

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.

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

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

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

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.

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 breach 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.”

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

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

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.

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

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

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

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

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

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

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

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

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.*