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# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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July 11, 2014

The Honorable Trey Gowdy  
Chairman

Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi  
1036A Longworth House Office Building  
Washington, D.C. 20515

Dear Mr. Chairman:

I am encouraged that the Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi will emphasize full Executive Branch compliance with any current outstanding Benghazi-related requests for documents and information by standing Committees of the House. In response to your request, I am providing detailed background information regarding the Committee on Oversight and Government Reform's outstanding Benghazi-related document requests to the Executive Branch, as well as the status of any Benghazi-related production and compliance issues.

The Committee on Oversight and Government Reform investigated the attack on U.S. diplomatic facilities in Benghazi from September 2012 until the creation of the Select Committee. As part of this investigation, the Committee made numerous document requests and issued three subpoenas to the Department of State. The Department's response was woefully inadequate. To be precise, the Department has not provided a full and complete response to two subpoenas, nor has the Department provided all documents responsive to many written requests. Moreover, the Department used numerous tactics to obstruct this investigation.

### The "Reading Room" Documents

#### **I. Early Correspondence with the Department**

On September 20, 2012, just eight days after the Benghazi attack concluded, the Committee on Oversight and Government Reform first requested documents from the Department of State pertaining to the attack.<sup>1</sup> In a letter to the Secretary of State, the Committee requested the following documents:

<sup>1</sup> Letter from Hon. Jason Chaffetz, Chairman, H. Subcomm. on Nat'l Security, to Hon. Hillary Clinton, Sec'y, U.S. Dep't of State (Sept. 20, 2012).

1. All analyses, classified and unclassified, related to the security situation in Benghazi leading up to the attack;
2. All assessments, to include dissenting views, of potential threats to the American presence in Libya leading up to the attack;
3. All preliminary site exploitation results gleaned at the Consulate by U.S. Government personnel following the attack;
4. All warnings subsequently provided to U.S. Government personnel serving abroad based on the initial findings of the attack in Benghazi;
5. All documentation which supports or contradicts Ambassador Rice's statement that the attack evolved from a protest and was not premeditated;
6. All documentation which supports or contradicts Libyan President el-Megarif's statement that the attack was premeditated; and
7. All information, which does not directly expose sources or methods, related to the attack on the consulate.<sup>2</sup>

On October 2, 2012, National Security Subcommittee Chairman Jason Chaffetz and I wrote to the Secretary of State to highlight previous security incidents that occurred in Benghazi earlier in 2012 and ask questions about these incidents.<sup>3</sup> Later that day, the Secretary of State wrote to me, stating:

We look forward to working with Congress and your Committee as you proceed with your own review. As you know, we have already begun working with your Committee. We are committed to a process that is as transparent as possible, respecting the needs and integrity of the investigations underway. We will move as quickly as we can without forsaking accuracy.<sup>4</sup>

On October 9, 2012, the night before the Committee's first hearing on the Benghazi attack, the Department first allowed Committee staff to review responsive documents, but only in an *in camera* setting.<sup>5</sup> It was not until the following morning, however, less than two hours before the hearing was set to begin, that the Majority staff was able to begin reviewing these

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<sup>2</sup> *Id.*

<sup>3</sup> Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, & Hon. Jason Chaffetz, Chairman, Subcomm. on Nat'l Security, to Hon. Hillary Clinton, Sec'y, U.S. Dep't of State (Oct. 2, 2012).

<sup>4</sup> Letter from Hon. Hillary Clinton, Sec'y, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Oct. 2, 2012).

<sup>5</sup> E-mail from Hon. David S. Adams, Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to H. Comm. on Oversight & Gov't Reform Majority Staff (Oct. 10, 2012, 5:52 a.m.).

documents. The Minority staff reviewed the documents on the night of October 9.<sup>6</sup> The Department did not permit the Committee to retain possession of the documents, nor did it allow Committee staff to make any copies of them.

On October 23, 2012, the Department of State allowed Committee staff to review a second tranche of documents *in camera*.<sup>7</sup> As with the first tranche of documents, the Department did not permit the Committee to retain possession of the documents, nor did it allow Committee staff to make any copies of them.

On October 29, 2012, Chairman Chaffetz and I wrote to the Secretary of State requesting five new categories of documents.<sup>8</sup> The deadline for production of the documents to the Committee was November 5, 2012.

On November 1, 2012, Chairman Chaffetz and I again wrote to the Secretary of State, this time quoting from two draft letters found at the scene of the Benghazi attack.<sup>9</sup> Although an article published in *Foreign Policy* discussed these letters, the State Department had not yet produced them to the Committee, despite the Committee's standing request for all information related to the attack.<sup>10</sup>

On November 12, 2012, the State Department permitted Committee staff to conduct an *in camera* review of a third tranche of documents.<sup>11</sup> As with the first two tranches of documents, the Department did not permit the Committee to retain possession of the documents, nor did it allow Committee staff to make any copies of them.

On November 14, 2012, President Obama made a statement about the Congressional investigation into the Benghazi attack. The President stated:

I think it is important for us to find out exactly what happened in Benghazi, and **I'm happy to cooperate in any ways that Congress wants. We have provided every bit of information that we have, and we will continue to provide information.**<sup>12</sup>

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<sup>6</sup> E-mail from Hon. David S. Adams, Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to H. Comm. on Oversight & Gov't Reform Minority Staff (Oct. 9, 2012, 9:08 p.m.).

<sup>7</sup> E-mail from H. Comm. on Oversight & Gov't Reform Majority Staff, to Hon. David S. Adams, Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, (Oct. 23, 2012, 12:31 p.m.).

<sup>8</sup> Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight and Gov't Reform, and Hon. Jason Chaffetz, Chairman, Subcomm. on Nat'l Security, to Hon. Hillary Clinton, Sec'y, U.S. Dep't of State (Oct. 29, 2012).

<sup>9</sup> Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform and Hon. Jason Chaffetz, Chairman, Subcomm. on Nat'l Security, to Hon. Hillary Clinton, Sec'y, U.S. Dep't of State (Nov. 1, 2012).

<sup>10</sup> *Id.*

<sup>11</sup> Letter from Hon. David S. Adams, Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Nov. 12, 2012).

<sup>12</sup> President Barack Obama, *Remarks by the President in a News Conference*, Washington, D.C. (Nov. 14, 2012), available at <http://www.whitehouse.gov/the-press-office/2012/11/14/remarks-president-news-conference> (emphasis added).

On November 16, 2012, Chairman Chaffetz and I wrote to the Secretary of State requesting that the Department produce copies of all documents responsive to all previous Committee letters to the Department regarding Benghazi. As of that date, nearly two months after the Committee's first document request, the only documents the Department had produced were publicly available on the Department's website.

In our letter, Chairman Chaffetz and I explained our serious concerns about the Department's *in camera* review process. We stated:

Thus far, the only documents the Department has delivered to the Committee for its retention are publicly available information from its website. For responsive documents that are not in the public domain—classified and unclassified—the Department has insisted that congressional staff review that material *in camera* and under the supervision of Department personnel. The fact that staff must handwrite copies of unclassified material—even when that material has been openly discussed in public—is a departure from past practices and is unnecessarily impeding a thorough review and analysis of relevant information.

\* \* \*

Accordingly, we ask that you immediately produce, in accordance with the President's statement, in hard or electronic copies all documents and information requested [in] our September 20, 2012, October 2, 2012, October 29, 2012, and November 1, 2012, letters.<sup>13</sup>

The State Department's November 19, 2012, response did not include any of the documents the Committee requested. Instead, the Department attempted to formalize the *in camera* review process that had been occurring. The Department wrote:

To facilitate your access to these documents, the Department is in discussions with the Office of House Security to open a reading room for Committee Members and appropriately-cleared staff wishing to review the documents. We anticipate that this arrangement will be finalized this week, and appreciate any assistance your office may be able to provide to support this effort.<sup>14</sup>

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<sup>13</sup> Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Hon. Hillary Clinton, Sec'y, U.S. Dep't of State (Nov. 16, 2012).

<sup>14</sup> Letter from Hon. David S. Adams, Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Nov. 19, 2012).

The restrictions for reviewing the “reading room” documents—only on an *in camera* basis in the presence of a State Department custodian—remained.<sup>15</sup> The Department would not permit the Committee to review documents under any other circumstances.

On December 4, 2012—without having finalized any accommodation with the Office of House Security—the Department of State allowed Committee staff to review a fourth tranche of documents *in camera*.<sup>16</sup> Over the next month, the Department continued to make additional tranches of documents available to the Committee for *in camera* review on a rolling basis. The Department first made the fifth tranche available on December 7, 2012.<sup>17</sup> The Department first made the sixth tranche available on January 2, 2013.<sup>18</sup> The Department first made the seventh tranche available on January 14, 2013.<sup>19</sup> The Department first made the eighth and final tranche available to the Committee on January 18, 2013.<sup>20</sup> Consistent with prior practice, for each production, a State Department representative remained in the room with these documents while Committee staff reviewed them, and took the documents back to the Department at the end of the day.

By the end of January 2013, the Department had made approximately 25,000 pages of documents available to the Committee. The Department’s production practices, combined with the conditions imposed on the Committee’s review of these materials, however, presented significant challenges. The Department did not organize or catalog the documents in any logical way, either within each production or across the productions. In light of the fact that the review had to occur in the presence of Department personnel, the Committee was forced, therefore, to

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<sup>15</sup> The “reading room” review process required that Committee Members and staff give advance notice to the Department of State each time they wanted to review relevant documents. For example, on April 10, 2013, the State Department officials refused to make documents available the following day because they had not received enough advance notice:

In order for the department to secure staff for the reading room, we need to hear from the committee by the night before (although ideally 24 hours before is preferable). Because we didn’t hear from you until 10:00 a.m. this morning, I was not able to place that order until now.

E-mail from Bureau of Legis. Affairs Staff, U.S. Dep’t of State, to H. Comm. on Oversight & Gov’t Reform Staff (April 10, 2013, 11:45 a.m.). Further, Committee staff was forced to review documents during timeframes the Department set. On one occasion—the night before a hearing, no less—Committee Members and staff wished to review documents past 5:00 p.m., the normal time at which the custodian took the documents back to the State Department. The Department agreed to make the documents available until only 7:00 p.m. E-mail from Bureau of Legis. Affairs Staff, U.S. Dep’t of State, to H. Comm. on Oversight & Gov’t Reform Majority Staff (May 6, 2013, 7:19 p.m.).

<sup>16</sup> Letter from Hon. David S. Adams, Assistant Sec’y, Legis. Affairs, U.S. Dep’t of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Dec. 4, 2012).

<sup>17</sup> Letter from Hon. David S. Adams, Assistant Sec’y, Legis. Affairs, U.S. Dep’t of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Dec. 7, 2012).

<sup>18</sup> Letter from Hon. David S. Adams, Assistant Sec’y, Legis. Affairs, U.S. Dep’t of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Jan. 2, 2013).

<sup>19</sup> Letter from Hon. David S. Adams, Assistant Sec’y, Legis. Affairs, U.S. Dep’t of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Jan. 14, 2013).

<sup>20</sup> Letter from Hon. David S. Adams, Assistant Sec’y, Legis. Affairs, U.S. Dep’t of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Jan. 18, 2013).

sift through thousands of pages of disparate documents—frequently fragmented or separated—only as the Department permitted. The Department did not allow staff to take any documents, even unclassified ones, from the reading room, even temporarily. Department “minders” physically removed all documents from the Committee’s offices and returned them to the Department of State’s offices at the end of each day.

Despite numerous requests by Committee Members and staff for the Department to comply with the Committee’s letters and produce documents for the Committee’s retention, the Department repeatedly refused to comply.

## II. The Department’s Continued Refusal to Produce Documents

On January 23, 2013, Committee staff contacted State Department officials via e-mail to request that the Department arrange to bring all tranches of responsive documents to the Committee offices for review. Although Committee staff followed up with Department officials the next day, the Department never responded.<sup>21</sup> On January 29, 2013, Committee staff sent a follow-up e-mail to the Acting Assistant Secretary of State for Legislative Affairs, reiterating this request.<sup>22</sup>

On February 11, 2013, the Department brought tranche eight back to the Committee offices for an additional *in camera* review. By this stage, the constant *in camera* reviews had become untenable. Indeed, the Department failed to bring all tranches of documents because of a “mix-up.”<sup>23</sup>

On March 29, 2013, the Department of State wrote to Chairman Issa in response to the Committee’s request for documents the ARB reviewed.<sup>24</sup> The Department wrote that it had **“provided the Congress with access to documents, comprising over 25,000 pages to date, including communications of senior Department officials regarding the security situation in Benghazi.”**<sup>25</sup>

In response to the State Department’s March 29 letter, on April 15, 2013, the Committee on Oversight and Government Reform and the Committee on Foreign Affairs sent a joint follow-up letter to the Secretary of State. The Committees’ letter stated:

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<sup>21</sup> E-mail from H. Comm. on Oversight & Gov’t Reform Staff, to Bureau of Legis. Affairs Staff, U.S. Dep’t of State (Jan. 24, 2013, 5:40 p.m.).

<sup>22</sup> E-mail from H. Comm. on Oversight & Gov’t Reform Staff, to Thomas B. Gibbons, Acting Assistant Sec’y, Legis. Affairs, U.S. Dep’t of State (Jan. 29, 2013, 4:31 p.m.).

<sup>23</sup> E-mail from Bureau of Legis. Affairs Staff, U.S. Dep’t of State, to H. Comm. on Oversight & Gov’t Reform Staff (Feb. 11, 2013, 9:29 a.m.).

<sup>24</sup> Letter from Thomas B. Gibbons, Acting Assistant Sec’y, Legis. Affairs, U.S. Dep’t of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Mar. 29, 2013) (emphasis added). The Committee’s request for documents reviewed by the ARB is discussed below in section VI.

<sup>25</sup> *Id.* (emphasis added).

[The March 29, 2013, response from the State Department] was wholly inadequate as the Department failed to deliver the specifically requested materials. It further provided no explanation – legal or otherwise – for the Department’s decision to refuse to make other Benghazi related materials permanently available. This is unacceptable and inconsistent with the level of transparency promised by this Administration. Without this information, we cannot together achieve the reforms necessary to ensure the safety of our diplomats abroad.<sup>26</sup>

The Committees’ requested a number of clarifications regarding the Department’s March 29, 2013, letter, including:

Whether the Department will deliver copies of all documents and information requested for the Committees’ permanent and unmonitored retention. This includes, but may not be limited to, the more than 25,000 pages of documents referenced in the March 29, 2013, letter, and those which the Committees have reviewed *in camera*. If not, then please cite the legal basis for refusing to do so[.]<sup>27</sup>

The Committees requested a response “not later than 5:00 p.m. on April 29, 2013.”<sup>28</sup> In addition, the letter stated:

The more than 25,000 pages of documents should be readily available for delivery within 24 hours of the receipt of this letter, as they have already been collected for the purposes of *in camera* review. If the Department declines to produce the requested documents and information the Committees’ permanent and unmonitored retention, the Committees may compel production.<sup>29</sup>

The Department never responded to the Committees’ April 15, 2013, request. On April 26, 2013, therefore, I again wrote to the Secretary of State and requested that the Department permanently produce the reading room documents to the Committee. My letter described the effects of the Department’s drastic restrictions placed on the Committee’s investigation. The letter stated:

Predictably, this arrangement has created problems. For example, when Members recently met with USAFRICOM Commanding General Carter Ham, Members were not able to bring documents relevant to their line of inquiry. Instead, Members were forced to rely on handwritten notes taken by staff. Because of the State Department’s unreasonable restrictions,

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<sup>26</sup> Letter from Hon. Chairman Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, et al., to Hon. John Kerry, Sec’y, U.S. Dep’t of State (Apr. 15, 2013).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

which even apply to unclassified documents, discussions between Members and staff concerning the documents must take place in front of Department officials.

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Besides impeding the work of Committee investigators, this arrangement was wasteful and unnecessary. The State Department paid an employee to babysit boxes of documents for weeks—documents of the sort that the Committee regularly stores in its own secured areas. Notwithstanding the fact that the Committee has both the right and the capability to review and possess classified information, I note that approximately 80 percent of the documents in question are unclassified and marked identically to documents routinely sent to the Committee without the same restrictions placed upon them.<sup>30</sup>

In an effort to accommodate the Department's interests, I proposed a compromise for producing documents to the Committee permanently:

As a sign of good faith, and in recognition of the President's commitment to share all relevant information with Congress, I hope you will agree to turn over to the Committee documents that Members and staff have identified as critical to the investigation. These critical documents are a subset of the total universe of documents identified by the State Department as responsive. Unfettered access to these documents will allow the Committee to proceed expeditiously, which I believe is in the interest of all parties. Additionally, producing critical documents to the Committee will alleviate the need for the Department to use taxpayer dollars to pay couriers and staff to move and babysit boxes of documents every day. I am certain there is a better use for those funds.<sup>31</sup>

Despite my letter, the Department of State continued to refuse to produce the documents to the Committee permanently.

On May 28, 2013, I wrote to Secretary of State Kerry, noting yet again the Department's repeated failure to produce the Reading Room documents to the Committee:

[D]espite multiple requests, the Department continues to refuse to turn over any documents, including unclassified materials, to the Committee on a permanent basis. Instead, the Department uses a courier to deliver boxes containing thousands of relevant documents to the Committee's offices each day. A Department minder sits and watches Committee investigators

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<sup>30</sup> Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Hon. John Kerry, Sec'y, U.S. Dept. of State (April 26, 2013).

<sup>31</sup> *Id.*



review them. No documents, even unclassified material, are allowed to leave the room, even temporarily, and all documents are returned to the Department at the end of each day.<sup>32</sup>

Between January 18, 2013, and July 1, 2013, the Department did not produce a single document—or even provide any additional documents for *in camera* review—pursuant to the Committee’s letters of September 20, 2012, October 2, 2012, October 29, 2012, November 1, 2012, and November 16, 2012, April 15, 2013, and April 26, 2013.<sup>33</sup> In fact, despite the Committee’s repeated attempts at accommodation, the Department showed no willingness even to consider producing documents to the Committee.

Finally, on July 1, 2013, the Department indicated a willingness to produce the 25,000 pages of reading room documents to the Committee on a permanent basis. Officials from the Department’s Office of the Legal Adviser informed the Committee that they wanted to find a way to produce the documents without a subpoena.<sup>34</sup> The Department was concerned, however, that the documents contained sensitive information requiring additional redactions prior to production to the Committee. Despite the numerous requests for a permanent production prior to this date, the Department representative explained that the “process for preparing documents for production [has] not been done yet.”<sup>35</sup> The Department suggested it might be possible to avoid the need for additional redactions prior to production if the Committee would commit not to release any information without first providing it to the Department for review and redaction.<sup>36</sup> The Department committed to commence processing documents and offered to begin with documents of particular interest to the Committee, including those to be used in upcoming transcribed interviews.<sup>37</sup>

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<sup>32</sup> Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, to Hon. John Kerry, Sec’y, U.S. Dept. of State (May 28, 2013).

<sup>33</sup> Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, to Hon. Hillary Clinton, Sec’y, U.S. Dep’t of State (Sept. 20, 2012); Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, and Hon. Jason Chaffetz, Chairman, H. Subcomm. on Nat’l Security, to Hon. Hillary Clinton, Sec’y, U.S. Dep’t of State (Oct. 2, 2012); Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, and Hon. Jason Chaffetz, Chairman, H. Subcomm. on Nat’l Security, to Hon. Hillary Clinton, Sec’y, U.S. Dep’t of State (Oct. 29, 2012); Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform and Hon. Jason Chaffetz, Chairman, H. Subcomm. on Nat’l Security, to Hon. Hillary Clinton, Sec’y, U.S. Dep’t of State (Nov. 1, 2012); Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, to Hon. Hillary Clinton, Sec’y, U.S. Dep’t of State (Nov. 16, 2012); Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, to Hon. John Kerry, Sec’y, U.S. Dep’t of State (Apr. 15, 2013); Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, to Hon. John Kerry, Sec’y, U.S. Dep’t of State (Apr. 26, 2013).

<sup>34</sup> Telephone call with Office of Legal Adviser Staff, U.S. Dep’t of State and H. Comm. on Oversight & Gov’t Reform Staff (July 1, 2013).

<sup>35</sup> E-mail from Office of Legal Adviser Staff, U.S. Dep’t of State to H. Comm. on Oversight & Gov’t Reform Staff (July 1, 2013, 6:36 p.m.).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* As discussed below in section VII(C)(2), the Committee was unwilling to accept any arrangement that provided Department attorneys with information about specific documents the Committee intended to use in upcoming transcribed interviews with Department employees.

In response, Committee staff made clear it was my expectation that any State Department review would be expeditious, and additional redactions would be limited because the Department had previously redacted the documents before making them available to the Committee for *in camera* review.<sup>38</sup> Further, Committee staff informed the Department that my request for a complete production of the reading room documents still stood and conveyed my disappointment that the Department had not commenced any additional review necessary to fulfill that request.<sup>39</sup> That afternoon, Department staff informed the Committee:

We understand your points about prior review of the documents, and the Chairman's disappointment that the process had not started previously, and we will try to turn the documents around as quickly as possible.<sup>40</sup>

On Friday July 5, 2013, the Department informed the Committee that it had identified new documents relevant to four State Department employees scheduled to participate in interviews the following week. Although these documents were responsive the Committee's previous requests, the Department had not previously made them available to the Committee. In a letter accompanying the new material, the Department wrote:

[T]his afternoon we sent over (in two different deliveries) witness documents that we believe were not previously produced. . . . They have been provided to the 'reading room' and for now are for review only[.]<sup>41</sup>

This was the first time in nearly six months that the Department allowed Committee staff to review new documents. Similarly, the Department made an additional set of documents available for *in camera* review on July 29, 2013, in advance of another transcribed interview the very next day.<sup>42</sup>

On July 24, 2013, the State Department finally produced documents from the reading room for the Committee's retention. This production exemplified the reasons for my unwillingness to accept additional review and redaction by the Department. Of the approximately 25,000 total pages available in the reading room, the Department produced only 145 heavily redacted pages for the Committee's retention.<sup>43</sup> It took more than two weeks for the Department to review and produce this incredibly small set of documents. In addition, as discussed in Section VII(B), the additional redactions the Department applied Department were unreasonable.

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<sup>38</sup> E-mail from H. Comm. on Oversight & Gov't Reform Staff, to Office of Legal Adviser Staff, U.S. Dep't of State (July 3, 2013 11:34 a.m.).

<sup>39</sup> *Id.*

<sup>40</sup> E-mail from Office of Legal Adviser Staff, U.S. Dep't of State, to H. Comm. on Oversight & Gov't Reform Staff (July 3, 2013 1:05 p.m.).

<sup>41</sup> E-mail from Office of Legal Adviser Staff, U.S. Dep't of State, to H. Comm. on Oversight & Gov't Reform Staff (July 5, 2013 4:46 p.m.).

<sup>42</sup> E-mail from Office of Legal Adviser Staff, U.S. Dep't of State, to H. Comm. on Oversight & Gov't Reform Staff (July 29, 2013, 12:30 p.m.).

<sup>43</sup> Letter from Thomas B. Gibbons, Acting Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (July 24, 2013).

### III. Issuance of and Response to the Subpoena for the “Reading Room” Documents

As a result of the Department’s continued refusal to produce the reading room documents for the Committee’s retention, the Committee had no alternative but to issue a subpoena for these documents to Secretary of State John Kerry on August 1, 2013—nearly one year after the original document request. The subpoena schedule read as follows:

In accordance with the attached schedule instructions, you, John F. Kerry, are required to produce all records in unredacted form described below:

1. All documents that have been made available to the House Committee on Oversight and Government Reform for *in camera* review, including, but not limited to, the approximately 25,000 pages of documents referenced in the March 29, 2013, letter from Acting Assistant Secretary Thomas B. Gibbons to House Oversight and Government Reform Committee Chairman Darrell Issa.<sup>44</sup>

The subpoena specifically instructed that the documents were to be produced, “in the exact condition they are made available for any *in camera* review.” Further, the subpoena required “[d]ocuments that have been in any way sorted, marked or flagged during any *in camera* review shall be produced in the current order with any and all marks of flags intact.”<sup>45</sup> The subpoena required Secretary of State Kerry to produce the materials by August 16, 2013.<sup>46</sup>

Committee staff made clear to Department officials that compliance with the subpoena would be simple and straightforward. In an e-mail to Department officials after a telephone conversation discussing the contents of the subpoena, Committee staff wrote:

With respect to the Reading Room subpoena, it is the Chairman’s expectation that it is very simple to comply with – rather than take the Reading Room documents back to the State Department this afternoon, just leave them here.

On behalf of the Chairman, I also want to remind you that the subpoena requires the Department to produce unredacted versions of all responsive documents. In cases where the Department is asserting a privilege, the Department should identify the privilege being asserted and provide additional information described in instruction 12 [of the subpoena].<sup>47</sup>

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<sup>44</sup> Subpoena from H. Comm. on Oversight & Gov’t Reform to Hon. John F. Kerry, Sec’y, U.S. Dep’t of State (Aug. 1, 2013).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> E-mail from H. Comm. on Oversight & Gov’t Reform Staff to Office of Legal Adviser Staff, U.S. Dep’t of State (Aug. 7, 2013, 1:41 p.m.).

The Department once again attempted to obtain assurances that the Committee would not release any materials—including unclassified materials—produced under the subpoena without the Department's pre-clearance. According a representative of the Office of the Legal Adviser, this step was necessary to facilitate clearance for release of the documents from other agencies.<sup>48</sup>

On August 16, 2013, the Department of State provided an initial production of documents to the Committee that it claimed to be responsive to the August 1, 2013, subpoena. The Department wrote:

The Department is producing today copies of all documents from the first three tranches and approximately 1100 pages from the fourth tranche, originally provided for *in camera* review between October 9 and November 12, 2012, as well as copies of certain documents identified by the Committee as exhibits in its interviews with Department employees.<sup>49</sup>

On August 23, 2013, the Department of State provided additional documents that it claimed to be responsive to the August 1, 2013, subpoena. The Department wrote:

The Department is producing today copies of 1188 pages from the fourth tranche and 1583 pages from the fifth tranche, originally provided for *in camera* review on or about November 12 and December 7, 2012, respectively.<sup>50</sup>

On August 29, 2013, the Department of State provided additional documents to the Committee that it claimed to be responsive to the August 1, 2013, subpoena. The Department wrote:

The Department is producing today copies of 2,676 pages from the fifth tranche and 1,966 pages from the sixth tranche, originally provided for *in camera* review on or about December 7, 2012, and January 2, 2013, respectively.<sup>51</sup>

On August 30, 2013, the Department of State provided additional documents to the Committee that it claimed to be responsive to the August 1, 2013, subpoena. The Department wrote:

The Department is producing today copies of 3265 pages from the sixth tranche, originally provided for *in camera* review on or about January 2,

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<sup>48</sup> E-mail from Office of Legal Adviser Staff, U.S. Dep't of State, to H. Comm. on Oversight & Gov't Reform Staff (Aug. 6, 2013, 12:29 p.m.).

<sup>49</sup> Letter from Thomas B. Gibbons, Acting Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Aug. 16, 2013).

<sup>50</sup> Letter from Thomas B. Gibbons, Acting Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Aug. 23, 2013).

<sup>51</sup> Letter from Thomas B. Gibbons, Acting Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Aug. 29, 2013).

2013, as well as 17 pages of documents identified by the Committee as exhibits in its August 8 witness interview.<sup>52</sup>

On September 6, 2013, the Department of State provided additional documents to the Committee that it claimed to be responsive to the August 1, 2013, subpoena. The Department wrote:

The Department is producing today copies of 7,305 pages from the seventh tranche, originally provided for *in camera* review on or about January 14, 2013.<sup>53</sup>

On September 13, 2013, the Department of State provided additional documents to the Committee that it claimed to be responsive to the August 1, 2013, subpoena. The Department wrote:

The Department is producing today copies of 4,113 pages from the eighth tranche, originally provided for *in camera* review on or about January 18, 2013.<sup>54</sup>

On March 21, 2014, the Department of State provided additional documents to the Committee that it claimed to be responsive to the August 1, 2013, subpoena. The Department wrote:

The Department is producing today copies of 619 documents, consisting of 1642 pages. This production consists of documents responsive to the Committee's subpoena of August 1, 2013, seeking possession of documents originally provided *in camera*, as well as additional documents that are also responsive to the Committee's request of September 20, 2012.<sup>55</sup>

On April 7, 2014, the Department of State provided additional documents to the Committee that it claimed to be responsive to the August 1, 2013, subpoena. The Department wrote:

The Department is producing today copies of 172 documents, consisting of 798 pages. This production consists of documents responsive to the Committee's subpoena of August 1, 2013, seeking possession of documents originally provided *in camera*, as well as additional documents

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<sup>52</sup> Letter from Thomas B. Gibbons, Acting Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Aug. 30, 2013).

<sup>53</sup> Letter from Thomas B. Gibbons, Acting Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Sept. 6, 2013).

<sup>54</sup> Letter from Thomas B. Gibbons, Acting Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Sept. 13, 2013).

<sup>55</sup> Letter from Hon. Julia Frifield, Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Mar. 21, 2014).

that are also responsive to the Committee's request of September 20, 2012.<sup>56</sup>

On April 17, 2014, the Department of State provided additional documents to the Committee that it claimed to be responsive to the August 1, 2013, subpoena. The Department wrote:

The Department is producing today copies of 276 documents, consisting of 779 pages. This production consists of documents responsive to the Committee's subpoena of August 1, 2013, seeking possession of documents originally provided for *in camera* review, as well as additional documents that are also responsive to the Committee's request of September 20, 2012.<sup>57</sup>

The August 1, 2013, subpoena required the production of "all documents that have been made available to the House Committee on Oversight and Government Reform for *in camera* review." The Department ignored instructions included with the subpoena, and it withheld documents responsive to the subpoena. The Department was required to produce all documents required by the subpoena according to its instructions. To date, the Department has not delivered a complete production nor satisfied the conditions of the Committee's subpoena.

### **The Accountability Review Board Documents**

#### **I. Initial Correspondence with the Department**

On January 28, 2013, Chairman Ed Royce, Chairman Jason Chaffetz, and I wrote to the Secretary of State requesting documents relating to the Accountability Review Board. We specifically requested the following:

[A]ll documents and information reviewed by the ARB to develop its findings and recommendations reported on December 18, 2012, including, but not limited to:

1. Documents and communications, including e-mails, cables, and memoranda sent or received by [Secretary Clinton], Deputy Secretary Burns, Deputy Secretary for Management and Resources Nides, and Undersecretary for Management Kennedy, and their respective staffs, referring or relating to physical security platforms, security personnel staffing, security planning, and diplomatic security;

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<sup>56</sup> Letter from Hon. Julia Frifield, Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Apr. 7, 2014).

<sup>57</sup> Letter from Hon. Julia Frifield, Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Apr. 17, 2014).

2. A complete list of every individual – including name, title, and agency – interviewed by the ARB for the December 19, 2012, report, and any documents and communications referring or relating to the interviews; and
3. Video footage of the September 11, 2012, attack on the Benghazi compound.<sup>58</sup>

Despite a response deadline of February 11, 2013, for the production of documents, the Department did not even acknowledge receipt of this letter to the Committee until February 12, 2013. Following a phone call from Committee staff, the Department stated in an e-mail that it was “working diligently to respond as quickly as possible.”<sup>59</sup>

On February 14, 2013, House Foreign Affairs Committee (HFAC) staff e-mailed Department staff about the lack of response to the January 28 request. HFAC staff informed the Department that the set of documents the ARB received should have been readily available for production.<sup>60</sup> The Department did not respond until February 19, 2013, when it stated in an e-mail that it was “currently working to get a response to the Chairman’s letter as quickly as possible.”<sup>61</sup> Following an additional inquiry from the Foreign Affairs Committee, on February 25, 2013, Department staff stated:

So sorry for the delay. Unfortunately, there are whole sets of folks who worked on this and are no longer here so while this transition has been going on, it has been a bit difficult to track some of these things. In the interim, know that we are doing all we can to get this out to you as quickly as possible and that we understand the importance of this request and are working hard on our end.<sup>62</sup>

On March 4, 2013, over three weeks past the deadline in the January 28 letter, HFAC staff requested clarification on the staff transition and its effect on the collection of materials responsive to the request. In addition, staff requested clarification as to when the Committees could expect a response.<sup>63</sup> The Department never responded to the Committees’ inquiries.

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<sup>58</sup> Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, et al. to Hon. Hillary Clinton, Sec’y, U.S. Dep’t of State (Jan. 28, 2013).

<sup>59</sup> E-mail from Bureau of Legis. Affairs Staff, U.S. Dep’t of State to H. Comm. on Oversight & Gov’t Reform Staff (Feb. 12, 2013 4:07 p.m.).

<sup>60</sup> E-mail from H. Comm. on Foreign Affairs Majority Staff to Bureau of Legis. Affairs Staff, U.S. Dep’t of State (Feb. 14, 2013 10:36 a.m.).

<sup>61</sup> E-mail from Bureau of Legis. Affairs Staff, U.S. Dep’t of State to H. Comm. on Foreign Affairs Staff (Feb. 19, 2013 4:04 p.m.).

<sup>62</sup> E-mail from Bureau of Legis. Affairs Staff, U.S. Dep’t of State to H. Comm. on Foreign Affairs Staff (Feb. 25, 2013 7:01 p.m.).

<sup>63</sup> E-mail from H. Comm. on Foreign Affairs Majority Staff to Bureau of Legis. Affairs Staff, U.S. Dep’t of State (March 4, 2013 9:00 a.m.).

On March 29, 2013, the Department finally issued a written response to the January 28, 2013, letter. Despite having consistently corresponded with the Committee via e-mail up to that point, the Department sent the letter to the Committee only via the U.S. Postal Service, and did not e-mail an electronic copy.<sup>64</sup> This ensured that the Committee would receive the letter after it had been scanned for foreign substances at an outside facility. This process that takes days, if not weeks, to complete—a process of which Department officials are well aware. HFAC staff received a copy of the letter on April 1, prompting an inquiry from Committee staff. At that point, the Department finally forwarded an electronic copy.<sup>65</sup>

No documents accompanied the Department's March 29, 2013, letter. While the letter acknowledged that the "Department ha[d] also provided the Congress with access to documents, comprising over 25,000 pages to date" that "also were available to the ARB during the course of its investigation," the Department did not confirm that it had given the Committee all documents available to the ARB. Further, the Department did not identify which of the 25,000 pages of documents had been available to the ARB. The Department also failed to produce a complete list of individuals the ARB interviewed. Finally, the Department did not provide any video footage from the Benghazi attack.<sup>66</sup>

On April 15, 2013, Chairman Royce, Chairman Chaffetz, and I wrote to Secretary of State John Kerry. Our letter stated:

On March 29, 2013, Acting Assistant Secretary for Legislative Affairs Thomas Gibbons replied to our letter on behalf of the Department. This response, however, was **wholly inadequate**, as the Department failed to deliver the specifically requested materials. It further provided no explanation – legal or otherwise – for the Department's decision to refuse to make other Benghazi related materials permanently available.<sup>67</sup>

The letter reiterated the document requests from the January 28, 2013, letter, and included the following additional requests:

1. Whether the Department retained a complete set of documents provided to the [ARB];
2. Whether the Board reviewed the more than 25,000 pages of documents referenced in the March 29, 2013, response letter prior to the issuance of the Board's report;

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<sup>64</sup> Letter from Thomas A. Gibbons, Acting Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Mar. 29, 2013) [hereinafter March 29 Letter].

<sup>65</sup> E-mail from Bureau of Legis. Affairs Staff, U.S. Dep't of State to H. Comm. on Oversight & Gov't Reform Staff (Apr. 1, 2013 3:36 p.m.).

<sup>66</sup> March 29 Letter, *supra* note 119, at 2.

<sup>67</sup> Letter from Hon. Chairman Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, et al. to Hon. John Kerry, Sec'y, U.S. Dep't of State (Apr. 15, 2013) (emphasis added).



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4. Whether the Department will make the Board's staff, including but not limited to, all staff listed in 12 FAM 032.3, available to answer specific questions about the Board's review process.<sup>68</sup>

On May 28, 2013, I sent another letter to Secretary Kerry. The letter stated:

[T]his Committee and the House Committee on Foreign Affairs have submitted multiple requests for documents and information the Accountability Review Board on Benghazi reviewed or produced. This information was first requested on January 28, 2013. The State Department's response on March 23, 2012, contained no relevant documents. The Committees followed up with a second request for this information on April 15, 2013. These requests remain unanswered.<sup>69</sup>

The State Department did not produce any documents in response to the Committees' requests for documents and information related to the Accountability Review Board.

## **II. Issuance of and Response to the Subpoena for the Accountability Review Board Documents**

On August 1, 2013, after months of non-compliance by the Department, the Committee issued another subpoena to Secretary Kerry for the numerous outstanding document requests from the January 28 and April 15, 2013, letters. The subpoena schedule read as follows:

In accordance with the attached schedule instructions, you, John F. Kerry, are required to produce all records in unredacted form described below:

1. All documents provided by the Department of State to the Accountability Review Board ("ARB" or "the ARB") convened to examine the facts and circumstances surrounding the September 11-12, 2012, attacks on U.S. facilities in Benghazi, Libya.
2. All documents and communications referring or relating to ARB interviews or meetings, including, but not limited to, notes or summaries prepared during and after any ARB interview or meeting.<sup>70</sup>

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<sup>68</sup> *Id.* at 2. The third document request relating to production of the reading room materials is discussed above, in Section IV(B).

<sup>69</sup> Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Hon. John Kerry, Sec'y, U.S. Dep't of State (May 28, 2013).

<sup>70</sup> Subpoena from H. Comm. on Oversight & Gov't Reform to Hon. John F. Kerry, Sec'y, U.S. Dep't of State (Aug. 1, 2013).

The deadline for production of documents was August 16, 2013.

On August 6, 2013, Department staff e-mailed Committee staff to provide the Department's understanding of the scope of the subpoena. Additionally, the Department requested an extension of the production deadline:

I request[] that we have a limited extension of the subpoena deadlines. . . .  
As a matter of professional courtesy, I would request we extend the deadline another week, to Friday, August 23. That would allow us to fully participate in the compilation and production of documents.<sup>71</sup>

The next day, August 7, 2013, Committee staff responded to clarify the Committee's position on what documents the subpoena covered:

With respect to the ARB subpoena, paragraph 2, it covers all documents related to ARB interviews and meetings. It is our understanding that the ARB did not transcribe witness interviews, but that they did create notes and summaries for each witness interview (both group interviews and individual interviews). At this point, we request that you prioritize the production of those interview notes and summaries.<sup>72</sup>

In addition, the Committee staff conveyed my approval of the Department's requested extension. Staff stated:

The Chairman will grant an extension until August 23, as you requested. The Chairman expects that the Department will begin producing "high priority" documents (ARB interview notes/summaries, see above) as soon as possible, the extension notwithstanding, as a sign of good faith.<sup>73</sup>

Finally, Committee staff reminded the Department of my expectations regarding production of the subpoenaed materials:

On behalf of the Chairman, I also want to remind you that the subpoena requires the Department to produce unredacted versions of all responsive documents. In cases where the Department is asserting a privilege, the Department should identify the privilege being asserted and provide additional information described in instruction 12.<sup>74</sup>

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<sup>71</sup> E-mail from Office of Legal Adviser Staff, U.S. Dep't of State, to H. Comm. on Oversight & Gov't Reform Staff (Aug. 6, 2013 12:29 p.m.).

<sup>72</sup> E-mail from H. Comm. on Oversight & Gov't Reform Staff to Office of Legal Adviser Staff, U.S. Dep't of State (Aug. 7, 2013 1:41 p.m.).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

On August 23, 2013, the Department provided its first formal response to the subpoena. Despite the extension the Committee granted, the Department did not produce any documents. The Department acknowledged that there are “approximately 7,000 State Department documents, numbering thousands of pages, that are known to have been received by the ARB as part of its investigation.”<sup>75</sup> The Department announced, however, that it did not intend to produce any ARB materials to the Committee:

[T]he Department’s practice has been not to disclose an ARB’s files, including the documents it reviewed and summaries of witness interviews.<sup>76</sup>

The Department also questioned “why the Committee would seek to access internal ARB files” and requested “that the Committee reconsider the specific requests in the subpoena.”<sup>77</sup>

On September 5, 2013, Chairman Issa wrote to Secretary Kerry:

At no point prior to the August 1, 2013, subpoena did the Department provide specific objections to requests by this and other congressional committees for material related to the ARB review, other than claiming that providing the requested documents to Congress would chill the work of future Accountability Review Boards. It simply ignored the requests and failed to produce any responsive documents. In its August 23, 2013, response to the subpoena, however, the Department expressed “grave concerns about the Committee’s unprecedented request for documents from the files of the ARB.”

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The documents in question are critical to the Committee’s review of the ARB. For over six months, the Department ignored the Committee’s interest in this material. Only now, and under a subpoena, does the Department raise objections to the Committee’s desire to review this information. Understanding what information the ARB requested, received and reviewed is crucial to the Committee’s evaluation of this process. In addition, determining how the ARB arranged, conducted, and recorded interviews is necessary to gain important insight into the processes and procedures of the ARB. Finally, a record of these interviews is important in developing the Committee’s understanding of what information was conveyed to the ARB.

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<sup>75</sup> Letter from Thomas B. Gibbons, Acting Assistant Sec’y, Legis. Affairs, U.S. Dep’t of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Aug. 23, 2013) (“I am writing in response to your August 1 subpoena[.]”).

<sup>76</sup> *Id.* at 3.

<sup>77</sup> *Id.* at 5.

The State Department cannot dictate the terms of Congress's constitutional authority and responsibility for oversight. I urge you to reconsider the Department's position so that we can learn from the past and work together to consider additional reforms that will benefit the State Department, and the brave men and women who serve our interests across the globe. Please also provide, in writing, valid legal justification of the Department's position to withhold documents, including whether any documents are subject to a valid assertion of privilege, as soon as possible, but by no later than September 18, 2013.<sup>78</sup>

On September 20, 2013, the Department responded to the Committee. In its letter, the Department argued that the documents requested in the subpoena were "appropriately protected from disclosure" and again made clear that the Department did not intend to produce the subpoenaed materials.<sup>79</sup> In support of this position, the Department cited several cases that were neither on point nor binding, and noted that the Department was not "aware of [any] compelling reason to override these important interests."<sup>80</sup> In a brazen attempt to usurp the Committee's constitutionally-mandated oversight prerogatives and defy its subpoena, the Department asserted that it alone would decide which documents to make available to the Committee. The Department wrote:

Specifically, we have weighed the potential for severe damage to the ARB process and believe that the release of non-deliberative documents provided by the State Department to the ARB for its review poses lesser concerns. Nevertheless, such documents comprise thousands of pages and would take months to produce in full.<sup>81</sup>

Despite the Department's position that it would not produce large amounts of materials to the Committee, Department staff engaged in discussions with Committee staff about prioritizing production in response to the subpoena. In an effort at accommodation, and in response to a request from the Department, on September 25, 2013, Committee staff provided a list of priority documents responsive to the ARB subpoena.<sup>82</sup>

Committee staff also sought clarification that the Department would not even make subpoenaed ARB interview notes available for *in camera* review. Committee staff stated:

You asked me to provide some categories of high-priority documents responsive to the August 1 subpoena for ARB documents. As I've said on

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<sup>78</sup> Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform to Hon. John Kerry, Sec'y, U.S. Dep't of State (Sept. 5, 2013).

<sup>79</sup> Letter from Thomas B. Gibbons, Acting Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Sept. 23, 2013).

<sup>80</sup> *Id.* at 2-3 nn. 2-6, 8.

<sup>81</sup> *Id.* at 4.

<sup>82</sup> E-mail from H. Comm. on Oversight & Gov't Reform staff to Office of Legal Adviser Staff, U.S. Dep't of State (Sept. 25, 2013 2:25 p.m.).

the phone, the documents responsive to paragraph 2 are our first priority. As for documents responsive to paragraph 1, please prioritize the following:

1. Any documents not previously produced to the Committee in the Reading Room
2. Any documents or materials related to the military and/or interagency response to the attacks
3. Any documents related to the ARB's recommendations related to accountability

One related issue – on the phone the other day when we discussed the Henderson deposition, you stated that ARB interview summaries are not available to review *in camera*. Can you clarify whether that applies to all the summaries, or just the Henderson interview summary?<sup>83</sup>

On October 3, 2013, Committee staff sent a follow up email requesting further clarification on this matter. Staff wrote:

Hi [Office of Legal Adviser Staff] – just wondering if you've received any more guidance from the Department on whether the ARB interview summaries will be made available *in camera*. When we spoke last time, you said the current answer is no, but that there would be some additional consideration of the issue that might yield a different answer. Please let me know if there's an update. Thanks.<sup>84</sup>

Later that afternoon, the State Department responded, stating:

On the interview memos, I know you have been waiting patiently for what our position is. I will try to get back to you shortly.<sup>85</sup>

The State Department never followed up with Committee staff on the issue. On January 27, 2014, Committee staff again sought clarification on the State Department's position regarding ARB interview notes. Committee staff wrote:

With respect to [reviewing the ARB interview notes], please let us know if there is anything we need to discuss to move towards a resolution. The last time I discussed the ARB interview notes with [Office of Legal

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<sup>83</sup> *Id.*

<sup>84</sup> E-mail from H. Comm. on Oversight & Gov't Reform Staff to Office of Legal Adviser Staff, U.S. Dep't of State (Oct. 3, 2013 3:59 p.m.).

<sup>85</sup> E-mail from Office of Legal Adviser Staff, U.S. Dep't of State, to H. Comm. on Oversight & Gov't Reform Staff (Oct. 3, 2013 6:11 p.m.).

Adviser], he said that the Department's position was that they would not be produced. He indicated that position was still under discussion and that it may change. Please let us know if that is still the case so we can update Chairman Issa.<sup>86</sup>

The State Department never responded to this inquiry.

On October 18, 2013—more than two months after the subpoena deadline—the State Department provided an initial production of documents it claimed were responsive to the August 1, 2013, subpoena. The Department provided approximately 414 pages of documents provided to the ARB in 2012, but never before provided to the Committee.<sup>87</sup>

On October 29, 2013, the Department provided additional “non-deliberative” documents it claimed were responsive to the August 1, 2013, subpoena. These documents amounted to 235 pages.<sup>88</sup>

On November 15, 2013, the Department provided additional “non-deliberative” documents it claimed were responsive to the August 1, 2013, subpoena. These documents amounted to 140 pages.<sup>89</sup>

On December 13, 2013, the Department provided additional “non-deliberative” documents it claimed were responsive to the August 1, 2013, subpoena. These documents amounted to 253 pages.<sup>90</sup>

On February 6, 2014, the Department provided additional “non-deliberative” documents it claimed were responsive to the August 1, 2013, subpoena. These documents amounted to 166 pages.<sup>91</sup>

Each of these five productions consisted of “certain non-deliberative documents provided by the State Department to the ARB.” The Department continued to refuse to produce what it deemed “deliberative documents” responsive to the subpoena. Each production letter stated:

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<sup>86</sup> E-mail from H. Comm. on Oversight & Gov't Reform Staff to Office of Legal Adviser Staff, U.S. Dep't of State (Jan. 27, 2014 6:19 p.m.).

<sup>87</sup> Letter from Thomas B. Gibbons, Acting Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Oct. 18, 2013).

<sup>88</sup> Letter from Hon. Julia Frifield, Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Oct. 29, 2013).

<sup>89</sup> Letter from Hon. Julia Frifield, Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Nov. 15, 2013).

<sup>90</sup> Letter from Hon. Julia Frifield, Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Dec. 13, 2013).

<sup>91</sup> Letter from Hon. Julia Frifield, Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Feb. 6, 2013).

[A] substantial number of documents provided by the State Department to the ARB are identical or substantively identical to documents previously produced to the Committee or made available for *in camera* review[.]<sup>92</sup>

The Department has not, however, given the Committee a list of all documents the State Department provided to the ARB. Nor has the Department given the Committee a list of any additional documents or categories of documents the ARB requested. Such a list is critical for the Committee to examine the amount and type of documents the Department gave to the ARB and the Department withheld from the Committee.

Further, each of these five productions contained substantial redactions of names and other information—similar to the large amount of redactions applied to materials responsive to the reading room subpoena. The Department did not provide a privilege log for redactions applied to these productions or for any documents withheld that were responsive the subpoena.

To date, the Department has provided only 1,208 pages of documents responsive to the August 1, 2013, subpoena. This small number of documents is but a small percentage of the universe of documents, requested in Item 1 of the subpoena, that the Department provided to the Accountability Review Board. In addition, the Department has not identified which, if any, of the heavily-redacted documents produced in response to the August 1, 2013, reading room subpoena it provided to the ARB. Further, the Department has yet to produce a single document responsive to Item 2 of the subpoena—despite that the Committee informing the Department these documents were its “first priority.”

### **The Committee’s Accommodations; The State Department’s Lack of Compliance**

From the outset, while pursuing its constitutionally-required oversight obligations, the Committee has sought to accommodate the Department’s legitimate interests. The Committee has been unfailingly patient in working with Department representatives to obtain information the Committee required to complete its investigation into the Benghazi attack. At every opportunity, the Department created hurdles for the Committee to overcome, including retroactively classifying documents, heavily redacting documents provided to the Committee, mandating *in camera* reviews of documents, threatening to destroy lock bags provided by the Committee, and preventing Committee Members and staff from reviewing documents at key times.

#### **I. Threats to Destroy Committee Property**

In early April 2013, Committee staff continued to review and organize the reading room documents. In light of the challenges the reading room arrangement presented, Committee staff pulled documents most relevant to the investigation from the reading room materials and placed

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<sup>92</sup> See, e.g., Letter from Thomas B. Gibbons, Acting Assistant Sec’y, Legis. Affairs, U.S. Dep’t of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Oct. 18, 2013).

them in a locked bag, or “lock bag.” The lock bag and its contents remained with the reading room materials at all times. At the end of each day, the custodian took the lock bag back to the Department for overnight storage. This procedure protected the integrity of the Committee’s investigation by preventing the Department from reviewing the Committee’s key documents, which would have given the Department a roadmap to the investigation. It also accommodated the Department’s purported interest in controlling sensitive information.

Committee staff first informed the Department custodian of their intentions regarding use of the lock bag on Friday, April 5, 2013.<sup>93</sup> Department staff notified others at Department headquarters of the Committee’s plan.<sup>94</sup> The Committee received no further communication from the Department all day on April 5, 2013, or over the weekend.<sup>95</sup> On April 8, 2013, however, the Department of State claimed that it had “just noticed” that Committee staff had begun separating documents:

I just noticed that you are using non-State department satchels to separate documents. If you are planning to continue to use your own satchels going forward, please make sure to leave the keys for them with the State Department personnel present in the reading room. Both your staff and State Department staff need to have ready access to the documents at all times.<sup>96</sup>

Later that day, the Department informed the Committee that it would not make any documents available until Committee staff provided a key to the lock bags. A Department employee e-mailed Committee staff: “As I mentioned, we won’t be able to deliver documents until we receive the key to the satchel [in which] you have placed State Department documents.”<sup>97</sup> The Department also delivered an ultimatum and a threat: unless the Committee provided the Department the key to the lock bag—and thus access to what amounted to a roadmap to the Committee’s investigation—the Department would destroy the Committee’s lock bag and revisit the Committee’s already-limited terms of access to the documents.<sup>98</sup>

On April 10, 2013, the Department agreed to allow Committee staff to separate documents into a lock bag, provided that Department representatives could verify that all documents were accounted for and returned to the Department at the end of each day.<sup>99</sup>

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<sup>93</sup> E-mail from H. Comm. on Oversight & Gov’t Reform Staff to H. Comm. on Oversight & Gov’t Reform Staff (April 8, 2013, 10:08 a.m.).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> E-mail from Bureau of Legis. Affairs, U.S. Dep’t of State, to H. Comm. on Oversight & Gov’t Reform Majority Staff (April 8, 2013, 9:55 a.m.).

<sup>97</sup> E-mail from Bureau of Legis. Affairs, U.S. Dep’t of State, to H. Comm. on Oversight & Gov’t Reform Majority Staff (April 8, 2013, 6:49 p.m.).

<sup>98</sup> Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, to Hon. John Kerry, Sec’y, U.S. Dep’t of State (Apr. 16, 2013).

<sup>99</sup> E-mail from Bureau of Legis. Affairs, U.S. Dep’t of State, to H. Comm. on Oversight & Gov’t Reform Staff (April 10, 2013, 10:09 a.m.).



## II. Redacted Documents

The Department never permitted the Committee to review completely unredacted documents responsive to the subpoenas and other document requests, even *in camera*. While the *in camera* reading room materials included fewer redactions than documents physically produced to the Committee, the Department still redacted portions of these documents. The Department never answered the Committee's questions as to why it redacted materials provided for *in camera* review, nor has the Department produced a privilege log detailing the legal bases for withholding information from Congress.

For months, the Department refused to produce any of the reading room materials to the Committee on a permanent basis. On July 1, 2013, the State Department acknowledged for the first time that the Committee should be able to retain the 25,000 pages of documents available in the reading room. The Department informed the Committee that it needed more time to make additional redactions to the documents:

[B]ecause the State Department process for preparing documents for production has not been done yet, it would take some time to redact or identify sensitive information such as identifies of lower ranking [Foreign Service Officers] and other personnel and foreign policy or law enforcement sensitive information. As a result, we informed you that we are initiating that process now[.]<sup>100</sup>

On July 24, 2013, the Department provided for the Committee's retention 145 heavily redacted pages of the 25,000 total pages previously made available for *in camera* review in the reading room. It took the Department more than two weeks to review and produce this small set of documents—likely because of the excessive redactions applied. The Department described the heavy redactions and restrictions applied to the documents:

Consistent with Department practice, we have redacted certain foreign government sensitive information, law enforcement sensitive information, privacy protected information, and the names of Department personnel below the rank of Assistant Secretary, with the exception of Deputy Assistant Secretaries who have been interviewed during the course of this investigation. Aside from certain privacy protected information, the redacted text remains available to you through the existing document review process.<sup>101</sup>

Most of these 145 pages of documents contained so many redactions that they were nearly indecipherable.

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<sup>100</sup> E-mail from Office of Legal Adviser Staff, U.S. Dep't of State, to H. Comm. on Oversight & Gov't Reform Staff (July 1, 2013, 6:36 p.m.).

<sup>101</sup> Letter from Thomas B. Gibbons, Acting Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (July 24, 2013).

After the issuance of the August 1, 2013, subpoena pertaining to the reading room documents, Committee staff made clear that fulfilling the reading room subpoena would require leaving these documents with Committee staff:

With respect to the Reading Room subpoena, it is the Chairman's expectation that it is very simple to comply with – rather than take the Reading Room documents back to the State Department this afternoon, just leave them here.

On behalf of the Chairman, I also want to remind you that the subpoena requires the Department to produce unredacted versions of all responsive documents. In cases where the Department is asserting a privilege, the Department should identify the privilege being asserted and provide additional information described in Instruction 12.<sup>102</sup>

In an all too familiar pattern, however, Department staff did not comply with these instructions. Instead, the Department provided documents for the Committee's retention that contained substantially more redactions than the documents included in the reading room. On August 16, 2013, the Department wrote to me regarding these redactions. The letter stated:

In addition, consistent with Department practice, we have redacted certain sensitive foreign government information, such as confidential communications with foreign government officials, the disclosure of which could adversely impact relations with foreign nations, law enforcement sensitive information, and information on security policies, procedures, and specifications for American diplomatic missions, disclosure of which could threaten the safety of State Department and other U.S. Government personnel serving overseas. We have also redacted certain privacy protected information and the names of Department personnel below the rank of Assistant Secretary, with the exception of Deputy Assistant Secretaries who have been interviewed during the course of the Committee's investigation, in order to protect the security and privacy of Department officers who are serving or will serve overseas in sensitive locations. Additional information has been redacted for similar reasons at the request of other agencies referenced in the documents. Aside from certain privacy protected information, the redacted text remains available to you through the existing *in camera* document review process.<sup>103</sup>

The Department included identical language in letters dated August 29, August 30, September 6, and September 13, 2013, and March 21 and April 7, 2014—all accompanying document

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<sup>102</sup> E-mail from H. Comm. on Oversight & Gov't Reform Majority Staff to Office of Legal Adviser, U.S. Dep't of State (Aug. 7, 2013, 1:41 p.m.).

<sup>103</sup> Letter from Thomas B. Gibbons, Acting Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Aug. 16, 2013).

productions purportedly responsive to the August 1, 2013, reading room subpoena.<sup>104</sup> Despite the fact that the subpoena requires the Secretary of State to produce all documents in unredacted form, the Department did not cite any legal authority or assert any valid privilege as a basis for applying these redactions.<sup>105</sup>

The Department produced documents responsive to the August 1, 2013, ARB subpoena that also contained heavy redactions. In addition to the numerous categories of redactions outlined in the production letters for the reading room subpoena, productions pursuant to the ARB subpoena also included redactions of “certain handwritten notes and markings made on the documents that appear to be deliberative.”<sup>106</sup> Again, despite the fact that the subpoena required production of unredacted documents, the Department did not cite any legal authority or assert any valid privilege as a basis for applying these redactions.

The Department’s most recent production, on April 17, 2014, contained the most extensive redactions yet. This production, purportedly responsive to the reading room subpoena, contained the following redactions:

Consistent with Department practice, we have redacted certain sensitive foreign government information, such as confidential communications with foreign government officials, the disclosure of which could adversely impact relations with foreign nations; law enforcement sensitive information; and information on security policies, procedures, and specifications for American diplomatic missions, the disclosure of which could threaten the safety of State Department and other U.S. Government personnel serving overseas. We have also redacted certain privacy protected information and the names of Department personnel below the

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<sup>104</sup> Letter from Thomas B. Gibbons, Acting Assistant Sec’y, Legis. Affairs, U.S. Dep’t of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Aug. 23, 2013); Letter from Thomas B. Gibbons, Acting Assistant Sec’y, Legis. Affairs, U.S. Dep’t of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Aug. 29, 2013); Letter from Thomas B. Gibbons, Acting Assistant Sec’y, Legis. Affairs, U.S. Dep’t of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Aug. 30, 2013); Letter from Thomas B. Gibbons, Acting Assistant Sec’y, Legis. Affairs, U.S. Dep’t of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Sept. 6, 2013); Letter from Thomas B. Gibbons, Acting Assistant Sec’y, Legis. Affairs, U.S. Dep’t of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Sept. 13, 2013); ; Letter from Hon. Julia Frifield, Assistant Sec’y, U.S. Dep’t of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Mar. 21, 2014); Letter from Hon. Julia Frifield, Assistant Sec’y, U.S. Dep’t of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Apr. 7, 2014).

<sup>105</sup> Subpoena from H. Comm. on Oversight & Gov’t Reform to the Hon. John F. Kerry, Sec’y, U.S. Dep’t of State (Aug. 1, 2013) (“In accordance with the attached schedule instructions, you, John F. Kerry, are required to produce all records in unredacted form described below.”).

<sup>106</sup> Letter from Thomas B. Gibbons, Acting Assistant Sec’y, Legis. Affairs, U.S. Dep’t of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Oct. 18, 2013); Letter from Hon. Julia Frifield, Assistant Sec’y, Legis. Affairs, U.S. Dep’t of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Oct. 29, 2013); Letter from Hon. Julia Frifield, Assistant Sec’y, Legis. Affairs, U.S. Dep’t of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Nov. 15, 2013); Letter from Hon. Julia Frifield, Assistant Sec’y, Legis. Affairs, U.S. Dep’t of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Dec. 13, 2013); Letter from Hon. Julia Frifield, Assistant Sec’y, Legis. Affairs, U.S. Dep’t of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Feb. 6, 2013).

rank of Assistant Secretary, with the exception of Deputy Assistant Secretaries who have been interviewed during the course of the Committee's investigation, in order to protect the security and privacy of Department officers who are serving or will serve overseas in sensitive locations. Additional information has been redacted for similar reasons at the request of other agencies referenced in the documents. **Finally, certain information has been redacted to protect Executive Branch confidentiality interests. Aside from certain privacy protected information and information redacted to protect Executive Branch confidentiality interests, the redacted text remains available to you through the existing *in camera* document review process.**<sup>107</sup>

The Department was unable to provide a legal basis for withholding information based on "Executive branch confidentiality interests" when asked by the Committee. To date, it has still not provided a legal basis for withholding such information.

The Department's use of redactions on these documents is unprecedented. It cited no legal authority to withhold information from the Congress, nor did it assert any valid privilege to withhold the documents. Furthermore, the Department has not provided any information to the Committee about the source of the redactions, only stating that "information has been redacted for similar reasons at the request of other agencies referenced in the documents." Instead, the Department makes only a circular claim that the redactions are made "consistent with Department practice." Based on the Department's contention that such redactions are "consistent with Department practice," the Committee examined other productions made by this Administration and previous administrations to determine if such heavy redactions are indeed "consistent with Department practice." In fact, they are not. For example, an October 18, 2013, Freedom of Information Act response from the Department of State to the Sierra Club includes the names, phone numbers, and other information for Department of State employees and contractors below the rank of Assistant Secretary—including a Principal Deputy Assistant Secretary and a Project Manager.<sup>108</sup>

Additionally, prior Department document productions, including but not limited to those delivered pursuant to subpoenas from the Oversight and Government Reform Committee, have contained virtually zero redactions. On February 8, 2008, then-Chairman Henry Waxman issued a subpoena for documents to then-Secretary of State Condoleezza Rice.<sup>109</sup> In response, the Department produced nearly all of the documents responsive to the subpoena to the Committee in unredacted form.<sup>110</sup> The Department did require *in camera* review of a small number of

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<sup>107</sup> Letter from Hon. Julia Frifield, Assistant Sec'y, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Apr. 17, 2014) (emphasis added).

<sup>108</sup> Letter from Sheryl Walter, Dir., Office of Info. Programs & Serv., U.S. Dep't of State, to [Associate Attorney], The Sierra Club (Oct. 18, 2013).

<sup>109</sup> Subpoena from H. Comm. on Oversight & Gov't Reform, U.S. House of Reps. to Hon. Condoleezza Rice, Sec'y, U.S. Dep't of State (Feb. 8, 2008).

<sup>110</sup> Examples of unredacted documents from this production are on file with Committee staff.

documents and that classified documents delivered to the Committee be properly stored. The Department's production letter stated:

Please note that a small number of responsive documents have been withheld because they involve attorney-client communications, sensitive diplomatic communications, or other sensitive deliberations within the Department. We are prepared to make those documents available to your staff for review at the Department. In addition, as agreed with your staff, a small number of classified documents that are responsive to the subpoena will be delivered next week, so that they can be properly stored.<sup>111</sup>

Thus, the current Department's requirements of *in camera* review for all documents, and heavy redactions on documents produced pursuant to a subpoena are not even consistent with past Department practice, as it claimed.

Finally, it has come to the Committee's attention that the Department has produced relevant documents to a third party group pursuant to Freedom of Information Act (FOIA) litigation with fewer redactions than the Department applied to the same documents when it produced them to the Committee under subpoena. In June 2013, Judicial Watch filed a civil lawsuit against the Department of State for the Department's failure to respond to an October 18, 2012, FOIA request.<sup>112</sup> On April 17, 2014, the Department made a production to Judicial Watch pursuant to an October 1, 2013, court order. This production contained a number of documents also produced to the Committee on April 17, 2014.

For example, a September 14, 2012, e-mail to former Ambassador Susan Rice shows only the date and time of the e-mail, and includes only Ambassador Rice in the list of recipients.<sup>113</sup> The same e-mail, as produced to Judicial Watch, shows that Eric Pelofsky, Senior Advisor to the U.S. Permanent Representative to the United Nations, sent the e-mail to Ambassador Rice and seven other individuals.<sup>114</sup> None of the names of those who received the e-mail were redacted. Similarly, an e-mail sent to Ambassador Rice on September 16, 2012, was almost entirely redacted when it was produced to the Committee.<sup>115</sup> The same e-mail, as produced to Judicial Watch, shows Pelofsky sent it to Ambassador Rice and five other individuals.<sup>116</sup>

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<sup>111</sup> Letter from Hon. Jeffrey Bergner, Assistant Sec'y, Leg. Affairs, U.S. Dep't of State, to Hon. Henry Waxman, Chairman, H. Comm. on Oversight & Gov't Reform (Feb. 15, 2008).

<sup>112</sup> Judicial Watch, Inc. v. U.S. Dep't of State, No. 13-cv-00951 (D. D.C., complaint filed June 21, 2013).

<sup>113</sup> E-mail from [Redacted] to Ambassador Susan Rice, *et al.* (Sept. 14, 2012, 10:25 p.m.) [C05415279, as produced to H. Comm. on Oversight & Gov't Reform].

<sup>114</sup> E-mail from Eric J. Pelofsky, Senior Advisor to the U.S. Permanent Rep. to the U.N., U.S. Dep't of State, to Ambassador Susan Rice, *et al.* (Sept. 14, 2012, 10:25 p.m.) [C05415279, as produced to Judicial Watch].

<sup>115</sup> E-mail from [Redacted] to Ambassador Susan Rice, *et al.* (Sept. 16, 2012, 1:19 p.m.) [C05415302, as produced to H. Comm. on Oversight & Gov't Reform].

<sup>116</sup> E-mail from Eric Pelofsky, Senior Advisor to the U.S. Permanent Rep. to the U.N., U.S. Dep't of State, to Ambassador Susan Rice, *et al.* (Sept. 16, 2012, 1:19 p.m.) [C05415302, as produced to Judicial Watch].

Most critically, the Department redacted the names of White House personnel in an e-mail chain seemingly discussing a September 27, 2012, *Fox News* article titled “US officials knew Libya attack was terrorism within 24 hours, sources confirm.” On September 27, 2012, Peter Velz, then a “Media Monitor” at the White House, sent the *Fox News* article to more than 100 individuals, as well as a listserv called “DL-WHO-Press.”<sup>117</sup> The version of the e-mail produced to the Committee showed only that an unknown individual sent it to Jay Carney, then-Deputy National Security Advisor Denis McDonough, Samantha Power, and David Plouffe.<sup>118</sup> Furthermore, given the block redactions the Department used, the Committee could not even determine how many people received the e-mail, if not for the Judicial Watch production. The Department withheld all or part of the content from thirteen of fourteen subsequent e-mails in this chain from both the Committee and Judicial Watch. In a troubling trend, however, the document as produced to Judicial Watch shows all names of those people on the e-mail chain. The smaller group discussing the *Fox News* article, and later an *ABC News* article titled “Some Administration Offices Were Concerned About Initial White House Push Blaming Benghazi Attack on Mob, Video,” included McDonough, John Brennan, then-Homeland Security Advisor, Deputy Director of National Intelligence Robert Cardillo, Benjamin Rhodes, Deputy National Security Advisor for Strategic Communications and Speechwriting, Matthew Olsen, Director of the National Counterterrorism Center, and several others.<sup>119</sup> The e-mail produced to the Committee showed only the names of McDonough and Brennan—the Department redacted all other names.<sup>120</sup>

These are but three of many examples of the Department providing more information in response to third party FOIA litigation than to the U.S. Congress.

### III. Transcribed Interviews

During the course of the Committee’s investigation, Members and staff have conducted 28 transcribed interviews and depositions. The circumstances surrounding many of these transcribed interviews and depositions reflected both the Committee’s numerous accommodations and the Department’s acrimonious approach throughout the Committee’s investigation.

#### A. The Department Routinely “Found” Key Documents Just Before Each Interview

Only hours before the start of many of the transcribed interviews, the Department allowed Committee staff access to highly relevant documents for the first time. This left

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<sup>117</sup> E-mail from Peter Velz, Media Monitor, The White House, to Jay Carney, Press Secretary, The White House, *et al.* (Sept. 27, 2012, 10:15 a.m.) [C05415305, as produced to Judicial Watch] [hereinafter Sept. 27, 2012, e-mail as produced to Judicial Watch].

<sup>118</sup> E-mail from [Redacted] to Jay Carney, Press Secretary, The White House, *et al.*, (Sept. 27, 2012, 10:15 a.m.) [C05415305, as produced to H. Comm. on Oversight & Gov’t Reform] [hereinafter Sept. 27, 2012, e-mail as produced to H. Comm. on Oversight & Gov’t Reform].

<sup>119</sup> Sept. 27, 2012, e-mail as produced to Judicial Watch, *supra* note 177.

<sup>120</sup> Sept. 27, 2012, e-mail as produced to H. Comm. on Oversight & Gov’t Reform, *supra* note 178.

Committee staff little time to prepare questions based on these documents, and effectively limited the usefulness of these interviews.

For example, on Friday, July 5, 2013, the State Department made approximately 50 pages of responsive documents available to the Committee in advance of four transcribed interviews scheduled to take place the following week:

[T]his afternoon we sent over (in two different deliveries) witness documents that we believe were not previously produced. Because these are documents to or from the four witnesses who will be interviewed next week, we wanted to make sure you saw them today. They have been provided to the “reading room” and for now are for review only, but if there are any you wish to use during interviews, please include them among those to be brought back on Monday and they will be available under the process we outlined in earlier discussions and e-mails.<sup>121</sup>

The Department delivered the first set of documents at 3:30 p.m. on that Friday afternoon.<sup>122</sup> It delivered the second set just before 5:00 p.m.<sup>123</sup> Committee staff had less than an hour to review the second set of documents before the Department of State removed the documents from the Committee offices. Due to a prior agreement with Department staff, Committee staff had to include all documents to be used in the following week’s interviews in a lock bag by the end of the day on Friday.<sup>124</sup> This tight schedule left Committee staff with extremely limited time to review the documents and determine which ones to use in transcribed interviews the following week before the documents went back to the State Department.

On July 29, 2013, the Department permitted Committee staff to review highly relevant documents *in camera* just one day before the transcribed interview of a Department employee.<sup>125</sup> On August 2, 2013, for the third time, the Department permitted Committee staff to review highly relevant documents *in camera* just one business day before the transcribed interview of another Department employee.<sup>126</sup> In a letter accompanying these documents, the Department stated:

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<sup>121</sup> E-mail from Office of Legal Adviser Staff, U.S. Dep’t of State, to H. Comm. on Oversight & Gov’t Reform Staff (July 5, 2013, 4:46 p.m.).

<sup>122</sup> E-mail from H. Comm. on Oversight & Gov’t Reform Staff to H. Comm. on Oversight & Gov’t Reform Staff (July 5, 2013, 3:35 p.m.).

<sup>123</sup> E-mail from H. Comm. on Oversight & Gov’t Reform Staff to H. Comm. on Oversight & Gov’t Reform Staff (July 5, 2013, 6:04 p.m.).

<sup>124</sup> E-mail from H. Comm. on Oversight & Gov’t Reform Staff to Office of Legal Adviser Staff, U.S. Dep’t of State (July 3, 2013, 1:05 p.m.).

<sup>125</sup> E-mail from Office of Legal Adviser Staff, U.S. Dep’t of State, to H. Comm. on Oversight & Gov’t Reform Majority (July 29, 2013, 12:30 p.m.) (“[W]e are sending some additional documents relating to [State Department Employee], to ensure that you see them before tomorrow’s interview.”).

<sup>126</sup> E-mail from Office of Legal Adviser Staff, U.S. Dep’t of State, to H. Comm. on Oversight & Gov’t Reform Staff (Aug. 2, 2013, 9:56 a.m.) (“We have some additional [State Department Employee] documents that are being sent over today for in camera review in advance of the interview on Monday. We were hoping to get them to you yesterday[.]”).

[O]n July 5 and July 29 we made documents relating to those employees available to the Committee in advance of their interviews. We are making additional documents relating to an upcoming interview available as of today.

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As with the previously produced documents, this set of materials contains classified and other sensitive information, including personal privacy information and information about the security of U.S. diplomatic missions overseas and foreign government information, the unauthorized release of which could cause damage to national security and foreign relations. Mindful of these considerations, the Department has made copies of these records available for the Committee's *in camera* review.<sup>127</sup>

The Department's repeated last-minute identification of numerous responsive documents withheld from the Committee undermined confidence in its commitment to cooperate with the Congressional investigation and comply with the related subpoenas. On multiple occasions, the Department purportedly identified new documents for the first time in the course of preparing witnesses for interviews. The Department repeatedly provided the new information to the Committee just days before the interviews were scheduled to take place, and strictly on terms favorable only to the Department. Despite providing new material at the last minute, the Department insisted on removing these documents at the end of the day.

In addition, the Department's failure to identify these documents in the initial tranches provided to the Committee raises questions about the universe of the information that the Department permitted the Committee to review. If the Committee had not pursued transcribed interviews with these individuals, the Department likely would never have identified or produced these documents. The Committee agreed to delay many of these interviews for weeks due to the Department's stated need for additional time to prepare witnesses. The Department's decision to deliver these documents to the Committee on the eve of the interviews suggests that either the Department withheld this information during preparation of witnesses, or it did not collect information to prepare witnesses until days before the interview. In addition, because of the Department's insistence on retaining possession of these documents, Committee staff were limited in their ability to incorporate this information into their own preparation for interviews of key Department witnesses. Overall, this pattern suggested a willful effort on the part of the Department to obstruct the Committee's investigation.

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<sup>127</sup> Letter from Thomas B. Gibbons, Acting Assistant Sec'y, Legis. Affairs, U.S. Dep't of State, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Aug. 2, 2013).



**B. Limited Use of Documents in Transcribed Interviews**

Because the Department was unwilling to produce documents to the Committee, staff investigators had no alternative but to use a cumbersome and unnecessary process in identifying documents to be shown to witnesses in transcribed interviews and depositions.

On July 3, 2013, Committee staff described the initial protocol in two e-mails to the Department of State. The first e-mail stated:

Our staff is going to take some time today and Friday to segregate the documents they'd like to use during the interviews from the rest of the Reading Room docs. The plan we discussed internally is to place the docs we intend to use in a lock bag on Friday afternoon. The State Dept staffer who handles the docs will only need to bring the lock bag to next week's interviews (as opposed to all 25K docs in the Reading Room). On Thursday, after the interview with [State Department Employee], we'll provide the lock bag docs to State to process for release to the Committee so they can be attached to the transcripts as permanent exhibits.<sup>128</sup>

The second e-mail stated:

[B]ecause the Reading Room docs have already been redacted, it is the Chairman's expectation that any additional scrutiny that is required will occur very quickly and will leave the documents in the condition in which they were used during the interviews to the greatest extent possible. His request that all the Reading Room documents be permanently produced to the Committee still stands, and he was disappointed to learn that the Department has not even started the process of reviewing them for the purpose of complying with that request.<sup>129</sup>

The Committee worked under these restrictions for nearly a month. During this time, the State Department did not even allow Committee staff to make copies of the documents shown to witnesses during transcribed interviews.

On July 29, 2013, the Department began allowing Committee staff to make copies of documents used in transcribed interviews:

[W]e are prepared to facilitate the interviews by allowing multiple copies to be made of docs to be used in interviews. Here's a proposed procedure:

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<sup>128</sup> E-mail from H. Comm. on Oversight & Gov't Reform Staff to Office of Legal Adviser Staff, U.S. Dep't of State (July 3, 2013, 10:47 a.m.).

<sup>129</sup> E-mail from H. Comm. on Oversight & Gov't Reform Staff to Office of Legal Adviser Staff, U.S. Dep't of State (July 3, 2013, 11:34 a.m.).

1. Committee staff (majority or minority) identifies an unclassified document to be used in the interview.
2. This afternoon or tomorrow morning, Committee staff goes to the State Dept liaison office and, in the presence of the liaison staff, makes four (4) copies for use during the interview, clips them together with the original, and puts them all into the staff's lockbag. State Dept liaison staff does not have to see the document selected, just verify that 4 copies were made and that the original + 4 copies were put into the lockbag.
3. The lockbag stays with the State Dept liaison until the time of the interview.
4. After the interview, the originals go back in the lockbag, and the copies are returned to the State Dept liaison to be discarded.<sup>130</sup>

Even under this new arrangement, the Committee staff was limited in its flexibility to prepare for transcribed interviews.

### **C. Negotiations with the Justice Department**

On August 14, 2013, the Committee requested interviews with State Department employees who survived the Benghazi attack. Committee staff wrote:

The Chairman has requested that we start speaking with the survivors of the attacks on U.S. facilities in Benghazi, and he has directed us to begin by initially interviewing State Department personnel. We'd like to start with [Employee 1] and [Employee 2]. Please let me know what dates in August they are available to be interviewed.<sup>131</sup>

On September 10, 2013, I wrote to Secretary of State Kerry to follow up on the August 14, 2013, e-mail request to interview survivors of the Benghazi attack. My letter stated:

The State Department has not lived up to these unequivocal commitments to 'provide answers.' Instead, the Department has attempted to limit the Committee's access to important documents and information, including witnesses such as the Benghazi survivors. While the Committee is willing

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<sup>130</sup> E-mail from Office of Legal Adviser Staff, U.S. Dep't of State, to H. Comm. on Oversight & Gov't Reform Staff (July 29, 2013, 3:24 p.m.).

<sup>131</sup> E-mail from H. Comm. on Oversight & Gov't Reform Majority Staff to Office of Legal Adviser, U.S. Dep't of State (Aug. 14, 2013, 3:16 p.m.).

to assist in any of the special needs of the Benghazi survivors, it is imperative that Congress hear their stories.<sup>132</sup>

On August 23, 2013, Department staff responded that it was “not prepared to support the request for transcribed interviews” of two of the survivors, citing the fact that the witnesses would:

[V]ery likely be witnesses in any criminal proceedings relating to the Benghazi attacks. Interviews of these individuals outside of the criminal justice process will inevitably pose risks and generate complexities that will burden and could jeopardize these law enforcement efforts.<sup>133</sup>

The Committee accommodated the State Department’s concerns regarding potential law enforcement implications of interviewing the survivors of the Benghazi attack. Committee staff proactively contacted the Department of Justice via telephone on September 20, 2013, to discuss these concerns.<sup>134</sup> Acknowledging this discussion, the Department of Justice wrote to me on September 23, 2013,<sup>135</sup> and again on September 27, 2013.<sup>136</sup> I responded to the Department of Justice on September 30, 2013.<sup>137</sup> The Department of Justice subsequently responded to my letter on October 4, 2013.<sup>138</sup>

This unusual back-and-forth with the Department of Justice—concerning interviews with State Department employees—culminated on October 31, 2013, when I wrote to Attorney General Eric Holder, asking twelve specific questions about the prosecution of those responsible for the Benghazi attack and the potential effect of the Committee’s interviews with Benghazi survivors.<sup>139</sup> The Department never responded to this letter.

#### **IV. Retroactive Classifications**

The Committee has recently become aware that the Department is retroactively classifying documents related to the Department’s response to the Benghazi attack. The Department applied retroactive classifications to a number of documents produced to the Committee this year – well over a year after the attack. As discussed above, the documents

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<sup>132</sup> Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, to Hon. John Kerry, Sec’y, U.S. Dep’t of State (Sept. 10, 2013).

<sup>133</sup> E-mail from Office of Legal Adviser, U.S. Dep’t of State, to H. Comm. on Oversight & Gov’t Reform Majority Staff (Aug. 23, 2013, 11:36 a.m.).

<sup>134</sup> Telephone call between H. Comm. on Oversight & Gov’t Reform Majority Staff and Bureau of Legis. Affairs Staff, U.S. Dep’t of Justice (Sept. 20, 2013).

<sup>135</sup> Letter from Peter Kadzik, Principal Deputy Ass’t Att’y Gen., Legis. Affairs, U.S. Dep’t of Justice, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Sept. 23, 2013).

<sup>136</sup> Letter from Peter Kadzik, Principal Deputy Ass’t Att’y Gen., Legis. Affairs, U.S. Dep’t of Justice, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Sept. 27, 2013).

<sup>137</sup> Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, to Hon. Eric H. Holder, Jr., Att’y Gen., U.S. Dep’t of Justice (Sept. 30, 2013).

<sup>138</sup> Letter from Peter Kadzik, Principal Deputy Ass’t Att’y Gen., Legis. Affairs, U.S. Dep’t of Justice, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Oct. 4, 2013).

<sup>139</sup> Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform to Hon. Eric H. Holder, Jr., Att’y Gen., U.S. Dep’t of Justice (Oct. 31, 2013).

produced to the Committee contained more redactions than the same documents as produced to Judicial Watch. A number of the e-mails were classified just days before the Department's April 17 productions.

On February 5, 2014, the Department classified a September 16, 2012, e-mail chain from Eric Pelofsky to Ambassador Rice and five other individuals.<sup>140</sup> As discussed above, due to the Department's excessive redactions, the Committee would only have known that someone sent an e-mail to Ambassador Rice if not for the Department's production to Judicial Watch, a third party entity. The chain was retroactively classified as "confidential" with a declassify date of September 15, 2037—25 years after the attack on Benghazi.

Between April 9 and April 17, 2014, the Department retroactively classified all or part of five documents included in the April 17, 2014, productions.<sup>141</sup> The declassify dates range from five to 25 years, with three of four documents retroactively marked with "confidential" declassify dates of 15 years or more. To mark a document with the lowest possible classification but the highest possible declassify date—25 years—is highly unusual.<sup>142</sup> The classification authority, here the Deputy Assistant Secretary of State for Global Information Services, must select a declassification instruction that will result in the shortest duration of the classification. It is hard to believe that a "confidential" document would require such a long duration.

The Department has redacted all or most of the content of several "confidential" e-mails.<sup>143</sup> For a document to be marked as confidential, it must include material which would

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<sup>140</sup> E-mail from [Redacted] to Susan Rice, *et al* (Sept. 16, 2012, 1:19 p.m.) [C05415302, as produced to H. Comm. on Oversight & Gov't Reform]; E-mail from Eric J. Pelofsky, Senior Advisor to the U.S. Permanent Rep. to the U.N., U.S. Dep't of State, to Susan Rice, *et al*. (Sept. 16, 2012, 1:19 p.m.) [C05415302, as produced to Judicial Watch].

<sup>141</sup> E-mail from Ambassador Susan Rice to Eric Pelofsky, Senior Advisor to the U.S. Permanent Rep. to the U.N., U.S. Dep't of State (Sept. 11, 2012, 9:42 p.m.) (retroactively classified as confidential on April 9, 2014, with a declassify date of September 11, 2019) [C05415756, as produced to Judicial Watch]; E-mail from Eric Pelofsky, Senior Advisor to the U.S. Permanent Rep. to the U.N., U.S. Dep't of State, to Ambassador Susan Rice *et al*. (Sept. 11, 2012, 11:04 p.m.) (secret classification extended on April 17, 2014, with a declassify date of September 11, 2027) [C05415761, as produced to Judicial Watch]; E-mail from Ambassador Susan Rice, to Rexon Ryu, Deputy to the U.S. Permanent Rep. to the U.N., U.S. Dep't of State (Sept. 12, 2012, 7:30 p.m.) (retroactively classified as confidential on April 16, 2014, with a declassify date of September 12, 2032) [C05415804, as produced to Judicial Watch]; E-mail from Erin Pelton, Spokesperson, U.S. Permanent Rep. to the U.N., U.S. Dep't of State, to Eric Pelofsky, Senior Advisor to the U.S. Permanent Rep. to the U.N., U.S. Dep't of State, and Rexon Ryu, Deputy to the U.S. Permanent Rep. to the U.N., U.S. Dep't of State (Sept. 15, 2012, 2:21 p.m.) (retroactively classified as confidential on April 17, 2014, with a declassify date of September 15, 2027) [C05415286, as produced to Judicial Watch]; and E-mail from Rexon Ryu, Deputy to the U.S. Permanent Rep. to the U.N., U.S. Dep't of State, to Eric Pelofsky, Senior Advisor to the U.S. Permanent Rep. to the U.N., U.S. Dep't of State, *et al*. (Sept. 17, 2014, 10:11 a.m.) (secret classification extended on April 10, 2014, with a declassify date of September 17, 2037) [C05415931, as produced to Judicial Watch].

<sup>142</sup> E-mail from [Redacted] to Susan Rice, *et al* (Sept. 16, 2012, 1:19 p.m.) [C05415302, as produced to H. Comm. on Oversight & Gov't Reform]; E-mail from Eric J. Pelofsky, Senior Advisor to the U.S. Permanent Rep. to the U.N., U.S. Dep't of State, to Susan Rice, *et al*. (Sept. 16, 2012, 1:19 p.m.) [C05415302, as produced to Judicial Watch].

<sup>143</sup> *Id.*; see also E-mail from Ambassador Susan Rice, to Rexon Ryu, Deputy to the U.S. Permanent Rep. to the U.N., U.S. Dep't of State (Sept. 12, 2012, 7:30 p.m.) (retroactively classified as confidential on April 16, 2014, with a declassify date of September 12, 2032) [C05415804, as produced to Judicial Watch]; E-mail from Erin Pelton,

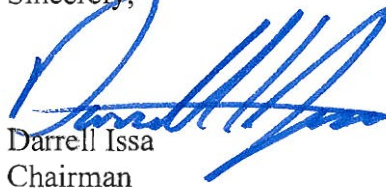
cause harm or prejudice to national security if publicly available. It is hard to believe that, given the extreme redactions to the content of the e-mails, every word meets that standard.

Further, many of these e-mails contain the notation "This email is UNCLASSIFIED" immediately below redacted text. These e-mails were sent among senior personnel at the U.S. Mission to the United Nations, who presumably know the difference between classified and unclassified material, and know that classified material must be transmitted via secure means. Thus, either these officials were improperly sending classified material via unsecure means, or the Department is excessively classifying documents after the fact to avoid embarrassment.

### **Conclusion**

I stand ready to assist your Committee in any way possible. If you would like to discuss any of the information contained in this letter, please contact me directly at any time. Alternatively, your staff may contact Brien Beattie or Jennifer Barblan of the Committee staff at (202) 225-5074.

Sincerely,



Darrell Issa  
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member