

tee he would not respond to certain questions regarding his communications with senior White House officials, including the President. Brown told the Select Committee, “I’m being advised by counsel that I can’t discuss with you my conversations with the President’s Chief of Staff and the President.”¹

On February 10, 2006, however, Brown appeared before the Senate Homeland Security and Governmental Affairs Committee, declaring that, as a private citizen, he no longer felt bound by the same restrictions that applied to his previous testimony.² In that appearance, he testified about specific conversations with, among others, White House Chief of Staff Andrew Card, Deputy Chief of Staff Joseph Hagin, and the President.

Deprived previously of this information, the Select Committee served a subpoena on Brown that same day, compelling him to appear on Monday, February 13, 2006.³ In lieu of his appearance on that date, the Select Committee took testimony from him in a sworn deposition on Saturday, February 11, 2006. In that testimony, he discussed his conversations with President Bush and Chief of Staff Card, among others.⁴

Brown’s communications with the White House generally confirm the Select Committee report’s findings. They confirm the Select Committee’s conclusions regarding the use of the National Response Plan’s (NRP) protocols and procedures and the potential for better response if the President had been involved in the details of the response at an earlier date.

But Brown’s communications with the White House also raise serious questions about when and how the White House becomes involved in disaster response under the NRP. Brown testified he regularly communicated with senior White House officials and asked for their assistance in the response. It is well-documented that the response at all levels of government was inadequate. The record establishes that Brown deliberately ignored the procedures, responsibilities, and mechanisms of the NRP and called directly on the White House for assistance instead.

II. BROWN DELIBERATELY IGNORED THE NATIONAL RESPONSE PLAN

Brown’s communications with the White House and his sworn statements to the Select Committee and others reflect his deliberate decision to ignore the NRP. The NRP was required to be promulgated under the Homeland Security Act and was established at the direction of the President under Homeland Security Presidential Directive 5 “to align Federal coordination structures, capabilities, and resources into a unified, all-discipline, and all-hazards approach to domestic incident management.”⁵ It was designed to

¹Hearing on Hurricane Katrina: The Role of the Federal Emergency Management Agency Before House Katrina Select Comm., 109th Cong. 79 (Sept. 27, 2005) (statement of Michael Brown, former Dir., Federal Emergency Management Agency) [hereinafter Sept. 27, 2005 Select Comm. Hearing].

²Hearing on Hurricane Katrina: The Roles of U.S. Dept of Homeland Security and FEMA Leadership Before Sen. Homeland Sec. and Gov’t Affairs Comm., 109th Cong. 25–26 (Feb. 10, 2006) (statement of Michael Brown) [hereinafter Feb. 10, 2006 Sen. Homeland Sec. Hearing].

³Subpoena served on Michael Brown by House Katrina Select Comm. Staff in Wash., D.C. (Feb. 10, 2006).

⁴See Deposition of Michael Brown by House Katrina Select Comm. Staff in Wash., D.C. (Feb. 11, 2006) [hereinafter Brown Dep.].

⁵Dep’t of Homeland Sec., *National Response Plan* (Dec. 2004) at i [hereinafter *NRP*].

“serve[] to unify and enhance the incident management capabilities and resources of individual agencies and organizations acting under their own authorities in response to a wide array of potential threats and hazards.”⁶ Thirty-two Departments and Agencies of the federal government adopted it.⁷

The NRP was completed in 2004 and provided new tools for dealing with disasters, including catastrophic disasters. These tools include the Homeland Security Operations Center (HSOC) and its constituent entity the National Response Coordinating Center, the Regional Response Coordinating Center, the Interagency Incident Management Group (IIMG), the Catastrophic Incident Annex,⁸ and the designation of the Secretary of Homeland Security as the person responsible for execution of “overall coordination of federal incident management activities”⁹ in a disaster.

Brown’s own testimony establishes that he ignored or circumvented the procedures under the NRP for managing the disaster. Brown’s testimony demonstrates that he deliberately chose to disregard key provisions of the plan, communicating with White House officials to secure resources. His circumvention of the NRP contributed to depriving the nation of an opportunity to determine whether the NRP worked. While it is clear that the federal, state, and local response was inadequate, it is not clear that the NRP itself would not have worked, or worked better, if it had been executed by those responsible for doing so, including Brown.

Brown chose to operate as he had in previous disasters—prior to the adoption of the NRP. Responding to questions from Select Committee Chairman Tom Davis, Brown testified that he relied on his “previous experience with lots of disasters” to “relay [his needs] to Hagin or Card, and it would get done. . . .”¹⁰ He reported that if he “needed, for example, DOD to do something in particular, then either [Deputy Secretary] Gordon England, or Secretary [Donald] Rumsfeld or Assistant Secretary Paul McHale would call me and confirm that, yeah, we just got a call from Andy, and . . . we are going to get that done for you.”¹¹ He testified that he had “literally dozens” of conversations or e-mails with senior White House staff, including the President, the Vice President, Card, Hagin, National Security Advisor Stephen Hadley, and Karl Rove.¹²

Brown virtually boasted that he deliberately avoided communicating with the Secretary of Homeland Security Michael Chertoff. When asked in the Senate by Senator Lieberman whether he had talked to Chertoff on Monday, August 29, and why he “would . . . not have if that was the chain of command,” he responded: “Because I’m still operating that I need to get things done, and the way I get things done is I request them from the White House”¹³

⁶*Id.*

⁷*Id.* at v–viii.

⁸*Id.* at ix–x.

⁹*Id.* at 15.

¹⁰Brown Dep. at 16.

¹¹*Id.*

¹²*Id.* at 8.

¹³Feb. 10, 2005 Sen. Homeland Sec. Hearing at 44.

He further testified in the Senate that calling Chertoff for support “would have wasted my time. . . .”¹⁴ Brown claimed that “DHS was an additional bureaucracy that was going to slow me down even more. And the way I got around that was dealing directly with the White House.”¹⁵ Senator Bennett observed, “[I]f I were Secretary Chertoff and I had a Deputy Secretary who would prefer to call the White House rather than talk to me, I would find that very disturbing.”¹⁶

At the same time as he was eager to call the White House for assistance, Brown tried to cut off communications with the Secretary. He told another FEMA official: “I did tell [Secretary Chertoff] privately that the phone calls were killing me, and he said he understood. He assures me he is not trying to interfere, but they are literally driving me crazy.”¹⁷

He also admitted that Card directed him to use the proper procedures. He testified that Card responded to a request:

Mike, we are going to have to follow the protocol. We are going to have to follow the chain of command on this one. And I took that to mean that the way we have played ball for the past couple of years, we are not going to play ball that way, and now we are going to play ball by “if you really need something, you need to go to Chertoff or back through HSOC or whatever you are going to do and do those requests that way.”¹⁸

Brown operated under the old procedures, despite his own recognition of changes to the NRP and at FEMA. In both his September 27, 2005 appearance before the Select Committee and his February 11, 2006 deposition, he complained about FEMA budget cuts and reorganization at DHS.¹⁹ In response to Chairman Davis’s question about whether the NRP had changed since the 2004 hurricane season in Florida, Brown replied: “It had. It had.”²⁰ Brown was also asked: “[I]t looks [as if] you may have spent a couple of years fighting a system that you didn’t like, and then when the disaster came, it came [time] to use that system you chose not to use it. How would you address that?”²¹ He responded:

I would say that is generally true because the system that is in place works, whether it is catastrophic or not. The system that is in place worked.²²

But that was emphatically not the system in place for Hurricane Katrina, and Brown deliberately ignored it. He admitted that he never advised the Secretary to designate Hurricane Katrina as an Incident of National Significance²³ and never even discussed with

¹⁴*Id.* at 65–66.

¹⁵*Id.* at 69.

¹⁶*Id.* at 66.

¹⁷E-mail from Michael Brown to Brooks Altschuler, Dep. Chief of Staff, FEMA (Sept. 1, 2005, 21:31).

¹⁸Brown Dep. at 17.

¹⁹See *Sept. 27, 2005 Select Comm. Hearing* at 114, 115–117 (statements of Michael Brown); Brown Dep. at 41, 43, 85. See also *Sept. 27, 2005 Select Comm. Hearing* at 77, 99, 114, 139–140 (statements of Michael Brown).

²⁰Brown Dep. at 17.

²¹*Id.* at 94.

²²*Id.*

²³Brown Dep. at 48–49.

Chertoff activating the NRP's Catastrophic Incident Annex.²⁴ He testified that he would have "fought the activation of the IIMG as hard as [he] could."²⁵ He testified that, if he had gone through the HSOC or the Secretary, it would have "added two new phone calls and two new layers to get things done."²⁶ Similarly, he objected to the designation of the Principal Federal Official for an Incident of National Significance because "it adds an additional layer of bureaucracy."²⁷ He testified: "[T]hat's why I am such an opponent of the PFO designation"²⁸

Yet when asked if these were the "mechanisms" for managing disasters under the NRP and for pushing resources into the field, he responded: "Right."²⁹ When confronted with that fact that he "choose [sic] not to use them," again, his unambiguous response was "Right."³⁰

At the same time, while he plainly perceived the structures of the NRP to be bureaucratic, he admitted that he had no reason to think that those structures could not and would not respond to his needs. When asked if he had "any reason to think that you couldn't get [the logistics mission] assignment accomplished through regular channels," he testified: "No. I really didn't."³¹ Thus, there did not appear to be any need to communicate with the White House to obtain the assistance that he sought.

Finally, Brown also appears to have represented to Secretary Chertoff that he could live with the changes at FEMA, when in fact he could not. According to Secretary Chertoff's testimony, Chertoff and Deputy Secretary Michael Jackson met with Brown and specifically asked him if he was "going to have a problem functioning as the head of FEMA" with the changes at FEMA that Brown had opposed.³² Chertoff testified that they told Brown it was "perfectly creditable to say, I can't go along with this. I want to leave. If you are going to stay, though, we need to have your full commitment. He told us he had felt he had gotten a fair hearing and would give this his full commitment."³³ Brown's refusal to follow the NRP seems contrary to that representation.

It is not clear that following the NRP's procedures would have dramatically altered the government's response to Hurricane Katrina. It is clear, however, that it was Brown's responsibility to use those procedures. It is equally clear, by his own admission,

²⁴*Id.* at 93.

²⁵*Id.* at 95.

²⁶*Id.* at 48.

²⁷*Id.* at 49.

²⁸*Id.*

²⁹*Id.* at 94-95.

³⁰*Id.*

³¹*Id.* at 92. Even when Brown had the opportunity to seek assistance from the White House, he did not. When Andy Card asked Brown directly on Monday, August 29—the evening following landfall—if there were "[a]nything you want me to do?" Brown did not ask for anything, saying only that "[h]ousing, transportation and environment could be long term issues." (E-mail from Michael Brown to Andy Card, Chief of Staff, White House (Aug. 29, 2005; 22:00) in response to E-mail from Andy Card to Michael Brown (Aug. 29, 2005; 21:51:07).) Moreover, in the August 28 video teleconference in which the President appeared, Brown did not request anything. (Daily Video Teleconference ["VTC"] amongst key officials dated Aug. 28, 2005, Transcript at 14-15.) Later in the same conference call, Brown asked Louisiana State Coordinating Officer Jeff Smith if he had "any unmet needs, anything that we're not getting to you that you need . . ." Smith replied simply "Mike, no." (*Id.* at 18.)

³²*Hearing on Hurricane Katrina: The Homeland Sec. Dept's Preparation and Response Before Sen. Homeland Sec. and Gov't Affairs Comm.*, 109th Cong. 24 (Feb. 15, 2006) (statement of Michael Chertoff, Sec., Dept. Homeland Sec.).

³³*Id.* at 24-25.

Brown failed to follow them. He thought he could just ignore the NRP and do it the way he did it in Florida in 2004. That way involved direct communication with the White House to get resources, circumventing the Secretary of Homeland Security and the interagency processes and mechanisms designed to speed relief to disaster victims.

The nation will never know whether its response would have been better if the NRP had been followed. We only know the actual response, where the NRP was not followed, was woefully inadequate.