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House of Representatives

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June 22, 2015

The Honorable Elijah E. Cummings
Ranking Member
Select Committee on the Events Surrounding
the 2012 Terrorist Attack in Benghazi
U.S. House of Representatives
B-241 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Cummings:

Thank you for your letter dated June 17, 2015. In addition, I enjoyed visiting with you during the Committee's deposition. I did, however, find your letter quite ironic. Your letter claims to support "transparency as part of this investigation," however, it is the very absence of transparency on the part of those who possess the information this Committee needs that is thwarting the completion of our work. In a matter of mere weeks, the Committee received the relevant emails we requested from a non-government, former journalist (Mr. Sidney Blumenthal, hereinafter referred to as Witness Blumenthal) represented by private counsel (James Cole). Contrast that with the lack of cooperation over the past several months shown from the Department of State, the White House, and other administration entities in producing similar documents.

I fully realize you may not be in a position to tell the Committee whether the discrepancy between Mr. Blumenthal's production and that of the Department of State was because the former Secretary of State did not produce these emails to the Department of State or because the Department of State failed to produce the emails to the Committee. I would, however, expect you to be more helpful in gaining an understanding of why the legislative branch is denied access to clearly relevant documents sought since last year. You and other Democrats on the Committee claim to want an expedited pace, yet you have done nothing to secure documents from any executive branch entities. Worse than inaction, you have enabled this failure to produce and contributed to a culture of intentional non-compliance and correspondingly incomplete public record.

The new emails produced by Mr. Blumenthal to the Committee are squarely within the jurisdiction of the Committee and wholly consistent with the Committee's requests for production. It is for these reasons Witness Blumenthal and his counsel fully complied with the Committee's requests, and it is for these reasons the failure of either the Department of State or

The Honorable Elijah E. Cummings

June 22, 2015

Page 2

Secretary Clinton to comply is so vexing and unfortunate. Specifically, of the first 31 memos/emails Witness Blumenthal sent to Secretary Clinton concerning Libya and Benghazi in February and March of 2011, Witness Blumenthal produced 30 memos and emails to the Committee whereas the Department of State produced only 1.

As you well know, the Department of Justice, in court filings related to an ongoing prosecution of a defendant for his role in the murder of our four fellow citizens in Benghazi, said anti-Western sentiment may have contributed to the attacks. These memos/emails therefore are precisely the type of information the House of Representatives expected and intended our Committee to receive so it could discharge its responsibility to investigate “all” policies, decisions and activities that may have led to or contributed to the attacks.

Transparency, were the Administration serious about it, would have also entailed the timely production of documents considered by the Accountability Review Board—documents first requested nearly two years ago. Transparency would have been reinforced by the timely production of emails that reflect the activities and decisions of State Department leaders related to our facilities in Benghazi, Libya—emails initially requested seven months ago, and subpoenaed over three months ago. Friday’s production of Witness Blumenthal’s documents reflected a greater degree of transparency only because of the diligence of his counsel, who responded in a straightforward manner to a request for documents reflecting Mr. Blumenthal’s interactions with the executive branch. This production was in spite of, not because of, any affirmative action by the State Department to produce materials requested by this Committee last year. Most significantly, transparency would have revealed to this Committee last summer the fact that former Secretary Clinton used exclusively a personal email account hosted on her own private server to conduct official business of the State Department.

Your stated support of transparency has not been reinforced by your actions and has done nothing to spur the State Department to action so that we may complete the essential tasks we have been assigned. If you are genuinely interested in helping accelerate the pace with which our Committee discharges its responsibilities, call President Obama or Secretary Kerry and ask for the complete, timely production of relevant documents. The failure to do so may allow one to conclude your call for transparency is more of a talking point than a committed principle.

It is also important that I correct certain misapprehensions that have, inadvertently I am sure, made their way into media accounts quoting Democrat sources. The Committee never expected Witness Blumenthal to be able to answer questions about the attacks in Benghazi, Libya since Witness Blumenthal was (1) not in Libya at the time of the attacks, (2) has never been to Libya, (3) did not collect any of the data passed on to Secretary of State Clinton, (4) did not evaluate the reliability or accuracy of any information he passed on to Secretary Clinton and (5) was dealing with information gatherers who may have had a financial interest in Libya. So, the proper question is not why did the majority members of the Committee ask so few questions of a witness who so clearly had no independent information about the attacks in Benghazi? The better question is why Secretary Clinton wasted her time reading “intelligence” memos from a witness who had never traveled to Libya, had no firsthand knowledge of facts in Libya, had no conceivable way of vetting the information passed on and may have been working with others

who possessed a financial interest in Libya, and why she asked so few questions about the reliability and credibility of these memos before forwarding them—or ever.

All of this made the emails Witness Blumenthal sent to Secretary Clinton in the aftermath of the attacks in Benghazi – but before the 2012 Presidential election – all the more curious. Inasmuch as the witness knew nothing about the attacks in Benghazi it raises the question of why he was tasked with placing articles about Benghazi. So, the real question is not why did the Committee talk to Witness Blumenthal about Benghazi and Libya; rather, why did Secretary Clinton do so?

As for the release of the transcript of Witness Blumenthal's testimony, there are arguments on both sides. Thus far, the Committee has released no transcripts of any other witness interviews. Moreover, the Committee does not plan to release the transcript of any witnesses. Witness Blumenthal's counsel is well and uniquely suited to know the reasons for this. Releasing transcripts can impact the recollections of other witnesses, jeopardize the efficacy of the investigation, alert witnesses to lines of inquiry best not made public, and publicize personal information. Not only have there been no releases of previous Committee transcripts, there have been no leaks of any information provided during those interviews.

On the other hand, I have seen gross mischaracterizations of what happened inside the deposition room in certain press releases. That mitigates toward release of the transcript so the public can see the utterly commonsensical rationale of asking background questions related to employment and income as well as the reason few questions were asked of Witness Blumenthal related to the attacks on our four fellow Americans in Benghazi. Simply put, it was readily apparent earlier on during the deposition that Witness Blumenthal not only knew nothing about the "intelligence" he forwarded from unvetted and uncorroborated sources in Libya, he also knew nothing about Libya or Benghazi period. Rather than criticizing the majority members of our Committee for uncovering these facts, perhaps it would serve our inquiry better if you questioned Secretary Clinton's decision to accept so many emails from him, comment in some instances on those emails, act in some instances on those emails, and forward those emails on to others.

I am scheduling a meeting with all members of the Committee so we can discuss why this witness' transcript should be treated differently from all others previously interviewed and all others to come. I have placed the burden of persuasion on those arguing for a departure from ordinary course. In other words, there is clear precedent. Why should it be broken for this witness? The only argument I have heard to date for treating Witness Blumenthal differently from every other witness interviewed by the Committee and every other witness to be interviewed by the Committee is that he was issued a subpoena rather than a letter. You and I know how absurd this is because subpoenas are routinely issued for witnesses in all manner of tribunals all across the country. A subpoena would be appropriate for a non-government witness whereas a letter request works quite well with current government employees. Witness Blumenthal does not work for the government nor has he during this administration inasmuch as the White House nixed his aspiring employment in 2009. In addition, Committee staff reached out to Mr. Blumenthal personally to discuss his testimony before the Committee. He did not

The Honorable Elijah E. Cummings

June 22, 2015

Page 4

return a message left with a responsible party. Thereafter, we exercised the Committee's prerogative to ensure that he would appear and answer all questions posed. Subsequent to the issuance of the subpoena, Mr. Blumenthal retained counsel and we worked cooperatively with his counsel to set a mutually convenient date and time for the deposition.

In addition, having considered the comments received from you and your staff following notice and consultation, I am publicly releasing Mr. Blumenthal's email production today. His production of emails to the Committee far exceeds that made to date by the Department of State. Thus, for those who feverishly called for the public release of Secretary Clinton's partial emails previously, the production of far more emails – thus contributing to the wholeness of the public record – should be embraced. The release includes necessary redactions, taking into account the comments received from Mr. Blumenthal's counsel last week. The public release is consistent with your previous and multiple requests that all of Secretary Clinton's emails be released as well as the Secretary herself who has said repeatedly she wants her emails to be made public as soon as possible. I, on the other hand, did not support the release of Secretary Clinton's emails because I have absolutely no assurance this represents the full body of relevant material. Nonetheless, the Department of State made the decision to release her emails previously. Curiously these emails released today were not part of either the Department of State's public release or their private production to our Committee. I look forward to working with you to determine why these relevant emails had to be produced by a lay witness rather than an administration pledged to transparency.

Sincerely,



Trey Gowdy
Chairman

cc: Mr. James M. Cole, Sidley Austin LLP