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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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LAWRENCE J. BRADY
STAFF DIRECTOR

July 31, 2013

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

Dear Mr. Secretary:

On December 19, 2012 -- approximately ten weeks after it was convened -- the Accountability Review Board (ARB) for Benghazi delivered a report that found certain senior State Department officials in Washington "demonstrated a lack of proactive leadership and management ability appropriate for the State Department's senior ranks in their responses to security concerns posed by Special Mission Benghazi"¹ In the section entitled, "Accountability of Personnel," the classified version of the ARB report assigned blame to four State Department officials -- Eric Boswell, Scott Bultrowicz, Charlene Lamb and Raymond Maxwell. Within days, Secretary Clinton placed those four officials on paid administrative leave.

The House Committee on Oversight and Government Reform investigation of the events before, during and after the September 11, 2012, attacks on U.S. diplomatic facilities is ongoing. In the course of this investigation, the Committee has heard testimony from all four individuals faulted by the ARB, as well as their supervisors and colleagues. Witnesses testified that the Department offered assurances to Boswell, Bultrowicz, Lamb and Maxwell that their administrative leave status would be temporary and that they would return to new assignments within the Department. More than seven months later, however, those four individuals remain on leave. The lack of a final determination, or even any sign that the Department is actively working to reach one, raises several questions, including: whether the Department has faith that the ARB's findings regarding accountability are complete and reliable; whether the Department is waiting for congressional investigators to announce their findings before resolving the paid administrative leave status of the officials in question; and, whether the Department will provide an opportunity for the officials on leave to respond to the ARB's findings before making a determination.

¹ Accountability Review Board Report, Unclassified Version (Dec. 19, 2012), at 39.

The Committee has certainly taken notice that while the Department hesitates to reach final determinations on the status of the four officials identified by the ARB, other officials with similar degrees of responsibility for security in Benghazi and the Department's flawed response to the attacks have been promoted. For example, Elizabeth Dibble was promoted to be the Deputy Chief of Mission in London.² Victoria Nuland was promoted to be the Assistant Secretary for the Bureau of European and Eurasian Affairs.³ These promotions -- which occurred while the employment status of the officials faulted by the ARB remains in limbo -- create the appearance that former Secretary Hillary Clinton's decision to announce action against the individuals named in the ARB report was more of a public relations strategy than a measured response to a tragedy.

Witnesses interviewed by the Committee -- including officials named by the ARB and their supervisors—are uncertain how and why the Secretary settled on paid administrative leave as appropriate course of action. It is also unclear how the State Department will resolve the employment status of the officials on leave. Witnesses did not know, and the State Department has not explained, what factors it will consider in deciding whether to allow these four officials to return to work. Furthermore, witnesses interviewed by the Committee testified that, in some cases, the individuals identified by the ARB bore no responsibility for the circumstances which led to the attacks in Benghazi.

Notwithstanding the ARB's findings, the responsibility for evaluating the performance of the officials on leave remains with the Secretary of State. With that in mind, I am writing to you to request information that will allow the Committee to better understand how the Department is conducting those performance evaluations.

I - The State Department relied on the ARB's findings to place several employees on paid administrative leave. In some cases, the ARB's findings were unrelated to the security situation at Special Mission Benghazi.

Witnesses interviewed by the Committee testified that their supervisors notified them they had been relieved of their responsibilities shortly after Secretary Clinton reviewed the ARB report. Chief of Staff Cheryl Mills and Under Secretary for Management Patrick Kennedy notified staff of the Secretary's decision.

The only individual singled out by the ARB from the Bureau for Near Eastern Affairs—the Bureau responsible for executing the Department's policy priorities -- was Deputy Assistant Secretary for Mahgreb Affairs Raymond Maxwell. Maxwell, a career Foreign Service Officer, had announced plans to retire prior to the attacks on Benghazi, but extended his service to help the Department through this difficult period. The ARB singled him out because he stopped attending morning meetings held to read certain intelligence material, which, according to witnesses interviewed by the Committee, contained no information that would have caused

² Josh Rogin, *Exclusive: Hillary's Benghazi Scapegoat Speaks Out*, The Daily Beast, May 20, 2013.

³ Siobhan Hughes, *Nominee Nuland Takes Heat Over Benghazi at Hearing* (July 11, 2013), <http://blogs.wsj.com/washwire/2013/07/11/nominee-nuland-takes-heat-over-benghazi-at-hearing/>.

Maxwell or anyone else to adjust the security posture at Special Mission Benghazi.⁴ Assistant Secretary for Near Eastern Affairs Elizabeth Jones informed Maxwell of the Secretary's decision to relieve him of his duties.⁵

The Committee interviewed witnesses, including supervisors, who questioned the basis for the ARB's criticism of Maxwell and the Secretary's decision to rely on the ARB to justify the Department's personnel actions against him. Ambassador Elizabeth Jones, who supervised Maxwell, agreed with the ARB's conclusion that it was inappropriate for him to stop attending the daily intelligence read-book meetings. She testified, however, that Maxwell's failure to read the daily intelligence had no connection to the inadequate security posture of the U.S. mission in Benghazi.⁶ Ambassador Jones's deputy, Deputy Assistant Secretary Elizabeth Dibble, agreed with that assessment.⁷ Jones also testified that she did not believe Maxwell's conduct warranted relieving him of his duty or placing him on paid administrative leave.⁸

Another individual cited in the accountability section of the ARB report was Assistant Secretary for Diplomatic Security Eric Boswell. The ARB criticized Ambassador Boswell for providing unsatisfactory supervision of his subordinate, Charlene Lamb, an official directly responsible for security decision making in Libya. Ambassador Boswell told the Committee that Under Secretary for Management Patrick Kennedy informed him that the ARB had cited him. Rather than wait for the Department to determine his fate, he decided to leave on his own terms and immediately penned his letter of resignation.⁹ Ambassador Boswell said he resigned in part because he did not feel the ARB's judgment concerning his performance was justified.¹⁰ Kennedy asked Boswell to remain at the Department as Director of the Office of Foreign Missions. Boswell, who agreed not to resign that position, was subsequently placed on paid administrative leave.

II - Senior State Department officials represented that paid administrative leave was an interim step before the reassignment of the employees in question. Those employees have been on leave for seven months.

Initially, the Department led the four individuals identified by the ARB and their supervisors to believe that they would be reassigned to new positions within their respective Bureaus. Senior Department officials informed all affected personnel that the administrative leave status would be temporary, allowing the Department time to evaluate the performance of the individuals who had been placed on leave.

⁴ Transcribed Interview of Ambassador Elizabeth Jones, H. Comm. on Oversight & Gov't Reform (July 11, 2013), Transcript at 90.

⁵ Transcribed Interview of Raymond Maxwell, H. Comm. on Oversight & Gov't Reform (May 30, 2013), Transcript at 29.

⁶ Jones Tr. at 88, 98-99.

⁷ Dibble Tr. at 64-65.

⁸ Jones Tr. at 89.

⁹ Transcribed Interview of Ambassador Eric Boswell, H. Comm. on Oversight & Gov't Reform (July 9, 2013), Transcript at 33.

¹⁰ *Id.* at 34.

According to Jones and Dibble, Maxwell was to be removed from his position as Deputy Assistant Secretary for Maghreb Affairs, but would remain in the Bureau of Near Eastern Affairs (NEA) in another capacity.¹¹ Before placing him on leave, Under Secretary Patrick Kennedy asked Boswell to stay on as Director of the Office of Foreign Missions, a position entirely unrelated to the events in Benghazi.¹² Boswell testified that Kennedy told him that the period of paid administrative leave would be brief.¹³ That was seven months ago.

Neither Ambassador Boswell nor Ambassador Jones, who each have decades of service in the Foreign Service, viewed administrative leave as a common practice, and neither was aware of any prior use of such an extended period of administrative leave.¹⁴ Because paid administrative leave is not considered an “adverse personnel action,” there is no means to challenge the decision. The Department’s approach to this process has been entirely inconsistent with its official position that the four individuals in question are entitled to due process. In the words of Department spokesman Patrick Ventrell:

It’s important to remember we’re dealing with four individuals who -- that we discussed are long-serving government officials who over the years have provided dedicated service to the U.S. government in challenging assignments. **And career Foreign Service employees are entitled to due process and legal protection under the Foreign Service Act, with respect to any potential disciplinary actions.**¹⁵

III - The reasons for Secretary Clinton’s decision to place four employees on leave remain unclear to those employees, and to their supervisors.

Maxwell’s case exemplifies a larger concern surrounding the Department’s process for assigning blame for Benghazi. The ARB’s conclusions about Maxwell were based on information that Maxwell himself conveyed in his interview with the Board. There was no further evaluation or effort to understand what, if any, effect the conduct the ARB criticized had on the security of U.S. facilities in Benghazi. In fact, Ambassador Jones -- Maxwell’s supervisor -- testified that the ARB never asked her about Maxwell’s conduct.¹⁶ She also testified that she has no knowledge of the Department’s review of Maxwell’s performance as part of the administrative leave process.¹⁷

The Committee interviewed other witnesses who shared similar concerns about the lack of a mechanism for responding to criticisms leveled by the ARB. For example, Ambassador

¹¹ Jones Tr. at 74; Transcribed interview of Elizabeth Dibble, H. Comm. on Oversight & Gov’t Reform (July 10, 2013), Transcript at 81.

¹² Boswell Tr. at 38.

¹³ *Id.* at 95-96.

¹⁴ Jones Tr. at 156-57.

¹⁵ Statement of Patrick Ventrell, Acting Deputy Spokesperson, U.S. Dep’t of State, Press Briefing (May 20, 2013) (emphasis added).

¹⁶ *Id.* at 99.

¹⁷ *Id.* at 77.

Boswell testified that, despite the fact the ARB cited him for unsatisfactorily supervising a subordinate, the ARB never asked him questions about his role as a supervisor.¹⁸ Nor did any other State Department official before he was placed on leave. To this day, he has not had a chance to address those allegations.

III -The Department appears to be treating employees involved in the Benghazi controversy who have criticized the ARB process differently from those who have not.

In contrast to the promotions of Victoria Nuland and Elizabeth Dibble to prominent new positions, the Department has not given other employees, notably those who have objected to the ARB's findings regarding accountability, an opportunity to advance their careers or respond to the ARB's charges. Maxwell and Boswell, both of whom announced plans to retire prior to the release of the ARB, changed those plans after being placed on paid administrative leave to preserve an opportunity to respond to the Board's criticisms of their conduct. Seven months later, they remain in limbo, unable to appeal their status or otherwise receive the due process they were promised. Gregory Hicks, the first-time DCM who ushered the U.S. Mission in Libya through the difficult period during and after the attacks and won praise from President Obama and other officials, was encouraged by his supervisors to curtail his assignment following criticisms of his management ability. The criticism of Hick's management style occurred after Hicks expressed concerns about the decisions of senior State Department officials following the attacks. Ten months later, he has been unable to obtain a comparable overseas assignment.

These examples raise questions about why the four individuals the State Department has singled out remain on paid administrative leave and how the Department intends to resolve their situations. The American Foreign Service Association and Members of Congress have repeatedly questioned the Department's approach. You even testified three months ago that you would weigh in on the Department's review of these individuals.¹⁹ And one month after that, your spokeswoman, Jen Psaki said:

In terms of these specific individuals you asked about, Secretary Clinton, as you know, began an administrative process to review the status of the four individuals placed on administrative leave. That review process continues. Secretary Kerry has been briefed regularly and will be making a decision soon. No, I can't define what soon means, just to preempt a question. And decisions will be made about the status of these employees.²⁰

IV - The State Department's process for assigning accountability is flawed because the ARB review was extremely limited.

¹⁸ Boswell Tr. at 32-33.

¹⁹ Testimony of Hon. John Kerry, Secretary, U.S. Dep't of State, before the H. Comm. on Foreign Affairs (Apr. 17, 2013).

²⁰ Statement of Jen Psaki, Spokesperson, U.S. Dep't of State, Press Briefing (May 16, 2013).

It took the ARB two months to identify four State Department personnel who, in its view, contributed to the inadequate security posture in Benghazi. The State Department did not hesitate to accept to the Board's conclusions and placed these individuals on paid administrative leave. This approach to accountability conformed with the Administration's publicly-stated position that the ARB was thorough and complete. White House spokesman Jay Carney and State Department spokesman Patrick Ventrell both touted the ARB's findings as definitive. Carney stated:

The Accountability Review Board which investigated this matter—and I think in no one's estimation sugarcoated what happened there or pulled any punches when it came to holding accountable individuals that they felt had not successfully executed their responsibilities—heard from everyone and invited everyone.²¹

With regard to the ARB, Ventrell stated: "We think that we've done an independent investigation, that it's been transparent, thorough, credible, and detailed, and . . . we've shared those findings with the U.S. Congress."²²

Secretary Clinton and other top State Department officials routinely declined to answer questions about Benghazi, instead referring reporters to the conclusions of the ARB report. However, several witnesses have testified that the ARB did not ask questions that would have informed the Board's findings regarding accountability. Witnesses have consistently disagreed with the ARB's findings, including the decision to cite Maxwell in the accountability section of the report.

The fact that, now seven months later, the Department has not resolved the administrative leave status of the four officials cited by the ARB, raises questions about the ARB's findings regarding accountability. The disparity and inconsistency between the treatment of these four individuals—both among themselves and as compared to other State Department personnel with responsibility for the security posture in Benghazi -- is striking.

To assist the Committee in understanding the process by which the Department is evaluating individual performance and accountability in the wake of the attacks in Benghazi, please provide a briefing as soon as possible, but by no later than August 7, 2013. Please be prepared to provide answers to the following questions:

1. Who made the decision to place the four individuals named in the ARB report on paid administrative leave?
2. For each of the four individuals on paid administrative leave, when was the decision made and what were the specific reasons for the decision?

²¹ James Rosen, *State Department's Benghazi Review Panel Under Investigation*, FoxNews.com, May 2, 2013.

²² *Id.*

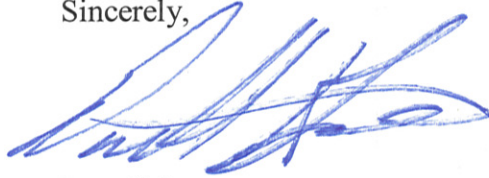
3. What is the State Department's internal definition of paid administrative leave?
4. Please describe any steps the Department has taken to evaluate the respective performances of the individuals who were placed on paid administrative leave.
5. Besides the findings of the ARB, what information is being considered as part of the performance evaluation process?
6. Who is conducting the performance evaluation(s)? Who will make a recommendation regarding how the administrative leave status should be resolved?
7. Is the Department delaying a final determination due to the ongoing congressional investigation or any other ongoing review, including, but not limited to a review being conducted by the Office of the Inspector General? If yes, please identify the investigation or review that is delaying the final determination.
8. Does the Department intend to offer individuals placed on paid leave a formal opportunity to respond to the ARB's criticisms of their conduct before making final decisions? Will their responses be made public?
9. How many times have you been briefed on the status of each of the four individuals placed on paid administrative leave?
10. Please explain why you have been unwilling or unable to reach decisions on these important personnel matters.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. Please provide the information requested by the Committee to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all information in electronic format.

The Honorable John F. Kerry
July 31, 2013
Page 8

Thank you for your attention to this important matter. Please contact Jonathan Skladany or Brien Beattie of the Committee staff at (202) 225-5074 with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Darrell Issa', is written over a light blue horizontal line.

Darrell Issa
Chairman

Enclosure

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