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# Congress of the United States

## House of Representatives

### Select Committee on Benghazi

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March 16, 2016

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114<sup>TH</sup> CONGRESS

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STAFF DIRECTOR

The Honorable Elijah E. Cummings  
Ranking Member  
Select Committee on Benghazi  
B-241 Longworth House Office Building  
Washington, DC 20515

Dear Mr. Cummings,

I am writing to ensure you and your staff have equitable access to all witness transcripts while we preserve the integrity of our thorough, fact-centered investigation. Unfortunately, the Minority's primary focus continues to be on undermining and impeding our work, as evidenced by these actions and more:

1. The Minority, without authorization, selectively released an unverified, unofficial and draft version of the transcript of the Committee's interview of Cheryl Mills.
2. *The Washington Post* recently reported<sup>1</sup> the Minority intends to further selectively release, without authorization, "a slew of interview transcripts," including those of Susan Rice, Ben Rhodes, Leon Panetta, and David Petraeus.
3. In staff conversations this week, the Minority refused to agree not to selectively release witness transcripts before the Committee completes its investigation and issues its report.

As I have said for months, it is my intention to release all of our transcribed interviews and depositions, as well as other documents produced to the Committee during this investigation, subject to appropriate reviews and redactions necessary to protect individuals and national security. As I also have said repeatedly, no transcript can be fairly considered in isolation and must be evaluated as part of the whole.

The Minority's selective release of one interview transcript without authorization, and its threat to selectively release "a slew" of others without authorization, has and will further undermine our thorough, fact-centered investigation. Such selective releases chill the willingness of witnesses to cooperate with the Committee, distort witnesses' recollection, and

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<sup>1</sup> *Gowdy cites progress in Benghazi probe as Dems scoff*, The Washington Post (Feb. 18, 2016) (online at <https://www.washingtonpost.com/news/powerpost/wp/2016/02/18/republican-promises-benghazi-panel-report-as-soon-as-possible/>).

allow witnesses to strategize answers to known lines of questioning. For example, the unverified, unofficial transcript already released without authorization by the Minority is now being quoted in federal litigation and other matters, even though it is not a final, corrected, and official transcript. These actions have thus endangered not only the thoroughness and fairness of the Committee's own work, but also federal litigation and other proceedings, as well as the rights of witnesses to correct potential errors in the transcript. Further breaches would no doubt be similarly damaging.

As an experienced attorney and Congressional investigator, you are, no doubt, well aware of the harm to our investigation that would be caused by the selective release of transcripts and the improper purposes those selective releases could be used for. So I am confused by the Minority's unwillingness to commit to not selectively release any more witness transcripts prior to the completion of our investigation and release of our report. This is the way the Committee operated for quite some time and it is my hope the Minority will return to this standard practice.

The integrity of this investigation is my utmost concern. In fact, I have refused requests from the majority staff of other congressional committees to view our transcripts.

Because of the Minority's stated intention to selectively release interview transcripts, I have taken reasonable steps to limit the Minority's ability to further damage our investigation. The Minority will have full and complete access to interview transcripts during Committee business hours, and my staff will do their best to accommodate requests for access outside of Committee business hours. Committee transcripts will not leave the Majority's control due to the Minority's stated intention to selectively release them at will.

I regret this is necessary to prevent the Minority from undermining our thorough, fact-centered investigation. I have consulted with the House Parliamentarian and I am confident this arrangement complies with the letter and intent of House rules. However, I am eager to return to our prior arrangement and will do so immediately upon receiving the Minority's written assurance neither the members nor your staff will selectively release interview transcripts prior to their official release by the Committee. In the past, you and I have agreed the selective parsing of certain portions of a transcript undermines fairness. There is a reason the Federal Rules of Evidence contain a rule of "completeness" wherein the remainder of a document can be introduced in evidence if one party introduces only a portion thereof. It is manifestly unfair to the public, the witnesses past and future, as well as the work of the Committee to choose to release certain transcripts but ignore the release of others. The full weight of the investigatory evidence should be considered as a whole. This is why we have worked so hard to have all transcripts reviewed and cleared by the agencies of jurisdiction so we can take the virtually unprecedented step of making all transcripts publicly available at the time the report is released. Simply picking some transcripts while ignoring others undermines fundamental fairness and chills the likelihood that additional witnesses will want to come forward.

The Committee will, as it is charged to do, produce a final report and have much to say about the evidence we have collected. Given the importance of these matters, I believe the American public should be able to view and judge the evidence and testimony for themselves. The review and publication of more than 80 transcripts and thousands of pages of documents is

no easy task, and it will require considerable work by my staff and the staff of several agencies to complete. I hope you will join me in supporting the release of the Committee's record at the appropriate time. In the interim, all transcripts will continue to be available for Minority staff and members to review. Moreover, I would be pleased to provide copies of these transcripts to Minority staff and members for your own custody just as soon as you commit to stop the practice of selectively releasing certain transcripts while ignoring the release of others.

Sincerely,

  
Trey Gowdy  
Chairman