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January 23, 2006

The Honorable Tom Davis
Chairman
Select Bipartisan Committee to Investigate the Preparation
for and Response to Hurricane Katrina
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In recent interviews, top FEMA officials informed the Select Committee that the Defense Department refused on multiple occasions to comply with civilian requests for assistance in the critical days after Hurricane Katrina struck the Gulf Coast. The FEMA officials also told us that Defense Secretary Donald Rumsfeld, who is currently defying the Committee's subpoena to produce documents, insisted on personally reviewing these urgent FEMA requests.

These new accounts contradict the testimony of Defense Department officials that all civilian requests were approved. And they underscore why it is essential for the Committee to enforce its subpoena against Secretary Rumsfeld.

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

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

Both FEMA officials stated that the Defense Department frustrated FEMA's attempts to get this aid delivered to the stricken region. The FEMA officials relayed the request to the

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Defense Department's Joint Director of Military Support. This office told them that the Defense Department would not accept the mission assignment and that all requests for assistance by FEMA had to be personally approved by Secretary Rumsfeld. According to the FEMA officials, the Defense officials expressed concerns that the involvement of active duty troops in providing emergency supplies raised legal issues that the Department had not resolved.

The FEMA officials recounted that this unexpected rejection of their emergency request delayed critical assistance for days. They reported that the Defense Department's rejection forced them to leave their command post at FEMA headquarters in order to negotiate with Pentagon attorneys about what assignments the Defense Department would and would not accept. These bureaucratic interagency negotiations continued throughout the weekend.

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

According to the FEMA officials, a final agreement on the Defense Department's mission assignment was not worked out until Monday, September 5 — one week after Hurricane Katrina struck. But even after a final agreement was reached, problems in the delivery of the emergency aid continued. Emails on Tuesday, September 6, show continuing problems with the delivery of Meals Ready to Eat (MREs). Mr. Buikema wrote to FEMA Deputy Director Patrick Rhode that the Defense Department claimed "we were cutting into their supply of MRE's for their war fighting effort and that they would not supply the Red Cross. ... So much for mission assigning DOD the logistics support mission."¹ On the same day, Secretary Rumsfeld was asserting publicly that "[w]e have the forces, the capabilities and the intention to fully prosecute the global war on terror while responding to this unprecedented humanitarian crisis here at home. We can and will do both."²

These new accounts by top FEMA officials raise serious questions about the sworn testimony of Defense Department officials before the Committee. At the Committee hearing on October 27, 2005, top Pentagon officials testified under oath that they approved every request made by civilian authorities. For example, Admiral Timothy Keating, the Commander of Northern Command, stated: "The United States Northern Command met every request for

¹ E-mail from Ed Buikema to Patrick Rhode et al. (Sept. 6, 2005).

² *DOD Response Began Before Katrina Made Landfall*, American Forces Press Service (Sept. 6, 2005).

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support received by FEMA.”³ 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.”⁴ Mr. McHale further testified that the Defense Department moved quickly to accept the mission assignment from FEMA to take over logistics. When asked whether any time was lost waiting for approval of civilian mission assignments by Secretary Rumsfeld, Mr. McHale said, “I don’t believe so. I think the time that elapsed was commensurate with the magnitude of taking on full logistical support throughout a three- or four-state area.”⁵

The accounts also make it imperative that the Committee obtain the complete correspondence and other records of Defense Secretary Rumsfeld. Unfortunately, we have been trying — without success — to obtain Secretary Rumsfeld’s cooperation for months. On September 30, 2005, you and I sent a document request letter to Secretary Rumsfeld asking that he provide all documents and communications “received, prepared, or sent between August 29 and September 15, 2005” relating to “emergency preparations” and “emergency responses” to Hurricane Katrina.⁶ We asked that Secretary Rumsfeld “give first priority” to providing documents from his office.⁷ When Secretary Rumsfeld failed to comply, we sent another letter on December 7, 2005, reiterating our request for all Katrina-related documents or communications from August 23 to September 15, 2005, that were received, sent, or reviewed by Secretary Rumsfeld.⁸ We noted that “we would like to avoid the issuance of a subpoena,” and we asked for the documents by December 12, 2005.⁹

After Secretary Rumsfeld again failed to provide the requested documents, I made a motion to subpoena these documents at the Committee’s hearing on December 14, 2005. The Committee adopted my motion and issued a subpoena compelling Secretary Rumsfeld to produce “all records and communications, including internal communications, referring or

³ 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).

⁴ *Id.*

⁵ *Id.*

⁶ Letter from Chairman Tom Davis and Rep. Charles Melancon to Defense Secretary Donald H. Rumsfeld (Sept. 30, 2005).

⁷ *Id.*

⁸ Letter from Chairman Tom Davis and Rep. Charles Melancon to Defense Secretary Donald H. Rumsfeld (Dec. 7, 2005).

⁹ *Id.*

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relating to the Department of Defense's efforts to prepare for and respond to Hurricane Katrina."¹⁰

Although the subpoena directed Secretary Rumsfeld to produce these documents by December 30, 2005, he again failed to comply. According to press accounts, Secretary Rumsfeld is refusing to provide these documents based on a claim of executive privilege.¹¹ However, neither Secretary Rumsfeld nor any other Administration official has asserted this privilege to the Committee. Moreover, the Defense Department has not produced any kind of privilege log, which normally accompanies this legal claim.

This situation is not acceptable. The statements of the FEMA officials have serious implications that need to be fully explored. Secretary Rumsfeld's failure to cooperate thwarts the legitimate work of the Committee in examining the military's role in responding to Hurricane Katrina, and it shows contempt for Congress' oversight role.

For these reasons, I ask that you initiate steps to enforce the subpoena issued to Secretary Rumsfeld on December 14, 2005. Only in this way will the Committee obtain a complete record of the Defense Department's compliance with mission assignments issued by civilian authorities.

Sincerely,



Charlie Melancon
Member of Congress

¹⁰ Subpoena from the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, to the Honorable Donald H. Rumsfeld, Secretary of Defense (Dec. 14, 2005).

¹¹ See, e.g., *Pentagon May Not Hand Over Rumsfeld Papers*, Associated Press (Dec. 16, 2005) (quoting Assistant Secretary McHale as stating that the document production remains "subject to a continuing review of the communication for legitimate issues of legal privilege").