

Appendix K

ANALYSIS OF ACCOUNTABILITY REVIEW BOARD, HOUSE ARMED SERVICES COMMITTEE AND HOUSE PERMANENT SELECT INTELLIGENCE COMMITTEE REPORTS

Was the Accountability Review Board Independent and Comprehensive?

INTRODUCTION

On October 3, 2012, the Secretary of State announced the formation of a panel known as the Benghazi Accountability Review Board [ARB].¹ The five member ARB was charged with examining “the circumstances surrounding the deaths of personnel assigned in support of the U.S. Government Mission to Libya in Benghazi, Libya, on September 11, 2012.”² Federal law and State Department procedures outline the process for convening and conducting an ARB investigation—a process typically overseen by career personnel.³ Notwithstanding the processes already in place, the Secretary’s senior staff oversaw the Benghazi ARB process from start to finish. The senior staff’s participation ranged from selecting the ARB members to shaping the ARB’s outcome by editing the draft final report. The decisions to deviate from longstanding processes raise questions about the ARB’s independence, thoroughness, and therefore the fullness of their findings of accountability.

BACKGROUND

Accountability Review Boards are designed to play a critical role in ensuring the State Department learns from past incidents so as to ensure future security and safety related incidents can be prevented. According to the State Department, the “ARB process is a mechanism to foster more effective security of U.S. missions and personnel abroad by ensuring a thorough and independent review of security-related incidents.”⁴

¹ Convening of an Accountability Review Board, 77 Fed. Reg. 60741 (Oct. 4, 2012), Pub. Notice 8052.

² *Id.*

³ 22 U.S.C. § 4831 et seq. and 12 FAM 030.

⁴ *Id.*

Through its investigations and recommendations, the Board seeks to determine accountability and promote and encourage improved security.”⁵

By law, Accountability Review Boards are charged with examining five aspects of an incident, including:

1. The extent to which the incident or incidents with respect to which the Board was convened was security related;
2. Whether the security systems and security procedures at that mission were adequate;
3. Whether the security systems and security procedures were properly implemented;
4. The impact of intelligence and information availability; and
5. Such other facts and circumstances, which may be relevant to the appropriate security management of United States missions abroad.⁶

Prior to 1986, no formal mechanisms were in place to examine, review, and make recommendations after significant incidents involving State Department facilities of personnel. Following several attacks against U.S. missions in the 1980s, the State Department created an independent review panel to examine the incidents. The Advisory Panel on Overseas Security, chaired by Admiral Bobby Inman, issued its report in 1985. Concerned that the State Department did not consistently examine serious and significant incidents as did other federal agencies, the Panel recommended the “Secretary of State [be required] to convene a Board of Inquiry with powers of establishing accountability in all cases involving terrorism or security related attacks that result in significant damage and/or casualties to United States personnel or property.”⁷ The Advisory Panel’s recommendation to establish the Accountability Review Board was adopted by the State Department and later incorporated in the Omnibus Diplomatic Security and Antiterrorism Act of 1986.⁸

⁵ 12 FAM 013. Objective.

⁶ 22 U.S.C. § 4834(a).

⁷ Report of the Secretary of State’s Advisory Panel on Overseas Security, Accountability and Acceptance of Risk, 1 (1985) <http://www.fas.org/irp/threat/inman> [hereinafter Inman Report].

⁸ 22 U.S.C. § 4831 through 4835.

Since 1986, nineteen (19) ARBs have been convened to review the most significant attacks against U.S. diplomatic personnel or facilities.⁹ The findings and recommendations of each ARB investigation are in effect cumulative. Cheryl Mills, Chief of Staff and Counselor to the Secretary of State, explained to the Committee, “ARBs ... have an enduring life, meaning that the learnings that came from those ARBs should be acted on and implemented.”¹⁰ Two significant ARBs convened subsequent to 1986 were those formed in the aftermath of the August 7, 1998, dual terrorist attacks in the east African cities of Dar es Salaam, Tanzania, and Nairobi, Kenya.

Speaking on behalf of both East African ARB panels, ARB Chairman William Crowe wrote former Secretary of State Madeline Albright expressing concern about the Department’s commitment to security:¹¹

[H]ow similar the lessons were to those drawn by the Inman Commission over 14 years ago. What is most troubling is the failure of the U.S. government to take the necessary steps to prevent such tragedies through an unwillingness to give sustained priority and funding to security improvements.

We are advancing a number of recommendations that deal with the handling of terrorist threats and attacks, the review and revision of standards and procedures to improve security readiness and crisis management, the size and composition of our missions, and the need to have adequate and sustained funding for safe buildings and security programs in the future. We recognize that the Department of State and other U.S. government agencies are already making adjustments and taking measures to enhance the protection of our personnel and facilities abroad. It is clear, however, that much more needs to be done.¹²

⁹ OIG Special Review of the Accountability Review Process, ISP-I-13-44A, 10 (September 2013) (“Within the 14-year period covered by this review [1998 - 2012], a significant number of security-related incidents, more than 222 in all, were not subject to [ARB] consideration.”), found at <https://oig.state.gov/system/files/214907.pdf>.

¹⁰ Testimony of Cheryl D. Mills, Chief of Staff, U.S. Dep’t of State, Tr. at 269 (Sep. 3, 2015) [hereinafter Mills Testimony] (on file with the Committee) (“It was my impression that ARBs are supposed to have an enduring life, meaning that the learnings that came from those ARBs should be acted on and implemented”).

¹¹ Letter from Admiral William J. Crowe, to Madeline Albright, Sec’y of State, U.S. Dep’t of State (Jan. 8, 1999) (on file with the Committee).

¹² *Id.*

Two recommendations identified by the East African ARBs were directed specifically to the Secretary of State:

Recommendation #4: The Secretary of State should personally review the security situation of embassy chanceries and other official premises, closing those which are highly vulnerable and threatened but for which adequate security enhancements cannot be provided, and seek new secure premises for permanent use, or temporary occupancy, pending construction of new buildings.¹³

Recommendation #13: First and foremost, the Secretary of State should take a personal and active role in carrying out the responsibility of ensuring the security of U.S. diplomatic personnel abroad. It is essential to convey to the entire Department that security is one of the highest priorities. In the process, the Secretary should reexamine the present organizational structure with the objective of clarifying responsibilities, encouraging better coordination, and assuring that a single high-ranking officer is accountable for all security matters and has the authority necessary to coordinate on the Secretary's behalf such activities within the Department of State and with all foreign affairs USG agencies.¹⁴

BENGHAZI ARB

Decision to Convene an Accountability Review Board Panel

The Secretary convened the Benghazi ARB on the recommendation of the State Department's permanent coordinating committee [PCC], a seven member committee with convening authority.¹⁵ State Department procedures provide "the ARB/PCC will, as quickly as possible after an incident occurs, review the available facts and recommend to the Secretary to convene or not convene a board."¹⁶ The Managing Director for the State Department's Office of Management Policy, Rightsizing and Innovation [M/PRI] and the Chair of the ARB/PCC, explained:

¹³ Report to the Congress on Actions Taken by the Department of State In Response to the Program Recommendations of the Accountability Review Boards on the Embassy Bombings in Nairobi and Dar es Salaam, 14 (April 1999), http://fas.org/irp/threat/arb/accountability_report.html.

¹⁴ *Id.* at 29-30.

¹⁵ 12 FAM 032.

¹⁶ 12 FAM 032.1.

[W]e put together . . . some facts as we know it, about the incident. We tell our director. He contacts the legal adviser, who is not a voting member but is there to provide advice to the PCC, and Diplomatic Security and the regional bureau. And we say hey, this looks to us like it meets the criteria, I'm going to call the PCC together. And it's the chairman's right to assemble this group.¹⁷

After the attacks on the U.S. diplomatic facility on September 11, 2012, the ARB/PCC did not meet in person but discussed the situation by email.¹⁸ The Managing Director of M/PRI explained:

A virtual meeting, we do that on incidents that we think do not need the PCC to meet. That is our standard operating procedure. But since this was well known by everyone in the Department, we felt comfortable in doing it electronically.¹⁹

The PCC agreed an ARB should be convened and made the recommendation to the Secretary on September 19, 2012.²⁰ In making the recommendation, the PCC noted:

Should you agree to this recommendation, we will prepare the appropriate appointment letters for the Chair and proposed members of the ARB, the letters to the Congress and notifications to the public via the Federal Register announcing your decision.²¹

¹⁷ Testimony of the Managing Director, Office of Management Policy, Rightsizing and Innovation, U.S. Dep't of State, Tr. at 20 (Mar. 4, 2016) [hereinafter M/PRI Managing Director Testimony] (on file with the Committee).

¹⁸ Email from the M/PRI Managing Director, U.S. Dep't of State to Eric Boswell, Ass't Sec'y of State, Bureau of Diplomatic Security, U.S. Dep't of State, Beth Jones, Acting Ass't Sec'y of State, U.S. Dep't of State, *et. al* (Sept. 19, 2012) (on file with the Committee, SCB 0049611) ("The Under Secretary from Management asked M/PRI to get the ARB/PCC together today to provide a recommendation to the Secretary as to whether to convene an ARB in response to the September 11, 2012 attack in Benghazi, Libya. Due to conflicting schedules we are conducting the vote via email.").

¹⁹ M/PRI Managing Director Testimony at 24.

²⁰ Memorandum from M/PRI Managing Director, U.S. Dep't of State, to the Sec'y of State, (Sept. 19, 2012) (on file with the Committee, C05456350) ("The Permanent Coordinating Committee (PCC) on Accountability Review Boards (ARB) was asked on September 19, 2012 to examine the recent incident, and has recommended that you convene an ARB to examine this incident.").

²¹ *Id.*

The Secretary approved the PCC's recommendation to convene the ARB the same day.²²

Selection of the ARB Panel

"The law requires four nominees [to be selected] by the Secretary of State and one nominee by now the Director of National Intelligence."²³ State Department procedures outline the process for selecting State Department representatives to the Board once a decision to convene an ARB has been made. The procedures specify "[i]f the ARB PCC recommends that the Secretary convene a board, it will forward a list of potential board members to the Secretary for approval." However, the Benghazi ARB/PCC did not prepare a list of prospective board members, nor did it share a list of candidates with the Secretary as required by State Department procedures.²⁴ The Managing Director who also served as the ARB/PCC Chair, explained to the Committee:

Q: Did you put together a list of names to recommend to be members of the ARB?

A: I don't believe I did.

Q: Okay. Why not?

A: Well, because they went for option two and did more of the celebrity approach as I would say. As I mentioned earlier, they got Ambassador Pickering, who I consider to be in that category as Ambassador Crowe, for when he was chosen for Nairobi Dar.²⁵

The PCC did not prepare or send a list of prospective members to the Secretary because the senior staff were already in the process of identifying panelists to serve.

As Mills told the Committee, "I worked with Under Secretary Kennedy and Deputy Secretary William Burns in identifying who might be talent that could actually serve in this role."²⁶ Talent would later be defined as

²² *Id.*

²³ Testimony of Patrick F. Kennedy, Under Sec'y for Management, U.S. Dep't of State, Tr. at 278 (Feb. 3, 2016) [hereinafter Kennedy Testimony] (on file with the Committee).

²⁴ M/PRI Managing Director Testimony at 29 (A list of potential board members was not forwarded to the Secretary for approval).

²⁵ *Id.* at 27.

²⁶ Mills Testimony at 137.

individuals who would understand the Secretary's narrative of expeditionary diplomacy. On September 15, 2012, William Burns, Deputy Secretary of State, recommended Ambassador Pickering to the ARB.

In an email to Mills, Burns wrote:

On arb, I'd suggest Pickering in addition to Armitage. They're both very experienced and fair minded and understand entirely demands of expeditionary diplomacy.²⁷

On September 18, 2012, Burns informed Mills and Patrick Kennedy, Under Secretary of State for Management, that "Tom Pickering is willing to chair He liked very much the idea of including Mike Mullen."²⁸ Admiral Michael Mullen retired as Chairman of the Joint Chiefs of Staff on November 1, 2011.²⁹ At the time they served on the Benghazi ARB, both Mullen and Pickering were also members of the Secretary's Foreign Affairs Policy Advisory Board.

The Foreign Affairs Policy Board was launched in December 2011 to provide the Secretary of State, the Deputy Secretaries of State, and the Director of Policy Planning with independent, informed advice and opinion concerning matters of U.S. foreign policy. The Board serves in a solely advisory capacity, with an agenda shaped by the questions and concerns of the Secretary. Its discussions focus on assessing global threats and opportunities; identifying trends that implicate core national security interests; providing recommendations with respect to tools and capacities of the civilian foreign affairs agencies; defining priorities and strategic frameworks for U.S. foreign policy; and performing any other research and analysis of topics raised by the Secretary of State, the Deputy Secretaries, and the Director of Policy Planning.³⁰

²⁷ Email from William Burns, Deputy Sec'y of State, U.S. Dep't of State, to Cheryl D. Mills, Chief of Staff, U.S. Dep't of State (Sep. 15, 2012, 1:09 PM) (on file with the Committee, SCB0057846).

²⁸ Email from Jacob J. Sullivan, Deputy Chief of Staff and Dir. of Policy Planning, U.S. Dep't of State, to William Burns, Deputy Sec'y of State, U.S. Dep't of State (Sept. 18, 2012, 9:35 AM) (on file with the Committee, SCB0057775).

²⁹ *Biography of Admiral Mike Mullen*, U.S. Navy (Jul. 12, 2013), <http://www.navy.mil/navydata/bios/navybio.asp?bioID=11>.

³⁰ *Foreign Affairs Policy Board*, U.S. Dep't of State, <http://www.state.gov/s/p/fapb/>.

The Foreign Affairs Policy Advisory Board's formation occurred contemporaneously with the decision to extend the operations in Benghazi as well as the restart of operations in Tripoli.

Mills explained her communications with ARB panelists Mullen and Catherine Bertini:

I reached out to, I believe Admiral Mullen myself And, I reached out to, I believe, Cathy Bertini, who had been recommended to us by the Under Secretary of Management.³¹

Kennedy described his role in the selection of the ARB panel members to the Committee:

I had met Catherine Bertini when I was one of the alternate representatives to the United Nations and she was at the United Nations as she was I think at that point the senior American serving in the United Nations Headquarters Secretariat. So I worked with her on a professional basis because I was representing the United States and she was a senior official within the United Nations. I did not recommend her for the position.

I provided one name, Richard Shinnick. That was the only name that I was solicited and asked to provide a suggestion for, in effect, a type of expertise.³²

Kennedy explained further:

A: As I said earlier, I was asked only to make one recommendation name somebody who was not in the State Department but knew a lot about Secretary of excuse me Department of State construction activities. So I made one recommendation and I made no recommendations for any of the other four.

I was advised, because I also head the unit that publishes the names in the Federal Register, I was advised that the selections were Pickering, Mullen, Turner, I think it was, Bertini and Shinnick.

Q: And so did Cheryl Mills ask you for that, or did Jake Sullivan? Or who asked you for--

³¹ Mills Testimony at 138.

³² Kennedy Testimony at 265.

A: Cheryl Mills asked me for the name of someone who knew about State Department facilities management and construction.

Q: And did she share with you who the other members who she was thinking about

A: No.

Q: appointing?

A: No. I was informed who the selections were.³³

On September 28, 2012, Mills shared with Kennedy, Stephen Mull, the Executive Secretariat, Uzra Zeya, the ARB executive secretary, and Burns about Catherine Bertini agreement to participate as an ARB member.³⁴ Within hours of Bertini's acceptance, Kennedy shared with Mills and Mull the additional news: "Dick Shinnick has accepted as the fifth member of the panel."³⁵

The Intelligence Community recommended Hugh Turner, a former CIA deputy director, to serve as the intelligence Community's representative.³⁶ Burns spoke early on with Michel Morrell, Deputy Director of the CIA, and Robert Cardillo, Deputy Director of ODNI about their choice of representatives on the ARB panel—reporting back to the Mills and Kennedy "they will coordinate on a nominee."³⁷

As panelists confirmed their participation on the ARB, Mills shared the information with the Secretary. For example, within minutes after shar-

³³ *Id.* at 278.

³⁴ Email from Cheryl Mills, Chief of Staff and Counselor, U.S. Dep't of State, to Stephen Mull, Executive Secretary, Office of the Secretariat, U.S. Dep't of State (Sept. 28, 2012, 2:37 PM) (on file with the Committee, SCB0057607) ("Catherine Bertini agreed to serve on the ARB panel today"). *See also* Email from Cheryl Mills, Chief of Staff and Counselor, U.S. Dep't of State, to Catherine Bertini, Accountability Review Board Member (Sept. 28, 2012, 2:28AM) (on file with the Committee, SCB0054582) ("[I]f you could tomorrow, I would welcome connecting with you." From Bertini "Thank you for reaching out to me. I am pleased to say Yes to your request and I very much look forward to contributing to the work of the panel on this critically important issue").

³⁵ *Id.* ("Dick Shinnick has accepted as the fifth member of the Panel").

³⁶ Mills Testimony at 138.

³⁷ Email from Jacob J. Sullivan, Deputy Chief of Staff and Dir. of Policy Planning, U.S. Dep't of State, to William Burns, Deputy Sec'y of State, U.S. Dep't of State (Sept. 18, 2012, 9:35 AM) (on file with the Committee, SCB0057775) (containing exchange from William Burns to Cheryl Mills and Patrick Kennedy).

ing the news about Catherine Bertini with the senior staff, Mills also relayed the news to the Secretary.³⁸ Mills explained to the Committee:

We certainly apprised her that it looked like we had a team of five that represented a balance of those who understood diplomacy, who understand national security, who understood what it meant to operate in environments that were insecure, and that we thought the balance of who we had identified met that criteria.³⁹

ARB Executive Secretary

The senior staff's involvement in the ARB process also extended to selecting the Executive Secretary to the ARB. According to the State Department's regulations, the Executive Secretary to the ARB is considered to be part of the ARB staff and "serves to coordinate and facilitate the work of that Board."⁴⁰ On September 25, 2012, the Managing Director wrote Mull and his Deputy:

I would appreciate knowing how this ARB is going to work since it is not going in the normal way. Can we talk this morning or tomorrow morning about the roles and responsibilities?⁴¹

The Managing Director explained to the Committee: "I was a little bit concerned about being behind the tide."⁴² "I was hungry for information myself."⁴³ She described her normal responsibilities with regard to selecting the Executive Secretary to the ARB:

A: [W]hat I normally do is go to our H.R. Bureau and see who is available at the senior ranks to take on a function such as this.

Q: And what does the Executive Secretary to the ARB do?

A: They arrange the meetings. They make sure that the board has access to the Department for interviews and, you know, because usually these people are removed from the Department, you

³⁸ Email from Cheryl Mills, Chief of Staff and Counselor, U.S. Dep't of State, to H (Sept. 28, 2012, 2:46 PM) (Subject: FYI) (on file with the Committee, SCB0045509).

³⁹ Mills Testimony at 141.

⁴⁰ 12 FAM 032.3b.

⁴¹ Email from Managing Director, Office of Management Policy, Rightsizing and Innovation to Stephen Mull, Exec. Sec'y, Office of the Secretariat, U.S. Dep't of State (Sept. 25, 2012, 7:58 AM) (on file with the Committee, SCB0093148).

⁴² M/PRI Managing Director Testimony at 32.

⁴³ *Id.* at 33.

know, they're retirees, they're unfamiliar with the Department's ways. So in sitting in on the interviews, the exec sec would know who they should contact next, who this leads them to in a bureau. So they act, as I call it, the bridge from the ARB to the building.

Q: And in the 10 prior ARBs that you had been involved in, as the ARB officer, had you made the selection of the executive secretary?

A: I wouldn't say made the selection. I nominated people in the past, sure.

Q: And had they been selected then?

A: Yes, normally.⁴⁴

On September 21, 2012, Mull informed Burns about Mills' decision to select Burns' Chief of Staff for the position of Executive Secretary to the ARB. He wrote to Burns:

Hi Bill, Cheryl [Mills] asked me to talk to Uzra about the possibility of her serving as Exec Sec for the ARB through the end of November. She seemed very reluctant, but Cheryl agreed that Uzra had all the right qualities. Uzra asked to hold off giving a decision until she talked to you, so she'll be seeking you out on this today.

Steve⁴⁵

Mills recounted a different version of events to the Committee:

She [Uzra] was recommended by Deputy Secretary Burns. She had been his chief of staff. She also, I thought was a good recommendation in the sense that Deputy Secretary Burns is well-respected and well-regarded in the building. He's the most senior foreign service officer. And she, in being his chief of staff,

⁴⁴ *Id.*

⁴⁵ Email from Stephen Mull, Exec. Sec'y, Office of the Secretariat, U.S. Dep't of State, to William Burns, Deputy Sec'y, U.S. Dep't of State (Sept. 21, 2012, 8:45 AM) (Subject: re: Uzra/ARB) (on file with the Committee, SCB0057773).

when she reached out to people, when she did that, people responded.⁴⁶

On September 22, 2012, Burns conveyed Uzra Zeya's decision to serve as Executive Secretary to Mills stating:

Hi,

Uzra has agreed to serve as Exec Secretary of ARB. She'll call Steve to let him know.

We talked at length about this, and she is comfortable with decision, for all the right reasons. She'll do a great job.⁴⁷

Documents Reviewed By the ARB

The ARB panel's primary sources of information were documents and witness interviews.⁴⁸ Documents were collected from State Department personnel with "information relevant to the Board's examination of these incidents."⁴⁹ Even before the ARB was convened, the Bureau of Legislative Affairs, with oversight from Mills, put in place a system to transmit, store, and review documents relevant to the myriad requests for information, including Congress, Freedom of Information [FOIA], and the ARB.⁵⁰ The Deputy Director, Office of Maghreb Affairs, Bureau of Near Eastern Affairs, described the process for submitting documents:

A: There was a request to produce documents ... I think that we were given, you know, kind of the general search terms to look for and scan in our computer and files.

⁴⁶ Mills Testimony at 194.

⁴⁷ Email from William Burns, Deputy Sec'y, U.S. Dep't of State, to Cheryl D. Mills, Chief of Staff and Counselor, U.S. Dep't of State (Sept. 22, 2012, 1:37 PM) (on file with the Committee, SCB0057772).

⁴⁸ Testimony of Ambassador Thomas Pickering, Chairman, Benghazi Accountability Review Board, before the H. Comm. on Oversight and Gov't Reform, Tr. at 52 (Sept. 19, 2013) [hereinafter Pickering Testimony] (on file with the Committee).

⁴⁹ Patrick F. Kennedy, Under Sec'y of State for Mgmt., *Department Notice, Convening of Accountability Review Board to Examine the Circumstances Surrounding the Deaths in Benghazi, Libya on September 11, 2012*. U.S. Dep't of State (on file with the Committee, SCB0050689).

⁵⁰ Testimony of the Deputy Director, Office of Maghreb Affairs, Bureau of Near Eastern Affairs, U.S. Dep't of State, Tr. at 112 (Dec. 17, 2015) [hereinafter NEA Deputy Director Testimony] (on file with the Committee). *See also* Mills Testimony at 150 ("I had been managing, as you know, our response effort and collaborating with our leadership team on Benghazi in particular.").

Q: So you eventually, did you produce a PST file, or did you produce hard copies in response to that request?

A: We produced hardcopies in response to that request.

Q: So you physically would have identified the documents that were responsive, printed them out from your computer, and then handed that stack over to somebody?

A: That's what I recall.⁵¹

The Deputy Director further elaborated on her role and the role of other individuals within the State Department in reviewing and identifying relevant documents:

A: I received a call from our Principal Deputy Assistant Secretary [Elizabeth Dibble] in NEA. It was Columbus Day weekend. I recall it because I changed my plans for the weekend very quickly as a result of her request. And she noted that I believe it was a group in H, was the Legislative Affairs Bureau, was reviewing all of the—was preparing documents to be provided for, I thought it was the ARB, and then whatever subsequent use, presumably congressional review or whatever the case may be. But I wasn't sure. They were going through the documents for release, and she said could I join the group the following day and look at, you know, kind of looking whether we needed to redact any sensitive information. That was my role to help in the release of those documents, and she indicated that night, you know, depending on how big of a task it is, could you help me setting up a work flow like other officers from NEA who could be involved in, you know, going through and looking for sensitive information that we might recommend for redaction.

Q: And you said, you recall that it was Columbus Day weekend?

A: Or close to Columbus Day weekend, because I had plans [REDACTED] that I cancelled.

* * *

⁵¹ NEA Deputy Director Testimony at 105.

It had started before that weekend, but DAS Dibble learned of it, or she realized there wasn't an NEA participant on that Saturday, so she called me and I went in the following morning, yeah.

Q: And did you go any other days other than that Saturday morning? Were you also there on Sunday? Did you continue on Monday?

A: I went in on Sunday and Monday and then through that first week, and then I helped develop a rotation schedule for other colleagues from NEA to kind of make sure we had an NEA colleague. There were colleagues from DS and IRM. You know, other subject matter experts were in the room as well, kind of looking and looking at documents for I can't recall how long that lasted, but I helped develop the work schedule.

* * *

I was primarily focused myself on redacting names and titles of individuals who were private citizens, either Libyan, American, U.N. staff, other internationals who were in Libya doing work, because they were talking to American diplomats. That's a sensitive thing that could endanger people if that's generally known in some circumstances. So that's primarily what I was recommending redacting. And then I also recommended redacting the names of junior people who were drafting emails or cables as well.⁵²

Mills involvement in the process was described by Charlene Lamb, Deputy Assistant Secretary, Bureau of Diplomatic Security. Lamb testified:

She [Mills]—it was my understanding, she was responsible for getting all of the documents that were being requested in—and compiled in, you know, organizing the documents so they made sense, and making sure nothing got left out.

Because Mills is not a security expert, she had a lot of questions about security policies, procedures, you know, what was routine, what was done under exigent circumstances. So there were several DS [Diplomatic Security] people there, not just myself, that

⁵² *Id.* at 101.

were working to help bring all these documents together and to answer questions that she had.⁵³

Mills told the Committee certain documents were set aside for her specific review. As she told the Committee:

The documents I would see were documents where the team had looked through them and thought that there was a subset that I should see. Those typically meant that they were sharing new information, new facts, or other information that they thought was important for the senior leadership to know.⁵⁴

* * *

I acknowledge I was pushing pretty hard for them to get them out the door because our goal was to try to do that.

Mills explained the ARB's access to these documents:

They [ARB] were looking at records already being assembled in response to a request that had already been posed to our department by Members of Congress, as well as they had their own individual interviews that they were conducting where they might ask for records or materials that they felt would be relevant that they came to have knowledge of.

* * *

Separate and apart from that, the ARB could both reach to the Administration Bureau to be able to access any of those records that were being collected, which would have been records regarding anything related to the night of September 11 and 12. And, they could also initiate their own requests for documents.

* * *

They [the Administration or "A" Bureau] were the actual repository and kept copies of everything and they would only make

⁵³ Testimony of Charlene Lamb, Deputy Ass't Sec'y of State for Diplomatic Security, Int'l Programs, Tr. at 108 (Jan. 7, 2016) [hereinafter Lamb Testimony] (on file with the Committee).

⁵⁴ Mills Testimony at 182.

copies to allow other individuals to review them as opposed to disturb their copy set.

* * *

Their [ARB] mechanisms were threefold, if I really think about it. One, obviously, they could reach out to the A Bureau and say, we want to look at all of them or we want to look at documents of this nature. Two, they could make requests. Three, they would ask, as our reviews were going on of records, were there any records that were relevant that they should be either looking at or that they would be at least apprised of. And so that was another mechanism that they had. And so those could be collected to them if that's what they reached to ask for. They might have asked for that on a particular subject matter; has anybody seen anything on this topic or that topic?

But those were the three ways that they could get it, with each of those being avenues for them to be able to ascertain whatever information they believed they needed, because people didn't have visibility into how they were making those judgments.⁵⁵

According to the State Department, the ARB reviewed more than 7,000 documents numbering thousands of pages as part of its investigation.⁵⁶ Excluded from the ARB panel's review were documents and emails sent to or by the Secretary or her senior staff. As the Secretary told the Committee:

I don't know what they [the ARB] had access to. I know that, during the time I was at the State Department, there was certainly a great effort to respond to your predecessor, Congressman Issa's inquiries. And many thousands of pages of information was conveyed to the Congress.⁵⁷

The ARBs access to information from the Secretary and her senior staff was extremely limited. The nearly 3,000 pages of emails from the Secretary were made available only to the Committee with productions occur-

⁵⁵ Mills Testimony at 142-147.

⁵⁶ Letter from Thomas B. Gibbons, Acting Ass't Sec'y, Bureau of Leg. Affairs, U.S. Dep't of State, to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Aug. 23, 2013) (on file with the Committee).

⁵⁷ Testimony of Hillary R. Clinton, Sec'y of State, U.S. Dep't of State, Tr. at 321-322 (Oct. 22, 2015) [hereinafter Clinton Testimony] (on file with the Committee).

ring on February 13, 2015, June 25, 2015, and September 25, 2015—well after the conclusion of the Benghazi ARB. Furthermore, it is unclear whether the ARB had access to the more than 60,000 pages of senior leader records produced separately to the Committee during its investigation.⁵⁸ This was further corroborated by Jacob Sullivan, Deputy Chief of Staff and Director of Policy Planning, who told the Committee:

Q: Did you provide any documents to the ARB?

A: I don't think they asked me for any documents, so I don't think I provided any.⁵⁹

The State Department informed the Committee, Department records for senior officials are stored separately.⁶⁰ This includes a separate email system, which until February 2015 did not have archiving capability.⁶¹ Unless separate searches were conducted by State Department personnel on these systems and personnel saved their emails, senior leader emails and records would not have been accessible by the ARB panel.⁶²

Subpoena for ARB documents

Like previous Congresses, the Committee sought access to the underlying documents reviewed by the ARB to better understand the ARB panel's review and findings. The documents sought are required by law to be physically separated and stored by the State Department and should be easily accessible by the State Department.⁶³ Congress issued its first subpoena for documents reviewed by the ARB on August 1, 2013.⁶⁴ No documents were produced. On January 28, 2015, the Committee reissued the subpoena for ARB documents.⁶⁵

⁵⁸ This number excludes the approximately 4,300 pages of documents produced to the Committee.

⁵⁹ Sullivan Testimony at 82.

⁶⁰ April 10, 2015 meeting with the Director of the Office of Executive Secretariat.

⁶¹ *Id.*

⁶² *Id.*

⁶³ 22 U.S.C. 4833(c) (the statute contemplates that ARB records will become publically available following the conclusion of its work).

⁶⁴ August 1, 2013 subpoena to John F. Kerry, Secretary of State seeking all documents provided by the Department of State to the Accountability Review Board convened to examine the facts and circumstances surrounding the September 11-12, 2012 attacks on U.S. facilities in Benghazi, Libya and all documents and communications referring or relating to ARB interviews or meetings, including but not limited to notes or summaries prepared during and after any ARB interview or meeting.

⁶⁵ See January 28, 2015 subpoena issued to John F. Kerry seeking:

Almost two and a half years after Congress issued its first subpoena in 2013, the State Department for the first time produced an ARB record—a four page interview summary for a witness who was scheduled to appear before the Committee the following day.⁶⁶ The State Department maintained this posture over the next several weeks with the production of one or two ARB interview summaries, totaling 38 pages, each provided less than a week before the Committee’s interviews.⁶⁷ It was not until April 15, 2015, the State Department produced a larger trove of ARB documents consisting of 1,758 pages. On April 24, 2015, the State Department produced another 2,523 pages of documents. Accompanying the April 24, 2015, production was a letter stating:

[t]his production, together with our production on April 15, 2015, constitutes our delivery of ARB documents that were physically set aside following the ARB’s completion and archived. In addition to these materials, the Department searched for and included in this production, as responsive to your subpoena’s second a request, a small number of interview summaries that had not been stored within these physically set aside files.⁶⁸

Although the State Department produced 4,319 pages to the Committee, previous statements by the State Department that the ARB reviewed “7,000 State Department documents numbering thousands of pages” suggest the Committee does not have all the documents reviewed by the ARB.⁶⁹ Moreover, the State Department by its own admission withheld a number of documents from the Committee. On April 24, 2015, the State Department informed the Committee “a small number of documents”

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1. “all documents and communications produced by the Department of State to the Accountability Review Board (“ARB” or the ARB) convened to examine the facts and circumstances surrounding the September 11-12, 2012 attacks on U.S. facilities in Benghazi Libya.
 2. All documents and communications referring or relating to the ARB interviews or meetings, including but not limited to, notes or summaries prepared during and after any ARB interview or meeting.”

⁶⁶ Letter to Trey Gowdy, Chairman, H. Select Comm. on Benghazi, from Julia E. Frifield, Ass’t Sec’y of State for Leg. Affairs, U.S. Dep’t of State (Feb. 13, 2015) (on file with the Committee).

⁶⁷ H. Select Comm. on Benghazi Internal Working Document (on file with the Committee).

⁶⁸ Letter to Trey Gowdy, Chairman, H. Select Comm. on Benghazi, from Julia E. Frifield, Ass’t Sec’y of State for Leg. Affairs, U.S. Dep’t of State, (Apr. 24, 2015) (on file with the Committee).

⁶⁹ Letter from Thomas B. Gibbons, Acting Ass’t Sec’y, Leg. Affairs, U.S. Dep’t of State, to Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Aug. 23, 2013).

were being withheld because of “executive branch confidentiality interests.”⁷⁰ The State Department’s basis for withholding the documents was a concocted administrative privilege—one made up entirely by the Administration and not recognized by the Constitution.⁷¹ The State Department has yet to explain the discrepancy.

Witness Interviews

The ARB interviewed more than 100 people.⁷² However, neither the Secretary, nor her inner circle, were interviewed by the ARB. Mullen offered this explanation:

Q: And, there was no interview of Deputy Secretary Nides or Secretary Clinton?

A: There was not.

Q: And was there any discussion as to at what level the interviews would not take place at? For example, was there a common – excuse me, I’ll start over. Was there a decision by the board not to interview Mr. Nides?

A: There was early on a discussion, and certainly I had a discussion, private discussion with Ambassador Pickering about at least my expectation, and I would say this was in the first couple weeks, that this certainly could present the requirement that we would have to interview everybody up the chain of command, including the Secretary, and he agreed with that. So the two of us had sort of set that premise in terms of obviously depending on what we learned over time, and our requirement to both affix both responsibility and accountability per se were, again, based on the facts as we understood them. So there was a consensus, and it was a universal consensus over time that we did the inter-

⁷⁰ *Id.*

⁷¹ Letter to Trey Gowdy, Chairman, H. Select Comm. on Benghazi, from Julia E. Frifield, Ass’t Sec’y of State for Leg. Affairs, U.S. Dep’t of State, Apr. 24, 2015 (on file with the Committee).

⁷² Press Release, U.S. Dep’t of State, Briefing on the Accountability Review Board Report (Dec. 19, 2012), <http://www.state.gov/r/pa/prs/ps/2012/12/202282.htm> (“We interviewed more than a hundred people, reviewed thousands of documents, and watched hours of video. We spoke with people who were on the scene in Benghazi that night, who were in Tripoli, who were in Washington. We talked to military and intelligence officials, including to many State Department personnel, and to experts who do not work for the United States Government.”).

views we needed to do and that we didn't do the interviews we didn't do, which would have included the ones obviously that we didn't do, which were Nides and Burns and Secretary.

* * *

Q: So it's fair to say the board decided it didn't need to interview Cheryl Mills or the Secretary about events that night?

A: No. And I think to your point about Ms. Mills and the Secretary, it was really through the, both the discussions with so many people that we interviewed and the affirmation and the validation of what happened that evening, including the conversation the Secretary had with Mr. Hicks, that we just didn't, we didn't see any need to clarify that, we knew that had happened. We were comfortable in the case of Mr. Hicks that he was walking us through what had happened. So there just wasn't any further need to go anywhere else.⁷³

Senior Staff Communications with the ARB Members

In addition to selecting members of the ARB and its staff, identifying and reviewing documents, Mills played a peculiar role during the ARB's investigation. Within days of the ARB's start, Mullen reached out to Mills to express concerns about Lamb's testimony before Congress.⁷⁴ Mullen explained his reasons for contacting Mills:

Shortly after we interviewed Ms. Lamb, I initiated a call to Ms. Mills to give her—what I wanted to give her was a head's up because at this point she was on the list to come over here to testify, and I was—so from a department representation standpoint and as someone that led a department, I always focused on certainly trying to make sure the best witnesses were going to appear before the department, and my reaction at that point in time with Ms. Lamb at the interview was—and it was a pretty unstable time. It was the beginning, there was a lot of unknowns. To the best of my knowledge, she hadn't appeared either ever or many times certainly. So essentially I gave Ms. Mills a head's up that I thought that her appearance could be a very difficult ap-

⁷³ Testimony of Admiral Michael Mullen, Vice Chairman, Accountability Review Board, before the House Oversight and Government Reform Committee, Tr. at 26-28 (Jun. 19, 2013) [hereinafter Mullen Testimony] (on file with the Committee).

⁷⁴ Mills Testimony at 184.

pearance for the State Department, and that was—about that was the extent of the conversation.⁷⁵

Mills did not recall the conversation about Lamb, telling the Committee:

A: I don't recall it [the conversation with Admiral Mullen], but I would have no reason to believe that he wouldn't be accurate about that.

Q: Okay. He related that he told you that Charlene Lamb was not going to be a good witness for the State Department. Does that ring a bell with you?

A: No, because if I was aware of that, I might have been thoughtful about that in all the ways of which—how we could best communicate information. But I don't dispute that. I'm sure that if that's his memory that he would be accurately reflecting what he recalls.⁷⁶

Weeks later, Mullen reached out again to Mills and the Secretary to discuss the ARB's work to date. Mullen explained:

So shortly after we met, first couple weeks there were some there were some things that we could see early that we thought it was important that the Secretary of State know about, not so much in terms of what had happened, but steps that we thought she might want to take initially as opposed to wait weeks or months to see the results of the board. So we put together a list of—and I honestly can't remember the number, but somewhere between 10 and 20 recommendations for her to take a look at immediately. So, for example, one of them clearly, because there was a fire issue, was consider getting breathing apparatuses out to high threat posts immediately. So there were things like that, and we sent that list up, and to the best of my knowledge, that's something that Ambassador Pickering either handed, transmitted to Ms. Mills and the Secretary.

At the end of the ARB we met with Secretary Clinton for about 2 hours to give her a briefing on what we had come across, and at least at that point, and we hadn't finished or signed it out, but at

⁷⁵ *Id.* at 23-24.

⁷⁶ *Id.* at 173.

least the major recommendations that we had concluded up to that point. The only other State Department employee that was in the room with Secretary Clinton then was Ms. Mills.⁷⁷

Mills confirmed the meeting with Pickering and Mullen:

In the course of their investigation, we had one briefing where they stepped through where they were in their process—and, by that, the other person who was briefed was the Secretary – that they stepped through where they were in their process and that they anticipated being on time and what their own assessments were, but that they had not come to conclusions yet about accountability. So this was basically a briefing before they had stepped through their accountability elements.⁷⁸

Editing the Report

Mills also described Pickering and Mullen’s outreach as they were drafting their final report:

A: And then, as they were preparing their report, they reached out to say, “We have a draft of the report.” They shared that draft with me. I shared back my observations of instances where there were issues or facts that I thought were relevant for their consideration. They took them, or they didn’t. Ultimately, they had to make that judgement.

Q: So you reviewed the draft before it went public, before it was released?

A: Well, the draft before it went to—ultimately, it goes to the Secretary –

Q: Right.

A: —and then it actually gets—we made a determination to release it. ARBs are not always released publicly, but the Secretary had said she wanted to release this one publicly.

Q: And can you tell me the extent of edits that you and/or the Secretary made to the report?

⁷⁷ Mullen Testimony at 25.

⁷⁸ Mills Testimony at 187-188.

A: The Secretary didn't. And the Secretary did not, at least to my knowledge, review a draft.

Q: So Secretary Clinton didn't review it; you just reviewed it.

A: I reviewed the draft. That's correct.

Q: All right. And were there—you said there was some suggestions. So what were the edits, what were the changes that you asked the ARB to make?

A: I can't tell you that were the different issues now, because that's obviously too long away. But basically what I stepped through was, if there was information that we had that didn't seem to be reflected there, I would flag that. If there were other reactions or observations I had, I would share that. And that's what I would have done.

Q: So I just want to be clear. First, you reviewed it. Second, you said there are changes that need to be made, and you gave those changes to the ARB. Is that right?

A: No.

Q: Okay. Well, then tell me what's right.

A: Okay. I reviewed it, and I identified areas where I either saw that there was, from my perspective, based on where I was sitting, information that wasn't present, information that might be different, or other factors that I thought were relevant for their consideration in deciding what went in the document. And they then made their own judgement.

Q: Well, that sounds like changes.

A: I certainly—

Q: So you suggested changes?

A: I certainly made recommendations for places where I thought there were inaccuracies or misstatements or other information that might not be fully reflective of what the information was that was there. I certainly made those, yes.

A: You reviewed it, and you recommended changes. It was up to them whether they implemented the changes or included them in the –

A: Yes. Recommend changes or flagged areas where I thought there might be inaccuracies.

Q: Change this, delete that, that kind of—that kind of—

A: No.

Q: I just want to be clear.

A: Oh. Thank you.

Q: All right?

A: I appreciate that.

Q: You recommended changes. Then what happened? Did they do it or not?

A: So some they took probably, and some they didn't. My impression is that—

Q: Why is there a “probably” there? I mean, the final report—you didn't look at the final report? The Secretary looked at it.

A: I did look at the final report, but what I didn't have is an errata sheet and say, “Oh, that's not there. Oh, this is there.” I didn't do that, so that's why I don't have a frame of reference.⁷⁹

Mills' peculiar role in the ARB investigation extended beyond the selection of members to approving senior State Department officials meeting with the ARB. On November 3, 2012, Thomas Nides, Deputy Secretary of State, sought approval from Mills for the ARB's request to meet with

⁷⁹ *Id.* at 187-191.

him. On November 3, 2012, Nides wrote Mills “I assume this is a y.”⁸⁰ Mills responded “Y”.⁸¹

Accountability of State Department Personnel

Among the 29 recommendations made to the State Department, the ARB found:

Systematic failures and leadership and management deficiencies at senior levels within two bureaus of the State Department (“the Department”) resulted in a Special Mission security posture that was inadequate for Benghazi and grossly inadequate to deal with the attack that took place.⁸²

The ARB identified one official from the Bureau of Near Eastern Affairs and three officials from the Bureau of Diplomatic Security at fault for Benghazi security failures. Notwithstanding their finding of inferior performance in these two bureaus, the ARB “did not find reasonable cause to determine that any individual U.S. government employee breached his or her duty,”⁸³ the performance standard set out in law. A breach of duty must rise to “willful misconduct or knowingly ignor[ing] his or her responsibilities.”⁸⁴ The Board noted that poor performance does not ordinarily constitute a breach of duty that would serve as a basis for disciplinary action but is instead addressed through the performance management system.⁸⁵

Mills shared with the Committee her reaction upon learning of the ARB’s findings on personnel:

⁸⁰ Email from Thomas Nides, Deputy Sec’y of State for Management and Resources, U.S. Dep’t of State, to Cheryl D. Mills, Chief of Staff, U.S. Dep’t of State (Nov. 3, 2012 12:26 PM) (on file with the Committee, SCB0058538).

⁸¹ Email from Cheryl D. Mills, Chief of Staff, U.S. Dep’t of State, to Thomas Nides, Deputy Sec’y of State for Management and Resources, U.S. Dep’t of State (Nov. 3, 2012 1:10 PM) (on file with the Committee, SCB 0058537).

⁸² Unclassified Benghazi Accountability Review Board, U.S. Dep’t of State [hereinafter Unclassified ARB].

⁸³ See Finding # 5, *id.*, at 7; see also Classified Accountability Review Board, U.S. Dep’t of State, at 10 [hereinafter Classified ARB].

⁸⁴ See Statement of Admiral Mullen, U.S. Dep’t of State, Briefing on the Accountability Review Board Report (Dec. 19, 2012), <http://www.state.gov/r/pa/prs/ps/2012/12/202282.htm>; see also Statement of Ambassador Thomas Pickering, U.S. Dep’t of State, Briefing on the Accountability Review Board Report (Dec. 19, 2012), <http://www.state.gov/r/pa/prs/ps/2012/12/202282.htm>

⁸⁵ *Id.*

What I do recall is that they had made determinations around personnel, and I recall one of them being surprising to me, and I told her [the Secretary] that I was surprised that they had made a conclusion about one particular individual.⁸⁶

Emails between Burns and Mills suggest others were surprised by the ARB's finding with regard to personnel. On December 18, 2012, Burns wrote to Mills:

Hi,

Went down to talk to Eric this evening but missed him. Sent him note, and will follow up tomorrow. Also had long talk with Pat. He's coping, but as you well know its not easy.⁸⁷

Emails between Kennedy and Mills indicate discussions were underway to reassign staff as an eventual, or perhaps even preventative, response to the ARB's finding. On December 13, 2012, five days before the ARB report was released, Kennedy proposed to Mills a staffing change dealing with three of the four individuals ultimately named in the ARB, all of whom were under Kennedy's supervision. His plan called for placing two individuals identified by the ARB with the Office of Foreign Missions. The third individual under Kennedy's supervision would have been responsible for security at non-high threat posts. Unsure of the plan, Kennedy wrote:

Cheryl

As we discussed, I'm sending along my first-cut on staffing

Still playing with it

But think its worth a gut check

Regards

Pat⁸⁸

⁸⁶ Mills Testimony at 192.

⁸⁷ Email from William Burns, Deputy Sec'y of State, U.S. Dep't of State, to Cheryl D. Mills, Chief of Staff and Counselor, U.S. Dep't of State (Dec. 18, 2012, 7:26 PM) (Subject: Fw: DS) (on file with the Committee, SCB0045827).

Notwithstanding Kennedy's proposal, all four individuals were placed on administrative leave and eventually reinstated within the State Department. Lamb described her experience to the Committee:

A: We were put on four State Department employees were put on administrative leave for a short period of time.

Q: Right. With pay or without pay?

A: With pay.

Q: And was there any due process for you to go through to what was the due process measures? They come to you State Department comes to you and says, you're going to be suspended on administrative leave not suspended on administrative leave for 4 weeks. Was there some kind of due process rights that you had when that was first given to you?

A: I was not given any guidance.

Q: They didn't tell you had any way to appeal that or anything?

A: No.

Q: Okay. And who told you that? Who told you that you were going to be suspended? Or you were going you were going to be on a 4 week administrative leave?

A: Eric Boswell.

Q: All right. And when he told you that, he didn't say there's tell me how he gave it to you, he told you that information.

A: He called me and Scott Bultrowicz in, and he said that we were to be out of the building by the end of the business day, and that we were on administrative leave.

Q: And did you ask him what was your response? I think I would say, really? Can I talk to anyone? Can I give my side of the story or

⁸⁸ Email from Patrick F. Kennedy, Under Sec'y for Management, U.S. Dep't of State, to Cheryl D. Mills, Chief of Staff and Counselor, U.S. Dep't of State (Dec. 13, 2012, 10:12 AM) (on file with the Committee, SCB100920).

A: No, I Scott and I have been around DS a long time. And, I mean, we've seen this process, and we knew that there were administrative things that people were looking into, and we just said, yes, and did as we were told.

Q: And then how were you notified that you were you were when you could come back? Did you know right ahead that today you are going to leave and you can come back to a date in the future? What did they tell you?

A: We were sent a letter telling us when to report back to duty.

Q: Okay.⁸⁹

While the ARB's findings of accountability extended to three individuals within the Bureau of Diplomatic Security, the findings were limited. The ARB correctly assessed the State Department's inadequate security posture at the Benghazi Mission both in terms of its physical security as well as the lack of security staffing. However, the ARB failed to distinguish between responsibility for security staffing and responsibility for physical security. This confusion is reflected in the Chairman of the ARB's testimony:

Q: So the decisions about additional physical security, who were those made by?

A: The Bureau of Diplomatic Security.

* * *

Q: How high up did they go?

A: To Assistant Secretary Boswell principally, but to [Deputy Assistant Secretary] Charlene Lamb in fact.⁹⁰

Contrary to the Chairman of the ARB's understanding, responsibility for the physical security of the Benghazi Mission did not fall within the Office of International Programs but within the Office of Countermeasures and the relevant offices under its purview.

⁸⁹ Lamb Testimony at 106-107.

⁹⁰ Ambassador Thomas Pickering Testimony at 153.

Moreover, the decisions to exclude the Benghazi Mission from the physical security rules were generally made at the Assistant Secretary for Near Eastern Affairs and Under Secretary for Management levels. The Benghazi ARB described “the flawed process by which Special Mission Benghazi’s extension until the end of December 2012 was approved,” determining it was “a decision that did not take security considerations adequately into account.”⁹¹ Yet, the ARB failed to ascribe responsibility to those who drafted and approved the Benghazi Mission’s 12 month extension.

The Benghazi ARB’s failure to recognize deficiencies at the highest levels of the State Department’s leadership is curious. As stated above, the State Department has been told repeatedly by past ARBs that change is needed both in its culture and with respect to security. Following two of the most significant terrorist attacks in State Department history, the Nairobi and Dar es Salaam embassy bombings in 1998, the ARB described steps the State Department should take to bolster the security of facilities abroad; chief among them, the application of the security rules at U.S. diplomatic facilities abroad. The State Department rejected these past ARB recommendations and excluded the Benghazi Mission from the security rules.

Furthermore, it is ironic that in the summer of 2009 the State Department conducted a Quadrennial Diplomacy and Development Review, which was intended to be a “sweeping review of diplomacy and development, the core missions of the State Department and USAID.”⁹² The report came out in December 2010 and was lauded as a “sweeping assessment of how the Department of State” could “become more efficient, accountable, and effective in a world in which rising powers, growing instability, and technological transformation create new threats, but also new opportunities.”⁹³ The report cautioned that the State Department must change in order to:

⁹¹ Unclassified ARB, *supra* note 81, at 30.

⁹² See U.S. Dep’t of State, Quadrennial Diplomacy and Development Review Fact Sheet, <http://www.state.gov/documents/organization/153109.pdf>.

⁹³ *Leading Through Civilian Power*, Quadrennial Diplomacy and Development Review, U.S. Dep’t of State, at 72 (2010).

[I]nstitute procedures to integrate security and risk management into every stage of policy and operational planning in Washington and the field. Including security considerations in the design and development of policy and programs from the outset will make it easier to find effective ways to mitigate risk. We will also ensure Diplomatic Security Regional Directors are more actively and regularly involved in regional bureaus' policy development so there is a shared understanding between those responsible for ensuring security and those responsible for developing and implementing policy.⁹⁴

Yet the State Department maintained the status quo and rejected the findings of this report. In fact, every ARB review has concluded that the State Department needs a significant change in its culture and organizational structure to improve security. Lasting and significant change must be directed from the top.

**House Armed Services Committee
Majority Interim Report: Benghazi Investigation Update**

Between September 2012 and April 2014, the House Armed Services Committee conducted its own review of the events surrounding the September 11-12, 2012, terrorist attacks, including the days leading up to and following the attacks. Specifically, the Armed Services Committee looked at the military's role: "the response of the Department of Defense", "what preparations the U.S. military had made for the possibility of an attack", and "what arrangements have subsequently been put in place to minimize the possibility of a similar occurrence."⁹⁵ In February 2014, the Armed Services Committee issued a "Majority Interim Report: Benghazi Investigation Update" outlining its findings to date. At the time of its interim report, the Armed Services Committee had conducted seven classified briefings, two public hearings and one transcribed witness interview. Based on the information obtained, it issued six findings in its February 2014 report:

1. In assessing military posture in anticipation of the September 11, 2012 anniversary, White House officials failed to comprehend or ignored the dramatically deteriorating security situation in Libya and the growing threat to U.S. interests in the region.

⁹⁴ *Id.*

⁹⁵ House Armed Services Committee, Majority Interim Report: Benghazi Investigation Update, at 3 (Feb. 2014) (on file with the Committee).

Official public statements seem to have exaggerated the extent and rigor of the security assessment conducted at the time.

2. U.S. personnel in Benghazi were woefully vulnerable in September 2012 because a.) the administration did not direct a change in military force posture, b.) there was no intelligence of a specific “imminent” threat in Libya, and c.) the Department of State, which has primary responsibility for diplomatic security, favored a reduction of Department of Defense security personnel in Libya before the attack.

3. Defense Department officials believed nearly from the outset of violence in Benghazi that it was a terrorist attack rather than a protest gone awry, and the President subsequently permitted the military to respond with minimal direction.

4. The U.S. military’s response to the Benghazi attack was severely degraded because of the location and readiness posture of U.S. forces, and because of lack of clarity about how the terrorist action was unfolding. However, given the uncertainty about the prospective length and scope of the attack, military commanders did not take all possible steps to prepare for a more extended operation.

5. There was no “stand down” order issued to U.S. military personnel in Tripoli who sought to join the fight in Benghazi. However, because official reviews after the attack were not sufficiently comprehensive, there was confusion about the roles and responsibilities of these individuals.

6. The Department of Defense is working to correct many weaknesses revealed by the Benghazi attack, but the global security situation is still deteriorating and military resources continue to decline.⁹⁶

SCOPE LIMITATIONS: MAJORITY INTERIM REPORT

Notwithstanding its findings, the Armed Services Committee acknowledged at the outset the limitations of its report stating “This report should be considered one component of continuing comprehensive Benghazi related oversight underway in the House of Representatives.”⁹⁷ Moreo-

⁹⁶ *Id.* at 2.

⁹⁷ *Id.* at 1.

ver, the Armed Services Committee recognized the scope of its review of the terrorist attacks was limited, stating, “[i]n keeping with the committee’s jurisdiction, however, this document addresses only the activities and actions of personnel in DOD.”⁹⁸ Finally, the report acknowledged “the committee’s inquiry continues”, “staff ... [will] interview additional witnesses in coming weeks, including individuals who were involved in responding to the Benghazi events and other officials. Some individuals who have already provided information will appear for further questioning and clarification.”⁹⁹ The Armed Services Committee conducted eight transcribed interviews after releasing the interim report.¹⁰⁰ The last transcribed interview occurred in April 2014, one month prior to the Select Committee’s formation.

CONTENT LIMITATIONS: MAJORITY INTERIM REPORT

The value of information obtained was necessarily limited. Public hearings and briefings typically do not lend themselves to uncovering new facts or witnesses. The Defense Department was positioned to influence the content of information presented in these settings. As a result, the Armed Services Committee was limited in its understanding of the policies and procedures that contributed to the military’s posture prior to and its response during the September 11-12, 2012, attacks.

For example, the Armed Services Committee had not conducted transcribed interviews of the top military officials prior to its 2014 report to understand the discrepancies in the discussions that took place during the September 10, 2012, meeting with the White House regarding the nation’s preparedness and security posture on September 11, 2012.¹⁰¹ It did not interview Secretary Panetta to discuss his December 2011 trip to Libya, his understanding of the Benghazi Mission compound, and his role in the military’s response—specially why only one asset made it to Libya more than 24 hours after his verbal order to deploy the Commander’s in Extremis Force, special operations forces located in the United States, and two Fleet Antiterrorism Security Teams including one to Benghazi and one to Tripoli.¹⁰² Further, it did not interview many military personnel on the ground at the installations and intermediate staging bases in Europe to understand the orders given and status of assets on September 11-12, 2012. Finally, the Armed Services Committee did not

⁹⁸ *Id.*

⁹⁹ *Id.* at 4.

¹⁰⁰ Committee on Armed Services: Benghazi Materials, p. 5.

¹⁰¹ *Id.* at 7.

¹⁰² *Id.* at 16.

have access to other agency documents referencing military discussions that could shed light on issues relating to military planning and operations prior to and during the attacks.

Broadly speaking, the Armed Services Committee predominantly confined its inquiry to whether the military had assets close enough to have “made a difference” in Benghazi. Further, it did not have access to new information with respect to assets potentially available outside of then-established military planning for such contingencies. Nowhere does the Armed Service Committee’s report consider: Was Benghazi ever part of the military’s response? Why did it take the military so long to get to Tripoli? What assets received orders to deploy? Why did it take so long to put U.S. forces into motion? And, most basically, whether it is accurate to state no assets could have arrived in time for the second fatal attack on the annex?

SELECT COMMITTEE’S INVESTIGATION

The Select Committee sought to answer these and other important questions based on all the evidence presented not just the facts as presented by Defense Department. At the Select Committee’s insistence, it conducted 24 interviews, 16 of whom had never been interviewed. The Select Committee also received approximately 900 pages of documents never before produced to Congress. The Select Committee’s insistence on additional information was met with opposition from the Defense Department, a department seemingly more used to dictating the terms of congressional oversight. From the perspective of the Defense Department, the Select Committee should have been satisfied with the witnesses and documents it provided. For example, the Defense Department chided the Committee for wanting to speak to a low-level service member that may have evidence contradicting the Department’s version of events. In the Department’s view, however, “locating these types of individuals are [sic] not necessary since such claims are easily dismissed by any one of the multiple high-level military officers already interviewed.” The Select Committee, however, was not in the business of accepting the word of anyone single person, “high-level military officers” or otherwise. The Select Committee was interested in finding and confirming facts wherever those facts emerged to understanding the truth about the military’s role on the night of September 11-12, 2012.

The Permanent Select Committee on Intelligence Chairman's Report

The House Permanent Select Committee on Intelligence released its report to the public on November 21, 2014. The report was limited in scope, its focus narrowly aimed at reviewing the performance of the Intelligence Community related to the deaths of four Americans in Benghazi on September 11, 2012. The Select Committee, having the benefit of time, breadth of inquiry and resources has identified facts that contradict a key, overly broad conclusion contained in the Chairman's report. Namely, the Chairman's report asserted that there was "no evidence of an intelligence failure."

The Select Committee received testimony from two senior Obama Administration officials who stated that in their view an "intelligence failure" had taken place with respect to Benghazi.

Further, the Select Committee received testimony with respect to not one, but two, important analytical tradecraft irregularities that career line analysts uniformly described as significant and gave rise to important concerns. Both directly impacted significant analysis with respect to Benghazi, including an assessment given to the President of the United States. This too was a significant intelligence failure.

The Intelligence Committee interviewed less than one-third of the CIA personnel on the ground that night in Benghazi—two-thirds of whom held the exact same position. It did not interview key witnesses who would have helped it better understand the overall CIA mission in Benghazi and its response to the attacks, including analytical issues in the wake of the attacks. The Intelligence Committee did not interview any of the CIA analysts at headquarters. The Select Committee's interviews with these analysts allowed it to draw conclusions about the errors of the products produced by the analysts involved in drafting.

Finally, the Chairman's report draws several conclusions about the analytical assessments done by the CIA. As described previously in this report, the Select Committee received testimony with respect to two separate serious analytical tradecraft incidents with respect to Benghazi: sloppy analytical work gave rise to key fallacies of the Administration's talking points with respect to the attack, and another incident where the President's briefer substituted her own personal assessment for the properly coordinated and vetted work of line analysts in the President's Daily Brief.

In short, the Select Committee has had access to and received evidence from numerous witnesses and documents that the Intelligence Committee never obtained. It has had the time and resources to inquire into the intelligence efforts before, during and after the attacks in Benghazi. This Committee believes this report provides a truly thorough review of the intelligence community's performance related to the attacks.