Libyans towards the United States and its citizens.

BOB SCHIEFFER: Was this a long-planned attack, as far as you know? Or what-- what do you know about that?

MOHAMED YOUSEF EL-MAGARIAF: The way these perpetrators acted and moved, I think we-- and they're choosing the specific date for this so-called demonstration, I think we have no-- this leaves us with no doubt that this has preplanned, determined-- predetermined.

BOB SCHIEFFER: And you believe that this was the work of al Qaeda and you believe that it was led by foreigners. Is that-- is that what you are telling us?

MOHAMED YOUSEF EL-MAGARIAF: It was planned-- definitely, it was planned by foreigners, by people who-- who entered the country a few months ago, and they were planning this criminal act since their-- since their arrival.

BOB SCHIEFFER: Mister President, is it safe for Americans there now?

MOHAMED YOUSEF EL-MAGARIAF: The security situation is-- is difficult, not only for Americans, even for Libyans themselves. We don't know what-- what are the real intentions of these perpetrators. How they will react? So-- but there is no specific particular concern for danger for Americans or any other foreigners. But situation is not easy--

BOB SCHIEFFER: Mister President.

MOHAMED YOUSEF EL-MAGARIAF: --to keep stability. Yes.

BOB SCHIEFFER: Will it be safe for the FBI investigators from the United States to come in, are you advising them to stay away for a while?

MOHAMED YOUSEF EL-MAGARIAF: Maybe it is better for them to say for a-- for a little while? For a little while, but until we-- we-- we-- we do what we-- we have to do ourselves. But, again, we'll be in need for-- for their presence to help in further investigation. And, I mean any hasty action will-- I think is not welcomed.

BOB SCHIEFFER: I want to thank you very much for joining us this morning. Thank you, Sir.

MOHAMED YOUSEF EL-MAGARIAF: Thank you so much.

BOB SCHIEFFER: And joining us now, Susan Rice, the U.N. ambassador, our U.N. ambassador. Madam Ambassador, he says this is something that has been in the planning stages for months. I understand you have been saying that you think it was spontaneous? Are we not on the same page here?

SUSAN RICE (Ambassador to the United Nations): Bob, let me tell you what we understand to be the assessment at present. First of all, very importantly, as you discussed with the President, there is an investigation that the United States government will launch led by the FBI, that has begun and--

BOB SCHIEFFER (overlapping): But they are not there.

SUSAN RICE: They are not on the ground yet, but they have already begun looking at all sorts of evidence of-- of various sorts already available to them and



to us. And they will get on the ground and continue the investigation. So we'll want to see the results of that investigation to draw any definitive conclusions. But based on the best information we have to date, what our assessment is as of the present is in fact what 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--

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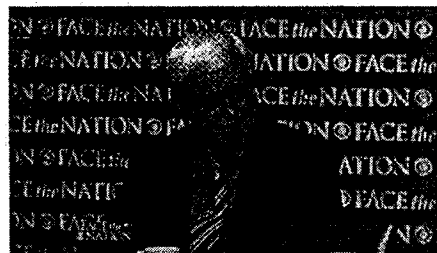
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No protest before Benghazi attack, wounded Libyan guard says

By Nancy A. Youssef and Suliman Ali Zway

McClatchy Newspapers September 13, 2012

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BENGHAZI, Libya — A Libyan security guard who said he was at the U.S. consulate here when it was attacked Tuesday night has provided new evidence that the assault on the compound that left four Americans dead, including the U.S. ambassador to Libya, was a planned attack by armed Islamists and not the outgrowth of a protest over an online video that mocks Islam and its founder, the Prophet Muhammad.

The guard, interviewed Thursday in the hospital where he is being treated for five shrapnel wounds in one leg and two bullet wounds in the other, said that the consulate area was quiet — “there wasn’t a single ant outside,” he said — until about 9:35 p.m., when as many as 125 armed men descended on the compound from all directions.

The men lobbed grenades into the compound, wounding the guard and knocking him to the ground, then stormed through the facility’s main gate, shouting “God is great” and moving to one of the many villas that make up the consulate compound. He said there had been no warning that an attack was imminent.

“Wouldn’t you expect if there were protesters outside that the Americans would leave?” the guard said.

The guard, located by searching hospitals for people injured Tuesday night, said he was 27 years old but declined to give his name. He asked that the hospital where he is being treated not be identified for fear that militants would track him down and kill him. He said he was able to escape by telling one of the attackers that he was only a gardener at the compound. The attacker took him to the hospital, the guard said.

Libyan authorities told reporters Thursday that they had made four arrests in connection with the consulate assault, but they cautioned that leaders of the group blamed for the attack, an Islamist organization known as Ansar al Shariah, denied that they had given the order to attack. But the guard’s tale suggested that whoever ordered the assault had been able to call upon a large number of people to carry out what appeared to be an organized attack.

Wanis al Sharif, the deputy interior minister responsible for Libya’s eastern region, which includes Benghazi, told a group of local reporters that in addition to the four people under arrest, authorities were monitoring others for possible involvement in the attack.

“There is a group under our control, and there is another we are monitoring,” Sharif said.

Exhibit 22

Sharif said that Ansar al Shariah's leaders had suggested that those carrying the group's flag during the assault were rogue members acting on their own.

"They called me and told me you have wronged us," Sharif said. "They told me that there may be individual acts."

Ansar al Shariah – Partisans of Islamic law – which is based in Benghazi, is one of the largest Islamic extremist groups now operating in Libya, according to an analysis published Wednesday by Aaron Zelin of the Washington Institute for Near East Policy.

The shadowy organization is led by Muhammad Zahawi and maintains "online connections" to a similarly named group in Tunisia. A unit, or katiba, based in Derna, an eastern town from which extremists made their way to fight U.S. forces in Iraq, is commanded by a former Guantanamo prison detainee, Abu Sufayan bin Qumu, according to Zelin.

Where Sharif's findings would fit in the U.S. investigation into the death of Ambassador Christopher Stevens and the other Americans remained unclear. But the guard's tale suggests that there were many more than four people involved in the attack.

The attack itself, the guard said, was immediate and bold, initiated by a group of men who approached the compound and lobbed grenades over the wall. Just behind them were scores of men, shooting wildly and yelling "God is great."

The guard, who said he'd been hired seven months ago by a British company to protect the compound, said the first explosion knocked him to the ground, and he was unable to fire his weapon. Four other contracted guards and three members of Libya's 17th of February Brigade, a group formed during the first days of the anti-Gadhafi uprising and now considered part of Libya's military, were protecting the outside perimeter of the compound.

After storming through the gate, the guard said, the men rushed into one of the compound's buildings, meeting no resistance. The guard did not say whether that was the building where the ambassador was.

Thirty minutes later, the guard said, he realized he was about to lose consciousness and asked one of the attackers for help, saying he was merely a gardener at the compound. The man agreed to drive him to the hospital. As they were leaving, the guard said he saw the attackers enter a second villa on the compound.

Stevens and consulate computer expert Sean Smith are believed to have been overcome by smoke in the main consulate building. Two other State Department employees were shot and killed by the invaders at another building on the compound where Americans had sought refuge. The two men, both former Navy SEALs who were working as security contractors, were identified by family members as Glen A. Doherty, 42, a native of Winchester, Mass., and Tyrone Woods, 41, of Imperial Beach, Calif. At least three other embassy employees were wounded.

A Libyan emergency room doctor who treated Stevens said Libyan security guards brought him to the hospital at 1 a.m., his lips black and his body reeking of smoke.

He was officially pronounced dead at 1:45 a.m. from smoke inhalation and carbon monoxide poisoning, but the doctor who tried to revive him, Ziad Bouzaid, 31, said Stevens was dead on arrival. Bouzaid said the body bore no other signs of injury.

The guard's tale is consistent with a version offered Wednesday by the man who had leased the compound to the United States.

Standing outside the fire-gutted compound, Mohammad al Bishari said the attack began with assailants carrying assault rifles, rocket-propelled grenades and the black flag of Ansar al Shariah moving from two directions against the compound.

The FBI has launched its own investigation into what took place, and two American destroyers, the USS Laboon and the USS McFaul, were expected to take up positions by early next off the coast near Benghazi in what many here interpreted as preparations for a possible retaliatory attack. On Wednesday, President Barack Obama promised justice in the case.

Meanwhile, fallout continued Thursday from anger over an online video that Muslims said denigrated their religion.

In Sanaa, Yemen, demonstrators protesting the video tried to storm the U.S. Embassy, making it past an initial security line but failing to make it to any of the main embassy compound buildings. Demonstrators burned tires and spray-painted "Death of America" on the wall surrounding the compound before they were repulsed by Yemeni security forces firing tear gas and warning shots.

No embassy staff was injured, but four demonstrators were killed and as many as 30 others injured.

Yemeni President Abed Rabbo Mansour Hadi quickly condemned the attack and vowed to punish those responsible for it.

Unrest continued as well Thursday in Cairo, where on Tuesday protesters breached the embassy compound's wall and tore down and burned the American flag. Protests continued Thursday, even though Egyptian President Mohammed Morsi, speaking publicly on the attacks for the first time, condemned them.

No one has claimed responsibility for the consulate assault, something that perhaps is unsurprising in this part of Libya, where Stevens was a popular ambassador representing a nation many here believed saved Benghazi from a massacre during the rebellion against toppled Libyan leader Moammar Gadhafi. Gadhafi's tanks were on the edge of the city, preparing to overrun it, when NATO jets began their bombing campaign March 19, 2011.

Indeed, throughout the day Thursday, Libyans nationwide held rallies in support of the ambassador, carrying signs in Arabic and at times broken English offering their support.

"Sorry People of America, this not the Pehavior our Islam and Profit," one read.

A young man in Benghazi carried a sign that read: "Chris Stevens was a friend to all Libyan people"

Zway reported from Benghazi, Libya, and Youssef from Cairo. McClatchy special correspondents Adam Baron from Sanaa, Yemen, and Mel Frykberg from Cairo contributed.

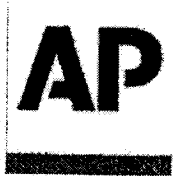
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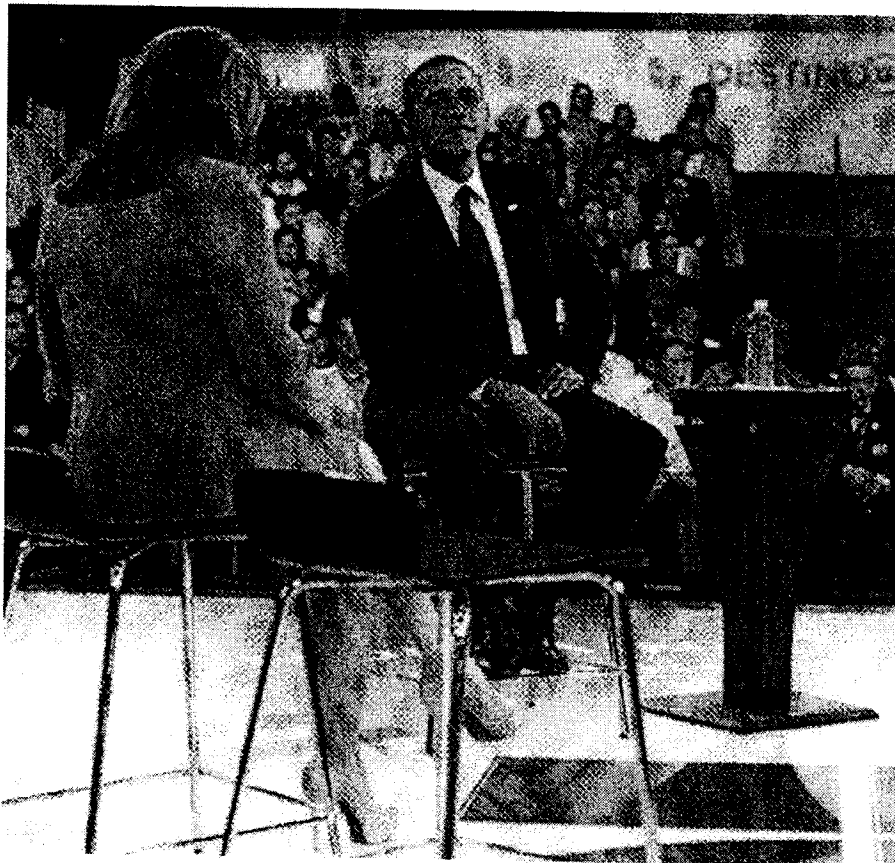
The Big Story

Obama: Extremists used video as 'excuse' to attack

By KEN THOMAS

— Sep. 20, 2012 8:08 PM EDT

Home » United States government » Obama: Extremists used video as 'excuse' to attack



President Barack Obama participates in a town hall hosted by Univision and Univision news anchor Maria Elena Salinas, left, at the University of Miami, Thursday, Sept. 20, 2012, in Coral Gables, Fla. (AP Photo/Carolyn Kaster)

<http://bigstory.ap.org/article/obama-extremists-used-video-excuse-attack>

Exhibit 24

Obama: Extremists used video as 'excuse' to attack

5/30/14, 11:30 AM

MIAMI (AP) — President Barack Obama said Thursday that extremists used an anti-Islam video as an excuse to assault U.S. interests overseas, including an attack on the U.S. Consulate in Libya that killed the U.S. ambassador and three other Americans.

The president's comments came as Secretary of State Hillary Rodham Clinton faced questions from members of the House and Senate about the Sept. 11 attack on the consulate in Benghazi in a series of closed-door classified briefings on Capitol Hill.

Republicans have accused the Obama administration of misreading the assault as the outgrowth of widespread demonstrations in the Middle East over the video. They insisted it was a terrorist attack, a term White House spokesman Jay Carney used on Thursday. Obama did not use the phrase.

"What we do know is that the natural protests that arose because of the outrage over the video were used as an excuse by extremists to see if they can also directly harm U.S. interests," the president said at a candidate forum on the Spanish-language network Univision.

Asked if that meant al-Qaida, Obama said, "We don't know yet."

"We will focus narrowly and forcefully on groups like al-Qaida, the ones that carried out the 9/11 attacks. Those forces have not gone away," the president said.

Clinton also announced that, in line with federal law, she will appoint an independent panel to look at circumstances of the attack in Benghazi that killed Ambassador Chris Stevens and three other employees. The so-called Accountability Review Board will be chaired by retired diplomat Thomas Pickering, she said.

Democrats and Republicans emerging from the briefings provided some details about what the administration is still piecing together — who was responsible, how much of it was planned and what was the security.

Joining Clinton at the back-to-back briefings were Director of National Intelligence James Clapper and Deputy Defense Secretary Ashton Carter.

Rep. Adam Smith of Washington state, the top Democrat on the House Armed Services Committee, said it was "clearly a terrorist attack," but mortars weren't used until six, seven hours into the fight.

"So it seemed like an armed gang that seized an opportunity," Smith said.

Both Smith and Rep. C.A. Dutch Ruppersburger of Maryland, the top Democrat on the House Intelligence Committee, said there was no evidence to suggest that the local Libyans at the consulate colluded with the attackers.

Published reports suggested that Sufyan bin Qumu, a former detainee at the U.S. military prison at Guantanamo Bay, Cuba, who was transferred to Libya in 2007, was involved. Lawmakers asked about Qumu at the briefing.

"But not directly related to the attack, but as someone who's in that region," Smith said. "They're attempting to establish whether or not he was connected to the people who made the attack. He's certainly a person of interest."

Obama: Extremists used video as 'excuse' to attack

5/30/14, 11:30 AM

Investigators have found no evidence or intelligence to suggest Qumu was at the conflict, leading it or organizing it, according to a U.S. official, speaking anonymously because he was not authorized to discuss the investigation publicly.

Senate Republicans expressed frustration with the information provided at the sessions and disputed the administration's assessment.

"There's increasing amount of evidence that this was a coordinated attack by terrorists," said Sen. Marco Rubio, R-Fla., a member of the Foreign Relations Committee. "The movie wasn't the catalyst for this, the catalyst was radical Islamic extremists that wanted to attack the United States and saw an opportunity to do it in Benghazi."

One of the harshest critics of the administration, Sen. John McCain of Arizona, scoffed at the administration's argument that the video set off the assault.

"I'm stunned that they thought this was some kind of spontaneous demonstration," McCain told reporters.

In testimony Wednesday, Matthew Olsen, director of the National Counterterrorism Center, called the incident a "terrorist attack."

Carney echoed that point on Thursday.

"It is, I think, self-evident that what happened in Benghazi was a terrorist attack. Our embassy was attacked violently, and the result was four deaths of American officials," he said.

Associated Press writers Kimberly Dozier and Donna Cassata in Washington contributed to this report.

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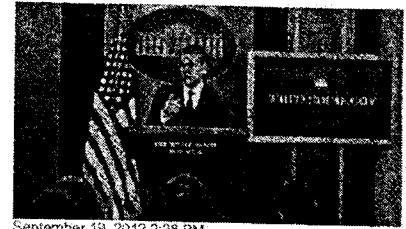
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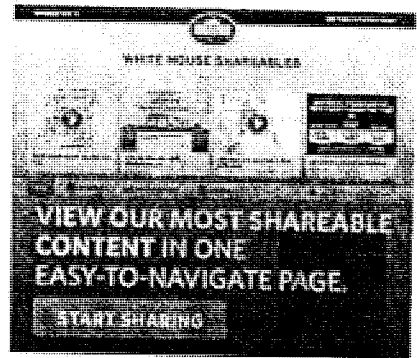
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Press Briefing by Press Secretary Jay Carney, 9/19/12

James S. Brady Press Briefing Room

11:32 A.M. EDT

MR. CARNEY: Hello, everyone. Good afternoon -- or good morning. Thanks for being here. Before I get started, as some of you have seen reported, I can tell you that later this afternoon the President will meet with Aung San Suu Kyi at the White House. The President looks forward to her visit as it provides another opportunity to reaffirm our longstanding support for her struggle, and the struggle of many others towards democratic, just, and transparent governance in Burma.

This is her first trip to the United States in more than 20 years. The President very much looks forward to that visit. That's all I have at the top.

Q What time?

MR. CARNEY: Late afternoon around 5:00 p.m.

Q Will there be a photo spray?

MR. CARNEY: We're still -- press coverage TBD, but we're working on it.

Jim.

Q Thanks, Jay. Two foreign policy issues. Reports that Iran is using Iraqi airspace to deliver weapons to Syria, the issue came up today in the Senate Foreign Relations Committee. What steps is the President prepared to take to prevent Iraq from allowing Iran into its airspace? Any conditions on financial aid or anything like that?

MR. CARNEY: Well, let me just say broadly that we have made clear to countries around the world that we all need to work together to prevent Assad from acquiring weapons that he can use to continue to perpetrate violence against his own people, and that's a message that we carry in conversations with leaders everywhere.

I don't have anything specific for you with regards to Iraq, and I'm not aware of the meeting on the Hill that you referenced. But that is something we're concerned about generally. We've worked very hard with our international partners to cut off access to weapons and financing for Assad, and we continue to do that.

Q On China, Secretary Panetta returned from his trip there, and we quoted that Chinese leaders are expressing concern over our U.S. military shift to the Pacific. Does the White House have any concerns that that, together with the attention that China has been getting in the presidential campaign, is increasing any tensions with the Chinese?

MR. CARNEY: What I said yesterday holds true today, which is that we have a very complex, broad relationship with China that is extremely important. And when we meet with the Chinese at the level of the President and below, we engage with them on all of the issues that are part of our relationship, and that includes areas of disagreement as well as areas of cooperation and agreement. We obviously have an important trade relationship and economic relationship, as well as military-to-military relationship.

We are, as the President made clear on his trip to Asia last fall, a Pacific power. We have a presence there that's

http://www.whitehouse.gov/the-press-office/2012/09/19/press-briefing-press-secretary-jay-carney-91912

Exhibit 25

000075

Q Thank you, Jay. Aside from the FBI investigation, doesn't the White House have its own intelligence that would allow you to say with some degree of certainty that the attack in Benghazi was either a coordinated attack or a spontaneous reaction to the movie?

MR. CARNEY: The White House doesn't have its own intelligence, Dan. The White House has --

Q The White House doesn't have its own intelligence on this? I mean --

MR. CARNEY: Outside of the intelligence community of the United States government?

Q No, outside of the FBI investigation? You don't have --

MR. CARNEY: Are you suggesting that we have a clandestine intelligence operation here in the White House?

Q No. You are able to find out a lot of information on your own, independently. And what I'm saying, in addition to what the FBI is doing, does the White House not have information that it has gathered that will allow --

MR. CARNEY: I think the FBI is leading an investigation that will encompass all of the information available to the White House and to the intelligence community and to the broader diplomatic community. What I can tell you is that, as I said last week, as our Ambassador to the United Nations said on Sunday and as I said the other day, based on what we know now and knew at the time, we have no evidence of a preplanned or premeditated attack. This, however, remains under investigation, and I made that clear last week, and Ambassador Rice made that clear on Sunday. And if more facts come to light that change our assessment of what transpired in Benghazi and why and how, we will welcome those facts and make you aware of them.

But again, based on the information that we had at the time and have to this day, we do not have evidence that it was premeditated. It is a simple fact that there are, in post-revolution, post-war Libya, armed groups, there are bad actors hostile to the government, hostile to the West, hostile to the United States. And as has been the case in other countries in the region, it is certainly conceivable that these groups take advantage of and exploit situations that develop, when they develop, to protest against or attack either Westerners, Americans, Western sites or American sites.

And again, this is something that's under investigation. We have provided you our assessment based on the information we've had as it's become available. As more information becomes available, we will make clear what the investigation has revealed.

Q And another question on Afghanistan. Given some of the developments that we've seen there recently, does the President still believe that Afghan forces are capable of handling their own security and will be able to do so in time for the 2014 deadline?

MR. CARNEY: The President believes that after a decade of war, we can and should pursue a strategy that transitions security authority over to Afghan forces and allows us to end the war in Afghanistan and bring home our men and women in uniform. That process is underway.

We have gotten to this point because the President, having inherited a policy in Afghanistan that was widely viewed as adrift, without a focused mission, under-resourced, he very deliberately, working with his national security team, honed in on what the proper objectives should be in Afghanistan; made clear that our number-one objective in that region was to disrupt, dismantle, and ultimately defeat al Qaeda, and to ensure, in support of that goal, that Afghanistan could not become a safe haven again for al Qaeda or other extremists who have as their objective attacking the United States or U.S. allies.

And the execution of that strategy continues. It led initially to a surge in U.S. forces, which halted the Taliban's momentum; which allowed us to take the fight to al Qaeda in the region in a way that we had not been able to before; that led to the decimation of al Qaeda's leadership, including the elimination of Osama bin Laden; and has now allowed us to draw down the surge forces and to continue the transition to Afghan security forces' responsibility for security of that country.

That process continues, as I said the other day. We are very concerned about the green-on-blue attacks that have been taking place in Afghanistan, the increase in those attacks. And our commanders are taking measures to ensure that there is more security for our troops in Afghanistan. But the process of partnering with and training Afghan security forces continues, and the process of transitioning to Afghan security lead continues. And the President has made clear that the pace -- that the drawdown of U.S. forces will continue. The pace of that will depend on evaluations by and assessments by commanders on the ground. But it will continue, and he remains committed to ending the war in Afghanistan in keeping with the NATO objectives by 2014.

From: [REDACTED]@state.gov

Sent: Tuesday, September 11, 2012 4:05 PM

To: [REDACTED]@state.gov; [REDACTED]@State.gov; [REDACTED]@state.gov; [REDACTED]@State.gov; [REDACTED]@State.gov; [REDACTED]@State.gov; [REDACTED]@State.gov; [REDACTED]@state.gov; [REDACTED]@state.gov; [REDACTED]@state.gov; [REDACTED]@State.gov; [REDACTED]@state.gov; [REDACTED]@state.gov; [REDACTED]@State.gov; [REDACTED]@nss.eop.gov; [REDACTED]@mail.mil; [REDACTED]@state.gov; [REDACTED]@state.gov; [REDACTED]@State.gov; [REDACTED]@State.gov; [REDACTED]@State.gov; [REDACTED]@State.gov; [REDACTED]@State.gov; [REDACTED]@dni.gov; [REDACTED]@pentagon.mil); [REDACTED]@State.gov; [REDACTED]@ic.fbi.gov; [REDACTED]@state.gov; [REDACTED]@state.gov; [REDACTED]@State.gov; [REDACTED]@State.gov; [REDACTED]@State.gov; [REDACTED]@State.gov; [REDACTED]@State.gov; [REDACTED]@State.gov; [REDACTED]@State.gov; [REDACTED]@State.gov; [REDACTED]@State.gov

CC: [REDACTED]@State.gov; [REDACTED]@nss.eop.gov

Subject: U.S. Diplomatic Mission in Benghazi Under Attack (SBU)

(SBU) The Regional Security Officer reports the diplomatic mission is under attack. Embassy Tripoli reports approximately 20 armed people fired shots; explosions have been heard as well. Ambassador Stevens, who is currently in Benghazi, and four COM personnel are in the compound safe haven. The 17th of February militia is providing security support.

The Operations Center will provide updates as available.

Exhibit 26

From: ██████████@state.gov
Sent: Tuesday, September 11, 2012 6:07 PM
To: ██████████; SES_DutyDeputies; S_SpecialAssistants; D(B); D(N); P; Ops_Targeted_Alerts_R_DL; PA FO Group; Operations Center; Ops_Targeted_Alerts_S_ES-O_DL; SES-Line_Only; Ops_Targeted_Alerts_DS_DL; ██████████@nss.eop.gov; ██████████@mail.mil; Benghazi Update; Ops_Targeted_Alerts_CA_DL; C; Ops_Targeted_Alerts_CSO_DL; CT_FrontOffice; D(B)/MET; MDGHR Front Office; DRL-FO-DL; ██████████@ic.fbi.gov; H_SeniorStaff; Ops_Targeted_Alerts_INL_DL; INR-STAFFER; INR-Watch; Legal-Ops-Alert-DL; M_Staff; Ops_Targeted_Alerts_NEA_DL; OBO-Special Assistants-DL; PM-Alerts-DL; NEA-SEMEP-DL; A Front Office
Cc: Ops_Targeted_Alerts_DS_DL; ██████████@nss.eop.gov
Subject: Update 2: Ansar al-Sharia Claims Responsibility for Benghazi Attack (SBU)
Categories: Yellow Category

(SBU) Embassy Tripoli reports the group claimed responsibility on Facebook and Twitter and has called for an attack on Embassy Tripoli.

C05391027 U.S. Department of State - Doc# C05391027 - Produced to HOCR - August 2013

[Redacted]

From: [Redacted]
Sent: Wednesday, September 12, 2012 12:46 PM
To: Nuland, Victoria J; [Redacted] Burns, William J; Sherman, Wendy R; [Redacted] (S); S_SpecialAssistants; Sullivan, Jacob J; Kennedy, Patrick F; Mills, Cheryl D;
Cc: [Redacted] NEA-Staff-Assistants-DL; [Redacted] Maxwell, Raymond D; [Redacted] [Redacted] NEA-LIBYADESK; NEA-DAS-DL; [Redacted] Gordon, Phillip H; [Redacted] Jones, Beth E
Subject: RE: Libya update from Beth Jones
Classification: UNCLASSIFIED
SMARTCategory: Working

From AA/S Jones:

I spoke to Libyan Ambassador Aujali at about 9:45am and told him that we would like him to help ensure that our wounded in the hospital in Tripoli are not disturbed by the investigation that Libyan officials are apparently beginning to conduct. I said we appreciate the Libyan desire to conduct an investigation, but I vehemently stressed the importance of allowing our wounded to recover in peace without the slightest disturbance. I thanked him for the excellent care that [Redacted] told us the wounded are receiving from Libyan doctors.

I also emphasized the importance of Libyan leaders continuing to make strong statements. Aujali noted that his President and Prime Minister had apologized publicly to the American people and the families of the victims. When he said his government suspected that former Qaddafi regime elements carried out the attacks, I told him that the group that conducted the attacks – Ansar Al Sharia – is affiliated with Islamic extremists.

Aujali said the people of Libya are shocked by the attacks and deeply saddened by the loss of Chris Stevens: "He is the man of Libya." He said he fervently hopes that this attack will not affect the relations between our two countries. The Libyans sincerely appreciate what the United States has done and is doing in Libya.

I informed him that it was too dangerous for our personnel to remain in Benghazi and let him know that we have pulled everyone out.

This email is UNCLASSIFIED.

From: Jones, Beth E
Sent: Wednesday, September 12, 2012 9:51 AM
To: Nuland, Victoria J; [Redacted] Burns, William J; Sherman, Wendy R; [Redacted] (S); S_SpecialAssistants; Sullivan, Jacob J; Kennedy, Patrick F; Mills, Cheryl D; [Redacted]
Cc: [Redacted] NEA-Staff-Assistants-DL; [Redacted] Maxwell, Raymond D; [Redacted] [Redacted] NEA-LIBYADESK; NEA-DAS-DL; [Redacted] Gordon, Phillip H; [Redacted]
Subject: RE: Libya update from Beth Jones

Good news: [Redacted] just called to report that our wounded in the hospital in Tripoli are doing much better. Libyan doctors have apparently served them very well so far.

C05391027 U.S. Department of State - Doc# C05391027 - Produced to HOCR - August 2013

[] also said the Libyan PM, Prosecutor General and Attorney General arrived at the hospital this morning (DC time). According to [] source in the hospital – the Embassy nurse – the Libyan officials plan to begin carrying out an investigation about the attack in Benghazi last night. [] said he is headed to the hospital immediately to shield the wounded from any attempts to interview them.

In the meantime, those selected for evacuation are gathering for the ride to the airport

From: Jones, Beth E

Sent: Tuesday, September 11, 2012 6:58 PM

To: Nuland, Victoria J; [] Burns, William J; Sherman, Wendy R; [] (S);

S_SpecialAssistants; Sullivan, Jacob J; Kennedy, Patrick F; Mills, Cheryl D

Cc: [] (@state.gov); NEA-Staff-Assistants-DL; []

[] Maxwell, Raymond D; [] Dibble, Elizabeth L; []

NEA-LIBYADESK; NEA-DAS-DL; [] Gordon, Phillip H; []

Subject: RE: Libya update from Beth Jones

[] just provided the following update about the three Embassy buildings in Tripoli:

- All 33 COM (State) personnel in Tripoli are accounted for and currently they are all at the Residential Compound.
- The [] has approximately 33 people as well, and they are all there.
- No one is currently at the Embassy itself.

I passed on U/S Kennedy's recommendation that the personnel all move together to one compound in Tripoli; [] said that suggestion made good sense and that he would discuss with the COS as to which compound is the most secure.

Other points:

- [] said he has closed the Embassy tomorrow, and no one will travel from the residential compound into town except, as necessary, for him, the RSO and the DATT.
- [] and the RSO held a Town Hall meeting in the last half hour to reassure the Embassy staff; they remain calm and are responding well.
- [] has requested police protection for the Residential Compound and the [] at the moment, the police are protecting the Embassy. He is checking now on what the extra protection situation is with the Residential Compound and the [] [] is in touch with the militias with which it works to ensure extra protection.

In Benghazi:

- [] is working with the COS to make sure he is aware of reports that another mob has gathered in Benghazi headed for the [] They will ensure extra protection there, too.

From: []

Sent: Tuesday, September 11, 2012 5:55 PM

To: [] Nuland, Victoria J; [] Burns, William J; Sherman, Wendy R; []

[] (S); S_SpecialAssistants; Sullivan, Jacob J; Kennedy, Patrick F; Mills, Cheryl D

Cc: [] NEA-Staff-Assistants-DL; []

Maxwell, Raymond D; [] Dibble, Elizabeth L; [] NEA-LIBYADESK; NEA-

DAS-DL; [] Gordon, Phillip H; []

Subject: RE: Libya update from Beth Jones

2

U.S. Department of State - Doc# C05391027 - Produced to HOCR - August 2013

000081

C05391027 U.S. Department of State - Doc# C05391027 - Produced to HOCR - August 2013

I just spoke again to [redacted] who himself spoke again to the offices of the Libyan President and Prime Minister, asking them to provide firefighting equipment to the Benghazi compound. He said the PD shop at Embassy Tripoli has found postings on Facebook indicating that the "Tripoli Council" plans to carry out an attack on Embassy Tripoli. He said he was promised increased police protection but it had not yet materialized.

[redacted] said his team reports that the extremist group Ansar Al Sharia has taken credit for the attack in Benghazi. He heard reports that the February 17 Brigade is currently engaged in a running battle with Ansar Al Sharia; he asked the offices of the President and PM to pursue Ansar al Sharia.

On working to locate Ambassador Stevens, the RSO team and militia are still on compound, which is 50 acres - [redacted] expressed the hope that Ambassador Stevens is in hiding somewhere on the compound. The PO's residence is still on fire.

From: [redacted]
 Sent: Tuesday, September 11, 2012 5:32 PM
 To: Nuland, Victoria J; [redacted] Burns, William J; Sherman, Wendy R; [redacted] (S);
 S_SpecialAssistants; Sullivan, Jacob J; Kennedy, Patrick F; Mills, Cheryl D
 Cc: [redacted] NEA-Staff-Assistants-DL; [redacted]
 Maxwell, Raymond D; [redacted] Dibble, Elizabeth L; [redacted] NEA-LIBYADESK; NEA-
 DAS-DL; [redacted]; Gordon, Phillip H; [redacted]
 Subject: RE: Libya update from Beth Jones

The fighting has stopped, DCM [redacted] just confirmed to me. He also confirmed one fatality [redacted] - a TDY'er from The Hague - has died. His body has been recovered. The five ARSOs are accounted for, but they're still trying to find the Ambassador. The Principal Officer's residence is still on fire with toxic smoke.

I have spoken to A/S Gordon and Liz Dibble is contacting the Charge at The Hague, [redacted] to inform them.

From: Nuland, Victoria J
 Sent: Tuesday, September 11, 2012 5:25 PM
 To: [redacted] Burns, William J; Sherman, Wendy R; [redacted] (S);
 S_SpecialAssistants; Sullivan, Jacob J; Kennedy, Patrick F
 Cc: [redacted] NEA-Staff-Assistants-DL; [redacted];
 Maxwell, Raymond D; [redacted] Dibble, Elizabeth L
 Subject: RE: Libya update from Beth Jones

We just asked NEA for hold lines for press. We are getting besieged.

This email is UNCLASSIFIED.

From: [redacted]
 Sent: Tuesday, September 11, 2012 5:15 PM
 To: [redacted] Burns, William J; Sherman, Wendy R; [redacted] (S); S_SpecialAssistants; Sullivan,
 Jacob J; Nuland, Victoria J; Kennedy, Patrick F
 Cc: [redacted] NEA-Staff-Assistants-DL; [redacted]
 Maxwell, Raymond D; [redacted] Dibble, Elizabeth L
 Subject: RE: Libya update from Beth Jones

+Cheryl Mills

C05391027 U.S. Department of State - Doc# C05391027 - Produced to HOCR - August 2013

From: [redacted]
 Sent: Tuesday, September 11, 2012 5:13 PM
 To: [redacted] Burns, William J; Sherman, Wendy R; [redacted] (S); S_SpecialAssistants; Sullivan, Jacob J; Nuland, Victoria J; Kennedy, Patrick F
 Cc: [redacted] NEA-Staff-Assistants-DL; [redacted] Maxwell, Raymond D; [redacted] Dibble, Elizabeth L
 Subject: RE: Libya update from Beth Jones

Just spoke again with [redacted], who confirmed the party includes Ambassador Stevens plus three, not plus four. [redacted] has been in contact twice with the Libyan President's office and twice with the Libyan PM's office; their offices assured him they are fully engaged and consider themselves personal friends of Ambassador Stevens. [redacted] has been coordinating with the [redacted] who has learned from the QRF about the status of the compound - currently they are clearing the compound and working to access the party.

I also urged Libyan Ambassador to the U.S. Aujali to engage on this immediately at the highest level.

From: [redacted]
 Sent: Tuesday, September 11, 2012 4:49 PM
 To: Burns, William J; Sherman, Wendy R; [redacted] (S); S_SpecialAssistants; Sullivan, Jacob J; Nuland, Victoria J
 Cc: [redacted] NEA-Staff-Assistants-DL; [redacted] Maxwell, Raymond D; [redacted] Dibble, Elizabeth L
 Subject: Libya update from Beth Jones

All:

Beth Jones just spoke with DCM Tripoli [redacted], who advised a Libyan militia (we now know this is the 17th Feb brigade, as requested by Emb office) is responding to the attack on the diplomatic mission in Benghazi. The QRF is in the compound, engaging the attackers, taking fire, and working its way through the compound to get to the villa, where Ambassador Stevens is in safe haven for extraction. The ARSO is also there in the compound. [redacted] spoke with Amb Stevens by phone 20 minutes before my call (which was about ten minutes ago. [redacted] will talk to the Prime Minister's Chief of Staff, and then speak with the Foreign Minister. I have spoken to [redacted] who is also in touch with its QRF contacts to ask for engagement. Embassy is sending medical assistance to Benghazi to be on stand-by.

More updates to follow.

[redacted]

201125781



United States Department of State

Washington, D.C. 20520

SENSITIVE BUT UNCLASSIFIED

December 27, 2011

ACTION MEMO FOR UNDER SECRETARY KENNEDY - M

FROM: NEA – Jeffrey Feltman *JF*

SUBJECT: Future of Operations in Benghazi, Libya

Recommendation 1:

That you approve a continued U.S. presence in Benghazi through the end of calendar year 2012; and that you approve a combined footprint of 35 U.S. government personnel in Benghazi, including eight State Department and USAID and two TDY beds.

Approve *JF* Disapprove _____

Recommendation 2:

That you approve the release of the existing State Department lease in Benghazi on Villa A; and that you approve the retention of Villas B and C for office and residential space for the State Department presence.

Approve *JF* Disapprove _____

Background

The Transitional National Council (TNC) recently declared Libya liberated and moved the center of TNC operations from Benghazi to Tripoli. Chris Stevens, the Department's original Special Envoy to the TNC, has been replaced by Bureau of Political Military Affairs officer Mike Miller, who previously served at Embassy Tripoli. Entry level officer Nathan Tek transitioned to Tripoli in mid-December and USAID has shifted its permanent presence to Tripoli. Because of budget constraints and the reduced footprint, Diplomatic Security's current presence consists of two Special Agents, with an additional three slots currently unfilled.

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Exhibit 28

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With Information Management Officer (IMO)/Management Officer Dana Pierce, the permanent presence in Benghazi is five, down from an approved footprint of 17. The current leases are paid through February 4, 2012, and extendable at our discretion through 2015.

Although our presence in Benghazi has shrunk considerably since the reopening of the Embassy in Tripoli, I would like to maintain a small State-run presence in Benghazi through the end of calendar year 2012, to include the critical summer elections period. Headed by an FS-02 or GS-14 officer, this office would work in close coordination with Tripoli on political and economic reporting, public diplomacy and commercial work in the eastern part of Libya and serve as "host" for the activities of USAID, PM, and any other U.S. government TDY personnel in Benghazi. Because this would be a smaller operation, Benghazi would continue to be supported by one IRM TDYer for communications and management issues and one NEA TDY reporting officer in addition to the TDY head of operations. NEA also would support the continuation of an LES PSA position to provide translation, policy, and administrative support. With the full complement of five Special Agents, our permanent presence would include eight U.S. direct hire employees, two slots for TDY PM and USAID officers, and one LES program assistant.

A continued presence in Benghazi will emphasize U.S. interest in the eastern part of Libya. Many Libyans have said the U.S. presence in Benghazi has a salutary, calming effect on easterners who are fearful that the new focus on Tripoli could once again lead to their neglect and exclusion from reconstruction and wealth distribution and strongly favor a permanent U.S. presence in the form of a full consulate. They feel the United States will help ensure they are dealt with fairly. TNC officials have said some government agencies may shift their headquarters to Benghazi (such as the National Oil Company). Other government agencies and corporations already have their headquarters in Benghazi and will likely remain there for the foreseeable future. The team will be able to monitor political trends (Islamists, tribes, political parties, militias) and public sentiment regarding the "new Libya," as well as report on the critical period leading up to and through Libya's first post-Qadhafi elections. Programmatic benefits to a continued U.S. presence in Benghazi include building on USAID/OTF's programs to strengthen civil society groups, media training, and capacity building in municipal councils. We should continue to engage with the populace, particularly with the large population of Libyan youth, an important and receptive audience with high expectations for the post-revolution period.

SENSITIVE BUT UNCLASSIFIED

SENSITIVE BUT UNCLASSIFIED

Italy, Tunisia, Morocco, Malta, Finland, Turkey, Egypt, Sweden, Sudan, and the Palestinian Authority all have consulates in Benghazi. In informal conversations, representatives of the United Kingdom and French have said their governments would be unlikely to maintain offices there for budgetary reasons. The European Union and the United Nations have not announced whether they will maintain long-term presences in Benghazi.

Facilities

The current Benghazi State platform (Villas A, B, and C) is a 13-acre walled compound with 3.5 villas, office space, and a dining hall. Although all groups have come to the conclusion that co-location is the best and most economical option for continued presence, the State presence cannot be accommodated at the annex, and the current State facility is not large enough to permit co-location. Tripoli Facility Manager George Ibarra recently traveled to Benghazi to study a proposed villa compound (Villa D – see Tab) adjacent to the annex property and determined that the electrical, plumbing and physical security work needed to bring the facility up to an acceptable standard would negate any cost savings of the move.

The current Villa Compound is much larger than we need for the duration of our presence in Benghazi. We currently pay \$70,000/month for the three properties (A - \$28,000/month, B - \$14,000/month, and C - \$28,000/month). NEA proposes to release the Villa A property and use Villa C for residential and Villa B for offices, dining facility, and TDY housing. If you agree with this course of action, NEA will work with DS to rapidly implement a series of corrective security measures as part of the consolidation of the State footprint. We have one-year leases renewable for up to three additional one-year periods on these villas, with an option to terminate without financial penalty after the first six months, with sixty days notice. In order to avoid any additional rent payments on Villa A, NEA proposes to give immediate notice of termination, but would like to retain the leases on Villas B and C through the end of calendar year 2012 or until such time as an appropriate alternate property can be found that would allow for co-location of all U.S. government personnel in Benghazi.

Attachment:

Tab – Benghazi proposal

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Approved: NEA/FO: Jeffrey D. Feltman *JDF*

Drafted: NEA-SCA/EX - Karen Keshap, ~~_____~~

Cleared: *with edits suggested by Am*

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- NEA/MAG: E Sidereas ok
- NEA-SCA/EX: K Hanson ok
- NEA-SCA/EX/PMO: G K Hill ok
- NEA-SCA/EX/Budget: V Lawrence ok
- M: E Dar ok
- OBO/FO: J Hochuli, Acting ok
- DS: G Smith, Acting ok
- RM: K Eisenhardt ok
- A: J Flynn ok
- D(N): S Carl-Yoder ok
- D(B): J Sawyer (info)
- P: C Grantham (info)
- Benghazi: M Miller ok

United Nations

S/2014/106



Security Council

Distr.: General
19 February 2014

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Note by the President of the Security Council

In paragraph 14 (d) of resolution 2095 (2013), the Security Council requested the Panel of Experts established pursuant to resolution 1973 (2011) to provide a final report to the Council with its findings and recommendations.

Accordingly, the President hereby circulates the report dated 15 February 2014 received from the Panel of Experts (see annex).

Exhibit 29



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Summary

The final report of the Panel of Experts established pursuant to Security Council resolution 1973 (2011), and most recently extended pursuant to Security Council resolution 2095 (2013), presents an analysis of the implementation of the measures imposed by resolution 1970 (2011), including the arms embargo, asset freeze and travel ban, and the modifications contained in subsequent resolutions — 1973 (2011), 2009 (2011), 2016 (2011), 2040 (2012) and 2095 (2013) respectively — for the period since its appointment on 3 April 2013 until the date of the present report. The report also outlines the Panel's findings and presents recommendations to the Security Council, the Committee established pursuant to resolution 1970 (2011) and Member States, including Libya, to improve the implementation of the relevant measures. The Panel also seeks to highlight instances of non-compliance based on substantiated data and information obtained.

The Panel's assessment is based on information received from Member States, relevant United Nations bodies, regional organizations and other interested parties during the period under review. The Panel also conducted several assessment trips to Libya, other parts of Africa, Europe and the Middle East during the period, during which it undertook arms inspections, when possible, and met with key stakeholders, including the United Nations Support Mission in Libya. During that time, the Panel visited a total of 15 countries and travelled to Libya nine times.

The consultations held with individuals, regional organizations and relevant United Nations bodies, together with the information received from various Member States, afforded the Panel the opportunity to obtain extensive information in pursuance of its mandate, including the evolution of the political and security context in Libya and its impact on the region.

Implementation of the arms embargo

The proliferation of weapons to and from Libya remains a major challenge for the stability of the country and the region. Despite some positive developments in rebuilding the Libyan security sector, most weapons are still under the control of non-State armed actors and border control systems remain ineffective.

Over the past three years, Libya has become a primary source of illicit weapons. In the course of this mandate, the Panel has continued to investigate leads relating to transfers of such weapons to 14 countries, including several cases that were identified in its previous report. Cases under investigation reflect a highly diversified range of trafficking dynamics, including State-sponsored transfers by air and transfers to terrorist and criminal entities in neighbouring countries by land and sea. This indicates how trafficking from Libya is fuelling conflict and insecurity — including terrorism — on several continents, with different weapons requirements, networks, end users, financing methods and means of transportation. This is unlikely to change in the near future.

In accordance with paragraph 13 of resolution 2009 (2011), several Member States have notified the Committee of transfers of military materiel to the Libyan authorities. While the creation of Libya's Military Procurement Department has been a significant development that has allowed for a more accountable procurement process, the Panel is concerned by a number of outstanding issues. Questions remain

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increased effort by Egypt to track and seize weapons. Some of the weapons from Libya that transited into other areas, including the Sinai Peninsula and the Gaza Strip, included man-portable air defence systems and anti-tank guided missiles. Weapons are smuggled by land and sea into the Sinai Peninsula. Representatives of the Government of Israel claimed that SA-7 man-portable air defence systems had been launched against an Israeli military helicopter from the Sinai Peninsula. Previously, the Israeli military publicly claimed that an SA-7 man-portable air defence system had been fired at one of their aircraft over the Gaza Strip.

163. The 25 January 2014 destruction of an Egyptian military helicopter in the Sinai Peninsula by non-State groups using man-portable air defence systems¹⁶ raises additional concerns about possible weapons proliferation. Recent media coverage of voluntary weapons collections organized locally by communities in both the Sinai Peninsula and the western part of the country¹⁷ and their surrender to the authorities offer further insight into the extent of illicit arms ownership and circulation throughout the country, as well as the significance of Libya as a source of the materiel.

Transfers to the Syrian Arab Republic

164. Libya has been a source of arms for the opposition forces in the Syrian Arab Republic, owing to popular sympathies for the Syrian opposition, large available stockpiles of weapons, the lack of law enforcement and a new generation of domestic arms dealers who appeared during the Libyan uprising. Transfers of arms and ammunition from Libya were among the first batches of weapons and ammunition to reach the Syrian opposition. The Panel's previous report concluded that the Syrian Arab Republic had become a preeminent destination for Libyan weapons and combatants (S/2013/99, para. 158).

165. Military materiel continues to flow from Libya to the Syrian Arab Republic with various modes of financing, transport and actors involved. To investigate the flows, the Panel interviewed numerous knowledgeable sources in Libya, including several Libyan and foreign official sources and Libyan combatants returning from the Syrian Arab Republic. The Panel visited Turkey in November 2013, including Istanbul, Ankara, Gaziantep and the border town of Kilis. The Panel met with representatives of the Government of Turkey, foreign government representatives, members of the Syrian opposition and independent policy analysts. The Panel conducted research in Lebanon and met officials, journalists and other sources.

166. The Panel requested access to the Syrian Arab Republic to discuss arms proliferation from Libya with the authorities and to receive access to materiel that had reportedly been seized from the opposition. The Syrian Arab Republic provided information on weapons and individuals involved in transfers, but has not responded to the visit request. The Panel gathered and analysed information about flight patterns and shipping routes and contacted various Member States.

167. Turkish authorities, Syrian opposition figures and international sources all cited concerns about transfers of weapons to radical armed groups and noted that the

¹⁶ See www.nytimes.com/2014/01/27/world/middleeast/militants-down-egyptian-helicopter-killing-5-soldiers.html?_r=0.

¹⁷ See <http://english.ahram.org/NewsContent/1/0/89279/Egypt/Egypt-army-chief-ElSisi-commends-Matrouh-Bedouins.aspx>.

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The White House
Office of the Press Secretary

For Immediate Release

September 13, 2012

Press Gaggle by Press Secretary Jay Carney -- Golden, CO, 9/13/12

Lions Park/Golden Community Center
Golden, Colorado

10:30 A.M. MDT

MR. CARNEY: Okay, thanks for doing this, this morning, from a spectacular gymnasium. I just wanted to note at the top that the President spoke with the leaders of Libya and Egypt last night. As you know, we put out statements on those productive phone calls that the President had. And beyond that, I think I'll just take -- we can take your questions.

Q Can you respond to the latest outbreak in Yemen? Are you guys concerned about that? And does that add some more pressure to -- where are you on that?

MR. CARNEY: Well, we are doing everything we can to protect the safety and security of our personnel in Yemen. And since the protests began, the Yemeni government has sent additional security forces to our embassy, and Yemen's President Hadi and other senior officials committed to maintain order and protect our personnel and diplomatic facilities.

President Hadi has publicly condemned violence against diplomatic personnel and facilities. The Yemeni government has also made clear that they will not tolerate violence against American personnel and will hold perpetrators accountable for any such actions. Just so you know, all U.S. embassy personnel are safe and accounted for.

I think it's important to note with regards to that protest that there are protests taking place in different countries across the world that are responding to the movie that has circulated on the Internet. As Secretary Clinton said today, the United States government had nothing to do with this movie. We reject its message and its contents. We find it disgusting and reprehensible. America has a history of religious tolerance and respect for religious beliefs that goes back to our nation's founding. We are stronger because we are the home to people of all religions, including millions of Muslims, and we reject the denigration of religion.

We also believe that there is no justification at all for responding to this movie with violence. Muslims in the United States and around the world have spoken out against violence, which has no place in religion and is no way to honor religion. Islam respects the fundamental dignity of human beings, and it violates that dignity to wage attacks on innocents. It is especially wrong for violence to be directed against diplomatic missions. These, after all, are places whose very purpose is peaceful to promote better understanding across countries and cultures. Governments everywhere have a responsibility to protect these places.

Now, we understand that it is hard for some people around the world to understand why the United States does not prevent movies like this from seeing the light of day. But as you know, our country --

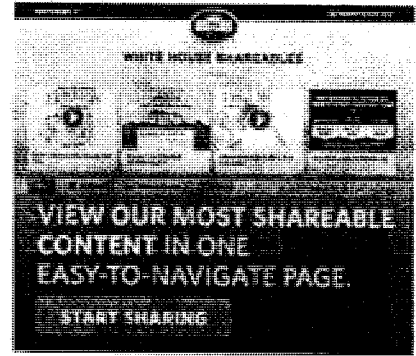
Q Jay, just to be clear, you're still reading --

Q What Clinton --

Exhibit 30

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MR. CARNEY: No, no, I'm sorry, this is me. This is all me. I'm reiterating -- yes, I mean, I'm paraphrasing some of what Clinton said.

Q Reiterating what Clinton said --

MR. CARNEY: No, when I said as Secretary Clinton said -- these are not --

Q -- reprehensible?

MR. CARNEY: Yes, I'm paraphrasing her. The United States had nothing to do with this movie. We rejected -- this is building off of what Secretary Clinton said, but this is not a verbatim quote of her statements.

Q Can you pick it up from "we understand it's hard for some" --

MR. CARNEY: Sure. It is hard for some people around the world to understand why the United States does not prevent movies like this from seeing the light of day. For one, that is impossible in today's world, as you know. But, furthermore, and more importantly, our country has a long tradition of free expression, which is protected by law. Our government does not and cannot stop individual citizens from expressing their views. Those of us who care about religious tolerance and who respect religious beliefs must not allow a tiny minority of people to provoke conflict between different religions, cultures, and countries. All leaders must draw a stark line against violence.

Q Jay, can I ask about Egypt? Is the President considering withholding any aid or putting new strings attached to the aid that's already in place?

MR. CARNEY: No. I think it's important to note, as the readout of the President's call noted, that the -- first of all, that we appreciate the public statements that President Morsi has made condemning acts of violence and emphasizing that Egypt will honor its obligation to ensure the safety of American personnel. The President last night made clear to his counterpart that the United States rejects efforts to denigrate Islam, but underscored that there is never any justification for violence against innocents and acts that endanger American personnel and facilities.

We have an important strategic partnership with Egypt, and that partnership continues. We are focused on assisting Egypt as it -- and the new government there -- as it makes its way in the post-Mubarak era for that country. And we are, as we are around the region, interested in assisting these countries to promote democracy, respect for human rights, and economic development. And that's certainly the case with Egypt.

Q So no thoughts to amending any of that aid?

MR. CARNEY: No.

Q Are you satisfied with the efforts the Egyptian government has taken to protect the U.S. facilities there?

MR. CARNEY: Well, I can tell you that the United States embassy in Cairo is secure and all U.S. government personnel are safe and accounted for. There are protests, small protests, in Cairo continuing, and obviously, we are monitoring that situation closely. And I would note that, again, the protests we're seeing around the region are in reaction to this movie. They are not directly in reaction to any policy of the United States or the government of the United States or the people of the United States.

Any violence associated with the offense taken by the movie, of course, is unjustified, as we've made clear. But we are monitoring the situation and the security of our embassies and our facilities and our personnel around the world. It is important to note that as these protests are taking place in different countries around the world, responding to the movie, that Friday, tomorrow, has historically been a day when there are protests in the Muslim world. And we are watching very closely for developments that could lead to more protests. We anticipate that they may continue.

Q Jay, the President yesterday said that Egypt isn't an ally. Is that a new position, or based on some new evaluation? Can you expand on --

MR. CARNEY: No. The President, in diplomatic and legal terms, was speaking correctly, that we do not have an alliance treaty with Egypt. "Ally" is a legal term of art. As I said, we don't have a mutual defense treaty with Egypt like we do, for example, with our NATO allies. But as the President has said, Egypt is a longstanding and close partner of the United States, and we have built on that foundation by supporting Egypt's transition to democracy and

working with the new government.

Just last night, as you know, the President spoke with President Morsi to review the strategic partnership between the United States and Egypt, while making clear our mutual obligations, including the protection of diplomats and diplomatic facilities.

Q Jay, Republicans are picking up on a column by a Washington Post writer looking at public records that says the President has missed a lot of national security briefings and has not attended one since September 5th. What's your response to that? Is he missing briefings that he should be attending, and what's your response to that?

MR. CARNEY: This line of criticism is based entirely on a fallacy. The President receives the presidential daily briefing every day of the week.

Q I'm sorry, say it again?

MR. CARNEY: He receives a presidential daily briefing, a PDB, every day of the week. He has briefings in person with his national security team most days when he is at the White House. He has extensive conversations with, meetings with and updates from his senior national security team, separate and apart from those specific meetings and from the PDB that's prepared every day for him. And when he is on the road -- as you know, he travels, as is the custom, with senior national security staff and is kept abreast of all the information that is provided in the PDB on a regular basis, and is in regular contact with his senior national security staff in Washington when he's on the road.

I find it -- I think that the President's record, when it comes to acting on -- interpreting correctly and acting on intelligence in the interest of the security of the United States is one that we are happy to have examined and it is one that he takes -- it is a responsibility that he takes enormously seriously.

Q Can I go back to the protests you expect to continue tomorrow in Cairo? Is the U.S. --

MR. CARNEY: Well, I don't know specifically in Cairo. It's just been the tradition -- it has been commonplace through this period for protests to occur in the region, in particular on Fridays.

Q Is the U.S. -- are there any specific precautions that the U.S. is making to prepare for that? How is the President monitoring that? And are we coordinating with President Morsi?

MR. CARNEY: We are, yes, coordinating with governments in the region and making sure that there's a clear understanding about the responsibility of host governments to protect diplomatic facilities and personnel. The President, very early after the incidents occurred in Benghazi and Cairo, directed that security -- precautions be taken to enhance security at embassies and facilities around the world. And that is continuing to take place.

And he is being -- he is very much on top of this. I meant to and neglected to last night read out a briefing he received from his Deputy National Security Advisor Denis McDonough that was focused specifically on developments in the region with regards to the protest, but especially on the progress of efforts underway to enhance security at our facilities.

He will also have a briefing later today with senior members of his national security team from here in Colorado after this event.

Q So was that a phone briefing with Denis?

MR. CARNEY: Yes, it was when we were in the air.

Q Were you able to -- there were reports of one of the third victims, a gentleman from Massachusetts, being identified today. Can you confirm that? And has the fourth victim been identified?

MR. CARNEY: I would refer you to the State Department. I believe that they are handling notifications as well as would be handling any public release of information about the other two victims.

Q Can I change the subject for a minute?

MR. CARNEY: Sure.

Press Gaggle by Press Secretary Jay Carney -- Golden, CO, 9/13/12 | The White House

5/30/14, 11:22 AM

Q The sequester -- you guys have to -- a report that says exactly what you'll do. When will you do that? Is that going to happen tomorrow?

MR. CARNEY: Yes, you can expect that report to be released tomorrow.

Q Then, House Speaker says, we've done our bit, it's up to you guys, you're dragging your feet. Any response to that?

MR. CARNEY: I haven't seen that comment. I find it surprising, since the Budget Control Act -- which majorities of Republicans and Democrats in both houses of Congress supported -- contained within it the direction to Congress to take action to find, through compromise, additional savings of \$1.2 trillion, and if they could not achieve that, then this sequester was the forcing mechanism -- rather, the sequester was the forcing mechanism to make it -- to compel Congress to do its job.

So the Speaker of the House announcing that he has done his job, when in fact Congress has failed to do its job and that is why the sequester still looms out there, is a rather remarkable statement.

There is a simple obstacle to resolving this, and that is the adamant refusal of Republicans in Congress to accept the simple proposition that we need to have a balanced approach to solving our fiscal challenges. They would rather see deep and harmful cuts in our defense spending, deep and harmful cuts in our non-defense discretionary spending, in education, in border security, in assistance to veterans, in research and development. They would rather see all of that than ask millionaires and billionaires to pay a little bit more to, as the President believes, return to the marginal tax rates that were in place for wealthier Americans under President Clinton when this country created more than 23 million jobs and there were many millionaires coined to boot.

So Congress needs to act, and it can act. One thing it could do to deal with the fiscal cliff -- which is a related matter -- tomorrow, if they're actually working tomorrow, which is always a question, but if they were in session, they could -- the House could immediately pass what the Senate passed, which is an extension of the tax cuts for 98 percent of the American people -- 98 percent of the American people.

The remarkable thing about the refusal to do that is that everyone in Washington agrees virtually that those tax cuts should be extended -- Republicans, Democrats, independents, everyone, the President. So let's get that done. And that would address a significant portion of the fiscal cliff. It would create certainty and security for middle-class Americans and businesses. And it would be absolutely the right thing to do. But because of that adamant refusal to simply accept balance, the Republicans have yet to take that simple measure.

Q Jay, I know this is a topic that we've been on before, but Romney is talking about China again today, and he said the President has had the chance year after year to label China a currency manipulator and he hasn't done so.

MR. CARNEY: Look, I think that this President's record when it comes to making sure that American businesses and American workers are competing on a level playing field, specifically with regards to China, is one we're proud of. This President, this administration has taken significantly more actions at the World Trade Organization. And, thus far, every action that we've taken has proved successful -- this President's commitment to both free and fair trade.

And his focus is on ensuring that our businesses and workers are able to compete on a level playing field, because if they do, if they are, he is very confident that we -- the American people and American businesses -- will compete and win in the global economy.

MS. PSAKI: And I can just add one thing on Romney's record on that. In his own book, he questioned the President's -- the actions of the administration and the President to put in place tariffs on Chinese tires, an action that we know and have seen over the last couple of years has been very effective. And so that raises questions about his own judgment on some of these issues.

Q He questioned the wisdom of the tariffs?

MS. PSAKI: Yes. I can get you the piece from the book, too.

Q So that raises questions --

MS. PSAKI: About his own judgment on what's effective.

Press Gaggle by Press Secretary Jay Carney -- Golden, CO, 9/13/12 | The White House

Q Can I just go back to Morsi real quick? It seems clear from the readout of the call that the President is frustrated, or trying to put pressure anyway.

MR. CARNEY: Not at all.

Q No?

MR. CARNEY: Well, he was very clear. I wouldn't say he was frustrated. I was with him when he made the call. It was a long and substantive call. As the readout makes clear, the President reiterated the importance that and the obligation that Egypt, as other countries, has to protect diplomatic personnel and diplomatic facilities. And he appreciated President Morsi's expression of condolences as well as his assertion that he will abide by that commitment.

Q Was there something more specifically that the White House would like to see him do or say?

MR. CARNEY: I believe President Morsi this morning -- well, this morning our time, I'm not sure what time in Egypt -- did make some public statements. That was what I was referring to when I talked about appreciating the public statements that President Morsi has made condemning acts of violence and emphasizing that Egypt will honor its obligation to ensure the safety of American personnel. Those were statements he made this morning.

Q Jay, can I ask you about housing? The President barely mentioned it in his convention speech last week. Yesterday, we were in Las Vegas, a city that's been really hammered by the foreclosure crisis. He made a couple of references to housing, so he expanded on it a little bit. But it's clear it's something that the administration has fallen short on its goals. I mean, I think you guys said you wanted to help 9 million homeowners, and I think about 2 million or so have been helped so far. Why isn't he talking about this more?

MS. PSAKI: Well, I'll start by just saying that Nevada is also the place where Mitt Romney presented his comprehensive plan on housing to let the housing market hit bottom. And in contrast to that, the President has taken a number of steps, including the HAMP program, including the HARP program that have benefited -- I believe have benefited the people of Nevada by -- they've received hundreds of millions of dollars in the state as one of the hardest-hit states across the country.

The President is the first to say that this is an issue where there's more that needs to be done. He has continued to take steps over the course of his presidency to take more steps to improve programs when improvements can be made. And he remains committed to doing that.

At the same time, his view and the view of many economists is the best thing we can do to help the housing market is also to help the economy continue to recover and move that at a faster pace. And there's a number of steps he's proposed to do that as well.

But I will say he spoke about it in Nevada yesterday, as you mentioned, briefly. He spoke about it when he was in Nevada in May. He speaks about it when he's in states where this is an issue that the people of the state are dealing with and confronting, and is happy to put his record and the efforts he's made to improve the housing market up against Mitt Romney's any day of the week.

And, at the end of the day, what we're looking at here is who is going to be more committed to taking the steps needed to continue to help the housing market moving forward. And when you put the President's record, when you put the President's effort up against the Romney/Ryan view of just letting the market hit bottom, that seems like there's a clear choice for the American people and especially the people who have been hit hard by this over the last few years.

Q Why didn't he mention it in the speech last week? I mean, that was sort of his big chance to speak to the American people. And, obviously, housing has been a huge part of the problem over the past four years.

MS. PSAKI: Sure. Look, he speaks about it frequently on the campaign trail. His speech last week was designed to offer to the American people the choice moving forward, bringing that into focus. It didn't mean he spoke about every issue that he was passionate about, every issue that impacts people across this country. And every time he's out on the campaign trail, that's another opportunity for him to do that. And that's one of the reasons you heard him speak to this issue yesterday.

MR. CARNEY: I think it's important to note, too, that the housing market that this President inherited was in collapse and the housing finance system in utter disrepair. And this has been an enormous challenge, as you note. And the variety of efforts the President has taken to address that challenge have assisted millions and millions of

Press Gaggle by Press Secretary Jay Carney -- Golden, CO, 9/13/12 | The White House

5/30/14, 11:22 AM

homeowners. And one that I'd like to point out is through the GSEs and through the FHA, the efforts to allow homeowners to take advantage of historically-low mortgage rates, which he was able to do administratively, which has helped millions of families.

He has called on Congress to pass a universal refinancing initiative, which would allow all homeowners -- responsible homeowners who qualify, even if their mortgages are underwater -- to take advantage of these remarkably low rates, to stabilize their mortgage situation. It would do enormous help to millions of American families and to the overall housing market. And that's another measure that Republicans have refused to pass, which harms no one but the American people.

Q On a somewhat related topic, the Federal Reserve said today that it's going to spend \$40 billion a month to buy mortgage-backed securities to help the economy. Any thoughts on that?

MR. CARNEY: I don't comment on the Fed or Fed actions.

Q And the lady? (Laughter.)

MS. PSAKI: I wouldn't touch that with a 10-foot pole.

Q Has the White House heard from Vice President Xi of China --

MR. CARNEY: I'll have to take that. I'm not sure.

MS. PSAKI: I can add one thing about the remarks. I know I flagged for you guys this morning it will have a similar tone and content to yesterday. He'll start out with a topper on the events in Libya, reiterating his commitment to protecting all Americans who are serving abroad, acknowledging how difficult it is for everyone to see disturbing images on TV as they have over the last 24 hours, reminding the American people that together we can meet these challenges. So you should expect to hear that from him when he speaks shortly.

Q Thank you.

MR. CARNEY: Thank you all very much.

END
10:55 A.M. MDT

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The White House
Office of the Press Secretary

For Immediate Release

September 14, 2012

Press Briefing by Press Secretary Jay Carney, 9/14/2012

James S. Brady Press Briefing Room

11:42 A.M. EDT

MR. CARNEY: All right, good afternoon, ladies and gentlemen. Thanks for being here.

Before I get started, I think you saw our updated guidance. As you now know, the President and the First Lady will be attending the transfer of remains ceremony at Andrews -- Joint Base Andrews at 2:15 p.m. That is for the four U.S. personnel who were killed in Libya. And then he will return here to the White House. And there will be press coverage, pool coverage.

Q Secretary Clinton will be joining the President?

MR. CARNEY: I believe that's the case. I would refer you to the State Department.

Q Any remarks out there?

MR. CARNEY: Yes, the President will have remarks.

And with that, I'll take your questions.

Q Jay, thanks very much. On the Libya attacks, was there any intelligence in advance that some kind of attack could take place, especially because so many embassies were taking precautions because of 9/11? Was there any advance warning at all?

MR. CARNEY: I have seen that report, and the story is absolutely wrong. We were not aware of any actionable intelligence indicating that an attack on the U.S. mission in Benghazi was planned or imminent. That report is false.

Q On the sequestration, I know you all are delivering the report today. Is there any reason that you didn't deliver it last week as the law required?

MR. CARNEY: I think I took this question last week and explained that it's obviously a complex piece of business and that we would have it by the end of this week, and we are releasing it later today.

Q Jay, as you know, the unrest in the Middle East is spreading to other embassies -- U.S. embassies. The President's critics are saying this is an indictment of his handling of the Arab Spring, that this has given rise to further inflamed sentiment among Islamists. What's his response to that?

MR. CARNEY: Let me say a couple of things. First of all, we are obviously closely monitoring developments in the region today. You saw that following the incidents in response to this video, the President directed the administration to take a number of steps to prepare for continued unrest. And I noted yesterday in my gaggle that Fridays have tended to be days when protests are larger in the Muslim world, and we were anticipating that.

When it comes to criticism, I would note that many observers, commentators, foreign policy experts, as well as elected officials -- both Democrats and Republicans -- have pointed out that the criticism in particular from Governor

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Romney and his team, in what seems to be an attempt to score a political point, has been both factually wrong and poorly timed.

Now is a time when Americans should be coming together. The President is attending a ceremony this afternoon for the return of remains of four U.S. personnel who were killed in Libya as a result of this unrest. And his focus is on ensuring that U.S. personnel and our facilities are protected. That is why he directed his administration to ensure that security would be enhanced around the world at our diplomatic facilities.

He has, as you know, because we've read out these phone calls, had numerous conversations with leaders in the region including the Presidents of Egypt and Libya. He sent a message, a personal message to the leader of Turkey, Prime Minister Erdogan, asking for his assistance to speak out against the violence. And I think you saw that the Prime Minister did that. And the President is very appreciative of these statements and the actions these leaders have taken personally.

President Morsi again today as well as yesterday has spoken out against any violence and committed himself to protecting U.S. diplomatic facilities and personnel in Egypt.

We also need to understand that this is a fairly volatile situation and it is in response not to United States policy, not to obviously the administration, not to the American people. It is in response to a video, a film that we have judged to be reprehensible and disgusting. That in no way justifies any violent reaction to it, but this is not a case of protests directed at the United States writ large or at U.S. policy. This is in response to a video that is offensive to Muslims.

Again, this is not in any way justifying violence, and we've spoken very clearly out against that and condemned it. And the President is making sure in his conversations with leaders around the region that they are committed, as hosts to diplomatic facilities, to protect both personnel and buildings and other facilities that are part of the U.S. representation in those countries.

Q Let me just follow up on the sequestration as well. Members of Congress are pointing to the fact that the report that you're due to release today could spotlight the loss of numerous jobs, many of them in defense, criticizing the administration for allowing that to potentially happening and potentially weakening U.S. national security as a result. What's your response to that?

MR. CARNEY: I think it's important to step back and look at what the sequester is. The sequester was put into place as part of the Budget Control Act in order to compel Congress to do its job. The sequester was designed to be bad policy, to be onerous, to be objectionable to both Democrats and Republicans. And it is important to remember that Democrats and Republicans voted in majorities in both houses of Congress in support of this. And some Republican leaders who are now decrying the sequester were very vocal in their support of it as part of this package, the Budget Control Act, last year.

The whole point of it was to compel Congress to take action to further reduce our deficit, to find \$1.2 trillion in additional cuts -- cuts that should come in a balanced, thoughtful way through policy decisions and not in a kind of across-the-board draconian manner that is written into the sequester.

What has been an obstacle to the achievement of reasonable cuts that would account for the \$1.2 trillion called for in the Budget Control Act has been the adamant refusal of Republicans to accept the fundamental principle that we ought to deal with our fiscal challenges in a balanced way. Republicans have, unfortunately, made clear that they would rather see cuts in defense that could harm our national security, cuts in education and innovation, research and development, in border security, cuts in vital programs and investments that we make as a nation, rather than ask millionaires and billionaires to pay a single dollar more in taxes.

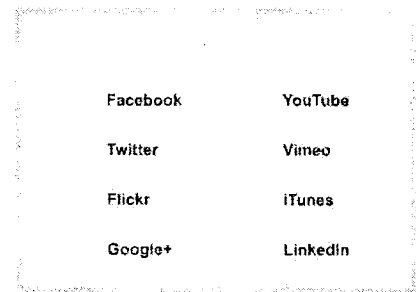
That's not a responsible approach. It is not a common-sense approach. It is not a balanced approach. One thing that the House could do in its few days here in Washington before it goes off again on recess is follow the Senate's lead and pass a tax cut -- an extension of a tax cut or tax cuts -- for the middle class, 98 percent of the American people. These are tax cuts that everybody in Washington agrees on -- Democrats, Republicans, independents. The President agrees with them. Republicans say they want those tax cuts extended. Why won't they pass them? Because they insist that millionaires and billionaires need a tax cut, too.

The President believes we can't afford that. And we can argue about that, we can argue about whether or not the top 2 percent of taxpayers in America deserve another tax cut as part of the election, and then that can be decided by the election.

But why not, for the sake of the middle class, for the sake of economic stability, for the sake of dealing with a large

consumption constant. These developments have had substantial economic and energy security benefits, and they are helping to reduce carbon emissions in the energy sector and thereby tackle the challenge posed by climate change.

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portion of the fiscal cliff, pass the tax cut for 98 percent of the American people today? That would be a very welcome sign I think to the American people that Congress is taking its responsibility seriously and Congress is addressing these challenges in a thoughtful and bipartisan and balanced way.

Jake.

Q My colleague from the Associated Press asked you a direct question, was there any intelligence suggesting that there would be an attack on the U.S. consulates. You said that a story -- referred to a story being false and said there was no actionable intelligence. But you didn't answer his question. Was there any intelligence, period -- intelligence, period -- suggesting that there was going to be an attack on either the embassy --

MR. CARNEY: There was no intelligence that in any way could have been acted on to prevent these attacks. It is -- I mean, I think the DNI spokesman was very declarative about this that the report is false. The report suggested that there was intelligence that was available prior to this that led us to believe that this facility would be attacked, and that is false.

Q Why was there not adequate security around Ambassador Stevens?

MR. CARNEY: In terms of the security at the Benghazi facility or post, I would have to refer you to the State Department for specifics about what security was there. There was a security presence. It was unfortunately not enough to resist the attacks that we saw and resulted in the tragic loss of life. But there was security.

It is also the case that in reaction to this the President has ordered that we review all of our security arrangements for embassy facilities and other diplomatic facilities around the world. But in terms of the specific security that was in place at Benghazi, I'd have to refer you to the State Department.

Q Wouldn't it seem logical that the anniversary of 9/11 would be a time that you would want to have extra security around diplomats and military posts?

MR. CARNEY: Well, as you know, we are very vigilant around anniversaries like 9/11. The President is always briefed and brought up to speed on all the precautions being taken. But let's be --

Q But saying you're very vigilant and being very vigilant are different things.

MR. CARNEY: Jake, let's be clear, these protests were in reaction to a video that had spread to the region --

Q At Benghazi? What happened at Benghazi --

MR. CARNEY: We certainly don't know. We don't know otherwise. We have no information to suggest that it was a preplanned attack. The unrest we've seen around the region has been in reaction to a video that Muslims, many Muslims find offensive. And while the violence is reprehensible and unjustified, it is not a reaction to the 9/11 anniversary that we know of, or to U.S. policy.

Q But the group around the Benghazi post was well armed. It was a well-coordinated attack. Do you think it was a spontaneous protest against a movie?

MR. CARNEY: Look, this is obviously under investigation, and I don't have --

Q But your operating assumption is that that was in response to the video, in Benghazi? I just want to clear that up. That's the framework? That's the operating assumption?

MR. CARNEY: Look, it's not an assumption --

Q Because there are administration officials who don't -- who dispute that, who say that it looks like this was something other than a protest.

MR. CARNEY: I think there has been news reports on this, Jake, even in the press, which some of it has been speculative. What I'm telling you is this is under investigation. The unrest around the region has been in response to this video. We do not, at this moment, have information to suggest or to tell you that would indicate that any of this unrest was preplanned.

What is true about Libya is that -- well, a couple of things. One, is it's one of the more pro-American countries in the

region. Two, it is a very new government; it is a country that has just come out of a revolution and a lot of turmoil, and there are certainly a lot of armed groups. So the fact that there are weapons in the region and the new government is not -- is still building up its capacities in terms of security and its ability to ensure the security of facilities, is not necessarily reflective of anything except for the remarkable transformation that's been going on in the region.

Q Jay, my last question. It was said that what happened on 9/11 was a failure of imagination, failure of American policymakers and counterterrorism officials to anticipate the kind of attack that could have taken place. This would seem to be the exact opposite. Was this a failure by the Obama administration? Did the President and his administration mess up in any way?

MR. CARNEY: Jake, again, what we have seen is unrest around the region in response to a video that Muslims find offensive, many Muslims find offensive. We have seen incidents like this in the past, in reaction to other actions -- cartoons and other actions that have been taken, that have been -- have led to protests and violence in the region. And we have managed those situations, and we are working to ensure that our diplomatic personnel and our diplomatic facilities are secure as we deal with the response to this video, which we believe is offensive and disgusting.

Q So that's a no? Entirely the fault of the filmmaker?

MR. CARNEY: Again, I don't think -- I think you have to understand what is happening currently in the region and what it is a response to. This is not -- this has been in --

Q I don't think I need to understand that. I think the people who protect the embassies need to understand it.

MR. CARNEY: The cause of the unrest was a video, and that continues today, as you know, as we anticipated. And it may continue for some time. We are working with governments around the region to remind them of their responsibilities to provide security to diplomatic personnel and facilities, and we are ensuring that more resources are put in place to protect our embassies and consulates and our personnel in these parts of the world where unrest is occurring.

Q Thank you.

Q You've mentioned a number of times now that this was in response to a video or a film. Would you not agree, though, that it's moved beyond that? That some are stirring violence by focusing on U.S. policy, or targeting the U.S. in general? That it's no longer just about the film?

MR. CARNEY: Well, the reason why there is unrest is because of the film; this is in response to the film. I don't doubt --

Q Well, that's what sparked it. You think that's what sparked it.

MR. CARNEY: We do think that's what sparked it.

Q Right. But it's moved beyond that, hasn't it?

MR. CARNEY: Well, I don't -- we obviously are not polling protesters to find out what their motivations are. There is no question that there's anti-American sentiment in various countries around the Middle East; that's not a discovery I think we've made today. What is the case is that the protesters in these countries are not representative of the broader sentiment in those countries, at least in the sense that -- sentiment that would say that the reaction, the proper reaction to a film that is offensive is violence. As I said yesterday, that's not in keeping with Islam, and it's certainly something that we do not accept. And we have made clear to leaders in the region that they need to make clear that it is not an acceptable reaction to a film, however offensive it might be.

Again, this is not a film that the United States government had anything to do with. We reject its message and its contents. We find it both disgusting and reprehensible. America has a history of religious tolerance and respect for religious beliefs, and that history goes back to our nation's founding. But there is absolutely -- as I've said, absolutely no justification at all for responding to this movie with violence, and we are making -- we are working, rather, to make sure that Muslims around the globe hear that message.

Q It's my understanding that at least four people have been arrested in the death of the Americans. Does the President think that whoever is arrested for this violence should be tried here in the U.S.?

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MR. CARNEY: This is an ongoing investigation. We're obviously working with our -- with the Libyan government on this matter. The President has made clear that he wants the assailants, the attackers to be brought to justice. But I am not going to prejudge outcomes or courses of action as this investigation is underway.

Q And then another question on the phone call that the President had with Benjamin Netanyahu. Is it correct that the President refused to lay down a red line in terms of what Iran shouldn't cross with its nuclear program?

MR. CARNEY: This has been an ongoing discussion in the press that's not specific to the phone call -- the one of many that the President has had with Prime Minister Netanyahu. The President's red line has been clear. The President has made clear that he is committed to preventing Iran from acquiring a nuclear weapon. We are completely in sync with Israel on that matter. There is no daylight between the United States and Israel when it comes to the absolute commitment to preventing Iran from acquiring a nuclear weapon.

We are pursuing a policy that includes incredibly intense punitive sanctions, unprecedented in history against Iran, of sanctions that are in place as a result of diplomatic work that has created an international consensus that did not exist prior to President Obama taking office and that has resulted, again, in unprecedented pressure and isolation for the regime in Tehran.

There is still time and space for that course to be pursued, because the best way to ensure that Iran does not have a nuclear weapon, does not acquire a nuclear weapon is to force and compel Iran to make the decision that it needs to forego its nuclear weapons ambitions, get right with the world, abide by its international obligations under the United Nations, and rejoin the community of nations by doing so.

It is also the case that this President has made absolutely clear that he does not remove any option from the table in terms of fulfilling his commitment to prevent Iran from acquiring a nuclear weapon. And we've also made clear that the window of opportunity here in terms of pursuing the diplomatic course will not remain open indefinitely.

What is a fact is that we have eyes onto the Iranian nuclear program and we would be aware of any so-called breakout move by the Iranians towards building a nuclear weapon. That has not occurred, but that window of opportunity will close at some point. And Iran needs to take seriously its responsibilities and to forego and forsake its nuclear weapons ambitions.

Nancy.

Q I want to go back to Jake's question for a minute because it seems like the point he's asking is not what the cause of the unrest was, but whether there are lessons to be learned by this administration or by the State Department, or by the military about safeguarding diplomatic personnel or restricting their movements, especially in a country as volatile as Libya.

MR. CARNEY: Well, this is under active investigation and it's certainly a reasonable question. And it stands to reason that there may be lessons learned, as there always are when you have investigations into incidents like this.

My point was simply that we are responding to and coping with and dealing with, with countries around the globe, unrest brought about by this offensive video, and taking action to ensure that security is enhanced and augmented at diplomatic facilities around the globe.

Q On Egypt, can you clear up whether the country is an ally or not? The State Department says it is; the President says it's not an ally, but it's not an enemy.

MR. CARNEY: I think you may have heard me, anyway, address this yesterday. Let me be clear: Egypt is a critical, strategic partner of the United States. As you know, the President had an important conversation with President Morsi very early yesterday morning, very late at night in Colorado, about the need to protect our embassy and our personnel in Cairo, and the need to denounce the violence.

President Morsi expressed his condolences for the tragic loss of American life in Libya, and emphasized that Egypt would honor its obligation to ensure the safety of American personnel. The President is very appreciative of the statement President Morsi made and for the actions he has taken to date to secure our embassy.

Let me make clear that the President's interview with Telemundo was not in any way an effort to change our relationship with Egypt. We have had a longstanding partnership with Egypt and have supported their transition to democracy, and we are now working to build our relationship with what is obviously a new government.

Q We were told that the President was blunt and perturbed in that conversation with President Morsi. What was he concerned specifically about when it comes to the way that President Morsi handled the early hours of this unrest?

MR. CARNEY: The President was very clear with President Morsi about Egypt's responsibilities as a host nation to provide security to diplomatic facilities and diplomatic personnel. And it was a very productive conversation, as I said yesterday, and it was substantive and long. I wouldn't necessarily use the adjectives you did to describe how the President felt about the call. In fact, it was a very focused and productive conversation.

Q And on the sequester, can you describe for us a little bit about how the administration -- what the process was that the administration used to compile this report? Who was involved in making the decisions about what should get cut? And how did they decide what should get cut?

MR. CARNEY: Well, I would refer you to a briefing we're going to provide later on the sequester. It is, as I said earlier, a pretty complex piece of business. And the Office of Management and Budget within the Executive Branch is the principal actor when it comes to assessing these things.

Q Jay?

MR. CARNEY: Yes.

Q Folks at State have said that there was a review of security at diplomatic installations in light of the upcoming 9/11 anniversary. Was there also a review in light of the possible impact of the trailers from this film?

MR. CARNEY: I would refer you to the State Department. Again, there is always, annually, as well as other moments -- predictable moments on the calendar, measures taken, precautions taken with regards to security both at our facilities abroad, but, of course, here in the United States. And we've been transparent in briefing you about when those moments occur and some of the things that are done to help enhance security.

With regard to the specific preparations for 9/11, I would refer you to the State Department for -- as it applies to diplomatic installations.

Q Are you suggesting the impact of the film was less predictable?

MR. CARNEY: Well, I'm saying that the fact that the film was about to inspire this reaction -- well, again, I don't want to -- this is all under investigation, so I don't want to get that far ahead of -- or get ahead at all of the investigation. I would refer you again to the State Department for whatever precautions were taken for diplomatic facilities in the run-up to the 9/11 anniversary.

Q There's also a lot of attention on how the President gets his daily briefing, at least in recent days. And the indications are that it has been in written form in the past week or so. Is it your sense that a briefing in person is no more efficient, no more effective than giving the President his PDB in print?

MR. CARNEY: Well, let's be clear, because it's selective representation of the facts about the last few days. Just in the last 24 hours, the President has been briefed numerous times, directly, by National Security Advisor Tom Donilon, by Deputy National Security Advisor Denis McDonough, by Homeland Security and Counterterrorism Advisor John Brennan, and others, including a secure call at 2:00 p.m. yesterday and another briefing at 10:00 p.m. yesterday. And he did, as he does every day, obviously have a presidential daily briefing today, and constant updates from his team.

I would say that this debate, when you say there's been some criticism, the quarters from which that criticism come are pretty clear, and who occupies those quarters is pretty clear. And I would simply say that this President is a absolutely responsible and voracious consumer of the presidential daily briefing and of the information provided to him by his national security team. His record of evaluating and acting on intelligence I think speaks for itself. And I'll leave it at that.

Q Is the criticism less valid because of the quarters from where it comes? The question remains whether --

MR. CARNEY: He gets his -- but what is the question? He gets his presidential daily briefing every day. He has --

Q The crisis -- the President speaks directly to his national security advisor. Obviously, the suggestion here is that's a more efficient way of communicating than getting a written briefing.

MR. CARNEY: No, he gets both. He does both. He does both all the time -- all the time. And when he is here in Washington he has briefings in person in the Oval Office with his national security team regularly. And when he is on the road, he has phone conversations that supplement and augment the briefings he receives on paper that are specific to the so-called PDB. I hardly think that is different from previous Presidents. And again -- well, I'll leave it at that.

Q You, in answering the previous questions, have said there was no actionable intelligence with regard to the facility in Benghazi, the consulate in Benghazi itself. Can you say the same with regard to the rest of Libya and the rest of the Middle East?

MR. CARNEY: I would refer you to the DNI and to others. The report was -- I mean, I just -- the report was specific to Benghazi, and we know for a fact that that report is false.

Q But, I mean, the Cairo embassy was breached as well. Was there any intelligence that would --

MR. CARNEY: I haven't asked that question, so I'll have to take the question.

Q There was an indication that the President around the U.N. meetings would be meeting with President Morsi on the periphery as these things go. Is that meeting still on?

MR. CARNEY: Well, you just asserted something that was on that you said there was some discussion about, so you kind of did two things in that questions.

The President has no bilateral meetings scheduled at this time while he's in New York.

Q Formal or informal in any way, shape, or form?

MR. CARNEY: None that I have to announce at this time.

Q And on a larger sense, does the President or does the White House feel that relations with the Muslim world in general and the Arab countries in particular are better now than when he took office?

MR. CARNEY: We have witnessed historic change in the region in just the last few years. This President's approach to what has been called the Arab Spring, to this unrest has been to lay out a set of principles and support for human rights, and to make clear that we support a process of non-violent, political and economic change and reform in the region. That looks different in different countries.

There are countries where the transition has occurred or is occurring, like Egypt, Yemen, Libya, and Tunisia. And in those countries, we are working to help those new governments consolidate their democracies, deal with security needs, and stabilize their economies. In other places like Syria that are still in the throes of a revolution, we have vocally opposed the brutality of the regime and are supporting the aspirations of the people.

You've heard us document and discuss the non-lethal support we're providing to the opposition, the over \$100 million in humanitarian aid that we're supplying to the Syrian people, and the diplomatic support that we've provided them.

This is a circumstance of dramatic change that has come because of a fervent desire by people of the region to have greater rights, greater freedoms, greater control over their lives. And we have actively engaged in the region to support non-violent democratic transition, to support governments that profess and demonstrate support for civil rights of all peoples, both genders and minorities. And we are working with these countries to help them progress in a way that is better for the people of those countries and better for the national security interest of the United States.

Q All great intentions at this moment, embassies across the region are under siege, so it appears that the message isn't getting through.

MR. CARNEY: Well, I appreciate the question, or the statement, rather. But the unrest that we've seen is in reaction to a film with which the United States government had no involvement, which we have denounced is offensive.

And as I said yesterday, obviously, it can be difficult to understand in some countries why the United States can't simply eliminate this kind of expression. But as you know, it is in the absolute core of our being as Americans that

we allow freedom of expression that is written into our Constitution and is one of our fundamental principles. And protecting speech, even offensive speech, is a foundational principle of our democracy. But we can nevertheless denounce and condemn expressions of speech that we find offensive, and we have made that clear around the world, as well as here in the United States.

Yes, Jared.

Q I think you just answered my question.

MR. CARNEY: Excellent.

Q The Muslim Brotherhood in both Egypt and Tunisia has kind of suggested they want the U.S. and the Obama administration to apologize for this video. Is that something you all have considered doing or have done?

MR. CARNEY: Absolutely not. We have made clear that we find it offensive and reprehensible and disgusting, but we -- I mean, if in that sense, you mean we have denounced it, we have said we find it offensive and reprehensible, but we will not -- we cannot and will not squelch freedom of expression in this country. It is a foundational principle of this nation.

Q Jay, freedom of expression issues aside, do you know of any government agencies who are trying to get to the bottom of who produced this video? Is there any reason --

MR. CARNEY: I don't. I've seen a lot of reporters attempting to find out its origin, but I have not heard of any. But I just -- you would have to direct that at some other agencies. But not that I'm aware of.

Q Do you see any reason for any federal agencies to look into it?

MR. CARNEY: I don't. I think based on what I've just said, the issue here isn't -- we all know what the film is and its contents and understand why it is offensive to Muslims. We also understand that there is no justification for violence and reaction to that, and have made that message clear around the world.

The President has made statements, the Secretary of State. We have consulted with leaders -- Muslim leaders around the world and asked them to make clear that violence is not an acceptable response to this film.

Q Was the President made aware of this film before or after the violence?

MR. CARNEY: Made aware of the film?

Q Right. Because it seems like you're pinning a lot of this on the film. I'm just curious when the President was aware of a film that could be potentially incendiary.

MR. CARNEY: I would have to take the question. I'm not aware of -- I certainly wasn't aware of the film before there was unrest related to it.

Q Okay. And if I could just follow up on -- you earlier said the cause of the unrest was a video, then you repeated something similar later on. And I just want to be clear, that's true of Benghazi and Cairo?

MR. CARNEY: I'm saying that that -- the incident in Benghazi, as well as elsewhere, that these are all being investigated. What I'm saying is that we have no evidence at this time to suggest otherwise that there was a preplanned or ulterior instigation behind that unrest.

Christi.

Q Jay, did the White House ask YouTube to take that video down?*

MR. CARNEY: I'm sorry, I'd have to -- I don't believe so, but I'll have to take that question.

Q Or anybody in the administration?

MR. CARNEY: We'll have to take it.

Q And on the Chicago teacher strike --

MR. CARNEY: I believe -- I mean, it wasn't -- again, I'm just -- based on press reports, it was taken down in the region, right, not everywhere?

Q I just wondered if the -- anyone from the administration had intervened or made a request or anything like that.

MR. CARNEY: Let me take that.

Q On the Chicago teacher strike, has the President weighed in with the parties to those talks in any way?

MR. CARNEY: We have been very clear that we hope and expect both sides to resolve this in a manner that is positive for the most important affected party here, which are the students, the children of Chicago. That's the position we've taken. I can't say that there's -- I don't know whether there's been phone conversations with various people involved. I can tell you that we believe the party should come together and resolve this in a way that is best for Chicago's students.

Q So he may have called, did you say?

MR. CARNEY: No, I just -- I don't have any phone calls to report out. What our position has been is to make clear that we want this resolved in a manner that is best for Chicago's students.

Q He's got ties to labor and management, obviously. Does he feel like it's his role to get involved in any way?

MR. CARNEY: I think that we -- what's important here is that the two sides here and all the parties that are stakeholders come together, work out a resolution that gets -- makes sure that the children of Chicago are back in school getting an education, and that everybody involved is guided by a desire to do what's best for the kids, because that's what's most important.

Yes, Jon-Christopher.

Q Jay, it seems like the unrest has now spread through the Sudan as of this morning. Can you shed any light on any conversations the President has had with his closest allies -- for example, Great Britain's Prime Minister Cameron, President Hollande of France, or Chancellor Merkel in Germany?

MR. CARNEY: About the unrest?

Q Yes, any conversation they may have had very recently.

MR. CARNEY: Well, I don't have any other foreign leader conversations to read out. We've read out a number of them in the last 24 to 36 hours, but I don't have any other --

Q They didn't include those top allies?

MR. CARNEY: I don't have any calls with any other foreign leaders to read out.

Q Will he be talking to them over the weekend do you think?

MR. CARNEY: I don't have a schedule to announce of foreign leaders calls. It's always possible.

Leslie.

Q Can you go back a little bit on the call that he made to the President of Egypt? Was there anything in particular that prompted that call? And apparently they've erected a new fence -- a wall overnight, a concrete wall. Was that discussed during the call with the President? Is that something --

MR. CARNEY: I don't think specific measures were discussed. The point of the call -- remember, he made several -- he has made several calls to leaders in the region -- was to discuss with them the unrest and the measures that these countries are taking to ensure the security of diplomatic facilities and American personnel. And that was the crux of the conversation with President Morsi.

Q Did he express displeasure with the initial reaction from the Egyptian government and ask them to --

MR. CARNEY: We gave a readout of the call. I don't really have more for that -- more on that for you. I think he

made clear that we have an important strategic partnership with Egypt. We are working very closely with Egypt and the government there to assist it in helping it stabilize the situation in the country and helping its economy improve as it transitions to democracy.

But the President also made clear that Egypt has obligations, as do other countries in the region and countries all over the world, to ensure that diplomatic representations in those countries are secure. The whole point of embassies and diplomatic facilities, the purpose behind them is to allow for the peaceful interaction between nations to build relationships, build partnerships, and to avoid conflict. And that is why it is so important that embassies, consulates, other facilities, and personnel are protected.

Yes, Alexis.

Q Jay, you were talking about the U.S. experience with reactions to either accidental or purposeful anti-Muslim -- burning of Qurans, et cetera. So my question is, are U.S. personnel who are abroad, who are seeing this erupt now over what you're saying is, as far as we know, just based on a film reportedly by anti-Muslim folks -- is there a concern in the U.S. government that this would encourage others who have these motivations to continue trying to inject these thoughts into that part of the world where this reaction could be predicted? And is the United States or the government making any additional effort to either surveil to protect American personnel or monitor this information, or to consider this almost like an act of war, to be continuing to inject that kind of thought into that region?

MR. CARNEY: Alexis, I think we have as a nation been in a posture, especially since 9/11, but even prior to that, where we have monitored and been aware of anti-American sentiment in that region of the world and elsewhere. And obviously, we are absolutely vigilant and continue to be, and that is the work of many agencies, in particular the intelligence community.

Since 9/11, we have seen periods like this where there has been an unrest in reaction to specific incidents, including Danish cartoons and including other incidents that have taken place that have offended Muslims in different countries and led to unrest directed at either the West or specifically at the United States. And this is something that both this administration and the prior administration have had to manage.

In terms of policy, we continue to make clear that in this case, we find the video reprehensible and disgusting. We continue to try to get the message out as broadly as we can that this video is -- has nothing to do, is not in any way related to the American government. It does not represent who we are or what we believe.

And we continue to pursue policies in the region that are aimed at helping these countries that are in transition, through this traumatic transformation that's happening, towards democracy, towards a better future, and towards -- we hope and are working for -- a strong, better relationship with the United States.

Goyal.

Q Two questions. One, as far as this 9/11 anniversary and violence around the Middle East is concerned, last week there was a peace walk by the interfaith community walking from Cathedral to the Mahatma Gandhi statue in front of the Indian Embassy. And they all spoke -- Muslims, Hindus, and Christians and Jews -- all faiths from around the globe, they were there -- hundreds of them. They all spoke for peace and unity, and they were saying that President Obama has brought peace in the Middle East. And they spoke against violence in the name of religion. But still, we have this violence around the globe, or in the Middle East or in Libya in the name of --

MR. CARNEY: Do you have a question, Goyal?

Q -- in the name of religion. My question is that you think the President needs another message for those people who are being misguided and misled in the name of religion?

MR. CARNEY: Well, I think we've spoken a lot today about the message that the President is carrying, the message that the Secretary of State is carrying, and you'll hear more about that. But I mean, that's -- I really can't go beyond that.

Q And second, if I may, as far as Iran's nuclear is concerned, do you believe that the President has any information that the Chinese companies are helping Iran as far as their nuclear ambitions are concerned? And also, Chinese companies are supplying some weapons to the terrorists?

MR. CARNEY: I don't have any response to that question.

Dennis.

Q Thanks. Can you talk a little bit about how the decisions are made about who the President is talking to? I mean, we saw reports from Tunis and Khartoum just before you came out here. For example, would he not speak to the President of Sudan versus Yemen, Egypt, India, for example, about events and risks in those locations?

MR. CARNEY: I'm not sure exactly what you're asking. He has made a number of phone calls, had a number of conversations with leaders in the region. I'm not precluding other phone calls and other conversations that he might have. I think he's reaching out in order to make clear our position and make clear our expectation of these countries and their governments in terms of their obligations to provide security for diplomatic facilities.

Q So is Donilon or Brennan advising or suggesting specific --

MR. CARNEY: Well, certainly, those two men are part of his -- are very key members of his national security team, but I don't think it's limited to those two.

Q Jay, can you clarify something?

MR. CARNEY: I could try.

Q You've taken about four or five questions during the course of the briefing. Can you be sure to pump the actual answers that you come up with to those out -- to the full press list and not just have them disappear somewhere, as they tend to do sometimes? (Laughter.)

MR. CARNEY: Well, I promise to follow up on those questions I took. If I don't have answers that I can provide, I --

Q Well, can you distribute them to the press list the way you would the transcript of the briefing, et cetera? Because we all share the same questions.

MR. CARNEY: If we have the answers that are responsive to the questions, yes. (Laughter.) I mean, again, it depends on what the question is and whether I'm able to answer it.

Q Jay, notwithstanding your explanations today for the reasons for the violence in the Middle East, there are Republicans -- Donald Rumsfeld, John McCain -- who say the attacks on our diplomatic posts in the Middle East are a result of perceived American weakness. Do you want to respond to that?

MR. CARNEY: I'll just go back to what I said, which is that this is a time when it's in the best interests of the country to focus on the four personnel, the four Americans that we lost in Libya and who are returning home today, and on the measures that we need to take as a nation to deal with the unrest in the region and deal with the security of our diplomatic facilities and personnel abroad.

We are happy to debate -- and there is certainly ample time and appropriate times to debate foreign policy approaches, this President's record on foreign policy, and contrast it to other approaches and other records.

And there will actually be a formal occasion in which foreign policy will be debated as part of the presidential campaign debates. And I'm sure there will be much discussion of it prior to and after that debate. We're very proud of the President's record on foreign policy and are happy to make the case at the appropriate time. Thank you all.

Q Jay, one last question -- while we were sitting here -- Secretary Panetta and the Vice Chair of the Joint Chiefs briefed the Senate Armed Services Committee. And the senators came out and said their indication was that this, or the attack on Benghazi was a terrorist attack organized and carried out by terrorists, that it was premeditated, a calculated act of terror. Levin said -- Senator Levin -- I think it was a planned, premeditated attack. The kind of equipment that they had used was evidence it was a planned, premeditated attack. Is there anything more you can -- now that the administration is briefing senators on this, is there anything more you can tell us?

MR. CARNEY: Well, I think we wait to hear from administration officials. Again, it's actively under investigation, both the Benghazi attack and incidents elsewhere. And my point was that we don't have and did not have concrete evidence to suggest that this was not in reaction to the film. But we're obviously investigating the matter, and I'll certainly -- I'm sure both the Department of Defense and the White House and other places will have more to say about that as more information becomes available.

Q Thank you.

Press Briefing by Press Secretary Jay Carney, 9/14/2012 | The White House

5/30/14, 11:24 AM

MR. CARNEY: Thanks.

Q Week ahead, Jay?

MR. CARNEY: Do we have a week ahead? I don't have one yet, so we'll have to put it out on paper. Thank you.

END
12:38 P.M. EDT

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*"Those who cannot remember the past are condemned to repeat it."
-- George Santayana, Reason in Common Sense (1905)*

INTRODUCTION

Pursuant to Title III of the Omnibus Diplomatic and Antiterrorism Act of 1986, 22 U.S.C. § 4831 *et seq.*, (the "Act"), Secretary of State Hillary Rodham Clinton convened an Accountability Review Board (ARB) for Benghazi to examine the facts and circumstances surrounding the September 11-12, 2012, killings of four U.S. government personnel, including the U.S. Ambassador to Libya, John Christopher Stevens, in Benghazi, Libya. A series of attacks on September 11-12, 2012 involving arson, small-arms and machine-gun fire, and use of rocket-propelled grenades (RPGs), grenades and mortars, focused on two U.S. facilities in Benghazi, as well as U.S. personnel en route between the two facilities. In addition, the attacks severely wounded two U.S. personnel, injured three Libyan contract guards and resulted in the destruction and abandonment of both facilities – the U.S. Special Mission compound (SMC) and Annex.

Four Board members were selected by the Secretary of State and one member from the intelligence community (IC) was selected by the Director for National Intelligence. Ambassador Thomas R. Pickering served as Chairman, with Admiral Michael Mullen as Vice Chairman. Additional members were Catherine Bertini, Richard Shinnick, and Hugh Turner, who represented the IC.

The criminal investigation of the September 11-12, 2012, Benghazi attacks, for which the statutory responsibility rests with the Federal Bureau of Investigation (FBI), was still underway at the time of this report. The Board enjoyed excellent cooperation with the Department of Justice and FBI throughout preparation of this report. The key questions surrounding the identity, actions and motivations of the perpetrators remain to be determined by the ongoing criminal investigation.

As called for by the Act, this report examines: whether the attacks were security related; whether security systems and procedures were adequate and implemented properly; the impact of intelligence and information availability; whether any other facts or circumstances in these cases may be relevant to appropriate security management of U.S. missions worldwide; and, finally, whether any U.S. government employee or contractor, as defined by the Act, breached her or his duty.

Exhibit 32

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and never formally notified to the Libyan government. Stevens arrived in Tripoli on May 26, 2012, to replace Cretz as Ambassador.

Throughout Libya, the security vacuum left by Qaddafi's departure, the continued presence of pro-Qaddafi supporters, the prevalence of and easy access to weapons, the inability of the interim government to reestablish a strong security apparatus, and the resulting weakness of those security forces that remained led to a volatile situation in which militias previously united in opposition to Qaddafi were now jockeying for position in the new Libya. Frequent clashes, including assassinations, took place between contesting militias. Fundamentalist influence with Salafi and al Qaeda connections was also growing, including notably in the eastern region. Public attitudes in Benghazi continued to be positive toward Americans, and it was generally seen as safer for Americans given U.S support of the TNC during the war. However, 2012 saw an overall deterioration of the security environment in Benghazi, as highlighted by a series of security incidents involving the Special Mission, international organizations, non-governmental organizations (NGOs), and third-country nationals and diplomats:

- March 18, 2012 – Armed robbery occurs at the British School in Benghazi.
- March 22, 2012 – Members of a militia searching for a suspect fire their weapons near the SMC and attempt to enter.
- April 2, 2012 – A UK armored diplomatic vehicle is attacked after driving into a local protest. The vehicle was damaged but occupants uninjured.
- April 6, 2012 – A gelatina bomb (traditional homemade explosive device used for fishing) is thrown over the SMC north wall.
- April 10, 2012 – An IED (gelatina or dynamite stick) is thrown at the motorcade of the UN Special Envoy to Libya in Benghazi.
- April 26, 2012 – Special Mission Benghazi principal officer is evacuated from International Medical University (IMU) after a fistfight escalated to gunfire between Tripoli-based trade delegation security personnel and IMU security.
- April 27, 2012 – Two South African nationals in Libya as part of U.S.-funded weapons abatement, unexploded ordnance removal and demining project are detained at gunpoint by militia, questioned and released.
- May 22, 2012 – Benghazi International Committee of the Red Cross (ICRC) building struck by rocket propelled grenades (RPGs).
- May 28, 2012 – A previously unknown organization, Omar Abdurrahman group, claims responsibility for the ICRC attack and issues a threat against the United States on social media sites.

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- June 6, 2012 – IED attack on the SMC. The IED detonates with no injuries but blows a large hole in the compound's exterior wall. Omar Abdurrahman group makes an unsubstantiated claim of responsibility.
- June 8, 2012 – Two hand grenades target a parked UK diplomatic vehicle in Sabha (800 km south of Benghazi).
- June 11, 2012 – While in Benghazi, the British Ambassador's convoy is attacked with an RPG and possible AK-47s. Two UK security officers are injured; the UK closes its mission in Benghazi the following day.
- June 12, 2012 – An RPG attack is made on the ICRC compound in Misrata (400 km west of Benghazi).
- June 18, 2012 – Protestors storm the Tunisian consulate in Benghazi.
- July 29, 2012 – An IED is found on grounds of the Tibesti Hotel.
- July 30, 2012 – Sudanese Consul in Benghazi is carjacked and driver beaten.
- July 31, 2012 – Seven Iranian-citizen ICRC workers abducted in Benghazi.
- August 5, 2012 – ICRC Misrata office is attacked with RPGs. ICRC withdraws its representatives from Misrata and Benghazi.
- August 9, 2012 – A Spanish-American dual national NGO worker is abducted from the Islamic Cultural Center in Benghazi and released the same day.
- August 20, 2012 – A small bomb is thrown at an Egyptian diplomat's vehicle parked outside of the Egyptian consulate in Benghazi.

It is worth noting that the events above took place against a general backdrop of political violence, assassinations targeting former regime officials, lawlessness, and an overarching absence of central government authority in eastern Libya. While the June 6 IED at the SMC and the May ICRC attack were claimed by the same group, none of the remaining attacks were viewed in Tripoli and Benghazi as linked or having common perpetrators, which were not viewed as linked or having common perpetrators. This also tempered reactions in Washington. Furthermore, the Board believes that the longer a post is exposed to continuing high levels of violence the more it comes to consider security incidents which might otherwise provoke a reaction as normal, thus raising the threshold for an incident to cause a reassessment of risk and mission continuation. This was true for both people on the ground serving in Libya and in Washington.

While the June IED attack and the RPG attack targeting the UK convoy in Benghazi prompted the Special Mission to reduce movements off compound and have a one-week pause between principal officers, the successful nature of Libya's

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Ex-CIA chief Petraeus testifies Benghazi attack was al Qaeda-linked terrorism - CNN.com

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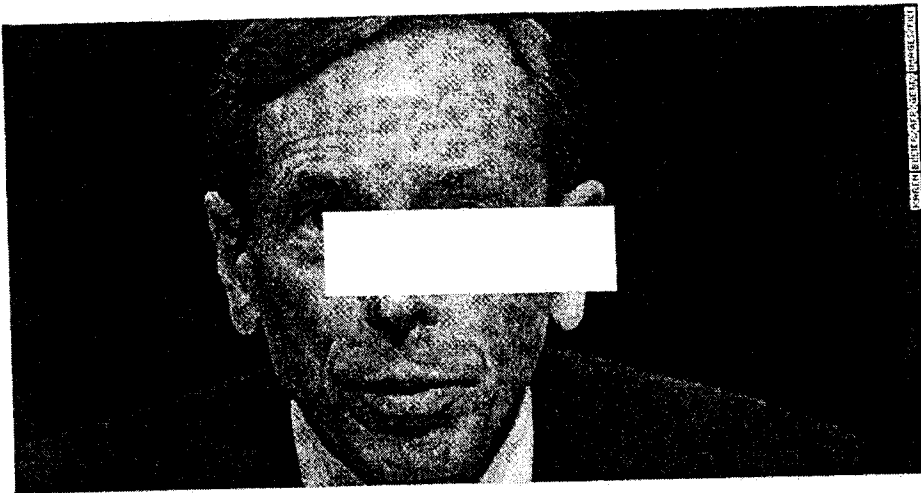
Ex-CIA chief Petraeus testifies Benghazi attack was al Qaeda-linked terrorism

By the CNN Wire Staff
updated 9:02 PM EST, Fri November 16, 2012

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Petraeus hearing doesn't clear confusion

STORY HIGHLIGHTS

Rep. Peter King says David Petraeus' account differs from an earlier assessment

A U.S. ambassador and three others were killed in the Benghazi attack

Lawmakers say Petraeus said his resignation had nothing to do with Benghazi

Washington (CNN) -- Former CIA Director David Petraeus testified on Capitol Hill Friday that the attack on the U.S. Consulate in Benghazi, Libya, in September was an act of terrorism committed by al Qaeda-linked militants.

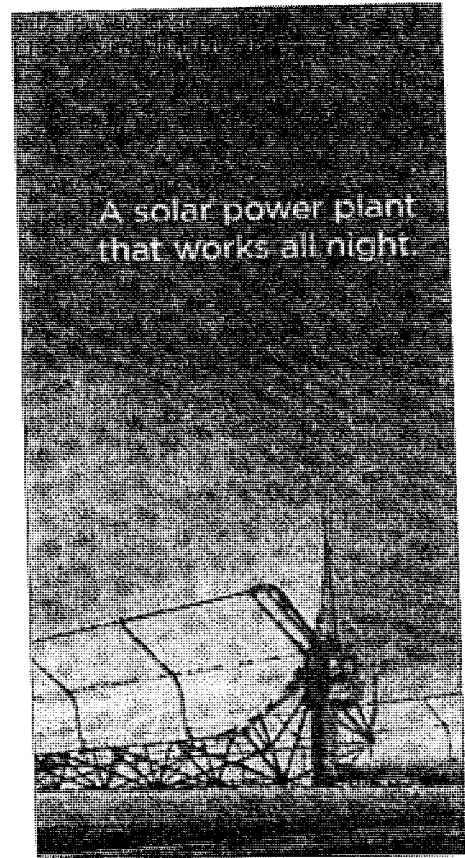
That's according to U.S. Rep. Peter King, R-New York, who spoke to reporters after a closed hearing in the House, which lasted an hour and 20 minutes.

King said Petraeus' testimony differed from an earlier assessment the former CIA director gave lawmakers just days after the September 11 attack, which left four Americans dead, including U.S. Ambassador Chris Stevens.

"He (Petraeus) ... stated that he thought all along he made it clear that there was significant terrorist involvement, and that is not my recollection of what he told us on September 14," King said.

"The clear impression we were given (in September) was that the overwhelming amount of evidence was that it arose out of a spontaneous demonstration, and was not a terrorist attack," he said.

U.S. officials initially said the violence erupted spontaneously amid a large protest about a privately made video produced in the United



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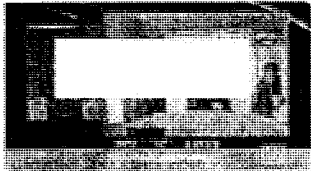
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updated 10:26 AM EST, Wed February 6, 2013



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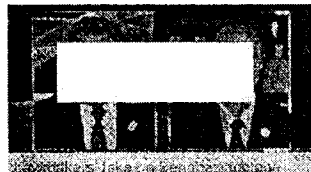
Exhibit 33



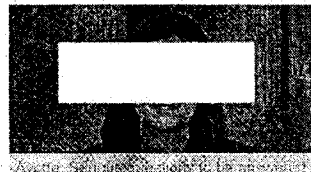
States that mocked the Prophet Mohammed. The intelligence community later revised its assessment, saying it believes the attack was a planned terrorist assault.



King said that the word spontaneous was minimized during Petraeus' testimony Friday, which was given one week after he resigned from the CIA. Lawmakers said they didn't ask him about why he left the agency. Petraeus has admitted an extramarital affair with his biographer.



Critics of the administration have suggested that his resignation might be linked to fallout over the attack.



What do we know so far about the Petraeus scandal?

The Benghazi attack became a political hot button during a presidential election year and raised questions regarding issues such as security at the compound and the Obama administration's initial description of the events.

King told reporters that he likes Petraeus and that it was uncomfortable, at times, to interview a man he considers a friend.

"He was a strong soldier. Very professional, very knowledgeable, very strong," King said. "He's a solid guy. I consider him a friend, which made the questioning tough. You realize the human tragedy here."

After he spoke at the House Intelligence hearing, Petraeus testified in front of the Senate Intelligence Committee. He was ushered into both sessions without reporters being able to get a camera shot of him, and after he testified he left the premises, CNN learned.

Petraeus was not asked to testify under oath, King said.

King and other lawmakers said Petraeus testified that his resignation had nothing to do with the consulate attack.

That matches what Petraeus told Kyra Phillips of HLN, CNN's sister network. He said his resignation was solely a result of his extramarital affair with his biographer, Paula Broadwell. He added that he never passed classified information to her.

Prior to Friday's hearings, it was thought that Petraeus would tell lawmakers that the CIA knew soon after the attack that Ansar al Sharia was responsible for it, according to an official with knowledge of the case. The official spoke on condition of anonymity because of the sensitivity of the subject matter.

Ansar al Sharia is more of a label than an organization, one that's been adopted by conservative Salafist groups across the Arab world.

Related: What is Ansar al Sharia?

It was not known whether Petraeus spoke specifically about Ansar al Sharia during Friday's sessions.

After the House committee hearing, Rep. Dutch Ruppersberger, D-Maryland, said the confusion over the consulate incident arose from

Capital goes hungry amid carnage

updated 7:09 PM EST, Tue February 5, 2013



Supplies of food, clothing and fuel are running short in Damascus and people are going hungry as the civil war drags on.

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updated 1:01 PM EST, Wed February 6, 2013



Supporters of Richard III want a reconstruction of his head to bring a human aspect to a leader portrayed as a murderous villain.

Former hostage 'shamed' by torture

updated 10:48 AM EST, Tue February 5, 2013



Robert Fowler spent 130 days held hostage by the same al Qaeda group that was behind the Algeria massacre. He shares his experience.

North Korea nuclear dream video

updated 12:07 AM EST, Wed February 6, 2013



As "We are the World" plays, a video shows what looks like a nuclear attack on the U.S. Jim Clancy reports on a bizarre video from North Korea.

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Daniela Mercury: Music is Brazil's soul

updated 7:15 AM EST, Tue February 5, 2013



Musician Daniela Mercury has sold more than 12 million albums worldwide over a career span of nearly 30 years.

Photos: Faces of the world



Photojournalist Alison Wright travelled the world to capture its many faces in her latest book, "Face to Face: Portraits of the Human Spirit."

How to fix a soccer match

updated 7:06 PM EST, Tue February 5, 2013



Europol claims 380 soccer matches, including top level ones, were fixed - as the scandal widens, CNN's Dan Rivers looks at how it's done.

there being essentially two threads of violence: one caused by the protest, which was chaotic, and a second that was orchestrated by terrorists, which was highly coordinated.

There were "two different types of situations at play," Ruppertsberger said, explaining that in the hours and days after the attack, it was naturally difficult to clearly discern what happened.

Intelligence evolves, he said, and new information comes out when agents obtain it. He played down the idea that there was something untoward going on.

Petraeus: I did not pass on classified information

The former CIA chief has said there was a stream of intelligence from multiple sources, including video at the scene, that indicated Ansar al Sharia was behind the attack, according to an official with knowledge of the situation.

Meanwhile, separate intelligence indicated the violence at the consulate was inspired by protests in Egypt over an ostensibly anti-Islam film clip that was privately produced in the United States. The movie, "Innocence of Muslims," portrayed the Prophet Mohammed as a womanizing buffoon.

There were 20 intelligence reports that indicated that anger about the film may be to blame, the official said.

The CIA eventually disproved those reports, but not before Petraeus' initial briefing to Congress when he discussed who might be behind the attack and what prompted it. During that briefing, he raised Ansar al Sharia's possible connection as well as outrage about the film, the official said.

Earlier, an official said that Petraeus' aim in testifying was to clear up "a lot of misrepresentations of what he told Congress initially."

Petraeus testified that he developed unclassified talking points in the days after the attack but he had no direct involvement in developing the ones used by Susan Rice, the U.S. ambassador to the United Nations, King said.

"No one knows, yet, exactly who came up with the final version of the talking points, other than to say the original talking points prepared by the CIA were different from the ones that were finally put out," said King, stressing that the original talking points were more specific about al Qaeda involvement.

Rice has been under fire for suggesting the attack on the consulate was a spontaneous event spurred by a protest against the anti-Muslim film.

The three unclassified talking points that were used by Rice on September 16 were read aloud to reporters on the Hill Friday.

They are:

-- The currently available information suggests that the demonstrations in Benghazi were spontaneously inspired by the protests at the US Embassy in Cairo and evolved into a direct assault against the U.S. diplomatic post in Benghazi and subsequently its annex. There are indications that extremists participated in the

Disney: Star Wars spinoffs there will be
updated 7:37 AM EST, Wed February 6, 2013



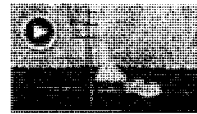
That galaxy far, far away is apparently bigger than first thought. The "Star Wars" franchise will get two spinoff movies, Disney announced.

15 biggest souvenir-buying no-no's
updated 2:18 AM EST, Fri February 8, 2013



It's an essential part of any trip, an activity we all take part in. Yet almost none of us are any good at it. Souvenir buying is too often an obligatory slog.

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6/9/14, 5:42 PM

violent demonstrations.

-- This assessment may change as additional information is collected and analyzed and as currently available information continues to be evaluated.

-- The investigation is ongoing, and the U.S. government is working with Libyan authorities to bring to justice those responsible for the deaths of U.S. citizens.

Sen. Dianne Feinstein, the California Democrat who leads the Intelligence Committee, read the points to journalists and vigorously defended Rice.

Feinstein said lawmakers should be careful not to "pillory" someone for intelligence failings.

"We have seen wrong intelligence before and it all surrounded our going into Iraq, and a lot of people were killed based on bad intelligence," she said. "And I don't think that is fair game. I think mistakes get made. You don't pillory the person.

"To select Ambassador Rice because she used an unclassified talking point, to say that she is unqualified to be secretary of state, I think, is a mistake," the senior lawmaker said. "And the way it keeps going it is almost as if the intent is to assassinate her character."

There has been speculation that Rice was among the people being considered as a replacement for Secretary of State Hillary Clinton, if she steps down as she has indicated.

But the committee's senior Republican, Saxby Chambliss of Georgia, said he doesn't think the issue is settled.

He said the concern is not whether the talking points were correct, but that Rice didn't go far enough.

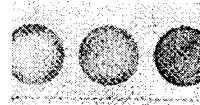
"She knew at that point and time that al Qaeda was very likely responsible in part or in whole for the death of Ambassador Stevens," he said, intimating that Rice should have said that.

Read a transcript of Rice's comments on CNN about the attack:

CNN's Dana Bash, Barbara Starr, Suzanne Kelley, Ted Barrett and Chelsea J. Carter contributed to this report

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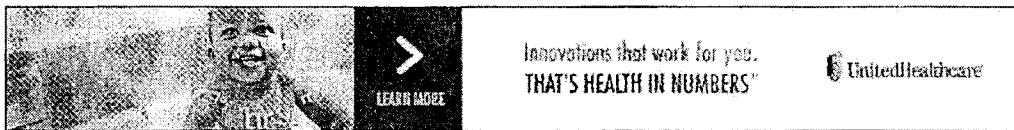
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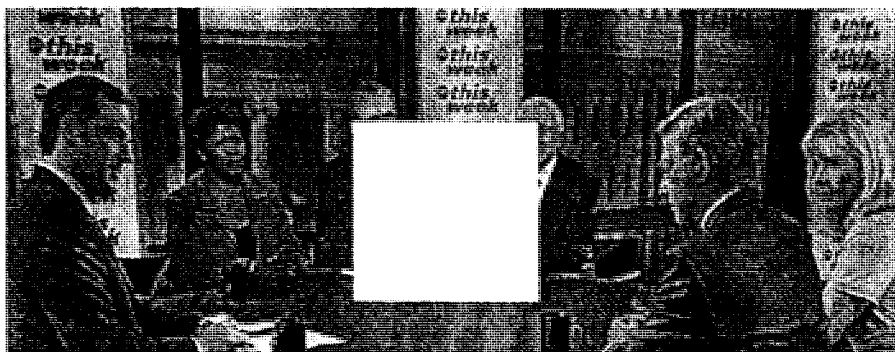
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'This Week' Transcript: U.S. Ambassador to the United Nations Susan Rice

WASHINGTON DC, SEPT. 16, 2012

56 67 8-1 2 8 Comments



Jake Tapper with Roundtable guests ABC News' George Will, Fox News Contributor and Co-Founder, Kara Swisher, NBC's Liz Cheney, Former NATO Supreme Allied Commander Europe Ret. General Wesley Clark, Senior Correspondent, "PBS NewsHour" and Moderator and... View Full Caption ABC News

TAPPER: Hello again. George Stephanopoulos has the morning off.

We are now in the homestretch, just 51 days until the election, and our powerhouse roundtable is standing by to get to all the week's politics. But first, the crisis that has the potential to shake up the presidential race, the murder of four Americans, including the U.S. ambassador, in Benghazi, Libya, on Tuesday, and the wave of anti-American protests and violence now sweeping the globe.

For more on what happened and why, let's bring in the U.S. ambassador to the United Nations, Dr. Susan Rice. Dr. Rice, thank you for joining us.

RICE: Good to be with you, Jake.

TAPPER: So, first of all, what is the latest you can tell us on who these attackers were at the embassy or at the consulate in Benghazi? We're hearing that the Libyans have arrested people. They're saying that some people involved were from outside the country, that there might have even been Al Qaida ties. What's the latest information?

RICE: Well, Jake, first of all, it's important to know that there's an FBI investigation that has begun and will take some time to be completed. That will tell us with certainty what transpired.

But our current best assessment, based on the information that we have at present, is that, in fact, what this began as, it was a spontaneous -- not a premeditated -- response to what had transpired in Cairo. In Cairo, as you know, a few hours earlier, there was a violent protest that was undertaken in reaction to this very offensive video that was disseminated.

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We believe that folks in Benghazi, a small number of people came to the embassy to -- or to the consulate, rather, 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, weapons that as you know in -- in the wake of the revolution in Libya are -- are quite common and accessible. And it then evolved from there.

We'll wait to see exactly what the investigation finally confirms, but that's the best information we have at present.

TAPPER: Why was there such a security breakdown? Why was there not better security at the compound in Benghazi? Why were there not U.S. Marines at the embassy in Tripoli?

RICE: Well, first of all, we had a substantial security presence with our personnel...

TAPPER: Not substantial enough, though, right?

RICE: ... with our personnel and the consulate in Benghazi. Tragically, two of the four Americans who were killed were there providing security. That was their function. And indeed, there were many other colleagues who were doing the same with them.

It obviously didn't prove sufficient to the -- the nature of the attack and sufficient in that -- in that moment. And that's why, obviously, we have reinforced our remaining presence in Tripoli and why the president has very -- been very clear that in Libya and throughout the region we are going to call on the governments, first of all, to assume their responsibilities to protect our facilities and our personnel, and we're reinforcing our facilities and our -- our embassies where possible...

TAPPER: But why...

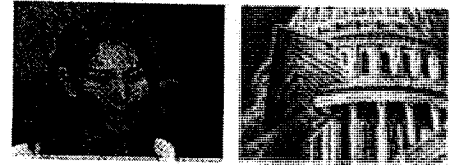


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like this -- this is obviously an unstable country. This is a region where U.S. interests have been attacked in previous months. Why were there not Marines there to begin with?

RICE: First of all, there are Marines in some places around the world. There are not Marines in every facility. That depends on the circumstances. That depends on the requirements. Our presence in Tripoli, as in Benghazi, is relatively new, as you will recall. We've been back post-revolution only for a matter of months.

But I've visited there myself, both to Tripoli and Benghazi. I was very grateful to have a strong security presence with me as part of our -- our embassy detachment there. So we certainly are aware that Libya is a place where there have been increasingly some violent incidents. The security personnel that the State Department thought were required were in place. And we'll see when the investigation unfolds whether what was -- what transpired in Benghazi might have unfolded differently in different circumstances.

But the president has been very clear. The protection of American personnel and facilities is and will remain our top priority. That's why we've reinforced our presence in Tripoli and elsewhere.

TAPPER: Look at this map, if you would. There have been protests around the world over the last several days. And President Obama pledged to repair America's relationships with the Muslim world. Why does the U.S. seem so impotent? And why is the U.S. even less popular today in some of these Muslim and Arab countries than it was four years ago?

RICE: Jake, we're not impotent. We're not even less popular, to challenge that assessment. I don't know on what basis you make that judgment. But let me -- let me point...

TAPPER: It just seems that the U.S. government is powerless as this -- as this maelstrom erupts.

RICE: It's actually the opposite. First of all, let's be clear about what transpired here. What happened this week in Cairo, in Benghazi, in many other parts of the region...

TAPPER: Tunisia, Khartoum...

RICE: ... was a result -- a direct result of a heinous and offensive video that was widely disseminated, that the U.S. government had nothing to do with, which we have made clear is

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reprehensible and disgusting. We have also been very clear in saying that there is no excuse for violence, there is -- that we have condemned it in the strongest possible terms.

But let's look at what's happened. It's quite the opposite of being impotent. We have worked with the governments in Egypt. President Obama picked up the phone and talked to President Morsi in Egypt. And as soon as he did that, the security provided to our personnel in our embassies dramatically increased. President Morsi...

TAPPER: It took two days for President Morsi to say anything about this.

RICE: President Morsi has been out repeatedly and said that he condemns this violence. He's called off -- and his people have called off any further demonstrations and have made very clear that this has to stop.

(CROSSTALK)

RICE: Now, and -- and same, frankly, in Tunisia, in Yemen, and, of course, in Libya, where the government has -- has gone out of its way to try to step up security and express deepest remorse for what has happened. We are quite popular in Libya, as you might expect, having been a major partner in their revolution. What transpired outside of our consulate in Benghazi was not an expression of deep-seated anti-Americanism on the part of the Libyan people. Quite the contrary. The counter-demonstrations, the outpouring of sympathy and support for Ambassador Stevens and for the United States, the government of Libya and -- and the people on the street saying how pained they are by this, is much more a reflection of the sentiment towards the United States than a small handful of heavily armed mobsters.

TAPPER: That certainly, according to polling, is the case in Libya. Not the case in Egypt. And since you brought up President Morsi, let me try to get some clarification on something. President Obama was asked about the relationship with Egypt on Wednesday, and this is what he said.

(BEGIN VIDEO CLIP)

OBAMA: I don't think that we would consider them an ally, but we don't consider them an enemy. They are a new government that is trying to find its way.

(END VIDEO CLIP)

TAPPER: The United States has sent billions of dollars of U.S. taxpayer money to Egypt over the last few decades. And by definition, as you know, according to the State Department, Egypt is a major non-NATO ally of the United States. Why would President Obama say Egypt is not an ally?

RICE: Well, first of all, the president has been very clear and -- and everybody understands that Egypt is a very critical partner of the United States, has long been so. That relationship remains the same, and the president wasn't signaling any change in -- in the nature...

TAPPER: Was he trying to nudge Morsi?

RICE: The president wasn't signaling any change in the nature of our relationship. Obviously, the president had a conversation with President Morsi and a very productive one, in which he underscored that it's, of course, the responsibility of the Egyptian government as host to protect diplomatic personnel and facilities, including our own, and we saw that President Morsi, immediately after that, took dramatic steps to improve the security of our facilities in Cairo and elsewhere, and then went out and repeatedly made a number of very important and powerful statements condemning the violence and conveying the message that, however hateful such a video may be, there is absolutely no justification for violence against the United States or other Western partners.

So what we've seen is that the president has been incredibly calm, incredibly steady, and incredibly measured in his approach to this set of developments. And his interventions, his leadership has ensured that in Egypt, in Yemen, in Tunisia, in Libya, and many other parts of the world, that leaders have come out and made very plain that there's no excuse for this violence. We heard Prime Minister Erdogan of Turkey say the same, we heard the Grand Mufti in Saudi Arabia say the same, that there's no excuse for violence, that violence is to be condemned, and that governments have a responsibility to protect United States personnel and facilities and those of all foreign diplomats.

TAPPER: I know you have to go, but very quickly, was the president in that interview trying to

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nudge President Morsi, "Get your act together"?

RICE: No. I think that the president communicated directly with -- with President Morsi and had the opportunity to -- to understand our expectation that Egypt will do what it can to protect our facilities. So that -- that was conveyed very directly, and the results were immediate and quite satisfactory.

TAPPER: Dr. Rice, thank you so much for coming here today and answering our questions.

RICE: Good to be with you.

TAPPER: And we're joined now by my colleagues and friends, Martha Raddatz, Brian Ross, and Christiane Amanpour.

Christiane, let's begin with you. You covered the Arab Spring. You had those exclusive interviews, we all remember, with Egyptian President Mubarak, Moammar Gadhafi in Libya, and with Mohamed Morsi, now the president of Egypt. And, Christiane, I know you've interviewed the prime ministers of Libya, Egypt, and the spokesman for the Muslim Brotherhood. What are they telling you about these protests? Who's behind them? And who's behind the attack in Benghazi?

AMANPOUR: Well, what they're saying, first and foremost, is that obviously this has nothing to do with the governments, they don't support this, they've called them back, they say, and today the Muslim Brotherhood has said that we've made plenty of arrests and we should know in the next few days, that they're trying to recalibrate and put their relations with the United States back on the correct track.

They're very, very concerned that this should not disrupt their relations with the United States, whether it's the Egyptian prime minister who told me that, the Muslim Brotherhood, the Libyan prime minister.

And I think it's also important to recognize that this is a seminal moment, Jake, for these Arab emerging democracies. The people have spoken. By and large, they've gone well. By and large, this is a success story. But as we've seen, there are elements that are out of control, most particularly in Libya, where you've got these armed people who are not yet under the government control, not brought into the, you know, under the rule of law.

But in Egypt, they say that they've got it under control, and they're very concerned that they want to maintain their relationships and not have this, you know, deter them from their strong relationship with the U.S.

TAPPER: Brian, let's talk about the homeland for a second. This week, there were three college campuses where there were bomb scares, apparently all false alarms, but they were false alarms. But they were called in. Is there a worry that these -- this wave of attacks could spread to the United States, to the homeland itself?

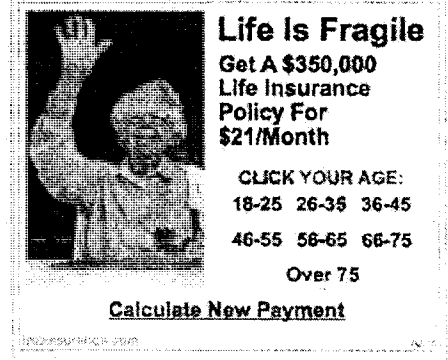
ROSS: Well, there's concern, but those bomb threats washed out as a real threat. There was an arrest yesterday in Chicago, an 18-year-old who had wanted to blow up a bar in Chicago as part of -- sort of a sympathy for what's going on in the world against Muslims. But in general, they see no organized plan to disrupt or to attack in this country, but there are the independent operators who could be inspired.

TAPPER: Martha, you've been to these embassies. How is security arranged? How is it decided who gets Marines, who doesn't? How do they decide, when the protests are coming, what they can do to calm things and -- and when they will actually make things worse if they get involved?

RADDATZ: Well, I think that's a real fine line. In Yemen particularly, I was watching this week, and that embassy is very, very hard to breach. You have the host nation usually on the outer perimeter. They're in charge of security there. But getting inside, you usually have Americans there backing them up, whether they're contractors or security.

If you saw those mobs coming, I suppose you -- you would say, "Let's go after them," but they can't really do that in all these cases. I think particularly in Yemen, they did a pretty good job of just letting them climb the walls, but not get over the walls. You don't want to use deadly force if you don't have to, because it makes it much worse.

But there are a lot of questions, Jake. You asked a very good question of Susan Rice. Why weren't there Marines in Tripoli, in particular?



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TAPPER: She didn't answer it.

RADDATZ: I'm pretty sure there are Marines in Paris. Why weren't they in Tripoli? And I think that's a question the State Department is looking at right now. And Benghazi, I think you had 25 or 30 people in the entire consulate. How many of those really were security? They overran the perimeter so quickly and were able to get to that main building so fast, that is a huge question.

TAPPER: And, Brian, you heard them talk about the YouTube video. You heard Dr. Rice talk about the YouTube video. They're hanging a lot on this YouTube video. You've been looking into the guy behind -- some of the -- the filmmaker, the main filmmaker behind it. What was his motivation? Why did he, first of all, initially falsely claim to be a Jew, an Israeli Jew? And what was he trying to do with this video?

ROSS: Clearly he was trying to stir things up with his false claims that he was an Israeli Jew, as he put it, that the money for this came from Jewish donors. In fact, the money came from his wife's family in Egypt, and he was attempting just to stir things up, I think, with this very provocative film.

TAPPER: He's a Coptic Christian.

ROSS: Coptic Christian -- the issues in Egypt between Coptic Christians and extremist Muslims. But he sought to create a hate film. The film was never really produced, just the trailer that was put on YouTube.

RADDATZ: It's really like a home video...

ROSS: Like a home video.

RADDATZ: ... and one person can cause this...

(CROSSTALK)

ROSS: I was going to say, it's so interesting that the actors that were called to say the words -- "Master George" was the main bad guy there. Then they dubbed in those three syllables with "Mohammad."

AMANPOUR: I mean, it was clearly a film designed to incite. And it's a film designed by an extremist with extremist views here that plays right into the extremist provocateurs over there.

But one thing I was really worried about, first of all, this cynical and dastardly attempt to stoke more hatred by pretending he was Jewish, and now it reveals that he's a Christian. You know, there have been very tense relations with Coptic Christians and Muslims in Egypt, and the one thing I asked the Muslim Brotherhood, is this going to cause a backlash? They said, absolutely not. We're standing absolutely firm. We're not going to let this have any impact on our relations, because that's possibly a very, very, you know, difficult fallout that could happen.

I'm pleased that nothing happened in Afghanistan. I mean, I think what's really important is to know that, again, this is a seminal moment. These governments have mostly done the right thing, you know, not just now, but in the lead-up to -- to all of this. They're mostly moderate. They want good relationships with the rest of the world.

Yes, the people are going to have a voice, because these are democracies now, in foreign policy going ahead. But as Susan said and as others have said, look, in Libya, more than half the people support not just U.S. leadership, but the United States and the people of the United States. So I think that should be the takeaway, I think.

TAPPER: Martha, before we end this roundtable, I do want to look forward. And right now, we have in the gulf the largest naval exercise ever in the history of the Middle East. What is the message that the United States military is trying to send here? Is it directly aimed at Iran?

RADDATZ: I think it's a pretty obvious message, and I don't think anyone would actually tell you that on camera, Jake. But I think it's pretty obvious the message to Iran is: Don't even try to shut down the Strait of Hormuz. They've got all these mine-sweeping exercises. It is an enormous exercise. Yes, they -- they normally do exercise, but nothing like this, and they're building up all sorts of missile-defense-type things in there, as well.

TAPPER: And, Christiane, just looking forward, the United Nations General Assembly meets this

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week and there's a lot of tension right now between Israel and Iran, but also between Israel and the Obama administration. What do you anticipate will happen this week?

AMANPOUR: Well, we've all been, you know, listening to how they're not going to meet the leaders of the United States and Israel. But I think what's really interesting -- and I've talked to a lot of people about this -- you know, Ehud Barak, the Israeli defense minister, is starting to walk back the idea of an attack on Iran's nuclear facilities. The internal intelligence and defense by and large inside Israel has been very lukewarm, if not downright negative, on the idea of a unilateral Israeli attack. I'm being told that -- that that's possibly sort of receding as a possibility, at least any time now.

But then -- and, of course, the Israeli people do not want to see their country unilaterally attack Iran. And I think, really, what we have to know is whether there's going to be any real, significant chance for proper negotiations, this negotiation that's going on right now with Iran and the West and -- and the United States, whether that can come to some kind of agreement, beyond -- you know, short of a kind of military intervention.

TAPPER: And, Brian, very quickly, because we're running out of time, what are your sources telling you about how far the Iranians are when it comes to actually building a nuclear device?

ROSS: Four to six weeks away, if they'd made the decision to do it.

TAPPER: They can't have...

(CROSSTALK)

TAPPER: They are able to acquire...

ROSS: That -- that is some of the intelligence. But they haven't made that decision. That's the key.

AMANPOUR: But, of course, it's so vastly disparate. I mean, others say, you know, it could be a year after they...

(CROSSTALK)

AMANPOUR: So, you know, this is a guessing game that's gone on for years.

ROSS: Yes. Yeah, right, that's the latest claim.

TAPPER: All right. All right, Christiane, Brian, Martha, thanks so much for joining us. Really appreciate it. Great insights.

When we come back, our powerhouse roundtable weighs in on all the week's politics.

(BEGIN VIDEO CLIP)

KIMMEL: There's a new poll out today. It claims that 58 percent of Americans believe Barack Obama would beat Mitt Romney in a fistfight. Maybe we could wrap this election up tonight. We make it a Pay-Per-View -- we could wipe out the national debt in one night if we had them fight.

TAPPER: With polls showing a slight Obama lead, is it time for Republicans to start worrying?

And the iPhone 5, economic stimulus?

O'BRIEN: Today Apple unveiled the iPhone 5, which is 20 percent lighter and 18 percent thinner. Yeah. In fact, it's just a piece of paper that says, "You saps will buy anything."

(END VIDEO CLIP)

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

(UNKNOWN): There is something I want you all to know. I'm not worried, not in the least. Our

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campaign has a secret weapon, and that secret weapon is speaking right now in Tulsa, Oklahoma. Let's take a look.

ROMNEY: Hello, I'm Mitt Romney.

(LAUGHTER)

And I understand the hardships facing ordinary Americans. For example, this summer, one of my horses failed to medal at the Olympics, so I know hardship.

(LAUGHTER)

(END VIDEO CLIP)

TAPPER: And we're joined now by George Will, Fox News contributor Liz Cheney, who's also the co-founder of Keep America Safe, retired General Wesley Clark, ABC's senior political correspondent Jonathan Karl, and Gwen Ifill, moderator of PBS's "Washington Week" and senior correspondent for the PBS "NewsHour."

Welcome, one and all. Lots to chew over. George, this week, Romney's senior foreign policy adviser, Richard Williamson, said of the situation in the last week unfolding throughout the Muslim world, "There's a pretty compelling story that if you had a President Romney, you'd be in a different situation." Is there?

WILL: No. The great superstition of American politics concerns presidential power. And during a presidential year, that reaches an apogee and it becomes national narcissism. Everything that happens anywhere in the world we caused or we could cure with a tweak of presidential rhetoric. Jay Carney participated in this when he said the riots in the Middle East are not about U.S. policy, they're about a video. Actually, they're about neither. If the video hadn't been the pretext, another one would have been found. There are sectarian tribal civil wars raging across the region that we neither understand nor can measurably mitigate.

TAPPER: Liz, Mitt Romney was criticized a lot this week, not just by Democrats, but even by some of his fellow Republicans for responding too quickly and for what was he saying in his response. You actually are not among those critics. You think he got it right.

CHENEY: I think he did get it right. I think that actually the statement this week that should have received more criticism and attention was the president's, when the president went into the Rose Garden 24 hours after the Cairo embassy attack, rightly, of course, condemned the killing of our ambassador in Libya, failed to even mention the Cairo attack. And, you know, I think that -- that in a situation in which an embassy has been attacked, the flag's been ripped down, the Al Qaida flag has been flown, that America's president not to even mention it clearly sends a signal to radicals across the region.

And, you know, I would disagree with George to the extent that we've now had three-and-a-half years of Obama policy, and it looks an awful lot like, whether you're talking about the Mexico City speech in 2009, the Cairo speech in 2009, the extent to which he's been apologizing for America, he's abandoned some of our key allies, like Israel, Poland, Czechoslovakia, he's attempted to appease our enemies, the Iranians, for example, the Russians. He's now getting ready, as we watch these scenes unfold on the air, to slash our defense. And the defense sequestration includes over \$120 billion for embassy security. And so the president himself's got a terrible record on national security. And it's clearly something that Governor Romney ought rightly to be pushing.

TAPPER: I suspect, General Clark, that you disagree with what Liz Cheney just said.

CLARK: I do disagree, because I think this is a consistent Republican narrative that Democrats are soft on defense, but we've a Democratic president who's been strongest on national security. He's completely taken the foreign policy and national security argument away from the other side.

He reinforced in Afghanistan. He got us responsibly out of Iraq. We took Osama bin Laden. He's been firm. He's been visionary. He's been tough. He's decisive.

So I know what the Republican narrative wants to be, but when you get below the rhetoric, there are no facts to support these charges. In fact, we've worked anti-missile defense. Poland's happy. Other nations in Europe seem to be happy. We've got the strongest relationship with Israel I think we've ever had. It's very good relations there. So I -- I just don't find much ground in these

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comments from the Republicans.

TAPPER: And, Jon, let me just go to some polling, because I want you to weigh in on this. If you look at how the American people feel about who would be better when it comes to foreign policy and terrorism, trust to handle foreign policy, Obama, 51 percent, Romney, 38 percent, trust to handle terrorism, Obama, 51 percent, Romney, 40 percent. That was Tuesday, an ABC News-Washington Post poll, so obviously the events of this last week have not factored into it. Could the events of the last week change those numbers?

KARL: They sure could. It's a question of where it goes. I mean, I think, Liz, despite what you're saying, I think even the Romney campaign thinks they mishandled the way they initially played this. Look at the difference in tone from Mitt Romney between when he came out right after the attack to where he is now.

CHENEY: Well, the Romney campaign doesn't always get it right.

KARL: Well, there you go. But -- but in terms of the longer-term implications here, this is really a potential, you know, danger for the president. There will be questions asked. No doubt there will be hearings up on Capitol Hill about what happened, why there was not more security in Benghazi. There will be questions about the overall situation in the Middle East. Was this really about one YouTube video or trailer for a movie that had been out, you know, for months actually and was finally translated into Arabic and put on an extremist television show in Egypt? Or is there something more fundamental going on?

This was a president that was going to, you know, transform our relations with -- with the rest of the world, particularly with the Arab world, and now the Arab world is to a degree inflamed with -- with very visible anti-Americanism. That's the kind of thing that could potentially erode the president's numbers long-term, even though Mitt Romney severely mishandled the situation.

TAPPER: And, Gwen, how much do voters care about foreign policy? How much could this actually change the course of this election?

IFILL: Not much immediately. But, you know, I find it really interesting. Jake, that a week ago we were post-convention and we were completely consumed with what we talked about at those conventions, not foreign policy, not at either convention, unless you count every Democrat talking about Osama bin Laden. Other than that...

TAPPER: You caught that?

IFILL: ... nobody really -- I picked up on that. I picked up on that. But I find it striking that Liz would say the Romney campaign doesn't always get it right. That -- that shows a little bit of disagreement within the Republican Party about how this week went.

But more interestingly to me, getting back to your question, I don't think people were paying attention to this, even though you can argue very clearly that this is the most important power that any president would have. So it boils down to a point that Mitt Romney was really trying to make, after all, the -- the timing issues, which is, who is in a better position to lead?

The tough position, if you are the guy trying to take out the incumbent, is to make the case that you would be better. Of course the president does better in this poll, because he is the president. He is currently the commander-in-chief.

But I don't know that Americans, when they go to the polls in the end, are going to say, "Well, I think I like the way he handled Benghazi." He's going to say, "Does he feel like a leader to me? Does he feel like someone who could be president?" And that's -- that's -- that's what was tough for Mitt Romney this week.

TAPPER: Liz?

CHENEY: I want to clarify. I think that the governor handled it exactly right when he went out and condemned the embassy statement. Jonathan's point that the campaign now feels like it needs to back is where I would fault them, if that is true.

I cannot imagine a more important set of issues. And I think, frankly, you know, it would be a tragedy for the nation if President Obama is allowed to effectively claim that he's been a successful national security president. And it'd be a tragedy for the nation if the Romney campaign doesn't push this issue very hard.

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I know how deeply Governor Romney cares about the country. So I hope very fervently that they will continue to push this hard. But there's no question but that we're weaker than we were when Barack Obama took office, and if he has four more years, we may well be unrecognizable.

CLARK: Actually, I don't think we are weaker. I think the whole point of going into Afghanistan in 2001, which President George W. Bush articulated, was Osama bin Laden, wanted dead or alive. And it was Barack Obama who really put the pressure on and got him.

IFILL: There it goes again. Once again, Osama bin Laden.

(LAUGHTER)

(CROSSTALK)

CLARK: But I think it's a huge -- it was a huge marker. It was a presidential decision in the -- and he was very much aware of President Carter's problem with Desert One. And he did against the advice...

(CROSSTALK)

KARL: Are you at all uncomfortable, though, with how political that -- I mean, that at the -- at the national political convention, that this military operation is used as a -- as a political talking point over and over again?

(CROSSTALK)

CLARK: But here's the -- here's the...

(CROSSTALK)

KARL: The vice president talking about putting him on bumper stickers?

CLARK: We've had, since the Vietnam War, the consistent refrain has been Republicans are the daddy party, Democrats are the mommy party, Republicans are strong, robust. Democrats are soft and weak and want to negotiate, want to apologize. It's simply not true.

We're stronger. We're safer. Barack Obama has been a very robust, muscular -- has a very robust, muscular foreign policy. And as George said earlier, what's happened in the Middle East has lots of factors and lots of causes underneath. It has nothing to do with rhetoric from Washington.

WILL: (inaudible) list of muscular actions by the president, you could add the use of drones, which has been extremely aggressive, more aggressive both in the number of attacks and the places where the attacks are made than under George W. Bush.

I really do not think it's fair to fault the president for throwing Israel under the bus, as they say. Granted, he has a bad relationship with my good friend, Netanyahu. But the relationships between the U.S. military and the Israeli military, which is 98 percent of the point of this relationship, are quite good.

But politically, our profession, graphic journalism, with all these pictures of things in flames, tends to give the country the sense that the world is somehow in chaos. The world's always dangerous and all that, but the chance of dying on this planet from organized state violence is lower than it has been since the 1920s.

IFILL: It's the disorganized state violence, I think, or non-state violence that everyone's worried about when they look at a map and see protests in 20 different places.

WILL: Yes, but it -- but it -- but it beast the heck out of wars.

(CROSSTALK)

CHENEY: But with respect to the state of -- but with respect to the state of Israel, George, look, you're in a situation now, in the last 48 hours, the president of the United States reportedly has offered to meet with the Muslim Brotherhood president of Egypt, who at a minimum allowed the attack on our embassy and has refused to see Benjamin Netanyahu. There's simply no way that

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you can claim that that relationship is not strained.

WILL: It is unpresidential peevishness. I take that point.

CHENEY: And given -- and given the fact that Israel's facing an existential threat, which is also a threat to the U.S., with respect to a nuclear-armed Iran -- and, frankly, the one effective program that we may have had in place that would have been able to slow or stop that nuclear program, the Stuxnet cyber warfare activity, which according to the New York Times, members of the president's national security team leaked to them. So this -- this president's record is clearly abysmal.

(CROSSTALK)

CLARK: Well, look, I want to say (inaudible) this question about refusing to meet with Netanyahu. I'm not in the administration, so I wasn't a part of this. But I ask it. I don't think there's been any direct request to meet. And I don't think there's been a refusal. There's daily contact between Israeli government officials and the United States. Secretary of State Clinton has been out there meeting people. We know very well the positions on all sides. The uncertainties, the intelligence, the information is shared. Planning is shared. It's very close. This is a question of the best way to bring this Iranian program to a halt.

TAPPER: And on that subject, George Stephanopoulos interviewed Mitt Romney this week and asked about the red lines, where the U.S. will draw the line in the Iranian nuclear program -- nuclear weapons -- alleged -- before acting. And here's that exchange.

(BEGIN VIDEO CLIP)

STEPHANOPOULOS: The red line going forward is the same.

ROMNEY: Yes. And I recognize that when one says that it's unacceptable to the United States of America, that that means what it says, you'll take any action necessary to prevent that -- that development, which is Iran becoming nuclear.

(END VIDEO CLIP)

TAPPER: George, where does Prime Minister Netanyahu want this red line to be publicly drawn? We've heard so much about this red line. President Obama has not stated what it is. Mitt Romney has not stated what it is. What does Bibi want?

WILL: I'm not sure what he wants, because I'm not sure how you draw red lines when you can't have confidence -- not from incompetence, but just the limits of knowledge -- confidence in our intelligence system.

Last March, in an interview with Jeffery Goldberg of the Atlantic, President Obama said our intelligence service will give us a pretty long lead time in understanding where Iran is. Our intelligence services did not predict India's testing of a nuclear weapon, Pakistan's testing, didn't anticipate, didn't predict North Korea's, so I think he may have a faith in the ability of our intelligence services to draw lines and put down markers as to where the Iranian program is that we simply actually don't have.

TAPPER: And, General Clark, does the president -- I mean, is it in the president's interest to publicly state what the red line is? Doesn't that mean that he then has to go to war?

CLARK: No, he's not going to state a red line. There probably are several different indicators, and there's going to be a margin for uncertainty, because everyone understands that intelligence, as George said, is not precise. It's been sharpened up a lot. It's clearly a subject of focus that we didn't have on India and Pakistan, so that's not -- you know, it's not a direct comparison.

We're doing better on that intelligence. But he's going to have -- no president can publicly declare red lines. That surrenders his decision-making authority. He's going to evaluate a number of factors. He's -- he's been very clear they're not going to get a nuclear weapon. He says it's unacceptable. He's decisive. Osama bin Laden found that out. And if I were the Iranian leaders, I'd be very concerned.

IFILL: So do we know what Mitt Romney was saying in that interview with George, when he said he agreed with the president that there should be a red line? If we don't know what the

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president's red line is, and Mitt Romney and his advisers have said in the past that they actually agree more with Bibi Netanyahu, was Mitt Romney again backing away, getting softer on this issue, in agreeing with the president?

(CROSSTALK)

CHENEY: Look, I think -- I think the key on the intelligence here, it wasn't just India that we missed. It was also, frankly, Syria, the nuclear power plant that was being built in the Syrian desert, which was in 2007 that the Israelis came to us and said, "Here, we have it." On Iraq, the Israelis had better intelligence than we did about the development of that nuclear program. I think George is right on this one. I think that our own intelligence has not been very effective at identifying and predicting where other nations stand in this. And I think...

IFILL: But, Liz, I'm still trying to figure out how President Romney would be different, if he's agreeing with the president on this issue?

CHENEY: One -- one issue -- it seems to me the problem the Israelis have here, number one, I think they understand America intelligence is probably not as good as theirs is in predicting. Number two, they don't believe this president. They don't take him at his word.

So the president says, you know, I'm not going to allow this, and then the chairman of the Joints Chief is traveling around saying, gosh, the worst thing that could happen would be an Israeli strike. I think the -- you know, the Israelis would understand with a President Romney that -- that he actually means what he says, that we're not going to allow, frankly, even nuclear capability. It's not just waiting to get a weapon. It's the capacity to have that weapon.

TAPPER: I want to switch topics right now to a hardening we've seen in conventional wisdom about the state of -- of the -- of the election. We've seen in -- in Friday, these three swing state polls came back indicating, in Ohio, Obama's up 7 points, Virginia, Obama is up 5 points, Florida, Obama is up 5 points.

And, George, one of the amazing things is, Mitt Romney is no longer in polling beating Obama on trust to handle the economy.

WILL: Which is his campaign in one sentence. Those three states have one thing in common: They all have Republican governors. And all three Republican governors are bragging -- perhaps rightfully so -- that they have got their economies up and running. If you add Wisconsin, with Scott Walker, and -- to that list, you have a tension, a kind of disconnect between the interests of the Republican governors in the swing states and the interests of the Romney campaign.

TAPPER: Jon, what's going on behind the scenes here?

KARL: Well, look, one thing that's happened is, during the Democratic convention, the Romney campaign essentially went dark. And what you have seen is just an absolute bombardment, particularly in Ohio and in -- and in Florida, from the Obama campaign hammering Romney on -- especially in Ohio on the auto bailout. I mean, there was a Romney adviser who told me that that famous headline that Romney himself did not write, "Let Detroit Go Bankrupt," could be the headline that costs the election.

They have gone in and actually outspent dramatically the Romney campaign over the last few weeks, which is incredible, when you think that the Romney campaign actually has more money.

WILL: It's particularly interesting because the automobile companies went bankrupt. And so you're -- the argument between Romney and the administration on the auto bailout is one of nuanced degree and law.

(CROSSTALK)

CLARK: ... because what President Obama has said is there is a way to move this economy forward, and -- and Governor Romney's plans don't -- they really don't show that way. I mean, he's talking about tax cuts for the wealthy, closing loopholes, and sort of letting things take their course. And that's been his philosophy.

KARL: Although -- although -- although you had the Obama campaign entirely talking about something that happened during the first six months of the Obama administration.

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CLARK: It's true.

(CROSSTALK)

CLARK: But there are other things going on. Jonathan. There's a big manufacturing initiative going on. And all through the administration, people are working to try to restart and re-energize American manufacturing. The Pentagon's worked on DOD procurement...

(CROSSTALK)

CHENEY: General, why -- General, why then do we have more Americans unemployed at any time than since 1980? I mean, I think this administration has, at best, a real misunderstanding between the difference of -- about the difference between, you know, activity and action.

And I thought what was particularly interesting was that at the Democratic National Convention, certainly not from the president, you never heard the word "record." They don't want to talk about it. They can't talk about it because the record has been so bad, as bad as we just were talking about it's been on national security, it's been worse on the economy.

CLARK: Actually, it hasn't. You know, we've created 6.4 million private-sector jobs. Now, we have lost state and municipal jobs, because these -- these municipalities and states have to reduce their...

(CROSSTALK)

TAPPER: Well, it depends when you start counting. But, Gwen. I want to -- we have to take a break, but before we take...

IFILL: We can talk Ohio.

TAPPER: ... no, before we take the break. go.

IFILL: OK. We can talk about Ohio, which is about the bailout, but you talk about Virginia and Florida, you're talking about different things, especially in Florida, where we're talking about Medicare, and those are the ads, and that's the spending, and that's the rhetoric, especially with the addition of Paul Ryan to the ticket, which has got people paying attention.

In Virginia, in many ways, it's the northern part of Virginia which is more susceptible to what's happening in Washington and is listening to the debate more closely. And in the southern part of Virginia, which is more military and seems to be susceptible to the argument that the Obama administration is making. Because we live in Washington, we're seeing a lot of these ads. And we cannot underestimate how much of this has to do with the unpopular governors in Ohio and Florida and how much of it has to do with the effective advertising in all of those states.

TAPPER: OK, we'll be back in 60 seconds with more of our powerhouse roundtable, but, first, a bit more from "Saturday Night Live's" season premier last night.

(BEGIN VIDEO CLIP)

(UNKNOWN): I'm Barack Obama, and I approve this message, but I'm not real proud of it.

(UNKNOWN): After Bain Capital shut down the mill, I was out of work for a year. Next I worked as a trucker, but then Bain came along, bought the trucking company, and I lost that job, too. Finally, I got a job at a shoe-shine stand, under an assumed name, working just for tips. But Bain somehow found out, bought the business, and moved it to China. That's when I knew: This is not a coincidence.

(UNKNOWN): Each time Raymond McCoy (ph) got a new job, Mitt Romney and Bain Capital would buy the company, apparently for the sole purpose of laying him off.

(END VIDEO CLIP)

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

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KIMMEL: Here's another thing that will amaze you. You don't even have to order the iPhone. Apple has collected so much information about you, it already knows if you want it. It's coming to your house.

FALLON: A lot of people are complaining that the new iPhone 5 is taller than the last model, which means they have to buy a new case. In response, Apple issued an official statement saying, "Exactly."

(END VIDEO CLIP)

TAPPER: And we're back now with the roundtable. And as you saw right there, a lot of talk this week about the economic impact of that new iPhone being released by Apple. Take a look at this. JPMorgan estimates the iPhone could add \$3.2 billion to the nation's GDP in the next quarter alone. But the Federal Reserve is not counting on Apple. They also announced some steps this week to boost the economy, embarking on a new round of what's known as quantitative easing, which is bond buying, \$40 billion of mortgage-backed securities each month to help boost the economy.

George, I'm just taking a guess that you're not a big supporter of this.

WILL: Well, quantitative easing is how the government talks when it's really eager not to be understood. Quantitative easing -- quantitative easing is the government printing money. Now, printing presses are so 20th century. They do it digitally. Never mind. It's -- it's expanding the money supply.

And it's part of not mission creep, but mission gallop on the part of the Fed, which is on its way to becoming the fourth branch of government, accountable to no one and restrained by nothing, as far as I can tell, in exercising both monetary and fiscal policy.

The interesting thing is this. It used to have one mandate: protect the currency as a store of value, prevent inflation. Then we added a second mandate, maximize employment. Now we've forgotten the first and concentrated solely on the second to produce trickle-down economics.

The whole point of this is to drive people into -- out of bonds and into riskier assets, such as equities, great effect on the stock market, where the equities are owned by a tiny portion of the American people, in the hope that the wealth effect, as the stock market goes up, will cause the wealthy in America to spend and invest, and the results will, guess what, trickle down to the rest of us.

Now, banks have \$1.5 trillion in reserves. Companies have \$2 trillion of cash sitting on the sidelines. Who in America is not buying a house because of a 30-year mortgage at 3.5 percent is too high? Who is not hiring workers because lending is too expensive now?

TAPPER: OK.

(CROSSTALK)

KARL: You know, it's -- it's an extraordinary move by the Federal Reserve to take eight weeks before an election. And economists will differ over, you know, whether or not it will actually have an effect on the economy, but it will have an effect on Capitol Hill. You will see a move to kind of clip the Fed's wings and say, "Get back to the original purpose of controlling inflation." I think that, you know, you hear a lot of talk about the Fed on the Hill, but this gives impetus to doing something (inaudible)

CLARK: I think the thing is, inflation is under control. Yes, there's a lot of money out there. It's not moving. We're keeping interest rates low. We're giving opportunities for investment in housing and other sectors.

But it's got to be coupled with other measures, so the president's announced the new target, to get rid of half of our oil imports by 2020. That will put another \$150 billion, keep it inside the U.S. economy. It's a big deal, and it can be done.

He's announced new manufacturing initiatives. We're bringing jobs back from overseas. And we need to -- to move forward and do something about the home mortgage foreclosures.

So there's been some efforts on this. There's some frustration on this. We need some bipartisan

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work on this. I remember debating Karl Rove in -- in 2008 on this, and he was very, very firm that we're not going to help people who have home mortgage problems. But when you've got more than 5 million home mortgages out there underwater waiting for foreclosure, I think we need some action on it.

CHENEY: Look, what this is, is the Fed printing money in order to pay for Barack Obama's debt. And the one thing in your litany you didn't mention, General, is the debt. This country is facing a crisis that's a totally unavoidable crisis, \$16 trillion we hit during the Democratic National Convention. And the extent to which this president has shown absolutely no leadership to deal with it, you've now got the Fed stepping in. You've now also got another credit -- credit rating agency in just the last 24 hours downgrading the United States of America. That has never happened before, and we've had it happen now twice on President Obama's watch.

TAPPER: Gwen, we've got about 30 seconds...

(CROSSTALK)

IFILL: Well, Liz brings it back to politics. What I'm saying is that you look at this completely through a political lens. Ben Bernanke, every time he steps up and doesn't do something like this, people go, oh, no, the markets go down. He comes up and does it, and people say, a-ha, this is a way of getting the president elected. The problem is that nothing he announced this week is going to make any difference in the next seven weeks, except it's going to create the idea that something is being done, and that's what I think everybody here is talking about, this idea that something is being done, not necessarily something that will have an immediate effect.

(CROSSTALK)

CHENEY: But it's -- but it's an economic argument. I mean, I -- it does have a political impact because we're in the middle of a presidential campaign. But when the Fed is printing money in order to buy debt, you know, it's -- it's an economic argument.

TAPPER: All right. Thanks to all of you. The conversation will continue online. General Clark, Liz Cheney will answer your questions on Twitter @generalclark and @liz_cheney. Just use the hashtag #this week.

"Your Voice This Week" is coming right up, but first...

(BEGIN VIDEO CLIP)

TAPPER (voice-over): Three moments from "This Week" history. What year was it?

(UNKNOWN): We have raised this memorial to commemorate the service and sacrifice of an entire generation.

TAPPER: The World War II Memorial opened.

STEPHANOPOULOS: It's taken 17 years, almost three times as long as the war it commemorates, for the memorial to go from idea to reality.

BUSH: A few American troops who dishonored our country and disregarded our values...

TAPPER: We learned about the torture of prisoners at Abu Ghraib.

(UNKNOWN): I'm appalled. That is not how the American military acts or should act.

TAPPER: And 52 million people watched as "Friends" signed off.

SCHWIMMER: Please stay with me. I am so in love with you.

TAPPER: Was it 2003, 2004, or 2005? We'll be right back with the answer.

(END VIDEO CLIP)

(COMMERCIAL BREAK)

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TAPPER: So what year was it? When did the Abu Ghraib prison scandal break and the World War II memorial open? It was eight years ago, 2004.

And now "In Memoriam." We honor our fellow Americans who serve and sacrifice, including those killed in Benghazi, Libya.

(BEGIN VIDEO CLIP)

OBAMA: Four Americans, four patriots. They loved this country. They chose to serve it, and served it well.

CLINTON: We owe it to those four men to continue the long, hard work of diplomacy.

(END VIDEO CLIP)

TAPPER: This week, the Pentagon released the names of three soldiers killed in Afghanistan.

And finally, "Your Voice This Week." Today's question comes from Nancy Burkley who asks, "Who are you going to vote for?"

Nancy, the truth is, I don't vote in races I cover. After I became a reporter, I found that, after I voted absentee ballot on a race I covered, it felt like I'd made an investment, and it was an uncomfortable feeling. So while I believe an active voting public to be vital to our republic and I revere voting, I don't feel as those I can do the best job I can bringing you fair and impartial coverage of politicians if I feel in any way invested in those politicians.

Now, other reporters feel differently. And I in no way judge that. I'm not trying to be holier than thou. This is just my personal view.

And just a reminder. You can ask me questions all week long on Twitter @jaketapper. We'll be right back.

(COMMERCIAL BREAK)

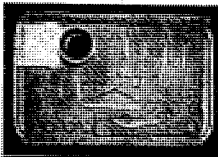
TAPPER: That's all for us today. Thanks for sharing part of your Sunday with us. Check out "World News" with David Muir tonight. George Stephanopoulos will see you back here next week. And Happy Jewish New Year.

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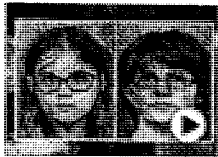


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Amb. Susan Rice, Rep. Mike Rogers discuss violence against Americans in the Middle East

Written by Chris Wallace / Published September 16, 2012 / Fox News Sunday

Special Guests: Amb. Susan Rice, Rep. Mike Rogers

This is a rush transcript from "Fox News Sunday," September 16, 2012. This copy may not be in its final form and may be updated.

CHRIS WALLACE, HOST: I'm Chris Wallace.

Violence against Americans sweeps the Middle East.

(BEGIN VIDEOTAPE)

WALLACE: We'll have the latest from the region and discuss what the Obama administration will do next with the U.S. ambassador to the United Nations, Susan Rice.

Then, big questions on Capitol Hill. Who is behind the attack that killed the U.S. ambassador to Libya? And should we cut off foreign protect our diplomats?

We'll ask the head of the House Intelligence Committee, Chairman Mike Rogers.

Plus, tough talk from both candidates on the Middle East. We'll ask our Sunday panel if foreign policy will finally become an issue in this campaign.

And our Power Players of the Week, using their Washington clout to fight a devastating disease.

All right now on "Fox News Sunday."

(END VIDEOTAPE)

WALLACE: And hello again from Fox News in Washington.

Exhibit 35

We'll talk with Ambassador Rice and Chairman Rogers in a moment. But, first, here is the latest on the situation overseas. Protesters have attacked U.S. targets in more than 20 nations. Citing concerns over security, the State Department ordered all nonessential U.S. government personnel to leave Sudan and

Tunisia. And in Benghazi, Libya, there are reports of more arrests in the attack that killed four Americans, including Ambassador Chris Stevens.

For more on the continuing unrest, let's bring in correspondent Leland Vittert, who is in Cairo, Egypt -- Leland.

(BEGIN VIDEOTAPE)

LELAND VITBERT, FOX NEWS CORRESPONDENT: In cities across the Middle East, there is now a tense calm that has taken over here in Cairo. Hundreds if not thousands of riot police ready on standby in case violence breaks out, once again. For four days, it was a pitched fight between protesters on the street throwing Molotov cocktails and hurling rocks and then police firing back with rubber bullets and tear gas.

The protesters carrying posters of Usama bin Laden and chanting, "Obama, Obama, we are all Usama."

In Tunis, Tunisia, U.S. citizens have been advised to evacuate the country and/or not travel to Tunisia after violence swept there that killed four people when protesters stormed the U.S. embassy.

The government of Sudan, we're hearing, has denied entry to a Marine Special Operations team that was deemed sent to secure the U.S. embassy after a local sheikh called for mass protests in that country which resulted in thousands storming the embassy and security forces opening fire to try and push back the protesters.

Al Qaeda in the Arabian Peninsula has issued a communique urging more attacks. And here in Cairo, local media reports, there was a credible threat against the U.S. embassy here. Security is at an unprecedented level, with 15-foot tall concrete barriers erected on every one of the entranceways down to the U.S. embassy compound. We took a walk around earlier and outside the barricades, the protesters made their message clear, spray-painted in English "USA go to hell."

Chris, back to you.

(END VIDEOTAPE)

WALLACE: Leland Vittert reporting from Cairo -- Leland, thanks for that.

Joining us now our ambassador to the United Nations, Susan Rice. Ambassador, welcome back to "Fox News Sunday."

AMB. SUSAN RICE, U.S. AMBASSADOR TO THE UNITED NATIONS: Thank you.

WALLACE: This week, there have been anti-American protests in two dozen countries across the Islamic world. The White House says it has nothing to do with the president's policies.

Let's watch.

(BEGIN VIDEO CLIP)

JAY CARNEY, WHITE HOUSE PRESS SECRETARY: This is not a case of protests directed at the United States writ large or at U.S. policy. This is in response to a video that is offensive.

(END VIDEO CLIP)

WALLACE: You don't really believe that?

RICE: Chris, absolutely I believe that. In fact, it is the case. We had the evolution of the Arab spring over the last many months. But what sparked the recent violence was the airing on the Internet of a very hateful very offensive video that has offended many people around the world.

Now, our strong view is that there is no excuse for violence. It is absolutely reprehensible and never justified. But, in fact, there have been those in various parts of the world who have reacted with violence. Their governments have increasingly and effectively responded and protected our facilities and condemned the violence and this outrageous response to what is an offensive video. But there is no question that what we have seen in the past, with things like satanic verses, with the cartoon of the Prophet Muhammad, there have been -- such things that have sparked outrage and anger and this has been the proximate cause of what we've seen.

WALLACE: Now, it may have sparked it but you critics say that the outpouring of outrage against the U.S. has everything to do with the U.S. policies, that we are disengaging from that part of the world, that we pulled out of Iraq, we are pulling out of Afghanistan, that Iran is continuing on with its nuclear program. And they say, our critics, that our allies no longer trust us, and our enemies no longer fear us.

RICE: Well, Chris, that's just false. And let's be plain -- our partners and allies have responded effectively and promptly when we have asked them to protect our facilities and our people.

WALLACE: Well, let's -- it took three days in Cairo.

RICE: Well -- and what happened initially in Cairo was not sufficiently robust when President Obama picked up the phone and spoke to the President Morsi, right away things changed. And that's an evidence of our influence and our impact.

And what happened was that the authorities in Egypt have been very robust in protecting our facilities, not just in Cairo, but elsewhere in the country. President Morsi has issued repeated condemnations of the violent response and called for calm. And we have seen the same thing in Yemen, in Libya, in Tunisia and many other parts of the world.

WALLACE: Why are we asking all nongovernmental personnel to leave Sudan and Tunisia?

RICE: Well, first of all, we're not asking all non-governmental personnel.

WALLACE: All non-essential governmental personnel.

RICE: What we have done on a selective basis, where we assess that the security conditions necessitate is to temporarily have family members and non-essential personnel depart the country. That's something we do all over the world when security circumstances warrant. It's short-term, it's temporary and it's prudent.

And we do it, Chris, because we obviously prioritize. The president has been very clear his number one priority is the protection of American personnel and facilities.

WALLACE: So do you think we're turning the corner here?

RICE: Well, Chris, I think, first of all, we have seen in the past outrage and unfortunately violent outrage which is condemnable and never justified. It may, indeed, occur in other circumstances. There is no predicting exactly what the trajectory of this is. Obviously, the last couple of days have been some what better. But we are vigilant and we are of the view that is not an expression of hospitality in the broadest sense towards the United States or U.S. policy. It's approximately a reaction to this video and it's a hateful video that had nothing to do with the United States and which we find disgusting and reprehensible.

WALLACE: You talk about our influence and impact in the region. Our closest ally in the region, Israel, clearly doesn't feel that we are supporting them when it comes to confronting Iran. In fact, this past week, Prime Minister Netanyahu blasted the U.S. for its failure to set the same red lines as he has in terms of stopping Iran's nuclear program.

Let's watch what the prime minister said.

(BEGIN VIDEO CLIP)

BENJAMIN NETANYAHU, ISRAELI PRIME MINISTER: The world tells Israel, wait, there is still time. And I say, wait for what? Wait until when?

Those in the international community who refuse to put red lines before Iran don't have a moral right to place a red line in Jerusalem.

(END VIDEO CLIP)

WALLACE: And when Netanyahu requested a meeting the president, said he was too busy to meet with him.

RICE: Let me address --

WALLACE: Let me ask a question, if I may.

RICE: I thought you had. I'm sorry.

WALLACE: Well, no, I haven't. They'll be a question mark at the end.

Is that how we treat our best friend in the region?

RICE: Well, let me answer that question in three parts. First of all, the overall relationship with Israel. As Prime Minister Netanyahu and Defense Minister Barak have repeatedly said, the intelligence and security relationship between the United States and Israel at present is unprecedented. It has never been stronger. That's -- those are their words.

So, that's the overall nature of our relationship, very strong -- stronger than ever.

Secondly, with respect to Iran. The United States, President Obama has been absolutely crystal clear that the United States will not allow Iran to acquire a nuclear weapon and we will do what it takes to prevent that from happening. All options remain on the table. The president has been very clear about that and that includes the military option. This is not a policy of containment, Chris. As the president has repeatedly said, it's a policy to prevent Iran from acquiring a nuclear weapon. That is the bottom line or as the prime minister

prefers to call it, a red line. That's the bottom line.

Now, we have also said and I think we are in constant communication with Israeli security and intelligence and policy officials that we still think that there is team through economic pressure which is unprecedented as well. Iran's economy is now shrinking by 1 percent a year. Its oil production is down 40 percent. Its currency has plummeted 40 percent just in the last several months as sanctions have gone into fullest effect.

We think there is still time and space for that pressure to yield a result. The bottom line, Chris, is the only way to permanently end Iran's nuclear program is if it decides to give that program up.

RICE: Now, the most solemn decision that a president can ever take is a decision to go to war. And President Obama's view is we will do what it takes it. But before we resort to the use of force, let us be sure we have exhausted other means including sanctions, pressure and diplomacy to ensure that Iran fully and finally gives up its nuclear weapons.

WALLACE: Let's talk in the time we have left about the --

RICE: You asked about the visit --

WALLACE: We have limited time. I'm happy -- if you want to go along, I'm happy to as well.

RICE: I don't want to leave that hanging. That was the third point I wanted to address.

As you know, the president is coming up to the General Assembly in New York at the United Nations. He'll be there in the beginning of the week, Monday and Tuesday. Prime Minister Netanyahu is coming toward the end of the week. Their schedules don't match. There is no opportunity for them to meet in the U.S.

WALLACE: The prime minister would be willing I'm sure to go. And in fact there are suggestions from the Israelis to go to Washington.

RICE: Well, the prime minister hasn't asked for a meeting in Washington, Chris.

(CROSSTALK)

WALLACE: If you watched what he just said, he said that countries that don't set red lines don't have the moral authority to put red lines on Israel. That doesn't sound like a happy ally, Ambassador.

RICE: Well, first of all, we are close partners and friends and always will be. That is an enduring aspect of the U.S.-Israeli relationship.

WALLACE: Why did the president call Prime Minister Netanyahu in the middle of the night and talk for an hour?

RICE: Precisely because they are friends, and when friends need to say something to each other, they pick up the phone and talk and they talked for an hour. It was a good conversation and it's in the nature of our relationship that these two partners speak to one another regularly.

We have no daylight between us on the issue of preventing Iran from acquiring a nuclear weapon. That is our clear bottom line and the president could not be any plainer about it.

WALLACE: Let's talk about the attack on the U.S. consulate in Benghazi this week that killed four Americans, including Ambassador Chris Stevens.

The top Libyan official says that the attack on Tuesday was, quote, his words "preplanned". Al Qaeda says the operation was revenge for our killing a top Al Qaeda leader.

What do we know?

RICE: Well, first of all, Chris, we are obviously investigating this very closely. The FBI has a lead in this investigation. 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, which unfortunately are quite common in post-revolutionary Libya and that then spun out of control.

But we don't see at this point signs this was a coordinated plan, premeditated attack. Obviously, we will wait for the results of the investigation and we don't want to jump to conclusions before then. But I do think it's important for the American people to know our best current assessment.

WALLACE: All right. And the last question, terror cells in Benghazi had carried out five attacks since April, including one at the same consulate, a bombing at the same consulate in June. Should U.S. security have been tighter at that consulate given the history of terror activity in Benghazi?

RICE: Well, we obviously did have a strong security presence. And, unfortunately, two of the four Americans who died in Benghazi were there to provide security. But it wasn't sufficient in the circumstances to prevent the overrun of the consulate. This is among the things that will be looked at as the investigation unfolds and it's also why --

WALLACE: Is there any feeling that it should have been stronger beforehand?

RICE: It's also why we increased our presence, our security presence in Tripoli in the aftermath of this, as well as in other parts of the world. I can't judge that, Chris. I'm -- we have to see what the assessment reveals.

But, obviously, there was a significant security presence defending our consulate and our other facility in Benghazi and that did not prove sufficient to the moment.

WALLACE: Ambassador Rice, we thank you so much for coming in today and discussing the fast-moving developments in that part of the world. Thanks so much.

RICE: Thank you for having me.

WALLACE: Up next, the head of the House Intelligence Committee, Mike Rogers, with the latest on who was behind that deadly attack on our diplomats.

(COMMERCIAL BREAK)

WALLACE: There are still more questions than answers about the attack in Libya Tuesday that killed U.S. ambassador Chris Stevens and three other Americans.

For more on where the investigation stands, we are joined which the chairman of the House Intelligence Committee, Congressman Mike Rogers, who is in his home state of Michigan.

Well, Congressman, you just heard Ambassador Rice say that her latest indications are that the attack on the consulate in Benghazi was a spontaneous demonstration about that video control that spun out of control. Do you agree with the ambassador?

REP. MIKE ROGERS, CHAIRMAN OF THE HOUSE INTELLIGENCE COMMITTEE: I think it's just too early to make that conclusion. There are -- there's analysts in Department of Defense and CIA. There's operatives in both places.

As an FBI agent, I get to look at all of that. I come to a different conclusion. They are only moderately confident it was a spontaneous event because there's huge gaps in what we know.

The way that the attack took place, I have serious questions. It seemed to be a military style coordinated. They had indirect fire, coordinated with direct fire, rocket attacks. They were able to launch two different separate attacks on locations there near the consulate and they repelled a fairly significant Libyan force that came to rescue the embassy.

And then it was on 9/11 and there is other information, classified information, that we have that just makes you stop for a minute and pause.

And as the first thing you learn as a young FBI agent in this, there are coincidences but they're not likely, and there are a lot of coincidences about this event.

Do I believe that people did show than had weapons and joined the effort? Probably I do, but I think to me, when you look at all of the information across both departments, it sure -- I'm just suspect that they could come to that conclusion so assuredly that it was a spontaneous effort given the coordination of it.

WALLACE: There has been talk about an extremist group in Benghazi, Ansar al-Sharia. There has been talk that they were in touch with another group, Al Qaeda in North Africa.

What can you tell us about that?

ROGERS: You know, for months, Al Qaeda in the Maghreb, and that's across northern Africa, which joined in about 2007 I think it was or 2008, they joined Al Qaeda. So they had their own groups across northern Africa.

What they have been looking -- they have been looking because Al Qaeda core, Zawahiri and others, have told them that you want -- you need to start attacking Western targets. So they have been looking for opportunities.

We know, there was an IED at this facility just months ago. So, we know that there is some interest by Al Qaeda, strong interest I should say to attack Western targets. We know that Al Qaeda cells in Tunisia have been developing; in Libya have been developing.

We can't say for certain it was an Al Qaeda event. It just has all of the hall marks, Chris, of an Al Qaeda-style event.

WALLACE: Given and you just mentioned the fact there had been an IED attack at this consulate. There have been, as I mentioned to Ambassador Rice, been five terror attacks on the ground against Western interests in Benghazi.

I understand that hindsight is 20/20. But were we as prepared as we should have been given the fact that, yes, there was a history of violence in the region and, yes, it was the 11th anniversary of 9/11 and, yes, the ambassador was at this not very fortified installation in Benghazi.

Should there have been more security there?

ROGERS: Yes, that one is going to be hard to assess. I think we need to walk to that conclusion and not run. One of the things we do ask diplomats in places like Libya to do, and remember, they're volunteers, they're in dangerous neighborhoods. It's a bit of an expeditionary exercise.

We didn't have an embassy there but it was important to have U.S. influence there for hopefully a better outcome that leads to more peaceful events in the future. So, he gave his life in that effort and it was expeditionary. So, we have to look at was the security accurate for what we knew in accordance with what the mission was for the ambassador in Benghazi at that time. I don't think any one today can say yes or no.

I think it's going to take -- and I know the FBI is on the ground. They'll have a great forensic when they are done a great forensic picture for us and then we can make that determination and we're also -- through the committee and through the intelligence services -- scrubbing everything we knew up to that point.

Was there a smoking gun that was missed? I don't think we know that answer either. I have not seen anything that indicates that. But we just don't know.

So, I think all of those pieces have to be put together before we come to the conclusion they didn't have the right security posture there in Benghazi.

WALLACE: Let's talk about the broader picture and wave of anti-American violence across Islamic world this week. You just heard Ambassador Rice say that this has nothing to do with U.S. policy in the Middle East. It is all about that video that insults the Prophet Muhammad.

Congressman, do you believe that?

ROGERS: I don't. I think this is a convenient effort by all of the groups who have other ulterior motives. If you remember even -- I know the ambassador mentioned the Prophet Muhammad cartoons. Well, there were months that went by before violence was incited. They did that through their own information operations. They being Al Qaeda and other terrorist groups.

So, we know that Al Qaeda is clearly trying to use this to incite violence. So, this is a mechanism to do what they have been trying to do all along. And what we are finding, too, in some of the demonstrators in Egypt is finding that a lot of the folks showing up hadn't even seen the video and this is some of that youth group that really started the change in Egypt and now the day the election happened felt immediately disenfranchised.

You have economic problems, religious problems, cultural differences, tribal differences in Libya -- all of those things are simmering and we have had at least what appears to the folks in the Middle East -- and they can say what they want, I travel there frequently -- the Middle East believes, the countries in the Middle East,

believe that there is a disengagement policy by the United States and that lack of leadership there or at least clarity on what our position is, is causing problems.

If we all decide to rally around the video as the problem we going to make a serious mistake and we are going to make I think diplomatic mistakes as we move forward if we think that is the only reason people are showing up at our embassy and trying to conduct acts of violence.

WALLACE: Well, you're not only the chairman of the House Intelligence Committee. You are also a congressman. Let me ask you a political question, not an intelligence question.

Do you think the administration is putting it all on the video because that allows them to duck questions about their policies?

ROGERS: Well, I think we have not had a robust debate in the campaign, in the presidential campaign, about foreign policy. It has been on the back-burner. I mean, the president doesn't talk a lot about it. He hasn't given any speeches really of significance since the 2009 Cairo speech. I do think that, you know, policies overseas have consequences. As a matter of fact, I had a meeting with a senior Middle East intelligence official awhile ago and asked him if I could make you king for a day, what would you ask of the United States. And he stopped for a minute, Chris and he said, I'd like to know -- I would tell you to tell us, what is your Middle East policy? There is no U.S. leadership.

That's a pretty powerful thing to hear when you have all this chaos breaking out now and this was several months ago. But it just shows that those policies do have some consequence.

Now, it's a combination of all of the things I just talked about. It is a very, very difficult problem to solve, but you can't solve it by just trying to step back and letting the cauldron simmer on its own. We have to be a part of it, and it doesn't mean militarily.

It doesn't mean investing billions and billions and billions of dollars. It's a combination of showing strength and showing up. We have to be there. If Israel is --

WALLACE: Let me just interrupt for a second because I want to get to this point.

ROGERS: Yes?

WALLACE: Obviously, relationships were going to be much more complicated after the Arab spring, democracies replaced dictatorships. Islamic groups were allowed to protest in the streets where before they had been crushed. Fairly, given this changing situation, could the administration, the president, have done more to aggressively advance our interests in this changing Middle East?

ROGERS: I'm not going to say it's not hard. I think these are hard problems. But I do think that it's important that with U.S. leadership, you don't allow these governments to fan the flames of anti-Americanism for their own domestic consumption and do the wink, wink, nudge, nudge which exchange public statements about how we all don't like it. That is not a good policy and is not going to solve the problem.

You need very direct conversations. You need public conversations and I think from the president as well and I hope he does start to engage in a public way in foreign policy that helps set the record straight about the United States position.

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You need very direct conversations. You need public conversations and I think from the president as well and I hope he does start to engage in a public way in foreign policy that helps set the record straight about the United States position.

And again, saying that we have great relationships. Saying everything is wonderful. Saying it's just this one video causing all of this problem, I mean, obviously, the bad guys are going to use this as a reason to do what they have already been doing.

But we need more than that. And that's where I hope -- maybe there's a silver line in this, Chris and we can turn this around.

This shouldn't be about the election. It can't be about the election. It has to be about standing up for our national security issues because it's going to impact us no matter who wins in November and it has -- as we can see -- very serious consequences if we he don't get it right.

WALLACE: Congressman, should the U.S. -- and this is a decision you're going to have to make as a member of Congress -- should the U.S. either cut off aid to countries like Egypt and Libya or at least delay it, conditioned it, on the idea that that you have to show that you are willing to protect U.S. interests, whether it's literally protecting our embassies and diplomats or protecting U.S. -- or advancing U.S. policies?

ROGERS: Well, the first thing is they are obligated to protect our embassy. I wouldn't make that a condition of anything. They need to do that today, without excuse and without delay.

On top of that, I think we can condition aid. You know, I always said, if we just completely pull out of Egypt, is America better off or worse off when it comes to being able to influence a better outcome for peace?

I think it's probably better that we have some influence in Egypt that we can have conversations about, hey, you don't want to provoke Israel, you don't want to continue on with this anti-Americanism. But it has to be conditioned. We shouldn't just give the money and hope for the best. That's not going to work.

I think that if we condition the spending and understand it's OK to ask for something that is in our best interest. We shouldn't apologize for that. We shouldn't say that's offensive to anyone. It's our money. It's taxpayer money and we ought to say here is what we really want to have happen.

And that good influence of the United States, really we prefer commerce over conflict, and if we can continue to promote that around the world, the world is going to be a better place. We have to be there for that to happen.

So, I wouldn't run away from the money right away and say, we're going punish you immediately, but we are going to condition it. And, by the way, if you don't do what you ask us to do, then we're going to take the money away. It's in our best interest to do it.

WALLACE: Congressman Rogers, we want to thank you so much for bringing us up to date on the investigation of that deadly attack in Libya and the whole rest of the situation in the Middle East. Congressman, thank you.

ROGERS: Hey, thanks, Chris. Appreciate it.

WALLACE: Coming up, what happens now to the president's Middle East policy? We'll bring our Sunday group into the conversation when we come right back.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

PRESIDENT BARACK OBAMA: I have come here to Cairo to seek a new beginning between the United States and Muslims around the world, one based on mutual interest and mutual respect, and one based upon the truth that America and Islam are not exclusive and need not be in competition.

(END VIDEO CLIP)

WALLACE: That was President Obama in Cairo three years ago trying to reset relations between the U.S. and the Islamic world.

And it's time for our Sunday group: Brit Hume, Fox News senior political analyst, Liz Marlantes of the Christian Science Monitor, Bill Kristol from The Weekly Standard, and Jeff Zeleny of the New York Times.

Well, we all remember the Cairo speech, where the president said that the trauma of 9/11 had led us, quote, "to act contrary to our ideals" and promising to change course.

Brit, in the aftermath of what we've seen this week, how is the president's policy as set forth in Cairo looking?

BRIT HUME, FOX NEWS: Well, it looks a little ragged. And I would say that they were remarks that he made even before the Cairo speech that are even more to the point, when said in an interview on November 21, 2007, "I truly believe," he said, "that the day I'm inaugurated not only does the country look at itself differently, but the world looks at America differently," and he immediately launched into a discussion of the Muslim world and his background in Muslim countries, in Indonesia, the fact that his half-sister is Muslim, and he want to say that, in the end, this will ultimately make us safer, something the Bush administration had failed to grasp.

What I would say about that is that I think we're seeing in these events this week the further education of a president who was -- and to some extent remains -- a foreign policy novice, and he is learning that his mere Obamaness and all that goes with it is simply not sufficient to -- to change the fact that the Middle East remains a tinderbox subject to being lit ablaze by even a small match, which I think that movie is at best a small match.

WALLACE: Liz, what happened to the reset in relations between the U.S. and the Islamic world?

LIZ MARLANTES, CHRISTIAN SCIENCE MONITOR: Yeah, well, obviously, it's been -- it's been hard going. And, you know, as Obama himself said in that 2009 speech, it was -- you know, anti-Americanism, tensions between the Middle East and the U.S. have been going on for decades, this was not something that was going to instantly change. He said that.

But I do, you know, kind of agree with Brit that to some extent this is another area where Obama now is probably suffering the consequences of what were probably inflated expectations, that -- you know, going there and listening was somehow going to change things. And, you know, obviously, it's a -- it's a really difficult problem, and it seems like we've got, you know, internal power struggles going on in these countries and not a lot of good options.

WALLACE: You know, Bill, when I talked to Ambassador Rice and discussed what critics are saying about

U.S. foreign policy, which she did not like, I was thinking of you, this notion that the U.S. is in disengagement from the Middle East, that we're in retreat, that our friends and our enemies don't know who we are or how much they can count on what they believe about us.

Obviously, you know, the people who killed the Americans, the people who stormed the embassy, they're responsible, but to what degree do you think Obama's policies have contributed to the events this week?

BILL KRISTOL, THE WEEKLY STANDARD: I think they have contributed, and I -- I really wish it weren't the case, that is, I wish -- and Brit (inaudible) that President Obama has -- educated since his Cairo speech. And I thought, actually, about a year ago, after the surge in Afghanistan, after a -- after the killing of Osama bin Laden, the drone attacks, some tougher stance generally, that perhaps he had learned something from his early pre-election promises and his -- and his speech in the summer of 2009.

But I would say, watching them this week, they are exactly where they were in the Cairo speech. I would -- they have -- the White House press secretary, not just some political hack, the White House press secretary saying from the White House podium that this movie is the -- this trailer of a movie that no one has seen...

WALLACE: That's what U.N. Ambassador Rice said.

KRISTOL: ... and now the U.N. ambassador is saying that -- that it has nothing to do with U.S. policy, nothing to do with U.S. -- what the U.S. stands for. I mean, really, that's the position of the U.S. government, not just the Obama campaign? That's one thing; that's just politics. The U.S. government, the U.S. administration is saying that?

And what is the actual official response? To send an FBI team over -- over to take a look at the situation, except it now turns out, it's being reported, that the FBI team can't land -- can't go to Libya. They pulled them back yesterday because it's not a safe enough situation to do their forensic investigation. It's like a parody of going back to the 1990s. I did think there was bipartisan agreement that that way of addressing national security threats was not effective. It's what we did in the '90s. It didn't work. And now they're right back where they were before 9/11.

WALLACE: Jeff, do you think -- because, I must say, I find it astonishing myself the idea that they would say this is all about the video -- do you think that they really believe that? Or do you think they see that as an easy out and, as I suggested to Mike Rogers, now they don't have to answer questions about policy, because it has nothing to do with policy?

JEFF ZELENY, THE NEW YORK TIMES: I'm not sure if they believe it or not, but they're certainly doubling down on it, so they are leaving us every -- it looks like they believe it. I mean, even privately, even in conversations I have had over the weekend with senior administration officials about this, no one is leaving open the possibility that, hey, that this is just a line we're giving as we look into it further.

So it seems to me that they're opening themselves up to -- or they're leaving themselves very vulnerable here. You know, when -- once more answers are known, I think, as Chairman Rogers was saying, he was giving a very sort of even-handed response, I think, saying, look, we still don't know the answers to a lot of the questions of what happened over there.

So if this administration -- if it turns out a month from now that there was a major intelligence failure, I think this is going to look pretty irresponsible and silly right now, to say that this is all because of a trailer for a

video.

But, look, I was at that speech in Cairo in June of '09. And I'm just struck by how much has changed and how much the -- I mean, it almost looks -- some of those comments sound, I don't know if naive, but quaint, given everything that happened with the Arab Spring and things, and it's certainly not really a relevant -- I mean, I think there's time for a reset of that reset. And we haven't heard the president talk about his policy a lot since then.

WALLACE: Well, and that brings up a very fair question, Brit, which is the Arab Spring. Obviously, things were going to be more complicated after the Arab Spring. You couldn't just call up Hosni Mubarak and say, "Stop the protesters." You've got democracies instead of dictators. You've got Islamic groups who are now free to express themselves and, yes, to protest. How could the president have better managed what was always going to be a messy transition?

HUME: Well, there are a couple of things. One -- two ways to look at this. One is how the president and his team dealt with the actions in the countries that were most affected by the Arab Spring. It seems we have kind of a mixed set of results.

The other question revolves around when militant Islamists are considering how to attack or undermine the United States, it is believed that one of the things that they deeply respect is power and force. They understand it; they recognize it; they fear it; and it worries them.

So if you look at the -- at the -- at the fact that we're -- you know, we're out of Iraq, didn't leave behind a force, we're pulling out of Afghanistan, does that look to them like strength or weakness and a possible opportunity?

If it turns out that Al Qaida was deeply involved in the Benghazi attack, it will be a very significant Al Qaida success and the first that they've had, really, since the heyday of -- of Al Qaida in Iraq. That will represent, it seems to me, a serious sign of failure of the administration's policies throughout the region.

WALLACE: All right. We have to take a break here. But coming up, we've covered the policy, next the politics of national security as it's playing out on the campaign trail.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

WALLACE: Still to come, our Power Player of the Week.

(UNKNOWN): It's costing us \$200 billion a year to care for people with Alzheimer's.

WALLACE: Now, 5 million Americans have the disease.

(UNKNOWN): That is going to grow to \$1 trillion a year by 2050.

WALLACE: Stay tuned. Our panel will be right back.

(END VIDEO CLIP)

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

MITT ROMNEY, REPUBLICAN PRESIDENTIAL NOMINEE: The first response to the United States must be outrage at the breach of the sovereignty of our nation, and apology for America's values is never the right course.

OBAMA: Governor Romney seems to have a tendency to shoot first and aim later. And as president, one of the things I've learned is you can't do that.

(END VIDEO CLIP)

WALLACE: President Obama and Governor Romney with punch and counterpunch over the U.S. reaction to the violence in the Middle East this week. And we're back now with the panel.

Well, it has certainly been the big political question in Washington this last week: Did Mitt Romney make a mistake attacking the president's policies just five hours after we found out that those four Americans had been slaughtered in Benghazi?

Brit, as you've look back at this over the last few days, now it's played out, what do you think?

HUME: I think what he said was correct, but it was clumsy, and it opened him up to charges that he made a terrible mistake. We had an almost ludicrous overreaction in a lot of the media about it, in which what he did became the big story, rather than what was happening over there, which was not a great moment for our national media, I'm sad to say.

You know, he could have waited. It might have been better if he had. But, look, what he was criticizing there was a statement that -- what we were talking about in the first panel, which is the administration's emphasis on this video, and attacking it, and then reiterating that -- Cairo embassy not only said that, and then it reiterated it later after these events had unfolded. So they doubled down on it.

Now, eventually the White House walked it back and so on. But the next thing you know, the White House is saying the same thing that it's all about the video. So my sense is that he was on the mark. He might have timed it better or said it better.

WALLACE: Liz?

MARLANTES: I think it was a tricky week for both Mitt Romney and President Obama. I mean, when you have a week when Obama is being compared to Jimmy Carter and Mitt Romney is being compared to Richard Nixon, it's not really a week that either campaign is probably going to want to remember.

That said, I think, you know, in the short term, Romney's statements got more attention. And I think the problem that Romney has in this situation is sort of twofold. One was that he did seem political. It seemed like he was acting more in the interests of his campaign than in the interests of the Americans overseas who maybe were in danger at the time.

And -- and, secondly, it's been hard for him to articulate exactly what he would be doing that's -- that's different. I mean, he says he would be shaping events, rather than letting events shape his policy, but he

doesn't say exactly what that means. It means -- is he saying he would not have withdrawn from Iraq, he would rather that we were still there?

You know, the consequences of what he actually seems to be implying are not necessarily policies that would be popular with Americans right now. And so I think it -- it makes it hard. He has this sort of sweeping language about how he wants to project strength, but he won't say exactly what that means, because I think to some extent, if strength means military force, if strength means, you know, spending more money on foreign aid, that's not popular either. I mean, it's -- it's not clear what those actions would be.

WALLACE: Bill, I want to pick up on that, because even if Romney's timing was wrong, as some people think, there's certainly a legitimate debate to have over the president's foreign policy. And we had some of it today with Ambassador Rice and Congressman Rogers. And yet I talked to top officials in the Romney campaign yesterday, and they say they have absolutely no plans for a major foreign policy speech in the next few weeks before the debates. And I guess the question is, why not?

KRISTOL: Well, I'm keeping home alive that they actually will think that they should address the issue that's on the mind of every American now, which is, what is going on over there, and why is it happening, and what would the next president do to address it? It's crazy not to address it. It's -- this is what people want to hear about.

I heard from a congressional candidate, Republican congressional candidate yesterday sent me an e-mail and said he's interested personally in foreign policy, he hasn't talked much -- so much about it, and his audiences haven't asked him much about it over the last 14 months. He said suddenly, last week, he didn't even begin to raise it, particularly on Wednesday or Thursday, but suddenly all the questions were about it.

People -- the next president is going to have to deal with this. What are you going to do? He needs to address it.

Brit's right. He was a little clumsy at first, but it's better to be clumsy and correct than timid and silent. And I really hope, as someone who hopes Romney wins, I hope he is not timid and silent over the next couple of weeks and that he does what Liz said and lays out his foreign policy agenda.

And they're very spooked. I talked with some Romney people, too. Got to be very careful, though. War is unpopular. Afghanistan is unpopular. Iraq, horrible memories. Which convention spoke more about war? Which convention didn't -- wasn't timid to say the word "Afghanistan"? It was the Democratic convention. And they got a bounce. And the Republicans, who shied away totally from foreign policy, didn't get a bounce.

So maybe the American public's a little more mature and serious than these campaign strategists think, and maybe they would actually like to hear what the next president would do about this crisis.

WALLACE: Jeff, you know, I think it'd be fair to say there's a growing sense among political observers, as we see these polls, that Romney is losing right now, not that he's lost, not that it's over, but that he's losing ground. And I think the question is, after this selection now of Paul Ryan, which was seen as a pretty bold choice, they seem to have gone back into something of a crouch and are not campaigning on a bold agenda as a candidate of reform. What are they thinking at Romney headquarters in Boston?

ZELNY: I think they are frustrated by the sort of growing storyline that he may be losing. But I think losing is the wrong way to look at it. He's not losing or he hasn't lost. He probably has failed to take advantage of

this moment of the, really, three weeks since naming the vice presidential candidate and into his convention.

I mean, the jobs report number a week ago on Friday -- seems like a long time ago -- was something that his campaign thought would reset things. It really didn't. So they have had a hard time sort of, I think, resetting the race and gaining ground, but I think it's absurd to say that he has lost or is losing.

I mean, the CBS-New York Times poll last week showed among likely voters it is still a 3-point contest, within the margin of error. So that is with even what Romney's own advisers will concede that they had not the smoothest of weeks. So this is still an even race. This is still anything could happen.

But out in battleground states across the country, the Obama campaign seems to be performing a little bit better. So...

WALLACE: But why this reluctance...

ZELNY: I hear the same thing from...

(CROSSTALK)

WALLACE: Why this reluctance to give a major foreign policy speech? Why the reluctance, when there's all this criticism that, you know, he favors -- his policies favor the rich over the middle class, why not give a major speech and explain -- and -- and you can hear people clamoring for it -- what are some of the things he would do in tax reform that would -- that would hurt the rich?

ZELNY: The overarching thought in the Romney campaign is still that this election is about President Obama and that they can win this election by this growing sentiment that it's time to fire President Obama.

Now, I'm not sure that that's right. I mean, they have to give -- it seems a lot of Republicans are hungering for more of a reason to hire Governor Romney. I'm not convinced that they won't give some kind of a big speech. I don't know if it'll be a foreign policy speech, but they have -- see the same information that everyone here sees and talks about. I think they know that they have to kick things up a little bit.

HUME: Even if this ends up being, in effect, a referendum on the president and his record, the challenger still has something that must be done, and that is to present himself as a plausible and acceptable presidential alternative.

Now, Romney's got the presidential bearing down. He's fine on that. He presented himself at his convention as a nice guy and a normal person with a great family. He's got that down.

What he didn't do was dwell at length on the economic policies that he would put in place. And a big piece of being a plausible president is being knowledgeable and have a deep sense of the world and the United States' place in it and be able to differentiate the policies you'd pursue from the other guy. And he hasn't done that. So, you know, he may get the referendum, but if he hasn't done his part and stepped up as a plausible alternative, he might lose anyway.

WALLACE: Liz?

MARLANTES: Yeah, I mean, I -- I think it has become a difficult storyline for Romney that he's losing. We've had a lot of stories in the last week or two about the differences in the polls, and that is a difficult

position for a candidate to get into, because the entire media lens starts to be through that lens of he's the losing candidate right now. And I think even the reaction this week to his statement, you know, was seen as an act of desperation, well, that's the way you cover a candidate who's losing. So that is something that I think the Romney campaign is going to have to do something to turn around, because right now it's not helping them.

WALLACE: And, Bill, we got less than a minute left. I guess what confuses me is when he picked Ryan as his running mate, I thought, well, that's a statement that he's going to come forward with a bold, affirmative, positive agenda, he's going to be the candidate of reform. And yet he has, after naming him and getting a little bump in the polls and people getting excited, he hasn't capitalized on that.

KRISTOL: Maybe they'll learn the lesson from the fact that, from the day he named, August 11th, until the Republican convention, Romney gained in the polls. He narrowed a 4.5 point gap to 1 point in the RealClearPolitics average. It's back up to 3 points when they've gone back to the pre-Ryan campaign. Maybe they should follow up on the consequences of the Ryan pick, which are positive.

WALLACE: Thank you, panel. See you next week. Don't forget to check out Panel Plus, where our group picks right up with this discussion on our website, foxnewssunday.com. We'll post the video before noon Eastern time, and make sure to follow us on Twitter @foxnewssunday.

Up next, our power players of the week.

(COMMERCIAL BREAK)

WALLACE: They are one of Washington's power couples. He was a top executive at AOL and CBS; she used to write sitcoms. Now they're taking on the fight of their lives. And they're our Power Players of the Week.

(BEGIN VIDEOTAPE)

GEORGE VRADENBURG, US AGAINST ALZHEIMER'S: It's the only disease in the top 10 killers that has no means of prevention, cure or treatment.

WALLACE (voice-over): George Vradenburg is talking about Alzheimer's, the disease that robs people of their memory, then mind, and eventually kills them. He and his wife of 43 years, Trish, have donated millions of dollars to launch an organization called Us Against Alzheimer's.

(on-screen): What is the goal of Us Against Alzheimer's?

G. VRADENBURG: A means of prevention and treatment by the year 2020.

WALLACE: But is there any reason to believe that's possible over the next eight years?

G. VRADENBURG: Yes, the answer is 2020's feasible. Is it -- is it a guarantee, a lock? No. Otherwise, why should we be in the game?

WALLACE (voice-over): What makes this group different is it is part philanthropy that invests in research, but it's also a political action committee, contributing to candidates who back their fight.

Amb. Susan Rice, Rep. Mike Rogers discuss violence against Americans in the Middle East

6/9/14, 5:39 PM

This week, the Vradenburgs were on Capitol Hill meeting with Congressman Jim Moran.

G. VRADENBURG: Right now, cancer is allocated about \$6 billion a year, and we're making progress. HIV-AIDS, \$3 billion a year. Alzheimer's, \$450 million a year.

WALLACE: And Vradenburg says, if we don't find a treatment or cure for Alzheimer's, it will bankrupt the nation. Now, 5 million Americans have the disease, but with aging baby boomers, that will double in 30 years.

G. VRADENBURG: It's costing us \$200 billion a year to care for people with Alzheimer's; 70 percent of that comes from Medicare and Medicaid. That is going to grow to \$1 trillion a year by 2050.

WALLACE: The Vradenburgs' fight against Alzheimer's is personal. Trisha's mother, who was a hard-charging New Jersey Democrat, died of the disease 20 years ago.

TRISH VRADENBURG, US AGAINST ALZHEIMER'S: We saw her just go downhill from a towering human being to a person who didn't know us.

WALLACE (on-screen): Tough question: Do you worry that you're going to get it?

T. VRADENBURG: Those days where I can't find my keys, I -- yeah, I worry.

WALLACE: Is it true you have not been tested?

T. VRADENBURG: Until I know that there's a possibility of having some way to diminish or stop or arrest Alzheimer's, I have no need to know if I have a death sentence or not.

WALLACE: Honestly, how much of this crusade is the fact that you want to find a cure or a treatment?

G. VRADENBURG: Of course. And me. Whether I'm the caregiver or the victim, one out of two over 85 have this disease.

WALLACE (voice-over): And so George and Trish Vradenburg keep sounding the alarm, keep trying to build a political movement against a killer they say is coming for them and so many of us. G.

VRADENBURG: With Alzheimer's, it is a cruel disease that's going to take tens of millions of lives, and we can't get ourselves together, so that's frustrating.

(END VIDEOTAPE)

WALLACE: If you want to learn more about the Vradenburgs' cause, check out their website, usagainstalzheimer.org.

And that's it for today. Have a great week. And we'll see you next "Fox News Sunday."

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September 16: Benjamin Netanyahu, Susan Rice, Keith Ellison, Peter King, Bob Woodward, Jeffrey Goldberg

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MR. DAVID GREGORY: This morning, a special hour of MEET THE PRESS...

September 16 Benjamin Netanyahu Susan Rice, Keith Ellison, Peter King, B Jeffrey Goldberg, Andrea Mitchell 25

updated 9/16/2012 1:08:45 PM ET

MR. DAVID GREGORY: This morning, a special hour of MEET THE PRESS. Turmoil in the Middle East creates a flashpoint on the campaign trail. Set off by an American anti-Islamic video, rage against the U.S. sweeps the Arab world. And an attack on the U.S. Consulate in Libya kills ambassador Chris Stephens and three others.

(Videotape)

HILLARY CLINTON: The people of Egypt, Libya, Yemen and Tunisia did not trade the tyranny of a dictator for the tyranny of a mob.

(End videotape)

GREGORY: But in this highly-charged campaign environment new questions about how the Obama administration should respond enter the political debate.

(Videotape)

MR. MITT ROMNEY: The administration was wrong to stand by statements sympathizing with those who had breached our embassy in Egypt instead of condemning their actions.

(End videotape)

GREGORY: This morning we'll talk to a key member of the president's foreign policy team--the U.S. ambassador to the United Nations, Susan Rice.

Also, this morning, an exclusive network interview with a key player in the Middle East--the prime minister of Israel, Benjamin Netanyahu. Has relations between his country and the U.S. have at a new low over the looming nuclear threat from Iran?

(Videotape)

BENJAMIN NETANYAHU: Those in the international community that refuse to put red lines before Iran don't have a moral right to place a red light before Israel.

(End videotape)

GREGORY: Sorting out U.S. options in the Middle East, consequences for the region, and the political impact in November--our political roundtable. Joining us, the first Muslim elected to the U.S. Congress, Democratic Representative from Minnesota Keith Ellison; the chairman of the Homeland Security Committee, New York Republican congressman Peter King; Author of the new book, *The Price of Politics*, *The Washington Post's* Bob Woodward; the *Atlantic's* Jeffrey Goldberg; and NBC's chief foreign affairs correspondent Andrea Mitchell.

Exhibit 36

Announcer: From NBC News in Washington, MEET THE PRESS with David Gregory.

GREGORY: And good morning. Relative calm this morning in the Middle East after several days of intense anti-American protests raged across many parts of the Islamic world. But word this morning that the Obama administration has ordered the evacuation of all but emergency personnel from diplomatic missions in Tunisia and Sudan. And defense secretary Leon Panetta saying this morning, the Pentagon has deployed forces to several areas in an increased effort to protect U.S. personnel and property from the potential of violent protests, the latest consequences, of course, of this troubling unrest. Joining me now for the very latest, the U.S. ambassador to the United Nations, Susan Rice. Ambassador Rice, welcome back to MEET THE PRESS.

MS. SUSAN RICE (U.S. Ambassador to the United Nations): Thank you, good to be here.

GREGORY: The images as you well know are jarring to Americans watching all of this play out this week, and we'll share the map of all of this turmoil with our viewers to show the scale of it across not just the Arab world, but the entire Islamic world and flashpoints as well. In Egypt, of course, the protests outside the U.S. embassy there that Egyptian officials were slow to put down. This weekend in Pakistan, protests as well there. More anti-American rage. Also protests against the drone strikes. In Yemen, you also had arrests and some deaths outside of our U.S. embassy there. How much longer can Americans expect to see these troubling images and these protests go forward?

MS. RICE: Well, David, we can't predict with any certainty. But let's remember what has transpired over the last several days. This is a response to a hateful and offensive video that was widely disseminated throughout the Arab and Muslim world. Obviously, our view is that there is absolutely no excuse for violence and that-- what has happened is condemnable, but this is a-- a spontaneous reaction to a video, and it's not dissimilar but, perhaps, on a slightly larger scale than what we have seen in the past with *The Satanic Verses* with the cartoons of the Prophet Muhammad. Now, the United States has made very clear and the president has been very plain that our top priority is the protection of American personnel in our facilities and bringing to justice those who...

GREGORY: All right.

MS. RICE: ...attacked our facility in Benghazi.

GREGORY: Well, let's talk-- talk about-- well, you talked about this as spontaneous. Can you say definitively that the attacks on-- on our consulate in Libya that killed ambassador Stevens and others there security personnel, that was spontaneous, was it a planned attack? Was there a terrorist element to it?

MS. RICE: Well, let us-- let me tell you the-- the best information we have at present. First of all, there's an FBI investigation which is ongoing. And we look to that investigation to give us the definitive word as to what transpired. But putting together the best information that we have available to us today our current assessment is that what 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. What we think then transpired in Benghazi is that opportunistic extremist elements came to the consulate as this was unfolding. They came with heavy weapons which unfortunately are readily available in post revolutionary Libya. And it escalated into a much more violent episode. Obviously, that's-- that's our best judgment now. We'll await the results of the investigation. And the president has been very clear--we'll work with the Libyan authorities to bring those responsible to justice.

GREGORY: Was there a failure here that this administration is responsible for, whether it's an intelligence failure, a failure to see this coming, or a failure to adequately protect U.S. embassies and installations from a spontaneous kind of reaction like this?

MS. RICE: David, I don't think so. First of all we had no actionable intelligence to suggest that-- that any attack on our facility in Benghazi was imminent. In Cairo, we did have indications that there was the risk that the video might spark some-- some protests and our embassy, in fact, acted accordingly, and had called upon the Egyptian authorities to-- to reinforce our facility. What we have seen as-- with respect to the security response, obviously we had security personnel in Benghazi, a-- a significant number, and tragically, among those four that were killed were two of our security personnel. But what happened, obviously, overwhelmed the security we had in place which is why the president ordered additional reinforcements to Tripoli and-- and why elsewhere in the world we have been working with governments to ensure they take up their obligations to protect us and we reinforce where necessary.

GREGORY: The president and the secretary of state have talked about a mob mentality. That's my words, not their words, but they talked about

the-- the tyranny of mobs operating in this part of the world. Here's the reality, if you look at foreign aid--U.S. direct foreign aid to the two countries involved here, in Libya and Egypt, this is what you'd see: two hundred million since 2011 to Libya, over a billion a year to Egypt and yet Americans are seeing these kinds of protests and attacks on our own diplomats. Would-- what do you say to members of congress who are now weighing whether to suspend our aid to these countries if this is the response that America gets?

MS. RICE: Well, first of all, David, let's put this in perspective. As I said, this is a response to a-- a very offensive video. It's not the first time that American facilities have come under attack in the Middle East, going back to 1982 in-- in Beirut, going back to the Khobar Towers in-- in Saudi Arabia, or even the attack on our embassy in 2008 in Yemen.

GREGORY: Or Iran in 1979.

MS. RICE: This has-- this has happened in the past, but there-- and so I don't think that-- that we should misunderstand what this is. The reason we provide aid in Egypt and in Libya is because it serves American interests because the relationships...

GREGORY: But-- but our Americans are not being served if this is the response.

MS. RICE: It serves our interests to have Egypt willing and able to-- to maintain its peace treaty with Israel, it serves our interest for Egypt to continue to be a strong partner. Now, let's be clear, the government, once President Obama called President Morsi, immediately in Egypt the security forces came out and have provided very significant protection. Same in Tunisia, same in Libya, same in Yemen. And all of these leaders have very forcefully conveyed their condemnation of what has transpired.

GREGORY: But there were conflicting messages from the Morsi government. In Arabic they encourage protests, in English they said stop the protests. This from an ally that we give over a billion dollars?

MS. RICE: What has happened in fact is that the Egyptian government has come out and protected our facilities. Our embassy is open today, things are calm. And Morsi has repeatedly been clear in his condemnation of-- of what has occurred. We-- we are in these partnerships, David, over the long-term. We think that-- that-- despite this very bumpy path we're on and the very disturbing images we've seen, it's in the United States fundamental interest that people have the ability to choose their own governments, that the governments be democratic and free. That's in our long-term best interest.

GREGORY: You know that this...

MS. RICE: We need to reinforce that with our assistance.

GREGORY: We are in the middle of a heated presidential campaign, there are different foreign policy visions. That's why we wanted to dedicate the hour to this today to really understand these different views. Mitt Romney spoke out this week, he criticized the administration, talked about whether the United States was apologizing for some of the initial response to this. These were his comments this week.

(Videotape; Wednesday)

MR. MITT ROMNEY: The administration was wrong to stand by a statement sympathizing with those who had breached our embassy in Egypt instead of condemning their actions. I think it's a-- a-- a terrible course to-- for America to-- to stand in apology for our values.

(End videotape)

GREGORY: Our embassies did not stand up for speech-- free speech in this initial response to this violence. And the Republican charge is that it's weakness on the part of this administration that invites this kind of chaos, that the administration has not been tough enough on radical extremists that are beginning to take root in these countries. How do you respond to that?

MS. RICE: First of all, I think the American people and certainly our diplomats and-- and development experts who are putting their lives on the line around the world every day expect from our leadership unity in times of challenge and strong, steady, steadfast leadership of the sort that President Obama has been providing. With respect to this, I think, vacuous charge of weakness, let's-- lets recall, I think, the American people fully understand that this is an administration led by a president who said when he ran for office that he would take the fight to al Qaeda. We have decimated al Qaeda. Osama bin Laden is dead. He said we would end the war responsibly in Iraq. We've done that. He has restored relationships

around the world. I spend every day up at the United Nations where I have to interact with 192 other countries. I know how well the United States is viewed. I know that our standing is much improved and it's translated into important support for strong American positions, for example with sanctions against Iran.

GREGORY: Was it inappropriate for Governor Romney to level the criticism he leveled?

MS. RICE: I'm not going to get into politics, David. That's not my role in this job. But I think the American people welcome and appreciate strong, steady, unified leadership, bipartisan in times of challenge. And for those men and women in our diplomatic service, including those we tragically lost, they look to our leadership to be unified and responsible.

GREGORY: Let's talk about another area where the administration is on the defensive in terms of leadership in the world, and that is the nuclear threat from Iran. Another area of tension between the United States and Israel. In just a couple of minutes we will show our interview with the prime minister of Israel, Benjamin Netanyahu. And our viewers will see that. One aspect is how close Iran is getting to becoming a nuclear power. I asked him about that. I want to show you a piece of the interview and get your reaction to it.

(Videotape)

PRIME MINISTER BENJAMIN NETANYAHU (Prime Minister of Israel): I can tell you, David, that Iran has been placed with some clear red lines on a few matters, and they have avoided crossing them. So I think that as they get closer and closer and closer to the achievement of the weapons-grade material, and they're very close, they're six months away from being about 90 percent of having the enriched uranium for an atom bomb, I think that you have to place that red line before them now, before it's-- it's too late.

GREGORY: As the prime minister of Israel, has Iran crossed your red line?

MR. NETANYAHU: Well, the way I would say it, David, is they are in the red zone. You know, they are in the last 20 yards. And you can't let them cross that goal line. You can't let them score a touchdown, because that would have unbelievable consequences, grievous consequences, for the peace and security of us all-- of the world really.

(End videotape)

GREGORY: What is President Obama's line in the sand, the point at which he says to Iran don't cross this with your nuclear program or there's going to be a military consequence?

MS. RICE: David, the president has been very, very clear. Our bottom line, if you want to call it a red line, president's bottom line has been that Iran will not acquire a nuclear weapon and we will take no option off the table to ensure that it does not acquire a nuclear weapon, including the military option.

GREGORY: The prime minister says...

MS. RICE: But...

GREGORY: ...they are acquiring.

MS. RICE: ...he's talking about a-- a red zone which is a new concept...

GREGORY: No, no, but he's talking about how close they are to actually becoming a nuclear power--having to develop a capacity to become a nuclear power.

MS. RICE: They're not there yet. They are not there yet. And our assessment is, and-- and we share this regularly with our Israeli counterparts in the intelligence and defense community, that there is time and space for the pressure we are mounting, which is unprecedented in terms of sanctions, to still yield results. This is not imminent. The window is not infinite, but let's be clear--the sanctions that-- that are now in place reached their high point in July. The-- the Iranian economy is suffering. It's shrinking for the first time. Negative one percent growth. The amount of production of Iranian oil has dropped 40 percent over the last several months. Their currency has plummeted 40 percent over the last several months. This pressure is even to use the Iranian's own words crippling.

GREGORY: But can you say...

MS. RICE: And we think...

GREGORY: ...that President Obama's strategy to keep Iran from acquiring a nuclear weapon almost at the end of his first term is succeeding or failing?

MS. RICE: David, what is clear is Iran does not have a nuclear weapon. And that Iran is more isolated than ever internationally. The economic pressure it is facing is much greater than ever. When President Obama came to office the international community was divided about Iran. And Iran was internally very united. The exact opposite is the case today. The international community is united. We just had another strong resolution out of the IAEA Board of Governors. And the internal dynamics in Iran are-- are fracturing and the leadership is divided. We are committed and President Obama is committed to preventing Iran from acquiring a nuclear weapon. It is not a policy of containment. But, David, the most difficult and profound decision that any president has to make is the decision to go to war. And this president is committed to exhausting pressure, economic pressure, and diplomacy while there is-- is still time before making a decision of such consequence.

GREGORY: Ambassador Rice, the debate continues. Thank you very much...

MS. RICE: Thank you.

GREGORY: ...for your views this morning.

Now to this looming nuclear threat from Iran from the Israeli perspective. There were new tensions between the Obama administration in Israel this week. Earlier, I spoke with the prime minister of Israel Benjamin Netanyahu about where things stand and whether he is trying to influence the outcome of our presidential campaign.

Prime Minister, welcome back to MEET THE PRESS.

PRIME MINISTER NETANYAHU: Thank you. Good to be with you, David.

GREGORY: I want to talk specifically before we get to the questions of what's happening more broadly in the Middle East and the turmoil there this week about the threat from Iran. You spoke about that this week, and this question of whether Israel has to take matters into its own hands. And you launched pretty pointed criticism at the United States. I want to play a portion of what you said.

(Videotape; Monday)

PRIME MINISTER BENJAMIN NETANYAHU: The world tells Israel, wait. There's still time. And I say, wait for what? Wait until when? Those in the international community who refuse to put red lines before Iran don't have a moral right to place a red light before Israel.

(End videotape)

GREGORY: Prime Minister, I want to understand very clearly what your views are. Is it your view that the Obama administration is either unwilling or unable to stop Iran from becoming a nuclear power?

PRIME MINISTER NETANYAHU: Now first of all, President Obama and the U.S. administration have repeatedly said that Israel has the right to act by itself against any threat to defend itself. And I think that that remains our position. And for me, the issue is-- as the prime minister of a country that is threatened with annihilation by a regime that is racing a brutal regime in Tehran that is racing to develop nuclear bombs for that and, obviously, we-- we cannot delegate the job of stopping Iran if all else fails to someone else. That was the main point that I was saying there. It was directed at the general international community. A lot of leaders calling me telling me don't do it, it's not necessary. You know, the danger of acting is much greater than not acting. And I always say the danger of not acting in time is much greater because Iran with nuclear weapons would mean that the kind of fanaticism that you see storming your embassies would have a nuclear weapon. Don't let these fanatics have nuclear weapons.

GREGORY: But Prime Minister, let's be clear. You were upset with this administration. The Secretary of State Hillary Clinton had said in an interview that there were no deadlines by this administration in terms of what Iran should or shouldn't do by a date certain. That's what led to

those remarks. And so my question still stands. Is it your view that this administration is either unwilling or unable to stop Iran from developing a nuclear weapon?

PRIME MINISTER NETANYAHU: No. President Obama has said that he's determined to prevent Iran from getting nuclear weapons and I appreciate that and I respect that. I think implicit in that is that if you're determined to prevent Iran from getting nuclear weapons, it means you'll act before they get nuclear weapons. I just think that it's important to communicate to Iran that there is a line that they won't cross. I think a red line in this case works to reduce the chances of the need for military action because once the Iranians understand that there's no-- there's a line that they can't cross, they are not likely to cross it, you know, when President Kennedy set a red line in the Cuban missile crisis, he was criticized. But it turned out it didn't bring war, it actually pushed war back and probably purchased decades of peace with the Soviet Union. Conversely, when there was no American red line set before the Gulf War, Saddam Hussein invaded Kuwait, and maybe that war could have been avoided. And I can tell you David that Iran has been placed with some clear red lines on a few matters and they have avoided crossing them. So I think that as they get closer and closer and closer to the achievement of weapons grade material, and they are very close, they are six months away from being about ninety percent of having the enriched uranium for an atom bomb, I think that you have to place that red line before them now before it's-- it's too late. That was the point that I was making.

GREGORY: As a prime minister of Israel, has Iran crossed your red line?

PRIME MINISTER NETANYAHU: Well, the way I would say it David is they are in the red zone. You know, they are in the last 20 yards. And you can't let them cross that goal line. You can't let them score a touchdown because that would have unbelievable consequences, grievous consequences, for the peace and security of us all-- of the world really.

GREGORY: That seems to be a newer development from your way of thinking that they are now in a red zone. And to use-- to use the sports metaphor, you won't let them cross the-- the goal line. Is Israel closer to taking action into its own hands?

PRIME MINISTER NETANYAHU: We always reserve the right to act. But I think that if we are able to coordinate together a common position, we increase the chances that neither one of us will have to act. Iran is very cognizant of the fact of its degrees of freedom and as the IAEA report says not only have they not stopped, they have actually rushed forward-- they're rushing forward with their enrichment program. And I think it's very important to make it clear to them that they can't just proceed with impunity.

GREGORY: Your criticism, your calling on President Obama to set this red line, comes in the middle of a heated presidential campaign. You understand the American political system very well. You're very sophisticated in that regard. In your view, would Governor Mitt Romney as President Romney make Israel safer? Would he take a harder line against Iran than President Obama in your judgment?

PRIME MINISTER NETANYAHU: God, I'm-- I'm not going to be drawn into the American election. And-- and what's guiding my statements are-- is not the American political calendar but the Iranian nuclear calendar. They're just-- you know, if they stop spinning the centrifuges for-- and took timeout for the American elections, I wouldn't have to talk. And I wouldn't have to raise this issue. But as the prime minister of Israel, knowing that this country committed to our destruction is getting closer to the goal of having weapons of mass destruction then I speak out. And it's got-- it's really not a partisan political issue. And I think it's important for anyone who is the president of the United States to be in that position of preventing Iran from having this nuclear weapons-- nuclear weapons capability. And I'm talking to the president. I just talked to him the other day. We are in close consultations. We're trying to prevent that. It's really not a partisan issue. It's a policy issue not a political issue.

GREGORY: Well, but it may not be a partisan issue. You have known Mitt Romney a long time. The reality is-- tell me if you disagree that Governor Romney just in an interview this week said that his position is very much the same as President Obama. They are both committed to preventing Iran from acquiring a nuclear weapon. Not just as an impartial observer, as the prime minister of Israel, do you agree with that that both the president and his challenger have the same view with regard to preventing Iran from going nuclear?

PRIME MINISTER NETANYAHU: I have no doubt that they are equally committed to preventing that. It's a-- it's a vital American interest. It's a-- it's an existential interest on my case so, this isn't the issue. We are united on this across the board.

GREGORY: Why can't Iran be contained just as the Soviet Union was? There are those in your country and in the United States who believe that a containment strategy would actually work?

PRIME MINISTER NETANYAHU: I think Iran is very different. They put their zealotry above their survival. They have suicide bombers all over

the place. I wouldn't rely on their rationality, you know, you-- since the advent of nuclear weapons, you had countries that had access to nuclear weapons who always made a careful calculation of cost and benefit. But Iran is guided by a leadership with an unbelievable fanaticism. It's the same fanaticism that you see storming your embassies today. You want these fanatics to have nuclear weapons? I mean, I've heard some people suggest, David, I actually I read this in the American press. They said, well, you know, if you take action, that's-- that's a lot worse than having Iran with nuclear weapons. Some have even said that Iran with nuclear weapons would stabilize the Middle East-- stabilize the Middle East. I-- I think the people who say this have set a new standard for human stupidity. We have to stop them. Don't rely on containment. That is not the American policy. It would be wrong. It would be a grave, grave mistake. Don't let these fanatics have nuclear weapons. It's terrible for Israel and it's terrible for America. It's terrible for the world.

GREGORY: Prime Minister, one more question on the American election. You have been accused this week by pundits in this country of trying to interfere in this presidential election, siding with Governor Mitt Romney. Now, Governor Romney for a year, and he said it in his convention speech, has said, quote, "President Obama has thrown allies like Israel under the bus." Do you agree or disagree with Governor Romney's charge? It's a serious charge.

PRIME MINISTER NETANYAHU: Well, you're-- you're trying to get me into the-- into the American election and I'm not going to do that. The relationship between Israel and the United States is a bond of-- it's just a very powerful bond. It was, it is, and will be and will continue to be. And I-- I can tell you there's no one-- there's no leader in the world who's more appreciative than me of the strength of this alliance. It's very strong. There's no one in Israel who appreciates more than me the importance of American support for Israel. It's not a partisan issue. In fact, we cherish the bipartisan support of Democrats and Republicans alike. This is critical for us.

GREGORY: But prime minister, with respect, if I may just interrupt you...

PRIME MINISTER NETANYAHU: And-- and I think it's critical that we take...

GREGORY: I think this is a very important point because you say you don't want to interfere in the election. There are tens of millions of Americans who are watching that speech, who hear that rhetoric, who hear that charge, who may not understand the complexities of this issue. You are the leader of the Jewish people. You say this is not a partisan issue. You get billions of dollars from direct foreign investment from this country, hundreds of millions of dollars from Americans, Jews and Christians alike from this country. It seems to me for you to remain silent on whether this administration has thrown Israel under the bus is tantamount to agreeing with the sentiment. So where do you come down on that specific charge against President Obama?

PRIME MINISTER NETANYAHU: Now, there you go again, David, you're trying to draw me into something that-- that is simply not-- not the case and it's not my position. My position is that we-- we have strong cooperation. We'll continue to cooperate. We're the best of allies. And Israel is the one reliable ally of the United States in the Middle East...

GREGORY: So President Obama has not thrown Israel under the bus?

PRIME MINISTER NETANYAHU: ...if that wasn't understood until yesterday. So it's-- it's-- there's-- there's no bus, and we're not going to get into that discussion, except to say one thing. We have a strong alliance and we're going to continue to have a strong alliance. I think the important question is where does the-- the only bus that is really important is the Iranian nuclear bus. That's the one that we have to-- to derail. And that's my interest. That's my-- my only interest.

GREGORY: Final question on the broader Middle East and what we're seeing this week. This anti-American and indeed anti-Israeli rage throughout the Middle East attacking our embassy, killing a United States ambassador as you well know. What has been unleashed and what can United States and its allies specifically do to contain it?

PRIME MINISTER NETANYAHU: Well, look, I-- I-- I think people focus on the spark. The spark of reprehensible and irresponsible film is a-- is a spark, but it's not-- it doesn't explain anything. I mean, it doesn't explain 9/11. It doesn't explain the decades of animosity and the grievances that go back centuries. In fact, there's a tinderbox of hatred here from a virulent strain of Islam that takes moderate Muslims and Arabs and attacks them first but seeks to deprive all of us of the basic-- the basic values that we have. They're against the human rights. They're against the rights of women. They're against freedom of religion. They're against freedom of speech and freedom of expression. They're against all the things that we value. They're against tolerance. They're against-- they're against pluralism, and they're against freedom. And they're-- they're-- they view not your policies but you, the very existence of United States and its values, and by extension Israel. They view that as an intolerable crime. And we

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have to understand that. We have to deal with it. And we have to be the close support because in-- in this vast expanse of land, you can understand why they are so-- so antagonistic to us because for them we are you and you are us. And at least on this point they're right.

GREGORY: Finally, prime minister, did you feel snubbed not getting a face-to-face meeting with President Obama in New York during the upcoming U.N. meetings? Would you like to have that face-to-face encounter? Would it be helpful to your relationship at this point?

PRIME MINISTER NETANYAHU: You know, I'm always pleased and-- and happy to have a conversation with President Obama. He's-- I think he's met me more than any other leader in the world and I-- I appreciate that. We've had our discussions. Our-- our schedules on this visit didn't work out. I come to New York and he leaves New York. But we continue in close consultations. We have urgent business, Israel and America, to prevent Iran from getting nuclear weapons. I think it's important to delineate a red line for Iran so we're not faced with a conundrum of what to do if we don't place a red line and they just proceed to the bomb.

GREGORY: Prime minister, thank you very much for your time.

PRIME MINISTER NETANYAHU: Thank you, to all of you.

GREGORY: Coming up next, our political roundtable on the political impact of this turmoil in the Middle East. Is it a case of weakness on the part of this administration? Did Governor Romney go too far in that criticism? Our political roundtable is here and we'll weigh in. Democratic congressman from Minnesota, Keith Ellison; Chair of the Homeland Security Committee, Congressman Peter King of New York; *The Washington Post's*, Bob Woodward; Jeffrey Goldberg of *The Atlantic* magazine; and our own Andrea Mitchell.

(Announcements)

GREGORY: Coming up our political roundtable. Was this week that 3:00 AM phone call moment for Romney? What is his response to the turmoil in the Middle East say about his readiness to be president? Our roundtable weighs in up next after this brief break.

(Announcements)

GREGORY: And we're back with our political roundtable. Joining me national correspondent for *The Atlantic*, a journalist who'd spent his career covering the Middle East, Jeff Goldberg; NBC's chief foreign affairs correspondent Andrea Mitchell; associate editor for *The Washington Post* and author of the new groundbreaking book *The Price of Politics*, Bob Woodward; Chairman of the Homeland Security Committee, Republican Congressman Peter King of New York; and the first Muslim elected to the U.S. Congress, Minnesota Congressman Keith Ellison. Welcome to all of you. These are very difficult times for this country and for the Middle East. There's a question I think that Americans have of what is going on here. Why is this happening? And it's happening, Jeff Goldberg, in a heated presidential debate. And so you have accusations and response, and we've seen that play out already in the course of this hour. Liz Cheney, the daughter of the former vice president, launched a very serious attack that indeed Governor Romney amplified on. And she wrote in the *Wall Street Journal*--I want to show it to our viewers and get discussion about it here. In too many parts of the world, she writes, America is no longer viewed as a reliable ally or an enemy to be feared... Nor do our adversaries any longer fear us. Ask the mobs in Cairo who attacked our embassy or the Libyan mobs who killed our diplomats at the U.S. consulate in Benghazi. Ask the Iranians who make unhindered daily progress towards obtaining a nuclear weapon.

MR. JEFF GOLDBERG (National Correspondent, *The Atlantic*): Well, I mean, a couple of quick points. The first is, you know, to be fair, 9/11 happened during the Bush administration, the Bush-Cheney administration. So it's not as if people-- Muslim radicals feared the United States during that period, not when they were killing thousands of American troops in Iraq certainly. I mean, the larger point is that-- that, you know, there's a tendency, especially seven weeks out from an election, to turn this in-- turn everything that happens in the world into an election issue. There are some very, very deep and troubling things going on in-- in the Middle East that have very little to do with what a president does or doesn't do. I mean, let's-- let's be fair about this. You-- you-- you have a complete upheaval in the Middle East. You don't have American policymakers being able to shape the way Muslims think about the world, about modernity, about the United States. So-- so to blame the president for-- for an attack on-- on these embassies, I think, is a bit much.

GREGORY: Congressman...

REP. PETER KING (R-NY/Chairman, Committee on Homeland Security): Yeah.

GREGORY: ...as a Republican here, supporter of Governor Romney...

REP. KING: Yes.

GREGORY: ...is this American weakness that brought this on? Is that the Republican view? Is that what the view of President Romney would be?

REP. KING: Well, my view is it was a large component of it. There has been-- this president's policy-- President Obama's policy has been confusing. It's been apologetic, and it's been misguided. From the day he started his apology tour back in 2009 where he was, no matter what people say, apologizing for America, somehow suggesting that we've been anti-Islam until he became the president throughout-- the fact that-- even talking about Iraq, the way he took our troops out of Iraq without even getting the status of forces agreement. He was given a glide path in Iraq. And yet he pulled the troops out, brags about the fact that troops are out, gives a definite date for getting out in Afghanistan. What he is doing by that is telling our allies they can't trust us and he's also telling unaligned that the U.S. is not a reliable ally. And the fact that you would have the prime minister of Israel on this show explaining his relationship with the president of the United States at a time of such turmoil in the Middle East, we have never had a situation like this where there has been such a disconnect between the U.S. president and the Israeli prime minister. And the fact that he won't even meet with him at the U.N., while he's going to meet with President Morsi, sends terrible signals.

GREGORY: Well, to-- to be fair, the prime minister of Israel did not describe that as a stub-- snub in that interview.

REP. KING: I'm saying it. I'm saying, I'm saying.

GREGORY: You're saying, okay. Congressman, your response?

REP. KEITH ELLISON (D-MN): Well, it's ridiculous. The president has been consistent. He's been steady. And he's had progress in the policy wins in the Middle East. I mean, this is a seriously deeply rooted phenomenon, the Arab Spring that is going to be unfolding for a long time. And the last thing we need is to start making quick emo-- emotionally-charged decisions. We need consistent steady leadership like the president has shown.

GREGORY: But there is a policy component, Andrea and Bob, to this. The *New York Times* writes about it in an analysis piece this morning. I want to put a portion of that on the screen because it does provide some context here. The upheaval over an anti-Islam video has suddenly become Mr. Obama's most serious foreign policy crisis of the election season and a range of analysts say it presents questions about central tenets of his Middle East policy: Did he do enough during the Arab Spring to help the transition to democracy from autocracy? Has he drawn a hard enough line against Islamic extremists? Did his administration fail to address security concerns?

MS. ANDREA MITCHELL (Host, "ANDREA MITCHELL REPORTS"): Well, first of all, I think we have to exce-- concede that George Herbert Walker Bush's relationship with the then prime minister of Israel was arguably much worse than what we're seeing now. So, Republicans as well as Democrats have had difficulty, Congressman, in the past with Israel. That..

REP. KING: It's always the post-9/11 world.

MS. MITCHELL: ..but that said...

REP. KING: There's never been a relationship like this.

MS. MITCHELL: ...that said. I think there can be a legitimate criticism that this president has not handled the Israeli-Palestinian issue well, but the Arab Spring has been a much greater, much broader troubling issue that arguably not any American president could handle very effectively. That is not the argument. That is not the policy argument that-- that Mitt Romney has made. Mitt Romney's-- the criticism of Mitt Romney is coming largely from many Republicans whom I talked to, foreign policy experts, who say that in the middle of the crisis when the state department did not know where Ambassador Stevens was, when the body was missing, that he came out with a written statement and doubled down on it the next morning and that it was not presidential, it did not show leadership. That is the criticism...

REP. KING: When he put out the statement, he didn't know that the ambassador had been shot.

MS. MITCHELL: But then he shouldn't have put out a statement, you know, the argue...

REP. KING: Well, first up-- that's exactly the problem. Entire project-- I mean, if you don't know something, how can you-- I mean, it's not (Unintelligible).

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MS. MITCHELL: But silence is often a good choice. Peggy Noonan said that as well.

REP. ELLISON: What about waiting until you know more? I mean, what about Reagan? Reagan said, you know, when we have a crisis like this, we should all come together as Americans and not sort of-- divide up politically and try to seek a-- a point.

REP. KING: You know, sometimes wait...

REP. ELLISON: That was in-- that was a-- that was a sad moment.

REP. KING: President Obama waited three days after the underwear bomber before he made a statement, and then he came out and said, this was a sole individual...

GREGORY: All right, let me get Bob to weigh in.

REP. KING: ...al Qaeda operation.

MR. BOB WOODWARD (Associate Editor, *Washington Post*): There's a way to look at this neutrally, and I-- I just don't think the charge of weakness will stick. I mean, Obama's been tough on these things. Let's be realistic. The extremists in the Middle East who are causing all of this trouble are extremists. And no Republican, no Democratic president is going to be able to control them. The question is, what's the policy and what's the response? And you deal in the intelligence world and you ask the experts about this and they'll say you never know. Ten people are going to come together and take over an embassy, shoot someone and so forth. So the idea that government can-- has the puppet strings here is-- is just--

(Cross talk)

GREGORY: But couldn't we've done well with-- well, but let's get-- gentleman, let's get to the point. Where...

MR. GOLDBERG: Yeah.

GREGORY: Where are the extremists who are-- who are protesting about the fact that Muslims are being killed in Syria every day, as you don't see those protests? Is this about the United States or is it about them?

MR. GOLDBERG: It's about everything. I mean, the truth is it's about everything. It's unfolding. It'll be unfolding for a generation. And you're right. I mean, you don't see-- you don't see that level of anxiety directed at Syria. Hundred-- in the last week, hundreds of Syrian Muslims have been killed by the Syrian regime. And you don't see Syrian embassies being attacked. Obviously-- obviously-- obviously, if you're-- you know, we talked so much about the Arab street, how the Arab street feels about America. We-- we have to start talking about the American street too, because this is going to have consequences for these governments that we support. You know, we Americans see these countries that are-- that we provide billions of dollars who're not protecting our embassies, and they're eventually going to say, the American people can say enough already with this.

REP. ELLISON: This is a good time to realize that the so-called Arab street is not one monolithic thing. You have some people in, say, Libya, for example, who are pro-- holding up signs, apologizing for what happened to Chris Stevens.

GREGORY: Right. We have some of them. Yeah.

REP. ELLISON: Yeah. And-- and-- and, we-- we need to understand that this is not-- everybody's not on the same side. You have some radicals who want to push back. Some con-- some of-- some loyalists from the old regime, some extremists, who want to exploit the situation, and you have people who want a Democratic society. They're both contesting for who's going to come out and the United States should stay on their side.

REP. KING: But-- but how do we appeal to the wrong people in the Middle East by somehow exalting this whole-- this whole idea of the video being the cause of the-- of the riot?

REP. ELLISON: It's a spark. It's not a cause.

REP. KING: Okay. But for us to be saying somehow putting that on the equivalence of the American policy or to say that our policy in this country can be determined by a fanatical Christian minister in the South or radical Islamist mobs in the Middle East, then I think, the president can do more.

MS. MITCHELL: I-- I agree with that.

REP. KING: The president should be dealing with the--

GREGORY: But, Congressman, is it responsible for Mitt Romney to say that a President Romney could have stopped this from happening?

REP. KING: I think it's responsible for him to say that he would set a policy which would not be as confusing as this one. Why (Unintelligible) with President Morsi? Why didn't the next day the president even mention President Morsi? He come out to not say a word about the fact that our supposed ally--he doesn't even know if he's an ally or not--was getting a billion dollars not to defend our embassy in Cairo. The president did not mention that.

REP. ELLISON: But when the president called-- but when the president called, Morsi listened.

REP. KING: But for the single (cross talk) said nothing about it...

REP. ELLISON: And I-- and I wouldn't...

(Cross talk)

REP. KING: No, everyone is being critical of Mitt Romney.

GREGORY: Okay, good.

REP. KING: President Obama made his statement, he did not even mention the failure of leadership in Egypt.

MS. MITCHELL: Well, Congressman, you're absolutely correct. I think that it is easy for the administration to try to point to the film. There is a much broader issue, as Jeffrey and-- and Bob has-- have been pointing to. The world is changing and it is changing too rapidly for any American leadership to figure out what to do. There is going to be a big argument over foreign aid, you know that. And whether or not that is even a sensible argument is another question. They have a big problem with Morsi. Morsi needs economic aid. He has, I've been told, reached out to the New York economic club. He wants to give a speech here in 10 days. He knows he needs the IMF. He knows he needs the United States. But he's trying at the same time to placate the radical elements in the brotherhood.

GREGORY: Let me...

MR. WOODWARD: But-- but the core problem is there're angry people out there. And you can't identify them. And the-- the idea that you're going to have a government policy to deal with angry people in a-- in a way that will suppress them just is not going to happen.

GREGORY: Let me get a break in here-- let me get a break in here. We'll come back with the roundtable. More on this, the political impact right in the middle of the campaign. More with our roundtable right after this.

(Announcements)

GREGORY: We're back with our roundtable. Some context here--look at this polling from CNN/ORC--better at handling foreign policy, a big advantage for President Obama as we go into these presidential debates. Jeffrey Goldberg?

MR. GOLDBERG: You know, I-- I was troubled by something that Susan Rice said before, which is talking about how people are offended by this movie and sort of apologizing for this-- this film. I think there's a-- there's a perpetual grievance machine working in the Middle East. Bob-- Bob points this out. People will be angry no matter what. And-- and at a certain point, I think the administration should just say, look, we have free speech in America. It is part of our value system. You know, opp-- opposition to blasphemy is part of your value system and we respect that as long as you do it peacefully, but we have free speech in our country and we're going to stand up for our liberal western values.

MR. KING: Suppose tomorrow with Salman Rushdie, we going to back down on that also, yeah.

MR. GOLDBERG: No. Exactly. You want to be-- you want to stand very strongly. And you want to also support liberal thought in the Middle East and that means engaging with-- you have to remember most Muslims in the Middle East aren't attacking American embassies, many want to be-- have more liberal open society.

GREGORY: Congressman Ellison, is our only leverage in the United States money and foreign aid?

REP. ELLISON: Absolutely not. We have a lot of influence in terms of culture, in terms of just the way America is a democratic society. We should use that. They, as a matter of fact, all the protests we saw were for people reaching for a greater level of democracy. But foreign aid is a part of it. And I think that for us to threaten to snatch aid now is dangerous and a bad idea.

GREGORY: Andrea Mitchell, the question of Iran as well, I want to get reaction to the prime minister. He said something among the significant things, there-- they have an equal commitment, he said, Mitt Romney and President Obama, to prevent Iran from going nuclear. That is not the wedge that Governor Romney has been arguing. He has said, "You re-elect President Obama they go nuclear, you elect me they do not."

MS. MITCHELL: And yet Mitt Romney himself misspoke apparently in another interview saying that he agrees with President Obama on what that imaginary red line is. I thought it was very interesting that Prime Minister Netanyahu said they are in a red zone. The football analogy, yes. But he was trying to smooth over the differences. But there are very real differences. Real differences in that while President Obama has made a commitment to stop them from weaponizing, from getting a-- from going nuclear, they believe somehow in this notion that they will have the intelligence, they will know when the Ayatollah makes a political decision, and they will still have the time. And arguably in the past, we've learned that intelligence is not that precise.

MR. WOODWARD: There is so much turns on the intelligence. It was this interesting your discussion with the Israeli Prime Minister, and he said, well, at six months and they'll have 90 percent. And the Ambassador Rice said, well, it's not imminent that they're going to get the bomb. If you study intelligence, as I have for about 40 years, and Jeffrey and I were talking about, some day we're going to write a book called "The Unintelligence of Intelligence" because it's just often wrong. And people are surprised. And we're-- you know, deep, deep uncertainty about all of this-- 90 percent, six months, it's not going to happen. We don't know.

GREGORY: What about-- what about this interference in our election? You're curious about that from both of you, because he takes on-- well, I-- I pressed him on that charge.

MR. GOLDBERG: Well, there's-- there's two issues. One is a legitimate issue, which is this debate over red lines. This is the debate that Obama and Netanyahu should have, a discussion, in private. And-- and that's-- that's legitimate for-- for Netanyahu to raise. What's illegitimate, and-- and let me put this as-- as bluntly as I can. I've been watching the relationship between the U.S. and Israel for 20 years, more than 20 years, very seriously and I've never seen an Israeli prime minister mismanage the relationship with the United States or with the administration the way this prime minister has. Obama is not blameless. The first year, the peace process was a disaster. But, you know, one-- one person here is the-- one person here is the senior partner, one is the-- the junior partner, and Netanyahu has turned this into a story about himself and Obama.

REP. KING: No, I-- I disagree. I'm-- I'm not here to criticize our president. The fact is in 2009 when he went to the Middle East and suggested a moral equivalency between the Iranians and the Israelis, when he was harping on against the Israelis, the fact is the Israeli government does not trust the American government. And that's really the issue. Not when the red line is going to be or where it's going to be. The fact is there was not a trust between the Israeli prime minister and the American President. And this is a President who'd come in saying he was going to restore harmony among nations, he was going to have better relationship with our overseas allies...

MS. MITCHELL: But...

REP. KING: ...and adversaries.

GREGORY: Are you double down on the comment that this President has thrown Israel under the bus?

REP. KING: He has not shown-- yes, I will. In the context of politics, yes, he has, absolutely.

REP. ELLISON: That's-- that's absolutely wrong.

REP. KING: He absolutely has.

REP. ELLISON: There's no evidence to that.

REP. KING: The way...

GREGORY: What does that mean in the context of politics, it's either true or it's not.

REP. KING: It-- it is true.

REP. ELLISON: It's not true.

REP. KING: It is true. Let me tell you why it's true. You had an Israeli prime minister being-- when he went to the White House being put off to eat by himself, being ignored by the president. You have the president refusing to sit down with him at the U.N. This is an ally.

REP. ELLISON: Well...

REP. KING: He's not going to treat Morsi this way.

REP. ELLISON: According to...

REP. KING: He's not going to treat the Arab League this way.

REP. ELLISON: According to...

REP. KING: To treat an ally like that is, yeah, like putting him under the bus.

GREGORY: All right. Go ahead, Congressman.

REP. ELLISON: ---military leaders the security relationship is as good as it ever has been.

REP. KING: We're talking about diplomatic relationship.

GREGORY: Hold on, let him...

REP. ELLISON: And-- and-- no, no, no. And so-- and so the point is this is a sad reality where we are putting Israel as a political football in an election, it should not be done.

REP. KING: The president...

REP. ELLISON: And-- and as a matter of fact, I think that the-- that the president-- President Netanyahu (sic) ought to be a little bit more careful (cross talk) himself.

GREGORY: Andrea, and I really-- in ten seconds, what do you look for this week as we move beyond, as this conversation moves?

MS. MITCHELL: I think there are more security challenges. You've got embassies shut down. The marines are going to be more engaged in various places. This is a crisis. And it could rebound against President Obama.

GREGORY: All right. Before we go and take a break, I wanted to let you know that you can catch more of Bob Woodward in our take two web extra, which will be posted on our press pass blog this afternoon. We're going to talk in depth about his new book, *The Price of Politics*. You can read an excerpt on our-- of the book on our website as well, that's meetthepressnbc.com. We'll be back with more in just a moment.

(Announcements)

GREGORY: Before we go this morning, a couple of programming notes. You can watch this week's press pass conversation on our blog as well, a lot going on on the blog. Some straight talk from the much talked about duo themselves. Simpson-Bowles, Former Senator Alan Simpson, former

White House chief of staff for President Clinton Erskine Bowles, that's at meetthepressnbc.com.

Also Thursday on ROCK CENTER WITH BRIAN WILLIAMS, Ted Koppel goes toe-to-toe with the lives of Bill O'Reilly, Ann Coulter and Bill Maher for a provocative new look at the role of openly partisan media and at the role it's playing in our society. That's on ROCK CENTER Thursday at 10:00 P.M. Eastern, 9:00 Central.

That is all for us today. We'll be back next week. If it's Sunday, it's MEET THE PRESS. And as we leave you, we remember the lives of Ambassador Chris Stevens and the three other Americans that were lost this week in the attack on our consulate in Libya. Our thoughts and prayers of course are with their families.

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STATE OF THE UNION WITH CANDY CROWLEY

Interview with Benjamin Netanyahu; Interview with Susan Rice; Interview with Nancy Pelosi; Interview with Rudy Giuliani

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CANDY CROWLEY, CNN ANCHOR: Is it really about an obscure promotion on YouTube, or is there a bigger picture?

Today as anti-American protests hit the Arab world a challenge of a different sort in the prickly relationship between president Obama and Israeli Prime Minister Benjamin Netanyahu.

(BEGIN VIDEO CLIP)

BENJAMIN NETANYAHU, ISRAELI PRIME MINISTER: What's guiding me contrary to what I've read in the United States, it's not the American political calendar, it's the Iranian nuclear calendar.

(END VIDEO CLIP)

CROWLEY: And the future of the president's outreach to the Muslim world with U.S. ambassador of the United Nations Susan Rice. Then democratic leader Nancy Pelosi, bullish on winning back the house.

(BEGIN VIDEO CLIP)

REP. NANCY PELOSI, (D) CALIFORNIA: That was the pivotal day.

(END VIDEO CLIP)

CROWLEY: Plus, foreign policy and poll numbers with Romney supporter and former New York City mayor Rudy Giuliani. I'm Candy Crowley. And this is State of the Union.

Another Middle East problem area flamed anew this week: certain that Iran is pursuing nuclear weapons, but pressured not to take military action right now, the prime minister of Israel is pushing back. Benjamin Netanyahu argues the U.S. must set specific limits for Iran. He suggested otherwise Israel will move forward on its own.

(BEGIN VIDEO CLIP)

NETANYAHU: Those in the international community will refuse to put red lines before Iran don't have a moral right to place a red light before Israel.

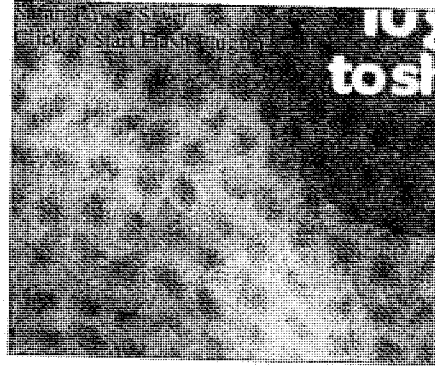
(END VIDEO CLIP)

CROWLEY: Netanyahu's call for red lines to restrain Iran was presumably the main topic in a private one-hour phone conversation with President Obama this week. But Secretary of State Clinton said publicly the U.S. will not set any deadlines after which Netanyahu told an Israeli paper, "I hear all those people who say we should wait until the very last minute, but what if the U.S. doesn't intervene? That is the question we have to ask."

Joining me now Israeli Prime Minister Benjamin Netanyahu. Thank you so much for joining us, Mr. Prime Minister. There has been all this talk about red lines put before Iran which you have talked about. Can you tell me what you would like that red line to be in the best of all possible worlds for you and for Israel, what would you like the U.S. to commit to in terms of a red line?

NETANYAHU: I think the issue is how to prevent Iran from completing its nuclear weapons program. They're moving very rapidly, completing the enrichment of the uranium they need to produce a nuclear bomb. In six months or so they'll be 90 percent of the way there. I think it's important to place a red line before Iran. And I think that actually reduces the chance of military conflict because if they know there's a point, a stage in the enrichment or other nuclear activities that they cannot cross because they'll face consequences, I think they'll actually not cross it. And that's been proved time and again.

President Kennedy put a red line before the Soviets in the Cuban Missile Crisis. He was criticized for it, but it actually pushed back the



world from conflict and maybe purchase decades of peace. There wasn't such a red line before Saddam Hussein, before -- on the eve of the Gulf War when he invaded Kuwait. Maybe that war could have been avoided. And I think Iran, too, has received some clear red lines on a number of issues, and they backed off from them.

So I think as Iran gets closer and closer to the completion of its nuclear program, I think it's important to place a red line before them. And that's something I think we should discuss with the United States.

CROWLEY: And let me read you something I know you're probably quite familiar with. But for our viewers, something the president has said repeatedly. This he said at the beginning of the year. "As president of the United States I don't bluff. I think both the Iranian and the Israeli governments recognize that when the United States says it is unacceptable for Iran to have a nuclear weapon, we mean what we say."

Do you disagree with that?

NETANYAHU: I think that when he says that implicit in that is that he will stop them before they get to a nuclear weapon, which means they'll draw red line somewhere. I think it's important to communicate it to them.

I wouldn't bet -- I wouldn't bet the security of the world and my own country's future from a country that threatens our annihilation, murders civilians en masse in Syria and brutalizes its own people. I wouldn't bet the future on intelligence for simple reasons.

American intelligence and Israeli intelligence that cooperate together had had wonderful successes in saving lives and alerting our people, but we've also had our failures, both of us. You know, you've just marked 9/11. That wasn't seen. None of us, neither Israel or the United States, saw Iran building this massive nuclear bunker under a mountain. For two years they proceed without or knowledge. So I think the one thing we do know is what they're doing right now. We know that they're enriching this material. We know that in the six, seven months they'll have got to covered 90 percent of the way for an atomic bomb material. And I think that we should count on the things that we do know in setting the red line.

CROWLEY: And what we know is, of course, that Iran is allowed under agreements, international agreements to go ahead and do what it's doing because there are legitimate peaceful purposes for enriching this uranium.

NETANYAHU: Do you think so? You think so, Candy? That's like -- well, let me interrupt -- it's not legitimate. This is a country that talks about -- denies the holocaust, promises to wipe out Israel, is engaged in terror throughout the world. It's like Timothy McVeigh walking into a shop in Oklahoma City and saying I like to tend my garden. I would like to buy some fertilizer.

How much do you want?

Oh, I don't know, 20,000 pounds.

Come on. We know that they're working towards a weapon. They're not -- we know that. It's not something that we surmise. We have absolutely certainty about that. And they're advancing towards that nuclear program.

CROWLEY: Do you mean you and the U.S. know that, because I don't from what I read, from what I hear, I don't get the sense that the U.S. has the certainty that you do or the urgency that you seem to have. Is there a disconnect there?

NETANYAHU: First of all, I talked about the certainty of their enrichment program, and I didn't talk about the other elements. And I spoke about the difficulty of knowing other things, but we have no difficulty as the IAEA report just tells us what they're doing in their enrichment program. That we know for sure. That's the only thing we know for sure that is verifiable and accessible. We know that.

As far as the U.S. and Israel, obviously we have different capability. You're a big country. You're several thousand miles away. You have stronger military capabilities. We're a smaller country. We are more vulnerable. They threaten our very annihilation, so obviously we have different capabilities and different clocks. But in terms of what is happening as Iran is getting closer and closer to completing its work for the first atomic bomb, the differences between us in our capabilities are becoming less and less important because Iran is fast approaching a point where it could disappear from our capability of stopping and our capability means not only Israel.

CROWLEY: I get the sense that your hour-long phone conversation with President Obama did not get you where you wanted to go insofar as U.S. willingness to set this red line. Is that correct?

NETANYAHU: Look, we had a good conversation. I'm not going to get into the details. I respect the president. I respect also the confidence of our conversation. But I think that -- I think this is a matter of urgency and people should understand it, that's what's guiding it.

What's guiding me, contrary to what I have read in the United States, is not the American political calendar, it's the Iranian nuclear calendar. And the Iranian centrifuges that are charging ahead simply do not take time out for the American elections. I wish the Iranians would shut down the centrifuges and then we won't have to talk about it, but they don't. And in fact, they do the very opposite. That's what's driving the urgency of this. And again, we have close consultations with the United States on this issue.

CROWLEY: Is the answer then, that no, you don't have the red line that you would like to have from the U.S.? Can you tell me at least that?

NETANYAHU: I think you should have a red line communicated to Iran, that's what I would say. And I think it's vital. I know that people value flexibility. I think that's important. But I think at this late stage of the game, I think Iran needs to see clarity. I'm not sure I would have said this three years ago, two years ago, one year ago, but as we get closer and closer and closer to the end game, I think we have to establish that.

That's becoming important, because you have to just think about it. You know, you see the Middle East. You see these fanatics storming your embassies, and I want to send my condolences to the American people for the loss of that extraordinary ambassador and his extraordinary colleagues. We sympathize as no other people does with the United States.

And yet, you know that as we face the possibility of a regime that is guided by the same fanaticism would have nuclear weapons, it's become something urgent for all of us to make sure they don't get there, and if you want to make sure that they don't get there. And if you want to make sure that they don't get there, make sure that they know that there is a line they shouldn't cross. Because otherwise, they'll cross it, and they'll get there.

CROWLEY: There's also people in your own country who have said that this is more aimed at President Obama and your friend Mitt Romney than it is about any new urgency. And I know you have heard this.

CROWLEY: And I wanted to ask you as a wrap-up question, do you see any major differences between the U.S. position vis-a-vis the relationship with Israel when you look at President Obama's position and when you look at former Governor Romney's position? Is there any difference in their policies towards Israel that you can detect?

NETANYAHU: Look, I know that people, Candy, are trying to draw me into the American election, and I'm not going to do that. But I will say that we value, we cherish the bipartisan support for Israel in the United States, and we're supported by Democrats and Republicans alike.

You know, this is not an electoral issue. It is not based on any electoral consideration. I think that there's a common interest of all Americans over all political persuasions to stop Iran.

This is a regime that is giving vent to the worst impulses that you see right now in the Middle East. They deny the rights of women, deny democracy, brutalize their own people, don't give freedom of religion.

All the things that you see now in these mobs storming the American embassies is what you will see with a regime that would have atomic bombs. You can't have such people have atomic bombs. And I believe that's as important for Republicans as it is for Democrats, important for Democrats as it is for Republicans. It's as important for President Obama as it is for Mitt Romney. It's important for the future of our world.

CROWLEY: Prime Minister Benjamin Netanyahu, that's a good place for us to end it. I appreciate your time this morning.

NETANYAHU: Thank you.

CROWLEY: The Arab Spring's unintended consequences, that's next.

(COMMERCIAL BREAK)

CROWLEY: In his second inaugural address, President Bush said the U.S. would seek out and promote democracy around the globe.

(BEGIN VIDEO CLIP)

GEORGE W. BUSH, 43RD PRESIDENT OF THE UNITED STATES: The survival of liberty in our land increasingly depends on the success of liberty in other lands. (APPLAUSE)

BUSH: The best hope for peace in our world is the expansion of freedom in all the world.

(END VIDEO CLIP)

CROWLEY: In Cairo, four years later, President Obama reached out the Muslim world with a new version of the same idea.

(BEGIN VIDEO CLIP)

BARACK OBAMA, PRESIDENT OF THE UNITED STATES: I know there has been controversy about the promotion of democracy in recent years. And much of this controversy is connected to the war in Iraq. So let me be clear, no system of government can or should be imposed by one nation, by any other.

That does not lessen my commitment, however, to governments that reflect the will of the people.

(END VIDEO CLIP)

CROWLEY: And then early last year uprisings on the Arab streets toppled longstanding autocratic regimes in Tunisia, Egypt, and Libya with the explicit yet sometimes delayed support of the West.

This week in at least 23 countries around the world the people returned to the streets to protest, sometimes violently, sometimes not, outside U.S. embassies. How, why, and what turned the Arab Spring into this autumn rage against the West. U.S. Ambassador to the U.N. Susan Rice is next.

(COMMERCIAL BREAK)

CROWLEY: Joining me is the U.S. ambassador to the United Nations, Susan Rice.

Madam Ambassador, thank you for joining us.

RICE: Good to be with you, Candy.

CROWLEY: One of the things when I spoke with the Israeli prime minister that struck me was the conviction that he has that for certain Iran is building -- on its way to building a nuclear weapon, and his sense of urgency that at this moment the U.S. needs to set what he calls a "red line" for the U.S.

Does the U.S. share the conviction that Iran is, indeed, building a nuclear weapon? And, B, what about the concept of a red line?

RICE: Well, Candy, the United States is in constant communication with Israel and Israeli intelligence, Israeli policy makers, the military. We're sharing our assessments every day. And our assessments, our intelligence assessments are very similar. Obviously, we share a grave concern about Iran pursuing a nuclear weapon. We are determined to prevent that from happening. President Obama has been absolutely clear, and on this there's absolutely no daylight between the United States and Israel that we will do what it takes to prevent Iran from acquiring a nuclear weapon.

We are not at that stage yet. They do not have a nuclear weapon. Our shared intelligence assessments is that there is still a considerable time and space before they will have a nuclear weapon should they make the decision to go for that. But we've been very clear. The United States is not interested and is not pursuing a policy of containment. President Obama has been very plain. We will keep all option on the table, including the military option, as necessary, to prevent Iran from acquiring a nuclear weapon.

But, Candy, the fact is we have just seen the imposition of another layer of the toughest sanctions that have ever been impose odd a country. In this case, Iran. Their economy is beginning to buckle. Their oil production is down 40 percent. Their currency has plummeted

40 percent in the last year. Their economy is now shrinking. And this is only going to intensify.

So we think that there's still considerable time for this pressure to work. But this is not an infinite window. And we've made very clear that the president's bottom line is Iran will not have a nuclear weapon.

CROWLEY: Let me move you to what's gone on in the Middle East in Arab countries and elsewhere. There is a "New York Times" story this morning that suggests that the administration thinks this is a foreshadowing of a fall that will see sustained instability. Does the administration expect to see these sorts of protests outside U.S. embassies and elsewhere throughout the fall?

RICE: Well, Candy, first of all, let's recall what has happened in the last several days. There was a hateful video that was disseminated on the internet. It had nothing to do with the United States government and it's one that we find disgusting and reprehensible. It's been offensive to many, many people around the world.

That sparked violence in various parts of the world, including violence directed against western facilities including our embassies and consulates. That violence is absolutely unacceptable, it's not a response that one can ever condone when it comes to such a video. And we have been working very closely and, indeed, effectively with the governments in the region and around the world to secure our personnel, secure our embassy, condemn the violent response to this video.

And, frankly, we've seen these sorts of incidents in the past. We've seen violent responses to "Satanic Verses." We've seen violent responses to the cartoons depicting the Prophet Mohammed in an evil way. So this is something we've seen in the past, and we expect that it's possible that these kinds of things could percolate into the future. What we're focused on is securing our personnel, securing our facilities.

CROWLEY: Do you at this moment feel that U.S. embassies abroad are secure?

RICE: We are doing our utmost to secure our facilities and our personnel and in various vulnerable places. We have demanded and we are receiving the cooperation of host governments. Host governments have also put out very strong messages in Libya, in Egypt, in Yemen and Tunisia condemning violence, saying that it's a completely unacceptable response to such a video. And we feel that we are now in a position doing the maximum that we can to protect our people.

CROWLEY: Why would one not look at what is going on in the Middle East now and say that the president's outreach to Muslims, which began at the beginning of his administration in Cairo and elsewhere has not worked because, yes, this video sparked it, but there is an underlying anti-Americanism that is very evident on the streets. So why not look at it and think that this is this outreach has failed?

RICE: For the same reason, Candy, when you look back at history and we had the horrible experience of our facilities and our personnel being attacked Beirut in 1981, we had the attack on Khobar Towers in the 1990s. We had an attack on our embassy in Yemen in 2008. There have been such attacks. There have been expressions of hostility towards the west.

CROWLEY: But this was sort of a reset, was it not? It was supposed to be a reset of U.S.-Muslim relations?

RICE: And indeed, in fact, there had been substantial improvements. I have been to Libya and walked the streets of Benghazi myself. And despite what we saw in that horrific incident where some mob was hijacked ultimately by a handful of extremists, the United States is extremely popular in Libya and the outpouring of sympathy and support for Ambassador Stevens and his colleagues from the government, from people is evidence of that.

The fact is, Candy, that this is a turbulent time. It's a time of dramatic change. It's a change that the United States has backed because we understand that when democracy takes root, when human rights and people's freedom of expression can be manifested, it may lead to turbulence in the short-term, but over the long-term, that is in the interest of the United States.

The mobs we've seen on the outside of these embassies are small minority. They're the ones who have largely lost in these emerging democratic processes, and just as the people of these countries are not going to allow their lives to be hijacked by a dictator, they're not going to allow an extremist mob to hijack their future and their freedom. And we're going to continue to stand with the vast majority of the populations in these countries.

They want freedom. They want a better future. And understand that we're with them in that long-term endeavor.

CROWLEY: All right. U.S. ambassador to the U.N., Susan Rice. I got to let you go here.

RICE: Thank you. Thank you very much.

CROWLEY: We'll switch gears next and talk to Democratic Minority Leader Nancy Pelosi about her road map to retake control of the House.

And later, a batch of fresh polls show Mitt Romney may be losing steam in his bid for the White House. Supporter and former New York City Mayor Rudy Giuliani is here to discuss.

(COMMERCIAL BREAK)

CROWLEY: No matter what they promise as a candidate, presidents can't do much of what they want without a cooperative congress, which brings us to the U.S. House currently run by Republicans who hold 240 seats compared to 190 held by Democrats. To take control next January, Democrats need a net gain of 25 seats in November.

At the Democratic Convention earlier this month, House Democratic leader Nancy Pelosi told reporters she's looking for a 27 seat pick-up, that would put her in line to regain the speakership.

She is expecting victories in Texas, California, Illinois, New York, Washington State, and Arizona. Democrats are also eyeing power changing winds in the presidential battleground states of Florida, Ohio, Iowa, and Nevada. And there is even talk about Montana where the House seat has been Republican for 15 years.

We should stress that most polls point to, and most political forecasters predict that Democrats will gain seats, but not enough to win the majority.

Democratic leader Nancy Pelosi and the reason for her optimism is next.

(COMMERCIAL BREAK)

CROWLEY: Earlier I visited with House Democratic leader Nancy Pelosi. We began with the Democrats' chances for winning back the majority in November.

(BEGIN VIDEOTAPE)

CROWLEY: I read something in "Roll Call" that described the prospects for Democrats retaking the House as theoretically possible but unlikely. Would you agree with that?

PELOSI: No. I think that, first of all, I don't know what that is, but I do know that the source of our confidence is, and that's the quality of our candidates. They're just great. The fact that they are strong in terms of their grass roots mobilization and their resource raising and the rest. And that the issues are with us.

For one year and a half since the Republicans passed their budget, which the Romney-Ryan now, Republican budget, which severs the Medicare guarantee, we have been saying three important issues of the campaign, and in alphabetical order they are Medicare, Medicare, Medicare.

On August 11th when Governor Romney chose Ryan, that was the pivotal day.

ROMNEY: Paul Ryan has become an intellectual leader of the Republican Party.

PELOSI: That is a day things really changed.

We were on a path. I would have said to you then we were dead even. Well, momentum is very much with us. The Medicare issue in this campaign.

So we have a message. We have the messengers. We have the money. We have the mobilization. We have an excellent chance to take back the House.

CROWLEY: Just quickly, the Romney campaign says that Medicare will always be a choice, but that they want to open it up so that they're not cutting off the Medicare option.

PELOSI: Well, you know, that is completely upside down. It's a contradiction of Medicare. Medicare is a guarantee. To make it a voucher is to put the decision in the hands of the insurance companies. Seniors know that, I'm a senior. I know that.

The whole pillar that Medicare is about economic and health security for our seniors and those who depend on Medicare. There are families who need their parents and grandparents to be provided for under Medicare. Everybody understands that.

If you don't believe in Medicare, you will say what the Republicans are saying.

CROWLEY: Let me ask you, if it should turn out that you gain seats in the House, but you don't take over the majority spot, would you still run for leader of Democrats?

PELOSI: Well, I don't ever predicate anything when losing. I feel very confident about our ability to win. Who will lead the party after that is up to my members. I feel that I...

CROWLEY: Oh, sure, but would you still run, whether it was for speaker or Democratic leader?

PELOSI: Well, I actually, didn't choose to run last time. My members chose that I would run last time.

But this isn't about me, this is about Medicare. It's about Social Security. It's about women's rights. It's about the American dream. It's about our democracy. All of that is on the ballot.

CROWLEY: If we look at the polls rather than the possibilities, it looks as though there is an even chance that the senate Republicans could take over and that the probability is that Democrats will not take over in the House.

So let's say everything stays as is and the president is re-elected. What's different about the dynamic that has been so toxic between Capitol Hill and the White House if we have what currently the polls show is -- you know, if the election were held today?

PELOSI: Well, with that theoretical, the -- you'll see more of the same because it's really important for the public to know that the Republican obstruction of President Obama's jobs bills and whatever he was advancing, their obstruction is their agenda. They really don't believe in...

CROWLEY: Does that change? If nothing changes in the dynamic...

PELOSI: It's what they believe in. Now I have always said in my Republicans take back your party, because this wing of the party or this over the edge crowd that is in charge -- taking charge of wagging the dog in congress is never going to cooperate, because they do not believe in a public roll. Clean air, clean water, public safety, public education, public transportation, public health, Medicare, Medicaid, Social Security, they don't believe in it, and that's what their budget is about. And that's what we vote on the floor almost every day.

CROWLEY: Do you see that changing.

PELOSI: No, I don't see it, that's why it's important for us to win the election so that we can go forward because bipartisan collaboration is on the ballot too.

When President Bush, George W. Bush, was president and we were in the majority and I was the speaker, we had our differences, we fought, but we also found common ground.

GEORGE W. BUSH, 43rd PRESIDENT OF THE UNITED STATES: I thank the leadership of the congress for joining us here.

PELOSI: There are so many places where we came together.

CROWLEY: So you could work with Mitt Romney basically, if it came to that?

PELOSI: Oh, Mitt Romney is not going to be president of the United States.

(LAUGHTER)

CROWLEY: Let me ask you...

PELOSI: I think everybody knows that.

CROWLEY: The president has put out his -- by law he had to put out a response to detail what its cut and what doesn't get cut under what we call sequestration, which are just mandated across the board cuts in both sides of the ledger. It says it will be horrible if it happens, et cetera, et cetera. The Republicans have complained repeatedly that there is no presidential leadership on this.

What is the president's involvement been so far in trying to get Republicans and Democrats together to avoid this fiscal cliff?

PELOSI: Well, the president as recently as yesterday I received a call from him saying we really do have to have an agreement, which I fully agree with, and the must have as much -- do everything we can to find common ground. That's what we did one year ago, more than a year ago in July/August of last year and the president worked very hard with the speaker to come out with a bipartisan agreement that was a big design which had \$4 trillion over 10 years in deficit reduction and the House and Senate Democrats said Mr. President, we're with you on this. He agreed to it. The Republicans walked away. CROWLEY: Is he a work-the-poner, though? I mean, compare him, say, to Bill Clinton who you also worked with. I mean, the image that we have is a president that does not do that as much as a Bill Clinton did in terms of offering guidance, trying to get people together in the same room, reaching out to Republicans, reaching out to you. The level of leadership from the president when it comes to legislative things compared to former President Clinton.

PELOSI: Well, I would say that they both score very high in terms of leadership. If you measure leadership in the number of phone calls, well, that might be a little bit of a different story because they're different personalities.

CROWLEY: Yes, more contact with Bill Clinton over the years.

PELOSI: Well, I wasn't leader or speaker when Bill Clinton was -- President Clinton was president, but we all -- but I saw how he worked with Congress and our leadership at the time.

Make no mistake, President Obama is, of course, a great leader. He has great vision for our country. He knows the issues. He has a plan. He is eloquent and can draw people to what he has to say, and that's all great.

He also is such a respectful person. And I have never seen -- I worked with presidents to a great or lesser degree, certainly to a greater degree to President Bush and President Obama, and this president has listened, spent time, respects the opinions of the Republicans to an extent that I think -- I wish one of them would come up with a new idea because he has more patience listening to them than I do.

But so, really, leadership should not be measured in the number of calls. But they were both great. They are both great leaders.

CROWLEY: So I'll just extrapolate from that that perhaps Bill Clinton was more hands-on than President Obama, but they both -- you think they both showed leadership?

PELOSI: Well, I think they're both hands-on. It's just a question of how they spent their time. And the challenges are very great today that the president -- as they were under President Clinton, but I think he uses his time well. I have no complaint with that.

CROWLEY: House Democratic Leader Nancy Pelosi, thank you for joining us today.

PELOSI: Thank you, Candy. My pleasure.

CROWLEY: I appreciate it.

PELOSI: Thank you.

CROWLEY: Battleground polls show trouble for Governor Mitt Romney. Supporter and former New York City Mayor Rudy Giuliani is here next.

(COMMERCIAL BREAK)

CROWLEY: I'm joined by former New York City Mayor Rudy Giuliani.

Mr. Mayor, thanks for being here. It occurs...

RUDY GIULIANI (R), FORMER NEW YORK CITY MAYOR: Nice to be with you.

CROWLEY: ... to me that you, as well as anybody, understands that when there is a crisis, Americans tend to rally around their leaders. So with that in mind, tell me who had the better week this week, President Obama or Mitt Romney?

GIULIANI: Well, I think clearly Mitt Romney. Largely because what we see is the president's policies in the Middle East falling apart. I mean, the reality is the president got elected to reset our relationship in the Middle East. We might as well not have had the reset.

I mean, look at the American flag being burned, unrest in 20 countries, a front page article in The New York Times today saying they anticipate numerous additional demonstrations over the next four or five months.

America is no more popular in the Middle East than it was four years ago. And now in addition to that, we've shown this kind of provocative weakness to the Middle East. And we were for Mubarak before we were against Mubarak. We were more or less neutral on Gadhafi until we wanted to overthrow him.

Hillary Clinton announced that Assad was a reformer. Now we want to overthrow him. And we don't seem to be willing to set a red line for Iran when that's exactly what Jack Kennedy did in the Cuban Missile Crisis.

And you do that any time you are dealing with a provocative enemy that needs to know, well, how far can you go so we have no confusion? The president refuses to do it. Prime Minister Netanyahu is absolutely correct in pushing him to do it.

CROWLEY: There are plenty of people who would argue that the president as commander-in-chief had a better week, but I want to move you on to some things that I think are possibly troubling inside the Romney campaign.

you can't come in and then you're possibly needing more of a military campaign.

This is the latest look at some battleground states from the NBC News/Marist poll with The Wall Street Journal. Ohio, it has President Obama up 7 points. And in Florida and Virginia, the same poll has President Obama up 5 points. What is wrong there?

GIULIANI: Nothing is wrong. It's a close election. Those are polls...

CROWLEY: Well, that's -- some of these -- I mean, those are pretty good leads compared to what we have seen before.

GIULIANI: I don't know. Those are the kinds of leads John Kerry had on Election Day, and George Bush became the president. You know? So those are -- those are margins that are well within striking distance for either candidate. To be overconfident about who is going to win this election, in fact, whoever is overconfident about whoever is going to win this election is probably going to lose it.

This is a darn close election. Whoever expected what happened in the last week, week-and-a-half with -- in this election. This was going to be an election about the economy. It's now becoming an election that's looking an awful lot like 1980 with Jimmy Carter-style president in the White House.

CROWLEY: But sure -- even you would agree, surely, that having American hostages held for 444 days is a little different from having a protest outside American embassies, yes, there -- and we had the deaths of these -- the tragic deaths of these four Americans in Libya, which a lot of folks are arguing is a different thing from saying everything here has failed.

So the question is, do you actually believe that this no longer is about the economy?

GIULIANI: No, no, I do. I believe it's about the economy, but I think the situation in the Middle East is becoming more and more important. And, Candy, I would argue that the situation in Iran is equally as dangerous as it was with the hostages there except this time they want to become nuclear.

And the president is fiddling while Iran is just moving ahead. I mean, he had to be forced -- he had to be forced to use these crippling sanctions, which he has used late, and I don't know how crippling they are since he has exempted 20 countries from them.

CROWLEY: And yet at...

GIULIANI: I mean, these sanctions...

CROWLEY: ... this point, Mr. Mayor...

GIULIANI: Even the U.N. is saying his sanctions aren't working. They are not working. The president doesn't want to deal with it.

CROWLEY: And yet at this point can you tell me something different in Mitt Romney's proposed policies toward Iran than President Obama's policies? They both said Iran should not be allowed to acquire a nuclear weapon, period. What's different?

GIULIANI: Well, I believe that Mitt Romney would set a red line. He'd make it clear exactly the point beyond which...

CROWLEY: Why doesn't he do that now?

GIULIANI: Well, he might over the course of these debates. He might vary well do it. Although then you'd all criticize him for engaging and interfering in foreign policy. I mean, Mitt Romney can't win no matter what he does.

He spoke out as a leader about a really, really ridiculous statement by the State Department, for 16 hours they had a statement out there apologizing. All of a sudden he gets criticized.

I mean, the administration was clearly wrong about the level of security needed for that ambassador in that consulate. And you had Nancy Pelosi just on saying there was enough security.

If they are as wrong in their security estimate of Iran as they were about the consulate in Benghazi, we are in serious trouble.

CROWLEY: Let me turn you back to the economy, since it remains issue number one. When you look at our -- I'm sorry, at a New York Times/CBS poll, this was about the probable electorate, and the question was, which candidate would do a better job of handling the economy and unemployment? President Obama, 47, Mitt Romney, 46 percent.

Your candidate has lost the edge when it comes to the economy. If the economy is as bad as Republicans have told us it is, what is holding Mitt Romney back here because from your description of the economy, others' description of the economy, this really should be a president that doesn't have a chance and yet he's beating Mitt Romney.

GIULIANI: There's no such thing as an incumbent president doesn't have a chance. Having the presidency is an enormous advantage. The president has used it well. They have done a good job, I think an unfair one, they've done a good job of raising all kinds of irrelevant questions about Mitt Romney and Paul Ryan, and the Romney/Ryan campaign has to overcome that.

But if you just look at the fundamentals, you know, 43 months of 8.1 or plus percent unemployment, no American president has ever been elected with these kinds of job loss numbers and permanent unemployment.

We haven't had something like this since the Great Depression.

CROWLEY: Which I think...

GIULIANI: I think that's going to...

CROWLEY: ... argues for why he isn't doing better. But let me, in our final moments, ask you whether you believe that the Romney campaign, that Mitt Romney needs to come out and say specifically, here is what I would do to reform the tax code, here are the loopholes I would close.

Does he need to be more specific? Does he need to give a foreign policy speech? Because the rap now from a lot of Republicans is, we don't -- there is no real alternative out there. Does he need to do that?

GIULIANI: Well, these are a bunch of Republicans who are, you know, running scared, because the polls aren't -- I mean, Romney is not ahead by 10 points or 15 points which, of course, would be totally unrealistic. I think he's running a perfectly fine campaign. This is the

level of specificity that American candidates usually give in a campaign.

My goodness, President Obama wasn't terribly specific four years ago when he told us he was -- he ran on hope and change. Hope and change. Look what a strategy that has been for the Middle East. Hope and change and now we have demonstrations in 20 countries.

CROWLEY: OK. All right. Mr. Mayor, thank you so much for joining us...

GIULIANI: Thank you.

CROWLEY: ... this morning. Come see us in the new studio.

GIULIANI: Always a pleasure, Candy.

CROWLEY: Thanks.

A tribute to five American heroes, after this.

(COMMERCIAL BREAK) CROWLEY: And finally we leave you with images from this week's tributes to five American heroes. Friday the bodies of the four Americans murdered in Libya, Christopher Stevens, Glenn Doherty, Sean Smith, and Tyrone Woods (ph), returned home to the U.S.

And just the day before, a memorial service was held here honoring Neil Armstrong, the first man to walk on the moon. He died at the age of 82. Armstrong never saw himself as a hero, but his extraordinary accomplishments didn't just leave his mark on the moon but here on Earth too.

Thanks for watching STATE OF THE UNION.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: Neil will always be remembered for taking humankind's first small step on a world beyond our own.

UNIDENTIFIED MALE: No one, no one, but no one could have accepted the responsibility of his remarkable accomplishment with more dignity and more grace than Neil Armstrong. He embodied all that is good and all that is great about America.

UNIDENTIFIED MALE: Gracious God, on behalf of a grateful nation, and in the presence of grieving family members, friends, and colleagues, we welcome home for the final time Ambassador Chris Stevens, Mr. Sean Smith, Mr. Glen Doherty, and Mr. Tyrone Woods.

HILLARY CLINTON, SECRETARY OF STATE: If the last few days teach us anything, let it be this, that this work and the men and women who risked their lives to do it, are at the heart of what makes America great and good. OBAMA: Four Americans, four patriots, they loved this country. And they chose to serve it and served it well. They had a mission, and they believed in it. They knew the danger, and they accepted it. They didn't simply embrace the American ideal. They lived it. They embodied it.

(END VIDEO CLIP)

Weather forecast



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CNN TV | HLN | Transcripts

From: draper, hannah a
 Sent: 8/8/2012 5:56:58 AM
 To: [REDACTED]
 Subject: The Guns of August: security in eastern Libya

UNCLASSIFIED
 SBU



MRN: 12 TRIPOLI 952
 Date/DTG: Aug 08, 2012 / 080856Z AUG 12
 From: AMEMBASSY TRIPOLI
 Action: WASHDC, SECSTATE ROUTINE
 E.O.: 13526
 TAGS: PGOV, KDEM, LY
 Captions: SENSITIVE, SIPDIS
 Subject: The Guns of August: security in eastern Libya

1. (SBU) Summary: Since the eve of the elections, Benghazi has moved from trepidation to euphoria and back as a series of violent incidents has dominated the political landscape during the Ramadan holiday. These incidents have varied widely in motivation and severity. There have been abductions and assassinations, but there have also been false alarms and outright fabrications. The individual incidents have been organized, but this is not an organized campaign. What we are going through – and what people here are resolved to get through – is a confluence rather than a conspiracy. The Supreme Security Council (SSC), designed to be an interim security measure, has not coalesced into a stabilizing force, and provides little deterrence. Across the political spectrum, people concede the necessity of a security apparatus that is strong enough to keep peace, but many inherently fear abuse by the same authorities. This debate, playing out daily in Benghazi, has created the security vacuum that a diverse group of independent actors are exploiting for their own purposes. End Summary.

2. (SBU) In response to the widely reported security incidents of the past week, security forces have increased their profile and are now a more visible, though still understaffed, presence on Benghazi streets. Most prominent is Benghazi's SSC, assembled from former members of various militias as an interim security measure. However, even in the assessment of its own commander, Fawzi Younis, SSC Benghazi has not coalesced into an effective, stable security force.

3. (SBU) The absence of significant deterrence, has contributed to a security vacuum that is being exploited by independent actors: Ordinary criminals are able to engage in crimes that are more about profit than politics with relative impunity; car jackings and smuggling are particular concerns. Former regime elements are active because they believe that attacking the Revolution in its cradle will have maximum impact on public opinion. Islamist extremists are able to attack the Red Cross with relative impunity, and UN officials tell us human trafficking is on the rise. Violence at hospitals has become a particular concern, with security guards reportedly walking out after demands for treatment have escalated into shootings. Police in the eastern city of Marj have also staged sit-ins to protest lack of government follow-through on promises made to them as well.

4. (SBU) Though most acknowledge the need, others fear the government's potential strength. But a centralized and professional security force is the future, and contacts across the political spectrum concede that the government needs to

CLASSIFICATION: UNCLASSIFIED
 Page 1 of 2

Exhibit 38

000171

be strong enough to keep the peace (though strongly committed to doing so within checks and balances). This is a long-term prospect the militias regard with suspicion at best. As Benghazi navigates the move from a Transitional Council no one respects to a National Congress no one yet knows, they are clearly jockeying for position in a game that involves public relations and private intimidation. (Comment: A surprising number of contacts here dismiss many of the recent incidents – particularly the bombs that were reportedly discovered and disarmed – as having been engineered by the various security forces to discredit their rivals, to improve their own standing, and to seize prime real estate. End Comment).

5. (SBU) Comment: The SSC has increased its presence in the wake of the most recent string of security incidents in Benghazi. This approach is all authorities can do at present. But it is not clear whether it will prove to be effective. What we have seen are not random crimes of opportunity, but rather targeted and discriminate attacks. Attackers are unlikely to be deterred until authorities are at least as capable. End comment.

Signature: STEVENS

Drafted By: , Benghazi:Gaudiosi, Erio V (Benghazi)

Cleared By: POL-ECON:McFarland, David C
Hicks, Gregory N

Approved By: EXEC:Stevens, John C

Released By: TRIPOLI:draper, hannah a

Info: DEPT OF AGRICULTURE USD FAS WASHINGTON DC RUEHRCROUTINE;
DEPT OF COMMERCE WASHINGTON DCROUTINE;
DEPT OF TREASURY WASHINGTON DCROUTINE; DEPT OF JUSTICE WASHINGTON DC
ROUTINE; DEPT OF ENERGY WASHINGTON DCROUTINE;
DEPT OF HOMELAND SECURITY WASHINGTON DCROUTINE; CIA WASHINGTON DC
ROUTINE; CDR USAFRICOM STUTTGART GEROUTINE; FBI WASHINGTON DCROUTINE;
AFRICAN UNION COLLECTIVEROUTINE; ARAB ISRAELI COLLECTIVEROUTINE

Action Post:

Dissemination Rule: Archive Copy

UNCLASSIFIED
SBU

Exhibit G

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 332-3030

JohnHClarke@earthlink.net

AP-2014-04211

August 5, 2014

FOIA-A
FBI

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

Federal Bureau of Investigation
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

RECEIVED

AUG 14 2014

Office of Information Policy

David Hardy, Director
Office of Information Policy (OIP)
U.S. Department of Justice
1425 New York Ave., NW
Suite 11050
Washington, D.C. 20530-0001

Re: February 21, 2014 FOIA Request
FBI/DOI Request No.: 1256410-000

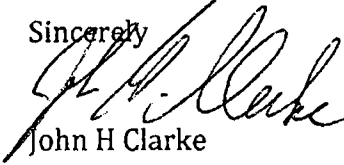
Dear Mr. Hardy:

In the March 31, Administrative appeal of the captioned matter, the requesters narrowed item 10, regarding autopsy reports. Please note that we further narrow the requests to withdraw Request Nos. 2(4), 3, 4, and 6.

Request No. 2(4) sought records of "any probe into the meetings from January 2007 through September 2012 between Tripoli Embassy officials, including Christopher Stevens, and the individuals identified in the following Request 3 below." Additionally, plaintiffs withdraw Request No. 3, which sought records "regarding meetings between Christopher Stevens or any other Tripoli Embassy official, and one or more of the following [nine] individuals..." Request No. 4 sought disclosure of "records of whatsoever nature regarding (1) the Benghazi consulate and (2) its CIA Annex for the time period of January 1st, 2011, through September 30th, 2012..." Lastly, Request No. 6 sought copies of "[a]ll calendars, day books, journals, notes, memoranda, or other records reflecting Ambassador Stevens' schedule on September 11..."

Thank you.

Sincerely



John H Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

Law Office
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(202) 332-3030
JohnHClarke@earthlink.net

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and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

August 5, 2014

Federal Bureau of Investigation
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

David Hardy, Director
Office of Information Policy (OIP)
U.S. Department of Justice
1425 New York Ave., NW
Suite 11050
Washington, D.C. 20530-0001

Re: February 21, 2014 FOIA Request
FBI/DOJ Request No.: 1256410-000

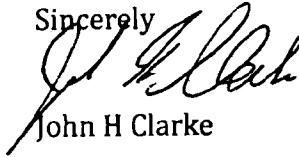
Dear Mr. Hardy:

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Thank you.

Sincerely



John H Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

Exhibit H



U.S. Department of Justice
Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

August 19, 2014

John H. Clarke, Esq.
Suite 300
1629 K Street, NW
Washington, DC 20006
JohnHClarke@earthlink.net

Re: Request No. 1256410

Dear Mr. Clarke:

This is to advise you that your administrative appeal from the action of the Federal Bureau of Investigation was received by this Office on August 14, 2014.

The Office of Information Policy has the responsibility of adjudicating such appeals. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number **AP-2014-04211**. Please mention this number in any future correspondence to this Office regarding this matter. Please note that if you provide an e-mail address or another electronic means of communication with your request or appeal, this Office may respond to your appeal electronically even if you submitted your appeal to this Office via regular U.S. Mail.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal, you may contact me at the number above. If you have submitted your appeal through this Office's online electronic appeal portal, you may also obtain an update on the status of your appeal by logging into your portal account.

Sincerely,

A handwritten signature in black ink, appearing to read "Priscilla Jones".

Priscilla Jones
Supervisory Administrative Specialist

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., et al.,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, et al.,

Defendants.

Civil Action No. 14-cv-1589 (EGS)

Exhibit B



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

February 17, 2021

Mr. John H. Clarke
Law Office of John H. Clarke
Suite 300
1629 K Street, NW
Washington, DC 20006

Civil Action No.: 14-cv-01589
Subject: Benghazi Attacks

Dear Mr. Clarke:

The FBI reviewed documents responsive to your request under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Below you will find checked boxes under applicable statutes for the exemptions asserted to protect information exempt from disclosure. The FBI has determined that all documents responsive to your request are exempt in full pursuant to the below exemptions. An Explanation of Exemptions is enclosed to further explain justification for withheld information.

Section 552		Section 552a
<input checked="" type="checkbox"/> (b)(1)	<input checked="" type="checkbox"/> (b)(7)(A)	<input type="checkbox"/> (d)(5)
<input type="checkbox"/> (b)(2)	<input type="checkbox"/> (b)(7)(B)	<input type="checkbox"/> (j)(2)
<input checked="" type="checkbox"/> (b)(3)	<input checked="" type="checkbox"/> (b)(7)(C)	<input type="checkbox"/> (k)(1)
<u>50 U.S.C., Section 3024 (i)(1)</u>	<input type="checkbox"/> (b)(7)(D)	<input type="checkbox"/> (k)(2)
<u>National Security Act of 1947</u>	<input checked="" type="checkbox"/> (b)(7)(E)	<input type="checkbox"/> (k)(3)
	<input checked="" type="checkbox"/> (b)(7)(F)	<input type="checkbox"/> (k)(4)
<input type="checkbox"/> (b)(4)	<input type="checkbox"/> (b)(8)	<input type="checkbox"/> (k)(5)
<input checked="" type="checkbox"/> (b)(5)	<input type="checkbox"/> (b)(9)	<input type="checkbox"/> (k)(6)
<input checked="" type="checkbox"/> (b)(6)		<input type="checkbox"/> (k)(7)

Please see the paragraphs below for relevant information specific to your request and the enclosed FBI FOIPA Addendum for standard responses applicable to all requests.

- The appropriate redactions were made by the Department of State (DOS) and the Central Intelligence Agency (CIA).

Please refer to the enclosed FBI FOIPA Addendum for additional standard responses applicable to your request. **“Part 1”** of the Addendum includes standard responses that apply to all requests. **“Part 2”** includes additional standard responses that apply to all requests for records about yourself or any third party individuals. **“Part 3”** includes general information about FBI records that you may find useful. Also enclosed is our Explanation of Exemptions.

Although your request is in litigation, we are required by law to provide you the following information:

If you are not satisfied with the Federal Bureau of Investigation’s determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP’s FOIA STAR portal by creating an account following the instructions on OIP’s website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically

transmitted within ninety (90) days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS). The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified.

Please direct any further inquiries about this case to the Attorney representing the Government in this matter. Please use the FOIPA Request Number and/or Civil Action Number in all correspondence or inquiries concerning your request.

See additional information which follows.

Sincerely,



Michael G. Seidel
Section Chief
Record/Information
Dissemination Section
Information Management Division

Enclosure(s)

FBI FOIPA Addendum

As referenced in our letter responding to your Freedom of Information/Privacy Acts (FOIPA) request, the FBI FOIPA Addendum provides information applicable to your request. Part 1 of the Addendum includes standard responses that apply to all requests. Part 2 includes standard responses that apply to requests for records about individuals to the extent your request seeks the listed information. Part 3 includes general information about FBI records, searches, and programs.

Part 1: The standard responses below apply to all requests:

- (i) **5 U.S.C. § 552(c).** Congress excluded three categories of law enforcement and national security records from the requirements of the FOIPA [5 U.S.C. § 552(c)]. FBI responses are limited to those records subject to the requirements of the FOIPA. Additional information about the FBI and the FOIPA can be found on the www.fbi.gov/foia website.
- (ii) **Intelligence Records.** To the extent your request seeks records of intelligence sources, methods, or activities, the FBI can neither confirm nor deny the existence of records pursuant to FOIA exemptions (b)(1), (b)(3), and as applicable to requests for records about individuals, PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(1), (b)(3), and (j)(2)]. The mere acknowledgment of the existence or nonexistence of such records is itself a classified fact protected by FOIA exemption (b)(1) and/or would reveal intelligence sources, methods, or activities protected by exemption (b)(3) [50 USC § 3024(i)(1)]. This is a standard response and should not be read to indicate that any such records do or do not exist.

Part 2: The standard responses below apply to all requests for records on individuals:

- (i) **Requests for Records about any Individual—Watch Lists.** The FBI can neither confirm nor deny the existence of any individual's name on a watch list pursuant to FOIA exemption (b)(7)(E) and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(7)(E), (j)(2)]. This is a standard response and should not be read to indicate that watch list records do or do not exist.
- (ii) **Requests for Records about any Individual—Witness Security Program Records.** The FBI can neither confirm nor deny the existence of records which could identify any participant in the Witness Security Program pursuant to FOIA exemption (b)(3) and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(3), 18 U.S.C. 3521, and (j)(2)]. This is a standard response and should not be read to indicate that such records do or do not exist.
- (iii) **Requests for Records for Incarcerated Individuals.** The FBI can neither confirm nor deny the existence of records which could reasonably be expected to endanger the life or physical safety of any incarcerated individual pursuant to FOIA exemptions (b)(7)(E), (b)(7)(F), and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(7)(E), (b)(7)(F), and (j)(2)]. This is a standard response and should not be read to indicate that such records do or do not exist.

Part 3: General Information:

- (i) **Record Searches.** The Record/Information Dissemination Section (RIDS) searches for reasonably described records by searching systems or locations where responsive records would reasonably be found. A standard search normally consists of a search for main files in the Central Records System (CRS), an extensive system of records consisting of applicant, investigative, intelligence, personnel, administrative, and general files compiled by the FBI per its law enforcement, intelligence, and administrative functions. The CRS spans the entire FBI organization, comprising records of FBI Headquarters, FBI Field Offices, and FBI Legal Attaché Offices (Legats) worldwide; Electronic Surveillance (ELSUR) records are included in the CRS. Unless specifically requested, a standard search does not include references, administrative records of previous FOIPA requests, or civil litigation files. For additional information about our record searches, visit www.fbi.gov/services/information-management/foipa/requesting-fbi-records.
- (ii) **FBI Records.** Founded in 1908, the FBI carries out a dual law enforcement and national security mission. As part of this dual mission, the FBI creates and maintains records on various subjects; however, the FBI does not maintain records on every person, subject, or entity.
- (iii) **Requests for Criminal History Records or Rap Sheets.** The Criminal Justice Information Services (CJIS) Division provides Identity History Summary Checks – often referred to as a criminal history record or rap sheet. These criminal history records are not the same as material in an investigative “FBI file.” An Identity History Summary Check is a listing of information taken from fingerprint cards and documents submitted to the FBI in connection with arrests, federal employment, naturalization, or military service. For a fee, individuals can request a copy of their Identity History Summary Check. Forms and directions can be accessed at www.fbi.gov/about-us/cjis/identity-history-summary-checks. Additionally, requests can be submitted electronically at www.edo.cjis.gov. For additional information, please contact CJIS directly at (304) 625-5590.
- (iv) **National Name Check Program (NNCP).** The mission of NNCP is to analyze and report information in response to name check requests received from federal agencies, for the purpose of protecting the United States from foreign and domestic threats to national security. Please be advised that this is a service provided to other federal agencies. Private Citizens cannot request a name check.

EXPLANATION OF EXEMPTIONS**SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552**

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

FBI/DOJ

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., et al.,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, et al.,

Defendants.

Civil Action No. 14-cv-1589 (EGS)

Exhibit C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
ACCURACY IN MEDIA, INC., et al.,)	
)	
Plaintiff,)	
)	
v.)	
	)	Civil Action No. 14-cv-1589
)	
DEPARTMENT OF DEFENSE, et al.))	
)	
Defendant.)	
_____)	

DECLARATION OF TIMOTHY J. KOOTZ

Pursuant to 28 U.S.C. § 1746, I, Timothy J. Kootz, declare and state as follows:

1. I am the Director of the Office of Information Programs and Services (“IPS”) of the United States Department of State (the “Department” or “State”), a position in which I have served since March 26, 2023. I am the Department official immediately responsible for responding to requests for records under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552; the Privacy Act of 1974, 5 U.S.C. § 552a; and other applicable records access provisions. Prior to serving in this capacity, I served as the Agency Records Officer and the Chief of the Records and Archives Management Division of IPS beginning in October 2016.

2. I am familiar with the efforts of Department personnel to process the FOIA request that is the subject of this litigation, and I am in charge of coordinating the agency’s processing efforts with respect to that request. As the Director of IPS, I have original classification authority and am authorized to classify and declassify national security

information. I make the following statements based upon my personal knowledge, which in turn is based upon information furnished to me in the course of my official duties.

3. The core responsibilities of IPS include: (1) responding to records access requests made by the public (including under the FOIA, the Privacy Act, and the mandatory declassification review requirements of the Executive Order governing classified national security information), by Members of Congress, by other government agencies, and those made pursuant to judicial process such as subpoenas, court orders, and discovery requests; (2) records management; (3) national security classification management and declassification review; (4) corporate records archives management; (5) research; (6) operation and management of the Department's library; and (7) technology applications that support these activities.

4. This declaration explains the withholdings that the Department requested the Federal Bureau of Investigation ("FBI") make on its behalf with respect to certain records that the FBI sent to the Department for consultation and review of its equities therein. A description of the Department's administrative processing of the consultation request and the applicable exemptions applied to the withholdings is provided below.

I. ADMINISTRATIVE PROCESSING OF PLAINTIFF'S FOIA REQUEST

5. By email dated November 9, 2020, the FBI referred the records at issue to the Department for review and response to the FBI. The Department assigned this consultation Case Control Number CL-2021-00018.

6. The Department reviewed the pages referred by the FBI and requested certain withholdings under FOIA Exemptions 1, 6, and 7, as described below. The Department returned the pages to the FBI by email dated March 17, 2021.

7. In its response to the FBI, the Department requested that the FBI withhold the records in full pursuant to FOIA Exemptions 1, 6, and 7, 5 U.S.C. § 552(b)(1), pursuant to Executive Order (“E.O.”) 13526, sections 1.4(b), 1.4(c), and 1.4(d); (b)(6); (b)(7)(A); (b)(7)(C); (b)(7)(E); and (b)(7)(F).

II. FOIA EXEMPTIONS CLAIMED

FOIA Exemption 1 – Classified Information

8. 5 U.S.C. § 552(b)(1) states that the FOIA does not apply to matters that are:

(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order

9. The Department withheld portions of all the documents referred by the FBI, as described in further detail below, pursuant to Exemption 1, 5 U.S.C. § 552(b)(1).

10. Based upon my personal review of the documents and information furnished to me in the course of my official duties, I have determined that the information withheld by the Department under Exemption 1, 5 U.S.C. § 552(b)(1), continues to meet the classification criteria of E.O. 13526 and that the Department has not previously authorized or officially acknowledged public release of this information.

11. For information to be properly classified and withheld from disclosure pursuant to Exemption 1, the information must meet all of the following requirements set forth in Section 1.1(a) of E.O. 13526:

- (1) an original classification authority is classifying the information;
- (2) the information is owned by, produced by or for, or is under the control of the United States Government;
- (3) the information falls within one or more of the categories listed in section 1.4 of [E.O. 13526]; and

- (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

12. This information withheld pursuant to Exemption 1 reflects information under the control of the United States Government that was classified at the SECRET level. Section 1.2 of E.O. 13526 states:

“Secret” shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.

13. Section 6.1(l) of E.O. 13526 defines “damage to the national security” as follows:

“Damage to the national security” means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, taking into consideration such aspects of the information as the sensitivity, value, utility, and provenance of that information.

14. Information withheld in this case under Exemption 1 is properly classified pursuant to Sections 1.4(b), 1.4(c), or 1.4(d) of E.O. 13526. Section 1.4 provides:

Information shall not be considered for classification unless . . . it pertains to one or more of the following: . . . (b) foreign government information; (c) intelligence activities (including covert action), intelligence sources or methods, or cryptology; (d) foreign relations or foreign activities of the United States, including confidential sources . . . ;

Section 1.4(b) – Foreign Government Information

15. Section 6.1(s) of E.O. 13526 defines “foreign government information” as follows:

- (1) information provided to the United States Government by a foreign government or governments, an international organization of governments, or any

element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence;

(2) information produced by the United States Government pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence

16. Section 1.1(d) of E.O. 13526 states:

The unauthorized disclosure of foreign government information is presumed to cause damage to the national security.

17. The ability to obtain information from foreign governments is essential to the formulation and successful implementation of U.S. foreign policy. Release of foreign government information provided in confidence, either voluntarily by the Department or by order of a court, would cause foreign officials to believe that U.S. officials are not able or willing to observe the confidentiality expected in such interchanges. Governments could reasonably be expected to be less willing in the future to furnish information important to the conduct of U.S. foreign relations, and in general less disposed to cooperate with the United States in the achievement of foreign policy objectives of common interest. In view of the important relationship between the United States and the foreign governments identified in the responsive documents, protecting foreign government information, and in some cases even the fact that information has been provided, is important to our relationship and conduct of foreign relations.

18. In all the documents referred to the Department by the FBI, the Department withheld certain foreign government information the release of which could reasonably be expected to cause serious damage to the national security. Specifically, the Department withheld information in these documents that was provided to the U.S. Government by a foreign government in confidence that the Department's Diplomatic Security officers relayed to the FBI

during the interviews concerning the September 11, 2012, attacks. Release of the foreign government information in these documents, either voluntarily by the Department or by order of a court, would cause foreign officials to believe that U.S. officials are not able or willing to observe the confidentiality expected in such interchanges. The disclosure of such information would weaken the relationship with the government that provided the information, as well as other countries considering sharing similar information with the United States in the future. Moreover, this information is currently and properly classified pursuant to Section 1.4(b) of E.O. 13526 and, is therefore, exempt from disclosure under FOIA Exemption 1, 5 U.S.C. § 552(b)(1).

Section 1.4(c) – Intelligence Activities and Intelligence Sources and Methods

19. In all the documents referred to the Department by the FBI, the Department withheld certain information that relates directly to intelligence activities, sources, or methods. This classified information includes, among other things, details related to the names of sources who assisted the United States government during the attack as well as the methods used to respond to the attack. Disclosure of this information could enable foreign governments or persons, or entities opposed to U.S. foreign policy objectives, to identify U.S. intelligence activities, sources, or methods, and to undertake countermeasures that could frustrate the ability of the U.S. Government to acquire information necessary to the formulation and implementation of U.S. foreign policy; therefore, disclosure “reasonably could be expected to result in damage to the national security.” The information withheld in these documents is currently and properly classified pursuant to Section 1.4(c) of E. O. 13526 and is, therefore, exempt from disclosure under FOIA Exemption 1, 5 U.S.C. § 552(b)(1).

Section 1.4(d) – Foreign Relations or Foreign Activities of the United States

20. Diplomatic exchanges are premised upon, and depend upon, an expectation of confidentiality. Mutual trust between governments in this realm is vital to U.S. foreign relations. The inability of the United States to maintain confidentiality in its diplomatic exchanges would inevitably chill relations with other governments and could reasonably be expected to damage U.S. national security by diminishing our access to vital sources of information.

21. Some of the withheld information is classified under Section 1.4(d) of E.O. 13526. This information concerns both confidential sources and sensitive aspects of U.S. foreign relations, including, in particular, issues relating to identifying potential threats to U.S. national security. Release of this classified information has the potential to inject friction into, or cause damage to, a number of our bilateral relationships with countries whose cooperation is important to U.S. national security, including some in which public opinion might not currently favor close cooperation with the United States. Release of information revealing confidential sources reasonably could be expected to risk the safety of those confidential sources. Failure to preserve the expected confidentiality could jeopardize future access not only to the sources of the withheld information, but also to others who might provide sensitive information to U.S. officials that is important to U.S. national security interests. For these reasons, the Department withheld certain information in this case that is currently and properly classified pursuant to Section 1.4(d) of E.O. 13526; and is therefore exempt from release under Exemption 1, 5 U.S.C. § 552(b)(1).

FOIA Exemption 7 – Law Enforcement Information

22. FOIA Exemption 7 protects from disclosure all “records or information compiled for law enforcement purposes” that could reasonably be expected to cause one of the six harms outlined in the Exemption’s subparts. 5 U.S.C. § 552(b)(7). The law to be enforced for FOIA

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Exemption 7 purposes includes administrative, regulatory, civil, and criminal law. Records pertaining to routine agency activities can qualify for FOIA Exemption 7 protection when those activities involve a law enforcement purpose. Although the records must be created for some law enforcement purpose, there is no requirement that the matter culminate in actual administrative, regulatory, civil, or criminal enforcement proceedings. In this case, the harm that could reasonably be expected to result from disclosure concerns the invasion of personal privacy; revealing sensitive law enforcement investigative techniques, security protocols, and procedures used by the U.S. Department of State and other federal agencies; and danger to the life or physical safety of an individual.

23. Before an agency can invoke any of the harms enumerated in FOIA Exemption 7, it must first demonstrate that the information or records at issue were compiled for law enforcement purposes. The FBI is a law enforcement agency with authority to undertake investigation into possible violations of Federal criminal and national security laws. The Department's Bureau of Diplomatic Security ("DS") officers are the security and law enforcement arm of the U.S. Department of State. DS has a broad scope of global responsibilities, with protection of people, information, and property as its top priority. DS designs and maintains security programs for every diplomatic mission in the world, investigates passport and visa fraud, conducts personnel security investigations, and protects the Secretary of State and high-ranking foreign dignitaries and officials visiting the United States. DS also trains foreign civilian law enforcement officers in disciplines designed to reduce the threat and repercussions of terrorism throughout the world.

24. The FBI has a broad law enforcement mandate that includes preventing and investigating acts of international and domestic terrorism. The FBI compiled the records over

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which the Department has asserted FOIA Exemption 7, which consists of forms FD-302 and their attachments.

25. Form FD-302 is used by FBI agents to record information obtained through witness interviews, grand jury subpoenas, proffer agreements and immunity statements, and from other federal agencies. The FD-302s on which the Department of State is asserting Exemption 7 were compiled during the FBI's investigation of the September 11, 2012, attacks on the State Department's Special Mission Compound in Benghazi, Libya. Specifically, these FD-302s are from the FBI's interviews of DS officers.

FOIA Exemptions 7(A) – Law Enforcement Proceedings

26. FOIA Exemption 7(A) protects information from disclosure which “could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7). Application of Exemption 7(A) requires the existence of law enforcement records or information; a pending or prospective law enforcement proceeding; and a reasonable expectation that the release would interfere with the enforcement proceeding. State withheld these documents in full pursuant to Exemption 7(A) because the premature release of this information could reasonably be expected to interfere with the FBI's ongoing investigation into the Benghazi attacks and related investigations. Specifically, disclosure of this information could reveal logistical details that would allow perpetrators to discover or anticipate the FBI's movement of personnel and destroy or tamper with evidence useful to the FBI's investigation.

FOIA Exemptions 6 and 7(C) – Personal Privacy¹

27. FOIA Exemption 6 protects “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). The courts have interpreted the language of Exemption 6 broadly to encompass all information that applies to an individual without regard to whether it was located in a particular type of file.

28. FOIA Exemption 7(C) protects “records or information compiled for law enforcement purposes [when disclosed] could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). FOIA Exemption 7(C) is the law enforcement counterpart to Exemption 6 and protects the privacy interests of all persons mentioned in law enforcement records. As described below, the Department has withheld certain information about DS officers, other federal government employees, contractors, and third parties, including foreign nationals under Exemptions 6 and 7(C).

29. When withholding information pursuant to Exemptions 6 and 7(C), the Department is required to balance the privacy interests of the individuals mentioned in the records against any public interest in disclosure. In asserting these exemptions, the Department examined each item of information to determine the nature and strength of the privacy interest of every individual whose name or identifying information appears in the records at issue.

¹ The Department has asserted Exemption 6 in conjunction with Exemption 7(C). Although the balancing test for Exemption 6 uses the standard of “would reasonably constitute a clearly unwarranted invasion of personal privacy,” and the test for Exemption 7(C) uses the lower standard of “could reasonably be expected to constitute an unwarranted invasion of personal privacy,” the analysis and balancing required by both exemptions is sufficiently similar to warrant consolidated discussion here. The privacy interests are balanced against the public’s interest in disclosure under the analysis of both exemptions.

30. In *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), the Supreme Court laid down two rules for determining public interest in disclosure of information involving a privacy interest: (1) whether disclosure would serve the “core purpose” for which Congress enacted the FOIA, i.e., to show “what the government is up to,” and (2) that public interest means the interest of the public in general, not particular interests of the person or group seeking the information. Accordingly, the identity of the requester as well as the purpose for which the information is sought is irrelevant in making the disclosure determination. In each instance where the Department determined that there were substantial privacy interests at stake, it analyzed whether there was a public interest and, if so, whether the public interest was sufficient to outweigh the individuals’ privacy interests.

31. The Department requested that the FBI withhold information pursuant to FOIA Exemptions 6 and 7(C) only after determining that the individuals’ privacy interests outweighed any public interest or when the Department determined that there was no public interest at all to balance against the individuals’ privacy interests.

32. The Department requested that the FBI assert Exemptions 6 and 7(C) to withhold the names of Department and other federal government officials, Blackberry cell phone numbers for Department officials, the email address of another federal government official, the direct phone numbers and email address of a foreign government official, and the names of foreign nationals contained in these documents because disclosure of this information could reasonably subject them to harassment, intimidation, unwanted attention, and/or unsolicited communications. Releasing the names of these individuals would expose their association with the U.S. Government, which would put them at an increased risk of harm. Thus, the Department

determined that these individuals had a strong privacy interest in not having their names or identifying information disclosed.

33. After identifying the substantial privacy interests of these individuals, the Department balanced those interests against the public interest in disclosure. The Department could identify no public interest in disclosure of this information because it would not shed light on the operation and activities of the Department or the U.S. Government. As a result, the Department determined that the lack of a public interest in this information is far outweighed by the individuals' substantial privacy rights. Accordingly, the Department concluded that the disclosure of this information would constitute a clearly unwarranted invasion of personal privacy under Exemptions 6 and 7(C) and requested that the information be withheld by the FBI.

FOIA Exemption 7(E) – Law Enforcement Techniques and Procedures

34. FOIA Exemption 7(E) protects records or information compiled for law enforcement purposes when release “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law” 5 U.S.C. § 552(b)(7)(E). Assertion of Exemption 7(E) requires that the agency demonstrate logically how the release of the requested information might create a risk of circumvention of the law. The agency need not demonstrate an actual or certain risk of circumvention, but rather a reasonably expected risk. The Department withheld portions of documents under Exemption 7(E) because disclosure could reveal investigative techniques related to protection of the U.S. diplomatic mission abroad. These techniques implicate operational security force protection concerns and the U.S. Government’s ability to conduct relationships with and obtain information from foreign governments and foreign government

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services. Revealing these techniques would effectively reveal the operational details of the security of the U.S. compound that protects the U.S. diplomatic mission from threats, thus risking the defeat of such security measures in the future. These techniques and their utility in the context of these and similar international terrorism investigations are not known to the general public. If made public, individuals could harness this information to identify and exploit security vulnerabilities at U.S. Government compounds, risking the safety of the U.S. Government employees. Moreover, release of this information could allow individuals to interfere with ongoing and future investigations into attacks on U.S. Government compounds and personnel. Release of the nonpublic details of these techniques would nullify their effectiveness, risk future criminal and terrorist activity, and make the U.S. Government more vulnerable, especially in the context of continued and increased unrest in the Middle East. Individuals who possess such knowledge may be able to utilize this information to search for vulnerabilities, thus compromising the effectiveness of the investigatory techniques. In each instance where the Department withheld information, I determined that release of the requested information would risk circumvention of the law.

FOIA Exemption 7(F) – Danger to Life or Physical Safety

35. FOIA Exemption 7(F) protects “records or information compiled for law enforcement purposes” when disclosed “could reasonably be expected to endanger the life or physical safety of any individual.” 5 U.S.C. § 552(b)(7)(F).

36. The Department has asserted FOIA Exemption 7(F) to protect details of threats received against U.S. Government employees, the release of which could reasonably be expected to endanger the lives and/or physical safety of these employees. The nature of the threats against these employees gives rise to a reasonable expectation that release of certain information would

place the employees at risk. The Department also asserted Exemption 7(F) to protect the details of foreign nationals employed by and/or cooperating with the U.S. Government because identifying their association with the U.S. Government and the Benghazi Special Mission, and/or the investigation of the September 11, 2012, attacks, could expose them to threats to their lives or personal safety. For these reasons, the Department has properly withheld certain information pursuant to Exemption 7(F), 5 U.S.C. § 552(b)(7)(F).

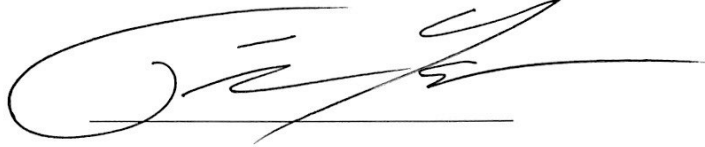
IV. CONCLUSION

37. In summary, the Department reviewed the documents in response to the FBI's consultation request made in connection with this litigation. The Department provided a response to the FBI's request, requesting that certain information in the documents be withheld from disclosure under FOIA Exemptions 1, 6, and 7.

38. The Department carefully reviewed all the documents addressed herein and, in making its withholding determinations, determined that no meaningful information can be segregated without disclosing information warranting protection under the law.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 27 day of June 2023, Washington, D.C.

A handwritten signature in black ink, appearing to read 'Timothy J. Kootz', written over a horizontal line.

Timothy J. Kootz

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., et al.,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, et al.,

Defendants.

Civil Action No. 14-cv-1589 (EGS)

Exhibit D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., et al.,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, et al.,

Defendants.

Case No. 14-cv-01589 (EGS)

DECLARATION OF VANNA BLAINE,
INFORMATION REVIEW OFFICER,
LITIGATION INFORMATION REVIEW OFFICE,
CENTRAL INTELLIGENCE AGENCY

I, VANNA BLAINE, hereby declare and state:

I. INTRODUCTION

1. I currently serve as the Information Review Officer ("IRO") for the Litigation Information Review Office ("LIRO") at the Central Intelligence Agency ("CIA" or "Agency"). I have held this position since February 2020.

2. Prior to my current position, I served as the Deputy IRO for LIRO beginning in April 2019, during which time I also served as the Acting IRO in the IRO's absence. Before becoming Deputy IRO, I served as the office's Litigation Production Manager for 24 months. In that capacity, I was the senior litigation analyst responsible for managing and tracking case assignments, as well as litigation deadlines, and also conducted

second-line reviews of Agency information subject to litigation, making classification and release determinations regarding such information when necessary. Prior to that, I was an Associate Information Review Officer for the Director's Area of the CIA for 11 months. In that role, I was responsible for making classification and release determinations for information originating within the Director's Area, which included, among other offices, the Office of the Director of the CIA, the Office of Congressional Affairs, the Office of Public Affairs, and the Office of General Counsel. I have held other administrative and professional positions within the CIA since 2007 and have worked in the information review and release field since 2014.

3. I am a senior CIA official and hold original classification authority at the TOP SECRET level under written delegation of authority pursuant to section 1.3(c) of Executive Order 13526, 75 Fed. Reg. 707 (Jan. 5, 2010). This means that I am authorized to assess the current, proper classification of CIA information, up to and including TOP SECRET information, based on the classification criteria of Executive Order 13526 and applicable regulations.

4. In my current role as IRO, I am responsible for ensuring that any determinations as to the release or withholding of any such documents or information are proper and do not jeopardize the national security. Among other things, I

am also responsible for the classification review of CIA documents and information that may be the subject of court proceedings or public requests for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

5. Through the exercise of my official duties, I have become familiar with this civil action and the underlying FOIA requests described below. I make the following statements based upon my personal knowledge and information made available to me in my official capacity as IRO for LIRO.

6. This declaration is submitted in support of the FBI's Motion for Summary Judgment, to be filed by the United States Department of Justice in this proceeding.

II. BACKGROUND

7. This matter concerns Plaintiffs' separate, but related, FOIA requests for records related to the September 11, 2012 attack on the United States Embassy in Benghazi, Libya. Plaintiffs sought records from several U.S. federal government agencies, including the FBI.¹

8. In response to Plaintiffs' FOIA requests, the FBI located documents containing classified information that belongs to the CIA ("FBI Documents"). In accordance with the

¹ Plaintiffs also named the CIA as a defendant in this case. It is my understanding that, on November 28, 2022, the Court adopted the Magistrate Judge's Report and Recommendation that the CIA had appropriately redacted portions related to the Inspector General files, and denied Plaintiff's cross-motion for Summary Judgment on this issue. ECF No. 92.

requirements of Section 3.6(b) of Executive Order 13526, the FBI coordinated review of these FBI Documents with the CIA via a letter dated 21 October 2020. The CIA responded to the FBI's request for consultation by applying FOIA Exemptions (b)(1), (b)(3), and (b)(6) to certain CIA information contained in the FBI Documents. It is my understanding that the FBI withheld the FBI Documents in their entirety, and that Plaintiff is challenging the asserted FOIA exemptions.

9. This declaration addresses the CIA's application of FOIA Exemptions (b)(1), (b)(3), and (b)(6) to certain CIA information contained in the FBI Documents.

III. FOIA EXEMPTIONS APPLICABLE TO THE FBI DOCUMENTS

10. The FBI Documents consist of interview statements provided to FBI agents in connection with the September 2012 Benghazi attack. In evaluating the referred FBI Documents, I conducted a page-by-page and line-by-line review, and released all reasonably segregable, non-exempt CIA information. After a careful review of the FBI Documents at issue, I have determined that no additional CIA information can be released without jeopardizing classified, statutorily protected information that falls within the scope of one or more FOIA exemptions.

A. Exemption (b)(1)

11. Exemption (b)(1) provides that FOIA does not require the production of records that are: "(A) specifically authorized

under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b)(1). Here, Executive Order 13526 is the operative Executive Order governing classification and safeguarding of national security information.

12. As an original classification authority, I have determined that the CIA information in the FBI Documents is currently and properly classified. The information is owned by and is under the control of the U.S. Government. As described below, the CIA information in the FBI Documents falls under classification category § 1.4(c) of the Executive Order because it concerns "intelligence activities (including covert action), [or] intelligence sources and methods." In addition, the unauthorized disclosure of the CIA information in the FBI Documents could reasonably be expected to result in serious damage to national security and, as a result, is classified at the SECRET level. Further, the FBI Documents are properly marked in accordance with Section 1.6 of the Executive Order.

13. Finally, in accordance with Section 1.7(a) of Executive Order 13526, none of the CIA information in the FBI Documents has been classified in order to conceal violations of law, inefficiency or administrative error; prevent embarrassment to a person, organization or agency; restrain competition; or

prevent or delay the release of information that does not require protection in the interest of national security.

14. Here, the withheld CIA information in the FBI Documents consists of information that would tend to reveal specific CIA intelligence sources, methods, and/or activities, which are protected under Exemption (b)(1). Intelligence activities refer to CIA's targets and operations, including the clandestine activities undertaken by the CIA to collect intelligence and the means used to collect intelligence. Although it is widely acknowledged that the CIA is responsible for conducting intelligence collection and analysis for the United States, the CIA generally does not confirm or deny the existence, or disclose the target, of specific intelligence collection activities or the operations it conducts or supports.

15. Intelligence methods are the techniques and means by which an intelligence agency accomplishes its mission, and the classified internal regulations, approvals, and authorities that govern the conduct of CIA personnel. The CIA's collection methods are valuable from an intelligence-gathering perspective only so long as they remain unknown and unsuspected. Once the nature of an intelligence method or the fact of its use in a certain situation is discovered, its usefulness in that situation is neutralized and the CIA's ability to apply that method in other situations is significantly degraded. Thus, the

more information the CIA discloses about its operational tradecraft, the more difficult it becomes for the CIA to actually collect foreign intelligence around the world.

16. In reviewing the FBI Documents, the CIA limited its redactions to cover only specific still-classified CIA intelligence information related to the September 2012 Benghazi attack. Although many details surrounding the attack are either not classified or have since been declassified, some information about CIA remains classified. The redacted CIA information includes certain classified details regarding the Agency's operational equipment, names of sources who assisted U.S. personnel during the attack, and the methods used to transport CIA personnel to safety during the attack. These are specific details that would tend to reveal CIA's sources and methods, including operational techniques, resources, capabilities, and vulnerabilities. Terrorist organizations, foreign intelligence services, and other hostile groups use such information to thwart CIA activities and attack the United States and its interests. These groups search continually for information regarding the activities of the CIA and are able to gather information from a myriad of sources, analyze this information, and devise ways to defeat CIA activities from seemingly disparate pieces of information. I have determined that

disclosure of such classified CIA information could reasonably be expected to cause serious damage to national security.

17. In sum, the CIA redactions in the FBI Documents satisfy the procedural and the substantive requirements of Executive Order 13526. See E.O. 13526 § 1.1(a), § 1.4(c).

B. Exemption (b) (3)

18. FOIA Exemption (b) (3) protects from disclosure information that is specifically exempted from disclosure by statute. A withholding statute under Exemption (b) (3) must: (A) require that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establish particular criteria for withholding or refer to particular types of matters to be withheld. 5 U.S.C. § 552(b) (3).

19. Section 102A(i) (1) of the National Security Act of 1947, as amended, 50 U.S.C. § 3024 (the "National Security Act"), which provides that the Director of National Intelligence ("DNI") "shall protect intelligence sources and methods from unauthorized disclosure." As an initial matter, it is well-established that the National Security Act is an Exemption (b) (3) withholding statute that both refers to particular types of matters to be withheld, and "requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue." 5 U.S.C. § 552(b) (3). Under the direction of the DNI pursuant to section 102A of the

National Security Act, as amended, and consistent with section 1.6(d) of Executive Order 12333, the Director of the CIA is responsible for protecting CIA intelligence sources and methods from unauthorized disclosure.

20. The National Security Act applies to all of the information protected by Exemption (b)(1), described above, because disclosure of the CIA information contained in the FBI Documents would tend to reveal information that concerns intelligence sources and methods. Accordingly, the withheld CIA information is exempt from disclosure under Exemption (b)(3) pursuant to the National Security Act. Exemptions (b)(1) and (b)(3) therefore apply independently and co-extensively to protect CIA's intelligence sources and methods from disclosure.

21. In contrast to Executive Order 13526, no harm rationale is required under the National Security Act. Nonetheless, I refer the Court to Paragraphs 14-16 above for a description of the damage to national security that reasonably could be expected to result should the redacted CIA information in the FBI Documents be disclosed.

C. Exemption (b)(6)

22. Exemption (b)(6) protects from disclosure "personnel and medical files and similar files when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). Courts have broadly

construed the term "similar files" to cover any personally identifying information. In applying Exemption (b)(6), an agency is required to balance the relevant privacy interests of the individuals against the public interest in disclosure. In order to withhold information pursuant to Exemption (b)(6), an agency must determine that the disclosure "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552

(b)(6). The public interest in the FOIA context is defined as information that would "shed[] light on the performance of [an Agency's] statutory duties." Courts have routinely found information that does not directly reveal the operations or activities of the federal government falls outside the scope of the public interest that FOIA was enacted to serve.

23. The CIA asserted Exemption (b)(6) to withhold exempt information regarding identifying information of individuals involved in the underlying subject matter of Plaintiff's FOIA request to the FBI. Specifically, the CIA withheld identifying information, in part or in full, of individuals who provided significant assistance to CIA personnel in response to the attack. Disclosure of such information could subject these individuals to harassment and hostility, and could cause certain organizations or foreign governments to take retaliatory action against these persons, or possibly their family and friends. It

further places in jeopardy other individuals with whom these individuals had contact during the relevant time period.

24. In contrast, there is no public interest to be served by disclosing the information of these individuals to the public. Revealing the identities of these individuals, or information that would allow them to be identified, will not shed light on the conduct of the Agency's activities or operations beyond what is already being disclosed to the public. Thus, disclosure of this information would constitute a clearly unwarranted invasion of these individuals' personal privacy.

25. Accordingly, I have determined that the CIA has properly withheld the identifying information of these individuals pursuant to FOIA Exemption (b)(6).

* * *

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 25th day of April 2023.



Vanna Blaine
Information Review Officer
Litigation Information Review Office
Central Intelligence Agency

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., et al.,)
)
 Plaintiffs,)
)
 v.)
)
 DEPARTMENT OF DEFENSE, et al.,)
)
 Defendants.)
 _____)

Case No. 14-1589 (EGS)

AFFIDAVIT OF JOHN TIEGAN

1. My name is John Tiegan. The FBI interviewed me on September 15 or 16, 2011, regarding the Benghazi attacks.

2. I waive any privacy interest I may have in the FBI's reports of its interview with me.

I hereby certify and affirm, under penalty of perjury, that the forgoing is true to the best of my information, knowledge, and belief.

Date: August 9, 2023.



John Tiegan

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
DEFENSE, *et al.*,

Defendants.

Civil Action No. 14-1589 (LLA)

MEMORANDUM OPINION

This matter is before the court on a Motion for Summary Judgment by Defendant Federal Bureau of Investigation (“FBI”) and a Cross-Motion for Summary Judgment by Plaintiffs, Accuracy in Media, Inc., and seven individuals.¹ ECF Nos. 97 & 98. Plaintiffs claim that the government violated the Freedom of Information Act (“FOIA”) by unlawfully withholding certain records pertaining to the September 11, 2012 attacks on the U.S. Embassy in Benghazi, Libya. *See generally* ECF No. 31. Upon consideration of the motions and supporting documentation, the court will grant the FBI’s Motion for Summary Judgment and deny Plaintiffs’ Cross-Motion for Summary Judgment.

I. Background

In 2014, Plaintiffs submitted over forty FOIA requests to the Defendants, which are the U.S. Department of Defense, the U.S. Department of State (“State Department”), the FBI, and the Central Intelligence Agency (“CIA”). *See generally* ECF No. 31. Over the course of this

¹ The individual Plaintiffs are Roger L. Aronoff, Captain Larry W. Bailey (Ret.), Lieutenant Colonel Kenneth Benway (Ret.), Colonel Richard F. Brauer, Jr. (Ret.), Claire M. Lopez, Admiral James A. Lyons, Jr. (Ret.), and Kevin Michael Shipp.

litigation, the parties resolved many of the requests at issue without court intervention. ECF No. 83, at 2. Only one issue remains in dispute: Plaintiffs' request for certain FBI interview reports—referred to as FD-302s—and corresponding handwritten notes of interviews conducted with United States personnel who were present during the attacks. ECF No. 31 ¶ 126 (8).

The FBI initially provided a *Glomar* response to Plaintiffs' request for these records, neither confirming nor denying the existence of such records. ECF No. 83, at 23-24; *see Roth v. U.S. Dep't of Just.*, 642 F.3d 1161, 1171 (D.C. Cir. 2011) (“In a [*Glomar*] response the government neither confirms nor denies the existence of the requested records.”). In 2018, the parties cross-moved for summary judgment on this issue, among others, and the case was assigned to Magistrate Judge Deborah Robinson. *See* Jan. 7, 2019 Minute Order. Judge Robinson recommended that summary judgment be granted to Defendants on all issues, except for the FBI's *Glomar* response. ECF No. 83, at 33. Shortly thereafter, the FBI withdrew its *Glomar* response and informed the court that it would search for and process the sought-after records. ECF No. 86, at 1.

To locate pertinent records, the FBI conducted index searches of its case management systems using key terms related to the Benghazi attacks. ECF No. 97-3 ¶¶ 20-22. The FBI informed Plaintiffs that it had compiled responsive records but, after consulting with the State Department and the CIA, it had determined that the records were protected in full pursuant to FOIA exemptions 1, 3, 5, 6, 7(A), 7(C), 7(E), and 7(F). ECF No. 97-2 ¶ 8.

The court later adopted Judge Robinson's recommendations on the other outstanding issues, but it found Defendants' motion for summary judgment with respect to the *Glomar* response moot in light of the FBI's change of position. ECF No. 92, at 20, 24, 27-28. The parties informed the court that Plaintiffs intended to challenge the FBI's new justifications for withholding

the FD-302 interview reports, and the parties subsequently filed cross-motions for summary judgment. *See* ECF No. 94 at 2; Feb. 22, 2023 Minute Order; ECF Nos. 97 & 98.

II. Legal Standard

The purpose of FOIA is “to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Am. C.L. Union v. U.S. Dep’t of Just.*, 655 F.3d 1, 5 (D.C. Cir. 2011) (quoting *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 361 (1976)). Congress nonetheless included nine exemptions to disclosure that “are intended ‘to balance the public’s interest in governmental transparency against the legitimate governmental and private interests [that] could be harmed by release of certain types of information.’” *Tipograph v. U.S. Dep’t of Just.*, 83 F. Supp. 3d 234, 238 (D.D.C. 2015) (quoting *United Techs. Corp. v. U.S. Dep’t of Def.*, 601 F.3d 557, 559 (D.C. Cir. 2010)).

Most FOIA cases are appropriately resolved on motions for summary judgment. *Brayton v. Off. of the U.S. Trade Representative*, 641 F.3d 521, 527 (D.C. Cir. 2011). A court shall grant summary judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The agency invoking a FOIA exemption bears the burden of demonstrating it applies. *U.S. Dep’t of Just. v. Repts. Comm. for Freedom of the Press*, 489 U.S. 749, 755 (1989). Summary judgment may be awarded to the agency if it can demonstrate that no material facts are in dispute, that it conducted an adequate search for responsive records, and that each record has either been produced or is exempt from disclosure. *Jud. Watch, Inc. v. U.S. Dep’t of Homeland Sec.*, 59 F. Supp. 3d 184, 189 (D.D.C. 2014). “To successfully challenge an agency’s showing that it complied with the FOIA, the plaintiff must come forward with specific facts demonstrating that there is a genuine issue with respect to whether the agency has improperly withheld extant agency records.” *Manna v. U.S.*

Dep't of Just., 106 F. Supp. 3d 16, 18 (D.D.C. 2015) (quoting *Span v. U.S. Dep't of Just.*, 696 F. Supp. 2d 113, 119 (D.D.C. 2010)).

In assessing a motion for summary judgment, the court affords “substantial weight” to an agency affidavit that is detailed and non-conclusory. *Jud. Watch, Inc. v. U.S. Dep't of Def.*, 715 F.3d 937, 940-41 (D.C. Cir. 2013) (quoting *Am. C.L. Union v. U.S. Dep't of Def.*, 628 F.3d 612, 619 (D.C. Cir. 2011)). The affiant must describe “the documents and the justifications for nondisclosure with reasonably specific detail [and] demonstrate that the information withheld logically falls within the claimed exemption,” and the court will credit such statements if they “are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.” *Manning v. U.S. Dep't of Just.*, 234 F. Supp. 3d 26, 32 (D.D.C. 2017) (quoting *Mil. Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981)). “Ultimately, an agency’s justification for invoking a FOIA exemption is sufficient if it appears ‘logical’ or ‘plausible.’” *Wolf v. Cent. Intel. Agency*, 473 F.3d 370, 374-75 (D.C. Cir. 2007).

III. Discussion

FBI invokes multiple FOIA exemptions to justify its withholding, but this court need only address one: Exemption 7(A), which allows an agency to withhold “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A). The court concludes that the FD-302s were properly withheld pursuant to Exemption 7(A), thereby warranting summary judgment for the FBI without the need to address the other grounds raised. *See Am. C.L. Union*, 628 F.3d at 619 n.2.

“Exemption 7(A) reflects the Congress’s recognition that ‘law enforcement agencies ha[ve] legitimate needs to keep certain records confidential, lest the agencies be hindered in their investigations or placed at a disadvantage when it [comes] time to present their case.’” *Citizens*

for Resp. & Ethics in Wash. v. U.S. Dep't of Just., 746 F.3d 1082, 1096 (D.C. Cir. 2014) (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 224 (1978)). When litigation itself threatens to reveal FOIA-exempt information, an agency may provide a categorical description of the withheld information rather than a document-by-document justification for exemption. *Id.* at 1089-90. Categorical treatment is appropriate under Exemption 7(A) when the general description supports an inference that the withheld category has a rational link to the agency's alleged interference. *See id.* at 1088-89.

“[A]n ongoing criminal investigation typically triggers Exemption 7(A).” *Id.* at 1098. “[T]o withhold documents pursuant to Exemption 7(A), an agency must show that they were compiled for law enforcement purposes and that their disclosure (1) could reasonably be expected to interfere with (2) enforcement proceedings that are (3) pending or reasonably anticipated.” *Mapother v. U.S. Dep't of Just.*, 3 F.3d 1533, 1540 (D.C. Cir. 1993) (emphasis omitted).

Plaintiffs do not appear to contest that the FBI compiled the records for law enforcement purposes or that the Benghazi investigation remains ongoing, so the court will only briefly touch on these requirements. The FBI submitted several declarations in support of its motion, of which two are particularly relevant to these issues: the declaration of Michael G. Seidel, Section Chief of the Record/Information Dissemination Section, Information Management Division of the FBI, ECF 97-2; and the declaration of Timothy J. Kootz, Director of the Office of Information Programs and Services of the State Department, ECF 97-5. Mr. Seidel averred that the FD-302s and interview notes were compiled for law enforcement purposes. ECF No. 97-2 ¶ 10. He also stated that the investigation of the Benghazi attacks “remains ongoing.” *Id.* ¶ 13. Specifically, he explained that “[t]he FBI continues to pursue all logical leads to identify and investigate those individuals who helped perpetuate, assist, or otherwise support the 2012 attack.” *Id.* ¶ 13.

Mr. Kootz similarly testified that the relevant FD-302s were compiled during the FBI's investigation of the attacks in Benghazi and that the investigation is "ongoing." ECF No. 97-5 ¶¶ 25-26. Plaintiffs present no evidence to contradict these statements, nor do they point to anything in the record suggesting bad faith on the part of the government. Accordingly, the court credits the government's declarations, and it finds that the records were compiled for law enforcement purposes and that the relevant investigation is ongoing. *Manning*, 234 F. Supp. 3d at 33.

That leaves the question whether disclosure of the records "could reasonably be expected to interfere with" the ongoing investigation. *Mapother*, 3 F.3d at 1540. Plaintiffs raise two main arguments against the FBI's claim of interference. First, they argue that the FBI has not sufficiently explained how the specific information they seek—those portions of the FD-302s that describe a purported order to security forces at the embassy to "stand down"—could interfere with an ongoing investigation. ECF No. 98, at 16-17; ECF No. 102, at 4-5. Second, they suggest that public statements made by security forces present at the attack undercut the FBI's arguments and require disclosure because the underlying information is already public. ECF No. 98, at 12-14; ECF No. 102, at 5-6. The court is not persuaded.

Sufficiency of the explanation. As noted, an agency may invoke Exemption 7(A) on a categorical basis when "the FOIA litigation process threatens to reveal 'the very information the agency hopes to protect.'" *Citizens for Resp. & Ethics in Wash.*, 746 F.3d at 1088 (quoting *Am. C.L. Union v. Cent. Intel. Agency*, 710 F.3d 422, 432 (D.C. Cir. 2013)); see *Robbins Tire & Rubber Co.*, 437 U.S. at 224 ("[L]aw enforcement agencies ha[ve] legitimate needs to keep certain records confidential, lest the agencies be hindered in their investigations or placed at a disadvantage when it [comes] time to present their case."). "Categorical withholding is often appropriate under

Exemption 7(A).” *Citizens for Resp. & Ethics in Wash.*, 746 F.3d at 1098. It is permissible where the agency (1) defines its categories functionally, (2) conducts a document-by-document review to sort information into the proper category, and (3) explains how disclosure will interfere such that the court can “trace a rational link between the nature of the document and the alleged likely interference.” *Crooker v. Bureau of Alcohol, Tobacco, & Firearms*, 789 F.2d 64, 67 (D.C. Cir. 1986); *Citizens for Resp. & Ethics in Wash.*, 746 F.3d at 1098.

The FBI properly invoked categorical withholding here. It defined its category functionally, characterizing the FD-302s as “Evidentiary/Investigative Materials.” ECF No. 97-2 ¶ 17. Mr. Seidel explained that this category encompasses records gathered through witness interviews, and he further stated that the search was conducted on a document-by-document basis, and each covered record was placed within the functional category. *Id.* ¶¶ 16-17.

The question, then, is not whether the disclosure of any specific portions of the FD-302s would interfere with the ongoing criminal investigation, but whether the FBI sufficiently explained how categorical disclosure would interfere with the investigation. It did. Mr. Seidel explained that the FD-302s “document the FBI’s investigation of the potential crimes and/or possible threats to national security” related to the Benghazi attacks. *Id.* ¶ 10. He further explained that a document-by-document description would “undermine” the FBI investigation because disclosure could reveal “leads the FBI is pursuing and the scope of the investigation.” *Id.* ¶ 15. This, in turn, could enable the suspected “groups or individuals to change their behavior and avoid scrutiny.” *Id.* More specifically, the FBI predicts that the disclosure of persons “of investigative interest” in the matter could lead to witness tampering and the destruction of evidence. *Id.* ¶ 14.

“Such predictive judgments of harm are entitled to deference . . . especially where, as here, the investigation concerns matters of national security.” *Manning*, 234 F. Supp. 3d at 36; *see Ctr.*

for Nat. Sec. Stud. v. U.S. Dep't of Just., 331 F.3d 918, 927 (D.C. Cir. 2003) (stating that the Supreme Court and the D.C. Circuit “have expressly recognized the propriety of deference to the executive in the context of FOIA claims which implicate national security”). In light of the FBI’s predictions, this is not an edge case. The interference that the agency warns of—potential witness tampering, destruction of evidence, and revelation of the scope of investigation—is within the heartland of exemption 7(A). *See Manning*, 234 F. Supp. 3d at 36 (finding sufficient interference under Exemption 7(A) where government declarations stated that the release of information would reveal the focus and scope of the investigation, allowing suspects to destroy evidence or alter their behavior); *Leopold v. U.S. Dep't of Just.*, 301 F. Supp. 3d 13, 26 (D.D.C. 2018) (finding sufficient interference under Exemption 7(A) where a “precise description of the records being withheld would ‘reveal non-public information about the targets and scope of the investigation’ which ‘could reasonably be expected to’ interfere with it”); *Tipograph*, 83 F. Supp. 3d at 239 (explaining that Exemption 7(A) protects against “chilling and intimidation of witnesses, and revelation of the scope and nature of the Government’s investigation”).

Because there is a “rational link” between the disclosure of the FD-302s and the threat of interference, the government’s categorical approach is appropriate. *Crooker*, 789 F.2d at 67; *Tipograph*, 83 F. Supp. 3d at 240 (“Because this explanation describes the nature of the information contained in the records, rather than merely the nature of the records themselves, it permits the Court to infer a rational link between the records and an investigative purpose.”).

Public disclosure. Plaintiffs also argue that some of the information contained within the FD-302s has already been made public, thus undercutting the FBI’s warnings of potential

interference.² ECF No. 98, at 12-14; ECF No. 102, at 5-6. Specifically, they allege that the FD-302s “reflect the accounts of Mark Geist, Kris Paronto, and John Tiegen,” all of which appear in a book and a movie, and some of which are detailed in Fox News interviews.³ ECF No. 102, at 6. It is undisputed that these three individuals were not FBI employees. ECF No. 100, at 12-13; ECF No. 102, at 3.

Plaintiffs seemingly invoke the doctrine of “official acknowledgment,” which requires an agency to disclose information “even over an agency’s otherwise valid exemption claim.” *Wolf*, 473 F.3d at 378. Official acknowledgement applies when “the information requested [is] as specific as the information previously released,” “the information requested [matches] the information previously disclosed,” and the information has already “been made public through an official and documented disclosure.” *Id.* (quoting *Fitzgibbon v. Cent. Intel. Agency*, 911 F.2d 755, 765 (D.C. Cir. 1990)). Plaintiffs bear the burden of showing the doctrine applies. *Buzzfeed, Inc. v. Fed. Bureau of Investigation*, 613 F. Supp. 3d 453, 472 (D.D.C. 2020) (quoting *Mobley v. Cent. Intel. Agency*, 806 F. 3d 568, 583 (D.C. Cir. 2015)).

Plaintiffs have not established the conditions required to invoke official acknowledgement. Although Mr. Seidel acknowledged that “some information pertaining to the Benghazi attacks has been made public,” he clarified that the “FBI has not disclosed the identities of the individuals” who were interviewed as part of the government’s investigation. ECF No. 97-2 ¶ 14. Nor has the FBI revealed the “focus and content” of the FD-302 interview reports. *Id.* Thus, the information

² In their initial cross-motion, Plaintiffs suggested that State Department’s August 2018 release of video clips showing the attack also undercut the FBI’s assertion of interference. ECF No. 98, at 16. They abandon this argument in their reply, so the court does not address it. ECF No. 102, at 6 (“Plaintiffs agree [that] [t]he surveillance footage is irrelevant.”).

³ The book is titled *13 Hours: The Inside Account of What Really Happened in Benghazi*, the movie is titled *13 Hours: The Secret Soldiers of Benghazi*. ECF No. 102, at 6.

requested does not match what the government has previously disclosed. *Wolf*, 473 F.3d at 378. It does not matter that three members of the security team—Mark Geist, Kris Paronto, and John Tiegen—have publicized their recounting of events. These are statements by third parties, not the “official and documented disclosure” required by the official acknowledgement doctrine. *Id.* (quoting *Fitzgibbon*, 911 F.2d at 765); see *Frugone v. Cent. Intel. Agency*, 169 F.3d 772, 774 (D.C. Cir. 1999) (explaining that the court “do[es] not deem ‘official’ a disclosure made by someone other than the agency from which the information is being sought”). Finally, at the core, public statements by third parties about the attacks do not undercut the FBI’s invocation of Exemption 7(A) because the FBI does not seek to obscure the underlying events—instead, it seeks to protect its investigation and future law enforcement proceedings. ECF No. 97-2 ¶¶ 14-15; see *Leopold*, 301 F. Supp. 3d at 26 (D.D.C. 2018). Public accounts of the attacks thus do not undermine the FBI’s concerns of interference with an open investigation.

IV. Conclusion

For the foregoing reasons, the court will issue a contemporaneous order granting the FBI’s Renewed Motion for Summary Judgment, ECF No. 97, and denying Plaintiffs’ Cross-Motion for Summary Judgment, ECF No. 98.

/s/ Loren L. AliKhan
LOREN L. ALIKHAN
United States District Judge

Date: April 26, 2024

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
DEFENSE, *et al.*,

Defendants.

Civil Action No. 14-1589 (LLA)

ORDER

For the reasons stated in the court's Memorandum Opinion, ECF No. 103, it is hereby **ORDERED** that Defendant Federal Bureau of Investigation's Renewed Motion for Summary Judgment, ECF No. 97, is **GRANTED** and Plaintiffs' Cross-Motion for Summary Judgment, ECF No. 98, is **DENIED**. The Clerk of Court is directed to close this case.

This Order constitutes a final judgment of the court within the meaning of Rule 58(a) of the Federal Rules of Civil Procedure.

SO ORDERED.

/s/ Loren L. AliKhan
LOREN L. ALIKHAN
United States District Judge

Date: April 26, 2024

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
	)	Case No. 14-1589 (LLA)
DEPARTMENT OF DEFENSE, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

NOTICE OF APPEAL

Notice is hereby given this 22nd day of June, 2024, that plaintiff Roger Aronoff hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from the final judgment of this Court entered on the 24th day of April, 2024, and all prior orders entered in this case, in favor of defendants, and against plaintiffs.

Date: June 22, 2024.

Respectfully submitted,

 John H. Clarke /s/
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