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Congress of the United States
House of Representatives

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LAWRENCE J. BRADY
STAFF DIRECTOR

April 26, 2013

The Honorable John F. Kerry
Secretary
U.S. Department of State
2201 C Street, NW
Washington, D.C. 20520

Dear Mr. Secretary:

The Committee on Oversight and Government Reform is investigating the facts and circumstances surrounding the September 11-12, 2012, attack on U.S. diplomatic facilities in Benghazi, Libya. On April 17, 2013, in a hearing before the House Committee on Foreign Affairs, you were questioned about the State Department's effort to stall the congressional investigation of the Benghazi attack. In response to a question from Chairman Ed Royce, you stated, "There's certainly no position by me to delay anything, and I was not aware."¹

I am writing to make you aware that the Department has in fact attempted to impede or otherwise delay the Committee's investigation, and it continues to do so. The Department has employed a range of tactics to interfere with the Committee's investigation including: an insistence that Committee investigators review all documents *in camera* (including unclassified documents); requiring a State Department minder to be present when investigators review evidence; and restricting the Committee's access to witnesses. The Department's posture towards the Committee's investigative prerogative has been wholly inconsistent with your testimony to the Foreign Affairs Committee and contrary to the President's pledge "to cooperate in any ways that Congress wants" with respect to the Benghazi investigation.²

The investigation has proceeded despite efforts by Department staff to limit the Committee's access to documents and witnesses. The Committee's investigation has been assisted by State Department employees and other witnesses who came directly to the Committee.

President Obama further stated that "[w]e have provided every bit of information that we have, and we will continue to provide information All that information will be disgorged to

¹ *Securing U.S. Interests Abroad: The FY 2014 Foreign Affairs Budget: Hearing Before the H. Comm. on Foreign Affairs*, 113th Cong. (Apr. 17, 2013) (statement of Hon. John F. Kerry, Secretary, U.S. Dep't. of State).

² President Barack Obama, Remarks at a News Conference (Nov. 14, 2012), *accessed at* <http://www.whitehouse.gov/the-press-office/2012/11/14/remarks-president-news-conference>.

Congress.”³ I urge you to consider whether the practices described below are consistent with the President’s commitment to cooperate with the congressional investigation of the Benghazi attack.

The State Department has restricted the Committee’s access to documents—both classified and unclassified.

The President stated unequivocally that documents relevant to the congressional investigation of the Benghazi attack will be made available to Congress. Despite that pledge, the Department’s actions with respect to the Benghazi documents have obstructed and interfered with the Committee’s investigation and its broad oversight responsibilities. Instead of negotiating a good faith agreement regarding how the Committee would handle the documents at issue, the Department sends an employee to Capitol Hill every morning with boxes containing documents relevant to the Committee’s investigation. These documents were not organized or catalogued in any logical way, documents were not permitted to be taken away, even temporarily, and all documents were returned to the Department at the end of each day.

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

The arrangement also forced Committee investigators to work around the Department’s schedule for making the documents available when, if the documents were in the Committee’s possession, Benghazi-related document review could have been expedited. For example, shortly before Easter, officials from the Department’s Bureau of Legislative Affairs asked the Committee to curtail the hours of its review, citing staffing shortages at the Department.

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.

All of this would have been avoided if the State Department simply turned over the documents in question as is normal with congressional investigations.

³ *Id.*

The State Department threatened to destroy Committee property.

In an effort to protect the integrity of the Committee's investigation and to accommodate the Department's interest in controlling sensitive information, I instructed Committee investigators to store key documents in a lock bag. These key documents were culled from the materials that arrived in boxes every morning and returned to the State Department every night. The lock bag remained with the rest of the documents at all times and left at the end of each day with the Department minder for overnight storage at the State Department.

In response, officials from the Department's Bureau of Legislative Affairs stopped making any of the Benghazi documents available to the Committee. They also delivered an ultimatum: unless the Committee provided the Department the key to the lock bag, and thus access to what amounted to a roadmap for 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. The Bureau of Legislative Affairs eventually relented from this remarkable threat to sabotage the Committee's property, but only after I personally intervened in response to a staff request.

The Department is interfering with its employees' right to communicate with Congress.

On April 16, 2013, I wrote to Principal Deputy Legal Adviser Mary McLeod to request information about the Department's process for clearing attorneys to possess or discuss sensitive or classified information. Because it is my understanding that the information I requested is readily available and well-known to the Department's lawyers, I asked that it be produced by 5:00 p.m. on April 17, 2013. To date, the Department has not responded.

During the course of the Committee's investigation, numerous individuals have come forward with information related to the Benghazi attack. Some witnesses may be required to retain personal counsel to represent them before the Committee and in case the Department retaliates against them for cooperating with the Committee's investigation. Additional witnesses may be compelled by subpoena to give testimony to the Committee and can be reasonably expected to retain personal counsel at that time. In each case, witnesses may need to share sensitive or classified information with their lawyers. The Department's unwillingness to make the process for clearing an attorney more transparent appears to be an effort to interfere with the rights of employees to furnish information to Congress.

Additionally, because it is unavoidable that Department employees identifying themselves as witnesses in the Committee's investigation will apply for a security clearance to allow their personal attorneys to handle sensitive or classified material, I requested that McLeod make clear to all State Department employees that they are free to furnish information to Congress in accordance with their statutory rights.⁴ To date, the State Department has not even

⁴ 5 U.S.C. § 7211 states: "The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied."

taken that modest step to assure whistleblowers that they will not face retaliation from the Department.

The Department's actions with respect to the Benghazi documents ignore the constitutionally-created relationship between the branches of government.

The Department's actions in this matter highlight a larger issue concerning the relationship between the branches of government. Under the Constitution, Congress and the Executive are coequal branches of government. Congress is charged by the Constitution with a right and a responsibility to conduct oversight of the Executive. However, the actions of the Department with respect to the congressional investigation of the attack in Benghazi belie that principle; rather, it gives the impression that the Executive can dictate the terms of the oversight prerogative vested in Congress by the Constitution.

The Department's posture towards the congressional investigation of the Benghazi attack creates the appearance that there is something to hide.

The Department's actions raise questions as to why the Department is treating the investigation of Benghazi differently from other matters that have been investigated by Congress. As the former Chairman of the Senate Committee on Foreign Relations, I expect that you share my view that access to information is the lifeblood of a congressional investigation. I also expect that when you were Chairman, you would not have allowed officials from an agency under investigation to be in the room while investigators reviewed and discussed key documents. When a federal agency insists on terms such as these, it begs the question, "What is it the Department seeks to hide?"

The State Department can avoid perpetuating the appearance of impropriety by simply turning over the documents in question as is normal with congressional investigations. The State Department can further mitigate the appearance that senior leadership is interfering with employees' right to communicate with Congress by responding to my letter dated April 16, 2013.

I recognize that the restrictive and obstructionist practices described above were implemented by your predecessor, Secretary Clinton, and that you may not even be aware of them. With that in mind, I hope you will review the Department's actions in response to the Committee's investigation and reevaluate the degree to which the Department will cooperate. 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.

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I also request that you direct Principal Deputy Legal Adviser Mary McLeod to immediately respond to my letter dated April 16, 2013. The Department's unwillingness to respond to that request is particularly troubling because witnesses have already described mismanagement by senior administration officials related to the September 11-12, 2012 attacks and subsequent attempts by the Department to obstruct the congressional investigation through intimidation.

I ask that you please respond to this letter no later than Tuesday, April 30, 2013. Please contact Brien Beattie or John Ohly of the Committee staff at (202) 225-5074 with any questions.

Sincerely,



Darrell Issa
Chairman

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