

MEMORANDUM

December 13, 2005

To: Members of the House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina

Fr: Rep. Charlie Melancon

Re: Motion to Subpoena White House and Other Agencies

On **Wednesday, December 14, 2005, at 10 a.m. in 2154 Rayburn**, the Select Committee will hold its final hearing of the year on Hurricane Katrina. At last week's hearing, I served notice that I will offer a motion at the hearing to subpoena the White House and other agencies that have not produced requested documents. This memo explains why I believe a subpoena is necessary to fulfill the Select Committee's mandate.

EXECUTIVE SUMMARY

On September 30, 2005, Chairman Davis and I sent document requests to the White House, FEMA, the Department of Homeland Security, the Defense Department, the Army Corps of Engineers, the Department of Health and Human Services, and the three states affected by the storm, Louisiana, Mississippi, and Alabama. These requests were broad, but we identified priority documents, including emails, internal memos, and other communications from top decision-makers in each office. We asked for an initial response within two weeks.

In the two and half months since we sent these document requests, we have received many boxes of documents from these agencies and the states. The staff is in the process of reviewing these responses and determining where additional documents should be provided. Already, however, it is clear that there are at least three major gaps in the document production. We have not received key documents and communications from (1) the White House, (2) the Secretary of Defense, (3) the Governors of Mississippi and Alabama. With the February 15, 2006, deadline for the completion of the Committee's work fast approaching, we should not delay any longer in issuing subpoenas for these documents.

The White House Subpoena

The first subpoena I request will seek the documents and communications related to Hurricane Katrina received, sent, or reviewed between August 23, 2005, and September 15, 2005, by four key individuals in the White House: Chief of Staff Andrew Card, his deputy Joe Hagin, Homeland Security Advisor Francis Townsend, and her deputy Ken Rapuano. These documents and communications are essential to the Committee's investigation.

The testimony of Michael Brown, the former FEMA Director, establishes that Mr. Card and his deputy, Mr. Hagin, played a crucial role in shaping the federal response to Hurricane Katrina. Mr. Brown told the Committee on September 27, 2005, that “the White House was fully engaged” and “working behind the scenes . . . to make things happen.” Mr. Brown testified that he “exchanged emails and phone calls with Joe Hagin, Andy Card, and the president”; that he may have spoken with or emailed these White House officials as many as 30 times during the key days before and after the hurricane struck; and that he informed Mr. Card that “we needed help.” In an interview with the *New York Times*, Mr. Brown further stated that he “ask[ed] the White House explicitly to take over the response.” These urgent communications — and how Mr. Card, Mr. Hagin, and other White House officials responded — are one of the keys to understanding what went wrong in the immediate federal response.

Equally important, documents that the Committee has recently obtained reveal striking discrepancies between what the White House knew about conditions in New Orleans and what the President and other senior Administration officials communicated to the public and members of Congress. The Committee needs to review the flow of White House communications to assess whether these disparities reflect a lack of competence at the highest levels of the Administration or, even worse, a lack of candor.

In the days after Hurricane Katrina struck, the President, Homeland Security Secretary Chertoff, and other senior Administration officials repeatedly explained the slow federal response by stating that they believed New Orleans had “dodged a bullet” on Monday, August 29, the day hurricane struck. They also said they were surprised when “the levees broke on Tuesday.” As Secretary Chertoff characterized it, “that second catastrophe really caught everybody by surprise.” Speaking at a press conference in New Orleans on September 12 — two weeks after the hurricane — President Bush stated: “When that storm came through at first, people said, whew. There was a sense of relaxation. . . . 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. . . . There was a sense of relaxation in the moment, a critical moment.”

Yet documents the Committee has recently obtained contradict these assertions. They show that the gravity of the situation in New Orleans was promptly communicated to both Secretary Chertoff and the White House. According to these documents:

- (1) Secretary Chertoff’s chief of staff received an email at 9:27 p.m. on Monday, August 29, the day the hurricane struck, stating that the conditions in New Orleans were much worse than being reported. The email stated: “the 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.”
- (2) Within an hour, at 10:30 p.m. on Monday, a “spot report” was sent to the White House Situation Room from the Department of Homeland Security, stating unequivocally that there was a large break in the 17th Street levee that was flooding New Orleans. This spot report stated that “Marty Bahamonte [sic] of FEMA Public Affairs made two aerial over flights of the New Orleans area the afternoon of Monday, August 29, 2005,” during

which he observed “a quarter-mile breach in the levee near the 17th Street Canal about 200 yards from Lake Pontchartrain allowing water to flow into the City.”

It is possible that the decision-makers in the White House and the Department of Homeland Security ignored or did not appreciate the significance of these Monday warnings, thereby delaying the urgently needed federal response. It is also possible that top Administration officials publicly contradicted these internal reports to justify the slow federal response. Either way, the implications are serious and need to be examined by the Committee.

I have tried — without success — to avoid the need for the issuance of a subpoena to the White House. I raised my concerns about the failure of the White House to comply with the document request at Committee hearings on October 19, November 2, and November 8, 2005. At the hearing on November 8, Chairman Davis stated that he would set a “firm deadline” of November 18. He also promised that “if the documents aren’t produced by that date, I’m ready to proceed with subpoenas. The clock is ticking.”

It is now apparent, however, that the White House will not comply voluntarily with the Committee’s request. Many of the documents that the White House has provided to the Committee are virtually useless, such as over 1,000 pages already available on the Internet, including press briefings, press releases, and transcripts of “Ask the White House” sessions printed directly from the White House website. When our staffs finally met with White House officials on December 1, 2005, these officials made the ludicrous argument that complying with our request would take over a year and require the review of 71 million emails. The officials also asserted a vague “separation of powers” claim, and one stated bluntly: “You’re not getting Andrew Card’s emails.”

We are thus left with no alternative but to proceed with the issuance of the subpoena.

The Defense Department Subpoena

The second subpoena I request will seek documents and communications related to Hurricane Katrina received, sent, or reviewed between August 23, 2005, and September 15, 2005, by nine key individuals in the Department of Defense: Secretary Donald Rumsfeld, Assistant Secretary of Defense for Homeland Defense Paul McHale, Acting Deputy Secretary of Defense Gordon England, Principal Deputy Assistant Secretary for Homeland Defense Peter Verga, U.S. Northern Command Commander Admiral Timothy Keating, Joint Task Force Katrina Commander General Russell Honore, National Guard Bureau Chief Lt. General Steven Blum, military assistant to the FEMA Director Col. John J. Jordan, and the Defense Coordinating Officer in Louisiana Col. Anthony Daskevich.

These documents and communications are also essential to the Committee’s investigation. Just two weeks ago, Bill Lokey, the FEMA official who was the designated “Federal Coordinating Officer” for Louisiana, told the Committee staff that he proposed requesting immediate assistance from the military on Tuesday, August 30. Yet significant military forces did not arrive until Monday, September 5, nearly a week later.

A key question the Committee must investigate is why the military response was delayed so long. And this question cannot be answered until we receive the documents and communications from the nine officials at the center of the Defense Department's response.

The Subpoenas to the Mississippi and Alabama Governors

The third and fourth subpoenas I request will seek documents and communications related to Hurricane Katrina received, sent, or reviewed between August 23, 2005, and September 15, 2005, by individuals in the offices of the Governors of Mississippi and Alabama. As we did with the federal agencies that responded to Hurricane Katrina, Chairman Davis and I sent document requests on September 30, 2005, to the states of Louisiana, Mississippi, and Alabama. Although Louisiana provided more than 100,000 pages of documents, including emails, internal memos, and other communications from top officials in Governor Blanco's office, we received no internal communications from the offices of Governor Barbour or Governor Riley.

When asked about this at the hearing on December 7, Governor Barbour testified that officials in his office did not send or receive any emails during this timeframe because there was no electricity. This does not appear credible. The request covers a time period prior to the storm — and well afterwards — when email communication was presumably working. It also covers other forms of communication that might have been used instead of email. Although Governor Barbour said he would revisit this issue with his staff and report back to the Committee, we have received no further documents from his office. Although officials from Governor Riley's office have not claimed that they did not use email during this time, we have not received these communications.

The Congressional Precedent

There is abundant congressional precedent for my subpoena requests. During the Clinton Administration, the House Government Reform Committee, which Chairman Davis now chairs, issued over 1,000 subpoenas to investigate the White House and the Democratic National Committee. Multiple White House Chiefs of Staff were called before the Committee for staff-level depositions and to provide sworn testimony in open hearings. The Committee obtained literally millions of pages of documents, including communications involving the President, the Vice President, and White House Chiefs of Staff. There should not be different standards for different presidents.

The 9-11 Commission also provides guidance for the Committee. I and other Democrats have been calling for an independent commission to investigate Hurricane Katrina modeled on the 9-11 Commission. The Republican response has been that the Select Committee will be able to conduct as thorough an investigation as an independent commission could. The 9-11 Commission, however, obtained access to many internal White House documents, including copies of classified Presidential Daily Briefs. If the Select Committee intends to be as thorough as the 9-11 Commission was, it will also need to obtain the relevant internal White House documents and communications that my subpoenas seek.

I. SELECT COMMITTEE MANDATE TO “CONDUCT A FULL AND COMPLETE INVESTIGATION”

In the wake of Hurricane Katrina, widespread criticism was leveled at local, state, and federal officials for their inability to respond adequately to the urgent needs of Gulf Coast residents. Images of agony and ruin were carried live for weeks on national television, making clear to the entire world that U.S. preparation and response efforts since the attacks of September 11, 2001, were severely deficient.

Recognizing this fact, President Bush traveled to the French Quarter of New Orleans to deliver a prime-time speech on September 15, 2005. Standing before Andrew Jackson’s statue at the foot of historic St. Louis Cathedral, he stated:

Four years after the frightening experience of September 11th, Americans have every right to expect a more effective response in a time of emergency. When the federal government fails to meet such an obligation, I, as President, am responsible for the problem, and for the solution.¹

In accepting responsibility, the President pledged to work with Congress to investigate the reasons behind this fundamental failure. As 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.²

On the same day, the House of Representatives passed Resolution 437 establishing a new Select Committee to investigate “the local, state, and Federal government response to Hurricane Katrina.”³ The resolution directed the Select Committee to “conduct a full and complete investigation” and “report its findings to the House not later than February 15, 2006.”⁴ Rep. Tom Davis was appointed chair of the Committee.

The House minority leadership and virtually all Democrats voted against the resolution, favoring instead the creation of “an independent commission, based on the rigorous and effective example of the bipartisan 9/11 Commission,” with an equal number of Democrats and

¹ White House, *President Discusses Hurricane Relief in Address to the Nation* (Sept. 15, 2005) (online at <http://www.whitehouse.gov/news/releases/2005/09/20050915-8.html>).

² *Id.*

³ H.Res. 437, at sec. 3 (Sept. 15, 2005).

⁴ *Id.*

Republicans.⁵ For this reason, no Democratic members were officially appointed to the Select Committee.

Nevertheless, Chairman Davis sent invitation letters to several Democratic members from the Gulf Coast region, including myself, asking us to join the Committee's investigation. He wrote in those letters: "I believe we must now move forward, together, to undertake this important task."⁶ At the Committee's first hearing on September 22, 2005, Chairman Davis assured us that the investigation would be even-handed and inclusive:

The American people want the facts, and they're watching. They alone will judge whether the review we begin today is thorough and fair. Our final exam will be the report we are tasked with completing. We want both Republicans and Democrats at the table to do this job right. The more voices asking tough questions, the better.⁷

Chairman Davis stated that we would "investigate aggressively what went wrong and what went right," that we would "do it by the book," and that we would "let the chips fall where they may."⁸ Based on these assurances, and recognizing the grave concerns of my own constituents, I agreed to participate.

Since that time, I have attended six hearings, been formally recognized to make opening statements and question witnesses, made motions that have been adopted by the Committee, and sent 13 letters requesting information or documents. By any definition, I have been an active participant in the Committee's work.

II. CURRENT STATUS OF FEDERAL AND STATE DOCUMENT PRODUCTION

One of my first actions in the Select Committee was to join Chairman Davis in sending document request letters to the federal and state agencies involved in responding to Hurricane Katrina. On September 30, 2005, the Chairman and I sent letters to the White House, FEMA, the Department of Homeland Security, the Defense Department, the Army Corps of Engineers, the Department of Health and Human Services, and the three states affected by the storm — Louisiana, Mississippi, and Alabama.

Our requests were broad, encompassing the full range of documents relevant to the Committee's inquiry. However, we identified a narrow subclass of documents in which we had a special interest. These high priority documents included emails, internal memos, and other

⁵ Office of the House Democratic Leader, *Pelosi Statement on Partisan Select Committee on Katrina Response* (Sept. 21, 2005). See also H.R. 3764 (creating an independent commission).

⁶ Letter from Chairman Tom Davis to Rep. Charlie Melancon (Sept. 21, 2005).

⁷ House Select Bipartisan Committee to Investigate the Preparation For and Response to Hurricane on Katrina, Statement of Chairman Tom Davis, *Hearings on Investigating Forecasts of Katrina*, 109th Cong. (Sept. 22, 2005).

⁸ *Id.*

communications to and from top decision-makers in each office. For example, our letter to White House Chief of Staff Andrew Card stated:

In responding to this request, we ask that you give first priority to providing responsive documents or communications, including internal communications, received, prepared, or sent by 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.⁹

We asked for an initial response within two weeks of sending our letters.

Responses to the September 30 document requests were mixed. While very few priority communications were produced initially, persistence by myself and Chairman Davis paid off in some circumstances. For example, in October, FEMA delivered to the Committee more than 1,000 pages of communications from the office of its former director, Michael Brown. These communications were extremely valuable to the Committee's work. They showed that Mr. Brown's actions in the aftermath of the hurricane differed significantly from the way he described them in his testimony to the Committee. In the midst of the crisis, Mr. Brown found time to exchange emails about his appearance, his reputation, and other extraneous matters, but few of his emails demonstrated leadership or a command of the challenges he faced.¹⁰

Several other agencies have provided at least some priority communications. On November 7, the Army Corps of Engineers provided several DVDs containing priority communications from top commanders, including Lt. Gen. Carl Strock, commander of the Army Corps of Engineers, and Col. Richard Wagenaar, commander of the New Orleans district. On December 6, the Department of Homeland Security provided two boxes of communications from several top officials in the office of Secretary Michael Chertoff, including Chief of Staff John Wood, Deputy Secretary Michael Jackson, Senior Counselor to the Secretary Scott Weber, and Counselor to the Secretary Adam Isles. On December 7, 2005, the Department of Health and Human Services provided two CDs containing communications from Secretary Leavitt's office.

The most thorough response to date has been from the office of Louisiana Governor Kathleen Blanco. On December 2, 2005, the Governor provided to the Committee over 100,000 pages of documents, including emails, internal memos, and handwritten notes from herself and top officials on her staff. Although she is a state chief executive, Governor Blanco did not assert any legal privilege or separation of powers claim to withhold documents. She also produced documents from her counsel that might otherwise be considered attorney-client work product. In addition to providing these documents to the Committee, the Governor's office posted them on an Internet website, and they have been made available to the public.¹¹

⁹ Letter from Reps. Tom Davis and Charlie Melancon to White House Chief of Staff Andrew H. Card, Jr. (Sept. 30, 2005).

¹⁰ Staff Report for Rep. Charles Melancon, *Hurricane Katrina Document Analysis: The E-Mails of Michael Brown* (Nov. 2, 2005) (online at <http://melancon.house.gov/news.asp?ARTICLE3337=4608>).

¹¹ See, e.g., *The Katrina Files: Governor Blanco's Katrina Documents*, New Orleans Times-Picayune (online at www.nola.com/katrina/view.ssf).

Committee staff are in the process of reviewing these submissions to determine whether they are complete or whether the Committee should insist on additional productions. Already, however, it is apparent that the Committee has not received key documents from (1) the White House, (2) the Secretary of Defense, and (3) the Governors of Mississippi and Alabama.

III. THE NEED TO SUBPOENA WHITE HOUSE DOCUMENTS

A. What the White House Has Produced

In two productions, on November 3 and December 7, 2005, the White House provided a total of 4,720 pages of documents to the Committee. Some of these documents are relevant to the Committee's investigation. For example, the White House provided 188 pages of reports by the White House Task Force on Hurricane Katrina Response from September 1 through 14, which include agency reports on Katrina-related work. The White House also provided 754 pages of materials from the White House Situation Room, including reports from the Homeland Security Operations Center, FEMA Region VI, and the State of Louisiana, and other agencies from August 25 to September 4, 2005. These documents begin to provide the Committee with a rudimentary understanding of what information the White House received during this time.

However, many of the documents produced by the White House were already publicly available and added little value to the investigation. For example, the White House provided 1,051 pages of materials that were available on the Internet. Approximately 470 pages were transcripts of formal press briefings and informal press "gaggles" available on the White House website. Approximately 205 pages were printouts of White House press releases from August 28 to October 28. And 40 pages were photocopies of official proclamations and other documents signed by the President following Katrina.

There are also 63 pages of transcripts of "Ask the White House" sessions printed directly from the White House website. These include a September 1 session hosted by Secretary Chertoff; a September 6 session with Education Secretary Margaret Spellings; a September 8 session with USA Freedom Corps Director Desiree Sayle; a September 9 session with Surgeon General Richard Carmona; and a September 19 session hosted by Lynne Cheney.

The Committee also received 469 pages of emails from the White House and DHS communications offices to broad lists of recipients. More than half of these, 273 pages, forward information that is publicly available on the Internet, including press releases, transcripts of press briefings and speeches, fact sheets, and excerpts from press reports favorable to the President.

The bulk of the remaining documents provided by the White House were reports from federal agencies involved in the response efforts. They include: 766 pages of FEMA Situation Report slides from September 1 to 15; 80 pages of FEMA Housing Area Command Report slides from September 8 to 15; 300 pages of National Guard briefing slides from August 23 to September 14; 193 pages of Department of Energy updates from August 26 to September 14; 706 pages of DHS Situation Reports from August 26 to September 15; 178 pages of HHS Flash Reports from August 31 to September 12; and 147 pages of Red Cross Disaster Operations

Summary Reports from August 25 to September 15. It is unclear who in the White House reviewed these documents or when they received them.

B. What the White House Has Not Produced

What the White House has not produced, however, are the most important documents: communications involving the key White House decision-makers. In particular, we have not received the communications received, sent, or reviewed by four key individuals: White House Chief of Staff Andrew Card, his deputy Joe Hagin, Homeland Security Advisor Francis Townsend, and her deputy Ken Rapuano.

These documents are needed to answer two fundamental questions that have been raised by the Committee's investigation: (1) What were the communications between former FEMA Director Michael Brown and White House officials and how did the White House respond? And (2) what accounts for the significant discrepancies between the reports the White House was receiving from New Orleans and the public statements of the President and senior Administration officials?

1. The White House Communications with Michael Brown

A key gap in the record before the Committee is how White House officials responded to multiple communications from former FEMA Director Michael Brown. During his testimony before the Committee on September 27, 2005, Mr. Brown stated that the White House played a central role in the response to Hurricane Katrina. Specifically, he testified:

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. And in this case they were working to make certain that DOD was providing what was needed.¹²

Mr. Brown also testified that he had multiple communications with White House officials regarding the hurricane. When asked when he first contacted the President, Mr. Brown replied: "On Saturday and Sunday, I started talking to the White House."¹³ When asked who else he spoke with, he replied that he "exchanged e-mails and phone calls with Joe Hagin, Andy Card, and the president."¹⁴ When asked how many times he spoke with the White House during this period, Mr. Brown replied: "I mean, 30 times, I mean, I don't know."¹⁵ And when asked how many times he talked to the president personally, he said: "The president was on one of the

¹² House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, Testimony of Michael D. Brown, *Hurricane Katrina: The Role of the Federal Emergency Management Agency*, 109th Cong. (Sept. 27, 2005).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

conference calls, talked to the president personally numerous times, several times. A couple of phone calls from the president, a phone call to the president.”¹⁶

According to Mr. Brown, he had extensive access to the highest officials in the White House. For instance, 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.”¹⁷ He elaborated: “I mean, look, the way it works: If I need to speak to the chief of staff or the President, I make the phone call.”¹⁸

In testimony before the Committee, Mr. Brown testified that he told Mr. Card and others that “we needed help.”¹⁹ In an interview with the *New York Times*, Mr. Brown claimed that he made a “blur of calls” warning Mr. Card that “I can’t get a unified command and control established” and that “things were going to hell in a handbasket.”²⁰ He also stated that on August 30, he “ask[ed] the White House explicitly to take over the response from FEMA and state officials.”²¹

This testimony from Mr. Brown raises obvious questions that the Committee needs to investigate. Mr. Brown was the federal official whom President Bush and Homeland Security Secretary Chertoff placed in charge of the federal response to Hurricane Katrina.²² His testimony is that he communicated frequently and extensively with the White House and that the White House was “fully engaged” and “working behind the scenes” to coordinate the federal response. Without access to the documents and communications of the key White House officials with whom Mr. Brown communicated, including Mr. Card and Mr. Hagin, the Committee will never know exactly what Mr. Brown told the White House or how the White House responded.

In addition to Mr. Card, who we know played a significant role, the Committee also needs to obtain communications from the President’s homeland security adviser, Frances Fragos Townsend, who should have played a significant role given her position. Ms. Townsend was reportedly vacationing when the hurricane struck, but returned to the White House by Wednesday.²³ According to press accounts:

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Ex-FEMA Chief Tells of Frustration and Chaos*, *New York Times* (Sept. 15, 2005).

²¹ *Id.*

²² Michael Chertoff, *Memorandum for Distribution: Designation of Principal Federal Official for Hurricane Katrina* (Aug. 30, 2005) (available online at http://www.realcities.com/multimedia/nationalchannel/news/KRT_Packages/archive/kwashingt on/CHERTOFF.pdf).

²³ *Put to Katrina’s Test*, *Los Angeles Times* (Sept. 11, 2005).

Early Wednesday morning, Blanco tried to call Bush. She was transferred around the White House for a while until she ended up on the phone with Fran Townsend, the president's Homeland Security Adviser, who tried to assure her but did not have many specifics.²⁴

Strangely, Ms. Townsend then left the country on "a previously scheduled trip for Saudi Arabia."²⁵ According to one press report, the President "urged Townsend to make the trip despite the crisis at home as a 'signal to ... the enemy'" that the hurricane had not distracted his attention from terrorists, one aide said."²⁶

2. Discrepancies Between the Information Flow Into and Out of the White House

The documents and communications of Mr. Card, Mr. Hagin, Ms. Townsend, and Mr. Rapuano are also needed to address a key question raised by the documents that the Committee has recently received: the discrepancy between the information sent to the White House and other senior Administration officials about the grave conditions in New Orleans on Monday, August 29, the day the hurricane struck, and the repeated insistence by President Bush, Homeland Security Secretary Chertoff, and other senior officials that they thought New Orleans had "dodged a bullet."

On September 2, 2005, after touring Biloxi, Mississippi, in his first visit to the Gulf Coast, President Bush tried to justify why the federal government was so slow to respond after Hurricane Katrina. According to the President, "New Orleans got hit by two storms, one the hurricane, and then the flood."²⁷ He said that although the hurricane struck on Monday, August 29, "[t]he levees broke on Tuesday in New Orleans."²⁸ He then said: "On Wednesday ... and Thursday we started evacuating people."²⁹

On September 12, 2005, during a press conference in New Orleans, President Bush was asked whether staff had misinformed him about the levees. He responded as follows:

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

²⁴ *How Bush Blew It*, Newsweek (Sept. 19, 2005).

²⁵ *Put to Katrina's Test*, Los Angeles Times (Sept. 11, 2005) (noting that Ms. Townsend was vacationing when Katrina struck, but that she later "attended several meetings in Washington, then left on a previously scheduled trip for Saudi Arabia").

²⁶ *Id.*

²⁷ *Id.*

²⁸ 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>).

²⁹ *Id.*

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.³⁰

Secretary Chertoff provided essentially the same account on *Meet the Press*, where he stated: “what happened is the storm passed and passed without the levees breaking on Monday.”³¹ He asserted that on “Tuesday morning, I opened newspapers and saw headlines that said ‘New Orleans Dodged The Bullet,’ which surprised people.”³² He also made the “second catastrophe” argument, stating: “I think that second catastrophe really caught everybody by surprise.”³³

General Richard Myers, Chairman of the Joint Chief of Staff, provided a similar justification for the delayed federal response. At a September 6 briefing, he stated:

The headline, of course, in most of the country’s papers on Tuesday were “New Orleans dodged a bullet,” or words to that effect. At that time, when those words were in our minds, we started working issues before we were asked. And on Tuesday, at the direction of the secretary and the deputy secretary, we went to each of the services. 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.³⁴

³⁰ 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).

³¹ *Meet the Press*, NBC News (Sept. 4, 2005).

³² *Id.*

³³ *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”).

³⁴ Department of Defense, *Defense Department Operational Update Briefing* (Sept. 6, 2005). See also 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”).

Administration officials also made these claims directly to members of the Select Committee. 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. He claimed that the levees were not breached until Tuesday. He stated that when Hurricane Katrina first passed through New Orleans, the winds pushed the water in Lake Ponchartrain north, away from the city. According to Admiral Allen, it was not until later that the winds reversed and pushed the water south, breaching the levee that usually drains into Lake Ponchartrain and flooding the city. Admiral Allen also claimed that he believed on Tuesday morning that New Orleans had “dodged the bullet.”

Contrary to these statements by the President and other top Administration officials, however, it now appears that both the White House and the Department of Homeland Security received warnings on Monday, August 29, the day the storm struck, reporting major breaches in the levees and providing dire assessments of the massive flooding.

A new document obtained by the Committee shows that on 9:27 p.m. on Monday, Secretary Chertoff’s chief of staff, John Wood, and others in the Secretary’s office at the Department of Homeland Security, received an email from Brian Besanceney, the Assistant Secretary for Public Affairs. This email warned the officials that conditions in New Orleans were significantly worse than being reported. According to the email:

[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.”³⁵

A second document shows that within an hour, at 10:30 p.m. on Monday, a “spot report” was sent to the White House Situation Room from the Department of Homeland Security. This spot report stated unequivocally that there was a large break in the 17th Street levee that was flooding New Orleans. According to the spot report:

Marty Bahamonte [sic] of FEMA Public Affairs made two aerial over flights of the New Orleans area the afternoon of Monday, August 29, 2005. ... His observations include the following. ... There is a quarter-mile breach in the levee near the 17th Street Canal about 200 yards from Lake Pontchartrain allowing water to flow into the City.”³⁶

About a half-hour later, FEMA Deputy Director Patrick Rhode also sent an email to DHS Deputy Secretary Michael Jackson. At 11:05 p.m. on Monday night, 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

³⁵ Email from DHS Assistant Secretary for Public Affairs Brian Besanceney to DHS Chief of Staff John Wood et al. (Aug. 29, 2005) (DHS-FRNT-0006-0000023).

³⁶ Homeland Security Operations Security, *Spot Report #13* (Aug. 29, 2005) (WHK-4055) (DHS-FRNT-0001-0000002).

collapse of the levy on the south side of the lake which is accounting for much of the additional flooding.”³⁷

In addition to these reports to top officials at the White House and the Department of Homeland Security, other documents reported levee breaches and massive flooding much earlier in the day on Monday. For example, at 8:14 a.m. on Monday morning, the New Orleans office of the National Weather Service issued a bulletin warning: “a levee breach occurred along the Industrial Canal at Tennessee Street.”³⁸ In addition, at 9:54 a.m., Edward Buikema, acting Director of Response at FEMA emailed Michael Brown and other top FEMA officials with the news that WWL TV was reporting that “a levee breach occurred along the industrial canal at Tennessee Street. 3 to 8 feet of water is expected due to the breach.”³⁹ There were also other contemporaneous state, local, and media accounts of severe breaches and massive flooding.⁴⁰

The discrepancies between the information flowing into the White House and Department of Homeland Security and the Administration’s public statements are striking and hard to comprehend. One explanation could be incompetence: the senior leadership at the Department of Homeland Security and the White House may have failed to grasp the significance of these dire warnings. Another explanation could be that the top Administration officials made public statements that contradicted these internal reports to help explain the botched federal response. In either case, the implications are serious and require rigorous scrutiny by the Committee.

C. The Need for a Subpoena

The record demonstrates that the Select Committee has made extraordinary efforts to accommodate the interests of the White House, that we have provided more than fair warning of our requirements and intentions, and that we have exhausted all voluntary methods of obtaining the priority communications requested on September 30. A compulsory subpoena remains the only appropriate course of action left for the Committee to fulfill its oversight role.

I first expressed concern with the failure of various agencies to provide documents at the Select Committee’s hearing with Secretary Chertoff on October 19, 2005. Because priority

³⁷ Email from FEMA Deputy Director Patrick Rhode to Deputy Secretary of Homeland Security Michael Jackson (Aug. 29, 2005).

³⁸ *Primetime Moment of Crisis: System Failure*, Primetime Live, ABC News (Sept. 15, 2005) (adding that “Washington seemed totally oblivious to the bulletin”).

³⁹ Email from, FEMA Acting Director of Response Edward Buikema to FEMA Director Michael Brown, et al. (Aug. 29, 2005).

⁴⁰ See, e.g., *Louisiana Governor Kathleen Babineaux Blanco Discusses Steps Being Taken to Prepare for the Aftermath of Hurricane Katrina*, The Today Show, NBC News (Aug. 29, 2005) (quoting Governor Blanco as stating at 7:33 a.m. on Monday: “I believe the water has breached the levee system, and is – is coming in”); *Rescuers Can’t Get to Those Who Are Stranded*, New Orleans Times-Picayune (2 p.m., August 29, 2005) (reporting that “City Hall confirmed a breach of the levee along the 17th Street Canal” at 2 p.m.).

communications had not been provided, the Committee was not able to review emails and memos from Secretary Chertoff's office prior to questioning him about what information he received about the hurricane and what actions he took. As I stated:

Reviewing emails and other communications would have shed a lot of light on these issues and enabled us to prepare for the hearing, but instead we have no documents from [Secretary Chertoff's] office. ... I want to trust that when we ask for all the documents we'll get them all. I would hope that we would not have to go to subpoenas to get those documents.⁴¹

I next raised concern with the lack of compliance with priority document requests at the hearing on November 2, 2005, and I asked about the possibility of subpoenas:

Key administration officials have failed to comply with document requests that we sent over a month ago. ... 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. We have nothing from HHS, we have nothing from the Pentagon, we have nothing from the Army Corps. Lack of compliance with congressional requests is always a problem, but it is especially egregious when a committee goes out of business in just a few months like this one will. Do you think we should issue subpoenas to the agencies that have not complied with the document request?⁴²

In response, Chairman Davis said that he shared my concern:

It's my understanding that we'll be receiving on Thursday a substantial production from the White House, responsive to that prioritized request. ... 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.⁴³

I raised the failure to comply with the priority requests for a third time at the hearing on November 9, 2005:

We ... have no communications from top White House officials, even though Mr. Brown testified that he exchanged multiple emails with White House officials, including chief of

⁴¹ House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, Statement of Rep. Charles Melancon, *Hurricane Katrina: The Role of the Department of Homeland Security*, 109th Cong. (Oct. 19, 2005).

⁴² House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, Statement of Rep. Charles Melancon, *Hurricane Katrina: The Federal Government's Use of Contractors to Prepare and Respond*, 109th Cong. (Nov. 2, 2005).

⁴³ *Id.*

staff Andy Card. And we have received no documents from Secretary Rumsfeld's office at DOD or Secretary Leavitt's office at HHS.⁴⁴

At this hearing, I asked that draft subpoenas be placed into the hearing record, and this motion was adopted. I also asked for a firm date by which the Committee would issue subpoenas if we still had not received the priority communications. Chairman Davis responded as follows:

I'm comfortable setting a firm deadline for the prioritized documents we outlined on September 30th. 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.⁴⁵

Having not received these priority communications from the White House more than two months after the initial request, our staff met with representatives from the White House Counsel's office on December 1, 2005.⁴⁶ Although other agencies had managed to comply with our request for priority communications, the White House Counsel's office asserted that their compliance would be impossible. They said it would require the review of 71 million email messages and take over one year. They could not explain, however, why they had not begun producing the priority communications of at least the key individuals identified in the September 30 request letter.

During the meeting, officials from the White House Counsel's office also 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. But when staff provided multiple examples of past precedents for this type of request — particularly from sitting White House Chiefs of Staff during the Clinton Administration — an official from the White House responded bluntly: "You're not getting Andrew Card's emails."⁴⁷

Later that day, I joined Chairman Davis in writing to the White House objecting to these arguments.⁴⁸ To further limit our request, we identified an even smaller set of documents the

⁴⁴ House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, Statement of Rep. Charles Melancon, *Hurricane Katrina: Preparedness and Response by the State of Alabama*, 109th Cong. (Nov. 9, 2005).

⁴⁵ House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *Hurricane Katrina: Preparedness and Response by the State of Alabama*, 109th Cong. (Nov. 9, 2005).

⁴⁶ Staff Meeting with 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 (Dec. 1, 2005).

⁴⁷ *Id.*

⁴⁸ Letter from Chairman Tom Davis and Rep. Charlie Melancon to White House Chief of Staff Andrew Card (Dec. 1, 2005).

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 Adviser 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.

On December 6, the White House wrote back refusing to provide the requested documents.⁴⁹ Instead, the White House offered to arrange a “background briefing” by an unnamed Administration official subject to unspecified “conditions.” Although the White House said it would produce some emails from unspecified Homeland Security Council staff, there was no mention of the specific individuals identified in the December 1 request letter. To date, even the promised briefing and emails have not been provided.

There is only one conclusion that can be drawn from this drawn-out chronology: the White House has persistently refused to provide the key documents that the Committee needs to complete its investigation. A subpoena is now our only option.

IV. THE NEED TO SUBPOENA DEFENSE DEPARTMENT DOCUMENTS

Another major gap in the documents and communications produced to the Committee involves the actions of key decision-makers at the Defense Department. Information provided to the Committee to date raises serious questions about whether the Pentagon’s response to Hurricane Katrina was timely and effective.

According to the National Response Plan, the federal government’s overall plan for responding to natural disasters and terrorist attacks, the Defense Department is charged with providing support “to Civil Authorities in response to requests for assistance during domestic incidents to include terrorist attacks, major disasters, and other emergencies.”⁵⁰ As the Plan states: “Federal support must be provided in a timely manner to save lives, prevent human suffering, and mitigate severe damage.”⁵¹ But this did not happen after Hurricane Katrina.

In an interview with Committee staff on December 2, 2005, Bill Lokey, the FEMA official who was acting as the Federal Coordinating Officer for Louisiana, reported that he asked Michael Brown to seek immediate assistance from the military on Tuesday, August 31. He stated, “On Tuesday, I went to Brown and said something to the effect of ‘this is beyond the state, this is beyond us, we need the military.’”⁵² His plea followed a similar request from Maj.

⁴⁹ Letter from William K. Kelly, Deputy Counsel to the President, to Chairman Tom Davis and Rep. Charlie Melancon (Dec. 6, 2005).

⁵⁰ U.S. Department of Homeland Security, *National Response Plan* (December 2004), at 41.

⁵¹ *Id.* at Catastrophic Incident Annex p.3.

⁵² Committee Staff Interview with William Lokey (Dec. 12, 2005).

Gen. Bennett Landreneau, the head of the Louisiana Guard, who “specifically requested a division of federal ground forces, in particular to evacuate stranded people from the city.”⁵³

Mr. Lokey also expressed particular concern that FEMA’s already weakened logistical supply system would crumble without the involvement of the Defense Department. He told the Committee staff that Michael Brown had downsized FEMA’s regional response teams as an “economy measure” and that the hurricane had caused such devastation that FEMA officials were now “working on a multi-billion dollar tasking to mission assign logistics delivery to DOD.”⁵⁴

Yet despite Mr. Lokey’s urgent request for Defense Department assistance, active-duty forces from the Army’s 82nd Airborne and 1st Cavalry Divisions did not arrive in significant numbers until Monday, September 5, a week after the hurricane struck.⁵⁵ Moreover, their deployment seemed to require a formal order from the President, which he signed in a “rare Saturday appearance in the Rose Garden before live television cameras.”⁵⁶

Other evidence before the Committee raises similar concerns about the delayed the Defense Department response. Michael Brown testified that on Tuesday, August 30, “Secretary Chertoff had conversations with Secretary Rumsfeld and we agreed that we were going to do a blanket mission assignment to the Army ... because we knew that we could not do it.”⁵⁷ Yet an email provided to the Committee shows that on Friday, September 2, the Defense Department objected to a request from FEMA for “support [for] the planning and execution of the full logistical support to the Katrina disaster” because the request did not “come from Secretary to Secretary.”⁵⁸

The Committee has been trying to obtain relevant documents about the military response since September 30, when Chairman Davis and I requested a wide range of documents from the Department of Defense. At that time, we asked that first priority be given “to providing responsive documents or communications, including internal communications, received,

⁵³ *Politics Delayed Troops Dispatch to N.O.*, New Orleans Times-Picayune (Dec. 11, 2005).

⁵⁴ Committee Staff Interview with William Lokey (Dec. 12, 2005).

⁵⁵ *Id.* See also *Political Breach Creates Parallel Recovery Operations*, Newhouse News Service (Sept. 5, 2005) (reporting that “7,000 active-duty troops ... began arriving Monday under the command of the regular Army and the president”).

⁵⁶ *As Anxiety Over Storm Increases, Bush Tries to Quell Political Crisis*, New York Times (Sept. 4, 2005).

⁵⁷ House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, Testimony of Michael D. Brown, *Hurricane Katrina: The Role of the Federal Emergency Management Agency*, 109th Cong. (Sept. 27, 2005).

⁵⁸ E-mail from FEMA Deputy Director of Operations Ken Burris to DHS Director of Operations Mathew Broderick, et al. (Sept. 2, 2005).

prepared, or sent by officials in the Office of the Secretary.”⁵⁹ These priority communications were not provided, however.

On December 5, staff met with Defense Department personnel regarding the Department’s failure to produce the requested documents. They informed us that Paul McHale, the Assistant Secretary of Defense for Homeland Security, had personally requested from Pentagon staff all relevant documents and emails and that the Committee would begin to receive the first set of priority documents in the next week.⁶⁰

On December 7, 2005, Chairman Davis and I wrote a second letter to Secretary Rumsfeld, narrowing our request to communications between August 23 and September 15, 2005, involving nine specified officials: Secretary Donald Rumsfeld, Assistant Secretary of Defense for Homeland Defense Paul McHale, Acting Deputy Secretary of Defense Gordon England, Principal Deputy Assistant Secretary for Homeland Defense Peter Verga, U.S. Northern Command Commander Admiral Timothy Keating, Joint Task Force Katrina Commander General Russell Honore, National Guard Bureau Chief Lt. General Steven Blum, military assistant to the FEMA Director Col. John J. Jordan, and the Defense Coordinating Officer in Louisiana Col. Anthony Daskevich.⁶¹

The letter asked for these documents by December 12, 2005. To date, we have not received the requested documents. Given the Committee’s short remaining time, and the Department’s failure to act in a responsive manner, we must issue a subpoena to compel compliance with our requests.

V. THE NEED TO SUBPOENA DOCUMENTS FROM MISSISSIPPI AND ALABAMA

The experiences and communications of officials in Louisiana, Mississippi, and Alabama are critical to understanding how well the federal, state, and local governments worked together in responding to Hurricane Katrina. The three states were affected differently. Louisiana suffered widespread and persistent flooding after a breach of the levees, while destructive winds and a powerful storm surge caused catastrophic damage in Mississippi. Alabama also suffered significant hurricane damage, but due to the relatively devastating impact of the hurricane on neighboring states, it quickly became an aid donor, as well as a recipient.

Although each state experienced different effects from the hurricane, they appear to have experienced similar challenges in responding to the urgent needs of their citizens and in dealing

⁵⁹ Letter from Chairman Tom Davis and Rep. Charlie Melancon to Defense Secretary Donald H. Rumsfeld (Sept. 30, 2005).

⁶⁰ Meeting of Committee Staff with Col. David Rhodes, Staff Director, Hurricane Katrina Comprehensive Review Task Force, and Army Legislative Liaison Lt. Col. Roger Carstens (Sept. 5, 2005).

⁶¹ Letter from Chairman Tom Davis and Rep. Charlie Melancon to Secretary Donald H. Rumsfeld (Sept. 7, 2005).

with the federal government. The Committee has received documents and testimony from FEMA's top official in Mississippi, William Carwile, who wrote in the days after the hurricane that the "system appears broken."⁶² 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."⁶³

In order to fully and fairly evaluate these similarities and differences among each state's response efforts, our document requests to the three states were identical. Our priority requests were for documents and communications from each state's governor's office, emergency management agency, and adjutant general's office. All three states have provided a significant number of documents from their emergency management officials, including detailed emergency and evacuation plans, situation reports about Hurricane Katrina, and deployment orders for state National Guard troops.

However, there are significant disparities in the documents produced by the three governors. Louisiana has been the most responsive, providing over 100,000 pages of documents, including extensive emails, internal memos, and handwritten notes. These documents have provided valuable insights into the timing and substance of critical decisions. For example, Governor Blanco's documents show concern over an attempt by the White House to federalize state National Guard troops. They also reveal shortcomings in FEMA's ability to secure mass transportation and distribute commodities in a timely manner. In contrast, Mississippi and Alabama have provided no communications from either governor's office.

I first raised concern with the failure of Governor Riley and Governor Barbour to produce internal communications from their offices at the Committee's hearing on November 2, 2005, stating: "we have not received any response from Mississippi, Alabama thus far."⁶⁴

During the Committee's hearing on Mississippi's response to Hurricane Katrina on December 7, 2005, Governor Barbour was specifically asked why he had not produced any internal communications from his office. In response, he testified that officials in his office sent and received no emails during this timeframe because there was no electricity. As he stated:

We were out of our offices. The state office building where my office is didn't have electricity. ... I don't carry a blackberry, I really am a low-tech kind of governor ... so

⁶² Email from FEMA Coordinating Officer William Carwile to FEMA Deputy Director of Response Michael Lowder, et al. (Sept. 2, 2005).

⁶³ House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, Testimony of William Carwile, *Hurricane Katrina: Preparedness and Response by the State of Mississippi*, 109th Cong. (Dec. 7, 2005) (as cited in *Barbour Beseches Congress*, Biloxi Sun Herald (Dec. 8, 2005).

⁶⁴ House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, Statement of Rep. Charles Melancon, *Hurricane Katrina: Preparedness and Response by the State of Alabama*, 109th Cong. (Nov. 9, 2005).

there are not, I don't have any emails from me, I don't do a lot of email. I do some, but only when I'm in the office.⁶⁵

This answer was puzzling since our request covered a time period prior to the storm, and well afterwards, when email communication was surely working. It also covered staff in the governor's office, and other forms of communication that might have been used instead of email. Although Governor Barbour testified that he would revisit this issue with his staff and report back to the Committee, we have received no further response from his office.

Unlike Governor Barbour, Governor Riley has not claimed that his office generated no emails or other internal communications during the timeframe covered by our document request. To the contrary, the Chairman's staff reports that they may have obtained some emails from officials in Governor Riley's office. My staff has asked to see copies of these documents and attempted unsuccessfully to contact Governor Riley's office.

Because we have not received significant internal communications from Mississippi or Alabama, it is more difficult for the Committee to assess whether the problems experienced in those states were similar to those in Louisiana. If we are to conduct a credible investigation, we must obtain essential documents from the governors of all three states. If Governor Blanco was able to fully comply with our requests, despite the massive problems confronting Louisiana, certainly Governor Barbour and Governor Riley can comply without facing an undue burden. Since they have not done so to date, however, a compulsory subpoena is necessary to obtain this information.

VI. THE PRECEDENT FOR THE SUBPOENAS

There is ample precedent for these subpoena requests from congressional oversight of the Clinton Administration.

During the Clinton Administration, the House Committee on Government Reform launched numerous investigations of the White House, from campaign finance probes to an examination of the White House Christmas card list. The Government Reform Committee issued over 1,000 subpoenas during the course of these investigations, including 46 subpoenas to White House officials or former officials. In response, the Clinton Administration produced internal White House communications involving the President, Vice President, and various White House Chiefs of Staff and Deputy Chiefs of Staff. The Government Reform Committee received millions of pages of documents, including internal memoranda and emails sent to four of President Clinton's chiefs of staff: Thomas "Mack" McLarty, Leon Panetta, Erskine Bowles, and John Podesta. The Committee also received communications between President Clinton and his advisors, as well as between Vice President Gore and his staff.

⁶⁵ House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, Testimony of Gov. Haley Barbour, *Hurricane Katrina: Preparedness and Response by the State of Mississippi*, 109th Cong. (Dec. 7, 2005).

Indeed, the Committee even required three White House Chiefs of Staff to testify before the Committee or appear for staff-level depositions. On July 12, 1996, White House Chief of Staff Mack McLarty came before the Committee for 5 hours and 15 minutes in a deposition conducted by staff.⁶⁶ On September 5, 1997, Mr. McLarty came before the Committee for 5 ½ hours in a second deposition conducted by staff.⁶⁷ On May 5, 1998, White House Chief of Staff Erskine Bowles came before the Committee for 2 hours and 20 minutes in a deposition conducted by staff.⁶⁸ And on March 1, 2001, White House Chief of Staff John Podesta testified before the Committee in open session. During this testimony, he described his personal communications with President Clinton.⁶⁹

The example of the 9-11 Commission is also relevant precedent. The Commission had access to the key decision-makers in the Administration. On April 29, 2004, President Bush and Vice President Cheney answered questions from Commission members in the Oval Office for over three hours.⁷⁰ National Security Advisor Condoleezza Rice and former National Coordinator for Counterterrorism Richard Clarke testified before the 9-11 Commission in public hearings.⁷¹ The 9-11 Commission also obtained access to relevant internal White House documents, including copies of classified Presidential Daily Briefs⁷² and internal memos from Richard Clarke to National Security Advisor Condoleezza Rice.⁷³ If the Select Committee intends to be as thorough as the 9-11 Commission was, the Committee will need to obtain the relevant White House documents as the 9-11 Commission did.

Against this backdrop, any claim by the Administration that it would be unprecedented for Congress to obtain the communications of senior White House officials is inaccurate.

⁶⁶ House Committee on Government Reform and Oversight, *Deposition of Thomas Franklin McLarty* (July 12, 1996).

⁶⁷ House Committee on Government Reform and Oversight, *Deposition of Thomas Franklin McLarty* (Sept. 7, 1997).

⁶⁸ House Committee on Government Reform and Oversight, *Deposition of Erskine Bowles* (May 5, 1998).

⁶⁹ House Committee on Government Reform, *Hearings on the Controversial Pardon of International Fugitive Marc Rich*, 107th Cong., 1st Sess., 309-437 (Feb. 8 and Mar. 1, 2001) (H. Rept. 107-11).

⁷⁰ White House, *Press Release: President Bush Meets with the 9/11 Commission on Thursday* (Apr. 29, 2004).

⁷¹ National Commission on Terrorist Attacks Upon the United States, *Hearings on Counterterrorism Policy* (Mar. 24, 2004); National Commission on Terrorist Attacks Upon the United States, *Hearing with Testimony from Condoleezza Rice* (Apr. 8, 2004).

⁷² National Commission on Terrorist Attacks Upon the United States, *Frequently Asked Questions About the 9-11 Commission* (Dec. 12, 2005) (online at <http://www.9-11commission.gov/about/faq.htm#q9>).

⁷³ See, e.g., Memorandum for Condoleezza Rice from Richard A. Clarke (Jan. 25, 2001)

VII. CONCLUSION

The House resolution creating the Select Committee has established a short deadline of February 15, 2006, for completion of the Committee's work. Even with full cooperation, this deadline would be difficult to meet. 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. I urge all members of the Committee to support my subpoena requests tomorrow.