

UNITED STATES HOUSE OF REPRESENTATIVES
SELECT BIPARTISAN COMMITTEE TO INVESTIGATE THE
PREPARATION FOR AND RESPONSE TO HURRICANE KATRINA
FEBRUARY 15, 2006

ADDITIONAL VIEWS PRESENTED BY THE SELECT COMMITTEE ON BEHALF OF REP. CHARLIE MELANCON REP. WILLIAM J. JEFFERSON

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EXECUTIVE SUMMARY

House Resolution 437 directed the Select Committee "to conduct a full and complete investigation" into the "government response to Hurricane Katrina." The Select Committee worked diligently to meet this mandate, and the Committee's final report makes an important contribution toward understanding what went wrong. But due to the Committee's short deadline and the refusal of the White House to provide access to essential documents, key questions remain unanswered. We therefore renew our call for an independent commission to examine the disastrous response to Hurricane Katrina.

The Select Committee's investigation identified scores of problems. The majority report includes more than 90 findings describing critical failures at all levels of government. Some of these problems were obvious. For example, Americans across the country saw for themselves during the televised coverage of the hurricane's aftermath that "FEMA management lacked situational awareness" and suffered from an "overwhelmed logistics system." Other problems were discovered during the Committee's investigation. We agree with many of these findings.

Overall, the majority report is a comprehensive, detailed recitation of the problems that occurred in responding to Hurricane Katrina. It is also a condemnation of the nation's progress in responding to catastrophic events since 9/11. We concur with the report's overarching conclusion that the response to Hurricane Katrina was "a national failure, an abdication of the most solemn obligation to provide for the common welfare." We also agree that Hurricane Katrina was "a failure of leadership."

For all it accomplished, however, the Select Committee adopted an approach that largely eschews direct accountability. The majority report rarely assesses how these problems occurred, why they were not corrected sooner, and who in particular was responsible. Instead, the report uses the passive voice to describe generic "institutional" failures, general "communications problems," and vague "bureaucratic inertia." It seldom holds anyone accountable for these failures.

Extraordinarily serious mistakes were made in the response to Hurricane Katrina, yet only one federal official has lost his job or been held accountable: Michael Brown, the former director of FEMA. We agree that Mr. Brown made grave errors and was unqualified to run FEMA. But Administration officials more senior to Mr. Brown had the primary responsibility after the 9/11 attacks to build a more robust homeland security response system; instead, they emaciated it. They also need to be held to account.

The single biggest flaw in the Select Committee's investigation is its failure to obtain key documents and testimony from the White House. The Select Committee learned that Michael Brown communicated up to 30 times with President Bush, White House Chief of Staff Andrew Card, and his deputy Joe

Hagin in the days before, during, and after the storm. The Committee received evidence that Mr. Brown warned the White House that he could not establish command and control; that he informed the White House that the levees failed on the day Katrina struck; and that he asked the White House for urgent help in managing the federal response. No "full and complete" assessment of the federal response to Hurricane Katrina is possible without reviewing these communications and the White House reaction. Yet when the White House refused to provide any of these communications, the Committee rejected our requests to subpoena them, effectively shielding the White House from scrutiny.

The federal agencies involved in the response to the hurricane provided more cooperation with the investigation than the White House. But there are also significant omissions in the documents they provided to the Committee. Defense Secretary Donald Rumsfeld, for example, refused to comply with the only subpoena the Committee issued. It is a telling mark of the Select Committee's deference to the executive branch that we lack even a basic log of the documents withheld by Secretary Rumsfeld and the Departments of Homeland Security and Health and Human Services.

The strongest part of the majority report is the assessment of the performance of Homeland Security Secretary Michael Chertoff. A major hurricane striking the Gulf Coast and New Orleans was one of the top three potential disasters facing the United States. Yet the evidence before the Select Committee shows that Secretary Chertoff was strangely detached in the key days before Katrina hit. He spent Saturday, August 27, at home and traveled on Tuesday, August 30 — the day after Katrina hit — to Atlanta for a bird flu conference. And he had the atrocious judgment to rely on Michael Brown as his "battlefield commander." The majority report correctly recognizes that Secretary Chertoff fulfilled his responsibilities "late, ineffectively, or not at all."

The majority report finds that Secretary Chertoff made a series of critical mistakes. According to the report, Secretary Chertoff "should have designated the Principal Federal Official on Saturday, two days prior to landfall"; he should have chosen someone "from the roster of PFOs who had successfully completed the required PFO training, unlike FEMA Director Michael Brown"; and he "should have convened the Interagency Incident Management Group on Saturday." The report calls his coordination with the Defense Department "not effective" and criticizes "the Secretary's failure to invoke the National Response Plan – Catastrophic Incident Annex, to clearly and forcefully instruct everyone involved with the federal response to be proactive, anticipate future requirements, develop plans to fulfill them, and execute those plans without waiting for formal requests from overwhelmed state and local response officials." Reviews by the Government Accountability Office and the White House itself reached similar conclusions.

What the majority report does not do, however, is draw the logical conclusion to its own findings and recommend Secretary Chertoff's removal from office. Our

judgment, based on a careful review of the record, is that the Department of Homeland Security needs new and more experienced leadership.

The work that the Select Committee has started needs to be completed. Accordingly, we call for an independent commission, modeled after the 9/11 Commission, that will put politics aside and follow the facts wherever they lead. Only by finishing this job will the nation obtain the complete accounting that must precede true reform.

Finally, as representatives and residents of the Gulf Coast regions directly impacted by Hurricane Katrina, we feel compelled to emphasize that this catastrophe is far from over. There may be a tendency to view this Committee's report as the "closure" the nation needs to move on. But this report will not help a resident of New Orleans settle an insurance claim any faster, it will not move a family in Mississippi into a trailer, and it will not assist a worker from Alabama cover a mortgage with no job. There remain urgent and massive problems affecting the Gulf Coast region. Continuing and active engagement by Congress is essential.

I. COMMENTS ON MAJORITY VIEWS

The majority report includes over 90 findings. Taken together, these findings depict a deeply flawed response to one of the worst disasters in U.S. history.

The majority report finds massive failures in virtually every topic it addresses, including planning, execution, and leadership. As the majority report concludes, "[w]e are left scratching our heads at the range of inefficiency and ineffectiveness that characterized government behavior right before and after this storm." The majority report finds "shortcomings and organizational inaction evident in the documents and communications the Committee reviewed."

Some of these problems were obvious even before the investigation began. For example, Americans across the country saw for themselves during the televised coverage of the hurricane's aftermath that "FEMA management lacked situational awareness" and suffered from an "overwhelmed logistics system." And they saw how "massive" communications inoperability "impaired response efforts, command and control, and situational awareness."

Other problems were discovered during the Committee's investigation. The "Hurricane Pam" exercise had predicted how a massive hurricane could devastate New Orleans, and the majority report finds that officials failed to implement the lessons learned from this exercise. The majority report also finds that miscommunications between the Pentagon and Homeland Security Department created confusion and "near panic;" that "top officials" at the Departments of Health and Human Services and Homeland Security "delayed medical care" because they did not understand who controls the National Disaster Medical System; and that officials across the government "had varying degrees of unfamiliarity with their roles and responsibilities under the National Response Plan."

Overall, the majority report paints a picture of leaders who failed to lead and an executive branch that failed to execute, resulting in a passive, disorganized response.

An internal review by the White House came to similar conclusions. During a briefing to the Select Committee on December 15, 2005, Ken Rapuano, White House Deputy Homeland Security Advisor, summarized more than 60 specific findings from the White House review of the government's response to Hurricane Katrina.[1] These findings identified problems with almost every facet of the response, including planning, the military response, emergency communications, logistics, coordination with the private sector, training, public communications, environmental issues, shelter and housing, public health, and law enforcement.

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[1] Letter from Rep. Charlie Melancon and Rep. Gene Taylor to Select Committee Chairman Tom Davis (Dec. 15, 2005) (summarizing the contents of Mr. Rapuano's briefing).

The Government Accountability Office also reached similar findings. On February 1, 2006, GAO reported that "responders at all levels of government — many victims themselves — encountered significant breakdowns in vital areas such as emergency communications as well as obtaining essential supplies and equipment."[2] According to GAO, the cause of these breakdowns was an absence of "clear and decisive leadership," "strong advance planning, training, and exercise programs," and "capabilities for a catastrophic event."[3]

What is most troubling about these findings is how closely they mirror problems identified after September 11, 2001. These same problems — a disjointed federal response, agencies that failed to share information, the absence of a clear chain of command, a lack of systems to communicate during the crisis — should have been resolved by the massive commitment of resources and government reorganization that took place after 9/11. The findings of the Select Committee, the White House, and the Government Accountability Office make clear that these problems have not been solved. What remains unclear is why the nation has made so little progress in preparedness, more than four years after 9/11.

In several areas, we have comments on specific findings made in the majority report. These are presented below.

A. National Guard Performance

First and foremost, we wholeheartedly agree with the majority finding that the National Guard performed admirably under the most trying of circumstances. These citizen soldiers came to the aid of their communities even as many of them lost their homes and loved ones to the storm. This assessment is unanimous.

White House Deputy Homeland Security Advisor Ken Rapuano told the Select Committee on January 27, 2005: "The National Guard was the most functional and robust presence in the region, and they did an incredible job."[4] Phil Parr, the Deputy Federal Coordinating Officer for FEMA who was on the ground in New Orleans after Hurricane Katrina struck, testified before the Select Committee on December 14, 2005:

> I cannot say enough good things about the Louisiana National Guard. Every person I spoke to lost either something or everything. There was

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[2] U.S. Government Accountability Office, *Statement by Comptroller General David M. Walker on GAO's Preliminary Observations Regarding Preparedness and Response to Hurricanes Katrina and Rita* (Feb. 1, 2006) (GAO-06-365R).

[3] *Id.*

[4] Briefing by Ken Rapuano, White House Deputy Homeland Security Advisor, to Select Committee (Jan. 27, 2005).

> one gentleman who lost his wife, but he was still there working. They worked extremely hard. They were moving commodities. They kept control of the crowd. … They were extremely professional. They were easy to work with. It was a pleasure. As a matter of fact, I'm even going to go so far as to say — because there's so many people I haven't mentioned and I'm not going to run down a list — but I worked with a National Guard unit in St. Bernard Parish from Colorado, also phenomenal people. So I just cannot say enough good things about working with the Louisiana National Guard.[5]

In an interview with the Select Committee staff on December 6, 2005, Mr. Parr explained further that, in addition to performing its own urgent mission, the National Guard was essentially making up for FEMA shortfalls.[6] For example, when FEMA failed to provide communications equipment to its officials in New Orleans, the National Guard made its own equipment available to FEMA. And when FEMA failed to provide vehicles so its officials could operate in flood conditions, Mr. Parr told the Select Committee that National Guard forces ferried FEMA officials back and forth across the street to attend meetings. The Guard was selfless and professional and did not allow adverse conditions to negatively affect its mission.

In particular, we acknowledge the sacrifice of Sergeant Joshua Russell of the Mississippi National Guard, who lost his life during the storm attempting to rescue an elderly couple. We agree with the testimony of Maj. Gen. Harold Cross, the Adjutant General of Mississippi, who stated:

> Sergeant Russell so highly represents the dedication and commitment of our National Guard. He swore to defend this country against all enemies, foreign and domestic. He'd already served in Iraq. He died facing forward to the enemy, in this case a natural disaster, and his last moments on this earth were spent helping others at the risk of his own life. He's a true American hero.[7]

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[5] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: Preparedness and Response by the State of Louisiana*, 109th Cong. (Dec. 14, 2005).

[6] Interview of Phil Parr, Deputy Federal Coordinating Officer, Federal Emergency Management Agency, by Select Committee Staff (Dec. 6, 2005).

[7] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: Preparedness and Response by the Department of Defense, the Coast Guard, and the National Guard of Louisiana, Mississippi, and Alabama,* 109th Cong. (Oct. 27, 2005).

B. FEMA's "Broken" Logistics System

We agree with the majority report that that FEMA's logistics system is inadequate. We concur that "FEMA management lacked situational awareness of existing requirements and of resources in the supply chain." This assessment came not only from the majority report, but the White House as well. In a briefing to the Select Committee on December 15, 2005, White House officials reported that their internal review had concluded that "priority needs were not met expeditiously," there was a "lack of real-time asset tracking," and FEMA's logistics system "failed to provide certain resources in an efficient and timely manner in order to meet the needs of victims and response personnel."[8]

FEMA officials agreed. For example, FEMA's top official in Mississippi, William Carwile, wrote in the days after the hurricane that the "system appears broken."[9] He described the same problems as officials in Louisiana, including a "dysfunctional" distribution system and inadequate supplies: "We were ordering 425 trucks of ice and 425 trucks of water a day and you're giving us 40."[10]

We add that the problems with FEMA's logistics system were well documented after the Florida hurricanes of 2004.[11] Solving these problems should have been a top priority for management at the Department of Homeland Security, and Congress should make this a key area for continuing oversight.

C. Contracting Problems

We agree with the Select Committee's finding that "the failure at all levels to enter into advance contracts led to chaos and the potential for waste and fraud as acquisitions were made in haste." We also agree that "FEMA suffered from a lack of sufficiently trained procurement professionals," and that "procurement continues to be decentralized and lacking a uniform approach" at the Department of Homeland Security. We are disappointed, however, that the Committee did not go further in its examination of contracting issues. We recognize that this was

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[8] Briefing by Ken Rapuano, White House Deputy Homeland Security Advisor, to Select Committee (Jan. 27, 2005).

[9] E-mail from William Carwile, Federal Coordinating Officer, Federal Emergency Management Agency, to Michael Lowder, Deputy Director of Response, Federal Emergency Management Agency, et al. (Sept. 2, 2005).

[10] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: Preparedness and Response by the State of Mississippi*, 109th Cong. (Dec. 7, 2005). *See also Barbour Beseeches Congress,* Biloxi Sun Herald (Dec. 8, 2005).

[11] Department of Homeland Security, Office of the Inspector General, *Emergency Preparedness and Response Could Better Integrate Information Technology with Incident Response and Recovery* (Sept. 2005) (OIG-05-36).

caused in part by the Committee's short deadline, and we urge standing congressional committees to take up where the Select Committee left off.

On November 2, 2005, the Select Committee held a hearing on the government's use of contractors to prepare for and respond to Hurricane Katrina and other catastrophic events.[12] This hearing raised troubling questions about the government procurement system's ability to respond. The government and contractor representatives who testified were unable to answer many basic questions about the scope, price, and terms of contracts awarded in response to Hurricane Katrina.

For example, the witness from the Army Corps of Engineers was unable to provide an estimate of the government's average cost to install blue tarps on damaged roofs. When asked about reports that the government was being charged almost $2,500 for two hours of work installing blue tarps, Colonel Norbert Doyle, Acting Principal Assistant Responsible for Contracting, acknowledged the concern, stating: "That does seem like a lot of money."[13] He offered to have a "paper put together to explain what we think the average cost per roof really is," and to supply that to Committee members.[14] This document was never provided.

Similarly, the witness from FEMA, Senior Procurement Executive Patricia English, was unable to explain whether the installation of travel trailers for displaced residents could move at a more rapid pace, whether there were travel trailers at staging areas that had not been delivered to victims, or how long it would take for FEMA to renegotiate the sole source contract with Bechtel to provide temporary housing.[15] Although she offered to provide the Select Committee with responses to these and other questions, the Select Committee never received this information.

Ms. English also testified about the lack of adequate contingency contracts, agreeing that FEMA was not prepared to have "adequately responded to the disaster."[16] When she was asked to explain what percentage of contracts for response and recovery were taken up on an emergency basis rather than a contingency basis, she offered to get back to the Committee. The information was not provided.

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[12] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: The Federal Government's Use of Contractors to Prepare and Respond to Catastrophic Events*, 109th Cong. (Nov. 2, 2005).

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

In response to yet another unanswered question, this one regarding FEMA's policy for reimbursing localities for debris removal, Greg Rothwell, the Chief Procurement Officer for DHS, acknowledged that "many of our answers are going to frustrate the committee" and promised to provide requested information at a later date. The information was not provided.

The Select Committee also obtained evidence that FEMA failed to properly execute a contract to recover dead bodies after the storm. FEMA contacted a company called Kenyon International Emergency Services to perform body recovery, but then delayed the company from starting its work for several critical days. According to company officials, the federal handling of this contract was so poor that the company eventually chose to deal directly with Louisiana Governor Kathleen Blanco.[17] When asked why the federal government did not have a contingency contract in place for these services prior to the hurricane, FEMA Director Michael Brown testified:

> I don't know. And that was a mistake, one that we should look at and make sure we don't do in the future. I do know that, at some point, it was either 3,000 or 10,000 body bags were ordered. But that doesn't account for the fact that we should have had the contract with Kenyon in place before Katrina made landfall.[18]

As a result of this lack of information, Rep. Melancon wrote to Chairman Davis on November 9, 2005, requesting that the Committee submit 27 questions for the record to the witnesses who appeared at the hearing.[19] But the Select Committee received no responses to these questions.

Finally, although we agree with many of the majority findings on contracting, we strongly disagree that Congress should conduct less oversight. The majority report, referring specifically to the government's $236 million contract with Carnival Cruise Lines, finds that "intense public scrutiny could limit the willingness of private sector companies to offer assistance during future disasters." In fact, congressional oversight protected the interests of taxpayers by raising important questions about whether it was reasonable to pay Carnival over $214,500 to house a family of five for six months.[20]

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[17] Briefing by Robert Jensen, President and CEO of Kenyon International, to Select Committee Staff (Sept. 28, 2005). *See also Company Accused Feds of Disaster Dithering; Body-Recovery Firm Instead Turns to State*, New Orleans Times-Picayune (Oct. 28, 2005).

[18] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: The Role of the Federal Emergency Management Agency*, 109th Cong. (Sept. 27, 2005).

[19] Letter from Rep. Charlie Melancon to Select Committee Chairman Tom Davis (Nov. 9, 2005).

[20] *See, e.g.,* Letter from Rep. Henry A. Waxman, Ranking Minority Member, House Committee on Government Reform, to Michael Chertoff, Secretary of Homeland Security (Oct. 20, 2005).

In testimony at the Select Committee's hearing on November 2, 2005, Terry Thornton, Vice President of Carnival Cruise Lines, testified that "if the government has any concerns about the implementation of this profit neutrality provision, we would welcome any reviews by the Defense Contract Audit Agency requested by [Military Sealift Command]."[21] After watching the hearing that day, Captain Joe Manna, the primary contracting officer at Military Sealift Command, which oversees the contract, immediately telephoned the President of Carnival and arranged for audits to begin.[22] Without congressional oversight, this audit would not have happened.

D. Ineffective Law and Order

We agree with the majority finding that the "collapse of law enforcement and lack of effective public communications led to civil unrest and further delayed relief." We also agree that "the New Orleans Police Department was ill prepared for continuity of operations and lost almost all effectiveness."

In addition, we agree that "Federal law enforcement agencies were also critical to restoring law and order and coordinating activities." We note, however, that the situation could have been much improved had FEMA acted on an offer from the Interior Department in the immediate aftermath of the storm to provide an additional 400 law enforcement officials, including special agents and refuge officers from the Fish and Wildlife Service. Interior Department officials explained their frustration:

> Although DOI has 4,400 law enforcement officers — many of whom work in harsh environments and are trained in search and rescue, emergency medical services, and evacuation — DOI was not called upon to assist under the NRP until late September. Yet DOI had hundreds of officers readily deployable, many of whom were in the immediate area.[23]

For these reasons, we believe that law enforcement agencies both inside and outside the Department of Homeland Security should be better integrated into disaster response operations.

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[21] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: The Federal Government's Use of Contractors to Prepare and Respond*, 109th Cong. (Nov. 2, 2005).

[22] Briefing by Captain Joe Manna, Kenneth Allen, and Harry Eliot, Military Sealift Command; Louise Vitale, Department of the Navy; and Sina Lehmkuhler, Office of the Secretary of Defense, to Minority Staff, House Committee on Government Reform (Jan. 24, 2006).

[23] Letter from P. Lynn Scarlett, Assistant Secretary for Policy, Management and Budget, Department of the Interior, to Chairman Susan M. Collins and Ranking Member Joseph I. Lieberman, Senate Committee on Homeland Security and Governmental Affairs (Nov. 7, 2005).

E. Success of Overall Evacuations

We agree with the majority finding that "evacuations of general populations went relatively well in all three states." We also agree that Louisiana's overall evacuation of the "general population was very successful" and "went smoothly." We disagree, however, with the suggestion that Louisiana state and local officials were responsible for "the failure of complete evacuations," and that this failure "led to deaths, thousands of dangerous rescues, and horrible conditions for those who remained." We do not believe 100% evacuation should be the standard operating assumption for disaster planning.

Louisiana state and local officials exceeded all expectations in executing their general evacuations. The majority report finds that more than a million people evacuated from southeastern Louisiana. Governor Blanco testified that of the 1.3 million people living in southeastern Louisiana, only 100,000 people, including first responders, remained in the area when Katrina made landfall.[24] In other words, more than 90% of the population evacuated. This was a significant accomplishment.

In testimony before the Select Committee, former FEMA Director Michael Brown criticized Louisiana officials for evacuation failures. But he offered his conclusion without first examining the facts. He said he was not sure how many people actually evacuated, and that he had not yet "had time to sit down and really look at those kinds of numbers." Yet, he said he "would have hoped for 80 percent."[25] In fact, Louisiana surpassed this goal.

We are not saying that evacuations cannot be improved. The majority report recognizes that even under mandatory evacuations, 10% to 25% of residents will refuse to leave, and authorities cannot forcibly remove these residents from their homes. We believe emergency planners should examine additional ways to encourage all residents to evacuate in such circumstances.

We also agree that evacuation of the special needs population was insufficient, and that evacuation of the city after it had flooded was chaotic and not well planned. We add that state and local officials should have better anticipated the basic needs of residents who evacuated to shelters of last resort. For example, they should have realized that flooding and power outages could have caused plumbing failures at the Superdome, and they should have pre-positioned portable toilets in advance. Nevertheless, we believe that these findings should be

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[24] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: Preparedness and Response by the State of Louisiana*, 109th Cong. (Dec. 14, 2005).

[25] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: The Role of the Federal Emergency Management Agency*, 109th Cong. (Sept. 27, 2005).

accompanied by clear recognition that the evacuation of the general population exceeded all predictions.

F. Inadequate Housing and Community Rebuilding

Nearly six months have passed since Hurricane Katrina made landfall, yet the housing situation in the affected areas of the Gulf Coast remains critical. In interviews with Select Committee staff in New Orleans in November, federal officials conceded that the housing mission is "failing."[26] Despite multiple requests, the Select Committee held no hearings on this critical issue, claiming that it was a long-term recovery problem outside the Committee's jurisdiction.

Securing temporary housing for displaced residents is an essential bridge in the transition from the relief phase to recovery. FEMA's confusion, indecision, and inefficiency in meeting the need for travel trailers, rental assistance, and hotel reimbursement have delayed that transition. These failures have prolonged the period in which displaced residents are dependent on federal assistance, and they have aggravated the adverse effects of other failures in the federal response.

Documents cited by the Select Committee show that top Administration officials identified temporary housing as a critical problem area shortly after the hurricane had passed. For example, an e-mail from the Vice President's office dated September 9, 2005, and stamped "VICE PRESIDENT HAS SEEN," stated:

> The trailer idea is worse then I originally thought. The last batch of trailers we are now purchasing will be coming off the production line in approximately 3.5 years. That means, most of these units won't be available for use for months.[27]

The Select Committee report quotes this message to show that the Administration recognized the shortcomings of FEMA's plan for trailer housing. It also finds that other federal agencies like Department of Housing and Urban Development were not fully utilized. But the report does not examine why the federal government has failed to develop a comprehensive rebuilding strategy for the Gulf Coast, or what happened to President Bush's promises of programs such as urban homesteading.[28]

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[26] Interview of Capt. Tom Atkin, U.S. Coast Guard, Chief of Staff to Principal Federal Official Thad Allen, by Select Committee Staff (Nov. 9, 2005); Interview of Ted Monette, Deputy Principal Federal Official, Federal Emergency Management Agency, by Select Committee Staff (Nov. 9, 2005).

[27] E-mail from Neil Patel, Staff Secretary to the Vice President, to Charles Durkin, Personal Aide to the Vice President (Sept. 9, 2005) (addressed to I. Lewis "Scooter" Libby, Chief of Staff to the Vice President).

[28] *Post-Katrina Promises Unfulfilled*, Washington Post (Jan. 28, 2006).

As it turns out, the forecasts of shortcomings in FEMA's trailer program have been borne out. In Mississippi, hundreds of Gulf Coast residents are still living in tents. Although FEMA has been delivering trailers throughout the region, FEMA's efforts have been plagued by delay and inefficiency. In Mississippi, more than 33,000 trailers have been installed, but FEMA has a backlog of 34,000 repair requests and maintenance complaints.[29] In New Orleans, the trailers that have been installed meet just 37% of the demand for temporary housing.[30]

On October 28, 2005, Rep. Gene Taylor sent a letter requesting that the Select Committee hold a hearing on FEMA's administration of housing assistance programs.[31] At the Select Committee hearing on December 14, 2005, Reps. Taylor and Melancon renewed this request.[32] The Select Committee never held a hearing on housing, claiming that long-term recovery programs fell outside the limited jurisdiction of the Committee.

While years of recovery remain, the residents of the Gulf Coast cannot begin the hard work of rebuilding their communities until the need for temporary and permanent housing is addressed. We urge standing congressional committees to take up this critical issue immediately.

G. Cause of Levee Failures

The breach of the levees in New Orleans was the single most significant event affecting the course of the Hurricane's aftermath, but the Select Committee did not seek to determine why the levees failed, who was responsible, or how to ensure that new levee systems will protect the region in the future.

If the levees had not failed, New Orleans still would have suffered severe storm damage, but the flooding that devastated the city most likely would not have been so widespread. Moreover, even if there had been some flooding due to storm surge or overtopping, evacuees who had taken shelter at the Superdome or other shelters of last resort may have been able to return to their homes after waters receded, rather than having to leave the city entirely.

At the outset of the Select Committee's investigation, Chairman Davis and Rep. Melancon sent letters to multiple federal agencies requesting documents "relating to the construction, maintenance, or capacity to withstand a hurricane or flooding

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[29] *Id.*

[30] *Id.*

[31] Letter from Rep. Gene Taylor to Select Committee Chairman Tom Davis (Oct. 28, 2005).

[32] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: Preparedness and Response by the State of Louisiana*, 109th Cong. (Dec. 14, 2005).

of the 17th Street, London Canal, or Industrial Canal levees and storm walls."[33] The Select Committee received some responsive documents from the Army Corps of Engineers. Despite a request from the minority, however, staff did not conduct interviews with the Army Corps of Engineers personnel most knowledgeable about these issues.

The Select Committee's report does not resolve critical questions about levee failures, noting instead that "the ultimate cause of the levee failures is under investigation and results to be determined." It may be that the Select Committee believed it could not resolve the complex engineering and liability questions in the short timeframe established by the House for its review. It also may be that the Select Committee felt it was more appropriate to leave these issues to the various other entities currently examining them. But the Select Committee never held a hearing on what these other organizations are learning or what they have concluded to date.

Questions about why the levees failed are important not only to establish accountability, but to help determine how to rebuild them. The reconstruction process will not be effective unless residents and businesses are confident that they will be protected from catastrophic flooding. Until Congress addresses this critical failure in a comprehensive and detailed manner, the rebuilding effort will be impeded.

H. Environmental Issues

The Select Committee overlooked numerous environmental concerns that affected the lead-up to the hurricane as well as the hurricane's immediate and long-term effects. Although the Committee received a limited number of documents from the Environmental Protection Agency, environmental issues were never addressed in a hearing and are not a focus of the majority report.

Prior to Hurricane Katrina striking the Gulf Coast, there was massive deterioration of Louisiana's coastal wetlands barrier islands that could have protected the mainland against the full force of the incoming storm. This erosion was caused by a huge reduction of sediment from the Mississippi River due to the creation of levees and concrete liners, as well as a vast network of canals through the marshlands built for shipping and oil development.[34]

In the immediate aftermath of the storm, independent test data showed dangerously high mold counts and areas of toxic sediments, which pose a serious

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[33] *See, e.g.,* Letter from Select Committee Chairman Tom Davis and Rep. Charlie Melancon to Lt. Gen. Carl Strock, U.S. Army Corps of Engineers (Sept. 30, 2005).

[34] *See Gone with the Water*, National Geographic (Oct. 2004).

health risk to returning residents and workers.[35] For example, indoor sites had spore counts of up to 645,000 spores per cubic meter, rendering homes uninhabitable.[36] In addition, sediment testing "found pervasively high levels of arsenic, as well as high levels of other contaminants, including lead, banned pesticides, and cancer-causing polycyclic aromatic hydrocarbons at three specific sites."[37]

Contamination caused by the hurricane could also be exacerbated by recovery efforts. For example, much of the debris is being disposed of by burning, which has the potential to release toxic air pollutants such as mercury, or disposal into unlined landfills, which can allow groundwater contamination.[38]

The long-term challenges posed by global climate change are also key to understanding Katrina's implications for the future. Sea levels have already risen over the last century, and they are projected to rise further as the planet warms. Warmer ocean temperatures contribute to hurricane intensity. Recent studies have shown empirically that the increased frequency of more intense hurricanes over the past few decades is correlated with warmer ocean temperatures during that same period.[39] At a minimum, sea level rise from climate change will make coastal areas more vulnerable to storm damage, and if the frequency of more

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[35] Natural Resources Defense Council, *New Private Testing Shows Dangerously High Mold Counts in New Orleans Air* (Nov. 16, 2005); Natural Resources Defense Council, *New Testing Shows Widespread Toxic Contamination in New Orleans Soil, Neighborhoods* (Dec. 1, 2005).

[36] Natural Resources Defense Council, *New Private Testing Shows Dangerously High Mold Counts in New Orleans Air* (Nov. 16, 2005).

[37] Natural Resources Defense Council, *New Testing Shows Widespread Toxic Contamination in New Orleans Soil, Neighborhoods* (Dec. 1, 2005).

[38] *See* Environmental Protection Agency, *Emergency Hurricane Debris Burning Guidance* (online at www.epa.gov/katrina/debris.html#emergency) (recognizing the difficulty of complying with federal regulations pertaining to burning debris and requiring segregation of hazardous wastes including batteries, which contain mercury, and PCBs "to the extent feasible"); Haley Barbour, Governor of Mississippi, *Emergency Order* (Sep. 13, 2005) (waiving requirements for expansion of landfills and allowing structural debris to be disposed of through emergency burn sites); National Institute for Occupational Safety and Health, Centers for Disease Control, *NIOSH Interim Guidance on Health and Safety Issues Among Clean-Up Workers Involved with Handling and Burning Hurricane Debris* (Sept. 2005) (online at www.cdc.gov/niosh/topics/flood/burningdebris.html) (explaining health and safety issues related to burning hurricane debris); *In Katrina's Wake*, Environmental Health Perspectives, v. 114, no. 1 (Jan. 2006) (noting that "the Louisiana Department of Environmental Quality has approved dozens of temporary debris disposal sites;" further noting that "monitoring in the area [of controlled burns] … has indicated some elevated levels of formaldehyde and acrolein in certain areas"); *Hurricane Bends Landfill Rules*, Washington Post (Oct. 30, 2005).

[39] *See* Emanuel, K., *Increasing Destructiveness of Tropical Cyclones Over the Past 30 Years,* Nature (2005); Webster, P.J., G. J. Holland, J. A. Curry, and H.R. Chang, *Changes in Tropical Cyclone Number, Duration, and Intensity in a Warming Environment,* Science (2005).

intense hurricanes also continues to increase, we will likely experience greater damage from hurricanes in the future.

Unfortunately, these important environmental issues were not examined by the Select Committee. The Select Committee also did not investigate the tremendous economic and environmental costs of the damage to oil and natural gas infrastructure in the Gulf, particularly to off-shore drilling platforms and seabed pipelines. For example, the Committee did not consider whether or how to ensure that new and rebuilt drilling infrastructure will be better able to withstand future storms.

The White House also raised some of these concerns. According to a briefing provided to the Select Committee on December 15, 2005, the White House concluded that there was a "lack of standards … to identify and communicate environmental risks to responders and general populations."[40] The White House also concluded that "environmental assessment teams were not prepositioned to respond."[41]

All of these issues are extremely serious and demand a coherent inquiry. But the Committee did not examine these critical questions.

I. Investigation Overview

Chairman Davis and the Select Committee have worked diligently, and we appreciate the opportunities Democratic members from the affected region were given to participate in the investigation. We regret, however, that the majority report seriously mischaracterizes the structure of the Select Committee and the objections of the Democratic leadership, as well as the vigor of the Committee's pursuit of critical documents.

According to the majority report, the Select Committee was established with "minority subpoena authority." This is flatly wrong. The resolution establishing the Select Committee granted subpoena authority to the Republican chairman, but not to the Democratic minority. This was one of the primary reasons Minority Leader Nancy Pelosi and the Democratic leadership refused to appoint members. They were concerned that Republican-dominated control of the Select Committee would leave it vulnerable to partisan pressures. Democrats also objected to the five-month timeframe for the investigation, believing that an artificially short deadline would encourage agencies to stonewall and run out the clock.

Regrettably, the Democratic concerns proved prescient.

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[40] Briefing by Ken Rapuano, Deputy White House Homeland Security Advisor, to Select Committee (Dec. 15, 2005).

[41] *Id.*

In large part, the success of an investigation hinges on access to documents and witnesses. The majority report recognizes that the Committee did not receive all the documents requested. But the report minimizes the significance of the missing documents, asserting that "we had more than enough to do our job." In fact, the Select Committee does not even know which documents the Administration is withholding. It is a telling indicator of the subservient position of the Select Committee that it was allowed to see only what the Administration wanted it to see and could not find out what had been withheld.

Based on obvious gaps in the documents provided to the Select Committee, we requested a series of meetings with officials at the Departments of Homeland Security, Defense, and Health and Human Services. We asked to have these agencies explain which documents they are withholding and why. We made this request on January 13, 2006.

Although the majority staff contacted these agencies, the agencies apparently ignored our request for briefings. As of February 11, 2006, we had received no briefing from any of the federal agencies regarding the documents they are withholding. The result is that the Select Committee does not have even the most basic log of the documents that have been withheld.

We have identified some of the holes in the record, although there are most likely many more. One major omission is that the documents provided to the Select Committee consistently lack communications to and from the agency head, which may be the most important agency records of all. As a result, the Select Committee has obtained little if any evidence documenting the basic flow of information to and from Homeland Security Secretary Michael Chertoff, Defense Secretary Donald Rumsfeld, or Health and Human Services Secretary Michael Leavitt regarding the Hurricane Katrina crisis. The Select Committee was informed that neither Secretary Chertoff nor Secretary Rumsfeld use e-mail, but we received no other records we requested, such as phone logs, e-mail records of assistants, or other internal communications that would show how Secretary Chertoff and Secretary Rumsfeld received information, communicated with other government officials, or gave orders. Nor did the Select Committee receive a set of Secretary Leavitt's e-mails, although e-mails to and from other officials at the Department make clear that Secretary Leavitt was sending and receiving e-mails relating to Katrina.

Another set of missing records involve FEMA's budget. When Michael Brown, the former FEMA Director, testified before the Committee, he asserted that FEMA had been "emaciated" by budget cuts that he had protested. On September 30, 2005, the Select Committee requested all "communications referring or relating to the budget request for fiscal year 2004, fiscal year 2005, and fiscal year 2006 for the Federal Emergency Management Agency to or from Undersecretary

Michael D. Brown."[42] Many of these documents were never provided by DHS. In fact, we would not even have known that the withheld documents existed, except that the *Washington Post* published an article on December 23, 2005, that described several of them.[43]

The most glaring gap in the record is the failure of the Select Committee to obtain documents from the White House. This omission — and its significance to the investigation — is discussed extensively in the next session. In this area too, the Select Committee was denied documents that were obtained by the press.[44]

We appreciate our ability to participate in the work of the Select Committee, and we recognize the efforts that Chairman Davis made to make the investigation bipartisan. But the fact remains that the investigation was far too deferential to the executive branch in resolving document disputes. These investigative failures would never have been tolerated if the recommendations of Leader Pelosi had been adopted.

II. FAILURE OF THE SELECT COMMITTEE TO EXAMINE WHITE HOUSE ACTIONS

As discussed in part I, the Select Committee has made many valuable findings about what went wrong with the response to Hurricane Katrina. Overall, the majority report is a comprehensive, detailed recitation of the problems that occurred. It is also a condemnation of the nation's progress in responding to catastrophic events since 9/11. We concur with the report's overarching conclusion that the response to Hurricane Katrina was "a national failure, an abdication of the most solemn obligation to provide for the common welfare." We also agree that Hurricane Katrina was "a failure of leadership."

Yet the findings of the majority report are nearly all phrased in the passive tense. The report catalogues what went wrong, but it rarely assesses how these failures occurred, why they were not corrected sooner, or who in particular was responsible. The majority report describes generic "institutional" failures, general "communications problems," and vague "bureaucratic inertia." With a few exceptions, however, the report fails to explain the causes of the failures or to hold anyone accountable.

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[42] Letter from Select Committee Tom Davis to Michael Chertoff, Secretary of Homeland Security (Sept. 30, 2005).

[43] *See, e.g., Brown's Turf Wars Sapped FEMA's Strength,* Washington Post (Dec. 23, 2005) (describing several memos from FEMA Director Michael Brown to Homeland Security Secretary Michael Chertoff, including one that states: "A total of $77.9 million has been permanently lost from the base"). Michael Brown provided to the Committee some budget-related documents that he retained in his personal possession.

[44] *Id.* (describing e-mails between former FEMA Director Michael Brown and White House Deputy Chief of Staff Joe Hagin, including one from Mr. Hagin on Sunday, August 28, 2005, the day before Hurricane Katrina struck, stating: "You didn't get out in time").

The single biggest flaw in the Select Committee's investigation is its failure to obtain key information from the White House. The evidence received by the Select Committee revealed that the White House played a major role in orchestrating the response to Hurricane Katrina, but the Select Committee did not determine the extent to which White House officials were responsible for faults in the federal response. The White House, in effect, was shielded from meaningful scrutiny.

There are four basic questions about the role of the White House that the Committee's investigation identified but did not resolve: (1) How did White House officials, including Chief of Staff Andrew Card, respond to dozens of urgent warnings and requests for assistance from former FEMA Director Michael Brown? (2) Why were top White House officials missing in action or unaware of key facts in the crucial days before and after the hurricane hit? (3) Why did President Bush and other top Administration officials insist on asserting that the levees held until the day after the hurricane struck when in fact they failed almost immediately? and (4) Why did the top ranking homeland security official in the White House Situation Room leave his post on the evening Hurricane Katrina struck feeling "satisfied" that the federal response was well in hand?

These unresolved questions go to the heart of the federal response, but the Select Committee did not answer them. We discuss each in turn below.

A. Communications with Michael Brown

During his testimony before the Select Committee on September 27, 2005, former FEMA Director Michael Brown explained that the White House played a central role in the response to Hurricane Katrina. He stated:

> I think this committee really needs to understand that the White House was fully engaged. The White House was working behind the scenes … to make things happen.[45]

Mr. Brown claimed to have based his conclusion on dozens of personal communications with top White House officials. He testified that he "exchanged e-mails and phone calls with Joe Hagin, Andy Card, and the president."[46] When asked how many communications he had with White House officials during this period, Mr. Brown replied: "I mean, 30 times, I mean, I don't know."[47]

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[45] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: The Role of the Federal Emergency Management Agency*, 109th Cong. (Sept. 27, 2005).

[46] *Id.*

[47] *Id.*

Mr. Brown testified that he had extensive access to the highest officials in the White House. As he testified at the hearing, "I mean, you know — look, I have no problem picking up the phone and getting a hold of Chertoff or Andy Card or Joe Hagin or the President. I don't have those problems."[48]

With respect to the substance of his communications, Mr. Brown testified that he told Mr. Card and others that "we needed help."[49] When asked exactly when the White House first learned that "a disaster was looming," Mr. Brown testified:

> Oh, they were aware of that by Thursday or Friday, because Andy Card and I were communicating at that point about — in fact, I remember saying to Andy at one point that this was going to be a bad one. They were focused about it. They knew it.[50]

In an interview with the *New York Times,* Mr. Brown claimed that he made a "blur of calls" after the hurricane struck, warning Mr. Card and others that "I can't get a unified command and control established" and that "things were going to hell in a handbasket."[51] He also stated that he "ask[ed] the White House explicitly to take over the response from FEMA and state officials."[52]

On February 10, 2006, Mr. Brown testified before the Senate Committee on Homeland Security and Governmental Affairs about his communications with the White House. He also appeared the next day, in closed session, before the House Select Committee to discuss these issues. In his statements before the Select Committee on February 11, Mr. Brown stated that he had "innumerable" conversations with White House officials in the days immediately preceding and following Hurricane Katrina, including the President; the Vice President; Mr. Card; Joe Hagin, Mr. Card's deputy; Francis Townsend, the Homeland Security Advisor; and Karl Rove, the deputy chief of staff and the President's political advisor. He stated that he kept the White House aware of the dire conditions in the Gulf Coast and sought White House help in tasking the Defense Department with essential response missions. He also stated that he made the White House aware of the frustrations he was encountering getting essential emergency support to the region in a timely manner.

Mr. Brown indicated that his communications with the White House were generally not successful in breaking through the red-tape and bureaucracy that

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[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Ex-FEMA Chief Tells of Frustration and Chaos,* New York Times (Sept. 15, 2005).

[52] *Id.*

was slowing down the federal response. He indicated that at one point Mr. Card responded to his requests by telling him to "go through the chain of command." He said he did not know why his calls to the White House failed to produce the results he wanted, but speculated that it could have been a result of the White House sending his requests back to the Department of Homeland Security to be processed through the chain of command.

Mr. Brown provided to the Committee several of the emails he sent to the White House. He indicated, however, that the emails that he had in his possession were an "incomplete" set of his email communications with the White House.

The questions raised by Mr. Brown's communications go to the core of the federal response. Mr. Brown had extensive communications with the top officials in the White House, in which he alerted them about conditions in the Gulf Coast and made urgent calls for help. Yet what the White House learned from Mr. Brown, what specific assistance he requested, and how the White House reacted remain shrouded in mystery.

B. Laxity at the White House

Significant questions also remain unanswered regarding the conduct of senior White House officials. In the key days before and immediately after Hurricane Katrina, virtually the entire leadership of the White House was on vacation or out of Washington. President Bush was on a five week vacation in Crawford, Texas. Vice President Cheney was at his ranch in Wyoming. Chief of Staff Andrew Card was vacationing at his lakefront summer home in Maine. And Homeland Security Advisor Frances Townsend was also on vacation in Maine.[53]

Their absence is difficult to understand. A major hurricane hitting New Orleans had been identified as one of the top three catastrophic threats to homeland security.[54] As Chairman Davis stated: "The director … of the National Hurricane Center said this was the big one. When this happened … Bush is in Texas, Card is in Maine, the vice president is fly-fishing. I mean, who's in charge here?"[55]

The senior official left in charge at the White House was Deputy Homeland Security Advisor Ken Rapuano. Yet during a briefing he gave to the Select

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[53] *Katrina's Aftermath: The Response; Put to Katrina's Test,* Los Angeles Times (Sept. 11, 2005).

[54] *See, e.g., Sharp Criticism of U.S. Response, Lack of Action to Prevent Disaster,* San Francisco Chronicle (Sept. 2, 2005); *Keeping Its Head Above Water,* Houston Chronicle (Dec. 1, 2001); *The Big One Is Coming,* Hartford Courant (Oct. 16, 2005); *Disaster Raises Question for California,* Dallas Morning News (Sept. 11, 2005); *Katrina's Aftermath: Government Response,* Houston Chronicle (Sept. 11, 2005); *Anarchy, Anger, Desperation: The Response,* San Francisco Chronicle (Sept. 2, 2005).

[55] *Administration Faulted on Katrina; GAO Report Blames Bungled Response on Failures That Started at the Top,* Washington Post (Feb. 2, 2006).

Committee on December 15, 2005, he conceded that he was not aware of key information. During the briefing he repeatedly emphasized that the major cause of the poor government response was that the National Response Plan relied on state and local officials to take the lead in organizing and coordinating the response.[56] In response to one question, Mr. Rapuano indicated that if federal officials did not hear from a local county in Mississippi, the federal agencies assumed that this meant that everything was under control, even if the county was so devastated that communications were impossible.

This assumption had catastrophic consequences and was completely unwarranted. The Select Committee obtained documents from the Department of Homeland Security demonstrating that federal officials had predicted before Hurricane Katrina that state and local authorities would be unable to conduct a response without federal help. The "Hurricane Pam" exercise was designed in 2004 to plan and prepare for "a catastrophic hurricane striking southeastern Louisiana."[57] The Scope of Work for this exercise predicted that such a "mega-disaster" would "quickly overwhelm the State's resources" and "creat[e] a catastrophe with which the State would not be able to cope without massive help from neighboring states and the Federal Government."[58] This document warned that "existing plans, policies, procedures and resources" were inadequate.[59]

Apart from the Hurricane Pam documents, the White House also received reports in the days directly before the storm struck warning that its effects would be catastrophic. For example, on the evening before the hurricane bore down on the Gulf Coast, the White House received a warning that "[a]ny storm rated Category 4 or greater on the Saffir-Simpson scale will likely lead to severe flooding and/or levee breaching, leaving the New Orleans metro area submerged for weeks or months."[60]

This evidence raises serious questions about how the White House could be so disengaged and so ill-informed. The threat of a major hurricane bearing down on New Orleans and the Gulf Coast called for the full attention of the President and his senior leaders. Yet for unexplained reasons, the response was left to a relatively junior official who was ignorant of basic information about the nature of the threat.

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[56] Briefing by Ken Rapuano, Deputy White House Homeland Security Advisor, to Select Committee (Dec. 15, 2005).

[57] Federal Emergency Management Agency, *Combined Catastrophic Plan for Southeast Louisiana and the New Madrid Seismic Zone: Scope of Work* (2004).

[58] *Id.*

[59] *Id.*

[60] Department of Homeland Security, National Infrastructure Simulation & Analysis Center, *Fast Analysis Report* (Aug. 28, 2005).

C. Misleading Statements about Levee Failures

FEMA and Coast Guard officials who were in New Orleans on Monday, August 29, the day the hurricane struck, personally observed levee failures and warned that two-thirds to three-fourths of the city had flooded. The White House was informed of these crucial facts, but for days and weeks after the hurricane, President Bush and other top Administration officials deflected criticism by insisting they were caught by surprise when the levees failed on Tuesday, August 30, the day after Hurricane Katrina. An important unanswered question is why these top officials persisted in making these misleading assertions.

The first official government report of the levee failure appears to have come at 8:14 a.m. on Monday, August 29, 2005, the morning Hurricane Katrina struck. At that time, the New Orleans office of the National Weather Services issued a bulletin warning against flash floods and stating: "A LEVEE BREACH OCCURRED ALONG THE INDUSTRIAL CANAL AT TENNESSEE STREET."[61] Within minutes, the report was picked up by radio and television news reports.[62] Later that day, additional press reports mentioned levee failures. For example, at 2:00 p.m., the New Orleans *Times Picayune* reported that "City Hall confirmed a breach of the levee along the 17th Street Canal."[63]

The same day, an urgent "Spot Report" was sent to the White House Situation Room. This Spot Report, issued by the Homeland Security Operations Center at 10:30 p.m., confirmed major breaches in the New Orleans levees: "There is a quarter-mile breech in the levee near the 17th Street Canal about 200 yards from Lake Pontchartrain allowing water to flow into the City."[64]

The Spot Report conveyed to the White House a worst-case scenario, including massive flooding that had already taken place and bodies scattered in the floodwaters. The report was based on the observations of Marty Bahamonde, the sole FEMA official in New Orleans, who had taken two Coast Guard helicopter flights that day to personally verify the damage. As the Spot Report continued:

- "[A]n estimated 2/3 to 75% of the city is under water."

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[61] National Weather Service, *Bulletin: EAS Activation Requested; Flash Flood Warning* (Aug. 29, 2005).

[62] *See, e.g., Good Day Dallas,* KDFW-TV (Aug. 29, 2005; 8:21 a.m.) (reporting that "[t]he National Weather Service in New Orleans has reported a levee breach in New Orleans"); *Morning Drive Time,* ABC News (Aug. 29, 2005).

[63] *Rescuers Can't Get to Those Who Are Stranded*, New Orleans Times-Picayune (Aug. 29, 2005). *See also Hurricane Katrina Slamming Into Gulf Coast,* CNN (Aug. 29, 2005) (noting at 10:00 a.m. that a "levee breach occurred").

[64] Homeland Security Operations Center, *Spot Report #13* (Aug. 29, 2005) (WHK-4055) (DHS-FRNT-0001-0000002).

- "Some homes were seen with water to the first floor and others completely underwater."
- "Hundreds of people were observed on the balconies and roofs of a major apartment complex in the city."
- "Lake Front Airport by Lake Pontchartrain is under water."
- "The Coast Guard is flying rescue missions for people stuck on roofs. They reported seeing about 150 people but said that as they lifted people out, they saw others breaking through the roofs of adjacent homes."
- "A few bodies were seen floating in the water."[65]

The Spot Report was not the only evidence of levee failures reaching senior officials on Monday, August 29. At 9:27 p.m., Secretary Chertoff's chief of staff, John Wood, and others in the Secretary's office, received an e-mail from Brian Besanceney, the Assistant Secretary for Public Affairs, stating:

> [T]he first (unconfirmed) reports they are getting from aerial surveys in New Orleans are far more serious than media reports are currently reflecting. Finding extensive flooding and more stranded people than they had originally thought — also a number of fires. FYI in case tomorrow's sit reps seem more "severe."[66]

About an hour and a half later, FEMA Deputy Director Patrick Rhode sent an e-mail to DHS Deputy Secretary Michael Jackson. At 11:05 p.m., he wrote: "We just spoke with our first rep on the ground in New Orleans who did a helo tour and describes a 200 yard collapse of the levy on the south side of the lake which is accounting for much of the additional flooding."[67]

Despite all of these reports, President Bush has insisted repeatedly since the hurricane that the levees held until the following day, Tuesday, August 30. After touring Biloxi, Mississippi, on September 2, 2005, President Bush stated: "The

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[65] *Id.*

[66] E-mail from Brian Besanceney, Assistant Secretary for Public Affairs, Department of Homeland Security, to John Wood, Chief of Staff, Department of Homeland Security, et al. (Aug. 29, 2005) (DHS-FRNT-0006-0000023).

[67] E-mail from Patrick Rhode, Deputy Director, Federal Emergency Management Agency, to Michael Jackson, Deputy Secretary of Homeland Security (Aug. 29, 2005).

levees broke on Tuesday in New Orleans."[68] According to the President, "New Orleans got hit by two storms, one the hurricane, and then the flood."[69]

During a press conference in New Orleans on September 12, 2005 — two weeks after the storm — President Bush explained the initial lax federal response by stating:

> When that storm came by, a lot of people said we dodged a bullet. When that storm came through at first, people said, whew. There was a sense of relaxation, and that's what I was referring to. And I, myself, thought we had dodged a bullet. You know why? Because I was listening to people, probably over the airways, say, the bullet has been dodged. And that was what I was referring to. Of course, there were plans in case the levee had been breached. There was a sense of relaxation in the moment, a critical moment.[70]

The President is not the only Administration official who has made this claim. Appearing on *Meet the Press,* Homeland Security Secretary Michael Chertoff stated: "what happened is the storm passed and passed without the levees breaking on Monday."[71] He claimed that when the levees broke on Tuesday, this "second catastrophe really caught everybody by surprise."[72] This statement appears to contradict not only the Spot Report, but other communications within the Secretary's own office that day.

Similarly, General Richard Myers, Chairman of the Joint Chief of Staff, stated at a September 6 briefing: "The headline, of course, in most of the country's papers on Tuesday were 'New Orleans dodged a bullet.'" He explained that on Tuesday, the day after the storm, "I called each of the chiefs of the services, one by one, and said we don't know what we're going to be asked for yet. The levees and the flood walls had just broken."[73] Since General Myers' briefing, the Defense

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[68] White House, *President Tours Biloxi, Mississippi Hurricane Damaged Neighborhoods* (Sept. 2, 2005) (online at http://www.whitehouse.gov/news/releases/2005/09/20050902-6.html).

[69] *Id.*

[70] White House, *President, Lieutenant General Honore Discuss Hurricane Relief in Louisiana* (Sept. 12, 2005) (online at www.whitehouse.gov/news/releases/2005/ 09/20050912.html).

[71] *Meet the Press,* NBC News (Sept. 4, 2005).

[72] *Id. See also* Department of Homeland Security, *Press Conference with Officials from the Department of Homeland Security, Justice Department, Defense Department, the National Guard Bureau, U.S. Coast Guard and FEMA* (Sept. 1, 2005) ("[T]his has been a unique disaster in that we really had two disasters one after the other. We had the storm, but then before we could come in and begin the rescue effort and the evacuation effort and the effort to address people's needs, we had a second catastrophe. That was the levee breaking and the flood coming in").

[73] Department of Defense, *Defense Department Operational Update Briefing* (Sept. 6, 2005).

Department has adopted this false claim as fact in numerous subsequent press releases.[74]

Administration officials also made these claims directly to members of Congress. Chairman Davis led a congressional delegation to the Gulf Coast on September 18, 2005, during which Coast Guard Vice Admiral Thad Allen briefed the delegation, claiming that the levees were not breached until Tuesday, and repeating the line that New Orleans had "dodged the bullet."[75]

It is appalling to think that the President and his top advisors would mislead the public about the levee breaches to provide political cover for the slow federal response. But it is also hard to comprehend how the President and his top advisors could be misinformed for weeks about basic facts about what happened in New Orleans. Unfortunately, the Select Committee's investigation is unable to explain why these erroneous statements were made initially and repeated so frequently.

D. Absence of Leadership in the Situation Room

President Bush allowed only a single White House official to talk to the Select Committee about the response to Hurricane Katrina. That official was Ken Rapuano, the deputy to Homeland Security Advisor Frances Townsend. Mr. Rapuano did not testify under oath or in public. None of his e-mails or other documents were provided to Congress. But he did brief the Select Committee in closed session in two parts, on December 15, 2005, and January 27, 2006.

Mr. Rapuano's briefings raised serious questions about the White House response. As described above, one question was how he could have been ignorant of the predictions that a hurricane hitting New Orleans and the Gulf Coast would incapacitate state and local officials. Other questions involve his conduct on Monday, August 29, the day the hurricane struck, and the seemingly passive White House response in the days following the hurricane.

With President Bush, Vice President Cheney, Chief of Staff Andrew Card, and Homeland Security Advisor Townsend on vacation, Mr. Rapuano was the senior official in the White House in charge of the federal response to Hurricane Katrina.

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[74] *See, e.g.,* Department of Defense, *New Orleans "Unwatering" Task Force Speeds Progress* (Sept. 15, 2005) ("Since Hurricane Katrina flooded the city [on Tuesday] Aug. 30, engineers and workers have been feverishly damming up breached levees, strengthening canal walls and getting huge pumps on line"); Department of Defense, *82nd Airborne Division Becomes "Waterborne" in New Orleans* (Sept. 21, 2005) ("About 80 percent of the Crescent City was flooded after levees broke [on Tuesday] Aug. 30"); *New Orleans Is Dry, Says Corps of Engineers,* American Forces Press Service (Oct. 11, 2005) ("About 80 percent of New Orleans became flooded after the levees gave way [on Tuesday] Aug. 30, a day after Category 4 Hurricane Katrina hit the Gulf Coast").

[75] Briefing by Vice Admiral Thad Allen, U.S. Coast Guard, to Select Committee (Sept. 18, 2005).

Yet he told the Select Committee that he left the White House at 10:00 p.m. on the day the hurricane hit. During the briefings, he repeatedly emphasized the confused, conflicting, and incomplete information being received by the White House. But when asked to explain his decision to leave, he said he was "satisfied" with federal search and rescue efforts and with FEMA's response.

Mr. Rapuano also stated that he left the Situation Room on Monday evening under the assumption that "Michael Brown was satisfied with everything he got." When asked to explain the basis for his belief, Mr. Rapuano conceded that he had not actually communicated with Mr. Brown, but that his "impression" was based on communications with officials from the Department of Homeland Security. When asked to provide these communications, officials from the White House Counsel's Office interrupted and stated that Mr. Rapuano had no authority to negotiate with the Committee about documents.

Mr. Rapuano told the Select Committee that his top priority on Monday was search and rescue operations. And he asserted that he was confident when he left the White House that every available federal resource was being used to assist in this effort. But on January 30, 2006, just three days after Mr. Rapuano's briefing, a hearing in the Senate revealed that offers by the Interior Department for additional search and rescue resources — including 300 boats — were ignored immediately after Hurricane Katrina struck.[76] As the Interior Department explained:

> The areas of search and rescue and law enforcement illustrate the nature of the problem. … DOI's proactive offer to deploy shallow-water rescue assets utilizing flat-bottom boats operated by qualified Refuge Officers was not integrated into the NRP process, yet clearly these assets and skills were precisely relevant in the post-Katrina environment.[77]

Interior Department officials concluded: "Although we attempted to provide these assets, we were unable to efficiently integrate and deploy these resources."[78] Mr. Rapuano was never called back before the Select Committee to explain these inconsistencies.

Mr. Rapuano was specifically asked who was left in charge in the White House when he left at 10:00 p.m. He could not identify the individual, except to say that

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[76] Senate Homeland Security and Governmental Affairs Committee, *Hearings on Hurricane Katrina: Urban Search and Rescue in a Catastrophe,* 109th Cong. (Jan. 30, 2006).

[77] Letter from P. Lynn Scarlett, Assistant Secretary for Policy, Management and Budget, Department of the Interior, to Chairman Susan M. Collins and Ranking Member Joseph I. Lieberman, Senate Committee on Homeland Security and Governmental Affairs (Nov. 7, 2005).

[78] *Id. See also FEMA Failed to Accept Katrina Help, Documents Say,* CNN (Jan. 30, 2006).

there would have been an unidentified "watch officer" manning the Situation Room.

These admissions by Mr. Rapuano call into question his actions and, by implication, the leadership emanating from the White House. It is astonishing that the White House would leave the response to one of the greatest disasters in U.S. history to a relatively junior staffer who would leave his post in the midst of confusion and conflicting reports without even identifying who would remain in charge.

Mr. Rapuano's briefing also raised unanswered questions about whether the White House provided essential leadership in the days after the hurricane. During the January 27 briefing, Mr. Rapuano was repeatedly asked to provide specific examples of orders or directives given by the White House to improve the disjointed federal response. He refused to provide a single example. Instead, he stated only that the White House had "engaged in discussions" about or "monitored" aspects of the federal response. Mr. Rapuano explained that "we don't do operations at the White House" and that his role was to "assess and monitor the situation" and to "coordinate and engage" when there were "operational gaps."

In a preliminary report to the Select Committee on February 1, 2006, Comptroller General David M. Walker concluded that someone should have been "directly responsible and accountable to the President" and should have been "designated to act as the central focus point to lead and coordinate the overall federal response."[79] Mr. Walker referred to an earlier GAO report emphasizing that "the nation needs presidential involvement and leadership both before and after a catastrophic disaster."[80]

Based on Mr. Rapuano's briefing, there is little evidence that such leadership was provided by the White House. There thus remain key unanswered questions about whether the White House fulfilled its responsibility to ensure that all branches of the federal government responded in an effective and coordinated manner.

E. White House Refusal to Cooperate

During the course of the investigation, we made repeated attempts to get the documents and testimony needed to resolve these unanswered questions about the White House role. But we were consistently frustrated. With the exception of

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[79] U.S. Government Accountability Office, *Statement by Comptroller General David M. Walker on GAO's Preliminary Observations Regarding Preparedness and Response to Hurricanes Katrina and Rita* (Feb. 1, 2006) (GAO-06-365R).

[80] U.S. General Accounting Office, *Disaster Management: Improving the Nation's Response to Catastrophic Disasters* (July 1993) (GAO-RCED-93-186).

Mr. Rapuano, President Bush refused to allow any White House officials to testify or be interviewed by the Select Committee. In addition, multiple efforts were made during the course of the Select Committee's investigation to obtain White House documents that would address these unanswered questions. In the end, these efforts were frustrated by the refusal of the White House to cooperate and the reluctance of the majority to exercise its authority under House Resolution 437.

On September 30, 2005, Chairman Davis and Rep. Melancon sent a document request letter to the White House. The request was broad, encompassing the full range of documents relevant to the Committee's inquiry. At the same time, the request identified a narrow subclass of documents that were of particular interest. These high priority documents included e-mails, internal memos, and other communications to and from top decision-makers in the White House. The letter asked the White House to give first priority to providing communications from "officials in the Office of the President, the Office of the Vice President, the Office of the White House Chief of Staff, and the Office of the Homeland Security Advisor."[81]

Although the letter requested an initial response within two weeks, the White House failed to respond. Rep. Melancon raised concern at the Select Committee's hearing on November 2, 2005, noting: "We also have no communications from the White House, even though Mr. Brown testified that he exchanged multiple e-mails with White House officials, including Chief of Staff Andrew Card."[82] In response, Chairman Davis cited not only the importance of these documents to the Committee's investigation, but his intent to issue a subpoena if necessary:

> I just want to commit to you and the other members of the committee, I'm going to seek a firm final deadline on all the prioritized requests. We need to get those documents to continue our work, and if they're not met — and I'll work on those deadlines with all of you. If we don't get them, I'm not hesitant to issue subpoenas; we have that power.[83]

When the White House again failed to produce the requested documents, Rep. Melancon reiterated his concern at the Select Committee's hearing on November 9, 2005.[84] In response, Chairman Davis promised to issue a subpoena by

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[81] Letter from Select Committee Chairman Tom Davis and Rep. Charlie Melancon to Andrew H. Card, Jr., White House Chief of Staff (Sept. 30, 2005).

[82] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: The Federal Government's Use of Contractors to Prepare and Respond*, 109th Cong. (Nov. 2, 2005).

[83] *Id.*

[84] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: Preparedness and Response by the State of Alabama*, 109th Cong. (Nov. 9, 2005).

November 18: "I'm comfortable setting a firm deadline. … I would think Friday, November 18th, the final day before we recess, is a reasonable date, and if the gentleman would agree, if the documents aren't produced by that date, I'm ready to proceed with subpoenas. The clock is ticking."[85]

When the White House again failed to produce the documents by the deadline, no subpoena was issued. Instead, representatives from the White House Counsel's office met with Select Committee staff on December 1, 2005.[86] At that meeting, the White House officials asserted that compliance would be impossible. They said responding to the document request would require the review of 71 million e-mail messages and take over one year. They could not explain, however, why other agencies had managed to comply or why they had not begun producing communications from at least the key individuals identified in the September 30 request letter.

During this meeting, the White House officials raised vague concerns about "separation of powers," claiming that it would be inappropriate and unprecedented for Congress to obtain the documents the Committee was seeking. When asked whether they were asserting a legal claim of executive privilege, they said they were not. When staff provided multiple examples of past precedents for this type of request — including testimony provided by White House chiefs of staff during the Clinton Administration — an official from the White House responded bluntly: "You're not getting Andrew Card's e-mails."[87]

Later that day, Chairman Davis and Rep. Melancon wrote to the White House objecting to these arguments.[88] To further limit the request, they identified an even smaller set of documents the White House should produce immediately. The letter requested communications from just a handful of individuals: Chief of Staff Andrew Card and his deputy Joe Hagin, Homeland Security Advisor Frances Townsend and her deputy Ken Rapuano, and two senior staff in each of their immediate offices. The request was further limited to communications from August 23 to September 15, 2005. The letter asked for these documents by December 6, 2005, and it made clear for the third time that our goal was "to avoid the issuance of subpoenas."[89]

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[85] *Id.* (emphasis added).

[86] Meeting between Richard Klinger, Associate Counsel to the President; Robert F. Hoyt, Associate Counsel to the President; and Alex M. Mistri, Special Assistant to the President for Legislative Affairs, with Select Committee Staff (Dec. 1, 2005).

[87] *Id.*

[88] Letter from Select Committee Chairman Tom Davis and Rep. Charlie Melancon to Andrew H. Card, Jr., White House Chief of Staff (Dec. 1, 2005).

[89] *Id.*

On December 6, the White House wrote back refusing to provide the requested documents.[90] Instead, the White House offered a "background briefing" by a single White House official, Deputy Homeland Security Advisor Ken Rapuano. Although the White House said it would produce some e-mails from lower-level Homeland Security Council staffers, there was no commitment to produce any documents from the four specific officials identified in the December 1 request letter. There was also no explanation for the White House's decision to provide e-mails from some White House staffers but not others.

On December 13, Rep. Melancon issued a memorandum to all Select Committee members explaining his intent to move for a subpoena of the White House at the Select Committee hearing the next day. As the memo stated:

> It becomes impossible for the Committee to fulfill its mandate responsibly if the White House and other agencies are permitted to withhold key documents and run out the clock on the investigation. On multiple occasions, I have raised my concerns with the Committee that the White House and other agencies appear to be stonewalling the investigation. The Committee should not permit this to continue.[91]

When Rep. Melancon offered his subpoena motion on December 14, 2005, Chairman Davis opposed the motion, reversing the position he had declared publicly on three previous occasions. In explaining his reversal, Chairman Davis stated: "I don't think that Andy Card's e-mails are appropriate. We've researched this, in terms of executive privilege and the like. The President doesn't carry a blackberry with him. For all intents and purposes the Chief of Staff is the President. For these reasons I think that's too inclusive."[92] Chairman Davis also opposed obtaining e-mails from Joe Hagin, Frances Townsend, and Ken Rapuano, but he offered no explanation for his position on these officials.

After rejecting the subpoena motion, the Republicans on the Select Committee approved a separate motion accepting a closed briefing from the White House in lieu of any of the requested documents. The first briefing was provided by Mr. Rapuano on December 15 and the second on January 27.

Immediately after the first White House briefing on December 15, Reps. Melancon and Taylor wrote to Chairman Davis to renew their request for a

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[90] Letter from William K. Kelly, Deputy Counsel to the President, to Select Committee Chairman Tom Davis and Rep. Charlie Melancon (Dec. 6, 2005).

[91] Memorandum from Rep. Charlie Melancon to Members of the House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina (Dec. 13, 2005).

[92] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: Preparedness and Response by the State of Alabama*, 109th Cong. (Dec. 9, 2005).

subpoena for the e-mails and communications of the four key White House officials. As they stated:

> The White House briefing made it clear that there were major flaws in the federal response. But the briefing did not explain why these failures occurred and who should be held accountable. Every time specific questions were asked about the role of key White House officials, Mr. Rapuano either declined to answer or gave only a general answer that provided no details.[93]

In the same letter, Reps. Melancon and Taylor asked Chairman Davis to schedule a hearing at which the four key White House officials would testify. That request was denied.

Late in the investigation, on February 10, 2006, Michael Brown testified before the Senate Committee on Homeland Security and Governmental Affairs, providing new details about his communications with the White House. After Mr. Brown completed his testimony, Chairman Davis subpoenaed him to appear the next day before the House Select Committee in closed session. During his appearance before the House Select Committee, Mr. Brown discussed his communications with White House officials. He also provided e-mails of some of these communications, although he described the e-mails as an "incomplete" set. The White House did not provide any of Mr. Brown's e-mails to the Select Committee. The White House also failed to provide any internal communications responding to Mr. Brown's e-mails and requests for assistance.

On September 15, the same day that House Resolution 437 passed the House, the President promised to cooperate fully in a congressional investigation. In a prime-time speech delivered in the French Quarter of New Orleans at the foot of historic St. Louis Cathedral, he stated:

> The United States Congress also has an important oversight function to perform. Congress is preparing an investigation, and I will work with members of both parties to make sure this effort is thorough.[94]

Ultimately, however, the President never kept this commitment. The White House withheld scores of critical documents, prevented all but a single White House official from even speaking to Congress, and made clear that a full and complete accounting would have to take a back seat to shielding White House actions through unprecedented and sweeping claims of executive privilege. When

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[93] Letter from Rep. Charlie Melancon and Rep. Gene Taylor to Select Committee Chairman Tom Davis (Dec. 15, 2005).

[94] *Id.*

President Bush was asked on January 27, 2006, why the White House was not being more forthcoming, he stated: "that's just the way it works."[95]

F. Congressional Precedents

The majority concludes that while it "was disappointed and frustrated by the slow pace and general resistance to producing the requested documents by the White House," the Select Committee "had more than enough to do our job." The majority has also asserted that its approach toward the White House was evenhanded and consistent with congressional precedents. We strongly disagree.

One of the most striking features of the Select Committee's approach toward the White House in this investigation is how dramatically it conflicts with congressional oversight during the Clinton Administration. During the Clinton Administration, the Government Reform Committee, the principal oversight committee in the House, issued over 1,000 unilateral subpoenas to investigate allegations against the Clinton Administration and the Democratic Party.[96]

Through these subpoenas and other requests, the Committee received exceptionally sensitive Administration documents, including descriptions of discussions between the President and his advisors, internal White House e-mails, and internal Administration deliberations.[97] At one point, the White House spent over $12 million to reconstruct internal White House e-mails for Committee review.[98] The Committee heard testimony from over 100 White House and agency officials, including three White House chiefs of staff.[99]

The treatment the Bush White House has received from the Select Committee is fundamentally different. The Select Committee has no idea what specific documents the White House is withholding from Congress. The Select Committee also has no idea whether the legal doctrine of executive privilege applies to any of these documents because we do not know what information they

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[95] *Bush Reasserts Presidential Prerogatives; Eavesdropping, Katrina Probe Cited as Concerns,* Washington Post (Jan. 27, 2006).

[96] Minority Staff, Special Investigations Division, House Committee on Government Reform, *Congressional Oversight of the Clinton Administration* (Jan. 17, 2006).

[97] *Id.*

[98] Letter from Phillip D. Larsen, Special Assistant to the President and Director of the Office of Administration, to Rep. Ernest J. Istook, Jr. (Aug. 1, 2001).

[99] Deposition of Thomas F. McLarty, House Committee on Government Reform and Oversight (Sept. 5, 1997); Deposition of Erskine Bowles, House Committee on Government Reform and Oversight (May 5, 1998); Testimony of John Podesta, House Committee on Government Reform, *Hearing on the Controversial Pardon of International Fugitive Marc Rich* (Mar. 1, 2001) (H. Rept. 107-11).

contain. Although the minority requested briefings to answer these questions, those requests were denied.

III. OTHER FAILURES TO ASSIGN ACCOUNTABILITY

The White House may be the most extreme example in the majority report of a failure to determine responsibility for mistakes and assign accountability. But it is not the only example. Consistently throughout the report, problems in the response are identified without an assessment of cause and responsibility. We know from the majority report that "massive failures" in communications operability "impaired response efforts," we know that coordination with the Pentagon was not effective, and we know that poor planning and the failure to adequately preposition medical supplies led to delays and shortages. But we do not know who was responsible for these failures.

In the discussion below, we comment on several areas where further investigation is required to determine why specific mistakes were made and to hold those responsible to account.

A. Delays in Deployment of Military Assets

The majority report contains multiple findings about problems in the Defense Department response to Hurricane Katrina. The report finds that "DOD/DHS coordination was not effective during Hurricane Katrina"; "DOD, FEMA and the state of Louisiana had difficulty coordinating with each other, which slowed the response"; and that various military organizations, including active duty troops, the National Guard, and the Coast Guard, each performed admirably, but that coordination among them was inadequate. But the Select Committee failed to insist on a full review of Defense Secretary Rumsfeld's responsibility for these problems.

At the Select Committee hearing on October 27, 2005, Defense Department officials claimed that they fulfilled every request for assistance they received in a timely manner. For example, Admiral Timothy Keating, the Commander of Northern Command, stated: "The United States Northern Command met every request for support received by FEMA."[100] Assistant Secretary of Defense for Homeland Defense Paul McHale testified: "The Department of Defense received 93 mission assignments from FEMA and approved all of them."[101] Mr. McHale further testified that the Defense Department moved quickly to accept a mission

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[100] Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: Preparedness and Response by the Department of Defense, the Coast Guard, and the National Guard of Louisiana, Mississippi, and Alabama* (Oct. 27, 2005).

[101] *Id.*

assignment from FEMA to take over logistics. When asked whether any time was lost waiting for approval of civilian mission assignments by Secretary Rumsfeld, Mr. McHale said, "I don't believe so. I think the time that elapsed was commensurate with the magnitude of taking on full logistical support throughout a three- or four-state area."[102]

This testimony was contradicted by FEMA officials. On January 5 and 6, 2006, Select Committee staff interviewed Ed Buikema, Acting Director of FEMA's Response Division, and Michael Lowder, FEMA Deputy Director of Response.[103] Mr. Buikema and Mr. Lowder were the senior FEMA officials responsible for coordinating logistics in response to Hurricane Katrina.

Both FEMA officials stated that on Thursday, September 1, 2005, three days after Hurricane Katrina made landfall, FEMA requested emergency assistance from the Defense Department pursuant to the National Response Plan.[104] In particular, they stated that FEMA issued a massive "billion-dollar mission assignment" to the Defense Department to deliver food, water, ice, and other essential commodities to all three states affected by the hurricane. The FEMA officials said that this urgent request included "logistical support," "airlift" assistance, and "commodity distribution." They characterized the request as a "blanket mission assignment" that was critical to a timely and effective emergency response.[105]

Both Mr. Buikema and Mr. Lowder stated that the Defense Department "rejected" this request.[106] The FEMA officials said they relayed their request to the Defense Department's Joint Director of Military Support, which told them that the Defense Department would not accept the mission assignment and that all requests for assistance by FEMA had to be personally approved by Secretary Rumsfeld. According to the FEMA officials, the Defense officials expressed concern that the involvement of active duty troops in providing emergency supplies raised legal issues that the Department had not resolved.

Both FEMA officials recounted that this unexpected rejection of their emergency request delayed critical assistance for days. They reported that they were forced to leave their command post at FEMA headquarters in order to negotiate with Pentagon attorneys about what assignments the Defense Department would and

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[102] *Id.*

[103] Interview of Michael Lowder, Deputy Director of Response, Federal Emergency Management Agency, by Select Committee Staff (Jan. 5, 2006); Interview of Ed Buikema, Acting Director of Response, Federal Emergency Management Agency, by Select Committee Staff (Jan. 6, 2006).

[104] *Id.*

[105] *Id.*

[106] *Id.*

would not accept. These bureaucratic interagency negotiations continued throughout the weekend.

The FEMA officials did not personally communicate with Defense Secretary Rumsfeld during this period. But they told the Select Committee that they were informed during these protracted negotiations that Secretary Rumsfeld had to personally sign off on every mission assignment and that this added an extra layer of bureaucracy and review. According to one of the FEMA officials, "all FEMA mission assignments to DOD had to go to the Secretary of Defense."[107] This official also said that "had DOD fully engaged earlier, that would have helped."[108]

According to the FEMA officials, a final agreement on the Defense Department's mission assignment was not worked out until Monday, September 5 — one week after Hurricane Katrina struck. These accounts appear to be supported by documents. On Monday, September 5, Homeland Security Operations Center Director Matthew Broderick wrote to Assistant Secretary of Defense Paul McHale asking whether the renewed FEMA mission assignments to the Defense Department had been finally approved.[109]

The majority report describes the contradiction between the accounts of Pentagon officials, who claimed they approved every request for assistance, and the accounts of FEMA officials, who said their requests were denied. It recognizes that "communications between DOD and DHS, especially FEMA, … reflect a lack of information sharing, near panic, and problems with process. But the majority report fails to assign accountability for the delays in responding to FEMA's pleas for help.

On multiple occasions, the Select Committee tried to obtain documents that would allow the Committee to investigate these issues further. Chairman Davis and Rep. Melancon first requested documents from the Department of Defense on September 30, 2005.[110] In that letter, they made clear that the Defense Department should give first priority to producing documents from the Office of the Secretary of Defense.

When these documents were not produced, Chairman Davis and Rep. Melancon sent another letter requesting high priority documents from Secretary

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[107] Interview of Michael Lowder, Deputy Director of Response, Federal Emergency Management Agency, by Select Committee Staff (Jan. 5, 2006)

[108] *Id.*

[109] E-mail from Matthew Broderick, Director, Homeland Security Operations Center, to Paul McHale, Assistant Secretary of Defense, et al. (Sept. 5, 2005).

[110] Letter from Select Committee Chairman Tom Davis and Rep. Charlie Melancon to Donald H. Rumsfeld, Secretary of Defense (Sept. 30, 2005).

Rumsfeld.[111] When the documents still had not been produced, Rep. Melancon offered a subpoena motion at the Select Committee's hearing on December 14, 2005. That motion was adopted, and the Select Committee directed Secretary Rumsfeld to turn over his communications on Katrina.[112]

Although the subpoena did prompt the production of some documents, including some of Secretary Rumsfeld's official correspondence, Secretary Rumsfeld continued to defy the subpoena with respect to his e-mails, notes, memoranda, and other documents. Secretary Rumsfeld withheld these documents "subject to a continuing review of the communication for legitimate issues of legal privilege and confidentiality," according to press accounts quoting Assistant Secretary of Defense Paul McHale.[113] The minority requested a meeting with Mr. McHale to determine precisely which documents were being withheld and why, but this request was denied. In response, Rep. Melancon wrote to Chairman Davis on January 23, 2006, to urge him to enforce the subpoena he had issued, but that request was also denied.[114] Our requests for an interview or direct testimony from Secretary Rumsfeld were denied as well.

Because Secretary Rumsfeld refused to comply with the Select Committee's subpoena, and because the Select Committee rejected our requests to enforce it, we were unable to determine why the Defense Department refused FEMA's requests for assistance or why protracted negotiations continued for more than a week after Hurricane Katrina struck.

B. Failures in the Medical Response

Although evidence gathered by the Committee revealed that major failures were predicted in the nation's medical response system well before the storm hit, the Select Committee did not fully investigate why these breakdowns occurred or who was responsible for correcting these deficiencies before Katrina struck.

A report issued on December 9, 2005, by Rep. Henry A. Waxman, Rep. Bennie G. Thompson, and Rep. Charlie Melancon documented major failures in the medical response to Hurricane Katrina.[115] This report found that a key component of federal emergency response capacity — the National Disaster

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[111] Letter from Chairman Tom Davis and Rep. Charlie Melancon to Donald H. Rumsfeld, Secretary of Defense (Dec. 7, 2005).

[112] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Subpoena to Donald H. Rumsfeld, Secretary of Defense* (issued Dec. 14, 2005).

[113] *Pentagon May Resist Rumsfeld Subpoena with Legal Privilege*, Associated Press (Dec. 16, 2005).

[114] Letter from Rep. Charlie Melancon to Select Committee Chairman Tom Davis (Jan. 23, 2006).

[115] Minority Staff, Special Investigations Division, House Committee on Government Reform, *The Decline of the National Disaster Medical System* (Dec. 2005).

Medical System (NDMS) — experienced breakdowns in planning, supply management, communications, and leadership.

Evidence shows that the Administration was repeatedly warned about problems at NDMS. In 2002, an internal HHS report identified major gaps in the readiness of NDMS, including poor management practices, inadequate funding, and a lack of relevant doctrine and standards.[116] The review also pointed to deficiencies in communications, training, and transport that hindered the system's capability.[117]

In a 2005 report, a senior medical advisor to the Secretary of Homeland Security found that NDMS was rapidly degrading under mismanagement and neglect.[118] The report described federal medical capability as "fragmented and ill-prepared to deal with a mass-casualty event."[119] With respect to NDMS specifically, the report concluded that the system lacked the medical leadership and oversight "required to effectively develop, prepare for, employ, and sustain deployable medical assets."[120] The report called for a "radical transformation" of NDMS to enable it to fulfill its responsibilities under the National Response Plan.[121] Yet the Administration did not act on the report's recommendations.[122]

Given these multiple unheeded warnings, the minority requested hearings on the medical response to Hurricane Katrina, but no hearings were held. The minority also requested that the Select Committee interview ten key officials at the Department of Homeland Security and the Department of Health and Human Services who were responsible for the medical response. In response, the Committee interviewed two of these officials in late January, after most of the Committee's work was complete.[123] These two interviews were with Stewart Simonson, Assistant Secretary of Public Health and Emergency Preparedness at HHS, and Jack Beall, Chief of the NDMS Section of FEMA.

In speaking with Select Committee staff, Mr. Simonson and Mr. Beall gave sharply conflicting accounts of who was responsible for directing NDMS

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[116] The CNA Corporation, *Assessing NDMS Response Team Readiness: Focusing on DMATs, NMRTs, and the MST* (Oct. 2002).

[117] *Id.*

[118] Department of Homeland Security, *Medical Readiness Responsibilities and Capabilities: A Strategy for Realigning and Strengthening the Federal Medical Response* (Jan. 3, 2005).

[119] *Id.*

[120] *Id.*

[121] *Id.*

[122] Minority Staff, Special Investigations Division, House Committee on Government Reform, *The Decline of the National Disaster Medical System* (Dec. 2005); *See also Review Warned of Medical Gaps Before Hurricanes*, Associated Press (Sept. 26, 2005).

[123] The Select Committee interviewed four other DHS and HHS officials about the medical response, but minority staff were not invited to participate.

operations during the response. Mr. Simonson stated that HHS had a limited role, since NDMS is housed within DHS. According to Mr. Simonson, HHS could not directly order the movement or operations of NDMS teams, but instead could only "advocate" for DHS to issue mission assignments that would place the teams where they were needed.[124] Mr. Beall denied this, stating that he and other NDMS officials "can't mission ourselves. We work for HHS. We just put the teams out there — then they belong to HHS."[125]

In its findings, the Select Committee identifies this critical confusion of roles, but it does not resolve the opposing accounts. Instead of determining who actually made critical decisions in the medical response, the majority report concludes that "the command structure between HHS and NDMS was problematic." While noting that more supplies and personnel could and should have been pre-positioned before the storm hit, the majority does not address why this was not done.

One way the Select Committee could have resolved this disconnect would have been to interview HHS Secretary Michael Leavitt — the person identified by the National Response Plan as responsible for overseeing the health and medical response to a disaster. Although the minority requested this interview, that request was denied. Without further investigation, it is impossible to know which officials controlled NDMS operations in the response and thus who should be held accountable.

Another way the Select Committee might have helped resolve this issue would have been to speak with the medical first responders on the ground who actually carried out orders. In his interview with staff on January 23, 2006, Mr. Beall informed the Select Committee that the Department of Homeland Security was planning to host a conference on January 26 and 27 in which all NDMS team leaders would gather in Washington D.C. to discuss the best way for NDMS to move forward in light of the problems experienced during Hurricane Katrina. Although not intended to be a backward-looking "lessons-learned" exercise, the conference promised to identify needed improvements, including resolving issues of command and control. We asked to have our staff attend this conference as observers and report back to the Select Committee. Although the majority initially responded positively to this request, the Administration refused to allow congressional investigators to attend.

Finally, the majority report does not fully address the inadequacy of medical supplies. Multiple accounts indicate that NDMS teams lacked critical medicines

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[124] Interview of Stewart Simonson, Assistant Secretary of Health and Human Services for Public Health and Emergency Preparedness, by Select Committee Staff (Jan. 20, 2006).

[125] Interview of Jack Beall, Section Chief, National Disaster Medical System, Federal Emergency Management Agency, by Select Committee Staff (Jan. 23, 2006).

and equipment, such as ventilators, and that requests were delayed or ignored for days, diminishing the quality of medical care.[126] Team leaders report that NDMS officials regularly refuse requests for restocking and that, as a result, teams "almost always deploy with an insufficient cache."[127] The majority report finds that equipment and supplies "were in heavy demand and could not quickly be replenished." It also notes that many DMATs arrived without their caches. But it does not address why these problems occurred or who was responsible for addressing these preexisting deficiencies.

IV. FAILURE OF LEADERSHIP AT THE DEPARTMENT OF HOMELAND SECURITY

A major hurricane striking the Gulf Coast and New Orleans was one of the top three potential disasters facing the United States. Yet the evidence before the Select Committee shows that the Secretary of the Department of Homeland Security, Michael Chertoff, was detached and relatively disengaged in the key days before Katrina hit. He also had the atrocious judgment to rely on Michael Brown as his "battlefield commander," despite his lack of training. The majority report finds that Secretary Chertoff made a series of critical mistakes, especially with respect to a basic understanding and execution of the National Response Plan. Reviews by the Government Accountability Office and the White House come to similar conclusions. We agree with these findings and call for the replacement of Secretary Chertoff.

A. Failure to Understand or Invoke National Response Plan

After the attacks of September 11, 2001, the Homeland Security Act transferred responsibility for responding to both natural and man-made disasters to a newly created Department of Homeland Security. As Secretary, Michael Chertoff was charged by the Act and by presidential directive with responsibility for managing the overall federal response to Hurricane Katrina. We agree with the majority report finding that Secretary Chertoff executed these responsibilities "late, ineffectively, or not at all."

In proposing a new Department of Homeland Security on June 6, 2002, President Bush observed that while "as many as a hundred different government agencies have some responsibilities for homeland security … no one has final accountability."[128] To provide this accountability, Congress passed the Homeland Security Act of 2002, which made the Secretary of Homeland Security

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[126] Minority Staff, Special Investigations Division, House Committee on Government Reform, *The Decline of the National Disaster Medical System* (Dec. 2005).

[127] *Id.*

[128] White House, *Remarks by the President in Address to the Nation* (June 6, 2002) (online at www.whitehouse.gov/news/releases/2002/06/20020606-8.html).

responsible for "providing the Federal Government's response to terrorist attacks and major disasters," including "managing such response" and "coordinating other Federal response resources in the event of a terrorist attack or major disaster."[129]

Despite these statutory responsibilities, the chronology of Secretary Chertoff's actions shows a seeming disengagement from federal preparation and response efforts. In his testimony before the Select Committee, Secretary Chertoff reported that on Saturday, August 27, two days before landfall, he worked from home.[130] He also conceded that he missed a teleconference to discuss storm preparations on that day, although he claimed he received a subsequent briefing. Secretary Chertoff's testimony left the impression that he remained in close contact with his office during the day. But no communications were ever provided to the Select Committee to document this. Moreover, the Select Committee was informed that Secretary Chertoff does not use e-mail, which means that this vital means of communication was not available to him from home.

On the same day that Secretary Chertoff remained at home, Leo Bosner, a 26-year FEMA employee, stated that he was shocked by the lack of urgency at the Emergency Operations Center.[131] Mr. Bosner, who managed the night shift, said he sent a report to top officials before his shift ended on Saturday morning warning that Katrina was headed towards Louisiana with potentially catastrophic consequence. Yet when he returned for his shift on Saturday night, he said little had changed:

> We'd been expecting that, given our reports and so on, that there'd be some extraordinary measures taking place. So when we come in Saturday night and nothing much had happened — you know, we had a few medical teams, a few search teams were in place, but there was no massive effort that we could see. There was no massive effort to organize the city of New Orleans in an organized way that clearly had to be done. There was no massive mobilization of national resources other than the few that were out there. And I think most of us — I can't speak for everyone, but I know that I and a number of my colleagues just — we felt sort of shocked.[132]

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[129] Homeland Security Act of 2002, Pub. L. No. 107-296, § 502.

[130] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: The Role of the Department of Homeland Security,* 109th Cong. (Oct. 19, 2005).

[131] *Analysis: FEMA Official Says Agency Heads Ignored Warnings*, National Public Radio (Sept. 16, 2005).

[132] *Id.*

On Sunday, Secretary Chertoff participated in a video teleconference and in calls with governors. He testified that he was satisfied that Michael Brown had the resources and cooperation that he needed to handle the hurricane.[133]

Secretary Chertoff participated in a telephone call with the President on Monday, the day Katrina hit, but the call related primarily to immigration policy.[134] On Tuesday, Secretary Chertoff traveled to Atlanta for a briefing on avian flu.

The Select Committee report expresses particular concern that Secretary Chertoff failed to invoke the National Response Plan prior to Hurricane Katrina making landfall. The Homeland Security Act gives Secretary Chertoff responsibility for "consolidating existing Federal Government emergency response plans into a single, coordinated national response plan."[135] Homeland Security Presidential Directive 8, which was issued in December of 2003, stated:

> The Secretary is the principal Federal official for coordinating the implementation of all-hazards preparedness in the United States. In cooperation with other Federal departments and agencies, the Secretary coordinates the preparedness of Federal response assets, and the support for, and assessment of, the preparedness of State and local first responders.[136]

The majority report finds that Secretary Chertoff did not fulfill these responsibilities in preparation for Hurricane Katrina:

> Perhaps the single most important question the Select Committee has struggled to answer is why the federal response did not adequately anticipate the consequences of Katrina striking New Orleans and, prior to landfall, begin to develop plans to move boats and buses into the area to rescue and evacuate tens of thousands of victims from a flooded city. At least part of the answer lies in the Secretary's failure to invoke the National Response Plan – Catastrophic Incident Annex, to clearly and forcefully instruct everyone involved with the federal response to be proactive, anticipate future requirements, develop plans to fulfill them, and execute those plans without waiting for formal requests from overwhelmed state and local response officials.

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[133] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: The Role of the Department of Homeland Security,* 109th Cong. (Oct. 19, 2005).

[134] *Id.*

[135] Homeland Security Act of 2002, Pub. L. No. 107-296, § 502.

[136] White House, Homeland Security Presidential Directive/HSPD 8 (Dec. 17, 2003) (online at www.whitehouse.gov/news/releases/2003/12/20031217-6.html).

We agree with this finding. We also concur with the majority report's finding that Secretary Chertoff "should have invoked the Catastrophic Incident Annex to direct the federal response," as well as its finding that he "should have convened the Interagency Incident Management Group on Saturday, two days prior to landfall."

We also agree with the majority report's observation that this was a failure of leadership:

> We are left scratching our heads at the range of inefficiency and ineffectiveness that characterized government behavior right before and after this storm. But passivity did the most damage. The failure of initiative cost lives, prolonged suffering, and left all Americans justifiably concerned our government is no better prepared to protect its people than it was before 9/11.

B. Misplaced Reliance on Michael Brown

We further agree with the majority report that Secretary Chertoff misplaced his trust in Michael Brown, the FEMA Director, to act as his "battlefield commander." The majority report finds that Secretary Chertoff "should have designated the Principal Federal Official on Saturday, two days prior to landfall." The majority report also concludes that Secretary Chertoff should have selected a Principal Federal Official "from the roster of PFOs who had successfully completed the required training, unlike FEMA Director Michael Brown." We agree with both findings. Failing to designate a qualified official prior to the hurricane left Michael Brown in charge by default.

During the Select Committee hearing on October 19, 2005, Secretary Chertoff testified that he relied on Mr. Brown to "manage this thing as the battlefield commander" who would "understand what the priorities were, which were first and foremost saving human lives, rescuing people, getting them food, water, medical assistance and shelter" and "execute those priorities in an urgent fashion."[137]

Prior to Hurricane Katrina, however, multiple reports had raised questions about Mr. Brown's leadership of FEMA. A report by the DHS Inspector General criticized FEMA's performance responding to four hurricanes in Florida in 2004, finding that the agency's systems for managing the personnel and equipment were

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[137] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: The Role of the Department of Homeland Security,* 109th Cong. (Oct. 19, 2005).

inadequate.[138] Instead of remedying these problems, Mr. Brown disputed the report's accuracy, claiming FEMA systems were "highly performing" and "well managed."[139] A report on the National Disaster Medical System found that under Mr. Brown's leadership, NDMS was "woefully underfunded, undermanned, and too remote from DHS leadership to gain the visibility it needs" due to "FEMA's inflexible and inappropriate management."[140] Mr. Brown's response to the report was to tell NDMS officials to "get over it."[141]

Despite these warnings, Secretary Chertoff left Mr. Brown in charge of mobilizing all preparations before Hurricane Katrina struck. And he did so despite Mr. Brown's evident lack of qualifications. As has been now widely reported, Mr. Brown did not have a background in emergency response prior to joining FEMA at the beginning of the Bush Administration. Instead, he had spent the previous decade as Judges & Stewards Commissioner of the International Arabian Horse Association.[142]

Mr. Brown's inability to manage a crisis is apparent from his e-mails that were provided to the Select Committee. Far from being an effective battlefield commander, Michael Brown's e-mails show that he was befuddled and disengaged. In the midst of the crisis, Mr. Brown found the time to exchange e-mails about his appearance, his reputation, and other nonessential matters. But few of his e-mails demonstrated leadership or a command of the challenges facing his agency.[143]

During the height of the crisis, it appears that Mr. Brown was reporting directly to the White House, effectively bypassing Secretary Chertoff and cutting him out of the chain of command. Secretary Chertoff testified that he repeatedly tried but failed to communicate with Mr. Brown. Secretary Chertoff testified that he grew increasingly frustrated on Tuesday:

> I would say that starting in the late morning — and the deputy and I both were trying to do this — rising in crescendo through the afternoon and late

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[138] Department of Homeland Security, Office of the Inspector General, *Emergency Preparedness and Response Could Better Integrate Information Technology with Incident Response and Recovery* (Sept. 2005) (OIG-05-36).

[139] *Id.*

[140] Department of Homeland Security, *Medical Readiness Responsibilities and Capabilities: A Strategy for Realigning and Strengthening the Federal Medical Response* (Jan. 3, 2005)

[141] *Brown's Turf Wars Sapped FEMA's Strength*, Washington Post (Dec. 23, 2005).

[142] International Arabian Horse Association, *Former International Arabian Horse Association Judges & Stewards Commissioner, Michael Brown* (Sept. 7, 2005) (online at http://secure.arabianhorses.org/apps/index.cgi?page=pressrel&prid=41).

[143] Staff Report for Rep. Charlie Melancon, *Hurricane Katrina Document Analysis: The E-mails of Michael Brown* (Nov. 2, 2005).

> afternoon I made it very clear to the people I was speaking to and communicating through that I expected Mr. Brown forthwith to get in touch with me because I insisted on speaking to him. I wound up speaking to his chief of staff. I rarely lose my temper, but I lost my temper to some degree with his chief of staff.[144]

Yet on Tuesday evening, Mr. Chertoff made another mystifying decision: he designated Michael Brown as Principal Federal Official in charge of the federal response.[145] The majority report asks why Secretary Chertoff "would have deviated from the requirements of the National Response Plan and designated an untrained individual to serve as PFO for such a catastrophic disaster." It answers this question by concluding that Secretary Chertoff "was confused about the role and responsibilities of the PFO." We agree.

It is also unclear why Secretary Chertoff retained Michael Brown for five days as the federal response continued to deteriorate. Secretary Chertoff testified before the Select Committee:

> On Thursday … the question that arose in my mind was whether I needed to supplement the battlefield management on the ground with some additional skills. And whether I ought to bring someone in with a different set of experiences to manage what I thought was the most troubled part of the operation. … And then ultimately on Friday I made the determination that I would put Admiral Allen in control of the entire operation."[146]

Ironically, on the same day Secretary Chertoff decided to relieve Mr. Brown of his duties, President Bush traveled to New Orleans and uttered his now-famous praise: "Brownie, you're doing a heck of a job."[147]

C. Contrast with Hurricane Rita

There is a stark contrast between Secretary Chertoff's actions before Hurricane Katrina and his actions before Hurricane Rita, which struck Texas and the Gulf

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[144] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: The Role of the Department of Homeland Security,* 109th Cong. (Oct. 19, 2005).

[145] Memorandum from Michael Chertoff, Secretary of Homeland Security, *Designation of Principal Federal Official for Hurricane Katrina* (Aug. 30, 2005).

[146] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: The Role of the Department of Homeland Security,* 109th Cong. (Oct. 19, 2005).

[147] *FEMA Director Faces a Wave of Destruction, Despair and Criticism,* Associated Press (Sept. 3, 2005).

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[147] *FEMA Director Faces a Wave of Destruction, Despair and Criticism,* Associated Press (Sept. 3, 2005).

Coast just three weeks later. Before Hurricane Rita, Secretary Chertoff traveled with President Bush to NORTHCOM headquarters in Colorado to monitor preparations for the storm.[148] They spent the night there, and continued to manage the response from NORTHCOM headquarters as the storm made landfall.[149] Secretary Chertoff designated Hurricane Rita an Incident of National Significance the day before it struck landfall.[150] In addition, he named Coast Guard Admiral Larry Hereth to serve as Principal Federal Official for Hurricane Rita on September 22, 2005, two days before that hurricane struck.[151] Admiral Hereth had 32 years of experience managing federal operations.

During a briefing provided to the Select Committee by the White House on December 15, 2005, Deputy Homeland Security Advisor Ken Rapuano was asked about the differences in Secretary Chertoff's responses to the two hurricanes. He attributed them to the lessons learned from Hurricane Katrina, explaining that the Department had learned how devastating a hurricane could be.[152]

What Mr. Rapuano did not explain is why it took Hurricane Katrina to alert Secretary Chertoff to the consequences of a massive hurricane hitting New Orleans and the Gulf Coast. There were multiple reports prepared by the Department and other experts relating to the Hurricane Pam exercise warning that a "catastrophic hurricane" striking southeastern Louisiana would cause a "mega-disaster."[153] These documents warned that such a hurricane "could result in significant numbers of deaths and injuries, trap hundreds of thousands of people in flooded areas, and leave up to one million people homeless."[154] They also warned expressly that "the gravity of the situation calls for an extraordinary level of advance planning to improve government readiness."[155] In the face of these dire warnings, Secretary Chertoff's disengagement remains a mystery.

For these reasons, we fully agree with the majority report's concern that "given the advanced warning provided by the National Hurricane Center and the well-documented catastrophic consequences of a category 4 hurricane striking New Orleans, it is unclear why Secretary Chertoff did not exercise these responsibilities sooner or at all."

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[148] *Hurricanes Katrina and Rita Were Like Night and Day*, Washington Post (Sept. 25, 2005).

[149] *Id.*

[150] *Id.*

[151] *Id.*

[152] Briefing by Ken Rapuano, Deputy White House Homeland Security Advisor, to House Select Committee (Dec. 15, 2005).

[153] Federal Emergency Management Agency, *Combined Catastrophic Plan for Southeast Louisiana and the New Madrid Seismic Zone: Scope of Work* (2004).

[154] *Id.*

[155] *Id.*

D. Failure to Plan for Catastrophic Incidents

Beyond the mistakes Secretary Chertoff made in the days directly before and after Hurricane Katrina struck, the majority report also identifies longer-term planning deficiencies at the Department of Homeland Security. We agree with the majority's conclusions that these failures presaged and compounded the disaster.

We agree with the majority report's finding that "implementation of lessons learned from Hurricane Pam was incomplete." The possibility of a massive hurricane striking the Gulf Coast was considered one of the top three disasters the nation might face.[156] Yet FEMA Director Michael Brown testified before the Select Committee that his requests for additional funding to implement the lessons learned from the Hurricane Pam exercise were denied:

> QUESTION: You are under oath as saying you didn't get the money to implement what you learned from Hurricane Pam. And you're telling us that your numbers were depleted, your dollars were depleted, and you saw your department eviscerated. That's what you told this committee now.
>
> MR. BROWN: That's correct.[157]

The Select Committee did not receive an adequate rationale for this decision to deny the Hurricane Pam funding.

We also agree with the majority report's finding that "massive" communications inoperability "impaired response efforts, command and control, and situational awareness." As the majority report concludes, there was "a failure to adequately plan for alternatives." This problem was highlighted by the 9/11 Commission when communications problems arose at all three crash sites:

> The inability to communicate was a critical element at the World Trade Center, Pentagon, and Somerset County, Pennsylvania, crash sites, where multiple agencies and multiple jurisdictions responded. The occurrence of this problem at three very different sites is strong evidence that compatible

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[156] *See, e.g., Sharp Criticism of U.S. Response, Lack of Action to Prevent Disaster*, San Francisco Chronicle (Sept. 2, 2005); *Keeping Its Head Above Water,* Houston Chronicle (Dec. 1, 2001); *The Big One Is Coming,* Hartford Courant (Oct. 16, 2005); *Disaster Raises Question for California,* Dallas Morning News (Sept. 11, 2005); *Katrina's Aftermath: Government Response,* Houston Chronicle (Sept. 11, 2005); *Anarchy, Anger, Desperation: The Response,* San Francisco Chronicle (Sept. 2, 2005).

[157] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: The Role of the Federal Emergency Management Agency*, 109th Cong. (Sept. 27, 2005).

> and adequate communications among public safety organizations at the local, state, and federal levels remains an important problem.[158]

To remedy this problem, the Homeland Security Act of 2002 gave the Secretary of Homeland Security responsibility for "developing comprehensive programs for developing interoperative communications technology, and helping to ensure that emergency response providers acquire such technology."[159]

Hurricane Katrina made clear that this responsibility was not met. The majority report concludes that "Joint Task Force Katrina, the National Guard, Louisiana, and Mississippi lacked needed communications equipment." It also finds that "medical responders did not have adequate communications equipment or operability." We agree with these findings.

To this list we would add FEMA. Several FEMA officials told the Select Committee that they had approximately 100 satellite telephones. Yet the Select Committee could not determine where even one of these satellite phones was deployed. To the contrary, we were informed that FEMA Director Michael Brown did not have one, FEMA public affairs official Marty Bahamonde did not have one, and FEMA Deputy Federal Coordinating Officer Phil Parr did not have one.[160] In fact, Mr. Parr told the Select Committee that FEMA was prevented from mobilizing its roving communications vehicle, a Multiple Emergency Operations Vehicle called the "Red October," to the Superdome because it was not designed to operate in flooded areas. He also said FEMA had no contingency plans for air dropping communications equipment into affected areas.[161]

We also agree with the majority report that Secretary Chertoff's coordination with the Defense Department "was not effective." In testimony before the Select Committee, Secretary Chertoff conceded there were major breakdowns with the Department of Defense, stating that the absence of adequate planning "goes to how well we work with the military when the military has large numbers of assets they can bring to bear on a problem, how fluid we are with them."[162] According to Secretary Chertoff, better planning with the military would have allowed the

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[158] National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report*, p. 397 (2004).

[159] Homeland Security Act of 2002, Pub. L. No. 107-296, § 502.

[160] Interview of Phil Parr, Deputy Federal Coordinating Officer, Federal Emergency Management Agency, by Select Committee Staff (Dec. 6, 2005); Interview of Michael Lowder, Deputy Director of Response, Federal Emergency Management Agency, by Select Committee Staff (Jan. 5, 2006).

[161] Interview of Phil Parr, Deputy Federal Coordinating Officer, Federal Emergency Management Agency, by Select Committee Staff (Dec. 6, 2005).

[162] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: The Role of the Department of Homeland Security,* 109th Cong. (Oct. 19, 2005).

federal government to "to respond hours and maybe even days earlier to some of the issues that were addressed on a Thursday and a Friday that might have been addressed on a Tuesday or a Wednesday."[163]

In addition to the planning failures noted in the majority report, we note that Secretary Chertoff failed to complete a required operational supplement to the National Response Plan for more than seven months. The National Response Plan issued in January 2004 established broad lines of authority for agencies responding to catastrophic events. It stated that a "more detailed and operationally specific" supplement would set forth in detail the precise role of each agency involved in federal response efforts.[164] But this Catastrophic Incident Supplement languished and was not completed until September 6, 2005 — seven days after Hurricane Katrina struck.

To investigate this delay, Chairman Davis and Rep. Melancon sent a letter to Secretary Chertoff on September 30, 2005, which requested a wide range of documents, including all previous drafts of the Catastrophic Incident Supplement.[165] When the Department did not provide them, Rep. Melancon reiterated the importance of these documents in a letter to Chairman Davis on January 10, 2006.[166] Although the Department provided the final draft, it did not provide any previous versions. As a result, the Select Committee was not able to analyze the negotiations between agencies to determine the cause of the delay.

In his testimony before the Select Committee, Secretary Chertoff conceded that one of the biggest failures was the failure to plan. He testified that the federal government "did not have the kind of integrated planning capabilities that you need to deal with the kind of catastrophe we faced in Katrina."[167] Over and over again, Secretary Chertoff pointed to a lack of planning as the key to the federal government's response failures. As he stated to Rep. Thornberry: "I think 80% or more of the problem lies with the planning. … [I]t doesn't come naturally to civilian agencies for the most part to do the kind of disciplined planning for a complicated operation."[168] What Secretary Chertoff did not explain was why he failed in this critical planning function, which is his under the Homeland Security Act.

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[163] *Id.*

[164] Department of Homeland Security, *National Response Plan* (Dec. 2004).

[165] Letter from Select Committee Chairman Tom Davis and Rep. Charlie Melancon to Michael Chertoff, Secretary of Homeland Security (Sept. 30, 2005).

[166] Letter from Rep. Charlie Melancon to Select Committee Chairman Tom Davis (Jan. 10, 2006).

[167] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: The Role of the Department of Homeland Security,* 109th Cong. (Oct. 19, 2005).

[168] *Id.*

E. "The Emaciation of FEMA"

Evidence before the Select Committee showed that FEMA's ability to respond to natural disasters significantly degraded following the enactment of the Homeland Security Act, which moved FEMA into the Department of Homeland Security. We agree with the majority report that both "DHS and FEMA lacked adequate trained and experienced staff for the Katrina response." As the head of the Department, Secretary Chertoff bears at least partial responsibility for this deterioration of FEMA.

Under the Clinton Administration and the leadership of James Lee Witt, FEMA was regarded as a premier, Cabinet-level, all-hazards planning and response agency. But after its transfer to the Department of Homeland Security in 2003, its capacity to respond deteriorated.

During his testimony before the Select Committee, Michael Brown testified that "one of my frustrations over the past three years has been the emaciation of FEMA."[169] He cited not only "brain drain" caused by the loss of senior career FEMA officials, but also what he euphemistically called a DHS "tax," which he described as "assessments imposed by DHS which is money that's drawn out of different programs used for DHS-wide programs."

Additional evidence obtained by the Select Committee supported Mr. Brown's assertions. For example, on January 5, 2006, the Select Committee conducted an interview with FEMA Deputy Director of Response Michael Lowder. He reported that the number of personnel on national emergency response teams had been cut from a high of 300 in the mid-1990s to a low of 50 today.[170]

Mr. Brown testified that he protested organizational and budgetary decisions that diminished the role of FEMA, and the importance of disaster response, within the Department of Homeland Security. He testified that "it has been a personal struggle over the past two or three years to keep that place together because of this resource problem."[171]

When asked whether he documented these concerns to his superiors, Mr. Brown replied: "I'm certain I did lay it out in writing. … I know I wrote to Secretary Ridge when he was secretary. I've done memos to Secretary Chertoff and Deputy

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[169] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: The Role of the Federal Emergency Management Agency*, 109th Cong. (Sept. 27, 2005).

[170] Interview of Michael Lowder, Deputy Director of Response, Federal Emergency Management Agency, by Select Committee Staff (Jan. 5, 2006).

[171] House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hearings on Hurricane Katrina: The Role of the Federal Emergency Management Agency*, 109th Cong. (Sept. 27, 2005).

Secretary Jackson."[172] Mr. Brown also testified that he requested additional resources for disaster response in the Department of Homeland Security budget, but that those requests were denied.

The Select Committee was provided with a copy of a September 15, 2003, memo from Mr. Brown to then-Secretary Ridge, warning that removing some of FEMA's preparedness functions would "fundamentally sever FEMA from its core functions," "shatter agency morale," and "break longstanding, effective and tested relationships with states and first responder stakeholders."[173]

Despite multiple requests for similar documents directed to Secretary Chertoff, however, the Department of Homeland Security has failed to provide them. In a story that ran on December 23, 2005, the *Washington Post* quoted from memos sent from Mr. Brown to Secretary Chertoff warning that "this reorganization has failed to produce tangible results," and "a total of $77.9 million has been permanently lost from the base."[174] The report also cited an e-mail to Secretary Chertoff's deputy, warning: "FEMA is doomed to failure and loss of mission."[175] The Department did not provide these documents to the Select Committee.[176]

F. GAO and White House Findings

Reports by the nonpartisan Government Accountability Office and the White House itself have largely come to the same conclusions as the Select Committee regarding Secretary Chertoff's actions. On February 1, 2006, GAO issued preliminary findings concluding as follows:

> No one was designated in advance to lead the overall federal response in anticipation of the event despite clear warnings from the National Hurricane Center. … [T]he DHS Secretary designated Hurricane Katrina as an incident of national significance on August 30th — the day after final landfall. However, he did not designate the storm as a catastrophic event, which would have triggered additional provisions of the National Response Plan (NRP), calling for a more proactive response. As a result,

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[172] *Id.*

[173] Memorandum from Michael D. Brown, Under Secretary of Homeland Security for Emergency Preparedness and Response, to Tom Ridge, Secretary of Homeland Security (Sept. 15, 2003) (DHS-FEMA-0116-000001).

[174] *Brown's Turf Wars Sapped FEMA's Strength,* Washington Post (Dec. 23, 2005).

[175] *Id.*

[176] Michael Brown provided to the Committee some budget-related documents that he retained in his personal possession.

> the federal posture generally was to wait for the affected states to request assistance.[177]

GAO went on to explain the importance of the Secretary's role in conducting the planning necessary to prepare for catastrophic disasters like Hurricane Katrina:

> Although the NRP framework envisions a proactive national response in the event of a catastrophe, the nation does not yet have the types of detailed plans needed to better delineate capabilities that might be required and how such assistance will be provided and coordinated. … The leadership to ensure these plans and exercises are in place must come from DHS.[178]

GAO concluded that without such leadership from Secretary Chertoff, major breaches appeared in the chain of command:

> In the absence of timely and decisive action and clear leadership responsibility and accountability, there were multiple chains of command, a myriad of approaches and processes for requesting and providing assistance, and confusion about who should be advised of requests and what resources would be provided within specific timeframes.[179]

Ultimately, GAO concluded that "[n]either the DHS Secretary nor any of his designees, such as the Principal Federal Official (PFO), filled this leadership role during Hurricane Katrina."[180]

The White House came to similar conclusions, although it couched its findings in general terms rather than mentioning specific officials responsible. During a briefing to the Select Committee on December 15, 2005, the White House provided more than 60 specific findings from its own review of the government's response to Hurricane Katrina.[181] Some of the findings related to Secretary Chertoff's duties under the Homeland Security Act, including:

- The National Response Plan did not function as planned.
- National Response Plan command and coordination were incomplete.

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[177] U.S. Government Accountability Office, *Statement by Comptroller General David M. Walker on GAO's Preliminary Observations Regarding Preparedness and Response to Hurricanes Katrina and Rita* (Feb. 1, 2006) (GAO-06-365R).

[178] *Id.*

[179] *Id.*

[180] *Id.*

[181] Briefing by Ken Rapuano, White House Deputy Homeland Security Advisor, to Select Committee (Dec. 15, 2005).

- Lack of comprehensive national strategy and plans to unite communications plans, architectures, and standards.
- No guidance for worst case effects to the communications infrastructure.
- Federal response did not inform nongovernmental organizations what resources were required and how to connect local, State, and Federal emergency managers.
- There was no Federal coordinating entity with a complete understanding of the interdependency of critical infrastructure sectors.
- Focus on terrorism rather than all hazards.[182]

G. New Leadership for the Department of Homeland Security

The discussion of Secretary Chertoff's response is in many ways the strongest part of the majority views. Unlike other areas, where the report eschews accountability, the majority makes affirmative findings that identify major shortcomings in Secretary Chertoff's actions. These findings are confirmed by the conclusions of GAO and the internal White House review.

Ultimately, though, the majority report does not draw the logical conclusion to its own findings. Former FEMA Director Michael Brown is the only federal official who has lost his job and been held accountable for the dismal federal response. He should not be alone. As the majority findings make clear, Secretary Chertoff provided ineffective leadership at a time of great crisis. We therefore recommend his replacement. We believe the President should appoint an official familiar with emergency management to the nation's top homeland security post.

V. THE NEED FOR AN INDEPENDENT COMMISSION

Given the key gaps that remain in the Select Committee's work, we recommend the creation of an independent commission based on the model of the 9/11 Commission. The Select Committee has significantly advanced public understanding of the response to Hurricane Katrina. But it failed to surmount White House intransigence and rarely assigned accountability for mistakes. These shortcomings can only be addressed by the appointment of a truly independent commission.

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[182] *Id.*

The 9/11 Commission provides an excellent model. It examined fundamental questions, including whether advance warnings of the September 11 attacks were taken seriously, whether adequate preparation had been made for responding to such contingencies, and whether plans were executed to minimize the loss of American lives. The 9/11 Commission called the highest Administration officials to account, including Presidents Bush and Clinton, as well as Vice Presidents Cheney and Gore. The 9/11 Commission also obtained sworn testimony from various other White House officials, including National Security Advisor Condoleezza Rice and National Security Council Counterterrorism Advisor Richard Clarke, among others.

This is exactly the type of forceful and independent investigation that the American people — and especially the residents of the devastated Gulf Coast region — deserve with respect to Hurricane Katrina.

During the course of its investigation, the 9/11 Commission received and reviewed more than 2.5 million pages of documents and over 1,000 hours of audiotape. The 9/11 Commission interviewed over 1,200 individuals in ten countries, and it issued a best-selling report recommending fundamental changes to the makeup of the federal government.

We commend Chairman Davis for his leadership of the Select Committee. He made numerous efforts to work with us, and he tried to approach the investigation in a bipartisan manner. But in the end, the model of congressional Republicans investigating a Republican White House has serious deficiencies. The Select Committee could not — or would not — insist on compliance when the White House resisted its requests for information. It failed to enforce its single subpoena to Defense Secretary Rumsfeld. Indeed, the Select Committee could not get a full accounting of withheld documents from even a single federal agency.

For these reasons, we conclude that only an independent commission with sufficient authority to obtain critical documents and other information from the Administration will be able to tell the full story of Hurricane Katrina. This endeavor is critical not only for historical and accountability purposes, but also to ensure that the nation will not falter again in the event of a future disaster.

Charlie Melancon
Member of Congress
Louisiana's 3rd District

William J. Jefferson
Member of Congress
Louisiana's 2nd District

LIST OF ATTACHMENTS TO BE PUBLISHED LATER

Correspondence and Reports

Letter from Chairman Tom Davis and Ranking Minority Member Henry A. Waxman, House Committee on Government Reform, to Michael Chertoff, Secretary of Homeland Security (Sept. 9, 2005) (regarding the Hurricane Pam exercise).

Letter from Select Committee Chairman Tom Davis and Rep. Charlie Melancon to Michael Chertoff, Secretary of Homeland Security (Sept. 30, 2005) (initial request for DHS documents).

Letter from Select Committee Chairman Tom Davis and Rep. Charlie Melancon to Donald H. Rumsfeld, Secretary of Defense (Sept. 30, 2005) (initial request for Pentagon documents).

Letter from Select Committee Chairman Tom Davis and Rep. Charlie Melancon to Lt. General Carl A. Strock, U.S. Army Corps of Engineers (Sept. 30, 2005) (initial request for Army Corps documents).

Letter from Select Committee Chairman Tom Davis and Rep. Charlie Melancon to Michael O. Leavitt, Secretary of Health and Human Services (Sept. 30, 2005) (initial request for HHS documents).

Letter from Select Committee Chairman Tom Davis and Rep. Charlie Melancon to Andrew H. Card, Jr., White House Chief of Staff (Sept. 30, 2005) (initial request for White House documents).

Letter from Select Committee Chairman Tom Davis and Rep. Charlie Melancon to Kathleen Babineaux Blanco, Governor of Louisiana (Sept. 30, 2005) (initial request for Louisiana documents).

Letter from Select Committee Chairman Tom Davis and Rep. Charlie Melancon to Haley Barbour, Governor of Mississippi (Sept. 30, 2005) (initial request for Mississippi documents).

Letter from Select Committee Chairman Tom Davis and Rep. Charlie Melancon to Robert Riley, Governor of Alabama (Sept. 30, 2005) (initial request for Alabama documents).

Letter from Rep. Henry A. Waxman, Ranking Minority Member, House Committee on Government Reform, to Michael Chertoff, Secretary of Homeland Security (Oct. 20, 2005) (regarding Carnival Cruise Line contract).

Letter from Rep. Gene Taylor to Select Committee Chairman Tom Davis (Oct. 28, 2005) (regarding the need for a Select Committee hearing on housing).

Letter from Rep. Henry A. Waxman and Rep. Charlie Melancon to Michael Chertoff, Secretary of Homeland Security (Nov. 1, 2005) (regarding incomplete Catastrophic Incident Supplement to the National Response Plan).

Staff Report for Rep. Charlie Melancon, *Hurricane Katrina Document Analysis: The E-mails of Michael Brown* (Nov. 2, 2005).

Letter from Rep. Charlie Melancon to Select Committee Chairman Tom Davis (Nov. 9, 2005) (regarding unanswered contracting questions).

Minority Staff, Special Investigations Division, House Committee on Government Reform, *The Decline of the National Disaster Medical System* (Dec. 2005).

Letter from Select Committee Chairman Tom Davis and Rep. Charlie Melancon to Andrew H. Card, Jr., White House Chief of Staff (Dec. 1, 2005) (second request for White House documents).

Letter from William K. Kelly, Deputy Counsel to the President, to Select Committee Chairman Tom Davis and Rep. Charlie Melancon (Dec. 6, 2005) (White House refusal to provide requested documents).

Letter from Select Committee Chairman Tom Davis and Rep. Charlie Melancon to Donald H. Rumsfeld, Secretary of Defense (Dec. 7, 2005) (second request for Pentagon documents).

Letter from Select Committee Chairman Tom Davis and Rep. Charlie Melancon to David Addington, Chief of Staff, Office of the Vice President (Dec. 7, 2005) (second request for Vice President documents)

Memorandum from Rep. Charlie Melancon to Members of the House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina (Dec. 13, 2005) (memo explaining need for subpoenas).

Letter from Rep. Charlie Melancon and Rep. Gene Taylor to Select Committee Chairman Tom Davis (Dec. 15, 2005) (requesting a hearing on White House compliance with Committee requests).

Letter from Rep. Charlie Melancon to Select Committee Chairman Tom Davis (January 10, 2006) (requesting that the Select Committee obtain drafts of the Catastrophic Incident Supplement to the National Response Plan).

Letter from Rep. Charlie Melancon to Select Committee Chairman Tom Davis (January 23, 2006) (regarding need to enforce the Defense Department subpoena).

Motions and Subpoenas

Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Motion to Subpoena Harriet Miers, Counsel to the President* (Dec. 14, 2005) (motion by Rep. Melancon to subpoena White House documents, rejected by majority).

Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Substitute Motion to Accept a Briefing from the White House* (Dec. 14, 2005) (handwritten motion adopted by majority in lieu of requested documents).

House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Subpoena to Donald H. Rumsfeld, Secretary of Defense* (issued Dec. 14, 2005).

Documents Provided to the Select Committee

Homeland Security Operations Center, *Spot Report #13* (Aug. 29, 2005) (WHK-4055) (DHS-FRNT-0001-0000002) (describing Bahamonde eyewitness account of flooding and levee failure).

E-mail from Brian Besanceney, Assistant Secretary of Homeland Security for Public Affairs, to John Wood, Chief of Staff, Department of Homeland Security, et al. (Aug. 29, 2005) (DHS-FRNT-0006-0000023) (regarding the severity of the storm).

E-mail from Patrick Rhode, Deputy Director, Federal Emergency Management Agency, to Michael Jackson, Deputy Secretary of Homeland Security (Aug. 29, 2005) (regarding the severity of the storm).

National Weather Service, *Bulletin: EAS Activation Requested; Flash Flood Warning* (Aug. 29, 2005) (online at www.srh.noaa.gov/data/warn_archive/LIX/FFW/0829_131705.txt) (first official government confirmation of levee failure).