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PHILIP G. KIKO, STAFF DIRECTOR

# Congress of the United States

## House of Representatives

### Select Committee on Benghazi

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114<sup>TH</sup> CONGRESS

SUSANNE SACHSMAN GROOMS, MINORITY  
STAFF DIRECTOR

January 23, 2015

The Honorable Trey Gowdy  
Chairman  
Select Committee on the Events Surrounding  
the 2012 Terrorist Attack in Benghazi  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

When the Benghazi Select Committee was established on May 8, 2014, many questioned whether the Select Committee would devolve into unseemly partisanship. During some previous investigations—particularly on the Oversight and Government Reform Committee—ridiculous allegations were made with no evidence to back them up, excerpts from documents were leaked out of context to promote false political narratives, and Democrats were cut out of the investigative process in key ways that undermined the credibility of the investigation itself.<sup>1</sup>

In response to these concerns, you encouraged Democrats to join, assuring us and the American people that you would lead the Committee in a bipartisan way. For example, during an interview on national television last May, you stated: “I have said from day one I want this to transcend politics and I want it to inspire trust in you and our fellow citizens.”<sup>2</sup>

During another interview last May, you stated:

I have no friends to reward and no foes to punish. We’re going to go wherever the facts take us. ... Facts are neither Republican nor Democrat. They are facts. And if we

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<sup>1</sup> See, e.g., Remarks by Rep. Darrell Issa, Republican Party of New Hampshire, Concord GOP Committee and Merrimack County GOP Committee (Feb. 17, 2014) (online at [www.youtube.com/watch?v=DeTKeoA4SAM](http://www.youtube.com/watch?v=DeTKeoA4SAM)) (quoting Chairman Issa stating at a political fundraiser that he suspected Secretary of State Hillary Clinton told Secretary of Defense Leon Panetta to “stand-down”).

<sup>2</sup> *Fox News Sunday*, Fox News (May 11, 2014) (online at [www.youtu.be/XEFz4xed8vg?t=6m27s](http://www.youtu.be/XEFz4xed8vg?t=6m27s)).

overplay our hand or if we engage in a process that is not fair according to the American people, we will be punished as we should be for that.<sup>3</sup>

We chose to participate in this Committee in order to honor the request of Ambassador Chris Stevens' family that the death of their son not be "used for political purposes."<sup>4</sup> As I explained on May 21, 2014: "In short, I believe we need someone in that room to defend the truth."<sup>5</sup> We were hopeful, based on your public assurances, that this investigation would be a credible, bipartisan effort to get to the truth.

However, over the past eight months, Democrats have repeatedly been excluded from core components of the investigation, and we have been proceeding with no rules to prevent this from occurring in the future. You have had different standards for Republicans and Democrats participating in the investigation, secret meetings with witnesses, and—perhaps most importantly— withheld or downplayed information when it undermines the allegations we are investigating.

Democratic Members and staff have spent hundreds of hours trying to address these concerns with you privately, including in the attached letter from November 24, 2014. We have repeatedly proposed that the Committee vote on basic rules to help ensure that all Members—both Republicans and Democrats—are able to participate fully in the investigation.

Your current rule proposal fails to meet that standard. Your rules allow you to continue to meet separately with Committee witnesses, even when those witnesses are willing to speak with both Republican and Democratic Members. They enable you to unilaterally subpoena witnesses or documents without any public discussion or debate, even if there is significant disagreement from other Members of the Committee. We simply ask for a public debate and a vote by Committee Members on these actions when there is significant disagreement. Contrary to statements from your office, we have not asked for the ability to veto your actions, as your seven Republican Members can always outvote the five Democrats on the Committee. But when we strongly disagree with your actions, we would like a transparent process that enables us to voice our concerns publicly.

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<sup>3</sup> *Trey Gowdy Brings Reputation of Legal Skills, Bipartisan Praise to Benghazi Panel*, Washington Times (May 13, 2014) (online at [www.washingtontimes.com/news/2014/may/13/trey-gowdy-brings-reputation-of-legal-skills-bipar/?page=all](http://www.washingtontimes.com/news/2014/may/13/trey-gowdy-brings-reputation-of-legal-skills-bipar/?page=all)).

<sup>4</sup> See House Committee on Oversight and Government Reform, *Hearing on Reviews of the Benghazi Attack and Unanswered Questions*, 113<sup>th</sup> Cong. (Sept. 19, 2013) (quoting Stevens family statement for the record: "What Chris would never have accepted was the idea that his death would be used for political purposes").

<sup>5</sup> House Select Committee on Benghazi, *Statement of Rep. Elijah E. Cummings, Press Conference with Leader Pelosi Announcing Democratic Appointees to the House Select Committee on Benghazi* (May 21, 2014) (online at [www.democrats.benghazi.house.gov/news/press-releases/cummings-on-select-committee-we-need-someone-in-that-room-to-defend-the-truth](http://www.democrats.benghazi.house.gov/news/press-releases/cummings-on-select-committee-we-need-someone-in-that-room-to-defend-the-truth)).

You and I met with Speaker Boehner in December, and at that meeting you promised to give us a vote in this new Congress on Committee rules. Like all committees, we should have that vote at an organizational meeting in January, and certainly before the Committee starts holding public hearings. I therefore ask that you schedule that organizational meeting this month before our next scheduled hearing on January 27, 2015.

I also ask that you reconsider your current proposal and adopt the language that I have repeatedly proposed on these core issues. In order for this Committee to “transcend politics,” as you put it, we must break significantly from the model previously employed by the Oversight and Government Reform Committee. You must include Democrats in all key aspects of the Select Committee’s investigation. We should work together to go where the facts take us, and we should hold joint meetings, interviews, and discussions with potential witnesses. This is how several other committees currently operate, such as the House Committee on Armed Services.

We should also follow the bipartisan example of the House Permanent Select Committee on Intelligence and when we find evidence that disproves allegations, we should jointly share that complete truth with the public. Instead of adopting this principle, you have repeatedly dismissed exculpatory information when you have learned of that information in private, Republican-only interviews. One such example was described in my November 24, 2014 letter, regarding allegations about whether the State Department destroyed or failed to produce documents to the Accountability Review Board.

In another instance, I have recently learned that you have chosen to disregard the statements of someone who has firsthand information relevant to allegations that you continue to investigate and discuss publicly. Among other things, she has confirmed—based on her expertise and personal experience in Benghazi in the time period immediately before the attacks—that there was no illegal transfer of weapons from Libya to Syria. In fact, she said that the bipartisan report of the House Permanent Select Committee on Intelligence (HPSCI) should have been stronger in its language making this point. In its report, HPSCI concluded that “eyewitness testimony and thousands of pages of CIA cables and emails that the Committee reviewed provide no support for this allegation.”<sup>6</sup> Instead of crediting her testimony to help put this previously investigated and debunked allegation to rest, you followed up your private, Republican-only interview of this witness by requesting a broad set of documents from the State Department on this debunked allegation. In addition, your staff has now informed us that they do not intend to use this individual as a factual witness in the Committee’s investigation.

I believe you were correct last May when you stated, very eloquently, that the best way to honor Chris Stevens, Sean Smith, Ty Woods, and Glen Doherty and their families is to conduct

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<sup>6</sup> House Permanent Select Committee on Intelligence, *Investigative Report on the Terrorist Attacks on U.S. Facilities in Benghazi, Libya, September 11-12, 2012*, 113<sup>th</sup> Cong. (Nov. 21, 2014) (online at [www.intelligence.house.gov/sites/intelligence.house.gov/files/documents/Benghazi%20Report.pdf#page=17](http://www.intelligence.house.gov/sites/intelligence.house.gov/files/documents/Benghazi%20Report.pdf#page=17)).

The Honorable Trey Gowdy  
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this investigation in a transparent, fair, and bipartisan manner. It is time to implement Committee rules and practices that ensure transparency, fairness, and bipartisanship.

Sincerely,

A handwritten signature in blue ink that reads "Elijah E. Cummings". The signature is stylized and cursive, with the first name "Elijah" being the most prominent.

Elijah E. Cummings  
Ranking Member

Attachment

TREY GOWDY, SOUTH CAROLINA  
CHAIRMAN

SUSAN BROOKS, INDIANA  
JIM JORDAN, OHIO  
MIKE POMPEO, KANSAS  
MARTHA ROBY, ALABAMA  
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# Congress of the United States

## House of Representatives SELECT COMMITTEE ON BENGHAZI

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ELIJAH CUMMINGS, MARYLAND  
RANKING MEMBER

ADAM SMITH, WASHINGTON  
ADAM SCHIFF, CALIFORNIA  
LINDA SANCHEZ, CALIFORNIA  
TAMMY DUCKWORTH, ILLINOIS

November 24, 2014

The Honorable Trey Gowdy  
Chairman  
Select Committee on the Events Surrounding  
the 2012 Terrorist Attack in Benghazi  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

After the House established the Select Committee on Benghazi more than six months ago, you and I both committed to work together in a bipartisan manner so our investigation would have credibility with the public we serve. Although our conversations have always been courteous, I have become increasingly concerned that the investigation has taken a sharp turn for the worse and is becoming what you strenuously insisted it would not—another partisan investigation of the Benghazi attacks that blocks Democrats from meaningful participation.

As I have expressed to you previously on several occasions, one of my principal concerns based on my experience on the Oversight Committee was that Democrats would be excluded from witness meetings and interviews. However, both you and Speaker Boehner assured me and the American public that this investigation would be different—that it would be run in a transparent and bipartisan manner that the American people would be proud of.

Despite these pledges, Democratic Members and staff have now been excluded from at least five witness interviews that I am aware of, and the significance of these interviews was downplayed after a key witnesses failed to corroborate allegations we are investigating.

For example, in September, an article reported that Raymond Maxwell, the former Deputy Assistant Secretary of State for Maghreb Affairs, came forward with “a startling allegation.” Specifically, the reported claim was that “Hillary Clinton confidants were part of an operation to ‘separate’ damaging documents before they were turned over to the Accountability Review Board.” Employees reportedly were instructed to remove documents that might put senior officials “in a bad light.” The article also stated that Maxwell said that he “couldn’t help but wonder if the ARB—perhaps unknowingly—had received from his bureau a scrubbed set of documents with the most damaging material missing.”<sup>1</sup>

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<sup>1</sup> *Benghazi Bombshell: Clinton State Department Official Reveals Details of Alleged Document Review*, The Daily Signal (Sept. 15, 2014) (online at <http://dailysignal.com/2014/09/15/benghazi-bombshell-clinton-state-department-official-reveals-alleged-details-document-review/>).

Several conservative press outlets immediately seized on this report to claim that former Secretary Clinton's aides ordered the destruction of these documents to prevent Congress and the Accountability Review Board from ever seeing them.<sup>2</sup> As you know, there is a significant difference between destroying documents and the standard practice of identifying documents with legal and other sensitivities for further review.

On October 17, you were interviewed on Fox News by Greta Van Susteren, who asked if you believe Mr. Maxwell's allegation that "documents were tossed out." In response, you stated:

What you would do is what I'm going to do Greta, and that is, give Mr. Maxwell an opportunity to say what he perceived to happen and he's going to have to give us the names of the other people who were involved and then we're going to give them an opportunity to say whether or not they have a different perspective. It's going to be an investigation. And if there is a dispute as to what happened then we'll let your audience decide who has more credibility.<sup>3</sup>

In fact, several weeks before you made these public statements, your staff had already interviewed Mr. Maxwell, but they did not include, invite, or even notify Democratic Members or staff. Mr. Maxwell apparently identified for your staff a second witness that he claimed was present during this document review at the State Department. Mr. Maxwell identified this person as someone who could corroborate his allegations and someone he believes is credible.

Then, on October 16—one day before you appeared on Fox News—your staff interviewed this second witness, again without including Democrats. However, this second witness did not substantiate Mr. Maxwell's claims. To the contrary, he did not recall having been in the document review session Mr. Maxwell described, and he said he was never instructed to flag information in documents that might be unfavorable to the Department. He further reported that he never engaged in or was aware of any destruction of documents.

I did not discover any of this information from you or your staff but from the witnesses themselves. When my staff inquired with your staff about what they learned from the witness identified by Mr. Maxwell, your staff stated that he had worked at the State Department during

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<sup>2</sup> See, e.g., *Former State Department Official: Clinton Camp Destroyed Benghazi Documents*, BenSwann.com (Sept. 16, 2014) (online at <http://benswann.com/former-state-department-official-clinton-camp-destroyed-benghazi-documents/>); *Hillary Clinton Staffers Destroyed Benghazi Documents, State Dept. Official Claims*, Christian Post (Sept. 16, 2014) (online at [www.christianpost.com/news/hillary-clinton-staffers-destroyed-benghazi-documents-state-dept-official-claims-126510/](http://www.christianpost.com/news/hillary-clinton-staffers-destroyed-benghazi-documents-state-dept-official-claims-126510/)); *Report: State Department Official Claims They Destroyed Benghazi Documents To Protect Hillary Clinton*, Conservative Tree House (Sept. 15, 2014) (online at <http://theconservativetreehouse.com/2014/09/15/report-state-department-official-claims-they-destroyed-benghazi-documents-to-protect-hillary-clinton/>).

<sup>3</sup> *On the Record with Greta Van Susteren*, Fox News (Oct. 17, 2014) (online at [www.youtube.com/watch?v=xnEU6n\\_bfPs&feature=youtu.be&t=4m42s](http://www.youtube.com/watch?v=xnEU6n_bfPs&feature=youtu.be&t=4m42s)).

the relevant time period. Beyond that, however, they reported: “We learned nothing else of note in our discussion, so we don’t plan to conduct any additional follow up.”<sup>4</sup>

I am sure you understand—as a former prosecutor—that evaluating the credibility of witnesses and their allegations depends on whether the information they provide can be corroborated. Although your staff stated that they learned nothing “of note,” in fact they learned that this claim was not substantiated by a key witness. If our goal is the truth and not a preconceived political narrative, these interviews should have been conducted jointly, with both Democrats and Republicans present.

In some of our conversations in the past, you have suggested that whistleblowers might be willing to come forward to provide information only to you. That was simply not the case here. When my staff spoke with Mr. Maxwell and the additional witness he identified, both were willing to talk to Democrats, but your staff excluded them nonetheless.

In addition, your public statements before and after the recent election raise concern about additional witnesses you and your staff may have interviewed without Democrats. For example, at a campaign event in North Carolina on November 3, 2014, you reportedly stated that you had interviewed a witness earlier that day. As one local radio station reported, “Gowdy said a lot is happening in that investigation. Gowdy said he actually interviewed a witness in the Benghazi case earlier Monday . . . he just didn’t do it on television.”<sup>5</sup>

A week later, on November 11, 2014, you appeared on national television and stated that you had interviewed multiple witnesses. You stated:

[M]y goal was to have an investigation where witnesses who had never been talked to before felt comfortable coming forward because of the seriousness of our investigation **and that is precisely what is happening.**<sup>6</sup>

As the Ranking Member of this Committee, I should not have to learn about the Committee’s interviews and other activities in press reports covering your political campaign events. Moreover, public descriptions of the Committee’s work should reflect reality. If you wanted to discuss publicly the interviews you conducted, I believe you also should have disclosed the fact that a key witness failed to substantiate one of the primary allegations we are examining.

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<sup>4</sup> Email from Republican Staff to Democratic Staff, Select Committee on Benghazi (Oct. 23, 2014).

<sup>5</sup> *SC Congressman Trey Gowdy and US Senator Tim Scott Excite Enthusiastic Republicans Monday Night at the WNC AG Center*, WHKP Radio (Nov. 3, 2014) (online at [http://democrats.benghazi.house.gov/sites/democrats.benghazi.house.gov/files/documents/2014\\_11\\_03\\_WHKP-GOWDY.pdf](http://democrats.benghazi.house.gov/sites/democrats.benghazi.house.gov/files/documents/2014_11_03_WHKP-GOWDY.pdf)).

<sup>6</sup> *The Kelly File*, Fox News (Nov. 11, 2014) (online at [www.youtube.com/watch?v=j\\_1PwKsG-xA](http://www.youtube.com/watch?v=j_1PwKsG-xA)) (emphasis added).

When I raised these concerns directly with you last week, you informed me that you have spoken with at least three additional witnesses without the participation of Democrats. You also informed me that two of those witnesses provided information that helps debunk other allegations we are investigating.

I appreciate that, in response to my objections, you are now willing to provide contact information for these three additional witnesses. However, this one-sided process—in which you selectively inform Democrats only after-the-fact and when you deem appropriate—impairs the efforts of Committee Members who are seeking the truth.

To conduct the credible, bipartisan, and transparent investigation you described six months ago, we should pursue evidence together and when that evidence disproves allegations, we should follow the bipartisan example of the House Intelligence Committee and share the complete truth with the American public.

For all of these reasons, I respectfully request that the Committee hold a vote in December to adopt Committee rules to ensure that all Members—both Republicans and Democrats—are able to participate fully in this investigation, including in witness meetings and interviews. I ask that you provide a response to my request by December 1, 2014, so I can inform Democratic Members about your decision.

I sincerely believe we can return to a more bipartisan approach in this investigation, but it must include full participation by all Committee Members so we can have the professional, serious, and credible investigation we both want and the American people deserve. Thank you for your consideration, and I look forward to discussing this with you in the near future.

Sincerely,



Elijah E. Cummings  
Ranking Member