

APPENDIX 7

General Counsel

U.S. Department of Homeland Security
Washington, DC 20528



Homeland Security

February 8, 2006

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Chief Counsel
House Select Bipartisan Committee on Katrina
2157 Rayburn House Office Building
Washington, DC 20515

Dear Keith:

We appreciated the opportunity to visit with you to discuss Mr. Walker's and the General Accountability Office's "preliminary observations" on the Department of Homeland Security's performance during Hurricane Katrina. As the Secretary has previously testified, the Department is not satisfied with many aspects of response for Hurricane Katrina and is working to remedy shortfalls in advance of the coming hurricane season. There are many appropriate criticisms regarding federal, state and local government entities involved in Katrina. Our meeting, however, addressed Mr. Walker's investigative methodology and the fact that several of his "preliminary observations" are not founded in any factual record. In the interest of brevity, we summarize certain of those issues below.

Premature Conclusions. First, Mr. Walker reached and announced conclusions regarding the Department without speaking with people in the Department actually involved in the decision-making process. Mr. Walker acknowledges this in his printed statement, which we understand to have been released to the press the day before his press conference: He states that he has "interviewed officials and analyzed information from the various involved federal agencies such as FEMA and the Department of Defense (DOD)"—but conspicuous by its omission is the interview of any officials from DHS headquarters. Indeed, Mr. Walker acknowledges that his report is only preliminary by qualifying his conclusions by describing them as "key themes . . . [that] seem to be emerging." (See Statement by Comptroller General, Feb. 1, 2006, at 3 (emphasis added)).

We do not believe it appropriate to reach conclusions regarding decisions purportedly made by top Department officials, *without* first speaking with the key personnel at DHS. For example, Mr. Walker opines on the Department's interpretation and use of the National Response Plan ("NRP") during Katrina. Robert Stephan, who is now our Assistant Secretary for Infrastructure Protection,

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was an author of the NRP and advised DHS leadership on the NRP during Katrina. Mr. Stephan was never consulted by Mr. Walker or his staff.¹

Misunderstanding of Basic Roles and Responsibilities. Mr. Walker states that “no one was designated in advance to lead the overall federal response in anticipation of the event. . . .” The statement demonstrates a lack of understanding of the roles and responsibilities of the FEMA Director. Once the President declared an emergency, Mr. Brown had the authority necessary to direct the assets of the federal government under the Stafford Act. And he was doing so: the transcript of the FEMA video teleconference from the day before landfall, Sunday, August 28, reveals that the States, including Louisiana, along with our federal partners, were in fact coordinating through the FEMA Director and, indeed, expressed satisfaction at the level of pre-landfall federal support.² In fact, it is undisputed that unprecedented quantities of assets were indeed pre-positioned prior to landfall. See Attachment A (listing certain assets prepositioned before Hurricane Katrina).

Mr. Walker’s conclusion also implies that there was some unmet need in the days prior to landfall—that DHS did not “lean forward.” However, even a quick reading on the August 28, 2005 FEMA video teleconference transcript would have revealed that the States expressed satisfaction with the federal pre-positioning of assets, that Louisiana reported that the evacuation was going well, and that DOD was fully engaged, among other things. (In fact, Louisiana’s Colonel Smith *directly refutes* Mr. Walker’s conclusion that DHS was not leaning forward. See Attachment B for text of the Video Conference from August 28, 2005.)

Misunderstanding of the NRP. Mr. Walker also concludes that it was a mistake not to employ the NRP’s Catastrophic Incident Annex (CIA), which he believes would have accelerated the response. First, as DHS NRP experts have advised, neither the CIA nor the Catastrophic Incident Supplement (CIS) was applicable—these documents were designed for no-notice or short-notice incidents where anticipatory preparation and coordination with the State under the Stafford Act are not practicable. Second, the implementation mechanism for the CIA, the CIS, was not in force, and had not been disseminated or trained on at the time of Katrina. Third, the Department already had authority to “push” assets to the field under the Stafford Act without formally utilizing the CIA or CIS. See Attachment B (Instruction from Mike Brown: “I want to see that supply chain jammed up just as much as possible. . . . Just keep jamming those [supply] lines full as much as you can with commodities.”) As noted, Katrina has demonstrated certain weaknesses and ambiguities in the NRP, particularly with regard to the Federal response to catastrophic events where State and local response capabilities are severely affected. The Administration will be addressing these issues as part of its lessons learned process.

¹ Just one example of a simple problem that could have been repaired: in his second paragraph, Mr. Walker states that he interviewed the “primary federal official.” Of course, the NRP refers to a “principal federal official,” or PFO, but not a “primary federal official.” Additionally, as there were two PFOs named during Katrina response, it is unclear to whom he is referring.

² Mr. Walker did not request, and we have no indication that Mr. Walker has ever reviewed, this or any other FEMA VTC transcript.

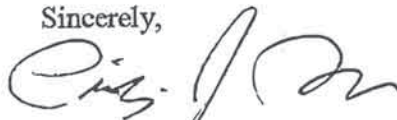
Finally, Mr. Walker raises the issue of the declaration of an incident of national significance. The language of the NRP provides that “. . . all Presidentially declared disasters and emergencies under the Stafford Act are Incidents of National Significance. . . .” Secretary Chertoff’s prior testimony before your committee already explained the purpose of the August 30 memorandum naming Mr. Brown as PFO. Of course, the Administration is continuing to review the language of the NRP to address any ambiguities or uncertainties in the use of particular terms.

Coast Guard. Mr. Walker gives well-deserved credit to the Coast Guard as a “federal responder . . . [that] ‘lean[ed] forward’ in proactive efforts anticipating a major disaster.” In criticizing DHS, he fails to recognize that the Coast Guard is indeed part of this Department, and that the Secretary was in communication with the Coast Guard about their important life-saving efforts during Katrina. We refer you to the Secretary’s testimony on this point.³

Preparedness and Planning. Mr. Walker points out that “training and exercises necessary to carry out these plans were not always developed or completed among the first responder community.” Upon taking the helm of the Department, the Secretary recognized that preparedness required retooling and proposed, in the Department’s Second Stage Review, that a new preparedness directorate be established. Because of the statutory 60-day waiting period, these changes were not in place at the time Katrina struck. Mr. Walker’s report does not mention the pre-hurricane fixes proposed by the Secretary in 2SR, and his report is lacking for that reason as well.

We would be pleased to discuss any of these critiques with you in greater detail.

Sincerely,



Philip J. Perry
General Counsel

³ “[O]ne of the things that I spoke to the Coast Guard at one point about was the need to make sure we were mapping areas where people might have just spontaneously collected to make sure we could get them food and water.” See Secretary’s Testimony to Committee (Oct. 19, 2005).

Exhibit A

Water (1 trucks = (approximately) 18,000 liters)

5 trailers at Superdome = 90,000 liters of water

211 trailers pre-staged around region = 3,789,000 liters of water

39 trailers Beauregard, LA (702,000 liters)

40 trailers Meridian, MS (720,000 liters)

53 trailers Maxwell, AL (954,000 liters)

20 trailers Saufley Field, FL (360,000 liters)

29 trailers Homestead, FL (522,000 liters)

30 trailers Mc Entire, SC (540,000 liters)

Ice (1 truck = (approximately) 40,000 pounds)

114 trailers pre-staged around region = 4,560,000 pounds of ice

22 trailers Beauregard, LA (880,000 pounds)

16 trailers Maxwell AL (640,000 pounds)

21 trailers Meridian, MS (840,000 pounds)

54 trailers Craig Field/Selma AL (2,160,000 pounds)

1 trailer Barksdale, LA (40,000 pounds)

325 trailers in Cold Storage = 13,000,000 pounds ice in Cold Storage

230 trailers Thomasville, GA (9,200,000 pounds)

25 trailers Montgomery, AL (1,000,000 pounds)

17 trailers Alexandria, LA (680,000 pounds)

8 trailers Fort Worth, TX (320,000 pounds)

45 trailers San Antonio, TX (1,800,000 pounds)

Meals Ready to Eat (MREs) (1 trucks = (approximately) 21,888 MREs)

2 trailers Superdome (43,776)

85 trailers pre-staged around region = 1,860,480 MREs pre-staged

14 trailers Beauregard (306,432)

30 trailers Maxwell, AL (656,640)

10 trailers Meridian, MS (218,880)

10 trailers Saufley, FL (218,880)

15 trailers Homestead, FL (328,320)

6 trailers Mc Entire, SC (131,328)

97 trailers in Logistic Centers = 2,123,136 MREs pre-staged

5 trailers Atlanta, GA (109,440)

46 trailers Palmetto, GA (1,006,848)

42 trailers Ft. Worth, TX (919,296)

4 trailers Moffett, CA (87,552)

Logistics Center Rockville Shipments:

August 27th

Three staging areas identified: Houston, TX; Memphis, TN; and Anniston, AL

0800 hrs: Packaged and shipped 4 Patient Treatment Caches and 4 Pharmaceutical Caches to Houston, TX

1750 hrs: Packaged and shipped 2 Patient Treatment Caches and 2 Pharmaceutical Caches to Memphis, TN

2000 hrs: Packaged and shipped 3 Patient Treatment Caches, 3 Pharmaceutical Caches and one Veterinary Medical Assistance Team (VMAT) Cache to Anniston, AL

August 28th

1300 hrs: Management Support Team (MST) Cache left LC-Frederick

1800 hrs: Packaged and shipped 3 Patient Treatment Caches and 3 Pharmaceutical Caches to Ft. McClellan, AL

2000 hrs: Packaged and shipped 3 additional Patient Treatment Caches and 3 additional Pharmaceutical Caches to Memphis, TN

August 29th

0130 hrs: Packaged and shipped 3 additional Patient Treatment Caches and 3 Pharmaceutical Caches to Memphis, TN

1000 hrs: Loaded on trailers and shipped 1 Disaster Portable Mortuary Unit (DPMU)

MOBILE EMERGENCY COMMUNICATIONS SUPPORT FOR HURRICANE KATRINA

As of August 29th, 2005:

All available MERS assets committed to Hurricane Katrina

MERS Denton, TX

Staged at Barksdale AFB; RNA and JFO build out team in LA EOC, Baton Rouge, LA

MERS Denver, CO

Convoys continue

MERS Maynard, MA

Equipment staged at McGee-Tyson

MERS Thomasville, GA

NDMS supported in Jackson, MS, all other sites operational

MERS Bothell, WA

Deploys additional equipment en route to LA

2000 hrs: Packaged and shipped 3 Patient Treatment Caches, 3 Pharmaceutical Caches and one Veterinary Medical Assistance Team (VMAT) Cache to Anniston, AL

August 28th

1300 hrs: Management Support Team (MST) Cache left LC-Frederick

1800 hrs: Packaged and shipped 3 Patient Treatment Caches and 3 Pharmaceutical Caches to Ft. McClellan, AL

2000 hrs: Packaged and shipped 3 additional Patient Treatment Caches and 3 additional Pharmaceutical Caches to Memphis, TN

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Exhibit B

Excerpts from August 28, 2005 videoteleconference:

MIKE BROWN: Okay. We'll move on now to the states. Louisiana?

COLONEL SMITH: Good morning, Mike. This is Colonel Jeff Smith here in Louisiana. We certainly appreciate those comments from the President, because I can tell you that our Governor is very concerned about the potential loss of life here with our citizens, and **she is very appreciative of the federal resources that have come into the state and the willingness to give us everything you've got**, because, again, we're very concerned with this.

I'm going to turn the briefing over for a moment to our Operations Officer, just to kind of give you a quick laydown of things. This is Colonel Bill Dorian.

COLONEL DORIAN: The Emergency Operations Center is at a Level 1, which is the highest state of readiness. We've got currently 11 parishes with evacuations, and climbing. Eight are mandatory, including a first-ever mandatory for New Orleans. We've got 38 parish declarations of emergency; also the state declaration and the Presidential declaration of emergency.

Evacuations are underway currently. We're planning for a catastrophic event, which we have been planning for, thanks to the help of FEMA, when we did the Hurricane Pam exercises. So we're way ahead of the game there.

Our priorities right now are sheltering, and then planning for search and rescue and commodities distribution after recovery.

That's all I have at this time.

COLONEL SMITH: I'll just tell you that the evacuation process is going much better than it did during Hurricane Ivan. Nobody anticipated that it would be easy. Nobody anticipated that there wouldn't be traffic jams. But by and large, it has gone much better than it did with Ivan. And, of course, we still have a contraflow in effect at this particular point in time, and we do still have heavy traffic coming out of New Orleans, but by and large that process is going very well.

We have established a unified command here with our federal coordinating officer. Our ERD-A team, ERD-N team is on the ground here. And, again, as our Operations Officer pointed out, we're spending a lot of time right now with the search and rescue, making sure that we marry the appropriate state assets and the federal assets, so we can have an effective search and rescue effort just as quickly as possible.

We're also taking a look at our sheltering needs, long-term sheltering needs, looking at sites to start bringing in the temporary housing. So we're not only fighting the current battle, managing expectations here with our local parishes, but we are also working with FEMA and our other federal partners to have the most effective response and recovery that we possibly can during this time.

So, again, I want to say thank you very much for all that you're doing. I think that at this point in time our coordination is as good as it can be, and we just very much appreciate the President and your commitments to resourcing our needs down here.

Any questions that you have, we'd be glad to take them now, unless you want to hold that until later. That's your call, Mike.

MIKE BROWN: Any questions? Colonel, **do you have any unmet needs, anything that we're not getting to you that you need or --**

COLONEL SMITH: **Mike, no.** (Inaudible) resources that are en route, and it looks like those resources that are en route are going to -- to be a good first shot. Naturally, once we get into this thing, you know, neck deep here, unfortunately, or deeper, I'm sure that things are going to come up that maybe some of even our best planners hadn't even thought about. So I think flexibility is going to be the key.

And just as quickly as we can cut through any potential red tape when those things do arise, you know, we just need to look at it. **We appreciate your comments. I think they were to lean as far, far as you possibly can, you know, without falling, and your people here are doing that.** And that's the type of attitude that we need in an event like this.

So, again, thank you very much.

MIKE BROWN: All right. I'll be in Baton Rouge probably about 4:00 this afternoon, so I'll see you sometime this evening.

* * *

MIKE BROWN: Any questions? (Missing) on the commodities that **I want to see that supply chain jammed up just as much as possible**. I mean, I want stuff (missing) than we need. Just keep jamming those lines full as much as you can with commodities.

My gut tells me we're -- that's going to be one of our biggest needs. So just (missing) up tight.

* * *

SECRETARY CHERTOFF: (Inaudible.) Yes. Hi, this is Secretary Chertoff. And, again, as it relates to the entire department, **if there's anything that you need from Coast Guard or any other components that you're not getting, please let us know**. We'll do that for you, OK.

MIKE BROWN: I appreciate it. (Missing.) Having been through many of these, the Coast Guard and ICE and all of the others have been incredibly good to us. And I hope we never have to call you and tell you that I can't get help from the Coast Guard or somebody. Thank you for those comments.

SECRETARY CHERTOFF: Secondly, **are there any DOD assets that might be available**. Have we reached out to them, and have we I guess made any kind of arrangement in case we need some additional help from them?

MIKE BROWN: We have DOD assets over here at the EOC. They are fully engaged, and we are having those discussions with them now.