

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,)	
)	
<i>Plaintiff,</i>)	
)	Civil Action No. 15-cv-692 (APM)
v.)	
)	
U.S. DEPARTMENT OF STATE,)	
)	
<i>Defendant.</i>)	
<hr style="width: 45%; margin-left: 0;"/>		

**REPLY IN SUPPORT OF PLAINTIFF’S
CROSS-MOTION FOR SUMMARY JUDGMENT**

The record makes clear that Defendant has not met its burden under the Freedom of Information Act (“FOIA”) to justify its limited search and its concealment of the responsive information identified in Plaintiff’s opening brief. First, Plaintiff Judicial Watch, Inc. (“Judicial Watch”) correctly asserts that a reasonable search must include the official agency email accounts of Secretary Clinton’s closest advisors who discussed the subject matter of Plaintiff’s FOIA request with Secretary Clinton during their term. Second, the supplemental declaration submitted by Eric F. Stein on behalf of Defendant U.S. Department of State (“State” or “State Department”) does little to justify the non-disclosure of the email communication from Secretary Clinton to Jacob Sullivan concerning Ambassador Rice’s appearance on NBC’s “Meet the Press” as deliberative. The declaration reaffirms that the Secretary Clinton’s recommendation was a final agency decision and that its disclosure would not reveal information within the deliberative process. And third, Defendant’s argument that the government misconduct exception should not apply is unconvincing. For all of the reasons asserted herein and those described in Plaintiff’s cross-motion for summary judgment (“Pltf. Cross-SJM”) (ECF No. 43), the Court should order a

supplemental search and disclosure of the records identified in Plaintiff's cross-motion for summary judgment.¹

ARGUMENT

1. Defendant's search does not satisfy its obligations under FOIA.

Defendant's search is inadequate because it excludes obvious agency systems of records that are known to contain Secretary Clinton's emails that are potentially responsive to Plaintiff's FOIA request. Plaintiff's FOIA request at issue (FOIA Request 1) seeks Secretary Clinton's emails concerning the terrorist attacks on the U.S. Consulate in Benghazi, Libya on September 11, 2012 during which four Americans were killed, including a U.S. Ambassador. Plf. Cross-SJM at pp. 4-5. The State Department argues that its search of the emails returned by Secretary Clinton's personal attorneys in December 2014, the emails returned by three of her high-level staff members, Cheryl Mills, Huma Abedin and Jacob Sullivan, also from their unofficial email accounts in 2015, as well as some of Secretary Clinton's agency emails recovered by the FBI in August 2016 during its investigation of Secretary Clinton's use of unsecure email system is sufficient to meet its obligations under FOIA. The fallacy in Defendant's argument, however, is that it asks this Court and the public to ignore the undisputed facts that this is an incomplete list of systems of records known to contain Secretary Clinton's agency emails and none of these systems of records contain a complete set of her agency emails from her time at the State Department. *Id.* at pp. 3-6. While Plaintiff does not seek a perfect search, nor does it seek to duplicate efforts already undertaken by other courts in connection with Secretary Clinton's use

¹ While Plaintiff already stated in its opening brief that it does not contest Defendant's response to FOIA Request 2, it is misleading for Defendant to state in its opposition brief that, because Plaintiff diligently worked to narrow the objections it wished to pursue in litigation, the remainder of Defendant's response satisfies its legal obligations under FOIA. Defendant's Opposition to Plaintiff's Cross-Motion for Summary Judgment ("Def. Opp.") (ECF No. 45) at pp. 2-3. Defendant omits to mention that it had not yet provided all non-exempt responsive information to FOIA Request 2 when it moved for summary judgment. Plaintiff Cross-Motion for Summary Judgment ("Pltf. Cross-SJM") (ECF No. 43) at n. 1. For that reason alone, Defendant would not have been entitled to summary judgment as a matter of law when it moved the Court.

of unofficial email account, Plaintiff does demand that the State Department undertake a search of the most obvious systems of records that contain Secretary Clinton's emails for it to meet its obligations under FOIA.

Defendant misleadingly and mistakenly asserts in its opposition to Plaintiff's cross-motion for summary judgment ("Def. Opp.") that Plaintiff does not provide statutory or case law support for its position that a request for agency emails from one government official may require searches of other officials' agency's email accounts in the normal course of a FOIA request. Def. Opp. (ECF No. 45) at p. 5. This Circuit has clearly settled that the adequacy of an agency's search in the normal course of FOIA is determined on a case by case basis, "dependent upon the circumstances of [each] case." *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983) (*quoting Founding Church of Scientology v. National Security Agency*, 610 F.2d 824, 834 (D.C. Cir. 1979); *citing McGehee v. Central Intelligence Agency*, 697 F.2d 1095, 1100-01 (D.C. Cir. 1983)). Further, where multiple systems of records are likely to contain potentially responsive records, the agency "cannot limit its search to only one record system." *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995) (internal citations omitted). In this case, it is definitely known, not just likely, that the State Department excluded agency systems of records that contain potentially responsive records from its search.

It is undisputed that the set of emails hand-selected and returned by Secretary Clinton's private attorneys almost two years after the secretary's tenure terminated at the State Department is not a complete set of Secretary Clinton's agency emails while she was the U.S. Secretary of State. Pltf. Cross-SJM at pp. 3-5. As addressed in Plaintiff's cross-motion, FBI Director Comey announced on July 5, 2016 that the FBI recovered "thousands" of agency emails with Secretary Clinton that were not returned by her personal attorneys to the State Department in December

2014. *Id.* at p. 5. Since Plaintiff’s cross-motion for summary judgment, the FBI has revealed that at least 1,539 work-related emails directly between Secretary Clinton and Huma Abedin on their unofficial email accounts were not among the emails Secretary Clinton’s attorneys returned to the State Department in December 2014. Ex. 1 (FBI Investigation Notes of Hillary R. Clinton, Part 6 of 6, marked with Bates Stamp HRC-1002), *also available* online at <https://vault.fbi.gov/hillary-r.-clinton> (accessed February 9, 2017).²

The predicament the State Department finds itself in as a result of its own making is that the former secretary’s agency emails are spread over a number of records systems, creating a complex web of the “filing system” of her agency emails. In other words, a number of storage systems contain Secretary Clinton’s agency emails, – while not one single storage system contains *all* of her government agency emails in their entirety. Ex. 1; Pltf. Cross-SJM at pp. 3-6, 8. One storage system that contains some of Secretary Clinton’s agency emails is the set of approximately 30,000 emails returned to the State Department by her personal attorneys in December 2014. Pltf. Cross-SJM at pp. 3-4. Another storage system is the set of agency emails returned by her closest advisors with whom she regularly emailed during their tenures at the State Department. *Id.* These officials include Huma Abedin, Cheryl Mills and Jacob Sullivan and are emails also from their unofficial email accounts. Another storage system is the set of emails recovered by the FBI. *Id.* at p. 5. Yet, another storage system, as equally obvious as the ones already mentioned, are the *official* government email accounts of all State Department officials Secretary Clinton communicated with during the course of her State Department tenure for government business. *Id.* at p. 7. While such a list is likely to be more than a select few –

² Plaintiff respectfully requests that the Court take judicial notice of the FBI investigation notes, which “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2).

such a list has not yet been provided by Secretary Clinton or the State Department, although it has been requested by Plaintiff in an unrelated lawsuit pending before this Court³ – Plaintiff has requested that the State Department search the official government email accounts of only the officials Defendant identified as likely having conversed with Secretary Clinton about the subject matter of Plaintiff’s FOIA request: Cheryl Mills, Huma Abedin and Jacob Sullivan. *Id.* at p. 4. Their official email accounts are known storage systems or systems of records that contain potentially responsive records and Defendant must search them to comply with its FOIA obligations. Defendant’s arguments that it need not do so to comply with FOIA are groundless.

Defendant also points to the fact that the search of the emails returned by Cheryl Mills, Huma Abedin and Jacob Sullivan from their unofficial email accounts and the FBI’s recovered records in August 2016 resulted in only 4 responsive records. This is irrelevant and does not diminish Defendant’s obligation to search records systems it knows to contain potentially responsive records. Where multiple systems of records are likely to contain potentially responsive records, the agency “cannot limit its search to only one record system.” *Nation Magazine*, 71 F.3d at 890. Furthermore, Defendant’s description that some of the records are “near duplicate” also bears no legal distinction and is only intended to distract from the real significance Secretary Clinton’s email use had on FOIA requests and FOIA litigants. The State Department has also not made a showing or alleged that an electronic search of the pst files of the agency email accounts issued to Cheryl Mills, Huma Abedin and Jacob Sullivan would be unduly burdensome. For all of the foregoing reasons and those set forth in Plaintiff’s opening brief, the State Department must supplement its search in response to Plaintiff’s FOIA request to include the agency email accounts that were issued to Cheryl Mills, Huma Abedin and Jacob

³ *Judicial Watch, Inc. v. U.S. Dep’t of State*, (Case No. 14-1242) (RCL), Pltf.’s Notice of Revised Discovery Proposal (ECF No. 50) at pp. 1-2, 8-11.

Sullivan while they were at the State Department and the records the FBI most recently announced to have recovered in November 2016.

2. Release of the redacted information in Doc. Nos. C05739728 and C0539722 does not disclose information within the deliberative process.

In response to Plaintiff's cross-motion for summary judgment, the State Department produced a supplemental declaration by Eric F. Stein in support of its position that the information redacted in document numbers C05739728 and C0539722 is protected by the deliberative process privilege afforded under Exemption 5. The supplemental description of the redaction, however, only strengthens Plaintiff's position that the information should be released forthwith as it does not convey agency deliberation and is a final agency decision. Under FOIA, documents are deliberative if they "reflect[] the give-and-take of the consultative process." *Pub. Citizen, Inc. v. OMB*, 598 F.3d 865, 874 (D.C. Cir. 2009) (reversing in part and remanding in part summary judgment found in favor of the agency by the lower court) (*quoting Judicial Watch, Inc. v. FDA*, 449 F.3d 131, 151 (D.C. Cir. 2006)).

The supplemental information provided by Defendant may be embodied in one sentence: "The redacted information was an instruction to Mr. Sullivan to convey Secretary Clinton's recommendation about how a different federal agency should address the particular issue in the media." Supplemental Decl. of Eric F. Stein Regarding Documents C05739728 and C05739722, ("Supp. Stein Decl.") at ¶ 3 (ECF No. 45-2). Defendant never identifies the "particular issue in the media" and nowhere in Mr. Stein's declaration does Defendant actually allege there was a deliberative process – in other words, a give-and-take consultation – between the agencies as to that particular issue. *Id.* Defendant also does not identify the other agency. *Id.* Defendant's supplemental declaration only raises more questions than answers, underscoring Plaintiff's objection to the withholding.

By State Department's own accord, Secretary Clinton instructed Jacob Sullivan to relay the agency's position about an issue concerning Ambassador Rice's televised appearance discussing the terrorist attacks in Benghazi. Nothing is provided in the record or Defendant's description of the emails to suggest that Secretary Clinton's email would reveal any give-and-take discussions between the agencies, or that there even was a "give-and-take" discussion between the agencies. *Id.*; *Pub. Citizen, Inc.*, 598 F.3d at 874. Plaintiff does not seek any information that may be considered deliberative or even as to how the other unidentified agency responded. The plain language of the email and Defendant's declarations suggest Secretary Clinton's recommendation is just that – a final disposition made by an agency, conveying the State Department's position on that particular issue. *Id.* The deliberative nature of the other agency's response is not at issue nor requested by Plaintiff in this case. *Id.* Defendant's description of the information withheld strongly suggests that it is a final disposition, giving grounds to sustain Plaintiff's objection to Defendant's invocation of the deliberative process privilege under Exemption 5.

Conclusory assertions by Defendant that Secretary Clinton's email contains information within the deliberative process, not supported by the evidence, falls short of the burden Defendant must meet to lawfully withhold the contested information. Final opinions or recommendation by one agency cannot be exempt from disclosure because they cannot be inter-agency or intra-agency memorandums. 5 USC 552(b)(5); *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 867-868 (D.C. Cir. 1980). "It is also clear that the agency has the burden of establishing what deliberative process is involved, and the role played by the documents in issue in the course of that process. *Coastal States Gas Corp.*, 617 F.2d at 868; *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 153-54 (1975). At a minimum, the Court should review the

records in unredacted form *in camera* to assist the Court in making a determination as to the alleged deliberative nature of the communication. *Ray v. Turner*, 587 F.2d 1187, 1195 (D.C. Cir. 1978).

3. The government misconduct exception applies even if the information is deemed deliberative.

Even if the Court were to determine Secretary Clinton's email to Jacob Sullivan is deliberative, which Plaintiff disputes, Defendant must disclose the information because the government misconduct exception applies in this case.⁴ Defendant's use of excerpts from congressional reports in its opposition brief is misdirected and rather confirms the continued applicability of the government misconduct exception to FOIA Exemption 5's deliberative process privilege.

Regardless of whether the misconduct at issue is characterized as "nefarious" or "extreme" or a "serious breach of the responsibilities of representative government," the exception applies here. *ICM Registry, LLC v. U.S. Dep't of Commerce*, 538 F. Supp.2d 130, 133 (D.D.C. 2008). Misleading the public, on the eve of a presidential election, about a terrorist attack that killed four Americans, including a U.S. ambassador, is nefarious and extreme wrongdoing. It also is a serious breach of representative government.

"[W]here there is reason to believe the documents sought may shed light on government misconduct, 'the privilege is routinely denied' on the grounds that shielding internal government deliberations in this context does not serve 'the public's interest in honest, effective government.'" *In re Sealed Case*, 121 F.3d 729, 138 (D.C. Cir. 1997) (*quoting Texaco Puerto Rico, Inc. v. Dep't of Consumer Affairs*, 60 F.3d 867, 885 (1st Cir. 1995)). Plaintiff has provided

⁴ Defendant's assertion that Plaintiff is "shopping" its government misconduct exception legal argument "around the courthouse" is baseless as they concern different records and even misconducts. Def. Opp. at pp. 12-13. The fact that the exception applies in multiple cases for different records requested under FOIA is not shopping, but rather asserting a legal objection that applies in more than just one lawsuit.

more than enough “reason to believe” government misconduct may have occurred. It presented overwhelming admissible evidence – Defendant’s own, internal records – showing a clear contradiction between what Secretary Clinton privately told at least three persons and what the public was told about the September 11, 2012 Benghazi attack.⁵ Plaintiff also presented admissible evidence – again, Defendant’s own, internal records – showing an apparent plan at the highest levels of the U.S. government to attribute the attack to spontaneous protests over an internet video.⁶ This is not a mere disagreement over emphasis or characterizations of the attackers’ motives. It is not mere speculation. Defendant’s assertions to the contrary are transparent attempts to distort the plain meaning of these records.

The evidence Plaintiff presented is evidence of serious misconduct – misconduct that clearly constitutes a “breach of the responsibilities of representative government” and can fairly be characterized as “nefarious” and “extreme.” Misleading the public on the eve of a presidential election about a terrorist attack that killed four Americans, including a U.S. ambassador, is certainly as nefarious and extreme as the misconduct at issue in other cases in which the exception was found to apply. These include, for example, the U.S. Department of Justice allegedly leaking information from an Office of Professional Responsibility investigation

⁵ Compare, e.g., RRC Decl. (ECF No. 43-1) Ex 2 (Sept. 11, 2012 Call Notes between Sec. Clinton and Libyan General National Congress President Mohammed Magariaf) (“[O]ur diplomatic mission in Benghazi was attacked earlier this evening . . . there is a gun battle ongoing, which I understand Ansar al-Sharia is claiming responsibility for.”), Ex. 2 (Sec. Clinton Sept. 11, 2012 Email with her daughter, Chelsea Clinton (under alias Diane Reynolds)) (“Two of our officers were killed in Benghazi by an Al Qaeda-like group.”), and Ex. 2 (Sept. 12, 2012 Call Notes between Sec. Clinton and Egyptian Prime Minister Kandil) (“We know that the attack in Libya had nothing to do with the film. It was a planned attack – not a protest.”) with Secretary Clinton’s public statement of Sept. 11, 2012 (Pltf. SMF at ¶ 1) (ECF No. 43), President Obama’s public statement of Sept. 12, 2012 (Pltf. SMF at ¶ 2) and Ambassador Rice’s public statements of Sept. 16, 2012 (Pltf. SMF at ¶¶ 3-4).

⁶ See RRC Decl. (ECF No. 43-1) Ex. 1 (Email from Benjamin Rhodes describing as a “goal” of U.S. Ambassador Susan Rice’s appearances on Sunday morning news programs “[t]o underscore that these protests are rooted in an Internet video” and suggesting Ambassador Rice use the following answer to questions about the attack, “We are not aware of any actionable intelligence indicating that an attack on the U.S. Mission in Benghazi was planned or imminent. The currently available information suggests that the demonstrations in Benghazi were spontaneously inspired by protests at the U.S. Embassy in Cairo and evolved into a direct assault against the U.S. Consulate and subsequently its annex.”).

into an Assistant U.S. Attorney or the U.S. Department of Defense allegedly leaking information from Linda Tripp's personnel file regarding a 30-year old arrest for a teenage prank. *Convertino v. U.S. Dep't of Justice*, 674 F. Supp. 2d 97, 104 (D.C.C. 2009); *Alexander v. Federal Bureau of Investigation*, 186 F.R.D. 170, 178-79 (D.D.C. 1999). As the misconduct at issue here occurred in the context of a presidential election, it arguably is more nefarious and extreme than the alleged misuse of the IRS at issue in *Tax Reform Research Grp. v. Internal Revenue Serv.*, 419 F. Supp. 415, 426 (D.D.C. 1976), in which the exception also was found to apply.

Based on Defendant's own description of the information withheld in the two emails, the information goes to the heart of the misconduct. If Secretary Clinton encouraged the false narrative that the attacks on the U.S. Consulate in Benghazi was rooted in the video, after she acknowledged to her daughter and foreign heads of state that the attack was a terrorist attack, the information is certain to shed light on the government's misconduct. There plainly is a direct "connection between the government misconduct and the documents." *Convertino*, 674 F. Supp. 2d at 104 (citations omitted).

The evidence presented by Plaintiff also rises above "evidence of a 'disagreement within the governmental entity at some point in the decisionmaking process.'" It is Defendant who tries to rebut Plaintiff's compelling evidence of misconduct citing to select portions of reports by the Select Committees on Intelligence of the U.S. House of Representatives and the U.S. Senate, as well as the report of the Democratic Members of the U.S. House of Representatives Select Committee on Benghazi. The misconduct is not whether the Administration correctly identified the actual terrorist groups or persons who led the attack, but rather, the false narrative made by the Administration to persuade the public to believe on the eve of a presidential election that the attacks were "inspired by protests" when in fact the Administration knew at the highest levels

that four Americans were killed as a result of a terrorist attack. *See e.g.* Pltf. Response to Def. Supp. Statement of Facts at ¶ 108 (Defendant fails to mention in its Supplemental Statement of Facts Director of National Intelligence James Clapper’s testimony before the Senate Committee on Armed Services that he agreed with CIA John Brennan’s statement that when the second of the September 11, 2012 Benghazi attacks happened, on the CIA annex, “unequivocally [] we *all* knew that was an organized terrorist attack..”) (Emphasis added.) (Director Clapper’s testimony is only 9 lines below the limited testimony Defendant cites). Defendant also cites to the House of Representatives Select Committee on Intelligence to highlight that intelligence gaps existed but omits the most relevant portion just below the paragraph it cites in its Supplemental Statement of Facts. It reads:

Various witnesses and senior military officials serving in the Obama Administration testified to this Committee, the House Armed Services Committee, and the Senate Armed Services Committee that they knew from the moment the attacks began that the attacks were deliberate terrorist acts against U.S. interests. *No witness has reported believing at any point that the attacks were anything but terrorist attacks.*

Pltf. Response to Def. Supplemental Statement of Facts at ¶ 100 (emphasis added).

Tellingly, Defendant also fails to mention the Under Secretary Patrick F. Kennedy’s statements made to Congressional Staff one day after the attack.⁷ When Department of State’s own Under Secretary was asked whether the attack was “under the cover of a protest,” he responded: “No this was a direct breaching attack.” Again he was asked “Do we believe [the attack] was coordinated w[ith] Cairo?” He responded: “Attack in Cairo was a demonstration. There were no weapons shown or used. A few cans of spray paint.”⁸ Defendant also ignores the

⁷ Declaration of Kate Bailey, Ex. 1 (Doc. No. C06059536 produced by Defendant in response to Plaintiff’s FOIA Request that was at issue in an unrelated FOIA lawsuit, *Judicial Watch, Inc. v. U.S. Dep’t of State* (Case No. 16-153) (RDM) (“Write-Up of U/S Kennedy Call with Hill re Libya”) at p. 4.

⁸ *Id.*

Benghazi select committee's majority report, which is over 800 pages long, has 5 primary sections, and 12 appendices.⁹ Attached hereto as Exhibit 2 is a true and correct copy of Section II of the report, entitled "Internal and Public Government Communications About the Terrorist Attack in Benghazi," as well as bullet points prepared by Plaintiff identifying key findings of the report.¹⁰ Among the findings in Section II are the following:

- "[Ambassador] Rice's comments on the Sunday talk shows were met with shock and disbelief by those closest to the facts of the situation. Subject matter experts with direct knowledge of the attacks expressed immediate concern about what Rice had said on the shows – and potential fallout as a result."
- "Other subject matter experts within the State Department also recognized problems with what Rice said on the talk shows. State Department employees in Washington, D.C. who had spoken with those on the ground in Libya after the attack were universal in their condemnation of Rice's statements. The Senior Libya Desk Officer, Bureau of Near Eastern Affairs, State Department, wrote: 'I think Rice was off the reservation on this one.'"
- "The Deputy Director, Office of Press and Public Diplomacy, Bureau of Near Eastern Affairs, State Department, responded: 'Off the reservation on five networks!'"
- "The Senior Advisor for Strategic Communications, Bureau of Near East Affairs, State Department, wrote: 'Yup. Luckily there's enough in her language to fudge exactly what she said/meant.' He also wrote: 'WH [White House] very worried about the politics. This was all their doing.'"

Ex. 2 at II-131, II-132, and II-133. Section II refutes Defendant's argument and confirms Plaintiff's argument that the government misconduct exception must apply. If anything, Section II and the reports and other materials cited by Defendant highlight the need for additional information, beyond these largely partisan exercises, to shed light on whether, as the evidence strongly suggests, misconduct occurred.

⁹ The full report is available at <http://benghazi.house.gov/NewInfo>.

¹⁰ Plaintiff respectfully requests that the Court take judicial notice of Section II of the report, which "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2).

Defendant's use of excerpts from congressional reports is also misdirected as Plaintiff does not have to prove that government misconduct actually occurred in order for the misconduct exception to apply. Plaintiff only needs to present evidence that "there is reason to believe the documents sought may shed light on government misconduct." *In re Sealed Case*, 121 F.3d at 738 (citations omitted). Plaintiff has satisfied that standard. It presented admissible evidence demonstrating that grave government misconduct may have occurred, and Defendant's own descriptions of the records at issue demonstrate there is reason to believe those records may shed light on that misconduct. Accordingly, Defendant's invocation of Exemption 5's deliberative process privilege cannot be sustained over the records in question.

CONCLUSION

For all of the foregoing reasons and the reasons set forth in Plaintiff's opposition to Defendant's motion for summary judgment and Plaintiff's cross-motion for summary judgment, Plaintiff's cross-motion for summary judgment should be granted and the relevant material should be produced to Plaintiff and Defendant should be ordered to conduct a supplemental search as requested by Plaintiff therein.

Dated: February 10, 2017

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ Ramona R. Cotca

Ramona R. Cotca (D.C. Bar No. 501159)

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Counsel for Plaintiff

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<i>Defendant.</i>)	
_____)	

**PLAINTIFF’S RESPONSE TO DEFENDANT’S
SUPPLEMENTAL STATEMENT OF MATERIAL FACTS**

Plaintiff Judicial Watch, Inc., by counsel and pursuant to Local Civil Rule 7.1(h), respectfully submits this response to Defendant’s supplemental statement of material facts (ECF No. 45-1):

94¹. Plaintiff disputes Defendant’s characterization of Secretary Clinton’s public statement issued after the attack on the U.S. Consulate and another U.S. government post in Benghazi, Libya. Plaintiff disputes that the text of Secretary Clinton’s September 11, 2012 statement is available at the URL provided by Defendant in its statement. The text of Secretary Clinton’s public statement was included in Plaintiff’s Statement of Undisputed Material Facts in Support of Cross-Motion for Summary judgment and is available at <https://2009-2017.state.gov/secretary/20092013clinton/rm/2012/09/197628.htm> (accessed Feb. 9, 2017).

95. Plaintiff does not dispute that President Barak Obama said the words quoted by Defendant, but notes that the statement is not quoted in its entirety. The entire statement is available online at the URL provided by Defendant and submitted here: <https://obamawhitehouse>

¹ The paragraph numbering resumes from the end of the numbering used in Defendant’s Statement of Facts (ECF No. 40).

.archives.gov/the-press-office/2012/09/12/remarks-president-deaths-us-embassy-staff-libya (last accessed February 9, 2017).

96. Plaintiff does not dispute that U.S. Ambassador Susan Rice appeared on September 16, 2012 on the five morning news shows identified in Paragraph 96: ABC's This Week, CBS's Face the Nation, FOX's Fox News Sunday, NBC's Meet the Press, and CNN's State of the Union to discuss the attacks in Benghazi, Libya that killed four Americans or that she may have also discussed other issues or that copies of the transcripts from those appearances are available at the URLs provided in Plaintiff's Statement at paragraph 4. Plaintiff however objects to the extent that Paragraph 96 in Defendant's supplemental statement of material facts includes multiple facts rather than a separate, concise statement of fact as required by LCvR (h)(1). Plaintiff also disputes Defendant's description in the parenthetical following each television news show to the extent it implies that only the subject matters asserted therein was addressed and/or discussed by Ambassador Rice.

97. Undisputed.

98. Plaintiff disputes Defendant's characterization of the reporting in the article. The article referenced in Paragraph 98 of Defendant's supplemental statement of material facts does not report on "violent protests" in Egypt, Malaysia, Bangladesh or Iraq. Plaintiff last accessed the article at the URL provided by Defendant on February 9, 2017.

99. Plaintiff does not dispute that the report includes the text quoted by Defendant, but notes that the statement is not quoted in its entirety and/or is materially incomplete.

100. Plaintiff does not dispute that report includes the text quoted by Defendant, but notes that the text is incomplete. Significantly, text just below that which Defendant cites in Paragraph 100 of its supplemental statement of material facts states as follows: "Various

witnesses and senior military officials serving in the Obama Administration testified to this Committee, the House Armed Service Committee, and the Senate Armed Service Committee that they knew from the moment the attacks were deliberate terrorist acts against U.S. interests. No witness has reported believing at any point that the attacks were anything but terrorist acts.” Plaintiff last accessed the report at the URL provided by Defendant on February 9, 2017.

101-104. Undisputed that the statements quoted by Defendant are within the report issued by the U.S. House of Representatives Permanent Select Committee on Intelligence, but notes text is not quoted in its entirety and/or is materially incomplete.

105. Undisputed that the report includes the text quoted by Defendant, but notes that the text is not quoted in its entirety and/or is materially incomplete.

106. Undisputed.

107. Undisputed that the minority report includes the text quoted by Defendant, but notes that the text is not quoted in its entirety and/or is materially incomplete.

108. Undisputed that the text Defendant quotes is included in the minority’s report but Plaintiff notes and objects to the fact that the text is not quoted in its entirety and/or is materially incomplete. Nine lines below the text Defendant quoted, the Director of National Intelligence James Clapper testified when asked by Senator Inhofe whether that he agreed with CIA Director John Brennan’s statement: “‘Unequivocally [] we all knew that was an organized terrorist attack.’” Director Clapper continued to testify “That’s the one thing that happened that had the earmark of some organization and proficiency, was the 11-minute mortar attack on the annex facility.” Def. Supplemental Statement of Facts at Paragraph 108. Plaintiff last accessed the report at the URL provided by Defendant on February 10, 2017.

Dated: February 10, 2017

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ Ramona R. Cotca

Ramona R. Cotca (D.C. Bar No. 501159)

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Counsel for Plaintiff

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U.S. DEPARTMENT OF STATE,)	
)	
<i>Defendant.</i>)	
_____)	

DECLARATION OF KATHERINE BAILEY

I, Katherine Bailey, declare as follows:

1. I am employed by Judicial Watch, Inc. ("Judicial Watch") as the FOIA Program Manager and I have held this position for approximately four years and seven months. I am over the age of eighteen and have personal knowledge of the matters set forth below.

2. Attached hereto as Exhibit 1 is a true and correct copy of a document produced by the U.S. State Department in response to a FOIA Request submitted by Judicial Watch that was at issue in the FOIA lawsuit *Judicial Watch, Inc. v. U.S. Department of State*, Case No. 16-153. The document appears to be notes from a telephone call between Under Secretary Patrick Kennedy and some U.S. congressional staff held on September 12, 2012, and is identified by the State Department as Doc. No. C06059536. The document as produced contains a total of five pages.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D.C. on this 10th day of February, 2017.


Katherine Bailey

Exhibit 1

(Katherine Bailey Declaration in support of Plaintiff's Reply)

- U.S. State Department Doc. No. C06059536 (5 pages)

B6
B7(C)

From: Rayburn, Dorothy J
Sent: Thursday, September 13, 2012 11:51 AM
To: Drucker, Joy E; [redacted] Chartrand, Jennifer; Rademacher, Paul R; Bulgrin, Julie K; Devine, Kristin; Canedo, Denese; H_DAS
Cc: Canedo, Denese; [redacted] DS CONGRESSIONAL AFFAIRS
Subject: RE:

RELEASE IN PART
B7(C), B6

For today's call, Amb. Boswell may be asked whether State had sent up a justification for a waiver of the DS criteria for Benghazi.

From: Drucker, Joy E
Sent: Thursday, September 13, 2012 11:28 AM
To: Drucker, Joy E; [redacted] Chartrand, Jennifer; Rayburn, Dorothy J; Rademacher, Paul R; Bulgrin, Julie K; Devine, Kristin; Canedo, Denese; H_DAS
Cc: Canedo, Denese; [redacted] DS CONGRESSIONAL AFFAIRS
Subject: RE:

Notes after the call.

From: Bulgrin, Julie K
Sent: Wednesday, September 12, 2012 7:55 PM
To: H_Egypt; Canedo, Denese; Lang, Alan; 'Rodriguez, Miguel'; 'Arguelles, Adam'; 'Lundeberg, Greta'; 'Ortiz, Michael'; 'Lee, Collin'; Pitkin, Douglas A; Maier, Christina A
Subject: Write up of U/S Kennedy Call with Hill re Libya

The call ended up starting around 6:30pm. Here are the raw notes.

Staff names from beginning.

Alan goldsmith - hfac
Jen Stewart - speaker
Chris - Risch
Erin - hac
Jason Rauch - mccaskill
Marin Stein - nelson
Rich Harper - Feinstein
Mike Phelan - SFRC
Rachel Ieman - house rules
Robert Marcus - hfac
Rep. Wilson office
Bob Corker office
Preeti Shah - Durbin
Brian - Schwartz
Jason Steinbaum - hfac
Alan Makovsky - hfac

U/S Kennedy

Benghazi was an interim office. As soon as Benghazi fell, we got back in and had two compounds.

1

All times est

4pm – Benghazi main compound took on fire from libyan extremists.

4:15pm – broke through and somehow building set fire. Libyan guard force and us mil personnel engaged/exchanged fire.

- Three people inside bldg at the time – amb, imo, and rso
- Try to evacuate bldg under fire and smoke.
- When rso got out, he found he didn't have others. attempted to get others out when not.
- Found sean dead of apparent asphyxiation.
- Then went back in to try to get ambo, but couldn't find him. Driven by the bldg by smoke, fire, and small arms.

4:45pm – us security personnel from annex reached compound to try to get in. took heavy fire and retreated to annex.

5:20pm – US and Libyan security made another attempt and were finally able to gain access to main building, secure the rso's (five) – one badly injured to lungs smoke damage, plus remains of sean smith. Then retreated due to fire.

Approximately 5:40-50 – annex under attack – included possible mortars, rpgs, etc. two us personnel wounded, two killed. Finally were able to gain control over compound. During that time, we believe ambo had been taken to hospital by others. However, attempts to get to compound – were unable to break through going through to hospital. Somehow, Libyans brought body of ambo to hospital during time of retreat.

Then retreated to Benghazi airport. Three badly injured. Put the injured and a small number of personnel to Tripoli. Got in second aircraft. During the time between the first and second aircraft, local employee was able to get body of ambo from hospital and bring him to airport. All personnel was evac from Benghazi.

Today got medivac c-17. Libyans treated wounded well. Then also reduced staff to emergency levels.

Then landed at ramstein afb. Longstool hospital.

Personnel will be held at hotel for a week or so in case can go back in, if necessary.

This is fog of war. Less than 18 hours.

This is an initial report. Haven't been able to interview everyone yet.

Starr- was ambo still alive when he was extracted?

- We were told by a phone call that they were taken by Libyan bystanders – ambo got out, collapsed on edge of compound, and taken to the hospital.

Rick Kessler – hfac- so last time we saw ambo was when rso and others were exiting bldg. how many ds personnel were in bldg and annex?

- Two ds at main bldg, 25-30 at annex. Approximately 15 security personnel.
- Three amcits at main bldg. other four security officers were in other buildings on the compound returning fire.
- Annex is several miles away from main compound.

Alan Makovsky – any estimate of number of attackers?

- We think 20-40 at first attack, maybe close to 100 in second attack.
- No idea who they might have been? There has been a group who has claimed responsibility, but we're investigating it ourselves to identify group.

Victor – Rubio – situation in Tripoli

- Relatively stable. PM express regret, deep humiliation. Have increased our security.
- We have reduced staffing.
- We have two compounds. First embassy was burned out.
- No attacks in Tripoli.
- Just this morning, we have moved all personnel to one of two compounds.

Perry – SFRC – any reason to think this wasn't premeditated? How effect operations regionally?

- I am not prepared to render formal opinion, except to say attack of this nature says this is semi-complex attack. This is personal opinion.
- We called senior security officer and embassies worldwide. We are operating.

Paul Foldi – SFRC – what was ambo doing in Benghazi and was it publicized?

- He makes periodic trips – duality to Libya.
- We don't widely advertise his travel.
- He does do appointments, so it's known

Paul Grove – any info on attackers killed or wounded? Any information?

- Believe there were wounded. Think that we couldn't gain access to hospital because some attacking forces had taken their wounded to hospital and effectively shut down hospital.
- Govt is offering assistance. We are going to follow-up in any possible way

Chris McCain – cooperation from GOL?

- GOL is shaken and embarrassed. Govt truly wants good relations.
- They have given us additional security support.
- Their dedication and capabilities do not match in equal strength.

AnneMarie – HACFO – security footprint – role of contract forces, militias, and if MSG contingent there.

- No MSGs. Used alternate security. Contract guard force – unarmed. A unit of GOL security personnel – 6 people – who lived in barracks on compound at all times.

Robert Carter – burgess – typical arrangement for consulate?

- This is a special office.
- In our smaller installations, there are probably more arm security in Benghazi than any other office of comparable size. To have five RSOs on compound, it's odd.
- In terms of timeline – was it true there was an initial attack then second attack? Unclear.
 - o Attack started at 10pm their time on main compound. 1015 breach compound...then go through the timeline again.

Matt Zweig – HFAC – light and medium weapons used – what do you mean?

- We're talking AK-47. Medium – RPGs or mortars.

Ayotte – some forewarning that attacks will happen?

- none.

Steve Marchese – HACFO – how many attackers?

- Not sure. Attack at 10pm. 20-30 on first compound, maybe as many as 100 on second.
- Did they take over hospital?
 - o We got call warning us of dangers of trying to reach hospital, but we were never able to break through.
 - o We believe they never knew who he was. His body wasn't desecrated. And our national was able to take him away.

Rob – Ayotte – any video cameras on compound?

- No, interim compound.

Mike P – sfrc – any arrangement for Libyan forces at compound? What arrangement?

- There was a six person detachment in residence on the compound. When we called for assistance, it didn't come immediately, not in as heavy numbers, but we cannot say Libyans w/in capabilities that they didn't muster help. From compound one to two, they did assist us, to airport. There was will, but not capability.

Brent Woolfork – HFAC – at second site, was there for 6.5 hours, then got permission to leave from DC.

- When they called us, they said they were leaving and we said yes. No one was holding them there.
- Did Libyans provide help the entire time? - yes.

Alan Makovsky – hfac – given the fact that this incident was going on for such a long time, was any thought that US troops could be brought in to help?

- All avenues were being considered. We were in contact with senior levels of DOD, National Security Staff, etc.
- Why weren't troops inserted? – the entire thing lasted approximately 4.5 hours. No US forces within time to get there.

Matt Zweig – HFAC – was there preexisting plan for QRF for such an occurrence?

- Yes, we knew who to call in such an incident. It took awhile for them to get there.
- Started at 4, then at 5:20, they had second sorti which included Libyans.

Chris – Risch – What is security footing of embassy and consulate on 9/11?

- Equivalent of defcon 5. We had discussions, conducted EACs, planned, etc. Any embassy depends on host nation for preponderance of security.

Rob Carter – was this an attack under the cover of a protest?

- No this was a direct breaching attack.
- Do we have any ideas of who launched? Leads?
 - o Some claims from someone who has never made threat before, but everyone is looking at this closely.
- Do we believe coordinated w/Cairo?
 - o Attack in Cairo was a demonstration. There were no weapons shown or used. A few cans of spray paint.

Matt Zweig – speaking in broad terms, are there any additional threats to the region to our compounds/embassies?

- Generally speaking, there have been demonstrations. Tunis, Cairo, Sudan. We are monitoring (overarching term) as we were two days ago – in constant contact with host nations and security forces.

Who is in charge in Tripoli now?

-Charge is Gregory Hicks. Formerly DCM.

Alan Makovsky – Any plans regarding Chris' return/remains? Memorial service?

- We are working on this, hopefully for Friday afternoon.
- There will be a memorial service. Will let you know.

Marin Stein – when will we learn the identity of others?

- Some problems finding the next of kin.

Were they State Department employees?

- Yes.

AnneMarie – Can someone give us an update on Egypt?

- We have been talking govt-to-govt.
- Apology
- We're talking to them = deploying additional police forces. Getting good cooperation.

Steve – refused to pull protesters off wall?

- It took police awhile to get protesters off the wall. They were there.
- We invited them in to remove the 6-8 who got in.

-for those of you who aren't there, there are three buildings. They were running around the grounds, but didn't penetrate the buildings.

Julie K. Bulgrin
Legislative Management Officer
for Near Eastern Affairs
Bureau of Legislative Affairs
U.S. Department of State
Phone: (202) 647-8729

SBU
This email is UNCLASSIFIED.

From: Drucker, Joy E
Sent: Thursday, September 13, 2012 11:27 AM

To: [redacted] A; Chartrand, Jennifer; Rayburn, Dorothy J; Rademacher, Paul R; Bulgrin, Julie K; Devine, Kristin;
Canedo, Denese; H_DAS
Cc: Canedo, Denese; [redacted] DS CONGRESSIONAL AFFAIRS
Subject: RE:

B6
B7(C)

I can send you H's write up after the call, but I don't think we asked for points to be generated and I think he spoke from the cuff, but I'm adding others to weigh in if they know more!

From: [redacted]
Sent: Thursday, September 13, 2012 11:23 AM
To: Drucker, Joy E
Cc: Canedo, Denese; [redacted] DS CONGRESSIONAL AFFAIRS
Subject: RE:

Can I get the points from the U/S call with the Hill staff yesterday? I need to share with Ambassador Boswell. Thanks.

[redacted]
Legislative Affairs Advisor
Office of the Assistant Secretary
Bureau of Diplomatic Security
Office: [redacted]
BB: [redacted]

This email is UNCLASSIFIED.

From: Drucker, Joy E
Sent: Thursday, September 13, 2012 11:02 AM
To: Maier, Christina A; [redacted] Bulgrin, Julie K; Canedo, Denese
Cc: Chartrand, Jennifer; Rademacher, Paul R; Rayburn, Dorothy J; Blumenfeld, Joshua R; Kramer, Rori A; Rodriguez, Laura I; H_DAS
Subject:

Just linking us all up by email as we seek to stand up a conference call on embassy security in light of events and in advance of House CR floor consideration. We're all waiting to hear back from Christy and [redacted] on whether this is doable and timing, but in the interim could Julie and Denese tee up a draft email to relevant staff so we're poised to send as soon as we get word. Joy and Jen and someone from the Sen. Team should just make sure we have the right list and are standing by to clear it.

Exhibit 1

(Plaintiff's Reply in Support of Cross-Motion for Summary Judgment)

- FBI Investigation Notes: “Documents an analysis of e-mail communications between hdr22@clintonemail.com and huma@clintonemail.com” (Bates Numbered HRC-1002 to HRC-1004).

CLASSIFIED BY: NSICG J76J18T80

REASON: 1.4 (C)

DECLASSIFY ON: 12-31-2041

DATE: 11-10-2016

~~SECRET~~ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

(Rev. 05-01-2008)

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 07/15/2016

To: Washington Field

From: Washington Field

CI-13

Contact: SOS [REDACTED]

b6
b7C

Approved By: [REDACTED]

Drafted By: [REDACTED]

(U) Case ID #: (S) [REDACTED] - 177

b1
b3
b7ETitle: (S) [REDACTED]
MISHANDLING OF CLASSIFIED;
UNKNOWN SUBJECT OR COUNTRY;
SENSITIVE INVESTIGATIVE MATTER (SIM)Synopsis: (U//~~FOUO~~) Documents an analysis of e-mail
communications between hdr22@clintonemail.com and
huma@clintonemail.com.~~Classified By: F22M62K21~~~~Derived From: FBI NSIC dated 20130301~~~~Declassify On: 20411231~~

References:

Details: (U//~~FOUO~~) The instant communication documents an analysis conducted by the author regarding the Department of State (DoS) tenure e-mail correspondence between the personal accounts of HILLARY CLINTON (hdr22@clintonemail.com) and HUMA ABEDIN (huma@clintonemail.com). The author analyzed e-mail correspondence across various datasets acquired by the FBI during the course of its investigation. Ultimately, the author identified approximately 1,539 direct e-mails between hdr22@clintonemail.com and huma@clintonemail.com (i.e., no other email address was party to the e-mail communication) which were not provided to DoS by CLINTON in December 2014, but were assessed by the FBI to be work-related.

(U//~~FOUO~~) Analysis of the e-mails provided to DoS by CLINTON in December 2014 indicated huma@clintonemail.com was party to 2,598 total emails in the dataset. However, of the 2,598 emails, only 32 were direct communications exclusively between

1

~~SECRET~~

HRC-1002

(Rev. 05-01-2008)

~~SECRET~~

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huma@clintonemail.com and hdr22@clintonemail.com. The author determined each of the 32 e-mails contained references to either "Benghazi," "Libya" or "Tripoli." Consequently, the 32 e-mails possibly were provided to DoS because they hit on those search terms, rather than a search of huma@clintonemail.com. As a result, the process used by CLINTON's legal team to determine which of CLINTON's DoS tenure emails were work-related was possibly flawed in its handling of email correspondence between CLINTON and ABEDIN's huma@clintonemail.com address.

(U//~~FOUO~~) A summary communication detailing the findings of the analysis described above is attached to this electronic communication as a 1A.

(U) **Analyst notes:**

- (U//~~FOUO~~) The investigation assessed e-mails to be work-related if they were related to CLINTON's official capacity at DoS (e.g., scheduling, travel, call sheets, personnel appointments).
- (U//~~FOUO~~) During the course of its investigation, the FBI did not evaluate all recovered e-mails to determine which were work-related and which were personal. As a result, the analysis detailed in this communication does not represent the entirety of the work-related e-mails recovered by the FBI. Rather, the analysis detailed in this communication only focused on explicit direct communications between huma@clintonemail.com and hdr22@clintonemail.com in a subset of the datasets acquired by the FBI.
- (U//~~FOUO~~) Due to insufficient e-mail metadata associated with the datasets, ABEDIN's name often appeared in lieu of a specific email address. Despite indications this occurred with regard to huma@clintonemail.com e-mail communications, the author omitted these e-mails from the analysis because explicit e-mail address attribution could not be made.
- (U//~~FOUO~~) To ensure the 1,539 emails were not contained in the original 30,524 e-mail dataset provided to the FBI, the author used Internet Message IDs to identify duplicates.

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(Rev. 05-01-2008)

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FEDERAL BUREAU OF INVESTIGATION

However, the metadata associated with some e-mail messages was incomplete, and thus, the author utilized date/time stamps and subject lines to remove additional duplicates when Internet Message IDs were unavailable.

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Exhibit 2

(Plaintiff's Reply in Support of Cross-Motion for Summary Judgment)

- Section II of the report, entitled “Internal and Public Government Communications About the Terrorist Attack in Benghazi,” as well as bullet points prepared by Plaintiff identifying key findings of the report.

Bullet Points Extracted from the U.S. House of Representatives Select
Committee on Benghazi Final Report, Section II “Internal and
Public Government Communications About the
Terrorist Attacks in Benghazi”

- “The attacks in Benghazi did not occur in a vacuum. They took place amidst a severely deteriorating security situation in eastern Libya – a permissive environment where extremists organizations were infiltrating the region, setting up camps, and carrying out attacks against Western targets.” II-2.
- “In June 2012, State Department security officials were discussing ‘an active terrorist cell in Benghazi’ that was ‘planning and implementing attack operations against western interests including the U.S. Mission in Benghazi.’” II-2.
- On the day of the attacks, a State Department official at the Diplomatic Security Command Center (“DSCC”) “was monitoring the situation in real time and was aware of the reports coming in from the agents under attack in Benghazi.” The official testifies “she was in ‘constant contact’ with the agents on the ground and had an ‘almost full-time connection to them.’” II-15.
- “A senior watch officer at the DSCC described the events as ‘a full on attack against our compound.’ The same individual also said there was ‘zip, nothing nada’ when asked if there was any rioting in Benghazi reported prior to the attack.” II-17.
- “At 6:34 p.m. on September 11, 2012, the DSCC sent a ‘terrorism event information’ to the Office of the Secretary.” II-17.
- “None of the Diplomatic Security agents on the ground reported anything about a protest in Benghazi. None of the Diplomatic Security agents on the ground reported anything about a video.” II-17.
- Emails exchanged between State Department officials “consistently used the term ‘attack.’” None of these emails mentioned anything about a protest. None of these emails mentioned anything about a video.” II-24.
- “None of the information coming directly from the agents on the ground in Benghazi during the attacks mentioned anything about a video or a protest.” II-25.
- “These first-hand accounts made their way to the Office of the Secretary through multiple channels quickly.” II-25 – II-26.
- Discussions at a 7:30 p.m. White House meeting “contained a great deal of discussion regarding the video.” II-27.

- The fact that “much of the conversation focused on the video is surprising given no direct link or solid evidence existed connecting the attacks in Benghazi and the video at the time the White House meeting took place.” II-29.
- “As a result of the White House meeting, the Secretary of State issues a statement about the attacks later that evening. Rather than relaying known facts from those experiencing the attacks firsthand, however, the Secretary’s statement created a narrative tying the events in Benghazi to the video, despite a dearth of actual evidence.” II-29 – II-30.
- At the direction of Deputy National Security Advisor Benjamin J. Rhodes, “the Secretary’s statement was the only statement issued on behalf of the United States government that night. This put additional emphasis on its contents.” II-36.
- The report found it “significant” that, in her phone call with Libyan President Mohammad el-Magariaf, “the Secretary did not mention the video nor did she connect the video with the attacks.” II-36 and II-38.
- In sharing with her daughter the fact that Ambassador Smith and a communications officer had been killed in the attacks, “the Secretary acknowledged the attack – with a link to al-Qaida – was in fact terrorism. In omitting this fact from her public statement, however, the Secretary sent a very different message to the public – a message that suggested a protest over a video.” II-38.
- On the morning following the attacks, Deputy National Security Advisor Rhodes hosted a conference call “for USG communicators” “to ensure we are all in sync on messaging for the rest of the day.” II-39.
- “The message emanating from the White House the morning after the attacks – similar to the message delivered by the U.S. government the night before through the Secretary’s statement – was that the video and the attack on U.S. facilities in Benghazi would be mentioned in the same breath. This therefore served the purpose of continuing to connect the two issues.” II-39 – II-40.
- The day after the attacks, “[t]he public statements by the President and Secretary of State did not call the events in Benghazi a terrorist attack.” II-43.
- In an interview with *60 Minutes* that same day, “the President raised the issue of the video while referring to the Benghazi attacks, implying the film was an ‘excuse for violence against Americans’ and conflating the two issues.” II-44.
- Also the day after the attack, Deputy Under Secretary of State for Management Patrick Kennedy, who oversaw the Bureau of Diplomatic Security, gave a private briefing to congressional staff in which he was “emphatic” in “conveying that no protests had occurred prior to the attack.” Kennedy “was specifically asked

whether this was ‘an attack under the cover of a protest’” and replied “[n]o this was a direct breaching attack.” II-46.

- “[T]he Executive Update, produced by the CIA analysts earlier that day and shared with senior administration officials” “stated ‘the presence of armed assailants from the outset suggests this was an intentional assault and not the escalation of a peaceful protest.’” This piece “was part of the President’s Daily Brief and likely discussed with the President’s Chief of Staff on September 13, 2012.” II-46.
- On September 13, 2012, the CIA “published its first intelligence assessment exclusively regarding the Benghazi attacks.” II-47. The September 13, 2012 assessment “was rife with errors as the analysts themselves would later acknowledge. There were improper footnotes, poor and confusing phrasing, and most importantly, headlines that were not supported by any text.” “Whether or not a protest occurred prior to the attacks was not a focal point of the piece, nor was it an issue the analysts found to be particularly germane.” II-49.
- “[D]espite the incorrect title and numerous other faults with the September 13 piece, there is still no assessment by the analysts that tied what transpired in Benghazi to the internet video. Even among the legion of mistakes made, the piece did not authoritatively connect Benghazi with protests or an internet video.” II-59.
- “While the inaccurate and poorly written CIA analysis on September 13 gave an opening for administration officials to claim protests had occurred prior to the Benghazi attack, the public connection and conflation by administration officials between Benghazi and the video continued. This occurred despite any assessment by the CIA analysts of the video playing a role in the Benghazi attacks.” II-59.
- On the morning of September 14, 2012, a public information officer at the U.S. Embassy in Tripoli sent an email to colleagues in Tripoli and at the State Department headquarters in which he wrote, “Our monitoring of the Libyan media and conversations with Libyans suggests that the film is not as explosive of an issue here as it appears to be in other countries in the region.” He continued, “Relatively few have even mentioned the inflammatory video. So if we post messaging about the video specifically, we may draw unwanted attention to it. And it is becoming increasingly clear that the series of events in Benghazi was much more terrorist attack than a protest which escalated into violence.” II-63 – II-64.
- The Chief of Station in Tripoli told CIA headquarters as early as the morning of September 14, 2012 that “a protest did not occur in Benghazi.” II-66.
- On September 14, 2012, the CIA prepared draft talking points for the House Permanent Committee on Intelligence that contained six bullet points. “Nowhere

in any of these six bullet points is a mention of demonstrations or protests in Benghazi. II-73.

- On September 15, 2012, the CIA prepared a further intelligence assessment, co-written with the National Counterterrorism Center. The assessment “had two main focuses: the extremists who participated in the Benghazi attacks, and Libyan authorities placing a high priority on tracking down the perpetrators of the attack. Similar to the September 13 [assessment] two days earlier, the notion of a protest and the discussion of a video were not central – or even minor – focuses of the piece.” II-81.
- Also on September 15, 2012, the CIA’s chief of staff emailed CIA Deputy Director Michael Morrell noting “there were ‘no signs of a protest’ at 10:00 p.m. in Benghazi – less than 20 minute after the attacks began – according to a CIA officer at the scene.” Morrell later testified that he “‘almost certainly would not have not read an email from the chief of staff.’” II-83.
- “Perhaps as much as any other subject surrounding Benghazi, the appearance by Ambassador [Susan] Rice on five Sunday morning talk shows following the attacks has been the most politically charged.” II-86.
- “It was not until two days before the shows, on Friday, September 14, when Rice learned she would be appearing on behalf of the administration. She was the administration’s third choice to appear on the shows – the first being the Secretary of State and the second being Tom Donilon, National Security Advisor to the President.” II-86.
- In selecting Ambassador Rice, “the administration selected someone to talk to the American people about the Benghazi attacks who was neither involved in the security of any U.S. facilities in Benghazi nor involved in any way with the operational response to the attacks. In fact, the administration selected an individual who did not even know there was a CIA presence in Benghazi, let alone the fact that two Americans died there.” II-88 – II-89.
- “Ambassador Rice did not begin preparing for the shows until the following day, Saturday September 15.” II-90.
- Ambassador Rice’s staff “prepared a book of briefing materials for Rice These briefing materials contained little to no information about the Benghazi attacks.” Ambassador Rice’s staffer later “testified that, in gathering briefing materials for the Sunday shows, she explicitly did not focus on Benghazi, anticipating materials pertaining to Benghazi would come at a later time.” II-90 – II-91.
- Deputy National Security Advisor Rhodes delivered the “Talking Points” memo (see PJO Decl. Ex. 8) “at 8:09 p.m. on the evening of September 14 in an email with the subject ‘RE: PREP CALL with Susan: Saturday at 4:00 pm ET.’ The

memo contained four bullet points under ‘Goals,’ six bullet points under ‘Top-lines,’ and contained five questions and suggested answers regarding the Arab Spring, protests, and Benghazi, and an additional four questions and suggested answers regarding Israel and Iran.” II-93.

- Regarding the goals of Ambassador Rice’s appearances, “[t]he second point [To underscore that these protests are rooted in an Internet video, and not a broader failure of policy] was one of the most explicit directions from a senior administration official about the intent of the administration’s communications strategy.” II-93.
- The fact that the next bullet under “Goals” references Libya “is important. The bullet point immediately prior references the video, allowing for easy connection and conflation of the video and the Benghazi attacks . . . and, having seen this memo, Rice appeared to again connect the video and Benghazi the next day when she appeared on the talk shows.” II-97.
- Deputy National Security Advisor Rhodes “admitted that he was not aware of any intelligence that existed to directly link the video to the attacks.” II-97.
- “[M]ultiple witnesses testified Benghazi was barely mentioned on the prep call. This inattention is consistent with the lack of information pertaining to Benghazi in the briefing materials.” II-99.
- Deputy Chief of Staff and Director of Policy Planning Jacob Sullivan obtained a copy of Ambassador Rice’s appearance on *This Week* and sent a note to Secretary Clinton about the appearance. “This note from Sullivan is interesting for two reasons. First, he writes that Rice makes clear their ‘view that this started spontaneously and then evolved.’ Second, Sullivan expresses concern regarding Rice’s comment on the investigation, where she said ‘[a]nd we’ll see when the investigation unfolds whether what was – what transpired in Benghazi might have unfolded differently in different circumstances . . . The fact Rice raised this as a possibility appeared to be unsettling to Sullivan.” II-128 – II-129.
- “Rice’s comments on the Sunday talk shows were met with shock and disbelief by those closest to the facts of the situation. Subject matter experts with direct knowledge of the attacks expressed immediate concern about what Rice had said on the shows – and potential fallout as a result.” II-131.
- “Other subject matter experts within the State Department also recognized problems with what Rice said on the talk shows. State Department employees in Washington, D.C. who had spoken with those on the ground in Libya after the attack were universal in their condemnation of Rice’s statements. The Senior Libya Desk Officer, Bureau of Near Eastern Affairs, State Department, wrote: ‘I think Rice was off the reservation on this one.’” II-132.

- “The Deputy Director, Office of Press and Public Diplomacy, Bureau of Near Eastern Affairs, State Department, responded: ‘Off the reservation on five networks!’” II-133.
- “The Senior Advisor for Strategic Communications, Bureau of Near East Affairs, State Department, wrote: ‘Yup. Luckily there’s enough in her language to fudge exactly what she said/meant.’ He also wrote: ‘WH [White House] very worried about the politics. This was all their doing.’” II-133.
- “A week after the Benghazi attacks, administration officials began telling the public yet a different story. It started with Matthew G. Olsen, the Director of the National Counterterrorism Center . . . On September 19, 2012, testifying before the Senate Homeland Security and Governmental Affairs Committee, Olsen firmly stated that what happened in Benghazi was in fact a terrorist attack. Olsen also testified that individuals affiliated with al-Qaida or al-Qaida’s affiliates may have been involved in the attack.” II-142.
- “Olsen’s testimony that what had transpired in Benghazi was a terrorist attack and that there may be links to al-Qaida was the first time an administration official had stated either of those facts publicly. He said the attacks were ‘opportunistic’ and did not mention anything about a video.” II-144.
- “Private reaction from senior officials at the State Department regarding Olsen’s testimony . . . appeared less supportive.” II-148.
- Deputy Chief of Staff and Director of Policy Planning Sullivan “called the White House to inform them that he was unaware Olsen was going to testify it was a terrorist attack.” II-148.
- Secretary Clinton “expressed surprise at Olsen’s testimony.” II-149.
- “Two days after Olsen’s testimony, on September 21, 2012, the Secretary said for the first time publicly that what happened in Benghazi was a ‘terrorist attack.’” II-151.
- “Four days later, on September 25, 2012, the President said, during remarks to the United Nations General Assembly: ‘There are no words that excuse the killing of innocents. There’s no video that justifies an attack on an embassy.’” II-151.
- “It was not until the following day – a full week after Olsen made his comments and fifted (sic) days after the attacks began – [White House Press Secretary Jay] Carney finally acknowledged the President’s position was that a terrorist attack occurred.” II-151.
- “The political import of the attacks on the presidential campaign of 2012 is not a subject of the committee’s investigation. Nevertheless, the House of Representatives did direct the Committee to investigate and study ‘internal and public executive branch communications about the attacks.’ It would be naive to

II: INTERNAL AND PUBLIC GOVERNMENT COMMUNICATIONS ABOUT THE TERRORIST ATTACKS IN BENGHAZI

“Two of our officers were killed in Benghazi by an Al Queda-like [sic] group”

The Secretary of State to her daughter, September 11, 2012¹

“We know that the attack in Libya had nothing to do with the film. It was a planned attack—not a protest”

Summary of a statement by the Secretary of State to the Egyptian Prime Minister, September 12, 2012²

“To underscore that these protests are rooted in an Internet video, and not a broader failure of policy”

Benjamin J. Rhodes, defining one of the goals of Ambassador Susan E. Rice’s appearances on the Sunday news programs following the Benghazi attacks, September 14, 2012³

“I gave Hillary a hug and shook her hand, and she said we are going to have the filmmaker arrested who was responsible for the death of my son.”

Diary entry of Charles Woods, father of Tyrone Woods, September 14, 2012⁴

¹ Email from Hillary R. Clinton (“H”), Sec’y of State, U.S. Dep’t of State, to Chelsea Clinton (“Diane Reynolds”) (Sept. 11, 2012, 11:12 PM) (on file with the Committee, C05795467).

² Email from U.S. Dep’t of State, to S_CallNotes, (Sept. 12, 2012, 7:11 PM) (on file with the Committee, C05561911).

³ Email from Benjamin J. Rhodes, Deputy Nat’l Sec. Advisor for Strategic Commc’s, Nat’l Sec. Council, to Dagoberto Vega, Special Ass’t to the President and Dir. of Broadcast Media, White House, *et al.* (Sept. 14, 2012, 8:09 PM) [hereinafter Rhodes Memo] (on file with the Committee, C05415285).

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THE SECURITY ENVIRONMENT

The attacks in Benghazi did not occur in a vacuum. They took place amidst a severely deteriorating security situation in eastern Libya—a permissive environment where extremist organizations were infiltrating the region, setting up camps, and carrying out attacks against Western targets.⁵ In June 2012, State Department security officials were discussing “an active terrorist cell in Benghazi” that was “planning and implementing attack operations against western interests including the U.S. Mission in Benghazi[.]”⁶ That same month another security official in Libya reported to Washington about the “increase in extremist activity” and described his “fear that we have passed a threshold where we will see more targeting, attacks, and incidents involving western targets.”⁷ The official cited a series of recent attacks and noted that a source had warned of a “group attack” on an American facility.⁸ He specifically mentioned “[t]argeting [and] attacks by extremist groups particularly in the eastern portion of Libya,” where Benghazi is located.⁹

In the months leading up to September 11, 2012, several major security incidents had taken place in Benghazi against Western targets, including:

- April 2, 2012: Attack on a United Kingdom [UK] armored vehicle;
- April 6, 2012: Improvised Explosive Device [IED] attack on the State Department facility in Benghazi;
- April 10, 2012: IED attack on the motorcade of the United Nations Envoy;
- April 27, 2012: IED attack on a courthouse in Benghazi;

⁴ Fox News Insider, *Father of Benghazi Victim Reveals Journal Entry Documenting Meeting With Hillary*, YouTube (Jan. 13, 2016), <http://www.youtube.com/watch?v=dMx0huMabos>.

⁵ This deteriorating security environment is discussed in detail in Section III of the report.

⁶ Memorandum from James Bacigalupo, Regional Dir. of the Near East Asia Bureau of Diplomatic Sec., U.S. Dep’t of State, to Charlene Lamb, Deputy Ass’t Sec’y for Diplomatic Sec., U.S. Dep’t of State (June 15, 2012) (on file with the Committee, C05578316).

⁷ Email from Diplomatic Sec. Agent 24, U.S. Dep’t of State, to Diplomatic Sec. Agent 25, U.S. Dep’t of State (June 14, 2012) (on file with the Committee, C05388987).

⁸ *Id.*

⁹ *Id.*

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- May 22, 2012: Rocket Propelled Grenade [RPG] attack on the International Committee for the Red Cross [ICRC] facility in Benghazi;
- June 6, 2012: IED attack on the State Department facility in Benghazi;
- June 11, 2012: RPG attack on the UK Ambassador's motorcade;
- June 12, 2012: RPG attack on the ICRC;
- July 29, 2012: IED found at Tibesti Hotel; and
- August 5, 2012: Attack on the ICRC facility.

The threat environment in Benghazi was so severe that on September 11, 2012, on the anniversary of September 11, one Diplomatic Security agent in Benghazi feared an attack that night and was not planning on going to sleep. He testified:

You know, I wasn't going to go to sleep that night. I was probably going to stay up throughout the night just because, one, it's September 11, you know, and what was happening in Egypt. So if anything was to happen, it would happen late at night, early morning. So I wasn't going to go to bed. I believe [Agent 2] was along the same mindset, but we hadn't ratified whether, yes, this is what we are doing. It was just people are going to stay up. I had taken my weapon and ammunition and put it in my room. [Agent 2] had done the same thing. And I believe they had— [Agent 5] had his weapon with him as well in his room.¹⁰

Sean P. Smith, the Information Management Officer at the Benghazi Mission compound, also feared an attack, telling a community of online gamers shortly before the attack: “[A]ssuming we don't die tonight. We saw one of our 'police' that guard the compound taking pictures.”¹¹

¹⁰ Testimony of [Agent 1], Diplomatic Sec. Agent, U.S. Dep't of State, Tr. at 49-50 (Mar. 6, 2015) [hereinafter [Agent 1] Testimony] (on file with the Committee).

¹¹ Matt Smith, *Ex-SEALs, Online Gaming Maven among Benghazi Dead*, CNN (Sept. 13, 2012, 8:53 PM), <http://www.cnn.com/2012/09/13/us/benghazi-victims/>.

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It was against this backdrop that the September 11, 2012 attacks against U.S. facilities in Benghazi took place.

THE PROTESTS IN CAIRO

In Cairo, Egypt earlier that day, approximately 2,000 protestors demonstrated outside the U.S. Embassy—a protest that began in the middle of the day.¹² A handful of protestors scaled the embassy wall, tore down the American flag, and sprayed graffiti inside the compound.¹³ Some protestors were eventually removed by Egyptian police. No Americans were injured or killed in the event.

In Cairo, protests had been planned for days in advance on social media as a result of a video posted on YouTube about the prophet Muhammad.¹⁴ On September 10, 2012, the CIA warned of social media chatter calling for a demonstration in front of the Embassy in Cairo,¹⁵ and Americans at the Embassy were sent home early due to the impending protests.¹⁶

Although the attacks in Benghazi occurred later on the same day, they had little else in common with the Cairo protests. Significant differences included:

- In Cairo, plans for the protest appeared on social media well before the actual demonstration.¹⁷ In Benghazi the attacks occurred without warnings on social media;¹⁸

¹² See, e.g., Email to Susan E. Rice, U.S. Ambassador to the U.N., *et al.*, (Sept. 11, 2012, 7:55 PM) (on file with the Committee, C05390691).

¹³ See, e.g., *id.*

¹⁴ Sara Lynch and Oren Dorell, *Deadly embassy attacks were days in the making*, USA Today, (Sept. 12, 2012, 8:36 PM), <http://usatoday30.usatoday.com/news/world/story/2012/09/12/libyan-officials-us-ambassador-killed-in-attack/57752828/1>.

¹⁵ See, e.g., email from Victoria J. Nuland, Spokesperson, U.S. Dep't of State, to Erin Pelton, Dir. of Commc's and Spokesperson, U.S. Mission to the U.N. (Sept. 15, 2012, 7:18 PM) (on file with the Committee, C05622933).

¹⁶ *Egypt Protesters Scale U.S. Embassy Wall, Take Flag*, CBS/AP (Sept. 11, 2012, 5:16 PM), <http://www.cbsnews.com/news/egypt-protesters-scale-us-embassy-wall-take-flag/>.

¹⁷ Sara Lynch and Oren Dorell, *Deadly embassy attacks were days in the making*, USA TODAY, Sept. 16, 2012.

¹⁸ See, e.g., Testimony of Tripoli Chief of Station, Cent. Intel. Agency, Tr. at 42-45, July 16, 2015 [hereinafter Tripoli COS Testimony] (on file with the Committee).

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- In Cairo, protestors did not brandish or use weapons.¹⁹ In Benghazi, attackers were armed with assault weapons, rocket propelled grenades, and sophisticated mortars;²⁰
- In Cairo, protestors spray painted walls and did other minor damage.²¹ In Benghazi, the attackers burned down buildings and pounded U.S. facilities with mortars and machine gun fire;²² and
- In Cairo, the protest was confined to a single location.²³ In Benghazi, the attacks spanned nearly eight hours over two different locations.²⁴

Diplomatic Security personnel in Washington D.C. recognized differences as well. At 5:13 p.m. on September 11, 2012 James Bacigalupo, Regional Director for Diplomatic Security, Near Eastern Affairs Bureau, State Department, notified all regional security officers:

Within the last few hours we have had one demonstration in which protestors infiltrated the perimeter of the compound in Cairo and an armed attack on our compound in Benghazi. Both are currently on-going and may be in response to the release of an anti-Islamic documentary and upcoming demonstration by Terry Jones this evening.²⁵

The differences also were noted by senior State Department officials as well. Victoria J. Nuland, Spokesperson, State Department, sent an email at 6:09 p.m. that included Jacob J. Sullivan, Deputy Chief of Staff and Director of Policy Planning, State Department, and Patrick F. Kennedy, Under Secretary for Management, State Department, among others. Nuland wrote:

¹⁹ See, e.g., Email to Susan E. Rice, U.S. Permanent Rep. to the U.N. (Sept. 11, 2012, 7:55 PM) [hereinafter 7:55 P.M. Rice Email] (on file with Committee, C053906910).

²⁰ See, e.g., Benghazi Accountability Review Board at 4, U.S. Dep't of State [hereinafter Benghazi ARB].

²¹ 7:55 P.M. Rice Email, *supra* note 19.

²² Benghazi ARB, *supra* note 20, at 4.

²³ See, e.g., 7:55 P.M. Rice Email, *supra* note 19.

²⁴ Benghazi ARB, *supra* note 20, at 4.

²⁵ Email from James Bacigalupo, Regional Dir. of the Near East Asia Bureau of Diplomatic Sec., U.S. Dep't of State, to DS-IP-NEA-RSO (Sept. 11, 2012, 5:13 PM) (on file with the Committee, SCB0048896).

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[Please] put out as two separate statements to bullpen, asap. On record, me.

We can confirm that our office in Benghazi, Libya has been attacked by a group of militants. We are working with the Libyans now to try to restore security.

In Cairo, we can confirm that Egyptian police have now removed the demonstrators who had entered our Embassy grounds earlier.

For [press] guidance, if pressed whether we see a connection between these two.

We have no information regarding a connection between these incidents.²⁶

WHAT BENGHAZI REPORTED DURING THE ATTACKS

All five Diplomatic Security agents at the Benghazi Mission spoke with the Diplomatic Security Command Center while the attacks were ongoing. Agent 5, the Diplomatic Security agent who was with Smith and Ambassador to Libya J. Christopher Stevens during the attack, recounted his story:

Okay, so the evening started with [Agent 4], [Agent 2] and I sitting at a table near the pool at the end of the night. Ambassador Stevens had come by and said, I'm going to bed. Sean Smith said the same thing and went, you know, went inside the villa, and we were just sitting out kind of relaxing at the end of the night.

While we were talking, I started hearing some kind of chanting, I thought it was. So I told the others, you know, I told the other two, hang on. Just listen for a minute. And what we heard was chanting. And it was my impression that it was coming closer. You know, so immediately when I realized, you know, that this is a potential security incident, or a potential something, I said, you know, get your gear, right now. I ran into Villa C where the

²⁶ Email from Victoria Nuland, Spokesperson, U.S. Dep't of State, to Elizabeth Dibble, Deputy Ass't Sec'y in the Bureau of Near Eastern Affairs, U.S. Dep't of State, *et al.* (Sept. 11, 2012, 6:09 PM) (on file with the Committee, C05578255).

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Ambassador and Sean Smith were and the other two ran in a different direction.

I remember hearing the chants. I mean, they were fairly close already. I mean, yelling distance, which is pretty close especially in a city setting. So my impression is that I don't have much time. So I ran right to my room, you know, put my helmet on, put my vest on, grabbed my weapons, my additional weapons, and I turned to lock the gate, and basically, it was a jail cell door with three locks on it. I locked all three locks.

And at about that time, Ambassador Stevens and Sean Smith were coming out of their rooms. Sean Smith was already, you know, donning his helmet and vest. I guided them both into the safe haven, and I set myself up in the safe haven with—I was holding my M4. I had a pistol, a radio, a shotgun, and when we were, you know, when we were in there, I radioed the other guy, hey, we are all in the safe haven.

I could hear outside explosions, yelling, chanting, screaming, gunfire, and I reported all of this on the radio just saying, this is what my senses are telling me. Then people started banging on the doors of the building, so I reported that. Hey, there is banging on the doors. They are trying to come in, you know, we need immediate assistance. And there wasn't any response on the radio. Shortly after that, to my recollection, the doors were blown open. And about 70 individuals, you know, rushed into the building, all of them carrying AK-47s, grenades, RPGs, you know, a mixture throughout everyone. Different—there were a couple of different assault rifles.

And with the number of individuals that came into the building versus me, I chose just to stay in the shadow that I was in. So I was partially in the safe haven, partially outside the safe haven. This area was, you know, there was a big shadow where I was sitting, and my view through the jail cell door was into the common area. So I could see where everybody was going, and they began breaking everything. I could just hear glass breaking. I could hear stuff being thrown around. I could hear furniture being moved.

If I may just back up a little bit. When we made it into the safe haven, I handed my cell phone to the Ambassador. I said, call

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everybody on my cell phone. Call everybody that you know that can help us. At one point, I handed Sean Smith the shotgun, but just like me and everybody else that was in the safe haven, we were scared. But as a security professional with my military training and my agent training, I'm trained to remain more calm than a non-security professional.

So I took the weapon back from him seeing that he was visibly shaken. And I just waited to see what was unfolding. I was on the radio the whole time updating, you know, whispering. Turned the volume way down, you know, hey guys, they are in the building. Shortly after that, two individuals came up to the jail cell door and took out their AK-47s, and they are beating on the jail cell door. They also had grenades on them. And I thought they were going to take the grenades off and pit them on the locks and blow the locks.

So I tuned to the Ambassador, and said, you know, if they take their grenades off the door and put them on the locks, I'm going to start shooting. And when I go down, pick up the gun, and keep fighting. Thankfully, they didn't put the grenades on the locks. And they just kind of turned away, and walked to a different, you know, part of the house that I couldn't really see.

And then slowly, people started to kind of trickle out. And then the lights started to kind of dim. My initial response or my initial thought was, well, they just knocked out the generators. You know, we have regular city power but we also have backup generators. So flickering would be a likely, you know, cause of this. But in reality, it was smoke. And it took me about, you know, two or three seconds after that to determine that it was smoke.

As soon as I realized it was smoke, I turned to the Ambassador and Sean Smith and said, we are moving to the bathroom. And at that time, grabbed the Ambassador, Sean Smith was right behind him and we started crawling towards the bathroom. It's about a three- to four—meter crawl. And it only took seconds for us to reach—to reach the hallway that the bathroom was in. But by that time—seconds later, the smoke had already filled the entire room and I began basically army crawling like on my belly, and breathing through my hands like this, the last, you know, centimeter of air that was left.

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And as soon as it became that thick, no light was visible from the lights that were fully on. The sounds were, you know, crackling and breaking of things from heat. And so to lead them to the bathroom, I was saying, Come on guys, follow me. And I was slapping my hands on the floor, or you know, hitting stuff with my hands if I felt anything. Like come on, you guys, follow me. Come on. We are going to the bathroom.

So I make it to the bathroom and nobody follows me in. The whole time I was slapping and saying, come on, follow me. My intention of going to the bathroom is because if we made it to the bathroom, I know there is a window that we can open. So what we would do is go into the bathroom, close the door, wet towels on the floor and open the window. And we could last, you know probably much longer in the bathroom than anywhere else in the house.

But because nobody followed me in, I wasn't going to close the door. So thinking about how I can better the situation, I open the window. And I thought that that could you know, provide some, you know, the lights in the bathroom. I could provide some light, or I could provide, you know, someplace with air and they could see that. But by opening the window, I stood up to open the window, and I thought my face was on fire. And I opened the window anyway and it just became a chimney and all the smoke started, you know, pouring out of the window and being sucked in my direction.

Because at that point that—I started to pass out. I could feel myself becoming weak and just overcome with smoke and heat. So I got back on the floor, took off my M4, because crawling with a slung weapon is extremely difficult. It was getting hung up on things, and I didn't want to be stuck in that building because of my M4. So I threw it in the bathroom, just left it there and started crawling towards my bedroom. And when I decided to do that, I was very clear to anybody else who could hear me, I'm moving to my bedroom. Come on guys, I'm moving to my bedroom. The whole time I'm hitting the floor, slapping, yelling. Come on, guys. Come on, you can do it. Let's go. Let's go. We are moving to my bedroom.

So I crawled to my bedroom. And as soon as I passed the threshold to my bedroom, you know, I had seconds left of life, essen-

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tially. And so I quickly went over to my window and started to crank open the metal shutters, but I was cranking the wrong way. So I had to turn back and crank it the other way. Then I had to open up the glass window, and then I had to pull a pin and push out this big metal gate. And as soon as I did that, I collapsed on to my little patio area.

And around the patio area was, you know, maybe a 2-1/2-foot tall cinderblock wall. And as soon as I went out there, I just started taking fire immediately. I remember hearing explosions, which I equate to grenades. I remember feeling the cement exploding and hitting me in the face. And I remember the sounds. So after catching my breath, I jumped back into the building and I searched for the Ambassador and Sean Smith. I went as far as my threshold, and reached out into the—into the area we had just come from to see if I could feel anybody. But the smoke and heat were so intense that, I mean, the smoke was coming in though my eyes, even though they were closed. It was coming in through my nose. And I stayed in there until I could --physically couldn't do it any more.

When I was in the Navy, they engrain in you, 110 percent. And most people don't think you can do 110 percent, but it's part of my character. I do 110 percent and I stayed in there until—until I physically could not and mentally could not stay in there any longer.

I went back out of the building, caught my breath on the patio again, immediately taking rounds, the same stuff, whizzing, you know, jumped back into the building, and I had intentions—you know, I was just thinking of any way that I could possibly signal them or let them know where I was besides yelling and slapping and hitting stuff.

And I remembered that I had a lamp in my room, and I went over to my lamp and I turned on my lamp, thinking that they could see it in the smoke. But it didn't turn on. And so I held it up to my eye to see if it was working, and I remember seeing a very faint glow when it was this close. I remember feeling the heat of the lamp, and I could just barely see the actual light from it.

II-11

That's how thick the smoke was. And I went back to my threshold, searched around, still yelling, still saying, "Come on guys," you know, to my bedroom. No response. Nothing. I went back out and caught my breath again, still taking rounds. And I went back in one or two more times to try and find them, and I couldn't. The last time I went out, you know, I decided that if I went back into the building that I wasn't going to come back out. The smoke and heat were way too powerful, and way too strong, and it was extremely confusing feeling my way in a smoke-filled building. And I didn't want to get lost, and so I decided to climb up the ladder up to the roof.

I climbed up the ladder, and pulled up the ladder behind me and that's the moment that I knew that Ambassador Stevens and Sean Smith were probably dead. Immediately, upon getting up to the roof, I started radioing for my colleagues, you know, telling them the situation, you know, telling them my situation, you know, I am exhausted. I am completely exhausted. I gave everything I had. And I'm still thinking of ways to help, still thinking of ways to get the guys out.

So I remember that we have a skylight in the top of the building, and so I, you know, we had a little stash of gear up on the roof. So I went over and I grabbed an M4 magazine and I climbed up on to this little platform which is near the window. But it's protected by these metal bars. And I couldn't break the window. But I remember yelling and hitting it as hard as I possibly could.

The bad guys saw me up there, started shooting at me again. I remember seeing tracer fire right over my head. I remember hearing the whizzing of the rounds going past me. And so I climbed, you know, back down off the ledge and just got on the radio. "Hey, guys, I'm on a frying pan. This thing is hot. The smoke is coming out of the building and going right on to the roof. If I pick my head up I'm getting shot at, and I can't—I can't do this forever."

Finally, over the radio, [Agent 4] says, "[Agent 5], we are coming to get you." You know, at that time a couple of seconds were gone, and he was like, "Hang on. Hang on. We are coming to get you" I don't know how long I was up on the roof, but for me it was a while.

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Finally, the other guys came over in a fully-armored vehicle and parked right at the base of kind of my location and set up a small perimeter, called me down off the roof. I climbed down and there were all amazed to see me still alive. Just my condition was, you know, my face was black. My eyeballs were black. My nose was black. Everything I had was black. But as a security professional, I said, "Give me a gun." [Agent 2] gave me a 9-millimeter pistol which I was a little unhappy about, but I took it anyway and stood—stood a position on the outside.

And [Agent 4]—[Agent 4] and [Agent 1] tried to go inside the building and find them, but shortly after that, their report was way too hot, way too smokey. You know, we are going to get lost in there. Somebody is going to die if we keep this up.²⁷

[Agent 3], Diplomatic Security agent in charge at the Benghazi Mission compound, testified he was in constant contact with the Diplomatic Security Command Center:

I was in the best position to see the attacks happen, unfold. I was in the TOC [Tactical Operations Center] at the special mission compound. I manned the cameras. You guys have seen the video. Any time you see the camera moving, that's me. Subsequently, I was also in a position to review the cameras and be aware of all the situational awareness at the second compound, all of which I have shared. Much of the attack was passed in real-time through my phone to DS command center.²⁸

[Agent 3] also testified about what he saw:

It was 9:42 at night, and I was wrapping up work and had some emails. My shift should have been done three or four hours earlier. I'm in the TOC office in the TOC building. I hear several, three to four, gunshots and an explosion that seemed substantially closer than what I heard earlier, which was the fireworks. The fireworks I kind of expected to happen every night at about 9:30 give or take. Initially I thought they were just a little bit late.

²⁷ Testimony of [Agent 5], Diplomatic Sec. Agent, U.S. Dep't of State, Tr. at 123 (Apr. 1, 2015) [hereinafter Agent 5 Testimony] (on file with the Committee).

²⁸ Testimony of [Agent 3], Diplomatic Sec. Agent, U.S. Dep't of State, Tr. at 77 (Oct. 8, 2013) [hereinafter Agent 3 Testimony] (on file with the Committee).

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So I get up. I go to the window, which is actually covered by two bookcases and has sandbags on the outside, so not to see anything, but actually to hear a little better I go to the window. I think I heard the shots or explosions first and then something more subsequent than that, either an additional explosion or additional gunfire, that sounded very close. I turn. I glance maybe a second, probably less, at the surveillance camera monitors and see a large group of personnel coming on. They're already on the compound, effectively in the middle of compound C. Right where this small roundabout is, there's a camera on a pole there. And I saw a large group. My original assessment was 16 to 20 armed men, a couple of them with banners[.]²⁹

Agent 3 testified this information was being relayed back to the Diplomatic Security Command Center [DSCC]:

We are relaying what is going on via the cameras, where slowly the barrack buildings [Villa C], which is one of the villas on the compound on the map, is set on fire, and then slowly those forces migrate over to our side, where they pin us in, basically, in both of our locations, in Villa B and the TOC building, where they proceed to gain entry into Villa B and attempt to kick the door in to the TOC building for 10 to 15 minutes. . . . [t]he situation on the ground was rough out there. There was heavy weapons. Some guys have grenades that have already gone off. Everybody is armed with either a pistol or a long gun. Somebody shows up at some point with, like, a bazooka. So it is tough.³⁰

Diplomatic Security agent Agent 1 called the DSCC when attackers were attempting to break into the room where he and another agent had barricaded themselves. He testified:

Q: You mentioned earlier that you used your BlackBerry to call the DS Command Center. When did you first call the DS Command Center during this sequence of events?

A: So before they breached, when they made the first attempt, the first attempt they didn't breach into the room yet. But it was imminent that they were going to breach and they were going to

²⁹ *Id.* at 135-136.

³⁰ *Id.* at 145-146.

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come in. So at that point we bunkered in and started to proceed making calls. So [Agent 2] was calling Tripoli and I called the Command Center. I believe it was 18 minutes after the attack.³¹

Diplomatic Security agent Agent 2 also spoke with the DSCC during the attacks. He testified:

I stayed on the roof of that building for the majority of the night. I made several phone calls back and forth to the DS Command Center in D.C. relaying information. I also made phone calls to one of the Ambassador's contacts to try to get some atmospheric about what was going on in the rest of the city, should we need to do a ground evac.³²

Agent 2 told the Committee he was providing "general situational awareness" to the DSCC so they could "make accurate decisions." He testified:

A: Yeah. He wanted to know the status of the accountability of the Americans who were on post, specifically the Ambassador, what information we had. There were also additional reports coming in that the Ambassador might have been at a hospital in a burn unit and we were trying to verify the validity of those claims. And then just general situational awareness for the Command Center in D.C.

Q: So your sense of kind of your—what you were doing there was kind of giving an ongoing as things were unfolding so that they would have the information to help assess how to continue responding?

A: Yes. My intent was to provide them the information that I had so they had timely information so they could make accurate decisions.³³

Diplomatic Security agent [Agent 4] testified it was his job to "immediately" contact the DSCC in the event of an attack.³⁴ He testified about the beginning of the attack:

³¹ Agent 1 Testimony at 62.

³² Testimony of [Agent 2], Diplomatic Sec. Agent, U.S. Dep't of State, Tr. at 100 (Mar. 19, 2015) [hereinafter Agent 2 Testimony] (on file with the Committee).

³³ *Id.* at 102.

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Q: Would it be then an accurate description to describe the attack as sort of a stealth attack?

A: It was very sudden. As I had mentioned, the only warning that I had that something was amiss was that—kind of that cry that I heard at the main gate. So it was very sudden.³⁵

Agent 4 also testified of the attack:

A: No, I never told them that there was a protest.

Q: Was it your assessment that there was a protest?

A: No.

Q: Do you believe there was a protest?

A: I don't.³⁶

At the Diplomatic Security Command Center, Charlene R. Lamb, Deputy Assistant Secretary for International Programs, State Department, was monitoring the situation in real time and was aware of the reports coming in from the agents under attack in Benghazi. She testified she was in “constant contact” with the agents on the ground and had an “almost full-time connection” to them:

A: I was in my office, and I received a phone call, I don't remember if it was directly from the command center or if it was from the desk officer, but I received a phone call that notified me that there was a problem.

Q: And that's what they said, it was a problem? Did they elaborate? Did they tell you anything more?

A: They said that they had the RSO on the phone and that the compound was under attack. And I didn't ask any more questions. I believe I notified Scott Bultrowicz, [Principal Deputy

³⁴ Testimony of [Agent 4], Diplomatic Sec. Agent, U.S. Dep't of State, Tr. at 85 (Mar. 16, 2015) [hereinafter Agent 4 Testimony] (on file with the Committee).

³⁵ *Id.* at 144.

³⁶ *Id.* at 155.

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Assistant Secretary for Diplomatic Security, State Department] and we both went down to the command center.

* * *

Q: And so once you learned of the attack, then what did you do?

A: I had a liaison officer that worked for me who had employees that worked in the Annex there, so I immediately called him on my way down to the command center and asked him to join me in the command center. And when we went in there, we initially tried to assess the situation the best we could, and then we started working on trying to identify security assets who could help them with the situation that was unfolding.

Q: And what assets would those have been?

A: Assets that were at the Annex facility. We made phone calls to Stuttgart, to AFRICOM [United States Africa Command] and EUCOM [United States Europe Command] to see if they had any assets in theater that were nearby that could possibly be drawn on for additional support.

Q: And did you discuss those assets and deployment with PDAS [Principal Deputy Assistant Secretary] Bultrowicz or Under Secretary Kennedy?

A: Yes. PDAS Scott Bultrowicz was in the room, he was on the phone with Pat Kennedy and Eric Boswell, and he was relaying information. As we were getting information in, he would relay it to them—

* * *

Q: And was the DS command center your only source of information that night or were you in constant contact with the Annex as well via your liaison?

A: Yes. My liaison had constant contact with the Annex. We had almost full-time connection to the DS agents that were on the ground, and then we were—you know, towards the end, we were

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getting information off of Twitter and public media. So those were our primary sources of information.³⁷

A senior watch officer at the DSCC described the events as “a full on attack against our compound.”³⁸ The same individual also said there was “zip, nothing nada” when asked if there was any rioting in Benghazi reported prior to the attack.³⁹

At 6:34 p.m. on September 11, 2012, the DSCC sent a “terrorism event information” to the Office of the Secretary.⁴⁰ The update noted that “host nation militia forces have responded to the U.S. Consulate in Benghazi” and “were engaged with the attackers.”⁴¹

Lamb testified information received by the DSCC—directly from all of the agents on the ground—was relayed to Kennedy.⁴² None of the Diplomatic Security agents on the ground reported anything about a protest in Benghazi. None of the Diplomatic Security agents on the ground reported anything about a video.

Kennedy testified that he passed on information from the DSCC directly to Secretary of State Hillary R. Clinton:

I stayed in my office, except for the SVTC [Secure Video Teleconference] the chairman referred to, monitoring my telephone, monitoring my emails, and making telephone calls or coordinating activities as were required.... I went up several times to brief the Secretary on the latest information that I was receiving from Diplomatic Security, which was receiving it from the ground.⁴³

³⁷ Testimony of Charlene Lamb, Deputy Ass’t Sec’y for Diplomatic Sec., U.S. Dep’t of State, Tr. at 14-16 (Jan. 7, 2016) [hereinafter Lamb Testimony] (on file with the Committee).

³⁸ Email from Diplomatic Sec. Agent 27, U.S. Dep’t of State, to svcSMARTCrossLow (Sept. 12 2012, 10:20 AM) (on file with the Committee, C05389586).

³⁹ Email from Diplomatic Sec. Agent 27, U.S. Dep’t of State (Sept. 18, 2012, 1:16 PM) (on file with the Committee, C05390678).

⁴⁰ Email from U.S. Dep’t of State to S_SpecialAssistants (Sept. 11, 2012, 6:34 PM) (on file with the Committee, C05578699).

⁴¹ *Id.*

⁴² Lamb Testimony at 15.

⁴³ Testimony of Patrick F. Kennedy, Under Sec’y for Mgmt., U.S. Dep’t of State, Tr. at 119 (Feb. 3, 2016) [hereinafter Kennedy Testimony] (on file with the Committee).

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KNOWLEDGE BY SENIOR STATE DEPARTMENT OFFICIALS

At 4:06 p.m. in Washington D.C. on September 11, 2012, 24 minutes after the attacks began in Benghazi, the State Department Operations Center issued a widely disseminated email to Department officials, including the Office of the Secretary, indicating an attack was occurring. With the subject “U.S. Diplomatic Mission in Benghazi Under Attack,” the email stated:

The Regional Security Officer reports the diplomatic mission is under attack. Embassy Tripoli reports approximately 20 armed people fired shots; explosions have been heard as well. Ambassador Stevens, who is currently in Benghazi, and four COM [Chief of Mission] personnel are in the compound safe haven. The 17th of February militia is providing security support.⁴⁴

Forty eight minutes later, a 4:54 p.m. update email stated:

Embassy Tripoli reports the firing at the U.S. Diplomatic Mission in Benghazi has stopped and the compound has been cleared. A response team is on site attempting to locate COM personnel.⁴⁵

A 6:07 p.m. update email with the subject “Ansar al-Sharia Claims Responsibility for Benghazi Attack” stated:

Embassy Tripoli reports the group claimed responsibility on Facebook and Twitter and has called for attack on Embassy Tripoli.⁴⁶

Gregory N. Hicks, Deputy Chief of Mission in Tripoli, was the United States’ highest ranking official in Tripoli at the time of the attacks in Benghazi. Hicks testified that he talked with Ambassador Stevens moments after the attack started:

⁴⁴ Email from OpsAlert@state.gov to S_Special Assistants, *et al.* (Sept. 11, 2012, 4:05 PM) (on file with the Committee, C05272001).

⁴⁵ Email from OpsAlert@state.gov to S_SpecialAssistants, *et al.* (Sept. 11, 2012, 4:54 PM) (on file with the Committee, C05272001).

⁴⁶ Email from OpsAlert@state.gov to S_SpecialAssistants, *et al.* (Sept. 11, 2012, 6:07 PM) (on file with the Committee, C05272001).

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A: I punched the number that I did not recognize and called it back, to call it back, and I got Chris on the line. And he said, "Greg, we are under attack." And I am walking outside, trying to get outside, because we have notoriously bad cell phone connectivity at our residence, and usually it's better outside. So I say, my response is, "Okay," and I am about to say something else, and the line clicks.

I try to reach him back on the—I begin walking immediately to our tactical operations center, because I knew that everybody would be gathering there, and I could then also summon everybody that needed to be at the—to begin the process of responding. And I am trying to call back on those numbers to reconnect, and not getting—either not getting a signal or not getting a response.

Q: And did you ever make a connection with the Ambassador again?

A: No. I never did.

Q: That was the last you spoke to him?

A: That was the last I spoke to him.⁴⁷

Hicks also testified that Stevens would have reported a protest had one occurred prior to the attack:

Absolutely, I mean, we're talking about both security officers who know their trade, even though they are brand new, and one of the finest political officers in the history of the Foreign Service. You know, for there to have been a demonstration on Chris Stevens' front door and him not to have reported it is unbelievable. And secondly, if he had reported it, he would have been out the back door within minutes of any demonstration appearing anywhere near that facility. And there was a back gate to the facility, and, you know, it worked.⁴⁸

⁴⁷ Testimony of Gregory N. Hicks, Deputy Chief of Mission at U.S. Embassy Tripoli, U.S. Dep't of State, Tr. at 18-19 (Apr. 11, 2013) [hereinafter Hicks Testimony] (on file with the Committee).

⁴⁸ *Id.* at 81-82.

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Throughout the course of the evening, Hicks was on the phone with A. Elizabeth Jones, Acting Assistant Secretary of State, Near Eastern Affairs, State Department, who was in Washington D.C. at the time, updating her about the events on the ground in Benghazi. Jones testified:

I sat down and called Greg Hicks and said, Tell me what is going on. I have this report from my special assistant, from the op[erations] center; what's going on? He said, I talked to Chris 20 minutes ago. Chris called me. He said, We're under attack.

I said, What do you mean we're under attack? He said there are people firing guns at us, firing weapons, firing at us. And I said, Where is Chris?

He said—he said that the RSO [Regional Security Officer] told him that they had taken—that Chris had said, We're going to the safe haven, and the regional security officer in Tripoli have reported, yes, the security officers in Benghazi had taken the ambassador to the safe haven.

I said, Okay. You talked to him 20 minutes ago. Call him again. He said, I've been trying. He doesn't answer the phone.

I asked, Who else was in the—in the building, where was Chris exactly, who else was in the building. He explained that Sean Smith was, that's the communicator, that there were three RSOs there and that they would—they were moving the two to the safe haven and that the others were trying to protect the building.

I immediately notified by email as many people as I could think of off the top of my head on the Seventh Floor [senior State Department leaders], that I had spoken to Greg, that this is what the situation was, that—that I would continue to stay in touch with him. In the meantime, I had a secure call from my CIA counterpart saying the same thing, We're hearing that Benghazi is under attack. I said, Is your annex under attack, which I knew to be a few minutes away.

He said, No. And I continued to be in touch with him, the—my CIA colleague and my staff. I decided to not work out of my office initially but work closer to where the secure phone is, which is on the other end of the suite and stayed in very close touch with Greg essentially all night long till the next morning.

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The—what I did in the second phone call, I believe it was with Greg, I said, Okay. Who are you talking to in the Libyan government?

He said, I've talked to—I've forgotten, the chief of staff of various of the senior people.

I said, Talk to the President, talk to the Prime Minister, don't just stay with the chief of staff. Talk to the senior people yourself and ask them for help. Tell them they've got to get their people up there, not—get their people up there to go over to the compound to render assistance to get the—get the attackers out of there, and I kept asking, Have you heard from Chris? Have you heard from Chris?

No, we can't find him. No, he's not—no, he's not answering. That was the first. And I don't remember the timeline anymore. It seemed like forever, but it probably w[as]n't that long.⁴⁹

Jones testified that she spoke with Hicks throughout the evening, almost every ten minutes:

Q: Okay. As the night wore on, was the phone just essentially left almost in permanent communication with Tripoli?

A: Yes.

Q: I mean, do you have that capability that you have an open line that just essentially stays open, or is this—or calling every 5 or 10 minutes? I'm just curious how that works.

A: Yeah. No, that's a good question. I didn't have an open line.

We did two things. I stayed in my office with my front office team and with my staff assistants and with—[Agent 1] was there. We, at the same time, started a task force in the Operations Center, so the Libya desk officers were up there helping manage some of the more routine issues, getting the evacuation going, working with EX [logistics] on those kinds of issues and sort of

⁴⁹ Testimony of Elizabeth Jones, Acting Ass't Sec'y, U.S. Dep't of State, Tr. at 39-40 (July 11, 2013) [hereinafter Jones Testimony] (on file with the Committee).

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doing the—helping us with the nuts and bolts on implementing the things that we were deciding that we needed to do.

Because DS kept the open—Diplomatic Secretary kept an open line—actually, I don't know that it was an open line. They had communication directly with the RSO. I basically worked primarily with Greg Hicks on his cell phone because that worked better in terms of Embassy communications and I could reach him wherever he was—wherever he was in the compound when he was moving around. So I communicated by my office manager dialing him directly on his cell phone.

So it was not an open line, but it was—I don't know that we talked every 10 minutes, but it seemed like it was every 10 minutes. It was close to that.⁵⁰

After some of Jones' discussions with Hicks, an assistant from the Office of the Secretary drafted emails about Jones' conversations with Hicks. These emails were disseminated to senior officials within the State Department, including Sullivan, Nuland, and William J. Burns, the Deputy Secretary of State.⁵¹

At 4:49 p.m., just over an hour after the attacks began, an assistant in the Office of the Secretary wrote:

Beth Jones just spoke with DCM Tripoli Greg Hicks, who advised a Libyan militia (we now know this is the 17th Feb brigade, as requested by Emb[assy] office) is responding to the attack on the diplomatic mission in Benghazi. The QRF [Quick Reaction Force] is in the compound, engaging the attackers, taking fire, and working its way through the compound to get to the villa, where Ambassador Stevens is in safe haven for extraction. The ARSO [Assistant Regional Security Officer] is also there in the compound. Greg spoke with Amb Stevens by phone 20 minutes before my call (which was about ten minutes ago). Greg will talk to the Prime Minister's Chief of Staff, and then speak with the

⁵⁰ *Id.* at 79-80.

⁵¹ *See, e.g.*, Email from U.S. Dep't of State to Victoria J. Nuland, Spokesperson, U.S. Dep't of State, *et al.* (Sept. 11, 2012, 5:32 PM) (on file with the Committee, C05391036).

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Foreign Minister ... Embassy is sending medical assistance to Benghazi to be on stand-by. More updates to follow.⁵²

At 5:13 p.m. a new email was sent to the group. It stated:

Just spoke again with Greg Hicks, who confirmed the party includes Ambassador Stevens plus three, not plus four. Hicks has been in contact twice with the Libyan President's office and twice with the Libyan PM's [Prime Minister's] office; their offices assured him they are fully engaged and consider themselves personal friends of Ambassador Stevens. Hicks has been coordinating with the [CIA] who has learned from the QRF about the status of the compound—currently they are clearing the compound and working to access the party. I also urged Libyan Ambassador to the U.S. Aujali to engage on this immediately at the highest level.⁵³

An email at 5:32 p.m., the first in the chain sent to Cheryl Mills, Chief of Staff and Counselor, State Department, stated:

The fighting has stopped, DCM Greg Hicks just confirmed to me. He also confirmed one fatality: Sean Smith—a TDY'er from The Hague—has died. His body has been recovered. The five ARSO's are accounted for, but they're still trying to find the Ambassador. The Principal Officer's residence is still on fire with toxic smoke. I have spoken to A/S [Assistant Secretary] Gordon and Liz Dibble is contacting the Charge at The Hague, [REDACTED], to inform them.⁵⁴

A 5:55 p.m. email to the same chain sent by an assistant in the Office of the Secretary stated:

I just spoke again to Greg Hicks, who himself spoke again to the offices of the Libyan President and Prime Minister, asking them

⁵² Email from U.S. Dep't of State to William J. Burns, Deputy Sec'y of State, U.S. Dep't of State, *et al.* (Sept. 11, 2012, 4:49 PM) (on file with the Committee, C05391036).

⁵³ Email from U.S. Dep't of State to Jacob J. Sullivan, Deputy Chief of Staff and Dir. of Policy Planning, U.S. Dep't of State, *et al.* (Sept. 11, 2012, 5:13 PM) (on file with the Committee, C05391036).

⁵⁴ Email from U.S. Dep't of State to Cheryl D. Mills, Chief of Staff to the U.S. Sec'y of State, U.S. Dep't of State, *et al.* (Sept. 11, 2012, 5:32 PM) (on file with the Committee, C05391036).

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to provide firefighting equipment to the Benghazi compound. He said the PD shop at Embassy Tripoli has found postings on Facebook indicating that the “Tripoli Council” plans to carry out an attack on Embassy Tripoli. He said he was promised increased police protection but it had not yet materialized.

Greg said his team reports that the extremist group Ansar Al Sharia has taken credit for the attack in Benghazi. He heard reports that the February 17 Brigade is currently engaged in a running battle with Ansar Al Sharia; he asked the offices of the President and PM to pursue Ansar al Sharia.

On working to locate Ambassador Stevens, the RSO team and militia are still on compound, which is 50 acres—Greg expressed the hope that Ambassador Stevens is in hiding somewhere on the compound. The PO’s residence is still on fire.⁵⁵

These emails consistently used the term “attack.” None of these emails mentioned anything about a protest. None of these emails mentioned anything about a video.

Hicks also spoke directly with the Secretary while the attacks were still ongoing. He testified:

A: No. I really didn't get—you know, about 2:00 a.m. [8:00 p.m. in Washington D.C.], the Secretary called—

Q: Okay.

A:—along with—her senior staff was on the—

Q: Okay. Do you recall who was on that call?

A: It was Wendy Sherman, Cheryl Mills, Steve Mull, Beth Jones, Liz—I am not sure whether Liz Dibble was on the phone or not at that time. I know Beth Jones was. Jake Sullivan.

And so I briefed her on what was going on, talked about the situation. And at 2:00 a.m., of course, Chris [Stevens] is in the hospital, although the Libyan Government will not confirm that he's

⁵⁵ Email from U.S. Dep’t of State to Victoria J. Nuland, Spokesperson, U.S. Dep’t of State, *et al.* (Sept. 11, 2012, 5:55PM) (on file with the Committee, C05391036).

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in the hospital. All they will tell us is he's in a safe place, or they will imply that he's with us at the [Annex] facility, which, of course, we have to feed back to them and say, no, we don't know where he is. It is a constant conversation, and I'm still talking to the same people.

The Vice Minister of the Interior chimes in sometime before midnight. And I'm pressing him to get their firefighters to the building to put the fire out, assuming that if they go to put the fire out, that they will send some security people with the firefighters to protect the firefighters. We tried everything that we could.

So we brief her on what's going on. She asks, How can we help? And I said, Well, we could use some reinforcements. And we have—we know we have wounded. And—

Q: What was the answer?

A: The answer was that the FAST team in Rota was being mobilized to come to Tripoli, and there would be a medevac flight coming down to pick up wounded.

And then we discussed also whether we were going to—they asked me if we were going to stay in the residential compound. And I said, no, we needed to consolidate our facilities here, because we basically sent everybody we have to protect us to Tripoli to rescue them.

Q: To?

A: To Benghazi. Sorry. Benghazi. Apologies. And they said, good.

Q: And how long does that call last?

A: Ten minutes.⁵⁶

None of the information coming directly from the agents on the ground in Benghazi during the attacks mentioned anything about a video or a protest. These first-hand accounts made their way to the Office of the

⁵⁶ Hicks Testimony at 32-34.

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Secretary through multiple channels quickly: through the Diplomatic Security Command Center; through the State Department Operations Center; through emails recounting Jones' phone calls with Hicks; through Kennedy, who briefed the Secretary directly; and through Hicks himself during a phone call with the Secretary.

THE SECRETARY'S STATEMENT

The principal public statement from the U.S. government the night of the Benghazi attacks, September 11, 2012, came from the Secretary of State and was issued at 10:08 p.m. It stated in full:

Statement on the Attack in Benghazi

I condemn in the strongest terms the attack on our mission in Benghazi today. As we work to secure our personnel and facilities, we have confirmed that one of our State Department officers was killed. We are heartbroken by this terrible loss. Our thoughts and prayers are with his family and those who have suffered in this attack.

This evening, I called Libyan President Magariaf to coordinate additional support to protect Americans in Libya. President Magariaf expressed his condemnation and condolences and pledged his government's full cooperation.

Some have sought to justify this vicious behavior as a response to inflammatory material posted on the Internet. The United States deplores any intentional effort to denigrate the religious beliefs of others. Our commitment to religious tolerance goes back to the very beginning of our nation. But let me be clear: There is never any justification for violent acts of this kind.

In light of the events of today, the United States government is working with partner countries around the world to protect our personnel, our missions, and American citizens worldwide.⁵⁷

⁵⁷ Press Release, U.S. Dep't of State, Statement on the Attack in Benghazi (Sept. 11, 2012), <http://www.state.gov/secretary/20092013clinton/rm/2012/09/197628.htm> [hereinafter September 11 Statement].

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The decision for the Secretary to issue the statement appears to have been made earlier that evening during a 7:30 p.m. secure video teleconference [SVTC], a meeting hosted by the White House, that included senior officials from the State Department, Intelligence Community, and Defense Department to discuss the events unfolding in Benghazi.

Rough notes from the White House meeting describe ten specific action items. One of these action items stated:

The Secretary will issue a statement tonight condemning the attacks and stating an official American was killed. ... S may issue another statement to distance the United States from the Pastor Jones video.⁵⁸

The Secretary did not, however, issue two statements that evening. She issued one. And that single statement condemned the attack, stated an American was killed, and distanced the United States from an internet video. In doing so, the statement—specifically the language “[s]ome have sought to justify this vicious behavior as a response to inflammatory material posted on the Internet”—appeared to connect, or at least conflate, the attacks in Benghazi with the video.⁵⁹ This connection between the attacks and the video continued for over a week, leading the public to believe that a video-inspired protest led to the attacks that killed Ambassador Chris Stevens and Sean Smith, Tyrone Woods, and Glen Doherty.

The 7:30 p.m. White House meeting was convened to discuss the Benghazi attacks and included the Secretary of State and other high level officials from the State Department, Defense Department, and White House. The meeting, however, contained a great deal of discussion regarding the video. Matt Olsen, Director, National Counterterrorism Center, was a participant in the meeting. He testified:

Q: Was there any discussion of sort of the video and Benghazi being linked on the call?

A: I don’t remember specifically, you know, how we talked about it. I’m sure that we did, right, because we were—the fact is that it came—the discussion of taking the video down was part

⁵⁸ Email from Watch Officer, U.S. Dep’t of State, to P_StaffAssistants & D(N)_StaffAssistants (Sept. 11, 2012, 9:46 PM) (on file with the Committee, C05562037).

⁵⁹ September 11 Statement, *supra* note 57.

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of our conversation in this call that was really focused on what was going on in Benghazi.⁶⁰

Olsen also said:

And in my own mind, at the time, I recall linking the two, you know, that this—we were thinking about what had happened in Cairo, we were thinking, okay, now this seems to be happening in Benghazi, and we're worried about other, obviously, other diplomatic posts in the Middle East and North Africa.

On that particular issue, one thing that I recall in thinking, again, sort of preparing for coming here, sort of trying to recollect as much as possible, one of the issues that Denis [McDonough] asked me—and I think Nick Rasmussen, my deputy, was there as well—was to see if we could work with—if we could contact Google to talk with them about enforcing their terms of service, which was the way that we often thought about offensive or problematic content.⁶¹

Five of the ten action items from the rough notes of the 7:30 p.m. meeting reference the video—including an item mentioning Leon E. Panetta, Secretary of Defense, and Martin E. Dempsey, Chairman of the Joint Chiefs of Staff, reaching out to “Pastor Jones” directly.⁶² For nearly two years the White House had been issuing public statements in the wake of actions committed by “Pastor Jones,”⁶³ although no connection at the time linked “Pastor Jones” or the video to the Benghazi attacks.

⁶⁰ Testimony of Matthew Olsen, Dir., Nat'l Counterterrorism Center, Tr. at 17-18 (Feb. 16, 2016) [hereinafter Olsen Testimony] (on file with the Committee).

⁶¹ *Id.* at 18.

⁶² Email from Watch Officer, U.S. Dep't of State, to P_StaffAssistants and D(N)_StaffAssistants (Sept. 11, 2012) (on file with the Committee, C05562037).

⁶³ See, e.g., Krissah Thompson and Tara Bahrapour, *Obama renews call for religious tolerance after Koran-burning canceled*, WASH. POST, Sept. 10, 2012 (“Obama denied that his administration’s forceful intervention—Defense Secretary Robert M. Gates made a personal appeal to the Gainesville pastor, the Rev. Terry Jones—had unnecessarily drawn attention to the pastor’s plans.”); and *Obama criticizes Quran burning, Afghan attacks*, NBC News, April 2, 2011, www.nbcnews.com/id/42396945/ns/world_news-south_and_central_asia/t/obama-criticizes-quran-burning-afghan-attacks/#.V1oSrvkjrJaR (“At least 10 people have been killed and 83 injured in the southern Afghan city of Kandahar, officials said on Saturday, on a second day of violent protests over the actions of extremist Christian preacher Terry Jones . . . ‘No religion tolerates the slaughter and beheading of innocent people, and there is no justification for such a dishonorable and deplorable act,’ Obama said.”).

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Avril Haines, Deputy Counsel to the President for National Security Affairs, held a conference call after the 7:30 p.m. meeting. Rough notes from the call stated:

There is likely to be a statement from S[ecretary Clinton] this evening addressing the violence and distancing the USG [United States government] from the videos that are believed to have instigated it (at least in part); while no one is sure of the cause, exactly, there is reportedly a new Terry Jones video threatening to burn Korans and a second film that includes a number of insulting statement about Mohamed.⁶⁴

The fact the 7:30 p.m. White House meeting, which took place while Ambassador Stevens was considered missing and before Tyrone S. Woods and Glen A. Doherty were killed, was about the attacks in Benghazi but much of the conversation focused on the video is surprising given no direct link or solid evidence existed connecting the attacks in Benghazi and the video at the time the White House meeting took place. The State Department senior officials at the White House meeting had access to eyewitness accounts to the attack in real time. The Diplomatic Security Command Center was in direct contact with the Diplomatic Security Agents on the ground in Benghazi and sent out multiple updates about the situation, including a “Terrorism Event Notification.”⁶⁵ The State Department Watch Center had also notified Sullivan and Mills that it was setting up a direct telephone line to Benghazi.⁶⁶ There was no mention of the video from the agents on the ground. Hicks—one of the last people to talk to Stevens before he died—said there was virtually no discussion about the video in Libya leading up to the attacks.

That did not, however, deter participants at the White House meeting—led by Denis McDonough, Deputy National Security Advisor to the President—from extensively discussing the video.

As a result of the White House meeting, the Secretary of State issued a

⁶⁴ Email from Attorney, U.S. Dep’t of State, to Harold Koh, Legal Advisor, U.S. Dep’t of State, *et al.* (Sept. 11, 2012, 10:40 PM) (on file with the Committee, C05528017).

⁶⁵ Email from DS Command Center to DSCC_C DS Seniors, DSCC_E TIA/PII, DSCC_E TIA/ITA, and DS-IP (Sept. 12, 2012, 5:05 AM) (on file with the Committee, C05389586).

⁶⁶ Email from U.S. Dep’t of State to Jacob J. Sullivan, Deputy Chief of Staff and Dir. of Policy Planning, U.S. Dep’t of State, *et al.* (Sept. 11, 2012, 4:38 PM) (on file with the Committee, C05561866).

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statement about the attacks later that evening. Rather than relaying known facts from those experiencing the attacks firsthand, however, the Secretary's statement created a narrative tying the events in Benghazi to the video, despite a dearth of actual evidence. This was done by mentioning the video and the attacks in the same sentence: "Some have sought to justify this vicious behavior as a response to inflammatory material posted on the Internet."⁶⁷

Sullivan testified about the decision to include that sentence in the statement:

Q: Do you recall whose idea it was to include that sentence?

A: I believe that it was my idea to include that sentence. It was either mine or Toria's [State Department spokesperson] or a combination of the two of us, but I thought it was important to include that sentence.

Q: And why is that?

A: Well there are two aspects to this. One was we didn't know the motivation of the actual attackers of Benghazi, so I didn't want to say they did it because of the video, and so I chose the words very carefully to say that some have sought to justify it on that basis.

But I thought it was really important for us to be able to express our views on the video and to say there is never any justification for violent acts of this kind, as well as to say we deplore efforts to denigrate the religious beliefs of others because I was deeply concerned that we could potentially face attacks on our embassies elsewhere. And, unfortunately, that's exactly what happened.⁶⁸

Sullivan did not say why it would not have been equally or even more important to denounce the video when it began circulating in the Middle East days earlier, or after the protests in Cairo where the link to the video was clear. Sullivan testified:

⁶⁷ *Id.*

⁶⁸ Testimony of Jacob J. Sullivan, Deputy Chief of Staff and Dir. of Policy Planning, U.S. Dep't of State, Tr. at 220 (Jan. 12, 2016) [hereinafter Sullivan Testimony] (on file with the Committee).

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I thought very hard about exactly how to formulate this. I didn't want to say the attackers did this because of the video. That's why I chose to use the phrase "justify," because I just wanted to talk more generally about people who might justify the attack on the basis of the video. Who would those people be? They would be the kind of people that would go try to gin up protests elsewhere, whether in Benghazi again or in Tripoli or anywhere else around the region.

And my first concern in getting this out was to do everything we could do to try to prevent further violence from happening. And I really thought it was important for the Secretary to get on the record on this issue. And in the days that followed, I thought it was important for her to continue getting on the record on this issue, especially as we dealt with these assaults on our embassies across the region.

So I thought hard about this paragraph. I thought hard about making sure we formulated it in a way that was accurate to say that just some had sought to justify it. Obviously, we have all seen a lot of public reporting linking things as well. So this, to me, was an important paragraph to include in this statement.⁶⁹

Sullivan apparently did not engage in nearly as much thought about the video when it first appeared online, or even when the U.S. Embassy was breached by protestors in Cairo earlier on September 11, 2012. Where there was a known connection to the video, Sullivan was silent. Where the video was not connected by even a scintilla of reliable evidence at the time, Sullivan thought it important enough to include.

Dan Schwerin, Speechwriter, Department of State, helped draft the statement that went out that evening. Schwerin told the Committee the statement was intended to speak to a global audience. He testified:

Q: You talked about speaking to a global audience. What did you mean by that?

A: I mean any time the Secretary of State speaks, the world is listening. We had—it was a period of unrest across the Middle East, North Africa, and beyond; specifically, in the Muslim

⁶⁹ *Id.* at 221.

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world, which was a source of concern; and how to lower that temperature and speak to that situation was an important issue.

Q: Was that focused on the video?

A: The video was the source of that unrest across the world in that period. And so, you know, lowering the temperature of that situation was one of our goals.⁷⁰

While protests around the Middle East flared up in the following days, at the time of the Benghazi attacks the protest in Cairo represented the only instance of unrest.

Megan Rooney, Speechwriter, Department of State, also worked on the statement and told the Committee that it was a “commonsense conclusion” that the video somehow sparked what happened in Benghazi, because it had done so in Cairo. She testified:

Q: Right. As you sit here today, do you recall anything generally about the conversation specific to the video that night?

A: No. Only that we thought it belonged in the statement.

Q: Do you recall why you thought it belonged in the statement?

* * *

A: ...I believed that it played a role in sparking the events of that night. And that any sort of conversation about what had happened, and what has to happen now would have to be taken into account in some way.

Q: Okay, just so I understand, it was your view that night that the video should be referred to in the statement because in your mind, the video had played some role in the attack in Benghazi?

A: Yeah, in sparking them or triggering them or motivating some of the people that night. Yeah, yes.

⁷⁰ Testimony of Daniel B. Schwerin, Staff Assistant and Speechwriter, U.S. Dep’t of State, Tr. at 21 (Oct. 9, 2015) [hereinafter Schwerin Testimony] (on file with the Committee).

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Q: And so you were kind of going back to your point about one of the goals for this speech was to explain to the American people what had happened. For that reason you wanted to refer to the video. Is that fair?

A: Yeah. I would say that's fair.

Q: And as best you can, could you just tell us what you based that conclusion on, or that opinion that the video somehow sparked what occurred in Benghazi?

A: Well, at the time it seems like the commonsense conclusion. You know, there was this incident happening in the same—not far from Benghazi, just a few countries to the—well, shoot, one country to the east. God, I'm failing on the geography—a nearby country, Cairo, Egypt, on the same day there was this protest that seemed—that was similarly targeting an American facility that similarly had our facility breached in this alarming way. And that seemed to be very clearly connected to this video since, again, I believe that not long before that protest broke out, the video had been broadcast on Egyptian news. So, you know, I was learning about what was happening in Egypt, and oh, look, the same day, something is happening at an American facility not far from there....⁷¹

The gist is: a statement connecting the video with the Benghazi attacks was included by a speechwriter because the “thought”—half a world away—was that “commonsense” dictated it. But that same commonsense would not dictate listening to and following the real time information being provided by eyewitnesses who survived the initial attack and were preparing for subsequent attacks.

Benjamin J. Rhodes, Deputy National Security Advisor to the President for Strategic Communications, spoke with Sullivan about the statement before it was released. Rhodes testified the sentence “Some have sought to justify this vicious behavior as a response to inflammatory material posted on the Internet” was not about Benghazi but served to respond “to

⁷¹ Testimony of Megan E. Rooney, Policy Advisor and Speechwriter, U.S. Dep’t of State, Tr. at 48-51 (Oct. 9, 2015) [hereinafter Rooney Testimony] (on file with the Committee).

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the general events taking place in the region as a whole.”⁷² He also said:

A: Again, our concern—one of our concerns was that we saw efforts to utilize the video to incite protests, including the type of violent protests that we saw in Cairo. And so I recall that we wanted to have messaging in the statement that sought to reduce tensions associated with the video.

Q: So was this sentence not meant to convey anything regarding Benghazi and Libya?

A: No, I don't believe so.

Q: You don't think—this sentence was not about Libya in any way, shape, or form?

A: Again, I believe that it was intended to address the broader context in the region.

Q: So that's what has me wondering. Then was there vicious behavior in other places that day?

A: Yes. Certainly in Cairo.

Q: But no—I mean, Pat Kennedy described Cairo as spray paint and rocks. Obviously, Benghazi was much different. So you're saying that vicious behavior applies to Cairo but doesn't apply to Benghazi?

A: Again, I think it applies generally to the fact that we had indications that there were individuals who might seek to use this video to justify violence?

Q: I'm asking about the two terms: vicious behavior. You said this sentence doesn't apply to Libya in a general sense or Benghazi in a specific sense, but does apply to other events in the region; namely, Cairo. Is that accurate?

⁷² Testimony of Benjamin J. Rhodes, Deputy Nat'l Sec. Advisor for Strategic Commc's, Nat'l Sec. Council, Tr. at 50-51 (Feb. 2, 2016) [hereinafter Rhodes Testimony] (on file with the Committee).

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A: Again, this is taking place in the context where we have a protest that turned violent at our Embassy in Cairo, and we have the attacks in Benghazi. The situation is fluid. There are indications that we are getting from the State Department that there are other actors who are seeking to incite people related to this video. And so one of the objectives in our messaging was to have a statement that, again, sought to minimize our association with this video.

Q: And I understand you conveyed that is one of your objectives, but I'm specifically, again, just for the record, asking that sentence you said does not apply, is not meant in any way to convey anything about Libya, it's about Cairo and the rest of the region.

A: Again, it's not intended to assign responsibility for what happened in Benghazi. It's meant to describe the context of what happened, what's happening in the region.

Q: You mentioned context a couple of times here. When I look at context, I look at this document. The heading is "Statement on the Attack in Benghazi." Paragraph one: I condemn in the strongest way the attack on our mission in Benghazi. We are securing personnel and facilities. One of our officers was killed in Benghazi. Next paragraph: I have talked to the Libyan President. So everything in this document is about Libya and Benghazi except you're saying this sentence doesn't apply to Libya and Benghazi.

A: Again, as I look at this statement, my recollection is one of the objectives was to convey that we were doing everything we could to secure our diplomats in facilities around the world. If you look, for example, at the last sentence of the statement, it's intended to be about that general principle that we will work with partner countries around the world to protect our personnel, our missions, and our American citizens.⁷³

⁷³ *Id.* at 61-64.

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Moreover, at Rhodes' direction, the Secretary's statement was the only statement issued on behalf of the United States government that night.⁷⁴ This put additional emphasis on its contents. Rhodes told the Committee:

A: You know, I recall telling my staff that that would be our comment for the night. So the people who work for me in the NSC press office, you know, everybody was being asked to respond to inquiries, and I remember determining that, you know, we would just have that one statement be our comment for the night.

Q: What was the thinking behind that, have that one statement coming from the State Department be the sole statement from the U.S. Government?

A: Again, my recollection is that this was an attack that had targeted our Ambassador, that it was appropriate for the Secretary of State to be speaking for the U.S. Government given that this had happened to people who worked in her department, and again, that made them the appropriate agency to issue a comment.⁷⁵

The Secretary's private comments, however, were different than her public comments. In a phone call with Libyan President Mohammed el-Magariaf at approximately 6:00 p.m. in Washington D.C., the Secretary did not mention the video nor did she connect the video with the attacks. A summary of the phone call is below:

Secretary Clinton: Mr. President.

Libyan General National Congress President Magarif: Your Excellency.

S: I appreciate you taking my call at this late hour.

M: No problem. It's my duty.

⁷⁴ See Email from Benjamin Rhodes, Deputy Nat'l Sec. Advisor for Strategic Commc's, Nat'l Sec. Council, to Steven Warren, Spokesman, U.S. Dep't of Defense, *et al.* (Sept. 11, 2012, 9:53 PM) (on file with the Committee, C05562046) ("[L]et the State Department' statement be our [USG] comment for the night.").

⁷⁵ Rhodes Testimony at 15.

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S: As you know, our diplomatic mission in Benghazi was attacked earlier this evening. We need your immediate help, as one of our diplomats was killed and our Ambassador, who you know, is missing. We have asked for the Libyan government to provide additional security to the compound immediately as there is a gun battle ongoing, which I understand Ansar al Sharia is claiming responsibility for. We also need to provide additional capacity for firefighting as there are reports that the principle officers residence has been bombed or set on fire. We believe that it is important for your government, as well as ours, to condemn this attack in the strongest possible terms and promise these criminals will be brought to justice. I also need you to help us secure our mission in Tripoli. We have serious threats on social media sites, like Facebook, and it is important that your government take all possible measures, in an urgent manner, to secure our facilities. We need you to have people who you are confident in, who will follow your direction, and that your government trusts to secure our compounds.

M: Please accept my condolences for the death of the American at the compound and our sincere apologies for what has happened. We promise to find the criminals and bring them to justice. We will do our utmost to protect American buildings and every American citizen in Libya. We were just in the midst of an emergency meeting with the Prime Minister and all of his deputies to address this situation.

S: If there is anything that you need or that I can do please do not hesitate to call me at any time, day or night.

M: Thank you.

S: Thank you.

M: Good Night.⁷⁶

In her call with the Libyan President, the Secretary mentioned a number of key facts not included in her public statement: that Stevens was still missing at the time;⁷⁷ that the extremist organization Ansar al Sharia had

⁷⁶ Email from U.S. Dep't of State to S_CallNotes (Sept. 11, 2012, 11:34 PM) (on file with the Committee, C05561906).

⁷⁷ *Id.* (“[O]ur Ambassador, who you know, is missing.”)

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taken credit for the attacks;⁷⁸ that the compound may have been bombed and set on fire;⁷⁹ and that the administration intended to bring the perpetrators to justice.⁸⁰ Significantly, she also did not mention the video she referred to in her public statement.

The Secretary also sent a private email to her daughter that evening about an hour after her public statement. The email said:

Two of our officers were killed in Benghazi by an Al Queda-like [sic] group: The Ambassador, whom I handpicked and a young communications officer on temporary duty w a wife and two very young children. Very hard day and I fear more of the same tomorrow.⁸¹

In that email, the Secretary states two individuals had been killed “by an Al Queda-like [sic] group.”⁸² This key fact had been omitted from the Secretary’s public statement. In sharing this fact with her daughter, the Secretary acknowledged the attack—with a link to al-Qaida—was in fact terrorism. In omitting this fact from her public statement, however, the Secretary sent a very different message to the public—a message that suggested a protest over the video.

It was not until ten days later the Secretary told the American people the events in Benghazi were terrorist attacks.⁸³

THE DAY AFTER THE ATTACKS

The day after the attacks was a day of mourning for the families of the four Americans who lost their lives—Ambassador J. Christopher Stevens, Sean P. Smith, Tyrone S. Woods, and Glen A. Doherty. It was also

⁷⁸ *Id.* (“I understand Ansar al Sharia is claiming responsibility[.]”).

⁷⁹ *Id.* (“[T]he principle officers residence has been bombed or set on fire.”)

⁸⁰ *Id.* (“[I]t is important for your government, as well as ours, to condemn this attack in the strongest possible terms and promise these criminals will be brought to justice.”)

⁸¹ Email from Hillary R. Clinton (“H”), Sec’y of State, U.S. Dep’t of State, to Chelsea Clinton (“Diane Reynolds”) (Sept. 11, 2012, 11:12 PM) (on file with the Committee, C05795467).

⁸² *Id.*

⁸³ Glenn Kessler, *From video to terrorist attack: a definitive timeline of administration statements on the Libya attack*, WASH. POST (Sept. 27, 2012), https://www.washingtonpost.com/blogs/fact-checker/post/from-video-to-terrorist-attack-a-definitive-timeline-of-administration-statements-on-the-libya-attack/2012/09/26/86105782-0826-11e2-aff-d6c7f20a83bf_blog.html.

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a time of mourning and reflection for America. However, the day after the attacks also saw a marked difference in information shared by the administration with the American people compared with information shared by the administration privately.

Public Statements Conflated the Video and the Attacks

The following day brought additional press inquiries and additional statements. After the Secretary's statement on the evening of September 11, two more Americans, Tyrone Woods and Glen Doherty, died in Benghazi as a result of the mortar attacks on the Annex.⁸⁴

The administration needed to act quickly to ensure each agency was on the same page about how to message the attacks. At 8:14 a.m. the morning after the attacks, Bernadette Meehan, Deputy Spokesperson, National Security Council, sent an email to nearly two dozen people from the White House, Defense Department, State Department, and intelligence community stating:

Both the President and Secretary Clinton released statements this morning. Both are pasted below. Please refer to those for any comments for the time being. **To ensure we are all in sync on messaging for the rest of the day, Ben Rhodes will host a conference call for USG communicators on this chain at 9:15 ET today....**⁸⁵

Rhodes responded, stating simply "If possible, let's do this at 9 to get a little ahead of potential statements by S[ecretary Clinton] and POTUS [the President] later this morning."⁸⁶

The message emanating from the White House the morning after the attacks—similar to the message delivered by the U.S. government the night before through the Secretary's statement—was that the video and

⁸⁴ Scott Neuman, *U.S. Ambassador To Libya, Three Other Americans Killed in Benghazi Attack*, NPR (Sept. 12, 2012, 7:45 AM), <http://www.npr.org/sections/thetwo-way/2012/09/12/160992840/u-s-ambassador-to-libya-three-other-americans-killed-in-benghazi-attack>.

⁸⁵ Email from Bernadette M. Meehan, Deputy Spokesperson, Nat'l Sec. Council, to Benjamin J. Rhodes, Deputy Nat'l Sec. Advisor for Strategic Commc's, Nat'l Sec. Council, *et al.* (Sept. 12, 2012, 8:14 AM) (emphasis original) (on file with the Committee, SCB000897).

⁸⁶ Email from Mr. Rhodes to Ms. Meehan, *et al.* (Sept. 12, 2012, 8:31 AM) (on file with the Committee, SCB000897).

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the attack on U.S. facilities in Benghazi would be mentioned in the same breath.⁸⁷ This therefore served the purpose of continuing to connect the two issues. As a result, this created confusion among the American public and the press as to whether or not these two events were directly related.

In the President's statement announcing the deaths of four Americans, he referred to "efforts to denigrate the religious beliefs of others"—i.e. the video—and the "senseless violence that took the lives of these public servants"—i.e. the Benghazi attacks—in the same sentence.⁸⁸ The statement, titled "Statement by the President on the Attack in Benghazi" read:

I strongly condemn the outrageous attack on our diplomatic facility in Benghazi, which took the lives of four Americans, including Ambassador Chris Stevens. Right now, the American people have the families of those we lost in our thoughts and prayers. They exemplified America's commitment to freedom, justice, and partnership with nations and people around the globe, and stand in stark contrast to those who callously took their lives.

I have directed my Administration to provide all necessary resources to support the security of our personnel in Libya, and to increase security at our diplomatic posts around the globe. While the United States rejects efforts to denigrate the religious beliefs of others, we must all unequivocally oppose the kind of senseless violence that took the lives of these public servants.⁸⁹

Later that morning the President addressed the Nation in a televised address from the Rose Garden about the attacks. The President said in part:

Yesterday, four of these extraordinary Americans were killed in an attack on our diplomatic post in Benghazi. Among those

⁸⁷ See Press Release, The White House Office of the Press Secretary, Statement by the President on the Attack in Benghazi (Sept. 12, 2012), <https://www.whitehouse.gov/the-press-office/2012/09/12/statement-president-attack-benghazi> ("While the United States rejects efforts to denigrate the religious beliefs of others, we must all unequivocally oppose the kind of senseless violence that took the lives of these public servants.").

⁸⁸ Press Release, The White House Office of the Press Secretary, Remarks by the President on the Deaths of U.S. Embassy Staff in Libya (Sept. 12, 2012), <https://www.whitehouse.gov/the-press-office/2012/09/12/remarks-president-deaths-us-embassy-staff-libya>.

⁸⁹ *Id.*

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killed was our Ambassador, Chris Stevens, as well as Foreign Service Officer Sean Smith. We are still notifying the families of the others who were killed. And today, the American people stand united in holding the families of the four Americans in our thoughts and in our prayers.

The United States condemns in the strongest terms this outrageous and shocking attack. We're working with the government of Libya to secure our diplomats. I've also directed my administration to increase our security at diplomatic posts around the world. And make no mistake, we will work with the Libyan government to bring to justice the killers who attacked our people.

Since our founding, the United States has been a nation that respects all faiths. We reject all efforts to denigrate the religious beliefs of others. But there is absolutely no justification to this type of senseless violence. None. The world must stand together to unequivocally reject these brutal acts.⁹⁰

In the speech about the attacks, drafted by Rhodes and similar to the President's statement about the attacks earlier in the morning, the President refers to "efforts to denigrate the religious beliefs of others"⁹¹—i.e. the video. These comments, in a public address, gave a strong and continually reinforced impression to the public: the video was somehow linked to the attacks.

The Secretary also made remarks about the attacks on the morning of September 12, 2012. She said in part:

We are working to determine the precise motivations and methods of those who carried out this assault. Some have sought to justify this vicious behavior, along with the protest that took place at our Embassy in Cairo yesterday, as a response to inflammatory material posted on the internet. America's commitment to religious tolerance goes back to the very beginning of our nation. But let me be clear—there is no justification for this, none. Violence like this is no way to honor religion or faith. And as long as there are those who would take innocent life in the

⁹⁰ Press Release, The White House Office of the Press Secretary, Statement by the President on the Attack in Benghazi (Sept. 12, 2012), <https://www.whitehouse.gov/the-press-office/2012/09/12/statement-president-attack-benghazi>.

⁹¹ *Id.*

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name of God, the world will never know a true and lasting peace.⁹²

Rooney, who helped draft the speech, told the Committee it was geared towards the American people:

We knew basically a few things that we wanted to accomplish. If indeed some people had died, we knew that we wanted to give her some material that she could say about them, so she could say gracious things about them, which we knew she would have wanted to do. We knew that we would want to give her some sort of a—something that she could say that would summarize what had happened, anticipating that, you know, if Americans were waking up and turning on their TV in the morning and their Secretary of State was standing there, that they would—one of the questions on their mind would be what, what happened. We wanted to be able to give her some language that would at least begin to answer that.⁹³

The fact the speech served in part to answer a question on the minds of many Americans—“what happened”—is interesting because Rooney never talked with anybody in the Bureau of Near Eastern Affairs (NEA) while she was drafting the speech. The individuals in NEA had been on the phone all night with State Department personnel in Benghazi receiving real-time updates about what was transpiring.⁹⁴ Rooney testified:

Q: Did you speak to anybody in the NEA bureau about what had happened in the attacks?

A: I don't recall speaking to anyone in the NEA bureau.

Q: Is that something you would have done? I mean, you talked earlier about the process. If you're writing a speech about China, you go to—

A: Right.

⁹² *Secretary Clinton Delivers Remarks on the Deaths of U.S. Personnel in Benghazi, Libya*, DIPNOTE (Sept. 12, 2012), <https://blogs.state.gov/stories/2012/09/12/secretary-clinton-delivers-remarks-deaths-us-personnel-benghazi-libya>.

⁹³ Rooney Testimony at 35-36.

⁹⁴ Jones Testimony at 79-80.

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Q:—the China experts and ask them. I mean, did that happen that night with regard to Libya?

A: No, I don't think so. I don't recall any conversation with anyone from—no.⁹⁵

Instead, the only actual description in the statement of what had occurred in Benghazi was a late addition to the speech from Sullivan. Schwerin, who also worked on the speech, explained:

A: He said, you know, we have to keep making edits. He didn't tell me the substance of the conversations he had had, just that there were more edits to make.

Q: Okay. What kind of edits?

A: I can't, you know, all these years later, tell you which sentences we changed, but the only thing that I remember is, I think the formulation "heavily-armed militants" we added that morning in his office. But I could not beyond that give you chapter and verse about what we changed.⁹⁶

The public statements by the President and Secretary of State did not call the events in Benghazi a terrorist attack.

The President also conducted an interview with Steve Kroft of *60 Minutes* that same morning. Kroft began the interview by asking the President about the attack and the President's reluctance to call the attack a terrorist attack in his earlier Rose Garden remarks. Again, the President did not call what had transpired in Benghazi a terrorist attack:

Q: Mr. President, this morning you went out of your way to avoid the use of the word "terrorism" in connection with the Libya attack.

A: Right.

Q: Do you believe that this was a terrorist attack?

⁹⁵ Rooney Testimony at 39.

⁹⁶ Schwerin Testimony at 36.

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A: Well, it's too early to know exactly how this came about, what group was involved, but obviously it was an attack on Americans. And we are going to be working with the Libyan government to make sure that we bring these folks to justice, one way or the other.

Q: This has been described as a mob action, but there are reports that they were very heavily armed with grenades. That doesn't sound like your normal demonstration.

A: As I said, we're still investigating exactly what happened. I don't want to jump the gun on this. But you're right that this is not a situation that was exactly the same as what happened in Egypt, and my suspicion is, is that there are folks involved in this who were looking to target Americans from the start.⁹⁷

Later in the interview, the President raised the issue of the video while referring to the Benghazi attacks, implying the film was an "excuse for violence against Americans" and conflating the two issues.⁹⁸ The President said:

And I do have to say that, more broadly, we believe in the First Amendment. It is one of the hallmarks of our Constitution that I'm sworn to uphold. And so we are always going to uphold the rights for individuals to speak their mind. On the other hand, this film is not representative of who we are and our values, and I think it's important for us to communicate that. That's never an excuse for violence against Americans[.]⁹⁹

Private Statements Tell a Different Story

While administration officials may have been in sync with their public messaging regarding the Benghazi attacks on September 12, the messages shared privately told a completely different story.

⁹⁷ See Email from Bernadette M. Meehan, Spokesperson, Nat'l Sec. Council, to Victoria J. Nuland, Spokesperson, Dep't of State, & Patrick H. Ventrell, Spokesperson, U.S. Dep't of State (Sept. 13, 2012, 9:17 AM) (on file with the Committee, C05527907) (Attaching transcript of the Interview of the President by Steve Kroft, 60 Minutes).

⁹⁸ *Id.*

⁹⁹ *Id.*

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Minutes before the President delivered his speech in the Rose Garden, Sullivan wrote in an email to Rhodes and others:

There was not really much violence in Egypt. And we are not saying that the violence in Libya erupted “over inflammatory videos.”¹⁰⁰

Sullivan’s private acknowledgement differs notably from the consistent public remarks connecting the video and the attacks in both the President’s and the Secretary’s statements that day.

On September 12, 2012, the President made separate phone calls to Libya President Mohamad Magariaf and Egyptian President Mohamed Morsi. In his phone call with the Egyptian President, the President “said that he rejects efforts to denigrate Islam, but underscored there is never any justification for violence against innocents and acts that endanger American personnel and facilities.”¹⁰¹ This is a reference to the video, which was the cause of the protest against the U.S. Embassy in Cairo.

In his phone call with the Libyan President, the President said the two countries “must work together to do whatever is necessary to identify the perpetrators of this attack and bring them to justice.”¹⁰² Notably, however, President Obama did not make a reference to the video.

The Secretary also had a phone call with an Egyptian leader, Prime Minister Hisham Kandil, on the afternoon of September 12. According to the call notes, the Secretary told the Prime Minister the following:

We know that the attack in Libya had nothing to do with the film. It was a planned attack—not a protest. . . . Your [sic] not kidding. Based on the information we saw today we believe the

¹⁰⁰ Email from Jacob J. Sullivan, Deputy Chief of Staff and Dir. of Policy Planning, U.S. Dep’t of State, to Senior Dir. for Commc’s and Public Diplomacy, Afghanistan and Pakistan, U.S. Dep’t of State, *et al.* (Sept. 12, 2012, 10:30 AM) (on file with the Committee, C05578214).

¹⁰¹ Press Release, The White House Office of the Press Secretary, Readout of the President’s Call with Egyptian President Morsi (Sept. 13, 2012), <https://www.whitehouse.gov/the-press-office/2012/09/13/readout-president-s-call-egyptian-president-morsi>.

¹⁰² Press Release, The White House Office of the Press Secretary, Readout of the President’s Call with Libyan President Magariaf (Sept. 13, 2012), <https://www.whitehouse.gov/the-press-office/2012/09/13/readout-president-s-call-libyan-president-magariaf>.

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group that claimed responsibility for this was affiliated with al Qaeda.¹⁰³

Not only did the Secretary tell the Prime Minister “the attack in Libya had nothing to do with the film,” she strengthened the statement by prefacing it with “we know.”¹⁰⁴ Such a definitive declaration made privately to another world leader stands in stark contrast to her speech earlier in the day to the American people where she mentioned the attack—“this vicious behavior”—in the same breath as the video—“inflammatory material posted on the internet.”¹⁰⁵

Kennedy was also emphatic in privately conveying that no protests had occurred prior to the attack. In a separate, private briefing to congressional staff Kennedy was specifically asked whether this was “an attack under the cover of a protest.”¹⁰⁶ Kennedy, who oversaw the Bureau of Diplomatic Security and had ready access to real-time information from the Diplomatic Security agents on the ground in Benghazi, replied “[n]o this was a direct breaching attack.”¹⁰⁷

Kennedy’s assertions also aligned with the intelligence product, the Executive Update, produced by the CIA analysts earlier that day and shared with senior administration officials. That piece stated “the presence of armed assailants from the outset suggests this was an intentional assault and not the escalation of a peaceful protest.”¹⁰⁸ This piece—which was part of the President’s Daily Brief and likely discussed with the President’s Chief of Staff on September 13, 2012—is discussed at length in Appendix H.

¹⁰³ Email from U.S. Dep’t of State to S_CallNotes (Sept. 12, 2012, 7:11 PM) (on file with the Committee, C05561911).

¹⁰⁴ *Id.*

¹⁰⁵ Though some may claim that “vicious behavior” also occurred in Cairo, in the Secretary’s September 12 speech she specifically separates the “vicious behavior” from what transpired in Cairo by saying “this vicious behavior, along with the protest that took place at our Embassy in Cairo yesterday . . .” *Secretary Clinton Delivers Remarks on the Deaths of U.S. Personnel in Benghazi, Libya*, DIPNOTE (Sept. 12, 2012), <https://blogs.state.gov/stories/2012/09/12/secretary-clinton-delivers-remarks-deaths-us-personnel-benghazi-libya>.

¹⁰⁶ Email from Legislative Management Officer for Near Eastern Affairs, U.S. Dep’t of State, to H_Egypt, *et al.* (Sept. 12, 2012, 7:55 PM) (on file with the Committee, C05580110).

¹⁰⁷ Email from Legislative Management Officer, U.S. Dep’t of State, to H_Egypt, *et al.* (Sept 12, 2012, 7:55 PM) (on file with the Committee, C05562234).

¹⁰⁸ Middle East and North Africa Situation Report, Sept. 12, 2012, 0700 EDT (on file with CIA, REQUEST 17-0345 to REQUEST 0346).

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Whether or not a protest occurred prior to the attack was a significant fact at the time because the absence of a protest would clearly distinguish what happened in Benghazi from what transpired in Cairo. If it therefore became clear no protests occurred in Benghazi over the video, then the administration would therefore no longer be able to connect the two events in statements about Benghazi.

Privately, Kennedy did not hesitate to explain no protests had occurred prior to the attack.¹⁰⁹ Publicly, however, it took the administration more than two weeks to do so.¹¹⁰

SEPTEMBER 13 INTELLIGENCE ASSESSMENT

On September 11 and September 12, public comments by administration officials had relied mainly on press reports and eyewitness accounts. On September 13 the Central Intelligence Agency [CIA] published its first intelligence assessment exclusively regarding the Benghazi attacks. This assessment, known as a WIRE [World Intelligence Review] was the key intelligence piece produced by CIA analysts immediately following the Benghazi attacks. It was titled “Libya: Government Poorly Positioned To Address Attacks.”¹¹¹ As both Michael J Morell, Deputy Director, Central Intelligence Agency, and the Director of the Office of Terrorism Analysis (OTA)—an office of ██████████ analysts focused on terrorism issues—acknowledge, this was the first time the analysts had coordinated a piece about the Benghazi attacks among the entire intelligence community.

The OTA Director described the purposes of this piece to the Committee:

¹⁰⁹ See Email to H_Egypt, *et al.* (Sept 12, 2012, 7:55 PM) (on file with the Committee, C05562234) (answering question about whether the attack was under the cover of a protest, Kennedy responded “[n]o this was a direct breaching attack.”).

¹¹⁰ Press Release, Office of the Dir. of Nat’l Intel., Statement by the Director of Public Affairs for ODNI, Shawn Turner, on the intelligence related to the terrorist attack on the U.S. Consulate in Benghazi, Libya (Sept. 28, 2012), <https://www.dni.gov/index.php/newsroom/press-releases/96-press-releases-2012/731-statement-by-the-odni-s-director-of-public-affairs-on-intelligence-related-to-the-terrorist-attack-on-the-u-s-consulate-in-benghazi>.

¹¹¹ Cent. Intel. Agency, Libya: Government Poorly Positioned to Address Attacks, World Intelligence Review, Sept. 13, 2012 [hereinafter September 13 WIRE] (on file with CIA, REQUEST 17-0067 to REQUEST 17-0070).

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This is something that by this point we would have been writing on a regular basis trying to sort out.... [T]o have done a WIRE would've been really the first time where we said we're going to stand back, we're going to really make sure this was fully IC coordinated. We're going to work through this and say this is a more formal look. So I don't believe it was tasked so much as it was time for us to really take a full look at where we were.¹¹²

Additionally, this particular piece was also included as part of the President's Daily Brief [PDB].

Morell explained:

Q: So the PDB staff would have edited this particular WIRE?

A: Yes, because it was a PDB.

Q: This particular WIRE was a PDB?

A: Yes.¹¹³

As a PDB, this piece received wide distribution throughout the intelligence community. As Morell notes in his book, this piece "would be published and shown to senior policy-makers and to Congress on the morning of September 13."¹¹⁴

This September 13 piece was the pivotal piece coming from the intelligence community for several reasons. One, it was the first time the analysts had taken a step back to assess what had actually occurred in Benghazi; two, this piece was widely distributed across the U.S. government;¹¹⁵ and three, Morell viewed this piece as the "assessment" of the analysts when he edited the talking points for the House Permanent Select Committee on Intelligence two days later.¹¹⁶

¹¹² Testimony of Dir. of the Office of Terrorism Analysis, Cent. Intel. Agency, Tr. 105 (Nov. 13, 2015) (on file with the Committee).

¹¹³ Testimony of Michael Morell, Deputy Dir., Cent. Intel. Agency, Tr. at 39-41 (Sept. 28, 2015) [hereinafter Morell Testimony] (on file with the Committee).

¹¹⁴ MICHAEL MORELL, THE GREAT WAR OF OUR TIME: THE CIA'S FIGHT AGAINST TERRORISM—FROM AL QA'IDA TO ISIS 217 (2015).

¹¹⁵ *Id.*

¹¹⁶ Morell Testimony at 135.

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Despite the September 13 piece being heavily vetted, going through the PDB process, and being widely distributed, the piece was rife with errors as the analysts themselves would later acknowledge. There were improper footnotes, poor and confusing phrasing, and most importantly, headlines that were not supported by any text. The result was a very poorly written piece containing inaccurate information that was relied on by those analyzing, discussing, and messaging the Benghazi attacks.

The focus of the September 13 piece was twofold: the ability of the Libyan government to respond to the attacks, and the fact extremists had participated in the attacks. A timeline of the attacks and the sequence of events leading up to the attacks were not discussed in the piece. Whether or not a protest occurred prior to the attacks was not a focal point of the piece, nor was it an issue the analysts found to be particularly germane. As the manager of the analysts who wrote the piece testified:

A: We weren't particularly concerned, worried about, or thinking about protests when we wrote this.

Q: That was the next question I was going to ask you. Yeah.

A: I want to make that very, very clear. Because in CTC [Counterterrorism Center] when something like this happens, we look at who do we think did it and are they about to do it again and is there anything we can do to stop it.

So we did not think the question of protests was particularly germane to answering that question. In fact, it was fully probably a week. And we had several conversations among ourselves and even with more senior people in the DI [Directorate of Analysis] about, why in the hell would everybody care about protests?

We just—we weren't tracking on it because it wasn't germane to what we were trying to do, which it doesn't really excuse our sloppy work, particularly in that paragraph here. I mean the ticks are the ticks. They are based on reporting. But our assessment was just imprecisely written. We weren't careful enough about it.¹¹⁷

¹¹⁷ Testimony of [REDACTED] Team Chief, Office of Terrorism Analysis, Cent. Intel. Agency, Tr. at 52-53 (Feb. 10, 2016) [hereinafter [REDACTED] Team Chief Testimony] (on file with the Committee).

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The fact the piece was not focused on protests—nor did the analysts find the issue of protests germane—is ironic given this piece has received so much attention by Morell and others as supporting evidence that the analysts did in fact believe a protest had occurred.¹¹⁸ That is because this is the only intelligence assessment written by the CIA that can support the analytic line that a protest had occurred prior to the attacks.¹¹⁹

Further, it was put in the intelligence piece by accident—a mistake that was not caught during what was supposed to be a rigorous and airtight editing process.

In his book, Morell says “[t]he September 13 piece—the first piece to go beyond a simple factual update—said four things. First, that the assault on the [Benghazi Mission compound] had been a spontaneous event that evolved from a protest outside the [Benghazi Mission compound].”¹²⁰ Except Morell is wrong. The piece did not say this at all. In fact, the exact language of the piece reads: “We assess the attacks on Tuesday against the US Consulate in Benghazi began spontaneously following the protests at the US Embassy in Cairo and evolved into a direct assault against the Consulate and a separate US facility in the city.”¹²¹ In his book, Morell alters the plain language of this piece, “began spontaneously following protests at the US Embassy in *Cairo*,” with the wording in his book, “a spontaneous event that evolved from a protest outside the [Benghazi Mission compound].”¹²²

On the first page of the September 13 piece, titled “Libya: Government Poorly Positioned To Address Attacks,” there is a single mention of “the early stages of the protest” buried in one of the bullet points.¹²³ The Director of the Office of Terrorism Analysis acknowledged the supporting evidence for this statement was incorrect. She testified:

¹¹⁸ Morell Testimony at 50.

¹¹⁹ The CIA notes that a September 15 WIRE “includes reporting that ‘members of an AAS-affiliated group stated that they took advantage of a planned demonstration . . .’” However, citing a report is different than crafting an assessment. A report is just that, a report—citing information from somebody else. An assessment, however, is the collective thoughts of analysts after synthesizing multiple pieces of intelligence to reach an analytic conclusion.

¹²⁰ MORELL, *supra* note 114, at 218

¹²¹ *Id.* at 218.

¹²² *Id.* (emphasis added).

¹²³ Cent. Intel. Agency, Libya: Government Poorly Positioned to Address Attacks, World Intelligence Review, Sept. 13, 2012 [hereinafter September 13 WIRE] (on file with CIA, REQUEST 17-0067 to REQUEST 17-0070).

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Q: “I’m sorry. In the early stages of the protest”—so a direct reference to a protest—

A: Yes.

Q: “Benghazi’s top Ministry of Interior official personally ordered the withdrawal of Libyan Security Forces protecting the consulate saying he believed the action would avoid violence, according to the press reporting.”

A: Correct.

Q: And we talked about that earlier.

A: Yes.

Q: Just really quickly, flip back to footnote 16, can you read the date on footnote 16? What’s the date of that?

A: That is 2012/09/04, so that would obviously be wrong.¹²⁴

The article cited to support the mention of a protest in this instance was titled “Libyan Parliament Speaker, Interior Minister Discuss Country’s Security” and was from Doha Libya TV in Arabic from September 4, 2012.¹²⁵ In other words, the analysts used an article from September 4, 2012—a full week before the lethal attacks—to support the premise that a protest had occurred just prior to the attack on September 11. A simple source check by the reader—or during any of the multiple levels of allegedly “rigorous” editing—would have caught the blatantly obvious error of relying on a news article from September 4 to support an event that occurred on September 11.

Yet it was not this mention of a protest in the piece that caught Morell’s attention. Rather, it was a headline on the following page titled “Extremists Capitalized on Benghazi Protests.” This page was a text box, which the OTA Director described as:

So a text box is material that we believe is related to the storyline, to the analytic—to the arc of the story but is something that we kind of separate out, because sometimes it doesn’t flow from

¹²⁴ OTA Dir. Testimony at 128.

¹²⁵ September 13 WIRE, *supra* note 123.

II-52

the analytic argument but it's information we think is important to include. So think of it as an adjunct to the piece.¹²⁶

While the title of this text box was "Extremists Capitalized on Benghazi Protests," nothing in the actual text box supports that title.¹²⁷ The summary paragraph in the text box, through which the rest of the text box would flow, read:

We assess the attacks on Tuesday against the US Consulate in Benghazi began spontaneously following the protests at the US Embassy in Cairo and evolved into a direct assault against the Consulate and a separate US facility in the city. Extremists with ties to al-Qa-ida were involved in the attacks, according to signals intelligence.¹²⁸

There is no mention—or even hint—of any protest in Benghazi in that paragraph or in any other text in the text box. Rather, the only mention of a protest relates to what had transpired in Cairo.¹²⁹

After a discussion of this document during their interviews with the Committee, both Morell and the OTA Director acknowledged this fact. Morell testified:

Q: I'm trying to tie it all back to the headline—

A: Yep.

Q:—"Extremists Capitalized on Benghazi Protests," I'm having a hard time understanding how that headline is supported by the evidence.

A: Right.

Q: So far, nothing in the actual text of the WIRE supports that, and so now we're looking at each footnote, footnote 29—source note 29, we've looked at the New York Times article, the body of the article doesn't support that, just the headline, and now we're looking at source note 30, "according to signals intelli-

¹²⁶ OTA Dir. Testimony at 109.

¹²⁷ September 13 WIRE, *supra* note 123, at 2.

¹²⁸ *Id.*

¹²⁹ *Id.*

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gence.” You know, where in here does it support that but for collateral, is my question to you.

A: And so—look, I don’t know the answer to your question, right, why they wrote it the way they did.¹³⁰

The OTA Director testified:

Q: Okay. Let’s look at the first bullet point. . . . That’s a lengthy sentence.

A: Not good trade craft. We try and make them shorter.

Q: Is there anything in that sentence or that bullet point that denotes that there was a protest in Benghazi that you can see?

A: “After hearing how protesters breached the”—so, no, not in Benghazi.

Q: Not in Benghazi, okay.

Let’s look at the next tick....

Is there anything in that tick that mentions a protest in Benghazi?

A: No.

Q: All right. Let’s look at the third tick.... Is there anything in that tick that mentions a protest in Benghazi?

A: No.

Q: And then I’m just going to read the last paragraph here....

Is there anything in that paragraph that mentions the protest in Benghazi?

A: No.¹³¹

The OTA Director also told the Committee the text box in the September 13 intelligence piece was not supposed to be about whether or not pro-

¹³⁰ Morell Testimony at 49.

¹³¹ OTA Dir. Testimony at 110-12.

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tests had occurred in Benghazi prior to the attack.¹³² Instead, it was supposed to focus on the involvement of extremists in the attacks. That was the point the analysts were trying to drive—extremists, not protests. This was true of the headline of the text box, too. The key word in that headline, according to the OTA Director, was “extremists,” not “protests.” She testified:

Q: So the headline for this text box, “Extremists Capitalized on Benghazi Protests,” do you see any supporting evidence in the five paragraphs I’ve just read that support that headline?

A: So the headline—and I admit that in retrospect, if I could go back and change this headline, I would. Because the headline, it was more meant to be about the, we know extremists were involved and less about whether or not there were protests.

So if you look at this idea that the first, the topic sentence that talks—so, sorry, the second sentence, where the bullets are then following immediately after, about extremists with the ties to Al Qaeda were involved. We then go on in the first bullet to talk about we know that there was, you know [REDACTED]

That bullet was to not only talk about AQIM but to also talk a little bit about motivation.

The second bullet that talks about, you know, again, extremists, as we were calling at that point, Ansar al-Sharia in Benghazi claimed responsibility, and also talked about the timing that this was spontaneous, [REDACTED]

[REDACTED] So, again, this idea of preplanning, timing, and those involved.

And the third bullet was, I think, meant to illustrate that this was a series that the extremists were involved at various points that was an opportunistic attack sequence, as we talk about. They took advantage of opportunities to attack U.S. facilities at various points throughout the night.

¹³² *Id.* at 112-13.

II-55

So are those things directly supporting in the way we would like the title of this? No. Was it meant—and as I said, so if I could take back that title, I would.

Q: Sure. “Extremists” is the key word in the title?

A: Yes, not the protests.¹³³

She later called the title of the text box the “unfortunate title,”¹³⁴ and, as the head of the Office of Terrorism Analysis, ultimately took responsibility for it.¹³⁵

While there may have been no text in the text box to support the title, as it turns out, the title was intended to be something different. According to the manager of the analysts who wrote the piece, the title of the text box was supposed to be “Extremists Capitalized on Cairo Protests.”¹³⁶ That small but vital difference—from Cairo to Benghazi—had major implications in how people in the administration were able to message the attacks, and was used as support in the days and weeks after this piece was published for the claim that protests had occurred prior to the Benghazi attacks.

Even worse, this mistake was not caught until more than a week later, when the analysts were updating their assessment. The manager of the analysts who wrote the piece testified:

Q: The title here: “Extremists Capitalized on Benghazi Protests.” So we talked to [the OTA Director] about this. She called it an unfortunate title?

A: It was a—we made a mistake.

Q: Okay. So when you say “we made a mistake,” I mean, where—how would that have been—

A: So, God, how do I begin?

* * *

¹³³ *Id.* at 112-13.

¹³⁴ *Id.* at 135.

¹³⁵ *Id.* at 112-113.

¹³⁶ [REDACTED] Team Chief Testimony at 49, 136.

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A: . . . So “Extremists Capitalized on Benghazi Protests.” Benghazi was supposed to be Cairo. So –

Q: Okay.

A: But let me explain that. So—and, frankly, it’s a mistake that we didn’t even notice until we published the WIRE on the 24th, where I was talking to a senior person as he was reviewing it, and he was looking back and asking, I thought: Oh, my God, we were talking about Cairo.¹³⁷

She also testified:

Q: So I guess this is why I’m a little confused is you say in the title Benghazi should have been Cairo?

A: The title probably should have read something like extremists motivated to attack in Benghazi because of protests in Cairo.¹³⁸

In the end, Morell conceded the obvious—this piece could have been written better. He testified:

Right. And if you want to get a bottom line from me, from me, I don’t think this was as well done as it could have been for a lot of reasons. I have reasons beyond yours as to why I don’t think this is as well done as it could be, and you’re pointing out some additional ones. So I don’t think is as well done as it could have been.¹³⁹

In addition to this piece being poorly written—conveniently, in a way relied on by senior administration officials with respect to a key point—it also contained sourcing inaccuracies. One of these was described above. The lack of attention paid to sourcing has implications on future pieces shared with the President and other senior executive branch officials.¹⁴⁰ From papers in high school, theses in college, law review articles to scientific research, assertions made are expected to be properly documented with sources to support them. Yet when it comes to CIA analysts and

¹³⁷ *Id.* at 48-49.

¹³⁸ *Id.* at 54.

¹³⁹ Morell Testimony at 56.

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pieces they write for the President, for some reason these footnotes do not receive the scrutiny they deserve. Morell explains:

A: So context number two, right, is that analysts don't spend a lot of time making sure that these footnotes match. Okay. They just don't. They just don't.

Q: Is that a problem?

A: It certainly is when you have a situation like this.

Q: I'm a lawyer. I mean, if you're writing a Law Review article, those things are going to be footnoted to death.

A: Is it a problem? Yes. Is it a problem? Yes. So those are the few pieces of context, right, is they believed is what they believed, right? They had a set of—they believed they had a set of information, a set of data points that took them there. Third, I think you've got to be a little bit careful going through this sentence by sentence and source by source, because analysts aren't as careful as they need to be.

Q: Why aren't they are careful as they need to be? If you're producing a piece for the [President], shouldn't every sentence have a valid source note?

A: Yes, absolutely. You're absolutely right. I couldn't agree with you more.¹⁴¹

The OTA Director also acknowledged there is not enough emphasis on making sure the footnotes, known inside the CIA as source attributions, are accurate—especially for pieces that become PDBs. She testified:

A: The editing process would have differed for a PDB in that it would have also gone through an additional layer of review or several additional layers of review. So a WIRE ceases, the review ceases pretty much after the office director, as I said, except for some technical edits.

A PDB, our process is more—there are additional levels that include a review within the organization we call PASS. There's al-

¹⁴¹ *Id.* at 52-53.

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so then the DA [Directorate of Analysis] front office would have reviewed a PDB, and then it would also have gone to ODNI [Office of the Director of National Intelligence].

* * *

Q: Okay. So there are more senior analysts that would review a PDB?

A: Yes.

Q: Does it undergo a certain extra level of rigor for attributing sources and making sure everything lines up properly?

A: Attributing sources, not necessarily.¹⁴²

Despite these myriad errors—the inaccurate title, the faulty sourcing, the lack of evidence in the text to support a headline— Morell and others have used this piece, and the title of the text box specifically, as the “assessment” of the analysts to buttress their statements that protests in Benghazi had occurred prior to the attacks.¹⁴³ In fact, the title “Extremists Capitalized on Benghazi Protests” alone does count as an “assessment” by the analysts. As the manager of the analysts testified:

A: And our assessment—again, it’s embarrassing, it’s poorly done—was that they had—really the title as it stood was what our assessment was, but we didn’t explain it well—that they capitalized on these protests in Benghazi.

Q: Okay. So your title is what the assessment was, but that’s not supported—and this is my analysis—not supported, Benghazi protests, by anything underneath –

A: That’s true.

Q:—in the ticks. Okay. So is that actually an assessment, extremists capitalized on Benghazi protests, or is the assessment sort of the body under here, the paragraph, the three ticks, and then the final paragraph?

¹⁴² OTA Dir. Testimony at 106-08.

¹⁴³ See e.g. Morell Testimony at 50.

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A: Well, it's all assessment. It's just sloppily done.

Q: Okay. So extremists capitalized on Benghazi protests, even though there's no supporting evidence for that statement in this box –

A: Yeah. Like I said, we weren't thinking about the protests or we would have been, frankly, far more careful about how we couched them.¹⁴⁴

In other words, the title of the text box itself was an assessment by the analysts. That title was inaccurate. That title was an accident and was supposed to be something else entirely, but nobody caught it. The analysts were not even focused on the issue of protests. Yet it was that title the administration could point to—and ultimately relied upon—to say the analysts had assessed that protests had occurred prior to the Benghazi attacks. That title is the only analytic piece fully vetted by the intelligence community prior to Morell's editing of the talking points and the appearance on the Sunday talk shows by Susan E. Rice, U.S. Permanent Representative to the United Nations, where she said protests had occurred in Benghazi.

Nevertheless, despite the incorrect title and numerous other faults with the September 13 piece, there is still no assessment by the analysts that tied what transpired in Benghazi to the internet video. Even among the legion of mistakes made, the piece did not authoritatively connect Benghazi with protests or an internet video.

THE CONFLATION CONTINUES

While the inaccurate and poorly written CIA analysis on September 13 gave an opening for administration officials to claim protests had occurred prior to the Benghazi attack, the public connection and conflation by administration officials between Benghazi and the video continued. This occurred despite any assessment by the CIA analysts of the video playing a role in the Benghazi attacks.

During her remarks at the opening plenary of the U.S.-Morocco strategic dialogue on September 13, 2012, the Secretary of State said there is “no

¹⁴⁴ [REDACTED] Team Chief Testimony at 55.

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justification, none at all, for responding to this video with violence. We condemn the violence that has resulted in the strongest terms.”¹⁴⁵ These comments were similar to prior public comments she had made regarding the video.

A draft of the Secretary’s comments, however, shows an attempt to draw a stronger link between Benghazi and the video—something unsupportable by the intelligence at the time, and not part of the CIA’s assessment—than she stated publicly. A draft of the Secretary’s speech states: “But as I said yesterday, there is no justification—none—for responding to an Internet video with murder. We condemn the violence that has resulted in the strongest terms.”¹⁴⁶

This subtle change from the draft to her speech—from “murder” to “violence”—is important. While some violence had occurred at other United States diplomatic facilities across the Arab World such as Cairo, murder had only occurred at one: Benghazi.¹⁴⁷ By changing that one word, from “murder” to “violence,” the Secretary did not draw an irrebuttable, direct link between the video and Benghazi—a link she had told the Egyptian Prime Minister she knew did not exist¹⁴⁸—but instead continued to indirectly connect and conflate the two events to the American public, thus allowing her to claim she did not make a direct public connection between the video and the Benghazi attacks.

That same day, Thomas R. Nides, Deputy Secretary of State for Management and Resources, had a meeting with the new Egyptian Ambassador to the U.S. According to a summary of that meeting, “Nides said he understood the difference between the targeted attack in Libya and the way the protest escalated in Egypt.”¹⁴⁹ While this message was shared

¹⁴⁵ Hillary R. Clinton, Sec’y of State, U.S. Dep’t of State, Remarks at the Opening Plenary of the U.S.-Morocco Strategic Dialogue (Sept. 13, 2012), <http://www.state.gov/secretary/20092013clinton/rm/2012/09/197711.htm>.

¹⁴⁶ Email from Jacob J. Sullivan, Deputy Chief of Staff and Dir. of Policy Planning, U.S. Dep’t of State, to Daniel B. Schwerin, Speechwriter, U.S. Dep’t of State, *et al.* (Sept. 13, 2012, 9:22 AM) (on file with the Committee, SCB00100122).

¹⁴⁸ Benghazi was the only US facility during this time period where terrorists killed an American government official.

¹⁴⁸ See Email from U.S. Dep’t of State to S_CallNotes (Sept. 12, 2012, 7:11 PM) (on file with the Committee, C05561911) (attaching notes from phone call with Egyptian Prime Minister).

¹⁴⁹ Email from Operations Center, U.S. Dep’t of State to Prem G. Kumar, Dir. for Israeli and Palestinian Affairs, White House (Sept. 13, 2012, 12:29 PM) (on file with the Committee, C05562242).

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privately by the Deputy Secretary of State to the Egyptian Ambassador two days after the attacks, it was not until two weeks later that the administration finally shared this message publicly with the American people.¹⁵⁰

At a press briefing later in the day on September 13, Nuland openly talked about the video while discussing the Benghazi attacks.¹⁵¹ At the briefing, she was asked whether any of the information she provided during the background briefing the day before had changed; she said she did not have anything significantly different than what she had said privately on background.¹⁵² Yet when asked about the Benghazi attack, she answered the question, then pivoted to talking about the video:

Q: Toria, can you tell us whether there's been any progress towards determining whether the Benghazi attack was purely spontaneous or was premeditated by militants, and also whether there's been any further determination about the extent to which the Cairo, Benghazi, and now Yemen attacks were related in some way other than just theme?

A: Well, as we said yesterday when we were on background, we are very cautious about drawing any conclusions with regard to who the perpetrators were, what their motivations were, whether it was premeditated, whether they had any external contacts, whether there was any link, until we have a chance to investigate along with the Libyans. So I know that's going to be frustrating for you, but we really want to make sure that we do this right and we don't jump to conclusions.

That said, obviously, there are plenty of people around the region citing this disgusting video as something that has been motivating. As the Secretary said this morning, while we as Americans,

¹⁵⁰ Press Release, Office of the Dir. of National Intel., Statement by the Director of Public Affairs for ODNI, Shawn Turner, on the intelligence related to the terrorist attack on the U.S. Consulate in Benghazi, Libya (Sept. 28, 2012), <https://www.dni.gov/index.php/newsroom/press-releases/96-press-releases-2012/731-statement-by-the-odni-s-director-of-public-affairs-on-intelligence-related-to-the-terrorist-attack-on-the-u-s-consulate-in-benghazi>.

¹⁵¹ Daily Press Briefing by Spokesperson Victoria Nuland, Bureau of Public Affairs, U.S. Dep't of State (Sept. 13, 2012), <http://www.state.gov/r/pa/prs/dpb/2012/09/197729.htm>.

¹⁵² *Id.*

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of course, respect free speech, respect free expression, there is never an excuse for it to become violent.¹⁵³

While the question addresses Cairo, Benghazi, and Yemen, Nuland does not differentiate among the three events and instead notes “there are plenty of people around the region citing this disgusting video as something that has been motivating.”¹⁵⁴ Nuland’s failure to separate what transpired in Benghazi from what transpired in Cairo on the same day and Yemen one day later resulted in an administration official connecting again, publicly, Benghazi with the other two events—and thus Benghazi with the video.

Two days after the attacks ended, September 14, Jay Carney, Press Secretary, White House, held a press briefing at the White House. Reporters pressed on whether the administration believed the events in Benghazi were a reaction to the video:

A: Jake, let’s be clear, these protests were in reaction to a video that had spread to the region –

Q: At Benghazi? What happened at Benghazi —

A: We certainly don't know. We don't know otherwise. We have no information to suggest that it was a preplanned attack. The unrest we’ve seen around the region has been in reaction to a video that Muslims, many Muslims find offensive. And while the violence is reprehensible and unjustified, it is not a reaction to the 9/11 anniversary that we know of, or to U.S. policy.

Q: But the group around the Benghazi post was well armed. It was a well-coordinated attack. Do you think it was a spontaneous protest against a movie?

A: Look, this is obviously under investigation, and I don’t have –

Q: But your operating assumption is that that was in response to the video, in Benghazi? I just want to clear that up. That’s the framework? That’s the operating assumption?

A: Look, it’s not an assumption —

¹⁵³ *Id.*

¹⁵⁴ *Id.*

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Q: Because there are administration officials who don't—who dispute that, who say that it looks like this was something other than a protest.

A: I think there has been news reports on this, Jake, even in the press, which some of it has been speculative. What I'm telling you is this is under investigation. The unrest around the region has been in response to this video. We do not, at this moment, have information to suggest or to tell you that would indicate that any of this unrest was preplanned.¹⁵⁵

In his response to a question about what happened at Benghazi, Carney switches gears to talking about the general unrest in the region as a whole—which was a result of the video. Carney does not distinguish the events in Benghazi from the events around the rest of the region thus connecting and conflating the two issues and again giving the impression that what happened in Benghazi happened as a result of the video. Carney is also asked twice whether or not a protest had occurred in Benghazi. Similar to his comments about the video, Carney talks about unrest in the region as a whole, conflating protests and Benghazi, and failing to distinguish Benghazi from what had transpired elsewhere in the region.

Despite these public comments by senior administration officials, those on the ground in Libya knew otherwise. That same morning a public information officer from the Embassy in Tripoli sent an email to colleagues in Tripoli and at the State Department headquarters in Washington D.C. regarding “messaging on the attacks in Libya.”¹⁵⁶ The email said:

Colleagues, I . . . want to share with all of you, our view at Embassy Tripoli that we must be cautious in our local messaging with regard to the inflammatory film trailer, adapting it to Libyan conditions. Our monitoring of the Libyan media and conversations with Libyans suggests that the film is not as explosive of an issue here as it appears to be in other countries in the region. The overwhelming majority of the FB [Facebook] comments and tweets we're [sic] received from Libyans since the Ambassador's

¹⁵⁵ Press Briefing by Press Secretary Jay Carney, Office of the Press Secretary, The White House (Sept. 14, 2012), <https://www.whitehouse.gov/the-press-office/2012/09/14/press-briefing-press-secretary-jay-carney-9142012>.

¹⁵⁶ Email from Public Affairs Officer, U.S. Embassy Tripoli, to Spokesperson, U.S. Dep't of State, *et al.* (Sept 14, 2012, 6:43 AM) (on file with the Committee, C05396788).

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death have expressed deep sympathy, sorrow, and regret. They have expressed anger at the attackers, and emphasized that this attack does not represent Libyans or Islam. Relatively few have even mentioned the inflammatory video. So if we post messaging about the video specifically, we may draw unwanted attention to it. And it is becoming increasingly clear that the series of events in Benghazi was much more terrorist attack than a protest which escalated into violence. It is our opinion that in our messaging, we want to distinguish, not conflate, the events in other countries with this well-planned attack by militant extremists. I have discussed this with Charge Hicks and shares PAS's view.¹⁵⁷

The purpose of this email was to discuss messaging to the Libyan people—similar to the part of the Secretary's September 11 statement where her aides noted she wanted to speak to the region to "lower the temperature."¹⁵⁸ What is significant about this email, however, is that in discussing messaging to the Libyans, the video is not emphasized at all—in fact the messaging on the ground in Libya sought to distinguish what happened from other countries.¹⁵⁹ This again contrasts with the statements of senior administration officials, speaking to the American people, who consistently connect the video and Benghazi.

THE TALKING POINTS

The talking points provided by the CIA to the House Permanent Select Committee on Intelligence [HPSCI] on September 15, 2012 were flawed. The individual who made the most substantial changes to those talking points was Michael Morell.¹⁶⁰ While much has been written about these talking points and the flawed process undertaken to create them, this section focuses on what specific information Morell had at his disposal when he made the changes to the talking points, how this information affected his editing of the talking points, and subsequent portrayal of the talking points by others.

¹⁵⁷ *Id.*

¹⁵⁸ Schwerin Testimony at 17.

¹⁵⁹ Email from Public Affairs Officer, U.S. Embassy Tripoli, to Spokesperson, U.S. Dep't of State, *et al.* (Sept 14, 2012, 6:43 AM) (on file with the Committee, C05396788).

¹⁶⁰ *White House e-mails on 2012 attacks in Benghazi, Libya*, Washington Post, <http://apps.washingtonpost.com/g/page/politics/white-house-e-mails-on-2012-attacks-in-benghazi-libya/157/>.

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Information from Tripoli

While the September 13 WIRE represented an “assessment” that CIA analysts believed a protest had occurred prior to the Benghazi attack, CIA case officers and security personnel in Libya knew that was not the case. For the first two days after the attacks, the Chief of Station in Tripoli had been debriefing eyewitnesses to find out what happened and worked with his CIA counterparts—who had been in Benghazi—to contact their sources and collect as much information as possible about the attacks.¹⁶¹ The Chief of Station knew no protests or demonstrations occurred prior to the attack. None of the eyewitnesses he spoke with mentioned anything about protests.¹⁶² The Chief of Station testified he first learned that Washington D.C. created a narrative that protests had occurred around September 13 or 14:

Q: I guess the first question would be, when did you first become aware that there was a belief back in Washington that the Benghazi attack was carried out without a significant degree of pre-planning, and that the attack had somehow evolved from a demonstration at the consulate, or perhaps used a demonstration as cover? About three things there, but when did you first become aware of those misconceptions?

A: I want to say it was when—probably the 13th or 14th we were asked to coordinate on that first intelligence report that came out.

Q: Sure.

A: We provided our edits or our contributions to that. They weren’t incorporated or included.¹⁶³

This was just the first time—in what would become a pattern—of analysts and others at CIA headquarters relying on accounts from the press

¹⁶¹ Testimony of Tripoli Chief of Station, Cent. Intel. Agency, Tr. at 129-31, 189 (July, 16, 2015) [hereinafter Chief of Station Testimony] (on file with the Committee).

¹⁶² *Id.* at 122-123.

¹⁶³ *Id.* at 178.

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and other sources over that of America's highest ranking intelligence officer in Libya.¹⁶⁴

The earliest evidence the Committee has seen where the Chief of Station told CIA headquarters a protest did not occur in Benghazi came early in the morning on Friday September 14, 2012.¹⁶⁵ A Worldwide Unrest Update sent to Morell's assistants and chief of staff said:

Tripoli: COS [Chief of Station] passed the following update being formulated by NE [Near East] now.

1. Fighters were trained, not an undisciplined militia. State compound was an assault/probe [sic] vice flash mob. This is based on the observations of CIA officers who were in the fight assessing the fighting method of the attackers.
2. Multiple militias and fluid political dynamics in Benghazi. Central government not able to project influence/power.
3. Mortar attack was precise on base location. Per JSOC [Joint Special Operations Command] operation on the ground [sic] one short, one long, two direct hits. Their assessment this was a well-trained group—not militia rabble. JSOC officer is training the

¹⁶⁴ The CIA told the Committee this part of the report "suggests the intelligence community had no information on which to base our initial assessment that a protest preceded the attacks on the State compound. To the contrary, a significant body of information available immediately following the attacks indicated that there was a protest." This "significant body of information," however, was almost exclusively press reporting, and with one exception, this information was not cited in either the September 13 or September 15 WIRE pieces.

On September 16, 2012, at the direction of Michael Morell, the CIA analysts finally tackled the issue of protests head-on. They wrote: "We have contradictory reporting about whether nonviolent demonstrations occurred prior to the attack on the US Consulate. The Station's assessment that there were no peaceful protests on the day of the attack is in contrast to other reports that peaceful protests preceded the violent assault." As supporting evidence for this paragraph the analysts used *only* public news articles from the Washington Post, Los Angeles Times, and National Public Radio—all of which were at least three days old—in addition to articles by Al Jazeera and the Guardian of London. They did not cite any intelligence reports, instead relying on the Internet.

¹⁶⁵ Email from [EA to DD CIA] to DIR-EAs, (Sept. 14, 2012, 8:27 AM) (on file with the CIA, REQUEST 1-001673 to 1-001674).

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Libyan Special Forces and noted that they are not as capable of precision mortar fire as was witness [sic] on 12 September.¹⁶⁶

Morell explained the purpose of these Worldwide Unrest Updates:

When the unrest began across the Muslim world as a result of the video, there was unrest, there were protests, the administration was deeply concerned about the prospect—possibility prospect of violence against U.S. facilities and U.S. persons. We were having daily deputies meetings to discuss the safety of Americans and the safety of U.S. facilities overseas, two a day deputies meetings, one in the morning and one at night.

One of the things the director and I did—and I don't know which one of us in particular did—one of us asked [REDACTED] where there was unrest as a result of the video to do a daily update, right? This is the daily update from Tripoli for that day in response to that request.¹⁶⁷

In other words, the daily updates were done for Morell, sent to his Executive Assistants, and written for his consumption. Despite this, Morell assumed the analysts received these updates as well. He testified:

Q: Did this actually go to the analysts?

A: I assume so. I assume so.

Q: Okay. Why would you assume it went to the analyst if it was created for you?

A: Because I believe all the updates—the updates were shared. I mean, that's something we can check, okay, something we can check.

Q: So you believe that this worldwide unrest update was shared with you?

¹⁶⁶ *Id.*

¹⁶⁷ Morell Testimony at 111.

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A: Absolutely. And something you can ask [the OTA Director].¹⁶⁸

The Committee asked the OTA Director, if she received this document. She was not aware they did. She testified:

At the time, I was not aware. I have since become aware. I believe this was part of the daily email that was being done at the behest of DD/CIA.¹⁶⁹

The manager of the analysts who conducted the analysis also does not remember seeing this email. She testified:

Q: Is this something that would have made it to your desk or your analysts' desks?

A: Not this email....

Q: Okay. Under Tripoli it says "COS [Chief of Station] passed the following update being formulated by NE now." And then there are seven, I guess, individual updates. Those seven updates in this format, is that something that would have been passed to your team?

A: No, I've never seen this.

Q: Okay. I'm just trying to understand –

A: Well, let me say, I don't remember seeing it. And I don't know that my team would have passed it. I do know [Chief of Station] was unhappy with our call on protests because –¹⁷⁰

When asked about this specific Worldwide Unrest Update from the Chief of Station, Morell responded:

A: So, look, the point is—the point is—the point is there is a flood of information coming in, right, and it's not my job as the deputy director of CIA to assess all this stuff. Right?

¹⁶⁸ *Id.* at 114-15.

¹⁶⁹ OTA Dir. Testimony at 130.

¹⁷⁰ [REDACTED] Team Chief Testimony at 61-62.

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Q: Right.

A: It's the job of the analyst. So I'm looking at it from the perspective of, geez, is there anything here that's going to lead me to raise questions with the analyst?

Q: Okay. And was there anything in this particular email, the worldwide unrest update that caused you to raise questions with the analyst?

A: So this is not the—this is not from the 14th. So, no.¹⁷¹

As noted earlier, the email was sent at 8:27 a.m. on September 14, 2012. It is unclear why Morell did not acknowledge this fact.

That afternoon, the Chief of Station also wrote an email directly to one of the analysts in the Office of Terrorism Analysis.¹⁷² That email, in response to a request to coordinate on talking points for a phone call for David Petraeus, Director, Central Intelligence Agency, on the Libya attack, said:

We are verifying some of the events that took place in fornt [sic] of the State department facility with some of the embassy personnel. The RSO [Regional Security Officer] noted that he was not aware of a protest in front of the consulate (the DOS [Department of State] facility where the Ambo and the ARSO's were staying. (could it have been the AAmerican [sic] corner?) We will be talking to the lead [REDACTED] who was in Benghazi to obtain additional background. I also do not agree with the assessment that the attack was opportunistic [sic] in origin. The GRS Agents and [REDACTED] operators on the scene noted that the fighters were moving and shooting in a fashion that indicated training—and set them apart for the militias fighters typically found in Benghazi. Perhaps most compelling point was the comment by the [REDACTED] who noted the percise [sic] and timing of mortar fire- one short, one long two direct hits. He noted that the Libyan special forces are unable to use mortars so effectively and that U.S. forces mortar

¹⁷¹ Morell Testimony at 117-18.

¹⁷² Email from Tripoli Chief of Station, Cent. Intel. Agency, to [Office of Terrorism Analysis Analyst] (Sept. 14, 2012, 4:05 PM) (on file with the CIA, REQUEST 15-0005).

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company would be hard pressed to repeat the same performance [sic] as he witnessed in Benghazi.

I am basing my assessment mostly on the data from the guys on the ground (not all source) and dealing with Libyan contacts. Thanks for letting have an opportunity to co[o]rd[inate].¹⁷³

The Chief of Station noted he was relying on information from “guys on the ground” and “Libyan contacts.”¹⁷⁴

Even though this email was written to an analyst, the analysts sent it up the chain. The manager of the analysts testified:

Q: Okay. So this email is from chief of station to her. Do you recall whether or not she forwarded this to you or disseminated this—

A: Oh yeah. She forwarded it. Everything from the [Chief of Station] I saw.

Q: So when you received this email, is this something you would have pushed up the chain?

A: Oh, yeah. Chief of Station, you know, disagreeing with something is no small thing. I mean, the chiefs of station are not required for coordination. But we absolutely, and especially NCTC [National Counterterrorism Center], take into account what they have to say.

Q: All right. So you sounded confident that you pushed this up the chain. I guess my question –

A: I don’t remember doing it, but, I mean, I would have.

Q: Okay. And you would have sent that to?

A: [OTA Director].

Q: [OTA Director]. Okay.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

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A: And my boss, my –

Q: Okay. And you don't know whether or not [the OTA Director] would have sent it on further?

A: I'm sure [the OTA Director] would have sent it on further. But I don't—well, I say that. I can't be sure what any other person does. But [the OTA Director] has excellent judgment and a whole ton of bureaucratic savvy. So —¹⁷⁵

The Chief of Station believes the email made its way up to Morell. He testified:

Q: Do you know how high up the contents of your email outlining your inform[ation] made it? Beyond the person at CT that was coordinating it, do you have any idea? Did it make it to Mr. Morell, for example?

A: I believe it made it to Mr. Morell.

Q: Okay.

A: Because this is one of the responses. The reason why I say that –

Q: Yeah.

A:—it went—this was a response. He was aware of our view that either—so I have all—I don't have any reason to doubt it didn't make it to him.

Q: Yeah.

A: And his questions to us were consistent that he got this specific information or something like it.¹⁷⁶

Morell, however, testified he does not remember receiving this email. He told the committee:

¹⁷⁵ [REDACTED] Team Chief Testimony at 68-69.

¹⁷⁶ Chief of Station Testimony at 208-09.

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Q: Okay. You don't believe this is something that you have ever seen?

A: Not that I remember.¹⁷⁷

Drafting the Talking Points

Petraeus testified the House Permanent Select Committee on Intelligence [HPSCI] did not ask for unclassified talking points when he met with them on September 14, 2012, but rather he offered to provide them to the Committee. Petraeus testified:

A: Yeah. The Ranking Member asked: What can we say about this publicly? And so I said: Okay, we'll come up with something for you. And, frankly, the thinking was we could do something very quickly, give it to him, he could have it that afternoon, and he could know what he could and could not say.

Q: So your expectations were this was something that would be done internally at the CIA and knocked out quickly and sent over in the afternoon?

A: Yeah, yeah. And, obviously, that would be inappropriate in the end because it would need to be sent through the intelligence community, so it had to be an IC. And then, of course, since it's now going to be used publicly, then the respective public affairs offices of various organizations get involved. And then since it has overall government implications, then you end up having to get State and FBI. There's security concerns and a variety of other issues that start to get factored in. So it became quite an involved process in the end.

Q: But what was your understanding of how the process would evolve when the tasking was first issued by HPSCI?

A: I'm not sure I had a very clear—yeah, staff come up with some talking points.¹⁷⁸

¹⁷⁷ Morell Testimony at 119.

¹⁷⁸ Testimony of David Petraeus, Dir., Cent. Intel. Agency, Tr. at 50-51 (Mar. 19, 2016) (on file with the Committee).

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The OTA Director accompanied Petraeus to the HPSCI meeting, and upon returning to her office, drafted an initial set of talking points. She testified:

So as I said, the coffee was that morning. I immediately came back. And knowing the sense of urgency that the Members had, I took that as my, you know, top task was to get them talking points because they had all said they were going to be going out and speaking to the media and to constituents and they wanted to know what they could say.

So I put together the talking points. And I wanted them to be reflective of what the Members, of course, had just heard. Thinking back on this now, I think part of this is I definitely had in my mind that the Members had heard a fuller explanation from the director, but that this was my attempt to try and say of what they had heard what could they say in an unclassified setting.

So I drafted these talking points immediately after that. And then at 11:15, so it was pretty quickly, then circulated them to make sure that everyone agreed with both the content and that they were unclassified.¹⁷⁹

The first draft of the talking points contained six bullet points. Nowhere in any of these six bullet points is a mention of demonstrations or protests in Benghazi. The OTA Director acknowledged that these six bullet points were factually accurate—both at the time they were crafted and today.¹⁸⁰ The first bullet point was pulled almost verbatim from the September 13 WIRE, published the day before.¹⁸¹

The bullet points were:

- We believe based on currently available information that the attacks in Benghazi were spontaneously inspired by

¹⁷⁹ OTA Dir. Testimony at 194-95.

¹⁸⁰ OTA Dir. Testimony at 197.

¹⁸¹ September 13 WIRE, *supra* note 123. The September 13 WIRE said “We assess the attacks on Tuesday against the US Consulate in Benghazi began spontaneously following the protests at the US Embassy in Cairo and evolved into a direct assault against the Consulate and a separate US facility in the city.” The first bullet point stated “We believe based on currently available information that the attacks in Benghazi were spontaneously inspired by the protests at the US Embassy in Cairo and evolved into a direct assault against the US Consulate and subsequently its annex.”

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the protests at the US Embassy in Cairo and evolved into a direct assault against the US Consulate and subsequently its annex. This assessment may change as additional information is collected and analyzed and currently available information continues to be evaluated.

- The crowd almost certainly was a mix of individuals from across many sectors of Libyan society. That being said, we do know that Islamic extremists with ties to al-Qa'ida participated in the attack.
- Initial press reporting linked the attack to Ansar al-Sharia. The group has since released a statement that the its [sic] leadership did not order the attacks, but did not deny that some of its members were involved. Ansar al-Sharia's facebook page aims to spread sharia in Libya and emphasizes the need for jihad to counter what it views as false interpretations of Islam, according to an open source study.
- The wide availability of weapons and experienced fighters in Libya almost certainly contributed to the lethality of the attacks.
- Since April, there have been at least five other attacks against foreign interests in Benghazi by unidentified assailants, including the June attack against the British Ambassador's convoy. We cannot rule out that individuals had previously surveilled the US facilities, also contributing to the efficacy of the attacks.
- We are working with Libyan authorities and intelligence partners in an effort to help bring to justice those responsible for the deaths of US citizens.¹⁸²

The OTA Director sent these six talking points out for coordination with other offices within the CIA at 11:15 a.m.¹⁸³ A member of the National

¹⁸² *Talking Points Timeline*, ABC NEWS, <http://abcnews.go.com/images/Politics/Benghazi%20Talking%20Points%20Timeline.pdf> (last visited May 17, 2016).

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Clandestine Service—the operators who work on the ground, as opposed to the analysts who sit at headquarters—asked: “Second tick says we *know* extremists with ties to AQ *participated* in the attack, which implies complicity in the deaths of the American officers. Do we know this?”¹⁸⁴ The OTA Director responds and says “Good point that it could be interpreted this way—perhaps better stated that we know they participated in the *protests*. We do not know who was responsible for the deaths.”¹⁸⁵

Given that no protests had occurred in Benghazi prior to the attack, this change had the effect of transforming the second bullet point from being accurate to being inaccurate. The OTA Director testified:

Q: Sure. So I guess the way I read it is, you’re trying to appease legal, which is always a challenge, by saying that—you wanted to back off the fact you know they participated in the attack because you don’t want to interfere and potentially jeopardize the investigation, showing complicity to the attacks. So you altered it to we know they participated in protests at the time you believe they were protests.

A: Correct.

Q: But you didn’t know for a fact that they [Islamic extremists with ties to al-Qa’ida] participated in the protests. You just knew that they were there.

A: Right.

Q: So the change went from being accurate to being inaccurate?

A: Correct.

Q: Okay and is that something you did solely on your own?

¹⁸³ See Email from [National Clandestine Service Officer] to [Near East Division, *et al.*] (Sept. 14, 2012, 2:52 PM) (on file with the CIA, REQUEST 17-0443 to REQUEST 17-0449) (sending talking points to multiple offices within the CIA).

¹⁸⁴ Email from [National Clandestine Service Officer] to [Near East Division, *et al.*] (Sept. 14, 2012, 2:52 PM) (on file with the CIA, REQUEST 17-0443 to REQUEST 17-0449) (emphasis original).

¹⁸⁵ Email from Dir., Office of Terrorism Analysis, Cent. Intel. Agency, to [National Clandestine Service Officer] (Sept. 14, 2012, 3:19 PM) (on file with the CIA, REQUEST 17-0443 to REQUEST 17-0449) (emphasis added).

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A: Yes.¹⁸⁶

In a subsequent email, the word “protests” was changed to “violent demonstrations” in that same bullet point.¹⁸⁷ Those changes made it all the way through to the final version of the talking points, surviving the extensive deletions made near the end of this process by Morell.¹⁸⁸

Shortly after this change was made, a meeting took place to discuss the talking points. The CIA’s “Lessons Learned” after action review described this meeting:

At some point between 4-5 p.m., a group of officers from OCA [Office of Congressional Affairs] and OPA [Office of Public Affairs] met in OPA spaces to discuss the talking points. Those officers included C [Chief]/OCA, COS [Chief of Staff]/OCA, D [Director]/OPA, the Chief of OPA’s Media Relations Branch and two OPA spokespersons. Their efforts, over a period of approximately 30 minutes, culminated in a revised version of the talking points that was sent to CIA/COS and the DDCIA’s [Deputy Director, Central Intelligence Agency] office by OPA at 4:42 p.m.

Participants in this group editing session agree that they did not have a complete picture of intelligence regarding the events in Benghazi to guide them. Group members were working under tremendous time pressure. All agree that they were focused on several important considerations, including ensuring that the talking points contained no information that could compromise sources and methods, and that nothing was said that could compromise the then-nascent FBI investigation by prematurely attributing responsibility for the attacks on any one person or group.

The group had access to an e-mail from NCS [National Clandestine Service] noting that the original talking points statement that

¹⁸⁶ OTA Dir. Testimony at 205-06.

¹⁸⁷ See Email from [National Clandestine Service Officer] to [Near East Division, *et al.*] (Sept. 14, 2012, 2:52 PM) (on file with the CIA, REQUEST 17-0443 to REQUEST 17-0449).

¹⁸⁸ See *Talking Points Timeline*, ABC NEWS, <http://abcnews.go.com/images/Politics/Benghazi%20Talking%20Points%20Timeline.pdf> (last visited May 17, 2016).

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“we do know that Islamic extremists participated in the attack” implied complicity in the deaths of American officers. The original drafter of the talking points agreed that we did not know who was responsible for the deaths and suggested that the language be changed to say “we know that they participated in the protests.” While the editing group did not make this change, “attacks” in the second bullet was changed to “violent demonstration,” effectively accomplishing the same purpose.

In addition, the word “attacks” in the first bullet of the talking points was changed to “demonstrations.” The group also deleted reference in the second bullet to al-Qa’ida. The reasons underlying both changes are not clear, and participants in the editing session have incomplete recollections regarding the decision. Some have suggested that they believed the sentence was somewhat awkward and illogical as written, making reference to “attacks” “evolving into an assault,” with “attacks” and “assault” seeming to be synonyms. In addition to these changes, the group added two sentences about CIA product discussing threats, a statement noting that the investigation was ongoing, and several non-substantive word changes.¹⁸⁹

The meeting did not include the OTA Director, the drafter of the original talking points, or any substantive experts on Benghazi. The OTA Director testified:

Q: So how did we go from “attacks” in bullet point one at 3:33 to “demonstrations” in bullet point one at 4:42?

A: At some point in this process this entered into—it became opaque to me. At some point in this process, as I –

Q: I’m sorry. Were you comfortable with it occur[ing] that way given the fact that you were tasked with –

A: I didn’t know it was occurring. So when I say it was opaque to me, I did not know this was happening.

¹⁸⁹ Letter from Michael Morell, Deputy Dir., Cent. Intel. Agency, to Sen. Richard M. Burr, S. Select Comm. on Intel., *Lessons Learned From Formulation of Unclassified Talking Points re the Events in Benghazi, 11-12 September 2012* [hereinafter *Lessons Learned*] (Aug. 6, 2013) (on file with the Committee), at 4-5.

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At some point in this process, as I know you have seen from all this, there is a group from OPA, our Office of Public Affairs, our Office of Congressional Affairs, and others, took the talking points and made changes to them. And I was not consulted on those changes. So I cannot tell you how some of these changes took place. I was not involved. I was not consulted beforehand.¹⁹⁰

That change in the first bullet point—from “attacks” to “demonstrations”—also survived Morell’s extensive edits and was in the final version of the talking points.¹⁹¹

Around this same time, Morell first learned about the existence of the talking points. He testified:

So there was a weekly meeting on Syria, followed by our three-times-a-week meeting on counterterrorism. In between those two meetings, the director’s chief of staff walked up to me in the director’s conference room and said, here, you need to see these. You need to be aware of this, you need to get involved in this. I said, what’s this? And he explained the origin of the talking points and he explained kind of where they were in the process. I skimmed the talking points, and I immediately reacted to the warning language [language indicating that five prior attacks had occurred in Benghazi against foreign interests]. . . .

So I say to my EA [Executive Assistant], where is this in the process? And he said, it’s being coordinated. I say, okay, I will deal with it in the morning.¹⁹²

Morell testified he did not edit the talking points that evening, nor did he speak with anybody about them.¹⁹³ Instead, Morell edited them by himself the next morning, Saturday, September 15. He testified:

So I come in the next morning and my—and the next morning, by the way, is a deputies meeting at eight. Family day at CIA—

¹⁹⁰ OTA Dir. Testimony at 209-10.

¹⁹¹ See *Talking Points Timeline*, ABC NEWS, <http://abcnews.go.com/images/Politics/Benghazi%20Talking%20Points%20Timeline.pdf> (last visited May 17, 2016).

¹⁹² Morell Testimony at 124-25.

¹⁹³ *Id.* at 128-29.

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once a year you allow families to come on the compound, walk around, visit offices, et cetera, et cetera—is at nine.

And first thing my EA tells me is that Denis McDonough, then the deputy National Security Advisor, wants to talk about—wants to talk about the talking points in the deputies meeting, and I say, okay. I have a conversation with General Petraeus about the talking points, and [Petraeus' Chief of Staff] was there, and I believe he would—if he were here, he would agree with what I'm about ready to tell you, that I told Director Petraeus that the talking points were stuck, that the State Department was objecting to the warning language, and I told him that I agreed that the warning language should be taken out, and the Director didn't say a word to me. He didn't tell me that he was going to put it in, he didn't say, keep—keep the warning language in there, I think it's really important. He didn't say anything.

We do our family day stuff, which includes literally hundreds of people coming through my office and shaking hands with me, and the whole time I'm thinking these talking points are sitting on my desk, actually my EA's desk.

So when the family thing is done, I go and edit the talking points and I literally edit them in 5, 10 minutes and I fly through them. And as you know, I made a bunch of changes, and the most significant of which is taking out the warning language. So that's kind of the—that's kind of the story there.¹⁹⁴

New Information on September 15

When Morell edited the talking points on the morning of September 15, new information was fresh in his mind regarding the Benghazi attacks. That morning saw additional information written about Benghazi. A *New York Times* article was published that morning written by Peter Baker. It read in part:

According to a guard at the compound, the attack began at about 9:30 p.m., without advance warning or any peaceful protest. “I started hearing, ‘God is great! God is great!’” one guard said. “I

¹⁹⁴ *Id.* at 126-28.

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thought to myself, maybe it is a passing funeral.” (All the guards spoke on the condition of anonymity for their safety)

“Attack, attack,” the guard said as he heard an American calling over his walkie-talkie as the chants came closer. Suddenly, there came a barrage of gunfire, explosions, and rocket-propelled grenades.¹⁹⁵

The Chief of Station found this article compelling. He testified:

Q: They told them attack or they told them fire, so I mean—I don’t know if you knew that at the time, but I mean, in reading this, it seems like some of the folks being interviewed here only know things that someone who was there would know. Did you read this –

A: Oh yeah, I found this compelling.¹⁹⁶

Morell, however, did not. He testified:

Q: Are you familiar with Peter Baker at all?

A: Yes, I believe I have met him.

* * *

Q: Okay. All right. Your assessment of the New York Times as a media organization?

A: My assessment of The New York Times is that, like any media organization, it gets a lot of things wrong. And my assessment of The New York Times is that its reporting and editorials are fairly biased, in my view.¹⁹⁷

Morell then said:

¹⁹⁵ Peter Baker, *et al.*, *Diplomats’ Bodies Return to U.S., and Libyan Guards Recount Deadly Riot*, N.Y. TIMES (Sept. 15, 2012), http://www.nytimes.com/2012/09/15/world/middleeast/ambassadors-body-back-in-us-libya-guards-recount-riot.html?_r=0.

¹⁹⁶ Chief of Station Testimony at 218.

¹⁹⁷ Morell Testimony at 106.

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Q: So the same paragraph we were talking about on page two, here is the New York Times citing one guard from the consulate. I mean, how would you assess that in terms of credibility from what the guard said reported in The New York Times article?

A: How would I assess it?

Q: How would you assess it?

A: Michael Morell?

Q: Yes.

A: I wouldn't give it great credibility.

Q: Okay.

A: Right? I mean, it's a data point. It's a data point. It's one guard. You don't know who it is. You don't know the conditions under which he was talking. I mean, it's a data point. I wouldn't discount it totally, but I wouldn't say this is absolute fact.¹⁹⁸

The CIA analysts published another WIRe that morning, September 15, with a new assessment.¹⁹⁹ This piece, co-written with the National Counterterrorism Center, had two main focuses: the extremists who participated in the Benghazi attacks, and Libyan authorities placing a high priority on tracking down the perpetrators of the attack.²⁰⁰ Similar to the September 13 WIRe two days earlier, the notion of a protest and the discussion of a video were not central—or even minor—focuses of the piece.

The first paragraph of the September 15 WIRe contains the sentence “The level of planning and exact sequence of events leading to the attack remain intelligence gaps.”²⁰¹ This indicates the analysts did not know definitively what had transpired prior to the attacks—perhaps whether or not protests in Benghazi had occurred, or the motivation or level of planning for the attacks—and signaled to the reader that information still needed to be gleaned about these events.

¹⁹⁸ *Id.* at 109.

¹⁹⁹ Cent. Intel. Agency, Libya: Variety of Extremists Participated in Benghazi Attacks, World Intelligence Review, Sept. 15, 2012 (on file with CIA, REQUEST 17-0262 to REQUEST 17-0265).

²⁰⁰ *Id.*

²⁰¹ *Id.*

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Morell also reviewed an email from the Chief of Station on the morning of September 15. That email stated in part:

INTEL: Station notes the following information from the past 24hrs, which strengthen Station's assessment that the attacks were not/not spontaneous and not/not an escalation of protests. Press reports noted that at the time of the attack, circa 2130 local, guards posted at the U.S. Consulate in Benghazi and Libyans residing in the vicinity reported the absence of protests at the consulate and specific that the attack began without warning. A CIA officer on the scene noted that at approximately 2200 [10:00 p.m.], there was no sign of a protest at the Consulate. Libya General National Congress (GNC) President Magaryaf stated in an interview that the attacks were planned in advance by experienced individuals, most likely al-Qa'ida (AQ) and not former regime elements (FRE).²⁰²

Morell testified about receiving this email:

I go through it, I read this, right, and the line in there about, we don't think this was a protest, right, jumps out at me. Why did it jump out at me? Because the analysts believed there was a protest. So here I have my analysts saying there was a protest, and I've got my Chief of Station, a guy I've got a lot of confidence in, right, telling me there was no protest.

The other thing that jumped out at me were that the reasons he gave ... why he thinks there was no protest, the first is that there were press reports saying no protest, but what goes through my mind, right, is, look, I know that there's press reports that say there were protests. Okay?...

And then the next reason he gives is that a CIA officer on the scene noted that at approximately 2200, there was no sign of a protest at the consulate. And what goes through my mind then is, well, you know what, that's—2200 is 20 minutes after the attack started, right? Maybe everybody dispersed by then. What I react to now is that they didn't get there at 2200. They got to the corner, they got to the corner of the street that the TMF [Benghazi

²⁰² Email from Tripoli Chief of Station, Cent. Intel. Agency, to [Morell Assistant] (Sept. 15, 2012) (on file with the CIA, REQUEST 15-0011 to REQUEST 15-0022).

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Mission compound] was on at about 10 minutes after 10:00. They didn't even—they didn't get to the TM—to the front of the TMF itself until 2240, an hour after the attack started. So not compelling at all, right?²⁰³

Morell also compared the language in this email from the Chief of Station to the language in the email the Chief of Station sent the day before.

Q: So [the September 15 email] is stronger than the assessment given by the Chief of Station a day earlier?

A: I certainly remember it that way.²⁰⁴

Morell likely reviewed another piece of intelligence the morning of September 15 titled “Observations from the 11-12 September, 2012 Attacks Against the U.S. Consulate and a Separate Facility in Benghazi, Libya.”²⁰⁵ Morell received this piece of intelligence in an email at 8:50 a.m. and testified that he “almost certainly would not have not read an email from the chief of staff [of the CIA].”²⁰⁶ This email also noted there were “no signs of a protest” at 10:00 p.m. in Benghazi—less than 20 minutes after the attacks began—according to a CIA officer at the scene.²⁰⁷

It was with this information fresh in his mind—the two September 15 emails and the September 15 WIRE—along with the September 13 WIRE and the September 14 email from the Chief of Station, that Morell edited the talking points. At the time he edited the talking points, he had seen at least two reports from the Chief of Station—and possibly more—indicating, in increasingly forceful language, that no protests had taken place. The analysts had not seen these emails. Morell therefore was the only person who had both the analytic assessments about Benghazi in addition to multiple emails from the Chief of Station—somebody Morell had worked closely with during the Arab Spring and recognized as an “outstanding intelligence officer.”²⁰⁸

²⁰³ Morell Testimony at 146-47.

²⁰⁴ *Id.* at 150.

²⁰⁵ Email from Chief of Staff to Dir., Cent. Intel. Agency, to Michael Morell, Deputy Dir., Cent. Intel. Agency (Sept. 15, 2012) [hereinafter Dir. COS Email] (on file with the CIA, (REQUEST 1-002167)).

²⁰⁶ Morell Testimony at 144.

²⁰⁷ Dir. COS Email, *supra* note 205.

²⁰⁸ Morell Testimony at 14.

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It was incumbent on Morell to take all of this information at his disposal into account when he edited the talking points. Morell, a former intelligence analyst who rose through the ranks analyzing disparate information and formulating assessments, disagreed. He testified:

A: It's not my job, it's not my job to be the analyst, right? It's not my job to take all this information and come to an analytic conclusion. That's the job of the analysts. So when I—look, and had I done that, had I played analyst, right, and started editing the talking points and started changing them to reflect what the COS said, the analysts would have protested, because they—at that moment, they still believed that there had been a protest. So for me to take it out because the COS said there wasn't one would have gotten a reaction from the analysts. They would have seen me as politicizing analysis, all right?

Q: How would that have politicized the analysis, the fact that you're —

A: They would have seen it that way.

Q: But you're taking judgments from somebody that you had worked with very closely, somebody that you had deemed an exemplary intelligence officer.

A: Look, managers at CIA don't do analysis. When they are perceived to be doing the analysis, the analysts go nuts, right? Bob Gates was accused of that, other senior officials at CIA have been accused of that. Analysts go nuts when they think that managers are doing the analysis themselves, particularly when they disagree with the analysis. So the last thing I was going to do was change the analysts' analysis, right?²⁰⁹

Morell was not, however, creating an analytic assessment. Morell was editing talking points that would be used for public consumption. The process—and the product—is an inherently different one from internal CIA processes for formulating assessments. The analysts were not involved in the talking points process—only managers were.²¹⁰ The ana-

²⁰⁹ *Id.* at 152-53.

²¹⁰ *See, e.g.*, email from Dir., Office of Terrorism Analysis, Cent. Intel. Agency, to [NE Division] (Sept. 14, 2012) (on file with the CIA, REQUEST 17-0443 to 17-0444).

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lysts did not have the same emails Morell did from the Chief of Station—only Morell had those.

Talking points—something the CIA rarely produces—are different from analytic assessments, which the CIA produces every day. Petraeus acknowledged this when he testified:

I mean, that was where finally once it—this was not—certainly no longer a CIA document. It wasn't even an intelligence community document, although that rightly should have been, and that's why it went to the IC referral process, but then, of course, you know, it's going to be interagency and not everyone has got a hand in this.²¹¹

The talking points were understood to be viewed as representative of an authoritative analytical assessment. As shown, however, this was not the case—no analysts worked on these talking points, as they were created and edited only by senior CIA managers and other senior officials in the administration. The distinction was never manifested on the document or otherwise made known to those relying on, or making representations based on, the talking points.

No process was in place to create the talking points, and no analysis was required to create them. The only expectation was to produce accurate information to Congress for them to share with the American people. That being the case, Morell—the only person with the complete universe of information at his disposal—could have edited the talking points to reflect the most up-to-date information—or at the very least to caveat the talking points with a reflection that different views existed. Morell did neither of these things.

Panetta—whom Morell worked for when Panetta was Director of the CIA—understands this concept well. He told the Committee:

The last lesson I would tell you is don't use talking points that don't include language that makes very clear that the matter is under investigation and that these results are only preliminary. As former chief of staff, I've seen talking points, and I can understand how trouble can result as a result of that. I used to re-

²¹¹ Testimony of David Petraeus, Dir., Cent. Intel. Agency, Tr. at 62 (Jan. 6, 2016) (on file with the Committee).

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view those before anybody got a hold of them to make sure that they reflected what we wanted to inform the American people about, because the last thing you want to do is to mislead the American people.²¹²

THE SUNDAY TALK SHOWS

Perhaps as much as any other subject surrounding Benghazi, the appearance by Ambassador Rice on five Sunday morning talk shows following the attacks has been the most politically charged. After all, it was the fallout from her appearances that ultimately caused her to withdraw her name as a candidate—perhaps the leading candidate—to be the next Secretary of State.²¹³ Yet little is known about why she was selected by the administration to represent the United States government on the shows, what she did to prepare for those talk shows, what materials she reviewed, who she spoke with to learn information about the attacks, and most significantly why she said what she said.

It was not until two days before the shows, on Friday, September 14, when Rice learned she would be appearing on behalf of the administration.²¹⁴ She was the administration's third choice to appear on the shows—the first being the Secretary of State and the second being Tom Donilon, National Security Advisor to the President.²¹⁵ Rhodes was the White House official responsible for reaching out to Rice and asking her to appear. He testified:

A: I recall reaching out to Secretary Clinton first.

* * *

Q: Did you get an affirmative "no" or did you just not hear back?

²¹² Testimony of Leon Panetta, Sec'y of Defense, U.S. Dep't of Defense, Tr. at 107 (Jan. 8, 2016) (on file with the Committee).

²¹³ Karen DeYoung & Anne Gearan, *Susan Rice withdraws as candidate for secretary of state*, WASH. POST (Dec. 13, 2012), https://www.washingtonpost.com/world/national-security/susan-rice-withdraws-as-candidate-for-secretary-of-state/2012/12/13/17ad344e-4567-11e2-8e70-e1993528222d_story.html.

²¹⁴ Testimony of Susan E. Rice, former U.S. Ambassador to the U.N., Tr. at 30 (Feb. 2, 2016) [hereinafter Rice Testimony] (on file with the Committee).

²¹⁵ See Rhodes Testimony at 65-66 (stating Sec'y Clinton and Tom Donilon were first and second choices to appear).

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A: I don't remember hearing back.

Q: Did you call again and redouble your ask or did you move on to your second draft choice?

A: I believe I moved on because I knew that she, again, does not regularly appear on Sunday shows. So I don't remember thinking that it was likely that she would want to appear.

Q: And who else would you have asked after Secretary Clinton?

A: I remember asking Tom Donilon, the National Security Advisor.

Q: And what was his response?

A: He did not want to appear. And he too very rarely appeared on the Sunday shows.

Q: All right. Who was number three?

A: I believe it was Susan Rice, is my recollection.²¹⁶

Although Rhodes testified the Secretary “does not regularly appear on Sunday shows,” she had in fact appeared on multiple shows on two separate occasions within a seven month period to discuss Libya. On March 27, 2011—barely a week after the United States supported the UN in imposing a no fly zone over Libya and authorizing all means necessary to protect civilians—the Secretary appeared on *Meet the Press*, *Face the Nation*, and *This Week*, to talk about the U.S. intervention in Libya, which was being promoted as a civilian protection and humanitarian mission.²¹⁷ Seven months later—in the immediate wake of Qadhafi’s death—she appeared on *Meet the Press*, *This Week*, *State of the Union*,

²¹⁶ Rhodes Testimony at 65-66.

²¹⁷ *Meet the Press transcript for March 27, 2011*, NBC News (Mar. 27, 2011), http://www.nbcnews.com/id/42275424/ns/meet_the_press-transcripts/t/meet-press-transcript-march/#.VzoK0_krJaQ; *Face the Nation March 27, 2011 Transcript*, CBS News (Mar. 27, 2011), http://www.cbsnews.com/htdocs/pdf/FTN_032711.pdf; *This Week’ Transcript: Hillary Clinton, Robert Gates and Donald Rumsfeld*, ABC News (Mar. 27, 2011), <http://abcnews.go.com/ThisWeek/week-transcript-hillary-clinton-robert-gates-donald-rumsfeld/story?id=13232096>.

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and *FoxNews Sunday* to talk about Qadhafi's death and the path forward in Libya.²¹⁸

Mills testified the decision not to appear on the Sunday shows was the Secretary's:

Q: Since the Secretary didn't appear, who made the decision that she wasn't going to appear?

A: Well, she would always decide what she would do, if she was going to go on a show or not go on a show.

Q: Okay. Were there recommendations that she took from you and others, such as Philippe Reines, Jake Sullivan, others?

A: No. Candidly, the Secretary was so focused on what had happened to our team and what was happening in the region that I don't know that there was a moment's thought about it. She didn't often go on the shows. And she was, understandably, very concerned about how we support our teams and the losses that we had incurred.²¹⁹

When Rhodes learned the Secretary would not represent the administration on the talk shows, he then asked Donilon to appear.²²⁰ He also declined.²²¹ Rice— Rhodes' third choice for the task—accepted.²²² In doing so, the administration selected someone to talk to the American people about the Benghazi attacks who was neither involved in the security of any U.S. facilities in Benghazi nor involved in any way with the oper-

²¹⁸ *Meet the Press transcript for October 23, 2011*, NBC (Oct. 23, 2011), http://www.nbcnews.com/id/45000791/ns/meet_the_press-transcripts/t/meet-press-transcript-october/#.V1cU19UrJaQ., *Clinton Warns Iran: U.S. Committed to Iraq*, ABC's *This Week* (Oct. 23, 2011), <http://abcnews.go.com/ThisWeek/video/interview-hillary-clinton-14796369>., *State of the Union with Candy Crowley*, CNN (Oct. 23, 2011), <http://transcripts.cnn.com/TRANSCRIPTS/1110/23/sotu.01.html>., and *Clinton Talks Iraq, Libya; Sen. Graham Challenges GOP Candidates; Bachmann Focused on Iowa*, FOX News Sunday (Oct. 23, 2011), <http://www.foxnews.com/on-air/fox-news-sunday-chris-wallace/2011/10/23/clinton-talks-iraq-libya-sen-graham-challenges-gop-candidates-bachmann-focused-iowa#p/v/1234077958001>.

²¹⁹ Testimony of Cheryl D. Mills, Chief of Staff to the U.S. Sec'y of State, U.S. Dep't of State, Tr. at 123 (Sept. 3, 2015) [hereinafter Mills Testimony] (on file with the Committee).

²²⁰ Rhodes Testimony at 66.

²²¹ *Id.*

²²² *Id.*

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ational response to the attacks. In fact, the administration selected an individual who did not even know there was a CIA presence in Benghazi, let alone the fact that two Americans had died there.²²³ She testified:

Q: Did you learn between September 11 and September 16 that there was a CIA presence in Benghazi?

A: I think—no. I think I learned subsequently.

* * *

Q: So nobody told you between the dates of September 11 and September 16 that two of the four Americans who were killed who were providing security actually worked for the CIA and not the State Department?

A: Not that I recall.

Q: All right.

Q: And you learned that subsequently?

A: To the best of my recollection, I learned it subsequently.²²⁴

In selecting Rice to appear on the Sunday talk shows, Rhodes chose an individual with limited knowledge of, and presumably limited participation in, the administration's response to the Benghazi attacks. Instead, while the attacks were happening, Rice was receiving—apparently in response to an email chain about the attack on the Benghazi Mission compound—a detailed update from staff about the number of retweets her Twitter account had generated.²²⁵

²²³ Rice Testimony at 107-08.

²²⁴ *Id.*

²²⁵ See Email to Susan E. Rice, U.S. Permanent Rep. to the U.N. (Sept. 11, 2012, 7:43 P.M.) (on file with the Committee, C05561948) ("Today, you tweeted 7 times on the anniversary of the September 11 attacks, generating more than 600 retweets. By this measure, your twitter account had a big day—your second or third biggest since the start of the summer—and your volunteering pics got a few nice responses . . .").

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How Rice Prepped for the Shows

On Friday, September 14, 2012, the Secretary's calendar included a meeting with Rice.²²⁶ Both Rice and Mills testified they believed that meeting took place, even though neither had a specific recollection of it.²²⁷ That Friday meeting was a standing meeting between the Secretary and Rice that would take place when Rice was in Washington.

Despite having no specific recollection of the meeting, Rice is confident she did not discuss the Sunday shows with the Secretary at the meeting.²²⁸ This is because Rice first learned of her possible appearance on the Sunday shows in the early afternoon of September 14, after the scheduled meeting. She testified:

I received a phone call as I was in my car on my way to Andrews for the ceremony receiving our fallen colleagues. And in that phone call from Ben [Rhodes], I was asked whether it would be possible, if Secretary Clinton were unable to appear on the shows, if I could appear on the shows. It was a contingency question at the time. And I said that, you know, I had other plans for the weekend and that it would not be my preference but if they needed me and there was not an alternative that I would be willing to do it.²²⁹

Both the Secretary and Rice attended the return of remains ceremony at Andrews Air Force Base that afternoon, and later that day, Friday September 14, Rhodes called Rice back to inform her she needed to do the Sunday shows.²³⁰

Ambassador Rice did not begin preparing for the shows until the following day, Saturday September 15. Her staff, led by Erin Pelton, Communications Director and Spokesperson, prepared a book of briefing materi-

²²⁶ Email from Special Ass't to the Sec'y of State, U.S. Dep't of State, to Hillary R. Clinton ("H"), Sec'y of State, U.S. Dep't of State (Sept. 14, 2012, 7:29 AM) (on file with the Committee, SCB0045306-SCB0045307).

²²⁷ Rice Testimony at 28; Mills Testimony at 138.

²²⁸ Rice Testimony at 28.

²²⁹ Rice Testimony at 26.

²³⁰ *Id.*

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als for Rice.²³¹ Rice testified she began reviewing these briefing materials on Saturday:

Q: So let's go forward to—did you do anything after speaking to Mr. Rhodes on Friday night to begin preparing?

A: No.

Q: What did you do the next morning to begin preparing?

A: I reviewed briefing materials.

Q: What briefing materials? Would that just be the same daily briefing materials that you received in the ordinary course, or was this different material?

A: It was both. I received my daily intelligence briefing on Saturday morning, and I also began reviewing a briefing book that had been prepared by my staff for—in preparation for the Sunday shows.²³²

These briefing materials contained little to no information about the Benghazi attacks. Pelton testified that in gathering briefing materials for the Sunday shows she explicitly did not focus on Benghazi, anticipating materials pertaining to Benghazi would come at a later time. She said:

Q: In your list of areas where you were attempting to collect the latest information, you left Benghazi out. Was that intentional, or were you just giving me some examples?

A: I don't recall preparing information about Benghazi. What I do recall is understanding that we would have access to talking points that would be provided by the intelligence community that were unclassified and consistent with our latest understanding of what had transpired in Benghazi.²³³

²³¹ Testimony of Erin Pelton, Dir. of Commc's and Spokesperson, U.S. Mission to the U.N., Tr. at 44 (Feb. 11, 2016) [hereinafter Pelton Testimony] (on file with the Committee).

²³² Rice Testimony at 31.

²³³ Pelton Testimony at 45.

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Pelton also testified she believed she would be receiving talking points regarding Benghazi that would not require her to seek out briefing materials about Benghazi on her own:

Well, I recall that in the process of preparing Ambassador Rice between Friday and Saturday, September 14th and 15th, that I was not focused on Benghazi because I was going to receive talking points that were appropriate for public use by the intelligence community. I don't remember how I came to know that I was going to get those materials.²³⁴

While Pelton not include any information specific to Benghazi in the briefing book, Rice recalled other material that was in the briefing book. She testified:

Q: As best you can, do you recall what was in that briefing book that your staff provided?

A: I recall it included statements that other senior administration officials had made, including the President and the Secretary. I recall it including background Q&A and top-line themes covering the wide range of issues that we anticipated would come up on the shows: the protests that occurred all around the world that week; obviously, also what happened in Benghazi.

And, also, because it was one week before the opening of the U.N. General Assembly in New York and Iran was expected to be a prominent issue, and Prime Minister Netanyahu's visit also a prominent issue, I recall preparing for that discussion as well.²³⁵

The "background Q&A" and "top line themes" came from Rhodes.²³⁶ Pelton testified about how this information came about:

A: I don't recall all the specifics of our conversation [with Ben Rhodes]. However, I do recall at one point asking him to provide, for lack of a better term, a memo regarding the objectives of the Sunday show appearances.

Q: How did he respond to you?

²³⁴ *Id.*

²³⁵ Rice Testimony at 33.

²³⁶ Rhodes Memo, *supra* note 3.

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A: He said he would write it.

Q: And did he eventually deliver that to you?

A: Yes.²³⁷

Rhodes delivered this memo at 8:09 p.m. on the evening of September 14 in an email with the subject "RE: PREP CALL with Susan: Saturday at 4:00 pm ET."²³⁸ The memo contained four bullet points under "Goals," six bullet points under "Top-lines," and contained five questions and suggested answers regarding the Arab Spring, protests, and Benghazi, and an additional four questions and suggested answers regarding Israel and Iran.²³⁹

The four bullet points under the "Goals" section of the memo were the following:

To convey that the United States is doing everything that we can to protect our people and facilities abroad;

To underscore that these protests are rooted in an Internet video, and not a broader failure of policy;

To show that we will be resolute in bringing people who harm Americans to justice, and standing steadfast through these protests;

To reinforce the President and Administration's strength and steadiness in dealing with difficult challenges.²⁴⁰

The second point was one of the most explicit directions from a senior administration official about the intent of the administration's communications strategy. The Chairman had the following exchange with Rhodes about these bullet points during Rhodes' testimony to the Committee:

Q: How about number two? They are not numbered, but let's just go second bullet, okay? "To underscore that these protests are

²³⁷ Pelton Testimony at 42.

²³⁸ Rhodes Memo, *supra* note 3.

²³⁹ *See id.*

²⁴⁰ *Id.*

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rooted in an Internet video, and not a broader failure of policy." What policy were you worried about being considered a failure?

A: My recollection over the course of that week is that we were getting questions about whether this represented a failure of our policy in the Middle East and in response to the Arab Spring.

Q: And you wanted to underscore the point that it wasn't any of that, it was just a video.

A: We were anticipating getting those questions, and we wanted to convey that, again, the protests were rooted in this video.

Q: Were there other options other than just those two, a wholesale failure of the administration's policy or an Internet video? Was there something else? Those are your only two options?

A: Again, my recollection is that this reflects the way in which we were getting questions over the course of the week is it's a failure of policy. And we were at the same time seeking to deal with the ongoing fallout from the video. So those were the factors in play.

Q: I'm with you on wanting to explain to folks that it wasn't a failure of policy. You essentially gave yourself two choices: an Internet video or a broader failure of policy. And my question is, were those your only two options?

A: Again, that's what I recall being the subject of discussion over the course of that week in terms of the questions we were being asked.

Q: Well, with respect to Benghazi, it certainly would have—it's possible that it was not just those two options, right?

A: I'm not sure I understand the question.

Q: With respect to what happened in Benghazi, you're not limiting us to just those two options, right, a failure of policy or an Internet video?

A: Again, I believe in this specific bullet I'm referring to the ongoing protests that are taking place across the Middle East which were very much still going forward on that Friday.

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Q: Right. But you agree—you knew Benghazi was going to come up when Ambassador Rice was going on the five Sunday talk shows?

A: Yes.

Q: We haven't had an ambassador killed since when?

A: It had been a long time. I don't remember specifically.

Q: So you knew that that was coming up?

A: I knew that was going to be one of the topics.

Q: Right. And your third bullet, which isn't numbered, but it's number three, "To show that we will be resolute in bringing people who harm Americans to justice." Can you think of a country where Americans were harmed other than Libya that she might have been asked about?

A: That would principally, I believe, refer to Libya.

Q: Okay. So you concede that the third item does apply to Libya. Let's go back to the second one. How about the second one? Are we to have drawn a contrast between the second bullet and the third bullet, or are they all interrelated?

A: Again, my recollection is she is going on to talk about several different issues: the attacks in Benghazi, the ongoing protests that were taking place across the Middle East, and issues related to Iran and Israel. And so these points refer to different elements of the topic.

Q: Well, at the time, what did you think was the impetus for the attack in Benghazi?

A: I did not have a judgment of my own at the time. I was going to rely on the information provided by the intelligence community.

Q: Did the intelligence community mention an Internet video to you?

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A: The intelligence community at this point had suggested that it was an event that was motivated in part by the protests in Cairo.

Q: That was a great answer to a question I didn't ask. Did they mention the video?

A: No, what I'm saying is, my recollection is they at that point had said that insofar as there was any connection it was more to the events in Cairo being a motivating factor for individuals.

Q: Right. So you are preparing the Ambassador to go on five Sunday talk shows to talk about what you know is going to involve Benghazi and you don't want her to be stuck with the option of a failure of your policy. So you give the option of the Internet video. And my question is, who in the intelligence community told you that the attacks in Benghazi were linked to the video?

A: Again, I prepared these points on a Friday in which there were violent protests across the Middle East because of the video, a violent breach of our facility in Tunis, a violent breach of our facility at Khartoum, violence against an American restaurant in Lebanon, at the very least. So I very much was focused on the fact that there were ongoing protests, and one of the subjects that she was going to be asked about were those protests. So insofar as I'm referring to protests in the video, I'm referring to the many protests that were continuing to take place over the course of that week in response to the video.

Q: So is it your testimony that the second bullet and the third bullet are totally unrelated?

A: They're referring to different elements of what she's going to have to talk about on the Sunday shows.

Q: So bullet number two was not about Libya or Benghazi at all.

A: It was not intended to assign responsibility for Benghazi.

Q: But yet you jump in the very next bullet to those who harm Americans. Can you see how someone reading that memo might be vexed?

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A: Well, again, these are several statements of principle up top that I think speak to, again, all—in different parts of the issues that she is going to have to address. And then you can see in the actual contents how we intended to respond to those individual questions and instances.²⁴¹

The fact Rhodes concedes the third bullet point references Libya is important. The bullet point immediately prior references the video, allowing for easy connection and conflation of the video and the Benghazi attacks.²⁴² This occurred in public statements by the administration prior to Rhodes' memo, and, having seen this memo, Rice appeared to again connect the video and Benghazi the next day when she appeared on the talk shows.

While this connection between the two events may have favored a particular narrative, even Rhodes admitted that he was not aware of any intelligence that existed to directly link the video to the attacks. He testified:

A: And, again, my recollection of any connection to the video was indirect through the fact that the protests in Cairo may have been a motivating factor for the events in Benghazi.

Q: Okay. So just to be clear, so there was no direct connection made between the video and the attacks in Benghazi from the intelligence community that you're aware of at that time?

A: That's my recollection. I recall that there were public reports of protests that were—that would have been included in, you know, the information we were receiving.

Q: But you certainly weren't relying on those public reports, were you?

A: We were relying on the intelligence community's assessment, and the intelligence community's assessment was that these were events that were motivated in part by the protests in Cairo.²⁴³

²⁴¹ Rhodes Testimony at 75-80.

²⁴² Rhodes Memo, *supra* note 3.

²⁴³ Rhodes Testimony at 106-07.

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At 4:00 p.m. on Saturday September 15, 2012, a conference call was convened with Rice to discuss her appearance on the Sunday shows the following morning.²⁴⁴ Rice participated in this conference call from Columbus, Ohio, where she was spending the day.²⁴⁵ Rexon Ryu, Deputy to the U.S. Permanent Representative to the United Nations, State Department, testified there were no State Department people on the call:

Q: Okay. Do you recall—so you said Ben Rhodes. Were there any individuals, other than the USUN individual, were there any other people from the State Department that participated in that call?

A: There were no State Department people.

Q: Do you recall if there were additional individuals from the White House that participated?

A: Yes, there were.²⁴⁶

Rice testified David Plouffe, Senior Advisor to the President, was on the call.²⁴⁷ Plouffe had previously served as the campaign manager for the President's 2008 presidential campaign.²⁴⁸ While Rhodes testified Plouffe would "normally" appear on the Sunday show prep calls,²⁴⁹ Rice testified she did not recall him being on prior calls and did not understand why he was on the call in this instance.²⁵⁰

No witness interviewed by the Committee was able to specifically identify State Department individuals on the call aside from Rice's staff.²⁵¹ In addition, nobody from the Federal Bureau of Investigation [FBI], Department of Defense, or Central Intelligence Agency participated in the call, which apparently consisted of just a small circle of Rice's advisors and communications staffers from the White House.

²⁴⁴ Rhodes Memo, *supra* note 3.

²⁴⁵ Rice Testimony at 38.

²⁴⁶ Testimony of Rexon Y. Ryu, Deputy to the U.S. Ambassador to the U.N., Tr. at 83 (Aug. 25, 2015) (on file with the Committee) [hereinafter Ryu Testimony].

²⁴⁷ Rice Testimony at 39.

²⁴⁸ WASH. SPEAKERS BUREAU, <https://www.washingtonspeakers.com/speakers/biography.cfm?SpeakerID=6495>.

²⁴⁹ Rhodes Testimony at 111.

²⁵⁰ Rice Testimony at 40.

²⁵¹ *See, e.g.* Ryu Testimony at 73-74.

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At the time of her appearance on the talk shows, it had been announced the FBI would take the lead on the investigation into finding out what had occurred.²⁵² The Department of Defense, along with White House operators, had been involved in sending troops towards Libya while the attacks were ongoing, and analysts from the Central Intelligence Agency had taken the lead on post-attack analysis of intelligence. The State Department had its compound in Benghazi attacked and, as such, it was the principal source of information from eyewitnesses to the attack. The fact that no individuals from either the Defense Department or White House operators participated in the Saturday prep call therefore limited the information pertaining to Benghazi provided to Rice. Moreover, it does not appear Rice sought out any information about the attacks or worked to ensure that she had a full understanding of the events outside of the talking points she was provided.

In addition, multiple witnesses testified Benghazi was barely mentioned on the prep call. This inattention is consistent with the lack of information pertaining to Benghazi in the briefing materials. Instead, Rhodes commented on the call that the CIA was preparing unclassified talking points pertaining to Benghazi, with the understanding that the talking points would be shared with Rice when they were completed.²⁵³ Rice testified:

A: I don't recall us talking about the CIA talking points. I recall being reminded that they were forthcoming and that we would be relying on them because they had been prepared for Members of Congress and they were our best distillation of what we knew at the time.

Q: Okay. Who told you that?

A: I'm not certain, but I believe it was Ben. And so we didn't talk about Benghazi, in fact, on the phone call, as I remember. We just said that those were the points.

Q: Let's go into that a little bit more. If I understood you correctly, you said during this prep call for the Sunday talk shows you did not talk about the attacks in Benghazi at all. Is that correct?

²⁵² *U.S. launching apparent terrorist hunt in Libya*, CBS NEWS (Oct. 18, 2012), <http://www.cbsnews.com/news/us-launching-apparent-terrorist-hunt-in-libya/>.

²⁵³ Rice Testimony at 39-40, and Rhodes Testimony at 76-78.

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A: In any depth. I don't have any recollection of talking about them in any depth.²⁵⁴

Rice also testified it was her understanding these talking points would be vetted and cleared by the CIA—in other words, manifesting the subtext the talking points represented an authoritative product.

A: As I said, to the best of my recollection, it was Mr. Rhodes on the phone.

Q: And to the best of your recollection, what did he—how did he characterize the CIA talking points?

A: As being carefully vetted and cleared, drafted by the CIA, and provided—produced for the purpose of being provided to Members of Congress and, thus, what we would also utilize.

Q: So, as far as you were concerned or as far as you understood, the CIA talking points represented the best information about the attacks in Benghazi at the time.

A: Yes. That's how I—that's what I understood them to be, and that's, in fact, what I knew them to be, because they mirrored very precisely the intelligence that I had also received.²⁵⁵

No CIA witness the Committee interviewed had any knowledge the HPSCI talking points were going to be shared with Rice to be used on the Sunday talk shows.

As discussed above, Rice, the individual selected by the White House to represent the administration on the Sunday talk shows following the deaths of Ambassador Chris Stevens—the first U.S. Ambassador to be killed in the field since 1979—Sean Smith, Glen Doherty, and Tyrone Woods, was not a central figure in the creation or management of the Benghazi compound, or in the government's response to the attacks. She was unaware at the time the CIA had a presence there and essentially relied on just three bullet points of material—that none of the authors of the bullet points knew would be provided to her—to discuss the Benghazi attacks on the Sunday talk shows.

²⁵⁴ Rice Testimony at 42.

²⁵⁵ Rice Testimony at 45-46.

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Rice took umbrage when she was confronted with the suggestion that her role was to simply parrot the talking points provided to her, testifying:

A: Sir, as I said earlier, I did not have any knowledge of how these talking points were edited.

* * *

Q: I understand. So you were just the spokesman. You had been given something, and they told you: Go on out there and do your duty and repeat what you were provided.

A: No sir. I was also a member of the President's Cabinet and the National Security Council. I was a recipient of the most refined intelligence products. And I satisfied myself that what I had been asked to say in the unclassified points were consistent with what I had received in intelligence channels. Otherwise, I wouldn't have said it.²⁵⁶

While Rice is mostly correct in noting the unclassified talking points were consistent with what she had received through intelligence channels, there was one major difference, as discussed above. What Rice received through intelligence channels said “The currently available information suggests that the *attacks* in Benghazi were spontaneously inspired by protests at the US Embassy in Cairo and evolved into a direct assault against the US diplomatic post in Benghazi and subsequently its annex.”²⁵⁷ Yet the unclassified talking points said “The currently available information suggests that the *demonstrations* in Benghazi were spontaneously inspired by protests at the US Embassy in Cairo and evolved into a direct assault against the US diplomatic post in Benghazi and subsequently its annex.”²⁵⁸ That change—from “attacks” to “demonstrations”—significantly altered the meaning of the entire sentence.

²⁵⁶ Rice Testimony at 157.

²⁵⁷ September 13 WIRE, *supra* note 123 (emphasis added).

²⁵⁸ *Talking Points Timeline*, ABC NEWS,

<http://abcnews.go.com/images/Politics/Benghazi%20Talking%20Points%20Timeline.pdf> (emphasis added).

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In her interview before the Committee, Rice maintained the claim that the talking points were similar to the analysis. In fact she had reviewed the two documents side by side “very recently.”²⁵⁹ She testified:

Q: And do you know how closely those products mirrored that bullet point?

A: Virtually identical but not verbatim.

Q: Okay. And do you know, if it was not verbatim, what the differences were between what you read—

A: I can't tell you precisely, but if you—I do recall looking at them side-by-side and being comfortable that they were—well, at the time, I didn't look at them side-by-side, but I knew from having seen intelligence as early as that previous morning, Saturday morning, that this was very consistent with our latest information.

Q: And you have since looked at them side-by-side?

A: Yes.

Q: And you're still comfortable that what was in the intelligence is virtually identical to what's in that bullet point?

A: Yes.

Q: And do you recall how recently you looked at them side-by-side?

A: Very recently.

* * *

Q: Sure. My question is you said that you looked at them recently side-by-side, correct?

A: Yes.

²⁵⁹ Rice Testimony at 50.

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Q: And you were comfortable that what was in the finished intelligence is reflected here in this bullet point.

A: Yes.

Q: Okay. And did you recognize any differences between, looking at them side-by-side, what you saw in the intelligence versus what's in the bullet point?

A: Okay. So let me be precise. What's in this bullet point closely mirrored a similar paragraph in the finished intelligence product that I received at the same time. I'm not saying this is the sum total of what I saw.

Q: Sure. And you say it closely resembled or closely mirrored. My question is, what are the differences between what you reviewed and what's in here?

A: I don't recall any substantive differences.

Q: And you looked at this recently?

A: Yes.²⁶⁰

Despite the precision by Rice and the fact she had compared the documents side by side very recently, “attacks” and “demonstrations” are fundamentally different words with fundamentally different meanings. The specific language Rice received through intelligence channels relating to the attacks here was accurate, and what she read from the talking points based on demonstrations was not. The fact she testified she did not recall any substantive differences does not mean no substantive differences existed.

What Rice Said on the Shows

Despite Rice's limited knowledge about the Benghazi attacks when she appeared on the Sunday talk shows, some of her comments were conclusory, some were based neither in evidence nor fact, and some went well beyond what even the flawed talking points indicated. Two months after she appeared on the talk shows, she stated publicly:

²⁶⁰ *Id.* at 49-51.

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When discussing the attacks against our facilities in Benghazi, I relied solely and squarely on the information provided to me by the intelligence community. I made clear that the information was preliminary and that our investigations would give us the definitive answers. Everyone, particularly the intelligence community, has worked in good faith to provide the best assessment based on the information available. You know the FBI and the State Department's Accountability Review Board are conducting investigations as we speak, and they will look into all aspects of this heinous terrorist attack to provide what will become the definitive accounting of what occurred.²⁶¹

A close examination of what Rice actually did say on each of the Sunday morning shows, however, along with the Committee's interview with her, demonstrates she in fact went well beyond "solely and squarely" relying on the information provided to her by the intelligence community.²⁶² In addition, several aspects of her Benghazi remarks—conflating the video with the attack, the status of the FBI investigation, the number of attackers, and the amount of security present at the State Department compound, to name a few—drifted even farther from the information provided to her by the intelligence community. An analysis of some of Rice's comments is below.

FACE THE NATION

Face the Nation was unlike the other four shows in that Libyan President Mohamed el-Magariaf appeared on the show immediately prior to Rice. During his interview with Bob Schieffer, *Face the Nation* host, el-Magariaf, who hailed from Benghazi, attended university there, and had deep ties to the city, said there was "no doubt" the attacks were pre-planned. El-Magariaf said of the attack:

Q: Was this a long-planned attack, as far as you know? Or what— what do you know about that?

²⁶¹ Krishnadev Calamur, *Susan Rice Says Benghazi Claims Were Based On Information From Intelligence*, NPR (Nov. 21, 2012), <http://www.npr.org/sections/thetwo-way/2012/11/21/165686269/susan-rice-says-benghazi-claims-were-based-on-information-from-intelligence>.

²⁶² *Id.* ("When discussing the attacks against our facilities in Benghazi, I relied solely and squarely on the information provided to me by the intelligence community.")

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A: The way these perpetrators acted and moved, I think we— and they're choosing the specific date for this so-called demonstration, I think we have no— this leaves us with no doubt that this was preplanned, determined— predetermined.

Q: And you believe that this was the work of al Qaeda and you believe that it was led by foreigners. Is that— is that what you are telling us?

A: It was planned— definitely, it was planned by foreigners, by people who— who entered the country a few months ago, and they were planning this criminal act since their— since their arrival.

Schieffer also asked President el-Magariaf about the FBI traveling to Benghazi to investigate the attacks:

Q: Will it be safe for the FBI investigators from the United States to come in, are you advising them to stay away for a while?

A: Maybe it is better for them to stay for a— for a little while? For a little while, but until we— we— we— we do what we— we have to do ourselves. But, again, we'll be in need for— for their presence to help in further investigation. And, I mean any hasty action will— I think is not welcomed.

Rice appeared immediately after President el-Magariaf on the show. She testified to the Committee she heard el-Magariaf say the attacks were preplanned, and even though his comments did not align with the talking points she was given, she was unconcerned. She testified:

Q: My question was, how did you react to that?

A: I was surprised.

Q: And what did you do? Were you concerned that he may have known something that you did not know?

A: I didn't know what he knew. I knew what we knew and what the intelligence community's current best assessment was. And

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so it was my responsibility to faithfully relay that and not make something up on the fly based on what he said.²⁶³

When asked about President el-Magariaf's comments by Schieffer, though, Rice actually disagreed with him. She responded:

Q: But you do not agree with him that this was something that had been plotted out several months ago?

A: We do not— we do not have information at present that leads us to conclude that this was premeditated or preplanned.

Q: Do you agree or disagree with him that al-Qaeda had some part in this?

A: Well, we'll have to find that out. I mean I think it's clear that there were extremist elements that joined in and escalated the violence. Whether they were al-Qaeda affiliates, whether they were Libyan-based extremists or al-Qaeda itself I think is one of the things we'll have to determine.²⁶⁴

Notwithstanding intelligence Rice had seen indicating that al-Qaeda extremists were involved in the attacks²⁶⁵—and that the first draft of the HPSCI talking points also noted this fact²⁶⁶—the fallout of Rice's disagreement with President el-Magariaf was large. According to Hicks, the top American official in Libya at the time, Rice's comments prevented the FBI from going to Benghazi for a number of weeks. He testified:

Q: Do you think those statements had an effect going forward? What difference did those statements make?

A: I think that they affected cooperation with the Libyans. I mean, I have heard from a friend who had dinner with President

²⁶³ Rice Testimony at 147.

²⁶⁴ "Face the Nation" transcripts, September 16, 2012: *Libyan Pres. Magariaf, Amb. Rice and Sen. McCain*, CBS NEWS (Sept. 16, 2012), <http://www.cbsnews.com/news/face-the-nation-transcripts-september-16-2012-libyan-pres-magariaf-amb-rice-and-sen-mccain/>.

²⁶⁵ September 13 WIRE, *supra* note 123, and Rice Testimony at 42.

²⁶⁶ *Talking Points Timeline*, ABC NEWS, <http://abcnews.go.com/images/Politics/Benghazi%20Talking%20Points%20Timeline.pdf> (last visited May 17, 2016).

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Magariaf in New York City that he was still angry at Ambassador Rice well after the incident.

You know, the Libyan Government doesn't have a deep bench. President, Prime Minister, Deputy Prime Minister, Minister. After that, nah, not much there. Some ministries, yeah, you can go—it goes three deep, it goes down three layers. Most ministries it's just the Minister. So if the President of the country isn't behind something, it's going to be pretty hard to make it happen.

And I firmly believe that the reason it took us so long to get the FBI to Benghazi is because of those Sunday talk shows. And, you know, frankly, we never, ever had official approval from the Libyan Government to send the FBI to Benghazi. We stitched together a series of lower-level agreements to support from relevant groups, and we sat around in the meeting and we said, well, guys, this is as good as it gets in Libya. And we looked at the legat [legal attaché] and said, call it in, this is your shot. Call it in to D.C. and see if they're ready—if they're willing to send a team. And that's how—that's how the FBI got to Benghazi.²⁶⁷

In her interview with Bob Schieffer, Rice also discussed the FBI investigation. She said:

Q: Madam Ambassador, he says this is something that has been in the planning stages for months. I understand you have been saying that you think it was spontaneous? Are we not on the same page here?

A: Bob, let me tell you what we understand to be the assessment at present. First of all, very importantly, as you discussed with the President, there is an investigation that the United States government will launch led by the FBI, that has begun and-

Q: (overlapping) But they are not there.

A: They are not on the ground yet, but they have already begun looking at all sorts of evidence of— of various sorts already available to them and to us. And they will get on the ground and continue the investigation. So we'll want to see the results of that

²⁶⁷ Hicks Testimony at 232.

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investigation to draw any definitive conclusions. But based on the best information we have to date, what our assessment is as of the present is in fact what began spontaneously in Benghazi as a reaction to what had transpired some hours earlier in Cairo where, of course, as you know, there was a violent protest outside of our embassy—

In her comments Rice states the FBI has “already begun looking at all sorts of evidence.”²⁶⁸ Yet nobody from the FBI or Justice Department was on the preparation call with her the day before the shows, and she did not know what evidence the FBI had already “begun” reviewing, despite her claim that the FBI was doing so. In addition, she did not rely on the HPSCI talking points here when discussing the FBI investigation, as the talking points indicated only “the investigation is ongoing;”²⁶⁹ earlier she claimed she had solely relied on those points when talking about Benghazi.²⁷⁰ The Chairman had the following exchange with her about this topic:

Q: If you go back when the issue was first broached. "Well, Bob, let me tell you what we understand to be the assessment at present. First of all, very importantly, as you discussed with the president, there is an investigation that the United States government will launch, led by the FBI that has begun." Then your next comment is, "They are not on the ground yet but they have already begun looking at all sorts of evidence." What were they looking at that you knew about?

A: I didn't know specifically what evidence, but I knew that the investigation had begun and that they would do as they customarily do, try to gather as much evidence as possible.

²⁶⁸ “Face the Nation” transcripts, September 16, 2012: Libyan Pres. Magariaf, Amb. Rice and Sen. McCain, CBS NEWS (Sept. 16, 2012), <http://www.cbsnews.com/news/face-the-nation-transcripts-september-16-2012-libyan-pres-magariaf-amb-rice-and-sen-mccain/>.

²⁶⁹ *Talking Points Timeline*, ABC NEWS, <http://abcnews.go.com/images/Politics/Benghazi%20Talking%20Points%20Timeline.pdf> (last visited May 17, 2016).

²⁷⁰ See, e.g., Krishnadev Calamur, *Susan Rice Says Benghazi Claims Were Based On Information From Intelligence*, NPR (Nov. 21, 2012), <http://www.npr.org/sections/thetwo-way/2012/11/21/165686269/susan-rice-says-benghazi-claims-were-based-on-information-from-intelligence>.

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Q: They do customarily try to do that; you are correct. But your statement was, "They have already begun looking at all sorts of evidence." Who told you that?

A: I don't recall exactly who told me that.

Q: Do you know when you would have been told that?

A: I don't know exactly when but sometime between September 11th and September 16th.

Q: And there was no one from law enforcement on the 4 p.m. call?

A: No, not to my knowledge.

Q: Do you recall talking to anyone with the Bureau [FBI] before you went on the Sunday morning talk shows?

A: No.

Q: Well, this is what I'm trying to reconcile. If you didn't talk to anyone with the FBI, who would have told you that they had all sorts of evidence?

A: I didn't say they had—"they have begun looking at all sorts of evidence." I was aware, as a senior U.S. policymaker, that we had announced there was an FBI investigation already underway and that that investigation would involve gathering and looking at all sorts of evidence.

Q: All right. But you go on to say "already available to them and to us." What evidence was already available to you?

A: To me personally, none.

Q: Then why would you have said "available to them and to us"?

A: I meant to the administration.

Q: Do you know what was available to the administration?

A: Not precisely at this point.

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Q: Not at this point or not at the point that you—

A: At the time.

Q: You did not know at the time what evidence was available to the administration.

A: That's correct.

Q: Then why would you say "already available to them and to us"?

A: Because I knew that we had already begun the process of gathering information, both from an intelligence side as well as from the law enforcement side.

Q: All right. I'm with you on the intelligence side, but this—but I can't find an interview that you conducted where you did not use "the FBI." And what I'm trying to understand is what was the source of your information from the FBI.

A: I didn't have any specific information from the FBI. I was aware of and what I was trying to convey is that the FBI was in the process of beginning its investigation.

Q: So if you were to say they already had begun looking at all sorts of evidence of various sorts already available to them and to us, in fact, you were not available—you were not aware of what evidence they had.

A: I knew they were looking at intelligence among other sources of evidence.²⁷¹

Rice used the imprimatur of the FBI as a highly respected law enforcement agency and then conflated the fact they had begun an investigation with her statement the Bureau was "already looking at all sorts of evidence." In reality, Rice had no idea what the FBI was doing and at where the investigation stood. The FBI would ultimately secure possession of the surveillance video from cameras on the Benghazi compound over a week later, but that video was not yet available to the Bureau—or the

²⁷¹ Rice Testimony at 96-98.

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U.S. government—and once it became available, it impeached many aspects of the administration's initial assessment about the attacks.

Other evidence available to the Bureau at the time of Rice's Sunday morning talk show appearances would have included eyewitness accounts from both State Department and CIA witnesses who survived the attacks. The administration either did not avail itself of these eyewitness accounts or completely ignored what these witnesses had to say. These accounts would contradict most of the administration's initial public statements about both the existence of a protest and a link between the attacks in Benghazi and an internet video.

Rice invoked the name of a premiere law enforcement agency, indicated all sorts of evidence was available to them and then proceeded to recite talking points that would later be utterly impeached by the information that was gathered by the Bureau. Currently, the FBI's investigative position is reflected in both the charging instrument in *U.S. v. Ahmed Abu Khattalah* as well as various pre-trial motions. Instead of validating Rice's comments, the FBI's current assessment of what happened in Benghazi is closer to being the opposite of what Rice described on national television.

When discussing the spontaneity of the attack, Rice also used definitive language about what had transpired. Such definitive language was not consistent with the HPSCI talking points. She had the following exchange with the Chairman about that comment:

Q: "Our best current assessment, based on the information that we have at present, is that, in fact, what this began as, it was a spontaneous"—what did you mean by "in fact"?

A: What I meant was that what we understood to be the case at the time was as I described. It was spontaneous, not premeditated, et cetera.

Q: But why would you use the—why would you use the phrase "in fact"? Ranking Member Schiff took great pains to talk about all the qualifying language that you used. "In fact" strikes me as being more definitive than qualifying language.

A: Given all the qualifiers that I put in here, I was not trying to convey that what I was saying was the last and final word on this.

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Q: Okay. What does the word "premeditated" mean to you?

A: It means that whoever was involved had planned in advance to do what they did.

Q: How much planning would need to have taken place for it to qualify as premeditated or preplanned?

A: I don't have a clear answer to that.

Q: Well, you specifically said it was not preplanned and not premeditated. So I'm trying to get an understanding of how short a period of time something would need to be planned to not be preplanned or premeditated. What time period?

A: I don't have a definitive answer to that question. What I was trying to do, sir, is to convey, consistent with the talking points that this was, to the best of our understanding, a spontaneous reaction. And, to me, the antithesis of "spontaneous" is "pre-planned or premeditated." I was trying to say the same thing in a slightly different way.²⁷²

It is unclear why Rice used such definitive language when the talking points she reviewed and relied on did not use similarly strong language.

THIS WEEK WITH GEORGE STEPHANOPOULOS

It was during her appearance on *This Week* when Rice made the clearest link between the video and the Benghazi attacks. She said:

Q: It just seems that the U.S. government is powerless as this—as this maelstrom erupts.

A: It's actually the opposite. First of all, let's be clear about what transpired here. What happened this week in Cairo, in Benghazi, in many other parts of the region...

Q: Tunisia, Khartoum...

A: ... was a result—a direct result of a heinous and offensive video that was widely disseminated, that the U.S. government

²⁷² *Id.* at 101-102.

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had nothing to do with, which we have made clear is reprehensible and disgusting. We have also been very clear in saying that there is no excuse for violence, there is—that we have condemned it in the strongest possible terms.

But let's look at what's happened. It's quite the opposite of being impotent. We have worked with the governments in Egypt. President Obama picked up the phone and talked to President Morsi in Egypt. And as soon as he did that, the security provided to our personnel in our embassies dramatically increased.²⁷³

In her comments, Rice stated “what happened this week in Cairo, in Benghazi, in many other parts of the region . . . was a result—a direct result—of a heinous and video that was widely disseminated.”²⁷⁴ Nowhere in the HPSCI talking points—which Rice said she relied on “solely and squarely”—is there a mention of a direct link to the video. In fact, there is no mention of a link to a video at all, and the Committee is not aware of any mention of a direct link to the video in any intelligence Rice reviewed prior to her appearance on *This Week*. In mentioning a direct link to the video, Rice strayed far beyond her talking points and provided incorrect information.

Rice told the Committee she was not trying to use the talking points here, and may have misspoke. She testified:

Q: Okay. We will go through those transcripts. But to the extent you were linking Benghazi and suggesting that there were protests there, your statement—and tell me if you disagree with this—your statement that what occurred in Benghazi was a result, and then for emphasis you say “a direct result,” of the heinous and offensive video.” I mean, do you believe that you went a little bit beyond what was in the talking points in making that statement?

A: I wasn't even trying to utilize the talking points here. I was talking about what had happened around the world. That's what I meant to be focused on.

²⁷³ ‘*This Week*’ Transcript: U.S. Ambassador to the United Nations Susan Rice, ABC News (Sept. 16, 2012), <http://abcnews.go.com/Politics/week-transcript-us-ambassador-united-nations-susan-rice/story?id=17240933>.

²⁷⁴ *Id.*

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Q: So when you included Benghazi, did you—was that—did you misspeak?

A: Quite possibly.

Q: Because you would agree that, at the time you made this statement on Mr. Tapper's show, the information you had did not—did not state that there was a direct connection between the video and what occurred in Benghazi.

A: That's right. And that's why I was, I think, more precise in the other transcripts.²⁷⁵

Rice later testified that she was “very careful” to link the video to what happened in Cairo. Despite her comments on *This Week*, Rice told the Committee:

What I can say is that I—we have been through this, but I was very careful to link the video to what happened in Cairo and to other posts around the world. I did not say that the attack on Benghazi was directly caused by the video.²⁷⁶

Morell, a career CIA analyst who rose through the ranks to become Deputy Director and Acting Director, disagrees with Rice's analysis of her own comments. Morell said that a “good bit of what she said was consistent with the CIA points, but she also said that the video had led to the protests in Benghazi. Why she said this I do not know. It is a question that only she can answer.”²⁷⁷

Rice also stated on *This Week* that there was a “substantial” security presence at the United States “consulate” in Benghazi. She said:

Q: Why was there such a security breakdown? Why was there not better security at the compound in Benghazi? Why were there not U.S. Marines at the embassy in Tripoli?

A: Well, first of all, we had a substantial security presence with our personnel...

²⁷⁵ Rice Testimony at 115-16.

²⁷⁶ *Id.* at 166.

²⁷⁷ MORELL, *supra* note 114, at 228-29.

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Q: Not substantial enough, though, right?

A: ... with our personnel and the consulate in Benghazi. Tragically, two of the four Americans who were killed were there providing security. That was their function. And indeed, there were many other colleagues who were doing the same with them.

It obviously didn't prove sufficient to the—the nature of the attack and sufficient in that—in that moment. And that's why, obviously, we have reinforced our remaining presence in Tripoli and why the president has very—been very clear that in Libya and throughout the region we are going to call on the governments, first of all, to assume their responsibilities to protect our facilities and our personnel, and we're reinforcing our facilities and our—our embassies where possible...

The State Department facility in Benghazi was not a consulate. The talking points provided to Rice about Benghazi did not mention anything about a consulate. In fact, the term “consulate” was specifically edited out of the talking points for accuracy before they were provided to Rice. A consulate is formally notified to the host government—something the Benghazi diplomatic post was not—and provides certain services to citizens.

As a former Assistant Secretary of State, Rice knew there was a difference between a consulate and diplomatic post. She testified to the Committee that she may have misspoke on this point and, with a statement of fact, acknowledged the difference:

Q: So, following along, top of page 4, you say, "With our personnel and the consulate in Benghazi." Was there a consulate in Benghazi?

A: It was a diplomatic post.

Q: Why did you say "consulate" if there was no consulate in Benghazi?

A: I may have misspoke.

Q: Okay. Is there a difference between a consulate and a diplomatic post?

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A: Yes, in fact, there is.²⁷⁸

In addition, the mention of a consulate may imply to some a stronger fortification than a diplomatic post, perhaps indicating an additional amount of security. While a “substantial security presence” is the point Rice was attempting to convey—and as the Accountability Review Board made clear—the security presence at the State Department facility in Benghazi was nowhere near substantial.²⁷⁹

Morell wrote in his book the “harder statement” for Rice to explain is why she “said that there was a ‘substantial security presence’ in Benghazi, as that point was not in either CIA or the White House talking points.”²⁸⁰ Rice explained to the Committee about what she meant when she said there was a substantial security presence:

Q: What did you mean, you said, “We had a substantial security presence with our personnel”?

A: I meant what I just said.

Q: What does a substantial security presence mean to you?

A: It means significant, more than one, more than two, more than three.

Q: Did you have any indication of how many security personnel were actually with the State Department in Benghazi?

A: Did I have any indication?

Q: Did you have any indication at the time you made the comments how many State Department personnel, security personnel, were in Benghazi?

A: I knew we had a Diplomatic Security presence.

Q: Okay.

A: I knew we had contractors.

²⁷⁸ Rice Testimony at 106.

²⁷⁹ Benghazi ARB, *supra* note 20, at 31-33.

²⁸⁰ MORELL, *supra* note 114, at 229.

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Q: Okay.

A: I knew that two of the people who had been killed were there in a security capacity.

Q: Okay. But in terms of "substantial security presence," to you that means more than one individual?

A: It means—it can—certainly means more than one. But it doesn't mean—I wasn't trying to say it means 10, it means 20, it means 50. It was substantial.

Q: Is "substantial security presence" more than one? Is that—in all situations, does a substantial security presence mean more than one, or are you referring specifically to Benghazi in this case?

A: I was referring to Benghazi.

Q: Okay.

A: But I was also making the point, as you'll see subsequently, that it obviously didn't prove sufficient to the attack.

Q: Okay. So I just want to make sure I'm clear. "Substantial security presence," in your mind, can mean two individuals.

A: I didn't say that.

Q: You said more than one.

A: I said more than one, more than two—we can keep going. I didn't mean to imply.²⁸¹

Rice was mistaken again in stating there were State Department security contractors in Benghazi. The security contractors who died in the Benghazi attacks worked for the CIA—and their job was to protect the CIA facility in Benghazi, not the State Department facility. Rice, whether intentionally or negligently, presented misleading information about the size of the security presence at the State Department facility in Benghazi.

²⁸¹ Rice Testimony at 103-05.

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FOX NEWS SUNDAY

Rice also characterized the level of security in Benghazi on *Fox News Sunday*—something that was not in her talking points. She said:

Q: All right. And the last question, terror cells in Benghazi had carried out five attacks since April, including one at the same consulate, a bombing at the same consulate in June. Should U.S. security have been tighter at that consulate given the history of terror activity in Benghazi?

A: Well, we obviously did have a strong security presence. And, unfortunately, two of the four Americans who died in Benghazi were there to provide security. But it wasn't sufficient in the circumstances to prevent the overrun of the consulate. This is among the things that will be looked at as the investigation unfolds and it's also why —

Q: Is there any feeling that it should have been stronger beforehand?

A: It's also why we increased our presence, our security presence in Tripoli in the aftermath of this, as well as in other parts of the world. I can't judge that, Chris. I'm—we have to see what the assessment reveals. But, obviously, there was a significant security presence defending our consulate and our other facility in Benghazi and that did not prove sufficient to the moment.²⁸²

When asked about the use of the word “strong” versus “substantial,” as she said on *This Week*, Rice responded:

Q: Okay. Just a couple more questions about your interview with Mr. Wallace. Your next response: “Well, we obviously did have a strong security presence.” What did you mean when you said “strong security presence”?

A: I think we had this exchange over another adjective I used.

²⁸² Amb. Susan Rice, Rep. Mike Rogers discuss violence against Americans in the Middle East, FOX NEWS SUNDAY (Sept. 16, 2012), <http://www.foxnews.com/on-air/fox-news-sunday-chris-wallace/2012/09/16/amb-susan-rice-rep-mike-rogers-discuss-violence-against-americans-middle-east#p/v/1843960658001>.

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Q: That was "substantial." I'm asking you about "strong."

A: The same answer applies.

Q: Same answer? Okay. So more than one?

A: That wasn't my prior answer.²⁸³

In her appearance on *Fox News Sunday*, Rice noted "two of the four Americans who died in Benghazi were there to provide security. But it wasn't sufficient in the circumstances to prevent the overrun of the consulate."²⁸⁴ This statement implies the two security officers who died were tasked with protecting the State Department facility. They were not; their job was solely to protect the CIA facility and CIA personnel. In reality the two she referenced—Glen Doherty and Tyrone Woods—were killed because the inadequate security at the State Department facility in Benghazi was not sufficient to repel the initial attack thus necessitating aid from CIA contractors at the Annex in Benghazi and from Tripoli.

In the case of Glen Doherty, not only was he not in Benghazi to provide security for the Benghazi Mission compound, he was not in Benghazi at all—at least initially. He left Tripoli to respond to the attacks in Benghazi precisely because State Department security proved inadequate. And neither Doherty nor Tyrone Woods were killed in the "overrun of the consulate." As noted above, there was no "consulate" in Benghazi and the Benghazi Mission compound was "overrun" hours before Doherty and Woods were killed.

Rice's appearance on *Fox News Sunday* is also where she was imprecise—again—in discussing the FBI investigation. Specifically, she said:

Q: Let's talk about the attack on the U.S. consulate in Benghazi this week that killed four Americans, including Ambassador Chris Stevens. The top Libyan official says that the attack on Tuesday was, quote, his words "preplanned." Al Qaeda says the operation was revenge for our killing a top Al Qaeda leader. What do we know?

²⁸³ Rice Testimony at 125.

²⁸⁴ *Amb. Susan Rice, Rep. Mike Rogers discuss violence against Americans in the Middle East*, FOX NEWS SUNDAY (Sept. 16, 2012), <http://www.foxnews.com/on-air/fox-news-sunday-chris-wallace/2012/09/16/amb-susan-rice-rep-mike-rogers-discuss-violence-against-americans-middle-east#p/v/1843960658001>.

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A: Well, first of all, Chris, we are obviously investigating this very closely. The FBI has a lead in this investigation. The information, the best information and the best assessment we have today is that in fact this was not a preplanned, premeditated attack. That what happened initially was that it was a spontaneous reaction to what had just transpired in Cairo as a consequence of the video. People gathered outside the embassy and then it grew very violent and those with extremist ties joined the fray and came with heavy weapons, which unfortunately are quite common in post-revolutionary Libya and that then spun out of control.²⁸⁵

Significantly, Rice noted the "FBI has a lead in this investigation."²⁸⁶ This critical distinction may have incorrectly implied to some the FBI was making significant progress in the nascent investigation. The Chairman had the following exchange with Rice about this topic:

Q: On one of the occasions, you said—this is to Chris Wallace—"The FBI has a lead in this investigation." How would you have learned that if you had not talked to the FBI?

A: Because I was aware, as a senior policymaker, that the FBI has a lead role in conducting investigations in this circumstance and others like it.

Q: But there's a tremendous difference between the FBI has "the lead" and the FBI has "a lead." "A lead" is a law enforcement term that we have a suspect, we have a lead.

A: No, no, no. Excuse me. That was not what I was trying to say. I was saying they had the lead, as in the leadership role, not a lead on a suspect in the investigation.

Q: All right. So at least with respect to that transcript, you intended the article "the" instead of the article "a" to modify the lead. You were not suggesting that they had a lead but that they were taking the lead in the investigation.

A: That's what I meant.

²⁸⁵ *Id.*

²⁸⁶ *Id.*

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Q: Okay. All right.²⁸⁷

In her interview with the Committee, Rice said that in the future, perhaps a “no comment” regarding an FBI investigation would be more appropriate. She had the following exchange with the Chairman:

Q: I guess this is what I am getting at, just from a broader perspective. We all hear, whether it's Attorney General Holder, Attorney General Lynch, really anybody in the criminal justice realm just doesn't comment on ongoing investigations. They don't make comments and use qualifying predicates. They just say: Look, I don't know. And I am not going to answer your question until the investigation is complete. Why not respond that way when you were asked on the Sunday morning talk shows?

A: Sir, I wasn't trying to qualify or characterize the investigation. I was trying to indicate that there was an investigation, that it was going to be thorough, and that it would reveal the best information as to what had transpired.

Q: I am not challenging that. I am just saying instead of saying, "Our best assessment at this time is that it was not premeditated, not preplanned, that it was spontaneous," one out of five references to the video, why not just say, "The investigation has just begun; we don't know; and I am not going to guess"?

A: Because our intelligence community, in response to a request from HPSCI, had provided talking points along the lines that we have discussed multiple times now. And those talking points, which you and your colleagues would have gone out with, were more detailed than simply saying, "I don't know."

Q: Right. But you and I both know in hindsight that the talking points, at least to some degree, were wrong. So I guess the lesson moving forward is maybe we should just say, "It's an ongoing investigation, and I am not going to comment on it."

A: Maybe we should.²⁸⁸

²⁸⁷ Rice Testimony at 95.

²⁸⁸ *Id.* at 146-147.

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Rice also said the following on *Fox News Sunday*:

But we don't see at this point signs this was a coordinated plan, premeditated attack. Obviously, we will wait for the results of the investigation and we don't want to jump to conclusions before then. But I do think it's important for the American people to know our best current assessment.²⁸⁹

Rice testified to the Committee about these comments:

Q: But when you said, "We don't see at this point signs," did you mean to say that there were no signs, or did you mean to say that there was no conclusion that it was a coordinated, premeditated attack?

A: I didn't purport to draw any final conclusions at any point during these interviews. I was very careful to underscore that I was providing the current best information and that information could change.²⁹⁰

Rather than noting that no final conclusions had been drawn by the intelligence community about premeditation, however, Rice instead chose to state there were "no signs" at all of any premeditation.²⁹¹ In this regard she not only went beyond the talking points she was provided, but she was also incorrect.

In fact, multiple signs existed at the time she appeared on *Fox News Sunday* that the attack may have been premeditated. [REDACTED]

[REDACTED]²⁹² Another piece of intelligence

²⁸⁹ Amb. Susan Rice, Rep. Mike Rogers discuss violence against Americans in the Middle East, FOX NEWS SUNDAY (Sept. 16, 2012), <http://www.foxnews.com/on-air/fox-news-sunday-chris-wallace/2012/09/16/amb-susan-rice-rep-mike-rogers-discuss-violence-against-americans-middle-east#p/v/1843960658001>.

²⁹⁰ Rice Testimony at 125.

²⁹¹ See Amb. Susan Rice, Rep. Mike Rogers discuss violence against Americans in the Middle East, FOX NEWS SUNDAY (Sept. 16, 2012), <http://www.foxnews.com/on-air/fox-news-sunday-chris-wallace/2012/09/16/amb-susan-rice-rep-mike-rogers-discuss-violence-against-americans-middle-east#p/v/1843960658001>.

²⁹² [REDACTED]

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from September 13 indicated that an attack was imminent—mere minutes away—and known by multiple parties.²⁹³ Rice could have made her point by simply saying “our current assessment is that the attack was neither coordinated nor premeditated.” Instead, she chose to go a step further and, inaccurately, state “we don’t at this point see signs this was a coordinated plan.”²⁹⁴

MEET THE PRESS

Rice’s comments on *Meet the Press* are perhaps the most egregious diversion from the talking points provided to her about Benghazi. She said:

Well, let us— let me tell you the— the best information we have at present. First of all, there’s an FBI investigation which is on-going. And we look to that investigation to give us the definitive word as to what transpired. But putting together the best information that we have available to us today, our current assessment is that what happened in Benghazi was in fact initially a spontaneous reaction to what had just transpired hours before in Cairo, almost a copycat of— of the demonstrations against our facility in Cairo, which were prompted, of course, by the video. What we think then transpired in Benghazi is that opportunistic extremist elements came to the consulate as this was unfolding. They came with heavy weapons which unfortunately are readily available in post-revolutionary Libya. And it escalated into a much more violent episode. Obviously, that’s— that’s our best judgment now. We’ll await the results of the investigation. And the president has been very clear—we’ll work with the Libyan authorities to bring those responsible to justice.²⁹⁵



²⁹⁴ Amb. Susan Rice, Rep. Mike Rogers discuss violence against Americans in the Middle East, FOX NEWS SUNDAY (Sept. 16, 2012), <http://www.foxnews.com/on-air/fox-news-sunday-chris-wallace/2012/09/16/amb-susan-rice-rep-mike-rogers-discuss-violence-against-americans-middle-east#p/v/1843960658001>.

²⁹⁵ *Meet the Press September 16: Benjamin Netanyahu, Susan Rice, Keith Ellison, Peter King, Bob Woodward, Jeffrey Goldberg, Andrea Mitchell*, NBC News (Sept. 16, 2012), http://www.nbcnews.com/id/49051097/ns/meet_the_press-transcripts/t/september-

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At the time of her appearance, Rice should have known what transpired in Benghazi was not a “copycat” of what had transpired in Cairo. On September 11, the day of the Cairo demonstrations and Benghazi attacks, she received frequent email updates about both events.²⁹⁶ Additionally, Rice received daily intelligence briefings from the CIA, and she received a briefing each day from September 12 to September 15. Out of scores and scores of intelligence products pertaining to Benghazi provided to the Committee, not a single one said what transpired in Benghazi was “almost a copycat of” what transpired in Cairo.²⁹⁷

Rice acknowledges that nowhere in the talking points was information indicating the Benghazi attack was a copycat of the Cairo protest. She testified:

Q: Now, you would agree with me that nowhere in the CIA talking points does it describe what occurred in Benghazi and what occurred in Cairo as almost a copycat of each other? You would agree with me on that?

A: I would agree with you on that.

Q: So would you also agree with me that describing what occurred in Benghazi as almost a copycat of Cairo was really overstating what was known at the time and certainly overstating what was in the talking points?

benjamin-netanyahu-susan-rice-keith-ellison-peter-king-bob-woodward-jeffrey-goldberg-andrea-mitchell/#.Vzozl_krJaQ.

²⁹⁶ See, e.g., Email from U.S. Dep’t of State, to Susan E. Rice, U.S. Ambassador to the U.N., *et al.* (Sept. 11, 2012, 7:55 PM) (on file with the Committee, C05390691); Email from Senior Advisor to the U.S. Permanent Representative to the U.N., U.S. Mission to the U.N., to Susan E. Rice, U.S. Ambassador to the U.N., *et al.*, (Sept. 11, 2012, 6:41 PM) (on file with the Committee, C05561948); and Email from Senior Advisor to the U.S. Permanent Representative to the U.N., U.S. Mission to the U.N., to Susan E. Rice, U.S. Ambassador to the U.N., *et al.* (Sept. 11, 2012, 11:53 PM) (on file with the Committee, SCB0051721).

²⁹⁷ *Meet the Press September 16: Benjamin Netanyahu, Susan Rice, Keith Ellison, Peter King, Bob Woodward, Jeffrey Goldberg, Andrea Mitchell*, NBC News (Sept. 16, 2012), http://www.nbcnews.com/id/49051097/ns/meet_the_press-transcripts/t/september-benjamin-netanyahu-susan-rice-keith-ellison-peter-king-bob-woodward-jeffrey-goldberg-andrea-mitchell/#.Vzozl_krJaQ.

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A: I don't know that it was overstating or even misstating. But I would agree that the word "copycat" does not appear in the talking points.²⁹⁸

In a later portion of her *Meet the Press* appearance, Rice connected the video with the Benghazi attacks, as she had with other appearances on the talk shows. She said:

Q: The president and the secretary of state have talked about a mob mentality. That's my words, not their words, but they talked about the— the tyranny of mobs operating in this part of the world. Here's the reality, if you look at foreign aid—U.S. direct foreign aid to the two countries involved here, in Libya and Egypt, this is what you'd see: two hundred million since 2011 to Libya, over a billion a year to Egypt and yet Americans are seeing these kinds of protests and attacks on our own diplomats. Would— what do you say to members of congress who are now weighing whether to suspend our aid to these countries if this is the response that America gets?

A: Well, first of all, David, let's put this in perspective. As I said, this is a response to a— a very offensive video. It's not the first time that American facilities have come under attack in the Middle East, going back to 1982 in— in Beirut, going back to the Khobar Towers in— in Saudi Arabia, or even the attack on our embassy in 2008 in Yemen.

Q: Or Iran in 1979.

A: This has— this has happened in the past, but there— and so I don't think that— that we should misunderstand what this is. The reason we provide aid in Egypt and in Libya is because it serves American interests because the relationships...²⁹⁹

In this part of the conversation, David Gregory, *Meet the Press* moderator, and Rice are discussing foreign aid to both Egypt and Libya. Gregory

²⁹⁸ Rice Testimony at 129-130.

²⁹⁹ *Meet the Press September 16: Benjamin Netanyahu, Susan Rice, Keith Ellison, Peter King, Bob Woodward, Jeffrey Goldberg, Andrea Mitchell*, NBC NEWS (Sept. 16, 2012), http://www.nbcnews.com/id/49051097/ns/meet_the_press-transcripts/t/september-benjamin-netanyahu-susan-rice-keith-ellison-peter-king-bob-woodward-jeffrey-goldberg-andrea-mitchell/#.Vzozl_krJaQ.

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mentions both countries twice in the lead-in to his question. Rice responds and says to “put this in perspective . . . this is a response to a—a very offensive video. It’s not the first time American facilities have come under attack in the Middle East . . .”³⁰⁰ She does not distinguish what happened in Libya to what happened in Egypt in her response, and ties the video to both incidents. After a brief interjection by Gregory, Rice mentions providing aid to both Libya and Egypt.³⁰¹ Nowhere in Rice’s comments is Libya distinguished from Egypt, indicating she did not intend for her comment about the video to apply to just Egypt, but rather both countries.

STATE OF THE UNION

On *State of the Union*, Rice spoke of the number of attackers at the Benghazi Mission compound. Nowhere in the talking points—on which she said she solely and squarely relied—is there any mention of the number of protesters. Rice said:

Q: But this was sort of a reset, was it not? It was supposed to be a reset of U.S.-Muslim relations?

A: And indeed, in fact, there had been substantial improvements. I have been to Libya and walked the streets of Benghazi myself. And despite what we saw in that horrific incident where some mob was hijacked ultimately by a handful of extremists, the United States is extremely popular in Libya and the outpouring of sympathy and support for Ambassador Stevens and his colleagues from the government, from people is evidence of that . . .

³⁰²

In her interview with the Committee, Rice acknowledged this information was not in the talking points and was unsure where she got the information about the number of attackers. She testified:

Q: Now, you respond, "And indeed, in fact, there had been substantial improvements. I have been to Libya and walked the streets of Benghazi myself. And despite what we saw in that horrific incident where some mob was hijacked ultimately by a

³⁰⁰ *Id.*

³⁰¹ *See Id.*

³⁰² *State of the Union with Candy Crowley Interview with Susan Rice*, CNN (Sept. 16, 2012), <http://transcripts.cnn.com/TRANSCRIPTS/120916/sotu.01.html>.

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handful of extremists, the United States is extremely popular in Libya and the outpouring of sympathy and support for Ambassador Stevens and his colleagues from the government, from people is evidence of that."

Where did you get the fact that there was a handful of extremists that had hijacked what occurred in Benghazi? I mean, our understanding, even at the time, the information was that there were 20 attackers. That went—that number went to 50-plus, and then it went to over 100. Where did you get the number "a handful," which, in my mind anyway, is about five?

A: I don't recall exactly where I got that from.

Q: It's not in the talking points, certainly.

A: Talking points say that "the demonstrations in Benghazi were spontaneously inspired by the protests at the U.S. Embassy in Cairo and evolved into a direct assault against the diplomatic post in Benghazi and subsequently its annex. There are indications that extremists participated in the violent demonstrations."

Q: That's correct. But nowhere in what you just read does the CIA or the intelligence community attribute a number to the number of extremists that took place in—took part in the attacks, correct?

A: Not in these talking points.

Q: Okay. Do you believe that you received that information from another source?

A: I don't recall.

Q: But you do believe somebody told you that?

A: I don't recall exactly how I acquired that information.³⁰³

Conveying a "handful" of individuals hijacked a mob had significant implications. By claiming only a handful of individuals, rather than a larger amount, were involved in the attack, Rice may have conveyed to

³⁰³ Rice Testimony at 121-22.

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the audience a sense that only a very small number of people were angry enough to attack the U.S. facility. Had Rice said more than a “handful” of people attacked the compound—which video evidence shows to be the case—she may have conveyed more widespread problems in Libya, potentially raising the very policy questions Rhodes strove so specifically to avoid in his September 14 briefing memo.³⁰⁴

While Rice was on message in the following clause of the sentence—“the United States is extremely popular in Libya,” indicating a successful Libya policy—unfortunately, the United States evacuated its embassy in Tripoli in July 2014 and today does not have an official diplomatic presence in Libya.

REACTIONS TO THE SUNDAY SHOWS

The reaction to Rice’s comments on the Sunday talk shows was as divided as it was quick. Many felt Rice presented information not based in fact, while others believed she simply stuck assiduously to the talking points she had been given.

“Off The Reservation on Five Networks!”

Even though the Secretary did not appear on the Sunday talk shows, she monitored what Rice said on those shows. As the transcript for each show became available late Sunday morning into early Sunday afternoon, Sullivan sent a copy of the transcript to the Secretary with an accompanying note. The first transcript he sent her was from *This Week*. Sullivan wrote:

Here is Susan on this week. She wasn’t asked about whether we had any intel. But she did make clear our view that this started spontaneously and then evolved. The only troubling sentence relates to the investigation, specifically: “And we’ll see when the investigation unfolds whether what was—what transpired in Benghazi might have unfolded differently in different circumstances.” But she got pushed there.

³⁰⁴ See Rhodes Memo, *supra* note 3 (“[T]hese protests are rooted in an Internet video, and not a broader failure of policy.”).

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Waiting on other transcripts.³⁰⁵

This note from Sullivan is interesting for two reasons. First, he writes that Rice makes clear their “view that this started spontaneously and then evolved.”³⁰⁶ Second, Sullivan expresses concern regarding Rice’s comment on the investigation, where she said “[a]nd we’ll see when the investigation unfolds whether what was—what transpired in Benghazi might have unfolded differently in different circumstances.”³⁰⁷

The fact that Benghazi may have transpired differently—and not spontaneously as a result of Cairo, as intelligence indicated to be the case—contained serious policy implications. If Benghazi started spontaneously and then evolved—as Sullivan seemed to indicate he and the Secretary believed—that would indicate a similarity with other areas in the Middle East, where protests had transpired as a result of the offensive video. If, on the other hand, Benghazi transpired differently—as a premeditated terrorist attack, for instance—such a scenario would call into question whether the United States was defeating terrorism, and would raise doubts about the government’s policy towards Libya specifically, and perhaps the Middle East generally. The fact Rice raised this as a possibility appeared to be unsettling to Sullivan.

Sullivan later passed on the transcript to *State of the Union* with an accompanying note saying “Nothing to this one.”³⁰⁸ Sullivan also forwarded the transcript for *Meet the Press*, with an accompanying note simply saying “[g]ood.”³⁰⁹ Just three minutes later, the Secretary responded and said “[p]ls remind Panetta NOT to mention Tunisia—in fact no specifics preferable.”³¹⁰ This may have been in response to the *Meet the Press* transcript, where moderator Gregory mentioned the evacuation of all but emergency personnel from diplomatic missions in Tunisia and Sudan,

³⁰⁵ Email from Jacob J. Sullivan, Deputy Chief of Staff and Dir. of Policy Planning, U.S. Dep’t of State, to Hillary R. Clinton, Sec’y of State, U.S. Dep’t of State (Sept. 16, 2012, 12:22 PM) (on file with the Committee, SCB0045373).

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ Email from Jacob J. Sullivan, Deputy Chief of Staff and Dir. of Policy Planning, U.S. Dep’t of State, to Hillary R. Clinton, Sec’y of State, U.S. Dep’t of State (Sept. 16, 2012, 2:38 PM) (on file with the Committee, SCB0045387).

³⁰⁹ Email from Jacob J. Sullivan, Deputy Chief of Staff and Dir. of Policy Planning, U.S. Dep’t of State, to Hillary R. Clinton, Sec’y of State, U.S. Dep’t of State (Sept. 16, 2012, 2:36 PM) (on file with the Committee, SCB0045390).

³¹⁰ Email from Sec’y Clinton to Mr. Sullivan (Sept. 16, 2012, 2:39 PM) (on file with the Committee, SCB0045390).

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and that the Secretary of Defense has deployed forces to several areas to protect U.S. personnel.

Almost immediately after Rice's appearance on the shows, Pelton highlighted conflicting statements between Rice and Libya President el-Magariaf. At 9:41a.m. on Sunday, September 16, 2012 she wrote to Rhodes and others on the White House communications team:

They open w Libyan President who says no doubt attack pre-planned/predetermined. Says planned by foreigners. Says maybe better for FBI to stay away a little while though they need their help w investigation. She said in all other shows that no evidence this was premeditated, as we discussed. Just fyi.³¹¹

Pelton testified as to why she sent this email:

Q: Do you recall having drafted this email?

A: Yes.

Q: And what was the—why did you write this email?

A: I wrote this email to alert Ben that what the Libyan President had said on CBS was inconsistent with what Ambassador Rice had said on the other shows that we had already taped.

Q: Did that inconsistency concern you?

A: No.

Q: Why not?

A: Because what Ambassador Rice said reflected the best information that we had at the time.³¹²

This email reflects the shortcomings of Rice's preparation for the Sunday shows, which was reflected in some of her comments. As described

³¹¹ Email from Erin Pelton, Dir. of Commc's and Spokesperson, U.S. Mission to the U.N., to Dagoberto Vega, Special Ass't to the President and Dir. of Broadcast Media, White House, and Benjamin J. Rhodes, Deputy Nat'l Sec. Advisor for Strategic Commc's, Nat'l Sec. Council (Sept. 16, 2012, 9:41 AM) (on file with the Committee, C05622905).

³¹² Pelton Testimony at 114-15.

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above, on her Saturday prep call were people from her office and the White House messaging team. No subject matter experts about Benghazi were on the call nor was anybody from the intelligence community. Pelton wrote “no evidence this was premeditated, as we discussed”,³¹³—likely indicating a discussion of this topic on the phone call the day before. This is a significant difference from simply saying “the current assessment does not indicate that this was premeditated.” In fact, as noted above, [REDACTED] intelligence existed at that point indicating the attack may have in fact been premeditated.³¹⁴

Rice’s comments on the Sunday talk shows were met with shock and disbelief by those closest to the facts of the situation. Subject matter experts with direct knowledge of the attacks expressed immediate concern about what Rice had said on the shows—and potential fallout as a result. Hicks—possibly the last person to talk with Stevens, and the highest ranking U.S. official in Libya on Sunday September 16, 2012—said he was not asked for any information in advance of Rice’s appearance on the show. He testified:

Q: You became the charge on—

A: September 12th, 3 a.m.

Q: And you are the senior U.S. official, senior diplomat in country starting September 12th. And you’ve testified you had constant contact with Washington. So, are you—as I understand what you are saying, before the Sunday show—series of appearances on the Sunday shows, you were not part of the preparation and planning?

A: That’s correct. I was not.

Q: You didn’t get a chance to review talking points?

³¹³ Email from Ms. Pelton to Mr. Vega and Mr. Rhodes (Sept. 16, 2012, 9:41 AM) (on file with the Committee, C05622905).

³¹⁴ [REDACTED]

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A: No, I did not.³¹⁵

Hicks also testified about Rice's appearance on *Face the Nation*:

So Magariaf, at great personal risk to himself, goes to Benghazi to initiate an investigation and lend his own personal gravitas. Remember he's from the Benghazi area himself. So he goes to lend his own personal gravitas and reputation to an investigation of what happens. And he gets on—and he is on these programs speaking from Benghazi, and he says this was an attack by Islamic extremists, possibly with terrorist links. He describes what happens. He tells the truth of what happened. And so, you know, Ambassador Rice says what she says, contradicting what the President of Libya says from Benghazi.

There's a cardinal rule of diplomacy that we learn in our orientation class, and that rule is never inadvertently insult your interlocutor. The net impact of what has transpired is the spokesperson of the most powerful country in the world has basically said that the President of Libya is either a liar or doesn't know what he's talking about.

The impact of that is immeasurable. Magariaf has just lost face in front of not only his own people, but the world. And, you know, my jaw hit the floor as I watched this. I've never been—I have been a professional diplomat for 22 years. I have never been as embarrassed in my life, in my career as on that day. There have been other times when I've been embarrassed, but that's the most embarrassing moment of my career.³¹⁶

Other subject matter experts within the State Department also recognized problems with what Rice said on the talk shows. State Department employees in Washington D.C. who had spoken with those on the ground in Libya after the attack were universal in their condemnation of Rice's statements. The Senior Libya Desk Officer, Bureau of Near Eastern Affairs, State Department, wrote: "I think Rice was off the reservation on this one."³¹⁷

³¹⁵ Hicks Testimony at 281.

³¹⁶ *Id.* at 83-84.

³¹⁷ Email from Senior Libya Desk Officer, Bureau of Near Eastern Affairs, U.S. Dep't of State, to Senior Advisor and Spokesperson, Bureau of Near Eastern Affairs, U.S. Dep't of

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The Deputy Director, Office of Press and Public Diplomacy, Bureau of Near Eastern Affairs, State Department, responded: "Off the reservation on five networks!"³¹⁸

The Senior Advisor for Strategic Communications, Bureau of Near East Affairs, State Department, wrote: "Yup. Luckily there's enough in her language to fudge exactly what she said/meant."³¹⁹

He also wrote: "WH [White House] very worried about the politics. This was all their doing."³²⁰

While [REDACTED] may not have known exactly what "worried" the White House, he had extensive experience at the State Department, had been in contact with the Embassy in Tripoli. Contrary to what Rice said on the talk shows, he did not believe any protests or demonstrations had occurred prior to the attacks. He testified:

Q: And then you made a statement that, you know, based on your training and experience, essentially you had never seen anyone bring an RPG to a protest.

A: I mean—

Q: Or that would be unusual.

A: I think what I said was "bringing an RPG to a spontaneous protest." I mean, I've been to Yemen before, and, I mean, knives, AK-47s, RPGs. I mean, that place is armed to the teeth, and I think people bring an RPG to the toilet sometimes. But when I said that, I was suggesting that, if you were spontaneously pro-

State, Deputy Dir. for the Office of Press and Public Diplomacy, Bureau of Near Eastern Affairs, U.S. Dep't of State & Deputy Dir. for Maghreb Affairs, U.S. Dep't of State (Sept. 17, 2012, 2:16 PM) (on file with the Committee, C05580618).

³¹⁸ Email from [REDACTED] (Sept. 17, 2012, 2:18 PM) (on file with the Committee, C05580618).

³¹⁹ Email from [REDACTED] (Sept. 17, 2012, 2:17 PM) (on file with the Committee, C05580618).

³²⁰ Email from [REDACTED] (Sept. 17, 2012, 2:19 PM) (on file with the Committee, C05580618).

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testing, an RPG might necessarily not be the first thing you grab next to your car keys.³²¹

The Deputy Director, Office of Maghreb Affairs, State Department, was surprised of the connection made to the video. She testified:

Q: Do you recall having any discussions with NEA about the substance of what was said on the talk shows and whether there was an agreement or disagreement with what was conveyed?

A: Yes, ma'am. I recall that I was a little bit surprised. The description of what was said—and, again, I didn't watch the program myself—it just sounded more definitive of what potentially had happened. But, again, I didn't watch the show myself, and I didn't read the full transcript. I was too busy that day to do that.

Q: When you say you're a bit surprised, what were you surprised regarding?

A: I was surprised in the way that they were described in the press clips, that there was an indication that there was some connection to the anti-Muslim video of concern that had been circulating online, that there was some connection to that. In the press clips that I read, I remember seeing, like—okay.

Q: And I think, before, you just said that that was a pretty definitive statement.

A: In the way that I saw it excerpted in the press clips, it seemed like the connection had been made to the video more definitively.³²²

Diplomatic Security Agent 30, Diplomatic Security Command Center, State Department, was in the Diplomatic Security Command Center while the attacks transpired and aware of real-time information coming straight from Benghazi during the attack, was asked if there was any riot-

³²¹ Testimony of Deputy Dir. for the Office of Press and Public Diplomacy, Bureau of Near Eastern Affairs, U.S. Dep't of State, Tr. at 96-97 (Oct. 9, 2015) (on file with the Committee).

³²² Testimony of Deputy Dir. for Maghreb Affairs, U.S. Dep't of State, Tr. 33-34 (Dec. 17, 2015) (on file with the Committee).

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ing in Benghazi reported prior to the attack. His response was: “Zip, nothing nada.”³²³

Circling the Wagons

While many lower- and mid-level State Department employees in contact with the Embassy in Tripoli believed Rice went too far on the talk shows, senior officials at the State Department and White House did not appear to share that sentiment. Instead, these senior officials appeared concerned more about supporting Rice’s statements and ensuring any future statements on the attacks were disciplined than ensuring they were reflective of what had actually transpired.

The day after Rice’s appearance, The Deputy Director, Office of Maghreb Affairs sent an email summarizing a meeting with McDonough. She wrote:

DNSA McDonough apparently told the SVTS [Secure Video Teleconference] group today that everyone was required to “shut their pieholes” about the Benghazi attack in light of the FBI investigation, due to start tomorrow.”³²⁴

McDonough’s comments about the FBI investigation starting the following day stand in stark contrast with Rice’s statements the day before that the FBI had already begun collecting “all sorts of evidence” in their investigation and had “a lead.” In addition, McDonough’s remark about not commenting in light of the FBI investigation directly address the issue that Sullivan raised with the Secretary the day before—the troubling sentence by Rice that the FBI investigation could uncover “Benghazi might have unfolded differently in different circumstances” from other protests across the Middle East.³²⁵

That same day, during her daily press briefing, Nuland was asked by reporters to comment on the Benghazi attacks even though there was an FBI investigation. Nuland attempted to address the dichotomy between

³²³ Email from Diplomatic Sec. Agent 30 (Sept. 18, 2012, 1:16 PM) (on file with the Committee, C05390678).

³²⁴ Email from Deputy Dir. for Maghreb Affairs, U.S. Dep’t of State, to James N. Miller, Under Sec’y of Defense for Policy, U.S. Dep’t of Defense (Sept. 17, 2012, 6:52 PM) (on file with the Committee, C05580200).

³²⁵ Email from Mr. Sullivan to Sec’y Clinton (Sept. 16, 2012, 12:22 PM) (on file with the Committee, SCB0045373).

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her refusal to talk about Benghazi and Rice's willingness to do so on the Sunday shows. Nuland said:

Q: Toria, in Friday's briefing, Friday evening, you essentially stated that all questions concerning any aspect of the Benghazi attack—the circumstances surrounding it, the outcome of it, et cetera—would henceforth be directed by you to the FBI since it's their investigation.

And yet, on five Sunday shows yesterday, Ambassador Rice, who works for the same agency as you, was giving the latest U.S. assessment of how this event unfolded, specifically by saying we don't believe it was premeditated or preplanned, and by saying that those with heavy arms and so forth showed up, in essence, as she put it, to hijack an ongoing demonstration.

So my first question for you is: Given that Ambassador Rice is out there talking publicly about it and not referring Bob Schieffer and Chris Wallace and the rest to the FBI, may we consider that we can again begin asking you questions at this podium about the circumstances of the attack? If it's fair for the Ambassador to discuss it, it should be fair in this room, correct?

A: Well, let me start by reminding you that Ambassador Rice outranks me, as does my own boss, so she is often at liberty to say more than I am. And I guess that's going to continue to be the case.

What I will say, though, is that Ambassador Rice, in her comments on every network over the weekend, was very clear, very precise, about what our initial assessment of what happened is. And this was not just her assessment. It was also an assessment that you've heard in comments coming from the intelligence community, in comments coming from the White House. I don't have anything to give you beyond that.

She also made clear, as I had on Friday, that there is an ongoing FBI investigation. So frankly, I'm not sure that it's useful to go beyond that. I'm not capable of going beyond that, and we'll have to just see what the FBI investigation brings us.

Q: You would acknowledge, however, that the account of the events, the preliminary account of the events that Ambassador

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Rice offered, diverges starkly from the account offered by the Libyan President, correct?

A: Well, we've heard a number of different things from Libya. I would simply say that what—the comments that Ambassador Rice made accurately reflect our government's initial assessment.³²⁶

Nuland also addressed a question as to whether or not protests had occurred outside the Benghazi compound. Her on-the-record response, in the wake of Rice's talk show appearances, was markedly different from what she told reporters in an off-the-record briefing back on September 12. Nuland said:

Q: And one last question, if I might, because Ambassador Rice spoke to this. She suggested that there had been an ongoing demonstration outside the Consulate or in the proximity of the Consulate in Benghazi that was, in essence, hijacked by more militant elements who came armed to the affair. I just want to nail this down with you. You are—you stand by this notion that there was, in fact, an ongoing demonstration?

A: I'd simply say that I don't have any information beyond what Ambassador Rice shared with you and that her assessment does reflect our initial assessment as a government.³²⁷

Nuland, similar to the President in his *60 Minutes* interview five days prior, also refused to directly label what had occurred as a terrorist act. She said:

Q: Simply on the basis of what Ambassador Rice has publicly disclosed, does the United States Government regard what happened in Benghazi as an act of terror?

A: Again, I'm not going to put labels on this until we have a complete investigation, okay?

Q: You don't—so you don't regard it as an act of terrorism?

³²⁶ Daily Press Briefing by Spokesperson Victoria Nuland, Bureau of Public Affairs, U.S. Dep't of State (Sept. 17, 2012), <http://www.state.gov/r/pa/prs/dpb/2012/09/197821.htm> [hereinafter Nuland Sept. 17 Briefing].

³²⁷ *Id.*

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A: I don't think we know enough. I don't think we know enough. And we're going to continue to assess. She gave our preliminary assessment. We're going to have a full investigation now, and then we'll be in a better position to put labels on things, okay?³²⁸

Even the CIA appeared to take part in the effort to bolster Rice's statements. Five days after the attack, a September 17, 2012 email exchange between officials at the White House, State Department, Office of the Director of National Intelligence [ODNI], and the CIA took place to craft a written response to questions posed by Fox News reporter Catherine Herridge about Rice's statements the day before. The first draft of the response, which appears to have come from the CIA's Office of Public Affairs, makes a number of misstatements—chiefly one in the first paragraph:

Off the record, I reviewed the timeline of what is known now, of course realizing that there will be interviews of witnesses, people on the ground etc.... to get the down to the minute details. Like you, we have the attack kicking off reportedly after 9:30 PM with small crowds gathering during that 9:00-10:00 PM_hour. It's pretty clear, as we discussed, that there had been smaller protests during the day, nothing along the scale of what we saw in Cairo or later on in the week, but protests nonetheless.³²⁹

It is unclear what information, if any, the CIA public affairs officer relied on to claim "it's pretty clear ... that there had been smaller protests during the day"³³⁰—no CIA intelligence product provided to the Committee contained any such information.

Seven days after the attacks, On September 18, 2012, Meehan sent an email to Patrick Ventrell, Director, Office of Press Relations, State Department and Nuland about message discipline. Her email said:

Focus today on reiterating that our initial assessment stands, and was based on information available. Keeping hard line about now waiting for the investigation to run its course; we will of course provide info as it comes to light. No discrepancy between

³²⁸ *Id.*

³²⁹ Email from Media Spokesperson, Cent. Intel. Agency, to Tommy Vietor, Nat'l Sec. Spokesperson, Nat'l Sec. Council (Sept. 17, 2012, 4:01 PM) (on file with the Committee, C05562137).

³³⁰ *Id.*

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what Rice said and what State and WH said early on regarding preplanned attack.³³¹

Nuland appears to have followed that guidance. In her daily press briefing later that day, Nuland said:

Q: Any more information on the investigation, on the timeline? There continues to be some question about whether the protests had all but dissipated before the attack in Benghazi began, or whether or not the protest was robust and ongoing and this attack at least used it for cover. And there also continue to be, frankly, some apparent differences between the characterization here that it was a coordinated attack and Ambassador Rice's assertion that it basically kind of grew out of the protest.

A: Well, on your last point, I spoke to this extensively yesterday, making clear that Ambassador Rice was speaking on behalf of the government with regard to our initial assessments. I don't have any more details beyond those that we've already shared, and I don't expect to because I think all of the information is going to go to the FBI for their investigation, and when they're completed, then we'll have more information.

Q: The idea that it grew—that the protest may have been used as cover, can you say whether or not the protest had basically dissipated when the attacks began?

A: I personally have no more information than what I've given you, and I don't think that we as a government will be talking about these details until the FBI has completed its investigation so that we don't prejudice it.³³²

Carney also held a press briefing on September 18. During that briefing, he was asked about the conflict between Libyan officials and the administration as to what transpired in Benghazi—a conflict on full display on *Face the Nation* when Rice contradicted the Libyan President. Carney,

³³¹ Email from Bernadette M. Meehan, Spokesperson, Nat'l Sec. Council, to Victoria J. Nuland, Spokesperson, U.S. Dep't of State & Patrick H. Ventrell, Spokesperson, U.S. Dep't of State (Sept. 18, 2012, 11:03 AM) (on file with the Committee, C05561843).

³³² Daily Press Briefing by Spokesperson Victoria Nuland, Bureau of Public Affairs, U.S. Dep't of State (Sept. 18, 2012), <http://www.state.gov/r/pa/prs/dpb/2012/09/197912.htm#LIBYA>.

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like Rice on the talk shows, also connected the protests and violence across the region with the Benghazi attacks, linking the video to both events. He said:

Q: I wanted to go back to the conflict between—the conflicting reports I guess between the administration and Libyan officials over what happened. On Friday, you seemed to cite that the videos were definitely part of it, but I get the sense that you're backing away from that a little bit today. Is there something that you've learned since?

A: No, no. I think what I am making clear and what Ambassador Rice made clear on Sunday is that reaction to the video was the precipitating factor in protests in violence across the region. And what I'm also saying is that we have—we made that assessment based on the evidence that we have, and that includes all the evidence that we have at this time.

I am not, unlike some others, going to prejudge the outcome of an investigation and categorically assert one way or the other what the motivations are or what happened exactly until that investigation is complete. And there are a lot of suppositions based on the number of weapons and other things about what really happened in Benghazi and I'd rather wait, and the President would rather wait, for that investigation to be completed.

Q: So you're not ruling out that —

A: Of course not. I'm not ruling out—if more information comes to light, that will obviously be a part of the investigation and we'll make it available when appropriate. But at this time, as Ambassador Rice said and as I said, our understanding and our belief based on the information we have is it was the video that caused the unrest in Cairo, and the video and the unrest in Cairo that helped—that precipitated some of the unrest in Benghazi and elsewhere. What other factors were involved is a matter of investigation.³³³

³³³ Press Briefing by Press Secretary Jay Carney, The White House (Sept. 18, 2012), <https://www.whitehouse.gov/the-press-office/2012/09/18/press-briefing-press-secretary-jay-carney-9182012>.

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Eight days after the attacks, on September 19, 2012, the Special Assistant to the Spokesperson, State Department, sent Nuland an email, possibly in response to a press inquiry, regarding Rice's statements regarding security personnel on the Sunday shows. He wrote:

This is the only piece I can find that could possibly be construed as the two security officials being there w/ responsibility to protect the mission compound vice the annex. From the FOX News Sunday interview ...³³⁴

Also on September 19, 2012, Sullivan drafted an "ALDAC"—a world-wide cable to all U.S. embassies—approved by the Secretary in which guidance was given on "outreach and messaging" about the widespread violence in the Middle East.³³⁵ The cable continued to connect the attacks with the video:

Since September 11, 2012, there have been widespread protests and violence against U.S. and some other diplomatic posts across the Muslim world. The proximate cause of the violence was the release by individuals in the United States of the video trailer for a film that many Muslims find offensive. Diplomatic compounds have been breached in several countries including Libya, Egypt, Tunisia, and Yemen. In Benghazi, Libya four

U.S. personnel were killed in the violence[.]³³⁶

Even as late as September 20, 2012, Nuland was still supporting the claims made by Rice on the talk shows. When reporter Jennifer Rubin asked Nuland to comment on a CBS news report that "there was NO protest outside Libya embassy," Nuland responded, "Off: this does not square with our info."³³⁷

In the week following her appearances on the Sunday talk shows, Rice remained publicly silent about her comments. Privately, however, she

³³⁴ Email from Special Ass't to the Spokesperson, U.S. Dep't of State, to Victoria J. Nuland, Spokesperson, U.S. Dep't of State (Sept. 19, 2012, 5:20 PM) (on file with the Committee, SCB0052773).

³³⁵ Email from Special Ass't to the Deputy Chief of Staff and Dir. of Policy Planning, U.S. Dep't of State, to SWO-Cables (Sept. 19, 2012, 7:13 PM) (on file with the Committee, SCB0052812-SCB0052813).

³³⁶ *Id.*

³³⁷ Email from Victoria J. Nuland, Spokesperson, U.S. Dep't of State, to Jennifer Rubin ("J Rubin") (Sept. 20, 2012, 9:59 AM) (on file with the Committee, C05412001).

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was “constantly interested” in new information about the attacks. She testified:

Q: Did you have any conversations with anybody, either on the night of September 16th or at any day thereafter up to the point where you learned there were no protests in Benghazi, on the issue of whether or not President Magarief was correct or whether or not you were correct in saying that the attack was spontaneous?

A: I don't recall specific conversations, but I recall being constantly interested in understanding our evolving best assessment, with a mind to caring about its inconsistency with what I was— with what I said on the 16th.³³⁸

The absence of protests prior to the Benghazi attacks, however, remained a troubling issue for the administration. It was only a matter of time before this fact became widely known and disseminated publicly. Despite the best efforts by administration spokespersons to publicly support Rice's comments, however, the truth ultimately emerged to show much of what she said on the talk shows was incorrect.

THE SHIFT

A week after the Benghazi attacks, administration officials began telling the public yet a different story. It started with Matthew G. Olsen, the Director of the National Counterterrorism Center.

Matt Olsen's Testimony on September 19

On September 19, 2012, testifying before the Senate Homeland Security and Governmental Affairs Committee, Olsen firmly stated that what happened in Benghazi was in fact a terrorist attack. Olsen also testified that individuals affiliated with al-Qaida or al-Qaida's affiliates may have been involved in the attack. Olsen said:

Q: So, let me begin by asking you whether you would say that Ambassador Stevens and the three other Americans died as a result of a terrorist attack.

³³⁸ Rice Testimony at 149.

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A: Certainly on that particular question, I would say yes, they were killed in the course of a terrorist attack on our embassy.

Q: Right. And do we have reason to believe at this point that that terrorist attack was preplanned for September 11th or did the terrorists who were obviously planning it because it certainly seemed to be a coordinated terrorist attack just seize the moment of the demonstrations or protests against the film to carry out a terrorist attack?

A: A more complicated question, and one, Mr. Chairman, that we are spending a great deal of time looking at even as we speak. And it's a—it's a—obviously, an investigation here is ongoing and facts are being developed continually. The best information we have now, the facts that we have now indicate that this was an opportunistic attack on our embassy. The attack began and evolved and escalated over several hours at our embassy—our diplomatic post in Benghazi. It evolved and escalated over several hours.

It appears that individuals who were certainly well-armed seized on the opportunity presented as the events unfolded that evening and into the—into the morning hours of September 12th. We do know that a number of militants in the area, as I mentioned, are well-armed and maintain those arms. What we don't have at this point is specific intelligence that there was a significant advanced planning or coordination for this attack.

Again, we're still developing facts and still looking for any indications of substantial advanced planning; we just haven't seen that at this point. So, I think that's the most I would say at this point. I do want to emphasize that there is a classified briefing for all of Congress that will take place tomorrow.

Q: We'll be there. Let me come back to what you said—that there was evidence or intelligence that, as you indicated broadly a moment ago, that in eastern Libya, in the Benghazi area, there were a number of militant or violent extremist groups. Do we have any idea at this point who was responsible among those groups for the attack on the consulate?

A: This is the most important question that we're considering.

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Q: Right.

A: We are focused on who was responsible for this attack. At this point, I would say is that a number of different elements appear to have been involved in the attack, including individuals connected to militant groups that are prevalent in eastern Libya, particularly in the Benghazi area, as well. We are looking at indications that individuals involved in the attack may have had connections to al-Qaida or al-Qaida's affiliates; in particular, al-Qaida in the Islamic Maghreb.

Q: Right. So that question has not been determined yet—whether it was a militant—or a Libyan group or a group associated with al-Qaida influence from abroad.

A: That's right. And I would—I would add that what—the picture that is emerging is one where a number of different individuals were involved, so it's not necessarily an either/or proposition.

Q: OK. OK, good, well—

A: Again, as you know, the FBI is leading the investigation and that's ongoing.³³⁹

Olsen's testimony that what had transpired in Benghazi was a terrorist attack and that there may be links to al-Qaida was the first time an administration official had stated either of those facts publicly. He said the attacks were "opportunistic" and did not mention anything about a video. Olsen responded to Chairman Joseph I. Lieberman's questions directly, concisely, confidently, and factually. He did not couch his language, speculate, or go beyond the facts he knew. Additionally, what he said was accurate. Such fact-centered testimony stands in stark contrast to Rice's appearances on the talk shows.

Olsen told the Committee he wanted to talk about the connection to al-Qaida at the Senate hearing; a possible al-Qaida connection was a large

³³⁹ *Homeland Threats and Agency Responses: Hearing before the S. Committee on Homeland Security and Government Affairs*, 112th Cong. (2012) (statement of Matthew Olsen, Dir., Nat'l Counterterrorism Center).

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factor in the post-attack analysis occurring within the intelligence community—a fact the IC had known for nearly a week.³⁴⁰ Olsen testified:

But my thought at the time was this is not overly sensitive, and it is the kind of information that I was concerned, if we didn't—if I didn't say this in response to a question about who was responsible for this attack, it would be an omission that would be glaring in the—you know, as, on, Congress Members, themselves, were aware of this, right? Some of them serving on HPSCI or SSCI may well have seen the reporting. So it seemed to me the right thing to do to avoid being, you know, viewed as not being as forthcoming as I could be, even if it went beyond what had been publicly stated.

So that was my thinking at the time, why I thought that that was an important point to make and why I actually focused on it in advance of the hearings, so that folks would know that I was going to say it.³⁴¹

Olsen knew at the time the administration had yet to publicly tie al-Qaida to the Benghazi attacks. As such, he directed his head of legislative affairs to alert other Executive Branch agencies that he would likely make the connection at the hearing.³⁴² Meehan emailed Nuland about this possibility on the morning of the hearing. In an email with the subject “Change of Language per the call”—perhaps an indication of coordination between how the White House and State Department were going to respond to press inquiries that day about Benghazi—Meehan wrote:

I am rushing to Jay's prep, and will circle up with the broader group after. But wanted to flag that Matt Olsen from NCTC will be on the Hill this morning... Wanted to flag that IF ASKED, Matt will use the line:

There are indications some of the extremists involved in the attack may be linked to al-Qa'ida or its affiliates, but this assessment may change as additional information is collected and analyzed. In eastern Libya there are numerous armed groups, some of whom have al-Qa'ida sympathies.

³⁴⁰ Olsen Testimony at 55-57 (discussing how long and from what sources intelligence community knew of al-Qaida connection).

³⁴¹ *Id.* at 57-58.

³⁴² *Id.* at 53-54.

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Flagging because it is an unclass session, so if he makes that statement, word will likely leak, and it is the first time someone from the USG will be saying that there might be a link to al-Qaida. Ben and I discussed, and agreed that we refer questions to people involved in the investigation, note the investigation is still underway and no definitive conclusions yet, and if pressed, can point out there is no discrepancy with our original assessment because we always said our original assessment was based on info available at the time and that the investigation would provide further detail.

Hopefully won't come up, but wanted to flag just in case.³⁴³

In her email, Meehan mentions a conversation with Rhodes and notes that "if pressed, can point out there is no discrepancy with our original assessment because we always said our original assessment was based on info available at the time and that the investigation would provide further detail."³⁴⁴ What Meehan does not say is that the link to al-Qaida was actually cited in the intelligence community's original assessment.³⁴⁵ That was not new information, as Olsen acknowledged.³⁴⁶

Additionally, Meehan's email—reflecting other public statements by administration officials up to that point—noted she and Rhodes "agreed that we refer questions to people involved in the investigation." Olsen told the Committee the investigation did not in fact prohibit him from talking about what had been learned up to that point. He testified:

Q: Was there anything about the FBI investigation that prohibited you from either, A, saying it was a terrorist attack, or, B, drawing a link to AQIM?

A: No, nothing that I—no, I don't—certainly not the question of whether it was a terrorist attack or the way I phrased the answer to the question on who was responsible—on the connections to—you know, potential connections to terrorist groups.

³⁴³ Email from Bernadette M. Meehan, Spokesperson, U.S. Dep't of State, to Victoria J. Nuland, Spokesperson, U.S. Dep't of State, & Patrick H. Ventrell, Spokesperson, U.S. Dep't of State (Sept. 19, 2012, 10:22 AM) (on file with the Committee, C05561987).

³⁴⁴ *Id.*

³⁴⁵ September 13 WIRE, *supra* note 123.

³⁴⁶ Olsen Testimony at 25.

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Q: So if nothing about the ongoing investigation prohibited you from saying that, then why would others refer to the ongoing investigation when asked those very same questions?

A:—You know, I, obviously, don't know exactly why others. I do think there's a range of reasonable, you know, approaches to this question. In other words, I don't think there is one right approach.³⁴⁷

Olsen also testified his background as a prosecutor helps him create a fact-centered approach to sharing information. He said:

Q: Sure. As a prosecutor, the facts are very important to you. A fact is a fact, and you're going to share what that fact may be—is that fair to say?—as opposed to being concerned about public relations, in lack of a better phrase, or the impression people might get?

A: That's basically right, and that's sort of—that is the approach of being a prosecutor in terms of reliance on facts. I'm not—I shouldn't, you know, lead you to believe that I'm completely oblivious to—

Q: Of course

A: —the public impression that you can leave and the importance that that has too.³⁴⁸

Even though Olsen wanted to state publicly that al-Qaida sympathizers may have been involved in the attack, he did not plan on saying definitively that it was a terrorist attack. While Olsen knew from the outset it was a terrorist attack—“all of those factors, you know, made it so that it was, to me, there was not really a question of whether it was a terrorist attack”³⁴⁹—he testified he had not given it a great deal of thought, but when asked directly by Lieberman, the logical response was to acknowledge that it was a terrorist attack.³⁵⁰

³⁴⁷ *Id.* at 60.

³⁴⁸ *Id.* at 61-62

³⁴⁹ *Id.* at 100.

³⁵⁰ *Id.* at 50-51.

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Olsen recognized almost immediately after the hearing he may have made news with what he had said with respect to the events being a terrorist attack. He told the Committee he wrote an email to the White House alerting them of what he had said. Olsen testified:

Q: So what were the repercussions of you saying it was a terrorist attack?

A: So one of the things I did afterwards was I wrote an email to both John Brennan and Denis McDonough—you know, Denis was the Deputy National Security Advisor and John was—John Brennan was the counterterrorism advisor—and explained to them—you know, I said something like, “I made some news today with my testimony. Here is why I testified that this was a terrorist attack,” was my thought process. And they wrote back to me, saying, “You did the right thing,” essentially, in emails that day. You know, “Understand you made the right points,” or something like that.

But again, look, I was aware, again, in a way I hadn’t really been before that what I was testifying to was potentially newsworthy, and, in fact, it was. So that’s why I thought both let my press person think about what we need to do, ask him to think about what we may need to do, and they also, myself, reach out to John Brennan and Denis McDonough.³⁵¹

Private reaction from senior officials at the State Department regarding Olsen’s testimony, however, appeared less supportive. Nuland wrote to Sullivan, Mills, and Kennedy:

Fysa, and for Jake’s drafting exercise; NCTC also called it a terrorist attack today: I had demurred on that as had Jay, pending investigation.³⁵²

Sullivan called the White House to inform them he was unaware Olsen was going to testify it was a terrorist attack. Meehan testified:

³⁵¹ *Id.* at 71-72.

³⁵² Email from Victoria J. Nuland, Spokesperson, U.S. Dep’t of State, to Jacob J. Sullivan, Deputy Chief of Staff and Dir. of Policy Planning, U.S. Dep’t of State, Cheryl D. Mills, Chief of Staff to the U.S. Sec’y of State, U.S. Dep’t of State, & Patrick F. Kennedy, Under Sec’y for Management, U.S. Dep’t of State (Sept. 19, 2012, 2:45 PM) (on file with the Committee, C05561975).

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Q: Do you recall generally having any conversations with [Jake Sullivan] that week? Or in the immediate aftermath of the attack, that general period of September 2012?

A: I do recall having one phone conversation with him. I don't know whether it's in the scope of the 4 to 5 days that we're discussing.

Q: Okay. What was discussed in that conversation?

A: He raised that he had been unaware before Matt Olsen testified on the Hill, that Matt Olsen was going to make a link publicly to Al Qaeda in reference to the Benghazi attack.

Q: Why did he raise that issue with you?

A: I can't say why I was the individual that he called. I don't know.³⁵³

Even the Secretary expressed surprise at Olsen's testimony. Olsen testified:

Q: Yeah. Did anybody express to you that they were disappointed in what you said, they were perplexed by what you said, that what you said may have thrown a message off kilter?

* * *

A: ... But, you know, to your question I did hear at one point—and I don't remember exactly when—from Director Clapper that he'd heard from Secretary Clinton, you know, of some surprise about me saying that it was a terrorist attack. And he basically said—you know, I remember thinking he basically said, you know, "We're saying what we see," something like that.

But I remember hearing from him. He told me directly—I think we were either in a car or getting ready to get in his car to come downtown—that he'd gotten a call or had heard from Secretary

³⁵³ Testimony of Bernadette M. Meehan, Spokesperson, Nat'l Sec. Council, Tr. at 28-29 (Dec. 16, 2015) (on file with the Committee).

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Clinton about surprise that one of his guys was talking about this being a terrorist attack.³⁵⁴

The day after Olsen's testimony, September 20, 2012, the President participated in a town hall with Univision at the University of Miami. The President had the following exchange:

Q: We have reports that the White House said today that the attacks in Libya were a terrorist attack. Do you have information indicating that it was Iran, or al-Qaida was behind organizing the protests?

A: Well, we're still doing an investigation, and there are going to be different circumstances in different countries. And so I don't want to speak to something until we have all the information. What we do know is that the natural protests that arose because of the outrage over the video were used as an excuse by extremists to see if they can also directly harm U.S. interests—

Q: Al-Qaida?

A: Well, we don't know yet. And so we're going to continue to investigate this. We've insisted on, and have received so far full cooperation from countries like Egypt and Libya and Tunisia in not only protecting our diplomatic posts, but also to make sure that we discover who, in fact, is trying to take advantage of this. .

³⁵⁵

The President said the government wanted to “discover who, in fact, is trying to take advantage of this.” It is unclear if “this” is a reference to the video, protests, or something else. However, no assessment from the CIA ever stated anybody was “trying to take advantage” of the video, or even that there was a direct link between the video and the Benghazi attacks.

The President also stated, in response to a question that mentioned only Libya, the “natural protests that arose because of the outrage over the video were used as an excuse by extremists to see if they can also directly harm U.S. interests—.” This statement was made two days after the

³⁵⁴ Olsen Testimony at 82-83.

³⁵⁵ Remarks by the President at Univision Town Hall with Jorge Ramos and Maria Elena Salinas, Miami, FL, Sept. 20, 2012.

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U.S. government obtained access to the video footage from the Benghazi Mission compound, which did not show a protest outside the Benghazi Mission compound prior to the beginning of the attacks.

When asked if al-Qaida was involved, the President responded “we don’t know yet.” The day before, however, Olsen testified under oath before Congress the government was “looking at indications that individuals involved in the attack may have had connections to al-Qaida or al-Qaida’s affiliates; in particular, al-Qaida in the Islamic Maghreb.”

Two days after Olsen’s testimony, on September 21, 2012, the Secretary said for the first time publicly that what happened in Benghazi was a “terrorist attack.”³⁵⁶

Four days later, on September 25, 2012, the President said, during remarks to the United Nations General Assembly: “There are no words that excuse the killing of innocents. There’s no video that justifies an attack on an embassy.”³⁵⁷

It was not until the following day—a full week after Olsen made his comments and fifteen days after the attacks began—Carney finally acknowledged the President’s position was that a terrorist attack occurred. Carney said:

Q: Can I ask one more—are criticizing the President for not classifying what happened in Benghazi as a terrorist attack, going as far as you did or the NCTC director. Can you respond to that and explain why that is?

A: The President spoke eloquently I believe about the attack that took the lives of four Americans at the United Nations General Assembly, and I think made very clear that it is wholly unacceptable to respond to a video, no matter how offensive, with violence, and it is wholly unacceptable, regardless of the reason, to attack embassies or diplomatic facilities and to kill diplomatic personnel.

³⁵⁶ Hillary R. Clinton, Sec’y of State, U.S. Dep’t of State, Remarks with Pakistani Foreign Minister Hina Rabbani Khar before Their Meeting (Sept. 25, 2012), <http://www.state.gov/secretary/20092013clinton/rm/2012/09/198060.htm>.

³⁵⁷ Press Release, The White House Office of the Press Secretary, Remarks by the President to the UN General Assembly (Sept. 13, 2012), <https://www.whitehouse.gov/the-press-office/2012/09/25/remarks-president-un-general-assembly>.

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The President—our position is, as reflected by the NCTC director, that it was a terrorist attack. It is, I think by definition, a terrorist attack when there is a prolonged assault on an embassy with weapons.

The broader questions here about who participated, what led to the attack on the facility in Benghazi—all those questions are under investigation at two levels, by the FBI and by the Accountability Review Board established by Secretary Clinton to look at issues of security in Benghazi and security at other diplomatic facilities.

So, let's be clear, it was a terrorist attack and it was an inexcusable attack.³⁵⁸

September 24 Intelligence Assessment

Two days before Carney finally acknowledged publicly that Benghazi was a terrorist attack, on September 24, 2012, the CIA published its new “assessment” about the Benghazi attacks, formally changing their old assessment which had been in place since September 13. In the September 24 piece, which was produced jointly with the National Counterterrorism Center, the analysts wrote “We now assess, based on new reporting, that the assault was deliberate and organized. Our most credible information indicates that there was not a protest ongoing at the time of the attack as first reported.”³⁵⁹

The supporting intelligence used in this piece to support the new assessment was threefold. The first piece of intelligence was from September 19, 2012 and noted that attackers used fixed firing positions, capture or kill teams, and blockades to impede the escape of US personnel,”

[REDACTED]³⁶⁰

The second piece of intelligence [REDACTED] suggesting “the attack was put together at [REDACTED]

³⁵⁸ Press Gaggle by Press Secretary Jay Carney Aboard Air Force One en route Ohio, Office of the Press Secretary, The White House (Sept. 26, 2012), <https://www.whitehouse.gov/the-press-office/2012/09/26/press-gaggle-press-secretary-jay-carney-aboard-air-force-one-en-route-oh>.

³⁵⁹ Cent. Intel. Agency, Libya: Updated Assessment of Benghazi Attacks, World Intelligence Review, Sept. 24, 2012 (on file with CIA, IntBook29-076 to IntBook29-079).

³⁶⁰ *Id.*

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least several hours ahead of time.”³⁶¹ Although this piece of intelligence was available as early as September 15—one day before Rice went on the Sunday talk shows and nine days before the analysts published their updated assessment—an internal CIA after action review noted that this piece of intelligence was “not viewed as credible enough” at the time to outweigh other reporting, such as news reports.³⁶²

The third piece of intelligence [REDACTED] noted simply that the attackers “also employed effective mortar fire against the Embassy annex later in the night after US return fire repulsed their initial ground assault.”³⁶³ This piece of intelligence was formally available to analysts as early as September 14, and informally available to them as early as September 12.

Additionally, perhaps the most credible—and definitive—piece of intelligence indicating no protest had occurred prior to the Benghazi attacks was the video footage from the closed circuit televisions at the Special Mission Compound in Benghazi. The CIA had access to analysis of this footage by the Libyan Intelligence Service as early as September 18, 2012, and those in the CIA who saw the video on that date concluded immediately no protest occurred prior to the attacks. This intelligence was not cited in the update assessment.

The manager of the analysts testified the analysts began working on the piece before September 18. Given that fact—and that the information cited in the updated assessment as rationale for changing the assessment was available on September 14, September 15, and September 19—why did it take the CIA until September 24 to publish the piece?

The answer appears to be the piece was held up in interagency coordination. The analysts did not want an interagency partner to file a formal dissent. The manager of the analysts testified:

And, frankly, the WIRE that ran on the 24th actually got held up for 2 days in Coordination, trying to convince people in the IC

³⁶¹ *Id.*

³⁶² Intelligence Note, Memorandum for Acting Dir., Cent. Intel. Agency, Jan. 4, 2013 [hereinafter Analytic Line Review] (on file with CIA, REQUEST 17-0049 to REQUEST 17-0063).

³⁶³ [REDACTED]

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[Intelligence Community], who hadn't seen this video yet because it wasn't back in country, that there were no protests.³⁶⁴

Other interagency partners—specifically the State Department—did not trust the Libyan government's assessment of the video, even though CIA officials in Tripoli had seen the actual video footage and concurred with the assessment.³⁶⁵ This distrust held up interagency coordination of the piece for several days. It was not until September 24 when the actual video footage arrived at CIA headquarters, allowing for dissemination to other interagency partners.³⁶⁶

September 28 ODNI Statement

On September 28, 2012, Shawn Turner, Director of Public Affairs, Office of the Director of National Intelligence, released a statement on the intelligence related to the Benghazi terrorist attacks. That statement read in full:

In the aftermath of the terrorist attack on U.S. personnel and facilities in Benghazi, Libya, the Intelligence Community launched a comprehensive effort to determine the circumstances surrounding the assault and to identity the perpetrators. We also reviewed all available intelligence to determine if there might be follow-on attacks against our people or facilities in Libya or elsewhere in the world.

As the Intelligence Community collects and analyzes more information related to the attack, our understanding of the event continues to evolve. In the immediate aftermath, there was information that led us to assess that the attack began spontaneously following protests earlier that day at our embassy in Cairo. We provided that initial assessment to Executive Branch officials and members of Congress, who used that information to discuss the attack publicly and provide updates as they became available.

³⁶⁴ [REDACTED] Team Chief Testimony at 75-77, 92-95.

³⁶⁵ *Id.* at 75-77.

³⁶⁶ [REDACTED]

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Throughout our investigation we continued to emphasize that information gathered was preliminary and evolving.

As we learned more about the attack, we revised our initial assessment to reflect new information indicating that it was a deliberate and organized terrorist attack carried out by extremists. It remains unclear if any group or person exercised overall command and control of the attack, and if extremist group leaders directed their members to participate. However, we do assess that some of those involved were linked to groups affiliated with, or sympathetic to al-Qa'ida. We continue to make progress, but there remain many unanswered questions. As more information becomes available our analysis will continue to evolve and we will obtain a more complete understanding of the circumstances surrounding the terrorist attack.

We continue to support the ongoing FBI investigation and the State Department review of the Benghazi terrorist attack, providing the full capabilities and resources of the Intelligence Community to those efforts. We also will continue to meet our responsibility to keep Congress fully and currently informed. For its part, the Intelligence Community will continue to follow the information about the tragic events in Benghazi wherever it leads. The President demands and expects that we will do this, as do Congress and the American people. As the Intelligence Community, we owe nothing less than our best efforts in this regard, especially to the families of the four courageous Americans who lost their lives at Benghazi in service of their country.³⁶⁷

Even though the issue of protests was heavily debated in the public at the time, the statement does not specifically address whether or not a protest occurred prior to the attacks—doing so would have undercut Rice's statements on the talk shows twelve days before. In addition, the issue of

³⁶⁷ Press Release, Office of the Dir. of National Intel., Statement by the Director of Public Affairs for ODNI, Shawn Turner, on the intelligence related to the terrorist attack on the U.S. Consulate in Benghazi, Libya (Sept. 28, 2012), <https://www.dni.gov/index.php/newsroom/press-releases/96-press-releases-2012/731-statement-by-the-odni-s-director-of-public-affairs-on-intelligence-related-to-the-terrorist-attack-on-the-u-s-consulate-in-benghazi>.

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protests was not an “analytical focal point”³⁶⁸ for the intelligence community and was more of a “subsidiary issue” to them.³⁶⁹

Rather, the statement only mentions it was a “deliberate and organized terrorist attack”³⁷⁰—still leaving open the possibility protests may have occurred. The statement did not mention anything about the internet video, let alone any connection between the video and Benghazi attacks. The statement, issued by the intelligence community and not the White House or State Department, did not connect the two events.³⁷¹

As public statements tend to be, this statement was carefully worded. It notes only the initial intelligence community assessment that it “began spontaneously following protests earlier that day at our embassy in Cairo.”³⁷² This wording can be directly tied to language in the September 13 WIRE.³⁷³ The statement does not say, however, the intelligence community ever assessed that protests or demonstrations had occurred prior to the Benghazi attacks—something repeatedly mentioned by Rice on the talk shows. That is because, aside from the errant title in the September 13 WIRE, the intelligence community never formally coordinated such an assessment in writing.

The statement also says “[a]s we learned more about the attack, we revised our initial assessment to reflect new information indicating that it was a deliberate and organized terrorist attack carried out by extremists. . . we do assess that some of those involved were linked to groups affiliated with, or sympathetic to al-Qa’ida.”³⁷⁴

³⁶⁸ Olsen Testimony at 119.

³⁶⁹ Olsen Testimony at 67.

³⁷⁰ Press Release, Office of the Dir. of National Intel., Statement by the Director of Public Affairs for ODNI, Shawn Turner, on the intelligence related to the terrorist attack on the U.S. Consulate in Benghazi, Libya (Sept. 28, 2012), <https://www.dni.gov/index.php/newsroom/press-releases/96-press-releases-2012/731-statement-by-the-odni-s-director-of-public-affairs-on-intelligence-related-to-the-terrorist-attack-on-the-u-s-consulate-in-benghazi>.

³⁷¹ *See id.*

³⁷² *Id.*

³⁷³ September 13 WIRE, *supra* note 123.

³⁷⁴ Press Release, Office of the Dir. of National Intel., Statement by the Director of Public Affairs for ODNI, Shawn Turner, on the intelligence related to the terrorist attack on the U.S. Consulate in Benghazi, Libya (Sept. 28, 2012), <https://www.dni.gov/index.php/newsroom/press-releases/96-press-releases-2012/731-statement-by-the-odni-s-director-of-public-affairs-on-intelligence-related-to-the-terrorist-attack-on-the-u-s-consulate-in-benghazi>.

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Given that the intelligence leading to the new assessment was more than a week old, and in some cases even older, why, then, did ODNI wait until September 28, 2012 to issue this statement? The answer lies in emails between senior administration officials.

The genesis for ODNI's statement occurred the day before as a result of a press report. The article, published on September 27, 2012 said the following:

URGENT: U.S. intelligence officials knew from Day One that the assault on the U.S. Consulate in Libya was a terrorist attack and suspect Al Qaeda-tied elements were involved, sources told Fox News—though it took the administration a week to acknowledge it.

The account conflicts with claims on the Sunday after the attack by U.S. Ambassador to the United Nations Susan Rice that the administration believed the strike was a “spontaneous” event triggered by protests in Egypt over an anti-Islam film.

Sources said the administration internally labeled the attack terrorism from the first day to enable a certain type of policy response and that officials were looking for one specific suspect.

In addition, sources confirm that FBI agents have not yet arrived in Benghazi in the aftermath of the attack.³⁷⁵

Upon seeing the article that morning, McDonough forwarded it to Robert Cardillo, Deputy Director, Office of the Director of National Intelligence, Morell, and John Brennan, Counterterrorism Advisor to the President. McDonough wrote:

Hey, guys,

This is the third report making this assertion. Is this correct?

Thanks,

Denis³⁷⁶

³⁷⁵ Email from Peter Velz, Media Monitor, White House, to DL-WHO-Press, *et al.* (Sept. 27, 2012, 10:15 AM) (on file with the Committee, C05415305).

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Cardillo responded, including Olsen and Nick Rasmussen, Deputy Director, National Counterterrorism Center. Cardillo wrote:

I am fairly sure the answer is 'no.' And I've asked Matt and Nick to lay out on a timeline the evolution of our IC assessments from 12 September on. They're on cc so I'll ask when that can be ready. Robert.³⁷⁷

It is unclear which assertion McDonough and Cardillo were referring to, although Olsen told the Committee he believed from the beginning the assault on the U.S. facilities in Benghazi was a terrorist attack,³⁷⁸ and Morell testified that "[i]n the minds of the [CIA] analysts from the get-go, this was a terrorist attack, and I think that is reflected in what they wrote."³⁷⁹

Olsen responded to the email, writing:

All-

As Robert suggests, I think the best way to approach this is to review and memorialize exactly what we were saying from the onset of the attack going forward. We've got a chronological catalog of all finished intelligence on the attack. And we'll put together today a time line summary that sets forth all key points and analytic judgments as they developed from 9/11 through the present. Nick and I will get started on the time line right away.

-Matt³⁸⁰

That evening, Cardillo responded. He sent his response to the group, but also included Turner and Rexon Ryu. Cardillo wrote:

NCTC has already made great progress in documenting the chronology of what we knew and what we published. My reading of that draft is that we can easily debunk Fox and refute the

³⁷⁶ Email from Mr. McDonough, to Mr. Cardillo and Mr. Morell, (Sept. 27, 2012, 10:57 AM) (on file with the Committee, C05415305).

³⁷⁷ Email from Mr. Cardillo to Mr. McDonough, *et al.* (Sept. 27, 2012, 11:23 AM) (on file with the Committee, C05415305).

³⁷⁸ Olsen Testimony at 100.

³⁷⁹ Morell Testimony at 74.

³⁸⁰ Email from Mr. Olsen to Mr. Cardillo, *et al.* (Sept. 27, 2012, 12:12 PM) (on file with the Committee, C05415305).

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hits on Susan's statements on Sunday, 16 Sep. As I read the laydown, her comments were consistent with our intel assessment at that time....³⁸¹

McDonough responded to the email, and included Rhodes in the email chain. In his response, McDonough included another article from ABC News. The title of the ABC News article was "Some Administration Officials Were Concerned About Initial White House Push Blaming Benghazi Attack on Mob, Video" and read, in part:

Even before Defense Secretary Leon Panetta contradicted the initial story about the attack on the U.S. consulate in Benghazi, Libya, today, Obama administration officials told ABC News they were concerned after the White House began pushing the line that the attack was spontaneous and not the work of terrorists.... Panetta today said that the attack that killed four Americans on the anniversary of 9/11 was not only carried out by terrorists—it was pre-meditated....

The White House first suggested the attack was spontaneous—the result of an anti-Muslim video that incited mobs throughout the region....

But sources told ABC News that intelligence officials on the ground immediately suspected the attack was not tied to the movie at all....

As of Thursday afternoon, officials from the Obama administration were not even 100 percent certain that the protest of the anti-Muslim film in Benghazi occurred outside the U.S. diplomatic post.³⁸²

McDonough wrote of this article, "The piece immediately below led ABC World News Tonight today. It is really galling."³⁸³

Rhodes responded three minutes later. He wrote:

³⁸¹ Email from Mr. Cardillo to Mr. Olsen, Mr. McDonough, & Mr. Morell (Sept. 27, 2012, 7:47 PM) (on file with the Committee, C05415305).

³⁸² Email from Mr. McDonough to Mr. Cardillo, Mr. Olsen, Mr. Rhodes, and Mr. Morell (Sept. 27, 2012, 7:49 PM) (on file with the Committee, C05415305).

³⁸³ *Id.*

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I believe that we need something tomorrow. There is a narrative that is being aggressively pushed that the White House and Susan Rice deliberately misrepresented facts, which is being confirmed by anonymous intelligence sources and administration officials. In the absence of an affirmative statement that this has been an evolving set of facts guided by our increasing understanding of what took place, that narrative will only harden further. Already, it is a bell that is going to be very difficult to unring.³⁸⁴

In essence, Rhodes wanted to put out a statement not for the reason of informing the public about the updated intelligence assessment relating to the attacks, but to refute allegations Rice and the White House “deliberately misrepresented facts.”³⁸⁵

Rhodes emailed the group again less than twenty minutes later, stating:

Again, I believe we have a very credible case that all we have done is follow the facts and inform people of those facts, while prioritizing the need for investigations to run their course. However, that case is being lost amidst the leaks of information (correct and incorrect) and uninformed assertions coming from a variety of places.³⁸⁶

Two things about Rhodes’ response are noteworthy. One, he acknowledges some of the leaks are “correct,” although he does not identify which ones; and two, he writes “I believe we have a very credible case that all we have done is follow the facts.”³⁸⁷ “Credible case” is hardly a definitive, full-throated defense of the administration’s handling of the public explanation for the attacks in Benghazi.

The following morning Olsen emailed the group that he had provided a draft statement to Turner for eventual release. Rhodes responded, writing:

³⁸⁴ Email from Mr. Rhodes to Mr. McDonough, Mr. Olsen, Mr. Cardillo, and Mr. Morell (Sept. 27, 2012, 7:52 PM) (on file with the Committee, C05415305).

³⁸⁵ Email from Mr. Rhodes to Mr. McDonough, Mr. Cardillo, Mr. Olsen, and Mr. Morell (Sept. 27, 2012, 7:56 PM) (on file with the Committee, C05415305).

³⁸⁶ Email from Mr. Rhodes to Mr. Cardillo, Mr. McDonough, Mr. Olsen, and Mr. Morell (Sept. 27, 2012, 8:15 PM) (on file with the Committee, C05415305).

³⁸⁷ *Id.*

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Thank you for working this, as the most important thing is having a public baseline—informed by the facts—that we can all point to. We are well synched up with Shawn Turner as well.³⁸⁸

Rhodes testified to the Committee about his recollection of this statement:

Well, my recollection is that there was an interest in providing a statement that clarified our understanding and the evolution of our understanding of the events in Benghazi that that statement was to be prepared by the intelligence community. I work with them in my coordinating role as they were preparing that statement.³⁸⁹

Rhodes' email that they are "synched up" with Turner,³⁹⁰ and his testimony that he was in his "coordinating role" as the statement was prepared,³⁹¹ serves as a reminder the White House played a central role in the drafting of this statement—a statement that, by Rhodes' own admission, served not to inform the public but rather to push back against a narrative that the White House and Rice deliberately misrepresented facts. The statement itself, however, according to Olsen, was "speaking on behalf of the intelligence community at that point and not really beyond that."³⁹² The White House's involvement in the creation of the statement—through McDonough, Brennan, and Rhodes—continues to raise questions as to who ultimately controlled the message regarding Benghazi coming out of not just the intelligence community but the executive branch as a whole.

THE LANDSCAPE

The political import of the attacks on the presidential campaign of 2012 is not a subject of the committee's investigation. Nevertheless, the House of Representatives did direct the Committee to investigate and study "in-

³⁸⁸ Email from Mr. Rhodes to Mr. Cardillo, Mr. Olsen, Mr. McDonough, Mr. Morell (Sept. 28, 2012, 10:43 AM) (on file with the Committee, C05415305).

³⁸⁹ Rhodes Testimony at 137.

³⁹⁰ Email from Mr. Rhodes to Mr. Cardillo, Mr. Olsen, Mr. McDonough, Mr. Morell (Sept. 28, 2012, 10:43 AM) (on file with the Committee, C05415305).

³⁹¹ Rhodes Testimony at 137.

³⁹² Olsen Testimony at 117.

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ternal and public executive branch communications about the attacks.”³⁹³ It would be naïve to assume this or any administration’s public statements about a significant foreign policy event would be made without full awareness of the political effect of those statements. It is necessary to place the attacks and the administration’s statements about them in context.

The Benghazi terrorist attacks occurred not only on the anniversary of the Sept 11, 2001 terrorist attacks but also in the middle of the 2012 presidential campaign. The first presidential debate was 22 days away and the election was 56 days away. The killing of a U.S. Ambassador in the line of duty—which had not occurred in 33 years—and three other Americans would inevitably become an issue in the campaign and even be discussed at the presidential debate on October 16, 2012.³⁹⁴

Prior to the attacks, the President and the Secretary of State took credit for the Administration’s record in the war on terror, the perceived success of the intervention in Libya, and the toppling of its dictator, Muammar Qadhafi.³⁹⁵ Nearly four years had passed without a significant incident at home or abroad, and killing Osama bin Laden represented an historic victory.³⁹⁶ The President pointed to these successes in his campaign, including in a speech five days prior to the attacks:

In a world of new threats and new challenges, you can choose leadership that has been tested and proven. Four years ago, I promised to end the war in IraQ: We did. I promised to refocus on the terrorists who actually attacked us on 9/11. We have. We’ve blunted the Taliban’s momentum in Afghanistan, and in 2014, our longest war will be over. A new tower rises above the New York skyline, al Qaeda is on the path to defeat, and Osama bin Laden is dead.³⁹⁷

³⁹³ H. Res. 567 113th Congress Section 3(a)(3).

³⁹⁴ *October 16, 2012 Debate Transcript*, COMM’N ON PRESIDENTIAL DEBATES (Oct. 16, 2012), <http://www.debates.org/index.php?page=october-16-2012-the-second-obama-romney-presidential-debate>.

³⁹⁵ See, e.g., Tom Cohen, *Obama makes war policy an election strength*, CNN (Oct. 24, 2011), <http://www.cnn.com/2011/10/24/politics/obama-foreign-policy/>.

³⁹⁶ *Id.*

³⁹⁷ President Barack Obama, Speech at 2012 Democratic National Convention (Sept. 6, 2012).

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The Benghazi attacks could certainly affect public perception of the administration's record in the war on terror and the narrative of success in Libya. Almost immediately, the press began asking questions about whether Benghazi represented a failure of the President's policies. In a press conference the day after the attacks, a reporter asked Carney directly: "Jay, is the U.S. doing something wrong policy-wise in Libya that brings this [the attack] on? Or is the policy fine, it's just this particular event?"³⁹⁸ One publication summed up the situation by saying, "with the American Presidential election only two months away, the murder of four Americans serving their government overseas could be a game changer so far as Mr. Obama's re-election prospects are concerned."³⁹⁹

The attacks remained an issue throughout the campaign including at the second presidential debate where former Massachusetts Governor Mitt Romney used the attacks to question the administration's Middle East policy generally:

And this [the Benghazi attacks] calls into question the president's whole policy in the Middle East. Look what's happening in Syria, in Egypt, now in Libya. Consider the distance between ourselves and—and Israel, the president said that—that he was going to put daylight between us and Israel.

We have Iran four years closer to a nuclear bomb. Syria—Syria's not just a tragedy of 30,000 civilians being killed by a military, but also a strategic—strategically significant player for America.

The president's policies throughout the Middle East began with an apology tour and—and—and pursue a strategy of leading from behind, and this strategy is unraveling before our very eyes.⁴⁰⁰

³⁹⁸ Press Gaggle by Press Secretary Jay Carney en route Las Vegas, NV, Office of the Press Secretary, The White House (Sept. 12, 2012), <https://www.whitehouse.gov/the-press-office/2012/09/12/press-gaggle-press-secretary-jay-carney-en-route-las-vegas-nv-9122012>.

³⁹⁹ Con Coughlin, *The Murder of the US Ambassador to Libya is a Wake-up Call for Obama*, The Daily Telegraph (Sept. 12, 2012), <http://blogs.telegraph.co.uk/news/concoughlin/100180611/murder-of-us-ambassador-is-a-wake-up-call-for-obama/>.

⁴⁰⁰ *October 16, 2012 Debate Transcript*, Commission on Presidential Debates (Oct. 16, 2012), <http://www.debates.org/index.php?page=october-16-2012-the-second-obama-romney-presidential-debate>

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Shortly after this statement, the candidates and the moderator debated whether the President called the Benghazi attacks a terrorist attack from day one.⁴⁰¹ The President's Rose Garden remarks were not his only public comments about the attacks on September 12. The President also taped a *60 Minutes* interview the same day, which aired on September 23.⁴⁰² During the interview the President said it was "too early to tell" when asked about his Rose Garden remarks and whether the attacks were terrorism.⁴⁰³ The question and the President's answer were not included in the broadcast version because the interview was edited.⁴⁰⁴

Three days after the second debate, CBS posted additional portions of the *60 Minutes* transcript from the interview with the President on September 12, 2012.⁴⁰⁵ The portion of the President refusing to call it a terrorist attack was still absent. It was not until November 6, 2012, two days before the election, when CBS finally posted publicly for the first time the entire transcript of the President's interview on September 12, 2012.⁴⁰⁶

The President of CBS News at the time, David Rhodes, is the brother of Ben Rhodes, who helped prepare the President for the second debate.⁴⁰⁷ While Ben Rhodes denied to the Committee he talked with anybody at CBS prior to the September 23, 2012, airing of the President's interview, he did not know whether others in the White House did. Rhodes also did not testify as to whether or not he spoke with anybody at CBS after September 23, 2012, regarding the posting of the transcript to CBS' website. He testified:

Q: And you may recall there was some bit of controversy over the interview that was actually aired by CBS because it did not

⁴⁰¹ *October 16, 2012 Debate Transcript*, COMM'N ON PRESIDENTIAL DEBATES (Oct. 16, 2012), <http://www.debates.org/index.php?page=october-16-2012-the-second-obama-romney-presidential-debate>; Press Release, The White House Office of the Press Secretary, Remarks by the President on the Deaths of U.S. Embassy Staff in Libya (Sept. 12, 2012), <https://www.whitehouse.gov/the-press-office/2012/09/12/remarks-president-deaths-us-embassy-staff-libya>.

⁴⁰² Dylan Byers & MacKenzie Weinger, *CBS under fire for withhold Obama's Benghazi remarks*, POLITICO (Nov. 5, 2012), <http://www.politico.com/blogs/media/2012/11/cbs-under-fire-for-withholding-obamas-benghazi-remarks-148513>.

⁴⁰³ *Id.*

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.*

⁴⁰⁶ *Id.*

⁴⁰⁷ Helene Cooper, *Obama's Prep Session Goal: Don't Repeat Mistakes of Last Debate*, N.Y. TIMES (Oct. 14, 2012), http://www.nytimes.com/2012/10/15/us/politics/a-serious-debate-prep-session-for-obama.html?_r=0.

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include a portion of the President's remarks. Do you remember that?

A: I have a recollection that there was some controversy about that, yes.

Q: Did you or anybody else on your staff have any conversations with CBS about that 60 Minutes interview?

A: I did not excuse me, what's the in what time period are you talking about?

Q: Prior to it airing?

A: I did not have any conversations with CBS after the interview taped prior to it aired.

Q: Did anybody on your staff?

A: Generally, when we have interviews like that with the President, the contacts with the network are handled by the White House press in the communications office, not the NSC.

Q: Do you know if any of those communications actually occurred?

A: I don't know.⁴⁰⁸

On October 1, 2012, the Secretary of State forwarded a *Salon* article titled "GOP's October Surprise?" which alleged Romney planned to attack the President as weak on terrorism.⁴⁰⁹ Sidney Blumenthal emailed the article to the Secretary and took credit for it getting it "done and published."⁴¹⁰ The Secretary forwarded the email to Sullivan with the in-

⁴⁰⁸ Rhodes Testimony at 118-19.

⁴⁰⁹ Craig Unger, *GOP's October surprise?*, SALON (Oct. 1, 2012), http://www.salon.com/2012/10/01/gops_october_surprise/.

⁴¹⁰ See Email from Sidney Blumenthal to Hillary R. Clinton ("H"), Sec'y of State, U.S. Dep't of State (Oct. 1, 2012, 9:30 AM) (on file with the Committee, SCB0045545) ("Got done and published.").

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struction, “Be sure Ben knows they need to be ready for this line of attack.” Sullivan responded: “Will do.”⁴¹¹

The White House told the Committee they would not allow the Committee to ask about this email during the Committee’s interview with Rhodes, citing executive privilege and noting that preparing for a debate was a “core executive function.”⁴¹²

MIXING INTELLIGENCE WITH POLITICS

In the months after the Benghazi attacks, politics continued to play a role in assigning blame for what had occurred and who said what. In addition to the usual politics of Republicans and Democrats lobbing accusations at one another, however, a different, quieter, type of politics was taking place regarding Benghazi: internal politics. At the center of it all was Morell.

The Setup

On November 27, 2012, amid speculation the President would nominate her to become the next Secretary of State, Rice traveled to Capitol Hill to meet with three Senators to discuss her September 16 appearances on the Sunday talk shows.⁴¹³ Accompanying Rice to that meeting was Morell, who was at the time Acting Director of the CIA. Morell described why he attended the meeting:

Q: Can you just generally describe what the purpose of that meeting was?

A: Yes. So I got a phone call from Denis McDonough, who was then the deputy national security advisor. He told me that—of course I knew from the media that Susan was under attack for what she had said on the Sunday shows. He told me that Susan

⁴¹¹ Email from Jacob J. Sullivan, Deputy Chief of Staff and Dir. of Policy Planning, U.S. Dep’t of State, to Hillary R. Clinton (“H”), Sec’y of State, U.S. Dep’t of State (Oct. 1, 2012, 3:37 PM) (on file with the Committee, SCB0045545).

⁴¹² Phone Call between Office of White House Counsel and Committee Staff (Jan. 30, 2016).

⁴¹³ Ed O’Keefe, *Susan Rice, CIA director meet with GOP critics on Libya*, WASH. POST (Nov. 27, 2012), <https://www.washingtonpost.com/blogs/2chambers/wp/2012/11/27/susan-rice-cia-director-meet-with-gop-critics-on-libya/>.

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wanted to go to the Hill and have conversations with her critics. He told me that the President wanted me to go along with her. He made very clear to me that my job in going along with her was to talk about the classified analysis, to talk about the talking points, and importantly, to show, to actually show the Senators the consistency between the talking points and the classified analysis. That's what he told me my job was. And I said yes and I went.⁴¹⁴

Morell agreed to the President's request and attended the meeting with Rice. In his book, however, Morell wrote: "In retrospect, attending the meeting was a mistake. The meeting was inherently political, and by attending, I inserted myself into a political issue. . . That is not where an intelligence officer should be."⁴¹⁵ Morell told the Committee:

Q: Did you think your presence there was requested to insulate or protect Susan Rice in any way?

A: I think my—I think my presence there was to show that what she said, right, about Benghazi was consistent, right, at least the protest, spontaneity part, right, was consistent with what the analysts really believed.

Q: I guess what I'm trying to get at it, do you think in any way—I mean you're a career analyst, you're known or so I've heard you're known around the community as a very straight shooting, as a straight shooter, you call it like you see it. So the fact that you were accompanying her—did you know if the Secretary of State at that point had announced that she was going to step down? Do you know if Susan Rice at that point—

A: Yes, I believe so, right? I believe that was the whole point—in fact, that is what Denis said, right, her possible nomination to be Secretary of State was at risk, absolutely.

Q:—So it was a very inherently political meeting—

A: Yes, it was.

⁴¹⁴ Morell Testimony at 202-203.

⁴¹⁵ MORELL, *supra* note 114, at 235.

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Q:—that you were inserting yourself or that you had been asked to—it was a very inherently political meeting that you had been asked to attend.

A: Yes. But, again, I didn't realize it at the time. I really didn't. I didn't know I was walking myself into this political setting.⁴¹⁶

In addition to explaining to the Senators how Rice's comments on the Sunday shows aligned with the intelligence at the time, Morell's attendance at the meeting served another purpose—it kept him at the forefront of the controversy surrounding the Benghazi talking points. While Rice was the administration's representative on the Sunday talk shows, Mi-Morell was the individual who edited the CIA talking points Rice says she relied on.⁴¹⁷ Having public criticism targeted towards Morell, a career intelligence official, instead of Rice, a political appointee in a politically charged environment, could be beneficial for a potential Secretary of State nominee.

The Execution

In late 2012, Morell directed two internal CIA reviews take place regarding the talking points. One review, called the Analytic Line Review, went through each piece of CIA analysis after the Benghazi attacks to determine how strong the supporting evidence was for each of the analytic assessments.⁴¹⁸ The second review was about "Lessons Learned" from the internal process of creating the talking points for HPSCI.⁴¹⁹ Morell wanted to send these two internal reviews to Congress.⁴²⁰

Morell sent only the Analytic Line Review to Congress, which was completed in January 2013. The White House would not allow him to send the other document—containing drafts of the talking points and the process through which they were drafted—to Congress, "citing executive privilege."⁴²¹

⁴¹⁶ Morell Testimony at 205-206.

⁴¹⁷ **Error! Hyperlink reference not valid.** See, e.g., *HPSCI White Paper Talking Points for Use with the Media* at 63 (Sept. 14, 2012), <https://assets.documentcloud.org/documents/701145/white-house-e-mails-on-benghazi-talking-points.pdf>.

⁴¹⁸ Analytic Line Review, *supra* note 362.

⁴¹⁹ Lessons Learned, *supra* note 189.

⁴²⁰ Morell Testimony at 208.

⁴²¹ *Id.*

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On March 19, 2013, Robert S. Litt, General Counsel, Office of the Director of National Intelligence, testified before HPSCI.⁴²² At the hearing, Litt provided the HPSCI Members two packages of documents: one was a small package that contained each draft version of the talking points, showing which changes had been made from draft to draft; the other was a large package of roughly 100 pages that contained interagency emails regarding the drafting of the talking points. These documents were shared with the HPSCI Members, yet Litt claimed they were so sensitive that he took them back at the end of the briefing;⁴²³ Members therefore would be unable to keep the documents or make any copies.

Two months later, on May 15, 2013, however, everything changed. The White House decided to release 100 pages of emails related to the talking points.⁴²⁴ These were the same emails Litt had provided to HPSCI two months prior yet took back at the end of the hearing. In conjunction with the release, the White House asked Morell to brief the press on the evolution of the talking points. Just as he had when he accompanied Rice to the November 2012 meeting, Morell complied.⁴²⁵

Morell talked to the Committee about the White House's decision to release these emails:

Q: And so the fact that you were forbidden from sharing an assessment with Congress over the possibility of executive privilege and then all of a sudden the documents were released publicly, did that seem to you to be a pretty large turnaround?

A: So, you know, I don't remember, I simply don't remember why, you know, why the shift, right, why all of a sudden the administration decided to release these publicly. I don't remember being part of those discussions. I don't recall being part of those discussions. So I don't know why they decided all of a sudden to do it.

Q: Do you think it might have been politically beneficial for them to all of a sudden release those documents?

⁴²² Briefing—The Hon. Robert S. Litt (Benghazi Documents), *Hearing Before the H. Permanent Select Comm. on Intelligence*, 113th Cong. (2013).

⁴²³ *Id.* at 4.

⁴²⁴ Jake Tapper, *et al.*, *White House releases Benghazi e-mails*, CNN (May 16, 2013), <http://www.cnn.com/2013/05/15/politics/benghazi-emails/>.

⁴²⁵ MORELL, *supra* note 114, at 207.

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A: I think—I think—I’m speculating, now, okay, so speculating—I think that the criticism kept going up and up. The different theories about what was going on kept on expanding right, and the White House wanted to put that to rest by putting it all out there. That’s my guess.

Q: Did they put it all out there when they released those talking points?

A: Not in my view.

Q: Can you elaborate on that?

A: Sure. So 2014, mid-2014, I open the newspaper and I see Ben Rhodes’ talking points from the 15th of September, right, designed to prep Susan Rice for her Sunday shows. And I say to myself, I have not seen these things before. When I saw them in the media in mid-2014 it was the first time I ever saw them.⁴²⁶

The decision by the White House to release the talking points pertaining to HPSCI and not the talking points drafted by Rhodes had one major effect: it kept the spotlight on Morell—who became front and center of this release by briefing the press at the request of the White House—the CIA, and their role in shaping the talking points. It also kept the spotlight away from others. Morell acknowledged this in his testimony:

Q: And you said you feel that they should have been released with the package of the CIA talking points. What are the implications that they were not released with the talking points, the package, and they’re coming out a year later? What does that mean?

A: I don’t know, right, I don’t know, the counterfactual is hard to think through. I believe—I’m speculating now, okay—I believe there would have been less attention on CIA and more attention on the White House.⁴²⁷

Around the same time, Morell lobbied the White House to release video footage of the attack from the State Department compound in Benghazi. Morell, aware of the public debate over whether or not protests had oc-

⁴²⁶ *Id.* at 208-09.

⁴²⁷ *Id.* at 217.

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curred prior to attack, wanted the footage released to provide transparency to the American people so they could judge for themselves what had transpired and quell the political firestorm. After all, it was after a description of this video footage was shared with the CIA that CIA personnel began to definitively conclude no protest had occurred.⁴²⁸

In addition to Morell, James Clapper, Director, Office of the Director of National Intelligence, also wanted the surveillance tapes to be made public. The White House refused, however, and to this day, the tapes remain classified. Morell told the Committee:

Q: So you had seen the videos of the TMF, you had seen NCTC analysis of the videos. Did you want those videos to be released as well?

A: I did, I did.

Q: And was there anybody who agreed with you that those videos should be declassified and released?

A: Yes, the DNI agreed with me.

Q: The DNI. When you say DNI, you're talking about DNI Clapper?

A: Yes.

Q: Were those videos released?

A: No.

Q: Why did you want those videos released?

A: Because look, my view, not only strongly today because of all of this, but even at the time, my view is when there's—when there are questions about—when there are questions about what was done on a particular issue, particularly when there's questions of impropriety, the best thing to do is to get everything out,

⁴²⁸ Email from [Tripoli ██████████] to [Near East Division] (Sept. 18, 2012, 1:14 PM) (“I know that we all agree as time has passed the pieces are starting to unravel particularly where there was protests earlier that day—I think we can officially say now that there were none.”) (on file with CIA, REQUEST 1-002940 to REQUEST 1-002943).

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the best thing to do is to get all the information you can out. Let the American people see it all and let the American people decide.

You know, I thought the video—the NCTC analysis told the story of what actually happened that night and I thought the American people deserved to see it.

Q: And who prevented the video from being publicly released?

A: The White House—the White House never responded to the DNI and my repeated suggestions that it be released.

Q: So you were acting director of the CIA at the time?

A: Uh-huh.

Q: And Mr. Clapper was the director for national intelligence. And you two repeatedly pushed the White House to release this video?

A: Yes.

Q: And they did not.

A: Correct.

Q: And instead they released the package, so to speak, they released the package—

A: I don't remember the timing of our suggestion, right? But, yes, you're absolutely right.

Q: So they released the package and at the time they released the package they did not release [the Ben Rhodes talking points], which is—

A: The video.

Q: They did not release the video.

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A: And they did not release [the Ben Rhodes talking points].⁴²⁹

The Fallout

On April 17, 2014, the Rhodes talking points—which, in addition to the talking points provided to HPSCI and edited by Morell, were used by Rice to prepare for the Sunday talk shows—were released to Congress.⁴³⁰ Later that month, the talking points became publicized for the first time.⁴³¹

Around the time of the November 27, 2012 meeting between Rice and the three Senators, Lieberman said of Ambassador Rice:

I asked if she was briefed by the White House, the campaign, or the political operation, and she said she had seen no message points from the White House.”⁴³²

As discussed above, Rice testified she only relied on the talking points provided to HPSCI when discussing Benghazi on the talk shows.⁴³³ Rhodes, however, conceded the third bullet point in his talking points—“to show the U.S. would be resolute in bringing to justice people who harm Americans, and standing steadfast through these protests”—applied only to Libya.⁴³⁴

Morell said he first learned about Rhodes’ talking points when he opened the newspaper. Morell, an intelligence officer for over three decades,

⁴²⁹ Morell Testimony at 210-11.

⁴³⁰ Letter from Thomas B. Gibbons, Acting Ass’t Sec’y of Legislative Affairs, U.S. Dep’t of State, to Rep. Darrell Issa, Chairman, House Committee on Oversight and Gov. Reform, U.S. House of Representatives (May 20, 2013) (on file with the Committee).

⁴³¹ Press Release, Judicial Watch, Benghazi Documents Point to White House on Misleading Talking Points (Apr. 29, 2014), <http://www.judicialwatch.org/press-room/press-releases/judicial-watch-benghazi-documents-point-white-house-misleading-talking-points/>.

⁴³² Ed O’Keefe, *Susan Rice, CIA director meet with GOP critics on Libya*, WASH. POST (Nov. 27, 2012), <https://www.washingtonpost.com/blogs/2chambers/wp/2012/11/27/susan-rice-cia-director-meet-with-gop-critics-on-libya/>.

⁴³³ Krishnadev Calamur, *Susan Rice Says Benghazi Claims Were Based On Information From Intelligence*, NPR (Nov. 21, 2012), <http://www.npr.org/sections/thetwo-way/2012/11/21/165686269/susan-rice-says-benghazi-claims-were-based-on-information-from-intelligence>.

⁴³⁴ Rhodes Testimony at 78.

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also believed the talking points related to Benghazi. He told the Committee:

Q: Okay. So let me take that first statement. You thought that these were related to Benghazi. I'm just reading through it here on the first page, I don't see Benghazi listed. Why do you think that they were related to Benghazi?

A: Two reasons. One is Benghazi was what was on everyone's mind at the time. Benghazi had just happened, right, the previous Tuesday. This was the following Sunday, right, it was the kind of top-of-the-list issue. And two, the—there is a tick in here—let me find it—so the third tick under “goals,” third tick under “goals” says: “To show that we will be resolute in bringing people to harm Americans to justice.” That only happened in one place.

Q: And that was in Benghazi?

A: Yes.⁴³⁵

After learning of the existence of these talking points, Morell became bothered that Rhodes, a member of the National Security Council staff, had drafted what Morell viewed as a political document. Morell believes there should be a bright line between national security and politics, and he views the talking points drafted by Rhodes crossed that line. Morell testified:

Q: Aside from the release of these talking points and the release of the package, is there anything in, at least under the goals and the top-lines, is there anything about this document that makes you uncomfortable as a CIA officer and career analyst?

A: Yeah. So, as you know, I'm on the record on this, so the second goal, the second goal bothers me in two ways. The first way it bothers me is that it has a feeling of being political. It has a feeling of being political, right? Blame it on this, not on that, right? Just that concept of blame it on this and blame it on that, not don't blame it on that, has a feeling of being political to me.

⁴³⁵ Morell Testimony at 216-217.

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Q: Ben Rhodes worked at the White House?

A: Yes.

Q: So what's the problem if he writes something that –

A: Because Ben is on the National Security Council staff, right, and I believe, right, and there might be different views out there, but I believe, as a 33-year national security professional, that there should be a very, very sharp line between national security and politics. And I know that's not always the case, but that's what I believe, right? And I believe that that line was crossed here. That is a personal opinion, right?

The second thing, right, the second thing I don't like about that is the line, "not a broader failure of policy." The President himself is on the record as saying that he has deep regrets about Libya. We all have deep regrets about Libya. And I talked earlier about the regrets that I have about what the intelligence community should have written prior to the intervention. There are policy-makers have regrets about what we did and didn't do in Libya, right, and the loss of stability there.

And so, you know, I don't think "and not a broader failure of policy" is correct as it relates to Benghazi, as it relates to Libya. You can have a debate about the rest of the region, but as it relates to Libya and Benghazi I don't think that's right.⁴³⁶

When asked about his central role in all of these events—the meeting with Rice at the White House's request, briefing the press at the White House's request after the release of the drafts of the HPSCI talking points, and being in the dark for nearly two years about the Rhodes talking points—Morell testified:

Q: So we talked earlier about the meeting you had with Senators McCain, Graham, Ayotte. We talked about how the—at Denis McDonough's request, perhaps the President's request, we talked about how you briefed media members when the package was released. You have been beaten up for a year and you briefed media members at the request of the White House, is

⁴³⁶ *Id.* at 218-19.

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what I believe you said. Did you feel in any way used by the White House when you discovered that these talking points also existed and you were completely kept in the dark until the public found out about them?

A: Look, I wish I would have known about them, okay, I wish I would have known about them.⁴³⁷

THE FBI INVESTIGATION

Throughout the days and weeks after the attacks in Benghazi, administration officials used the pending FBI investigation as both a sword and a shield. When convenient, officials such as Rice and Carney made reference to the FBI.⁴³⁸ When inconvenient, administration officials cited the ongoing FBI investigation as the reason they could not discuss certain matters.⁴³⁹ On at least one occasion, an administration official cited the FBI investigation as evidence of a fact even though the FBI investigation had hardly begun.

It is worth noting Ahmed Abu Khatallah was arrested in June 2014.⁴⁴⁰ To date, he has still not been brought to trial. It was 23 months after his arrest that the Justice Department announced the Department would not seek the death penalty for Khatallah.⁴⁴¹ The Justice Department has, however, made certain legal filings wherein the government's theory of the case—hence its understanding of provable facts—is on public dis-

⁴³⁷ *Id.* at 222-23.

⁴³⁸ See, e.g., “*Face the Nation*” transcripts, September 16, 2012: *Libyan Pres. Magariaf, Amb. Rice and Sen. McCain*, CBS NEWS (Sept. 16, 2012), <http://www.cbsnews.com/news/face-the-nation-transcripts-september-16-2012-libyan-pres-magariaf-amb-rice-and-sen-mccain/> (“ . . . there is an investigation that the United States government will launch led by the FBI, that has begun and . . . they have already begun looking at all sorts of evidence of—of various sorts already available to them and to us.”), and Press Briefing by Press Secretary Jay Carney, Office of the Press Secretary, The White House (Sept. 18, 2012), <https://www.whitehouse.gov/the-press-office/2012/09/18/press-briefing-secretary-jay-carney-9182012> (“There is an ongoing investigation. The FBI is investigating. And that investigation will follow the facts wherever they lead.”).

⁴³⁹ See, e.g., Nuland Sept. 17 Briefing, *supra* note 326.

⁴⁴⁰ Karen DeYoung, *et al.*, *U.S. captured Benghazi suspect in secret raid*, WASH. POST (June 17, 2014).

⁴⁴¹ Spencer Hsu, *U.S. will not seek death penalty for accused ringleader in Benghazi attacks*, WASH. POST (May 10, 2016).

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play.⁴⁴² The FBI investigation that administration officials claimed would definitively answer questions that emerged in the days and weeks after the attacks is still “ongoing”—two years after a single suspect was arrested and nearly four years after Ambassador Chris Stevens, Sean Smith, Tyrone Woods, and Glen Doherty were killed.

⁴⁴² Gov’t’s Motion for Pretrial Detention at 5-9, U.S. v. Khatallah (E.D. Va July 1, 2014).