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# Congress of the United States

## House of Representatives Select Committee on Benghazi

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January 26, 2015

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114<sup>TH</sup> CONGRESS

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

Dear Ranking Member Cummings:

Thank you for your letter from last Friday and the opportunity to respond to several misconceptions you appear to have regarding certain aspects of this investigation. While the posture taken in the letter is considerably different than the lengthy conversations we have had in private, I maintain high hopes we will continue our constructive and bipartisan relationship as we endeavor to uncover all the facts surrounding the Benghazi attacks.

As you know, we have worked together harmoniously on a number of issues over the past eight months. We have held several joint hearings, briefings, and meetings. These include two hearings on topics suggested by Democratic members of the Committee, a briefing with the FBI regarding its prosecution of Ahmed Abu Khatalla, multiple viewings of videos relating to the attacks provided by the FBI and State Department, a meeting with the State Department and CIA regarding death benefits, and five separate meetings with family members of those who died during the attacks. In fact, one independent commentator wrote in the *Washington Post* after the Committee's first hearing that "[t]his is exactly what congressional oversight should be: a bipartisan effort by legislators to make sure executive branch officials don't repeat past mistakes. The resulting bonhomie was unprecedented in the two years of Benghazi bickering."<sup>1</sup>

Beyond such public geniality, however, this bipartisanship has extended behind the scenes as well. When I shared the Committee's investigative plan with you, you provided invaluable advice regarding the topics of suggested hearings, possible witnesses, and even dates of major Committee events. You have had the opportunity to review, edit, and narrow document requests that were sent to the State Department and National Security Council.

These facts show that we have worked well together, can continue to work well together, and that the work of the Committee can in fact be done in an inclusive manner. However, bipartisanship is a two-way street, and I do remain hopeful that we can continue down the path we have so far forged together.

Your letter raises two complications that need to be addressed. First, Minority members of the Committee, some as recently as last week, have stated on many occasions they believe this Committee serves no purpose, as everything relating to Benghazi has already been asked and answered. Your Compendium of

<sup>1</sup> Dana Milbank, *Trey Gowdy's unexpected Benghazi twist*, WASH. POST (Sept. 18, 2014).

Investigative Resources, released on the eve of our first hearing, instantly prejudged facts that are not yet in evidence. However, your own letter is incongruent with this oft-repeated argument by acknowledging the Committee has, in fact, received new information from multiple individuals.

As you are aware, this Committee recently obtained 15,000 pages of new, lesser-redacted documents from the State Department pursuant to an outstanding subpoena issued by the Oversight Committee. We have also received information from multiple individuals that has helped clarify our understanding of certain previously raised allegations. Some may believe that the best course of action is to take these individuals' words at face value, make an immediate conclusion, and selectively release misleading information to the public. I believe it is more prudent to obtain corroborating evidence and evaluate all of the relevant issues in light of all of the relevant evidence - present and future - before making any final determinations. Simple fairness and professionalism - as well as the need to avoid unduly influencing witnesses and evidence gathering - should compel us to withhold the release of any investigative findings during the pendency of the investigation. While this may not be politically convenient for either of us, we cannot risk undermining the integrity of our investigation simply to score political points. We cannot conduct an objective investigation if you continue to put out conclusory information based on fragmentary or insufficient evidence.

Second, your characterization of witness testimony, even in the form of a letter, not only risks an adverse effect on the investigation but also could also negatively impact the witnesses' careers. We rely on individuals to speak with us candidly, and privately, about their actions and observations regarding Benghazi; and this Committee has endeavored to create a safe environment where individuals can approach us anonymously without fear of retribution from their employer. However, most witnesses with direct knowledge of the events in Benghazi are currently still employed in the executive branch, so when you characterize their testimony for political gain, it understandably causes discomfort for individuals who speak to the Committee.

This characterization of witness testimony also serves as a major deterrent for other individuals who may be contemplating speaking voluntarily to the Committee. They may view these actions as an inability to safeguard information they share with the Committee, and therefore may not come forward in the future to speak with the Committee. To the extent you disagree that my proposed rules package allows the Majority to speak with a confidential source or whistleblower outside the purview of the Minority - something the Minority is also allowed to do outside the purview of the Majority - you need to look no further than your letter to understand why the rule pertaining to these individuals contains the language that it does.

However, I am also acutely aware of the immense respect you have from the Administration and am cognizant of the unique role that you play as Ranking Member of this Committee. To that end, I will continue to solicit your assistance in identifying witnesses who are willing to come forward and speak with us without needing to compel their testimony through the issuance of a subpoena.

Your letter also raises the notion that I may "unilaterally subpoena witnesses or documents without any public discussion or debate, even if there is significant disagreement from other Members of the Committee." While I understand that such an argument has become a popular Democrat talking point in recent weeks, the fact remains that the House of Representatives carefully considered and voted - twice - to give the Chairman of this Committee such authority. When the House voted to first constitute this Committee, seven of your fellow Democrats voted in favor.

While your suggestion of a public debate and a vote by Committee Members before the issuance of a subpoena is impractical and simply not functional for an investigative committee such as ours, I intend to give you, absent exigent circumstances, seven calendar days of notice before I issue a subpoena. This will provide

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ample opportunity for you and other Members of the Committee to discuss with me any concerns you may have. This is far more generous towards the Minority than any other Committee that has been granted similar authority and provides exactly the advance consideration that Democratic members have asked for recently in other Committees. Additionally, the rules package negotiated between our staffs goes beyond what the House Resolution creating this Committee envisioned, beyond what other committees have, and beyond even the leadership Memorandum of Understanding that dates back to last May.

The Committee can hold an organizational meeting - something we are not required to do under House Rules - if you will support a Committee Rules package that contains provisions specifically intended to ensure meaningful bipartisan consultation in the conduct of the investigation. While we can certainly disagree on the issues, the Committee's work must be conducted in a constructive manner by all of our members and staff going forward to make any bipartisan consultation genuine and meaningful.

If my understanding of this situation is incorrect, I welcome your comments on where I am mistaken. Your insistence on having Committee Rules goes beyond what the House Rules require us to do. However, I am willing to make an agreement with you to observe the Rules that are attached to this letter. This proposal is eminently fair, and as a whole grants the Minority a more substantial role than any previous select committee, whether controlled by Democrats or Republicans.

I have told you from day one that I intend for this Committee to operate in a manner worthy of the memories of our four fallen heroes. I do not intend to depart from that promise. I look forward to putting these administrative issues behind us and focusing on the investigative work that will take place in the coming months. I have known you to be a fair partner and expect for that cooperation to continue.

Respectfully,



Trey Gowdy  
Chairman

Attachment

January 26, 2015

**Rules of the Select Committee on the Events Surrounding the 2012 Terrorist Attack on Benghazi**

**Rule 1  
Select Committee Rules Generally**

The Rules of the Select Committee on the Events Surrounding the 2012 Terrorist Attack on Benghazi are the Rules of the House of Representatives as provided for by H. Res. 567 of the One Hundred Thirteenth Congress as well as the additional rules and authorities provided in that Resolution, unless otherwise modified by the House. The Committee's additional Rules are adopted only to the extent that they are not inconsistent with the provisions of H. Res. 567 of the One Hundred Thirteenth Congress.

**Rule 2  
Short Name**

The Committee may also be referred to in Committee documents and materials by the short name of "Select Committee on Benghazi".

**Rule 3  
Consultation**

In any instance in which consultation is required, such consultation shall be meaningful, with sufficient opportunity for the Ranking Member to raise relevant concerns and have them fairly evaluated. Unless otherwise specified, consultation shall occur at least 24 hours before the event or contemplated action.

**Rule 4  
Staff and Resources**

The resources of the Select Committee, including budget authority and staff slots, will be allocated in the traditional manner for Committees of the House, providing two-thirds of the resources to the majority and one-third to the minority, except the majority and minority shall each receive one additional senior staff slot. The chair of the Select Committee will entertain reasonable requests for additional resources from the minority if in the interest of furthering the inquiry.

**Rule 5  
Access to Records**

All members of the Select Committee and Committee staff with appropriate clearances and accesses shall have equal and timely access to all documents received by the Select Committee.

**Rule 6**  
**Release of Records**

To the extent practicable, the Chair and Ranking Member shall each consult the other at least five business days before publicly releasing any documents or portions of documents received by the Select Committee. In any event, such consultation shall occur at least 24 hours before the public release of documents or portions of documents received by the Select Committee.

**Rule 7**  
**Advance Notice of Hearing Witnesses**

The Chair and Ranking Member will make good faith mutual efforts to inform each other of proposed hearing witnesses in a manner allowing consultation and mutual consideration in advance of the final deadlines provided for by the Rules of the House of Representatives. If the Chair and Ranking Member are unable to reach such consensus, the Chair and Ranking Member shall each endeavor to provide notice to each other of the identities of any witnesses invited to testify by the majority or requested by the minority at a hearing of the Select Committee at least five days prior to such hearing. The Chair and Ranking Member shall also provide contact information for their witnesses.

**Rule 8**  
**Fair Treatment of Minority Requests for Witnesses**

The Chair shall allow for fair and appropriate representation by minority witnesses consistent with the Rules of the House. If the Chair receives a request pursuant to clause 2(j)(1) of rule XI of the Rules of the House of Representatives, the Chair will schedule the date to receive testimony from the minority requested witnesses at a date mutually agreed upon by the Chairman and Ranking Member. If the Chair and Ranking Member are unable to mutually agree on a date, the Chair will schedule the date to receive testimony from the minority requested witnesses no later than 14 days after the original hearing.

**Rule 9**  
**Witness Statements in Committee Hearings**

Witnesses shall submit written statements to the Committee two business days prior to a hearing. For any witnesses invited within three business days of the hearing, witness statements shall be provided as soon as practicable. Written testimony shall be distributed to all Committee Members as soon as it is received. The Chair may waive these requirements after consultation with the Ranking Member, which may be within 24 hours of the hearing if the testimony is received within 24 hours of the hearing..

**Rule 10**  
**Questioning of Witnesses in Committee Hearings**

The Chair may, after consultation with the Ranking Member, recognize each Committee Member to question witnesses for periods of up to ten minutes under the authority provided for by Section 4(c)(6) of H. Res. 567 of the One Hundred Thirteenth Congress and Section 4(a) of H. Res. 5 of the One Hundred Fourteenth Congress until such time as each member of the Select Committee who so desires has had an opportunity to question such witness.

**Rule 11**  
**Bipartisan Availability of Witnesses**

To the extent practicable, witnesses shall be available equally to both the majority and minority. During initial contact with a potential witness to arrange for an appointment to question that individual, Select Committee staff shall inform the individual that Select Committee substantive discussions are conducted on a bipartisan basis to determine if the individual seeks or is willing to conduct substantive discussions on a bipartisan basis.

**Rule 12**  
**Advance Notice of Subpoenas**

At least seven calendar days before issuing any subpoena pursuant to Section 4 of H. Res 567 of the One Hundred Thirteenth Congress, the Chair shall consult with the Ranking Member regarding the authorization and issuance of such subpoena, and the Chair shall provide a full copy of the proposed subpoena, including any proposed document schedule, at that time. The Chair shall consider any comments or objections raised by the Ranking Member or any member of the Committee within the seven calendar days prior to issuing the subpoena. The Chair may act notwithstanding this provision in circumstances that do not reasonably allow for these requirements, but shall make reasonable efforts to consult with the Ranking Member in such circumstances.

**Rule 13**  
**Advance Notice of Scheduled Interviews**

To the extent practicable, the Chair shall provide the Ranking Member with advance notice at least five business days prior to any scheduled interview and shall permit the minority to participate equally in the interview.

**Rule 14**  
**Protocol for Confidential Informants**

During an initial contact with a potential confidential source, Select Committee staff shall inform the individual that Select Committee substantive discussions are conducted on a bipartisan basis to determine whether the confidential source is willing to share information with staff for both the Chairman and the Ranking Member. If a potential witness objects to providing information to both the majority and the minority, the individual may be treated as a confidential

source. A confidential source is defined as any individual who wishes to provide information to the Select Committee on the condition that such information and/or the identity of the individual shall remain confidential. If a confidential source does not wish to disclose information to both the majority and the minority, Select Committee staff may continue to obtain information from the confidential source subject to the following restrictions:

- a) Agreement with Confidential Source: Select Committee staff (majority or minority) shall negotiate an agreement with a potential confidential source regarding that individual's disclosure of information to the Select Committee, including maintaining confidentiality of his or her identity (the "confidential source agreement"). Only staff authorized by the Chairman or Ranking Member may make a confidential source agreement. The confidential source agreement shall be provided to all staff and Members who have access to the confidential source or any information or documents provided by the confidential source. Such staff and Members shall abide by the terms of the confidential source agreement unless and until the confidential source agreement is modified or information related to the confidential source is approved for public release, as provided below. However, if the majority or minority staff did not have access to the information, these procedures do not restrict the ability of the staff that did not have access to the information to seek or use information from the source that may be obtained independently of the confidential information provided to the other staff. When Select Committee staff determines that modification of a confidential source agreement is necessary, staff responsible for the existing confidential source agreement may seek a further agreement with the confidential source. If such further agreement cannot be reached, the existing confidential source agreement shall be honored with respect to any information that has been shared with both sides. If modified, the modified confidential source agreement supersedes or modifies the original agreement and shall be provided to all staff and Members who have access to the confidential source or any information or documents provided by the confidential source. Such staff and Members shall abide by the terms of the modified confidential source agreement with respect to any information that has been shared with both sides.
- b) Public Disclosure of Confidential Sources: Any public release of information shared by a confidential source subject to a confidential source agreement must be made in accordance with the terms of the existing confidential source agreement. To the extent that such public release still requires confidentiality of information, such as the identity of the confidential source, all parties with access to that information shall abide by the terms of the confidential source agreement with respect to such information.
- c) Procedure for Release of Information: No information provided by a confidential source subject to a confidential source agreement shall be released publicly, and no public reference shall be made to such confidential source or such information, unless 1) such public release is in accordance with the terms of a confidential source agreement, 2) at least five business days prior to the public release or reference, the Chairman and Ranking Member have been provided: the identity of the confidential source, a description of the information obtained from the confidential source that is to be disclosed, an opportunity to question the witness directly, and copies of any documents

related to the confidential source that will be disclosed; and 3) the Committee votes to authorize the release of such information.

#### **Rule 15**

##### **Select Committee Investigative or Oversight Reports**

Select Committee investigative or oversight reports, including the final report required by section 3(a) and any interim reports the Committee deems necessary under Section 3(b) of H. Res. 567 of the One Hundred Thirteen Congress, shall be approved by a majority vote at a business meeting of the Select Committee at which a quorum is present. Any such report shall be made available to all members of the Select Committee at least three calendar days (excluding Saturdays, Sundays and legal holidays) before consideration by the Select Committee or public release. Any other report shall be made available to all members of the Select Committee at least three calendar days prior to the release of the report to the public and a member of the Select Committee may notice an intent to file supplemental, minority, additional, or dissenting views as if pursuant to clause 2(l) of Rule XI and clause 3(a)(1) of Rule XIII of the Rules of the House of Representatives.

#### **Rule 16**

##### **Committee Travel**

Consistent with the Speaker's policies, every effort should be made to ensure that international travel related to the Select Committee's investigative and oversight activities is bipartisan. The Select Committee shall file with the Clerk of the House reports disclosing all expenditures for international travel and the purpose of those expenditures as required.