

PREPARED STATEMENT OF PAUL N. STOCKTON

Senior Research Scholar
Center for International Security and Cooperation
Freeman Spogli Institute for International Studies
Stanford University

Testimony before the
Subcommittee on Economic Development,
Public Buildings, and Emergency Management
Committee on Transportation and Infrastructure

Hearing on “Readiness in the Post Katrina and Post 9/11 World: An Evaluation of
the New National Response Framework”

11 September 2007

The views expressed by the author are his own
and do not necessarily represent those of any U.S. Department or agency

Thank you for the opportunity to testify on the vital issue that you have taken up today. Since well before 9/11, this Subcommittee has helped strengthen the U.S. emergency management system. Now, as the Department of Homeland Security refines its draft National Response Framework,¹ you and your colleagues have an especially significant opportunity to shape the evolution of that system.

The draft Framework proposes much-needed improvements for disaster preparedness and response. As currently written, however, the Framework also ignores -- and is likely to subvert -- key changes that Congress enacted in Post-Katrina Emergency Management Reform Act of 2006.² Congress had compelling reasons to adopt those changes. The draft framework overlooks the concerns that helped shape the legislation Congress enacted, and would put the Nation at risk to some of the same systemic failures that hobbled the Federal response to Katrina.

I will open my testimony by examining the Framework's most glaring departure from the reforms Congress enacted in 2006: the proposal that disaster preparedness and response efforts be led by the Secretary of the Department of Homeland Security (DHS), rather than by the Administrator of the Federal Emergency Management System (FEMA). I will then briefly explain why I believe Congress made the correct decision in assigning that leadership responsibility and authority to the FEMA Administrator, and why the shift proposed by the draft Framework would put the emergency management system at such risk. I will conclude by raising some additional issues that the Subcommittee may wish to consider as it reviews the draft Framework, especially those involving the uncertainties that continue to surround response to catastrophic events.

I. A FUNDAMENTAL CHOICE

The Department of Homeland Security deserves great credit for recognizing the inadequacies of the National Response Plan, and moving to remedy those problems in the National Response Framework. The draft Framework proposes some important improvements in the response system. For example, it emphasizes the need to build the capacity of states and

localities to plan for disaster response operations, which remains a major shortfall in many jurisdictions. The Framework also focuses on clarifying the specific functions and authorities of federal officials in assisting states and localities for disaster response. That effort is absolutely vital, because in the response to Hurricane Katrina, confusion over who was responsible for what delayed and degraded federal assistance operations.³

The Framework's clarification of official functions is also its greatest weakness. As currently drafted, the Framework calls for a very different allocation of federal duties and authorities than Congress enacted into law in the Post-Katrina Emergency Management Reform Act of 2006 (hereinafter referred to as the Katrina Reform Act). That Act left untouched the Stafford Act's assignment of ultimate statutory authority over federal government response activities to the president. Just below that level, however, the Katrina Reform Act specifies that the Administrator of FEMA shall "lead the Nation's efforts to prepare for, protect against, respond to, recover from, and mitigate against the risks of natural disasters, acts of terrorism, and other man-made disasters."⁴ The Act also specifies that the FEMA Administrator is "the principal advisor to the President, the Homeland Security Council and the Secretary [of Homeland Security] for all matters related to emergency management in the United States."⁵

The draft Framework ignores most of these grants of authority. The Framework states that at DHS, "the FEMA Administrator is the Secretary's principal advisor for matters relating to emergency management."⁶ But the Secretary, not the FEMA Administrator, would be the principal advisor to the President for emergency management. According to the Framework, "the role of the Secretary of Homeland Security is to provide the president with an overall architecture for emergency response," and to "coordinate the Federal response" to disasters when such disaster assistance is needed. Instead of following the statutory requirement that the FEMA Administrator lead the Nation's efforts to prepare for and respond to the risks of terrorist attacks, hurricanes or other incidents, the draft Framework also emphasizes that:

The **Secretary of Homeland Security** is the principal Federal official for domestic incident management. By Presidential directive and statutory authority, the Secretary is responsible for coordination of Federal resources utilized in the prevention of, preparation for, response to or near-term recovery from terrorist attacks, major disasters and other emergencies.⁷ [Emphasis in the original]

The Framework does not explicitly recognize that it advances a very different allocation of authority than Congress enacted into law in 2006. Indeed, the draft Framework never once cites the Post-Katrina Emergency Management Reform Act of 2006, and makes no explicit reference to the Act's provisions concerning the authorities of FEMA and its Administrator. The Framework states, however, that "Nothing in this Framework alters or impedes the ability of Federal, State, local, or tribal departments and agencies to carry out their specific authorities or perform their responsibilities under all applicable laws..."⁸ That provision would appear to leave the FEMA Administrator in the lead for the emergency management system -- notwithstanding the Framework's own emphasis on the leadership role of the DHS Secretary over that same system.

A key objective of the draft Framework is to clarify roles and responsibilities in emergency management. Unless revised, the Framework will create new confusion over roles at the very top of the system, not only within DHS but also amongst the Departments that must partner with FEMA and DHS for disaster response, and with the State and local leaders whom the federal government will assist. The effective functioning of the National Incident Management System (and the incident command system on which it is based) will depend on a clear understanding of who is responsible for what. We need to know who will be in the lead for coordinating federal assistance, and for building the system that will provide for it. I would hope that the Members of this Subcommittee might take an interest in helping DHS to eliminate the confusion that the current draft of the Framework will foster.

As that process of clarification goes forward, I would also hope that future drafts will more closely adhere to the division of authorities laid out by the Katrina Reform Act. My reasons go beyond those involving the Constitutional imperative that the Executive faithfully execute the laws enacted by Congress (though such considerations are clearly important). I believe that the principles that guided Congress in adopting the Act remain relevant today, and that departing from the Act's grant of authority to the FEMA Administrator would put the response system at risk. Let me now turn to why that is the case.

II. LEARNING FROM KATRINA

Studies of the response to Hurricane Katrina, including the House Select Committee's A Failure of Initiative, identified underlying causes of federal-level failure that helped prompt Congress to reallocate authority over emergency management. The House Report's analysis of the Katrina-era national response framework led off with the finding that it did "not appear that the president received adequate advice and counsel from a senior disaster professional."⁹ The Report notes that in accordance with the 2002 Homeland Security Act, which created the Department of Homeland Security, DHS Secretary Michael Chertoff was the Department's top official for emergency management. The Report also notes, however, that "emergency management is just one of the Secretary's many responsibilities. According to Chertoff's testimony before the Select Committee, he is not a hurricane expert, nor does he have much experience with disasters."¹⁰ The Report went on to cite a number of instances in which the advice provided to the President, and the decisions made by the Secretary, delayed and degraded the federal response to the hurricane.

An emergency management professional might have offered better advice to the President. The House Report found that such a professional would have been "well aware" of the impending consequences of Katrina as it approached landfall (including the likelihood of catastrophic flooding). A professional emergency manager would also:

Recognize the challenges of responding to such a disaster, and appreciate the need for timely and proactive federal assistance. Comments such as those the President made about not expecting the levees to breach do not appear to be consistent with the advice and counsel one would expect to have been provided by a senior disaster professional. Furthermore, it seems reasonable to expect delays in recognizing the need for and then requesting DOD mission assignments [to provide disaster assistance] may have been avoided if the President had been advised of the need for early presidential involvement.

The Katrina Reform Act adopted two structural changes to strengthen the quality of advice received by the president in emergency management, and thereby avoid a recurrence of the problems that contributed to failure in Katrina. First, Congress recast the division of authority established by the Homeland Security Act of 2002, and required that the Administrator of FEMA (rather than the Secretary of DHS) be the principal advisor to the president for emergency management. Second, the Katrina Reform Act mandates that the FEMA

Administrator shall have “a demonstrated ability in and knowledge of emergency management and homeland security,” as well a minimum of 5 years of executive leadership and management experience.¹¹ Congress paired professional expertise with expanded Administrator authority to improve the emergency management system.

Of course, no legislative provisions can guarantee effective emergency management advice to the president (or ensure that the president will follow it). That is why the other steps Congress has taken to strengthen FEMA as a whole are so important, especially in terms of expanding the Agency capabilities and preparedness missions most critical to assisting states and localities. Yet, Congress also had compelling rationale to reallocate authority at the top of the emergency management system in 2006. Any reversion to the previous, DHS Secretary-led system would be a step backwards, and would reflect an “unlearning” of the lessons gained at such terrible human cost in Hurricane Katrina.

III. THE WAY AHEAD

The Katrina Reform Act included a third provision relevant to the focus of today’s hearing. The Act specifies that the Secretary of Homeland Security “may not substantially or significantly reduce the authorities, responsibilities, or functions of the Agency or the capabilities of the Agency to perform those missions” unless Congress gives legislative approval to such changes.¹² Congress put that provision in the Act for a reason. Prior to Katrina, FEMA suffered from a steady corrosion of its response capabilities, at the same time that DHS’ leadership also stripped away the responsibility of the Agency and its Administrator for disaster preparedness.¹³ Congress structured the Katrina Reform Act to prevent a renewed decline of FEMA within DHS. In this historical context, it is especially troubling that the draft National Response Framework ignores the leadership functions that Congress granted to the FEMA Administrator. DHS should revise the draft Framework to clearly reflect and help implement the augmentation in authority that Congress enacted for FEMA and its Administrator. That is important not only for respecting the Constitutional responsibilities of the legislative branch, but also for the future effectiveness of the emergency management system.

There are many additional ways in which the system Framework might be improved future drafts. In particular, I would urge that the Subcommittee explore the Framework’s allocation of coordination functions and authorities between Principal Federal Officials (PFOs)

and Federal Coordination Officers (FCOs).¹⁴ Confusion over those coordination roles undermined federal response efforts in Katrina, and should be further clarified in the Framework. The current draft of the that document is also silent on a number of outstanding issues for structuring the U.S. response to catastrophes, including that of the special circumstances in which the president would designate the Department of Defense (as opposed to FEMA and DHS) to serve as the lead federal agency for response activities. The Framework will have a web-based annex that may eventually help clarify these issues. They are too important, however, to be buried in annexes that may not get the readership they merit by state and local leaders and emergency managers they are intended to serve.

Ultimately, the Nation will continue to depend on the efforts of Congress (and especially this Subcommittee) to oversee and help shape the strengthening of our emergency management system. As the Department of Homeland Security revises the draft National Response Framework, and builds on the improvements that it already offers to the National Response Plan, I would like to thank the Committee for holding today's hearing to help advance that process.

¹ National Response Framework (Washington, D.C.: U.S. Department of Homeland Security, 19 July 2007), Pre-decisional and Deliberative Draft.

² Congress adopted the legislation (hereinafter referred to as the "Katrina Reform Act") as Title VI of H.R. 5411, the *Department of Homeland Security Appropriations Act for Fiscal Year 2007*, P.L. 109-295, 120 Stat. 1355, 1394 (2006). Text of the Post-Katrina Act can be found in the Congressional Record, *United States Congress, House of Representatives*, 28 September, 2006, pp. H7795-7800.

³ A Failure of Initiative: Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina (Washington, D.C.: U.S. Government Printing Office, 15 February 2006), pp. 131-149 and *passim*.

⁴ Sec. 503 (a) (2) (A) of 6 U.S.C. 311, as amended by Sec. 611 of the Katrina Reform Act.

⁵ Sec. 503 (c) (4) (A) of 6 U.S.C. 311, as amended by Sec. 611 of the Katrina Reform Act.

⁶ Draft Framework, p. 51.

⁷ Draft Framework, pp. 21 and 51.

⁸ Draft Framework, p. 21

⁹ A Failure of Initiative, p. 132.

¹⁰ Ibid.

¹¹ Sec. 503 (c) (2) (A) and 503 (c) (2) (A) of 6 U.S.C. 311, as amended by Sec. 611 of the Katrina Reform Act.

¹² Sec. 506 (c) (1) of 6 U.S.C. 311, as amended by Sec. 611 of the Katrina Reform Act.

¹³ A Failure of Initiative, pp.153-158.

¹⁴ Framework, pp. 64-6. For statutory language on the same issue, see Sec. 509 (c) (1) of 6 U.S.C. 311, as amended by Sec. 611 of the Katrina Reform Act.