I remember him like being nervous.

REP. BLUTE: So, there was a common suspicion in the compound that Rodriguez was not what he said he was?

MR. THIBIDEAUX: Yes.

REP. BLUTE: From early on?

MR. THIBIDEAUX: Yes.

REP. BLUTE: Okay.

MR. THIBIDEAUX: But David's whole attitude --

REP. BLUTE: And continue on that day.

MR. THIBIDEAUX: Okay. David's whole attitude with that was, "Well, you know, even if he is working with the government, even if he's with the National Guard, it doesn't matter. You know, I have the truth here that is being presented. It's going to be presented. And hopefully this person will see something that the other people from, you know, not having the experience of one on one with David cannot see." So, that was the hope. That day, I saw them talking. I didn't think much of it. And I went back --

REP. BLUTE: Let me just speed you up to the time of -- where were you when the raid began?

MR. THIBIDEAUX: I was in the cafeteria. I started to hear the helicopters coming from the back of the building. It was very faint. Koresh came down the stairs. My recollection is that Koresh was not armed. There were some people around Koresh. There was -- I would say quite a few -- five or six. And there was a lot of doors slamming throughout the building at this point. It just seemed like a lot of action was taking place at once. And David held his hand up. At this point, there were people coming in from the other area of the building. I wish I had a diagram. But they were coming in from where the dormitories were for the men. And they came into the cafeteria. David held his hand up and he said, "Now, okay. They're coming. They're on their way."

REP. BLUTE: And this was after the helicopter noise was audible?
MR. THIBIDEAUX: This is -- yes. This is -- we can hear the helicopter and it's getting louder and louder.

REP. BLUTE: Well, when did you first see the helicopter? Did you see the helicopters?

MR. THIBIDEAUX: I did not see the helicopters personally. But they were very loud. They were very clear.

REP. BLUTE: And we've heard testimony -- and I have to finish here -- but that the helicopters came a significant period of time before the raiding party. Is that your sense of what happened?

MR. THIBIDEAUX: My sense of what happened, from where I was, is after David Koresh made that statement, he said, "Don't do anything stupid. We want to talk to these people. We want to work it out. That's what we're all about here at Mount Carmel." And I'll never forget those words, because I was really scared. And when I heard that, you know, it was like, okay, David's going to try to talk to them. Maybe this can still be avoided. He went to the front door.

Now, from where I was in the cafeteria, it sounded to me like the shots were emanating from the front. Now, I talked to Renes Abraham (sp) later, and a couple of the other survivors. Renes (sp), particularly, his testimony was very strong. I said, you know -- this is considerable after hours later, maybe even a couple of days later. Time really was kind of -- the tunnel vision type thing. But I talked to Renes (sp), and Renes (sp) said -- you know, I said, "You know, Renes (sp), what did you think of all that firing just starting at the front door?" And Renes (sp) said, "It didn't." I said, "What do you mean?" He said, "I was outside, and I saw the helicopters coming in, and I saw fire coming from the helicopters into the tower area. And it initiated with the helicopters firing."

REP. BLUTE: You didn't see that yourself.

MR. THIBIDEAUX: No, I did not.

REP. BLUTE: But people there told you that on that day.

MR. THIBIDEAUX: Yes. Yes. And I said, "Renes (sp), are you sure," because it didn't go with my experience from what I heard. It sounded to me like the front door. And he said, "I am positive" -- which indicates to me that it was simultaneous, that you had the
group at the front and the group at the back. And the only way that that could have occurred is if it all occurred together.

REP. BLUTE: Well, Mr. Chairman, I think this is very important testimony. Mr. Thibideaux has a statement outlining what he thinks and what he saw happen on that day, which I think is very important, and that I hope we can get into the record. Thank you.

REP. MCCOLLUM: Certainly, any written testimony Mr. Thibideaux would like to make will be admitted to the record without objection.

REP. TAYLOR: Parliamentary inquiry.

REP. MCCOLLUM: Yes, Mr. Taylor?

REP. TAYLOR: Aren't we dealing with hearsay evidence here? And I'm not an attorney. But when someone is using secondhand testimony --

REP. MCCOLLUM: Well, parliamentary inquiry is taken. We -- in court proceedings, you might be able to not have hearsay in it. But in congressional hearings, hearsay is admissible. There is nothing that prohibits that.

REP. TAYLOR: Mr. Chairman, to continue my inquiry, will the record clearly indicate that this is secondhand testimony?

REP. MCCOLLUM: Well, it obviously does. You've just made it appear that way.

REP. TAYLOR: Thank you very much.

REP. MCCOLLUM: Mr. Scott? For five minutes.

REP. SCOTT: Thank you, Mr. Chairman.

Mr. Goldstein, I want to get away from the particulars of this case for a second, and go into some generalities, and ask you to explain how the -- in your written testimony, you go into the Fourth Amendment. And I'd like you to say, for a minute or so, how the exclusionary rule protects innocent people from police misconduct.

MR. GOLDSTEIN: The exclusionary rule was -- is a judicially crafted rule that, in effect, precludes from the introduction into evidence any items or evidence that was obtained by the police
illegally. I think the general citizenry out there thinks that liberal courts are unleashing violent criminals on the citizenry to beat up on them. In actual fact, less than 1/2 of 1 percent of the citizens charged in this country ever benefit from a motion to suppress. But the theory is that, by excluding illegally obtained evidence -- evidence that law officers obtain in violation of the supreme law of the land -- that will deter them from engaging in that illegal conduct because they won't want to go out and obtain evidence illegally if they know they can't use it.

REP. SCOTT: And so --

MR. GOLDSTEIN: The importance is that, while it only benefits 1/2 of 1 percent of those charged -- and many of them may be innocent -- everyone benefits from it, because the general discouragement of illegal police activity protects you and me and the innocent citizens out there whose homes are not intruded upon. So, it has a -- it protects 100 percent of the innocent citizens, and only benefits a small infinitesimal percentage of those who may in fact be guilty.

REP. SCOTT: Now, if you have an allegation of police misconduct or illegal activity on the part of the police in obtaining evidence, prior to 1984, where -- in the Leon case -- what part of the judicial proceeding would you argue the case that it was -- that the evidence was illegally obtained?

MR. GOLDSTEIN: It would be at a pre-trial motion, Mr. Scott, through a motion to suppress. What's interesting, as Mr. Taylor's pointed out, hearsay evidence would be admissible at a suppression hearing. It wouldn't matter that there wasn't probable cause, because in fact -- according to Leon, after 1984 -- the officers could --


MR. GOLDSTEIN: Part of that time you would be -- in fact, instances like this -- these kinds of issues would be viable prior to 1984.

REP. SCOTT: Now, after Leon and the good faith exception, how has it -- how has your ability to challenge police misconduct been compromised?

MR. GOLDSTEIN: Well, that's what I wanted to answer to Mr. Schumer. No good defense lawyer with his head screwed on right is
going to file a motion to suppress where there's a warrant, simply because the officers are entitled to rely upon the warrant -- even if it's totally lacking in probable cause, and even if there's a lie, because in order to meet the standard of Franks versus Delaware -- which is a hard standard to prove -- you're going to have to prove, in fact, by sworn testimony, that there's a lie before you can even call a witness, before you'll get a hearing, before you can ask a single question.

So, what I'm going to ask is -- and nobody wants to hear this apparently -- is if we're going to have anything out of this hearing that's going to regulate and control illegal police practices, what we need to do is put some teeth back in the Fourth Amendment, and give the citizenry some means of protecting themselves.

REP. SCOTT: Let me get to the particulars of this case, Robert. If you could show -- now, I think, in this case, there's plenty of evidence to support the search. You've got the UCPS testimony. You've got statements from arms dealers of what had gone in. You've got plenty there. But if you could show that this warrant had been obtained by irrelevant, inflammatory, and unreliable evidence, what could a innocent person -- if we're going to discourage searches of innocent people, how could any of the defendants in this case have brought up a challenge to the evidence?

MR. DESCAMPS: Frankly, I'm not sure that they -- well, they could have brought up a motion to suppress. They certainly could have asked for a Franks hearing to show that there was -- if there are lies in there; and I don't see any, but suppose there were -- that would be one remedy they have. I have to disagree with Mr. Goldstein. It isn't an automatic silver platter that you get a judicially issued warrant. If the officer himself knows -- and there's plenty of recent case law on this point --

REP. SCOTT: If a search --

MR. DESCAMPS: If the officer knows that it's based on lies --

REP. SCOTT: Wait a minute. My time is almost up. If the searching officer didn't know about all the irregularities, how would they be able to bring this up in a hearing?

MR. DESCAMPS: Through a Franks hearing --
REP. MCCOLLUM: You're time --

MR. DESCAMPS: -- to show that there were inappropriate, illegal lies, falsehoods that led to the probable cause.

REP. SCOTT: Which, in order to get that, you're going to have to be able to demonstrate that by sworn affidavit. How do you get that if you haven't been able to call or ask a question of a witness?

Thank you, Mr. Chairman.

REP. MCCOLLUM: Your time is up, Mr. Scott. Thank you. Mr. Bryant for five minutes.

REP.: Do you get the same extra minute that Mr. Blute gets?

MR. BRYANT: Mr. Chairman, before my five minutes starts, I want to ask unanimous consent to submit an opening statement for the record.

REP. MCCOLLUM: It is granted without objection.

MR. BRYANT: Thank you. As a former United States attorney, I had a very positive experience with law enforcement in my area with ATF and the FBI. But I have some very grave concerns about the environment that existed in Waco in February of 1993 that apparently compelled this raid to occur that day. And as such, I wanted to ask just a few questions, and maybe bounce around a little bit, and tie up some loose ends. Mr. Thibideaux, are you familiar with a Mark Breaux (sp)?

MR. THIBIDEAUX: Yes.

MR. BRYANT: Does Mr. Breaux (sp) have any physical impairment?

MR. THIBIDEAUX: Yes. He has a significant sight impairment. My understanding is he's legally blind.

MR. BRYANT: Okay. I bring up Mr. Breaux (sp) because as a part of the basis for this search warrant, the agent affirms under oath that he interviewed Mr. Breaux (sp) in Los Angeles, and that Mr. Breaux (sp) indicated that he actually shot weapons and performed guard duty with a loaded weapon.

MR. THIBIDEAUX: He also used to tell us stories about swimming for
sharks and, you know, being -- he used to tell some whoppers --
let me put it that way -- according to Steve Schneider (sp) and
some of the other people that I used to speak to about Mr.
Breaux's (sp) experience in the past. You know, nothing bad or,
you know, just -- that's -- he was a kind of a storyteller, yes.
That was the impression I had.

MR. BRYANT: Thank you. Again, as a former prosecutor, I don't mean
to concede -- and I certainly don't -- that Mr. Koresh's actions
were proper in his reaction to the service of this warrant. I
think he had an obligation to respond lawfully, and challenge it
in the
courts. I disagree totally with that action. But I -- as I said
before -- I'm concerned about other issues that -- from the other
side. Mr. McMahon, Mr. Koresh did go to gun shows and deal in
firearms and grenades and paperweights and so forth, is that
correct?

MR. MCMAHON: I've never seen any hand grenades, but I've seen
(upper ?) receivers, knives, accessories, magazines. I mean, he
had a -- you know, he went to gun shows, and he advertised it. I
mean, here's one of his business cards. I mean, I'm sure you all
have seen all of these.

REP. BRYANT: I'd like to put that in the record, if I could.

REP. MCCOLLUM: Sure.

REP. BRYANT: When I say hand grenades, I mean empty shells that
are used on vests. Are you familiar with that practice of putting
them on vests or using them as paper weights?

MR. THIBIDEAUX: Yes, I am. I'm real surprised that Mr. Schumer
didn't say that before. I mean, everybody's seen the (full pin?)
complaint department; you know, pin number one. But that is a
common practice at gun shows, yes, sir.

REP. BRYANT: Deputy Barber, I understand you're retired now from
the county sheriff's office.

MR. BARBER: Yes, sir, that's correct.

REP. BRYANT: And you were familiar with the Koresh people?

MR. BARBER: To a degree, yes.
REP. BRYANT: And were you consulted by the ATF before this raid occurred on February 28th, 1993?

MR. BARBER: Yes, I was.

REP. BRYANT: Were you familiar with the fact that there were, as a part of the Davidians out there, what I understand to be a number of elderly people and a number of -- obviously we know of at least 20 children. Did you know they were out there?

MR. BARBER: Yes, I did.

REP. BRYANT: Did you make this fact known to the ATF or did they already know that?

MR. BARBER: I feel they already knew that.

REP. BRYANT: Let me ask you, if I could, are you familiar at all with -- were you familiar with the fact that Mr. Koresh was dealing in guns at gun shows?

MR. BARBER: I had not seen him at a gun show there in Waco. I had seen Paul Fada (sp).

REP. BRYANT: Is it normally the practice of ATF to also monitor and attend these various gun shows just as a practice?

MR. BARBER: I can't tell you what their practices are.

REP. BRYANT: Mr. Goldstein, let me follow up. I understand before that you had expressed an opinion that because of what you perceived as the misapplication of law to the facts of this case and the staleness -- and I don't think our prosecutor talked about the staleness of this information, the age of it, and perhaps the lack of credibility on some of these witnesses who talked to the agent -- that you had some grave concerns about the validity of that search warrant.

MR. GOLDSTEIN: It is true, Mr. Bryant, I am concerned any time there's that kind of lapse of time between the date of the information and the date that the warrant is actually sought to be executed, because I think there's always a danger there that even if it existed, it won't be there when they go. I was concerned --

REP. BRYANT: Could I cut you off just a minute --
MR. GOLDSTEIN: Certainly.

REP. BRYANT: -- and ask one quick question back to Mr. Barber? Do you know what occurred in February that compelled the ATF to go in that day, on February the 28th, even when the element of surprise was lost, why they had to go in at that time?

MR. GOLDSTEIN: No, sir, I do not. I do know that the raid, as it's being referred to, was scheduled for the following Monday. I was aware of that.

REP. BRYANT: And they moved it forward a week?

MR. GOLDSTEIN: And they moved it forward one day.

REP. BRYANT: Okay. Well, right, Sunday. Thank you.

REP. MCCOLLUM: Mr. Bryant, your time has expired. According to my list, Ms. Lofgren, you're next up for five minutes.

REP. LOFGREN: Thank you, Mr. Chairman. First, I'd like to thank -- (inaudible) -- for being here today and for telling her how proud I am of her to be here and speak up. And it's not easy for anybody, even a grown-up, to come and testify. And I think you're a pretty special young lady, and you're doing something important for your country. In reading and listening to you, you note that there were some other girls. Your written statement mentions little Esther that your mother had mentioned, and also Rachel. Were you aware that other little girls were being molested by Mr. Koresh?

MS. JEWEL: Yeah.

REP. LOFGREN: Did you know about that? And you probably don't know about this, although maybe you do, and I'll ask a question. There was a Dr. Perry who -- I think we'll get into that later in the panel -- who, in March, contacted the FBI and talked about some of the other little girls who had been involved and had been abused by Mr. Koresh, and they reported to him information about wirings and explosions and things of that nature. Did you ever hear about guns or weapons or explosions? Or did you know anything about that?

MS. JEWEL: Yeah, guns. I never saw any explosions. I remember one time I was in David's room above the kitchen. This was before they rebuilt the whole compound, but it was above the kitchen. And he
pulled out this gun that had to have been -- I don't know; it was huge. It was huge. I mean, I, of course, was, like, eight, so it probably was a little bit bigger, but it was huge. Just the bullets itself had to have been, like, this big, with nails that came like this on each side of the bullet to keep it together just like --

MR. JEWEL: In a chain.

MS. JEWEL: Yeah, on a chain, like rows and rows of them. And they were just coiled up in his drawers.

MR. JEWEL: Like Rambo.

MS. JEWEL: Yeah, like Rambo. It was incredible. It was just -- and he was proud of it. It was his toy. It was his little -- it was his new toy that he had just gotten, and he was showing it off.

REP. LOFGREN: Now, in February, you and your dad went and spoke to the federal agents. What did you tell them? Do you remember what you said to them? Or maybe I misunderstood when you answered Karen Thurman earlier.

MS. JEWEL: Which part?

REP. LOFGREN: Did you in February go and speak to the federal agents, either the FBI or the ATF? Do you remember what you talked about with them?

MS. JEWEL: About being molested. That's about what I remember, about the children there, who the children's father was, just that. It was mostly about the children.

REP. LOFGREN: Now, this is -- the deputy sheriff said the first call that they got had to do with the immigration service. Do you know anything about marriages that could have been arranged by Mr. Koresh to avoid the immigration law?

MS. JEWEL: Yeah, they were arranged.

REP. LOFGREN: Can you tell us which marriages?

MS. JEWEL: Names?

REP. LOFGREN: Well, I don't know if we need names, but can you tell us what you knew and how you knew it?
MS. JEWEL: Like I said before, I listened and remembered. I could name right now at least five marriages that were arranged so that people could stay in the country.

REP. LOFGREN: All right.

MS. JEWEL: At least five.

REP. LOFGREN: Now, you, thank God, were not in the compound on the day of the raid, but you mentioned in your statement that you were on the phone frequently with your mom and she was pointing out that you would lose your place to Rachel and that sort of thing. The impression that you got from talking to your mother and what you saw when you were available to see things, how does that jibe with the statement that Mr. Thibideaux made that gives a more serene picture that things would be settled peaceably? What was your impression of what was going to happen? And why did you think, as you stated earlier, that it would end with no one coming out and with suicides?

MS. JEWEL: Because it was always -- there was always some sort of violence, not inside the compound, but the whole time you were there, you were prepared to die -- the whole time. One time my mom picked me up from the library. I was probably nine. And she said, "Are you ready to go?" And I said, "Where?" And she said, "To Israel. We're going to Jerusalem." And I said, "Okay." I wasn't going to leave her. But she said, "Okay, I just wanted to see if you were ready to go." And you were always ready for something; always had this little scared something inside of you.

REP. LOFGREN: Finally, the first panel of witnesses talked about this whole issue as a matter of religious freedom. Were you ever given a religious rationale for the molestation that was ongoing with the little girls in the complex? Was there a reason given?

MS. JEWEL: The only thing I remember was that he would say that King David from the Bible would sleep with young virgins to keep him warm, and something about Psalm 45, I think it was. Something in there justified all of the molestation. I don't know; there could have been something else he found that justified it, but that was what I remember.

REP. LOFGREN: Thank you, Carrie, and thank you for your bravery.

MS. JEWEL: Okay.
REP. MCCOLLUM: Thank you. Your time is up, Ms. Lofgren. I note from the minority's list that we had incorrectly let you have that time at that moment. Ms. Slaughter was supposed to get it. But I'm told we're going to correct that, because Mr. Schumer is going to yield to Ms. Slaughter in a minute. But where we are at this stage of these proceedings is the time where we have the ranking members and the chairmen have their opportunity to question or to yield to somebody for asking questions. And I'm going to take my five minutes at this point in time and then I will yield to Mr. Schumer, who I guess will yield to Ms. Slaughter. I want to ask Mr. Thibideaux a question. You were there the day of the raid, and you were there all the way through the fire at the very end, were you not?

MR. THIBIDEAUX: Yes, sir.

REP. MCCOLLUM: Can you tell us anything about how the fire began?

MR. THIBIDEAUX: Here's a couple -- this is how I look at it, and I put this in the report. Okay. At around 12 o'clock, after being CS-gassed the entire day, after having a black leather jacket and seeing little white spots all over it that were absorbed into the jacket, finally, I heard someone yell from the upstairs -- can I prerequisite this for something that happened at 10:30 that I think is very important? At 10:30 that day, I was listening to the radio and a news report came on, and the news report was saying the Branch Davidian compound in Waco, Texas, is being assaulted and Janet Reno has okayed the teargas plan. To the credit of the FBI, they have not fired back when the Davidians on the inside had returned 80 to 200 gunshots against the CEVs. All I want to say is I was in a fairly central -- I mean, I was in the chapel area, and I had heard shots fired accidentally throughout the course of the 51 days, and you could hear them throughout the building. And I did not hear any shots that morning fired, and I was overwhelmed with joy at this point, after being gassed, that my friends were not firing at these tanks, because obviously that would -- the FBI were saying, "If you fire at us, we are going to fire back, and not just CS canisters or ferret rounds." So I remember being overwhelmed that my friends were not stupid enough to fire at a tank with a 223 round that wasn't going to penetrate it anyway.

REP. MCCOLLUM: Well, what about the fire?

MR. THIBIDEAUX: Okay. What I was saying is to me that appeared
like a setup, a setup for a massacre. And it greatly disturbed me. At that point, I had lost all hope. At 12 o'clock, someone yelled from the upstairs that there was a fire. The front -- I could not get to the front because of what the tanks had come in, the stairwell that was closest to the front, so I went to the stairwell in the back. At this point, and I have some pictures available, the back of the gym was thoroughly destroyed. The tank went in and actually leveled the back of the gym area, the -- if you're facing the gym, the right half of it. So I went halfway up the stairwell and I could see the door, but I couldn't get to it because there was this huge beam in front of me and debris everywhere. However, David Koresh's room was on this side. I could put my elbow up on the floor of the second story. I climbed up. It took me quite some time to climb over the debris without getting cut. I went to his room and then to an adjacent room, which was an office space. I got in that room, and there was a catwalk that was leading over the rafters of the church area, say, from here to here, which is the front of the building. This is the front of the building. I walked to the front, and I got -- we were still in the process of building Mt. Carmel. I got to a blanket. I opened the blanket up. A big gust of smoke came at me. When that dissipated, I wanted to stick my head inside there because I'm thinking the kids, I'm thinking Serenity C. Jones, I was thinking of Isaiah and Joseph, some of these kids that I've come to know and love, and getting them into the bus, an underground bus that was buried, because I was under the impression that that was the plan. I get up there, I open it. After the smoke dissipates, I go to stick my head in, and a wall of flame shoots down the hallway in front of my face down to other end of the building. It was the loudest sound I've ever heard in my life. I'm a drummer -- and it was very -- it was incredibly loud. I could not hear anything else other than this flame.

REP. MCCOLLUM: Well, do you know how the fire started? Did anybody tell you or do you know personally how the fire started?

MR. THIBIDEAUX: No.

REP. MCCOLLUM: Was there any plan for the fire to be started that you heard?

MR. THIBIDEAUX: No.

REP. MCCOLLUM: You know, we heard tapes. All right. I want to go to you very quickly, Mr. Barber. Box of grenades that came from UPS, those were dud grenades, not live, armed ones, is that not
MR. BARBER: Yes, sir, they were practice grenades.

REP. MCCOLLUM: Methamphetamine lab -- you ever know anything about a methamphetamine lab out at the compound?

MR. BARBER: There was a rumor of one prior to --

REP. MCCOLLUM: Three or four years prior to this?

MR. BARBER: Yes. This would have been back in probably '87.

REP. MCCOLLUM: But not current with the raid or current with the time Aguilera or the ATF were going after these folks, right?

MR. BARBER: No.

REP. MCCOLLUM: All right, I want to ask a question of Mr. McMahon very briefly. In the book that Mr. Reavis has written -- Reavis has written, he talks about your having a relationship with David Koresh to sell guns or, through the compound, to have a refitting of guns or putting together certain type of weapons that you all had made an arrangement or an accommodation to sell them, weapons, over time. Do you know anything about that? Do you know what I'm talking about?

MR. McMAHON: I think what he's referring to is that there was this deal that I -- that we did. I bought the frames and he bought the upper receivers, and David put them together, and then I turned around and sold them. There was a total of five or six guns that I had sold that way.

REP. MCCOLLUM: Was this an ongoing arrangement, or was this something that just happened once and it didn't happen again?

MR. McMAHON: It had just started when ATF came and did a compliance check, and I explained to them exactly what was going on. And they said they had a problem with the excise tax. They said the excise tax had to be paid. And I'm going, "I don't know anything about this excise tax." And after they left, we stopped doing it. We didn't do it anymore. Only sold us five or six guns, and that was the only time.

REP. MCCOLLUM: All right, well, I thank you for those comments. Now I'm going to turn to Mr. Schumer. I've had my five minutes. I
gather you're going to yield yours to Ms. Slaughter, but you get the privilege of doing that.

REP. SCHUMER: It is my pleasure to yield my five minutes to my friend, colleague, and able legislator, Ms. Slaughter of upstate New York.

REP. MCCOLLUM: You're recognized for five minutes.

REP. SLAUGHTER: Thank you very much. Mr. Thibideaux --

MR. THIBIDEAUX: Yes, ma'am.

REP. SLAUGHTER: -- are you married?

MR. THIBIDEAUX: No.

REP. SLAUGHTER: Are you involved in a personal relationship or have you been with Mr. Koresh's sister-in-law Michele?

MR. THIBIDEAUX: The personal relationship that you're referring to is I had a large hand in taking care of Serenity C. Jones and her other twin daughters.

REP. SLAUGHTER: You lived together?

MR. THIBIDEAUX: No, we did not live together. We lived in the same building, so, yeah, in a sense we lived together.

REP. SLAUGHTER: Is she the same Michele Jones that Mr. Koresh referred to as his favorite wife, and had she been with him since she was 12 years old?

MR. THIBIDEAUX: I have no knowledge of him referring to Michele as his favorite wife and since 12 years old.

REP. SLAUGHTER: She has, I believe, three children?

MR. THIBIDEAUX: Yes.

REP. SLAUGHTER: How old are they?

MR. THIBIDEAUX: Three, and the other ones were twins, approximately 1.

REP. SLAUGHTER: Are they children of Mr. Koresh?
MR. THIBIDEAUX: Yes.

REP. SLAUGHTER: And he admitted that?

MR. THIBIDEAUX: Yes.

REP. SLAUGHTER: All right. Mr. Thibideaux, did you live at Mt. Carmel?

MR. THIBIDEAUX: Yes, I did.

REP. SLAUGHTER: And were you -- you were there, then, on the day of February 28th?

MR. THIBIDEAUX: Yes.

REP. SLAUGHTER: And the testimony that we had indicates that there was a 45-minute notice that the ATF was coming. Is that correct?

MR. THIBIDEAUX: Well, I believe that some people had -- a majority had prior notice -- there was some kind of prior notice -- but not everybody did. My example of that would be Winston Blake --

REP. SLAUGHTER: He knew?

MR. THIBIDEAUX: -- who was found with a piece of french toast in his hand laying on the ground.

REP. SLAUGHTER: Well, tell me, where did this prior notice come from?

MR. THIBIDEAUX: The prior notice? I believe that it came from David Jones --

REP. SLAUGHTER: And David --

MR. THIBIDEAUX: -- who was the mailman.

REP. SLAUGHTER: David Jones, the mailman, told you that the ATF was coming in 45 minutes to serve a search warrant?

MR. THIBIDEAUX: He did not tell me personally. Apparently, he went up to the front, the foyer area, where David was with a group of people, and told Koresh.
REP. SLAUGHTER: And you were there with Mr. Koresh?

MR. THIBIDEAUX: No, I was in the back. I was in the cafeteria area.

REP. SLAUGHTER: You were nowhere around Mr. Koresh at the time he was around --

MR. THIBIDEAUX: No, I was not.

REP. SLAUGHTER: -- the front door?

MR. THIBIDEAUX: I was not.

REP. SLAUGHTER: Was Mr. Jones a member of the Branch Davidians?

MR. THIBIDEAUX: Mm-hmm. Well, see, again, I always consider myself as -- (inaudible) -- the Seven Seals. Branch Davidian is something that I really heard on February 28th when the ATF raided so --

REP. SLAUGHTER: Mr. Jones was a member of your group?

MR. THIBIDEAUX: Yes.

REP. SLAUGHTER: Let me put it that way. Was that known to authorities that Mr. Jones was a member of your group?

MR. THIBIDEAUX: I would think that it would be. I mean, he's the mailman in the community, and he spends a lot of time out there. He had lived out there for some time. He did have a private residence.

REP. SLAUGHTER: Do you have any idea where Mr. Jones got his information that the ATF was coming to serve a search warrant?

MR. THIBIDEAUX: From what I have read and been told, it was from a news media truck that was at the other end of the property, down at the end of the Double E Ranch Road, I believe it to be.

REP. SLAUGHTER: A news media truck told Mr. Jones that the ATF was on its way. That's --

MR. THIBIDEAUX: Well, the story that I heard, and, you know, this really got -- David didn't really talk too much about it to me personally, but the story that I got it from the news media -- and I will say that I take everything I hear from the media with a
grain of salt -- that there was a news media truck down there and they were asking him directions.

REP. SLAUGHTER: Well, I have another question I want to ask you before my time comes up. And you knew Cirrus?

MR. THIBIDEAUX: I'm sorry?

REP. SLAUGHTER: Mr. Koresh's son Cirrus?

MR. THIBIDEAUX: Yes, I knew Cirrus.

REP. SLAUGHTER: I believe he was the son of his legitimate wife Rachel?

MR. THIBIDEAUX: Yes, Ma'am.

REP. SLAUGHTER: Were you there when, at the age of 3, Cirrus was forced to sleep on the kitchen floor night after night without any food until he was too weak to eat?

MR. THIBIDEAUX: No, I had not heard anything about that, and I really doubt the validity of that story.

REP. SLAUGHTER: And do you know anything about Cirrus at that point being taken to a garage in Pomona, I believe, and kept in a garage overnight? There are witnesses who say they took him there. He was told by his father that there were huge rats in this building, and he was made to stay there alone, terrified and scared.

MR. THIBIDEAUX: Okay. Of course, what you're referring to is the film that came out. I called the --

REP. SLAUGHTER: No, I haven't seen any film at all.

MR. THIBIDEAUX: Well, there was a film --

REP. SLAUGHTER: These were testimonies from witnesses who -- including a man who himself took young Cirrus at the age of 3 out to spend overnight in a garage with rats.

MR. THIBIDEAUX: I came onto the scene in 1991. I believe these things, if they happened at all, happened prior to me coming onto the scene. But I have never heard any talk about this occurring. And when I saw --
REP. SLAUGHTER: Is it your --

MR. THIBIDEAUX: -- this ATF propaganda film, ma'am --

REP. SLAUGHTER: Is it your testimony --

MR. THIBIDEAUX: -- I was very surprised.

REP. SLAUGHTER: Mr. -- is it your testimony, Mr. Thibideaux, that he did not spank children as young as 8 months until their bottoms bled?

MR. THIBIDEAUX: No, he did not till their bottoms bled. He did spank his children when they were disobedient, but --

REP. SLAUGHTER: Eight months old, Mr. Thibideaux?

MR. THIBIDEAUX: The mothers did. I don't know about 8-month-old children being spanked.

REP. SLAUGHTER: Mothers have testified to that issue. Now, Kiri, do you know anything about that? Were babies spanked at that compound, little babies?

MS. JEWELL: Yes.

REP. SLAUGHTER: Did you know Cirrus?

MS. JEWELL: Yep.

REP. SLAUGHTER: Is what I said about Cirrus, is that true --

MS. JEWELL: I don't --

REP. SLAUGHTER: -- to the best of your recollection?

MS. JEWELL: I don't know.

REP. SLAUGHTER: How small were the babies when they were spanked, and did you ever see any of those spankings?

MS. JEWELL: Eight months old.

REP. SLAUGHTER: And these babies were spanked with what?
MS. JEWELL: A wooden paddle.

REP. SLAUGHTER: Called?

MS. JEWELL: Helper.

REP. SLAUGHTER: Helper. And what reason would drive Mr. Koresh to spank an 8-month-old child?

MS. JEWELL: I saw him spank -- I don't know if he was 8 months old at the time, but I saw him spank Wisdom, who was Robin Bunns' (sp) son, countless amounts of times because Wisdom didn't like him. And Wisdom would run away. And he would call him back over and spank him, and then Wisdom would run away again, and he would call him over and spank him again. And then he would tell Robin to go spank him. And Wisdom, he would sit with him on his lap, and Wisdom would be sniffing and crying, and then he'd run away again and get spanked.

REP. SLAUGHTER: Have you ever known of any occasions where Mr. Koresh kept a child from having food?

REP. MCCOLLUM: Kerry can answer that question, Ms. Slaughter, but your time is up.

REP. SLAUGHTER: It is, but if you would answer that for me. Do you know how he -- if he punished by denying food for more than one day or several days at a time?

MS. JEWELL: I don't know about that, no.

REP. SLAUGHTER: Thank you very much.

REP. MCCOLLUM: Mr. Zeliff for five minutes.

REP. ZELIFF: Thank you. Kerry, thank you for being here. I know it's been a long and difficult day. Just on the record, you were invited as the Democratic minority witness, and it was -- you were asked to be here by subpoena, is that correct?

MS. JEWELL: Yeah.

REP. ZELIFF: And you needed the subpoena because it was needed so that your father could be with you?

MS. JEWELL: Yeah.
REP. ZELIFF: Is that the only reason you needed the subpoena?

MS. JEWELL: Yeah. I didn't need one.

REP. ZELIFF: Thank you very much. Mr. Goldstein, is it possible or, on probable cause, is it possible that it becomes stale, and is it stale if it's 6 or 7 months old? And would a warrant be valid if probable cause was stale?

MR. GOLDSTEIN: There are very few cases that actually deal with the issue of staleness. But there is a lot of rhetoric, a lot of dictated cases that suggest that staleness is certainly relevant to probable cause, and it goes to whether or not you would have a reasonable belief that whatever you have that causes you to believe items of evidence will be located at a particular site will still be there when you attempt to obtain the warrant and execute it.

REP. ZELIFF: Thank you. The warrant authorized the search of the entire premises of the 77-acre compound. All buildings were included in the scope of the search. This included all personal belongings of some 90 men, women and children besides the person named in the search warrant. Given the crimes alleged to have occurred, is the warrant so over-broad as to be unconstitutional?

MR. GOLDSTEIN: There are always those concerns. And I think this is one of the -- if there's something healthy that comes out of these hearings, it would be that an evaluation of what we expect goes on during motions to suppress in criminal trials is not in fact what does. The truth of the matter is that a warrant should be -- the Fourth Amendment talks about a particular item in a particularized place. One would want particularity. It would keep them, for example, where people were living, for example, in a college dormitory, from searching the entire building because of probable cause to believe one errant student had violated the law.

On the other hand, I can tell you this from common experience, and I think you could talk to prosecutors and defense lawyers who would agree with me, the idea that we will prevail on motions to suppress because the probable cause is stale or because the warrant is too broad because it allows the search of an entire building, where the distinction between rooms and residences is difficult to pinpoint, is foolhardy. Quite frankly, that's one of the reasons why these good lawyers raised the issue. It's simply, in practice, we don't have any teeth in terms of being able to enforce these kinds of restrictions that I think, as your
question points out, are needed. We need to restrict law enforcement in terms of time. We need to restrict them in terms of place. That's not asking too much, and they're able to enforce the laws, I think, adequately with those kinds of restrictions.

REP. ZELIFF: Thank you, Mr. Goldstein. Mr. Thibideaux, tell us about finding Winston Blake dead.

MR. THIBIDEAUX: When the raid initially occurred and the shooting started, I got down on the ground. I went into the dorm area I had mentioned earlier. I wish I had a diagram to show you. But I went down the hallway of the dorm to the end. Actually, the first room I went into was the weight room, and I waited there for, I would say, between 5 and 10 minutes. Time is pretty irrelevant when you're being shot at. Then Jimmy Riddle (sp) and Oliver Garfish, Jr. (sp) ran down the hall in front of me. They went to the underground bus area, they opened up the door and they went down into it, and that's when I followed suit behind them. I got downstairs, and Oliver Garfish, Jr., myself and Jimmy Riddle were down there. Jimmy went down the hallway into the tornado shelter that was being built. He started to walk around in the mud, and the agents could hear him from upstairs and they were yelling obscenities at him, telling him to come out and screaming at the top of their lungs obscenities. I think that Jimmy wanted to make sure that they weren't going to come in and take us out that way.

Anyway, to make a long story short, after a period of, I would say, 20, 30 minutes, the -- we went back upstairs just as the cease-fire was being established. Jimmy Riddle and Oliver Garfish, Jr., ran up the hallway. I was crawling still because there was some sporadic fire. I came to the first room that was to my left, and water was pouring out of the bottom of this room. And again, there was no door on there, there was a blanket on there. I opened up the blanket and I looked in, and it was the area of the building where there's three water tanks on the outside. The middle water tank had been punctured a number of times, as well as the glass. The first thing I focused on was the glass that was shot out. My eyes were still adjusting from being in a dark place. I noticed the water pouring out of the bullet holes onto the floor. I followed one of the streams down, and there was a body there. I couldn't tell who it was at first. After a period of time, my eyes focused on the body, and I could see that it was a large lump. I made it out to be Winston Blake. I remember he had a red jacket on, and it was Winston, and the water was pouring down onto him and there was a -- there was a pile of blood by his head. He was not moving. I pretty much knew that Winston was dead and was not going to move. I shut the curtain and I went up the
hallway trying to hold my breakfast from that morning.

REP. ZELIFF: Quick last question. Mr. Thibideaux, on this -- this -- this is a hand grenade. This happens to be a paperweight. Is this similar to some of the things that you may have seen inside, this little paperweight here, this hand grenade?

MR. THIBIDEAUX: Yeah, it looks similar.

REP. ZELIFF: Is it possible that this hand grenade could be a paperweight?

MR. THIBIDEAUX: Yeah, it is possible.

REP. ZELIFF: Okay, and --

MR. THIBIDEAUX: I say that in the extent that if you put a sign on there that says, "Complaint department, pull pin," then obviously it's a paperweight. It depends on what is inside the hand grenade that makes it active or not.

REP. ZELIFF: So it's possible that this paperweight --

MR. THIBIDEAUX: It's possible it could have been active.

REP. ZELIFF: -- is not a hand grenade or used for the intended purpose of a hand grenade?

MR. THIBIDEAUX: No, it's possible either way, sir.

REP. ZELIFF: That this could be a paperweight that is not dangerous, it's just used to hold papers down?

MR. THIBIDEAUX: Yes.

REP. MCCOLLUM: Mr. Zeliff, your time is up.

REP. ZELIFF: Thank you very much.

REP. MCCOLLUM: Ms. Thurman, five minutes.

REP. THURMAN: Thank you, Mr. Chairman. At this time, I would like to yield my time to the distinguished gentleman from Mississippi, Mr. Taylor.

REP. MCCOLLUM: Mr. Taylor, you're recognized for five minutes.
REP. TAYLOR: Mr. Jewell, like some other members of this body, I was a bit disturbed by some of the graphic things your daughter had to say. But having said that, I think it is also very fair that you be given an opportunity to tell this body about your experiences in going to court in Michigan to prevent your daughter from being held in custody by David Koresh, the events that, again -- why don't you tell this committee some of the things that you know that were going on that the Michigan court agreed with when they decided to keep your daughter from ever being in the presence of David Koresh?

MR. JEWELL: I wasn't expecting to speak today, so this catches me a bit off-guard.

REP. MCCOLLUM: I don't believe that he's been sworn in, but I'd be very glad to do that, Mr. Taylor. And I won't do it on your time. If you'd --

REP. TAYLOR: Fine.

REP. MCCOLLUM: If you'd raise your right hand, please, do you solemnly swear or affirm that the testimony you're about to give will be the truth, the whole truth and nothing but the truth?

MR. JEWELL: I do.

REP. MCCOLLUM: Then the record will reflect the answer was affirmative. You may be seated. Mr. Taylor, you still have 4-3/4 minutes, or something like that.

REP. TAYLOR: In the process --

REP. : Mr. Chairman, I have a parliamentary -- (inaudible).

REP. MCCOLLUM: Parliamentary? Please state it, Mr. -- (name inaudible).

REP. : Will other people be added without notice? And can other people bring in witnesses?

REP. MCCOLLUM: Normally, that would not be the case, but I believe under these circumstances, with the father of the young woman here, it is appropriate.

REP. : I understand it's extraordinary just like --
REP. MCCOLLUM: No, not -- normally, we would not. We've got a schedule. We print them, we publish them. It's a good inquiry, but -- you're correct.

REP.: Mr. Chairman?

REP. MCCOLLUM: Yes, Mr. Taylor.

REP. TAYLOR: If I may, Mr. Chairman, I hate to interrupt, but the point I'm trying to make is the same point I made at the beginning of this hearing. I think if you operate in a vacuum leading to the date of February 28th, you can jump to the wrong conclusion as to what the role of this nation and those people hired by this nation to enforce this nation's laws -- had taken place. Do you who are the most familiar with what happened to your daughter and what you tried to prevent from continuing to happen to your daughter, don't you think that this body needs to know what went on at that compound prior to February 28th?

MR. JEWELL: Absolutely, sir.

REP. TAYLOR: May I turn it to Mr. Barber as a local law enforcement agent who turned and asked the ATF to augment the efforts of your agency, do you feel like the law was being broken on a regular basis at that compound prior to your calling in the ATF to help out your agency?

MR. BARBER: We had a lot of accusations and suspicions, but we did not have probable cause on anything at that time.

REP. TAYLOR: Then, Mr. Barber, may I ask, why did you contact the ATF?

MR. BARBER: My primary concern was the hand grenades.

REP. TAYLOR: Okay. Mr. Jewel, if I may return to you, would you please inform this committee of some of the things that you brought to the Michigan court's attention when that court ruled that your daughter could no longer be brought in the presence of David Koresh?

MR. JEWELL: On or about the morning of Halloween in, I believe it was 1991, and again, I'm speaking a somewhat impromptu here, so my dates may be somewhat shuffled, but I received a call very early in the morning, and it was from Mr. Mark Breaux (sp), whose name
was raised earlier. He identified himself to me, and he said, "Mr. Jewel, I have nothing I can give you that would make you have a reason to believe me, but I hope you will." He said, "Do you know a Sherry Jewel?" because he wasn't even sure that he had contacted the right person. I said, "Yes, she's my former wife."

"So your daughter is Kerry?" I said, "Yes." He said, "Sir, I have reason to believe that your daughter is in danger." And at that point, he had my full attention, and he began to tell me about the fact that he was a former member and that he in fact had been placed fairly high in the hierarchy of David Koresh's organization. And he began to tell me who David Koresh what and what he was and what he was intending to do, not just with my daughter. I learned at that point that David Koresh intended to take my then 9-year-old daughter as his -- maybe 10-year-old daughter as his wife, but that he also had plans to destroy the earth. And I must say that I feel a little uneasy using that phrase in the chambers of the United States Congress because it seems so preposterous, but if you believe it, it's not preposterous. The David Koresh that I came to know of and who I spoke with twice on the telephone was a man of absolutely unparalleled evil intent. It was his plan to bring about any circumstances necessary that would start a war between he and his followers and the rest of the world. Over a period of years prior to my conversation with David Koresh -- or with Mark Breaux, excuse me -- I had had information that would come to me slowly and in little bits and pieces from my former wife, Sherry Jewel, who died in that fire, and from my daughter about what it was they were studying and what they believed and the things that were going to happen. And I heard about wars that they were going to be involved in that would cause literal "rivers of blood." And I heard about friends, supposedly, being told that if they didn't come and join the group, that they would be killed. I have sworn affidavits in the possession of my attorney that refer to the remarks that Mrs. Slaughter was making earlier about babies being beaten at the age of 8 months old until their buttocks bled, and I don't refer to one affidavit, I refer to several. I have testimony about women being held captive for months at a time and being systematically raped and demoralized to the point where they would then consent to the will of David Koresh and/or his henchmen. David Koresh perhaps truly believed that he was the incarnation of some deity or some power, but it was not heavenly.

REP. MCCOLLUM: Mr. Taylor, your time has expired.

REP. TAYLOR: Mr. Chairman, if I may, I have two requests that I think are very pertinent. Number one, and Mr. Jewel's time was
very limited, I would request that the testimony involved in the trial in Michigan where he sought custody of his child to prevent his child from falling into the hands of David Koresh, that be included in this testimony, for the sake of brevity.

REP. MCCOLLUM: If you can make it provided it will be done without objection.

REP. TAYLOR: Secondly, Mr. Chairman, I have an opening statement that I would like to include in the record.

REP. MCCOLLUM: Without objection, it's so included. Mr. Hyde, you are recognized for five minutes.

REP. HYDE: I thank you, and I am pleased to yield my five minutes to Mr. Schiff.

REP. SCHIFF: I think the chairman of the committee for yielding. I'd like to take a moment, Mr. Chairman, to put in focus a couple of important issues here. First of all, just as the Alcohol, Tobacco and Firearms investigation and raid never involved Mr. Koresh's personal practices, however outrageous they were, with girls the age of Kerry Jewel, they never involved an allegation of child abuse in spanking young infants, which of course would be equally outrageous if in fact it occurred. The Alcohol, Tobacco and Firearms search warrant and arrest warrant dealt exclusively with firearms violations. And I would ask my colleagues who are listening here today to decide if the other information that is constantly dumped into the middle of this hearing is relevant to the issues we must ultimately arrive at here. Second of all, I'd like to focus on the search warrant. And I'm not going to ask further academic questions about the search warrant, but I want to make the point that I think its relevancy to this hearing has been missed. In my mind, its relevancy to this hearing is not whether it legally established probable cause. I think it's possible that it did. But I think there are other aspects of the search warrant which are more relevant to what we're studying today, which is the activities of federal law enforcement agencies in this situation.

And those other aspects are, first, it was put together, as a number of witnesses have testified, in a prejudicial and inflammatory manner. And second, by the fact that no matter whose copy of the name of the offense is correct, it clearly misstates the U.S. Code statute number for the offense charge and I think makes other technical mistakes in the law, which means to me it was put together in a sloppy fashion. Now, you put together inflammatory with sloppy, that translates to me that ATF was in a
hurry to make a big splash with something. And I think that if that's true, and we have 7-1/2 more days to determine that, I think if that's true, that is substandard performance. And we'll hear from them, and they'll have a chance to explain. Now, with that, I'd like to use the balance of my five minutes to ask a few further questions. Deputy Barber, during the course of this investigation, I assume you met a number of ATF personnel?

MR. BARBER: That's correct.

REP. SCHIFF: Did you meet any of their public relations people who came to the scene before the raid?

MR. BARBER: Yes, I believe there was one -- I think her first name Sharon Wheeler (sp).

REP. SCHIFF: Right. And you know that she's in -- I believe she's in public relations for ATF?

MR. BARBER: Yes, I knew that.

REP. SCHIFF: And they brought her there before the raid, I believe?

MR. BARBER: I met her the day of the raid.

REP. SCHIFF: The day of?

MR. BARBER: The day of, yes.

REP. SCHIFF: Do you know when she arrived?

MR. BARBER: No, I don't.

REP. SCHIFF: All right. Let me turn now to Mr. McMahon. Mr. McMahon, when you did business with Mr. Koresh in firearms, where did you do business?

MR. McMATHON: I sold him some guns from my home. My license premise was my home.

REP. SCHIFF: From your -- your license premises was your home?

MR. McMATHON: Yes, sir.

REP. SCHIFF: And you didn't live on the Branch Davidian compound?
MR. MCMANON: No, sir.

REP. SCHIFF: So he came to your home?

MR. MCMANON: Sometimes, and sometimes I'd go out there and see him.

REP. SCHIFF: But he'd be willing to come to your home?

MR. MCMANON: Sure.

REP. SCHIFF: Did he come to your home regularly?

MR. MCMANON: I mean maybe once every three or four months or so, but --

REP. SCHIFF: Okay. Let me turn to Mr. Thibideaux. Mr. Thibideaux, at the time that the raid first took place, February 28th, the ATF was arriving, Mr. Koresh knew the ATF -- before that, Mr. Koresh knew the ATF was coming, in your opinion?

MR. THIBIDEAUX: Before --

REP. SCHIFF: Well, did Mr. Koresh know the raid was going to occur before it occurred?

MR. THIBIDEAUX: I think that when David Jones came in with that information, yes, he knew.

REP. SCHIFF: And how long was that before the raid?

MR. THIBIDEAUX: I'm not really sure. It's been said 45 minutes.

REP. SCHIFF: All right, and David Jones was a mailman who belonged to the Branch Davidian sect?

MR. THIBIDEAUX: Yeah, he lived there off and on. He had a property outside, but he was frequently coming, and his whole family was there.

REP. SCHIFF: Do you know where he got the information from?

MR. THIBIDEAUX: As I said previously, it was -- it appeared to be from a news truck that was at the end of the -- and this is from what I heard in the press --
REP. SCHIFF: I understand.

MR. THIBIDEAUX: -- a news truck that was at the end of the road. And they were asking directions, "Are we anywhere near the Branch Davidian compound," or, "the house," or whatever, I don't know what they said to him.

REP. SCHIFF: I know you're not directly the witness here, but as far as you know, Mr. Jones was asked for directions to the Branch Davidian compound from the news truck?

MR. THIBIDEAUX: No, the news truck was asking him.

REP. SCHIFF: Yeah, I --

MR. THIBIDEAUX: I think he pulled over seeing the news truck and said, "Hey," you know, "what's going on?" And being the mailman, they automatically assumed, oh, this guy is all right. "Well, you know, we're looking for the -- maybe you could help us." I believe it was that kind of thing. "Could you tell us where the Branch Davidians --"

REP. SCHIFF: Do you know who told the news truck that there was something that was going to be newsworthy happening there very soon?

MR. THIBIDEAUX: I don't know for certain. It would sound to me like that would be the ATF.

REP. SCHIFF: And since you won't be here for the testimony about the raid, one last question. From the best of your recollection, would you say again from which direction -- front, back, up or down -- do you believe the first shots were fired from?

MR. THIBIDEAUX: I personally believe from the front, but it didn't take long after the front began to the back, so I would think it was pretty close to simultaneously. And may I make a statement?

REP. SCHIFF: Please, if it's brief, because I'm out of time.

MR. THIBIDEAUX: Okay. In the past, I've been -- we've all been put through the ringer on this whole thing, okay? And time and time again, I've seen things like the "Donahue" shows and some of these shows, and it's never a fair forum. And I kind of feel cheated here today because I have some specific things that I'd like to
address. A lot of these points that were made can be addressed in counterpoints, and I've not been allowed to give that testimony, and I don't think anybody else, any other survivors have been allowed yet. And I really, truly hope we have that opportunity to address some of these points that have been made today.

REP. SCHIFF: All right. Are you able to return to this hearing at some point, Mr. Thibideaux?

MR. THIBIDEAUX: Yes, I am, absolutely.

REP. SCHIFF: Well, I'd let you work that out with the chairman, then.

REP. MCCOLLUM: Well, if I might, your time is up, Mr. Schiff. And we may be able to give you some of that opportunity here. The panel is going to be recessed because we have a vote. We are going to take a recess, this joint committee. Mr. Conyers will have his five minutes next, if Mr. Clinger comes back, his. Perhaps between the two of them, there will be that opportunity. If there's not, then we'll have to -- or Ms. Collins might come back. If not, why, we will have to find another alternative.

MR. THIBIDEAUX: Thank you very much, Mr. Chairman.

REP. MCCOLLUM: Thank you very much. We'll be in recess till after this vote. (Recess.)

REP. MCCOLLUM: The subcommittee is called to order. We have just a couple more questions and some witness -- a couple more questioners to hear. We really have three more, one chairman and two ranking members, the chairman of the full oversight committee. I was prepared to go to Mr. Conyers, and I will next, but Ms. Collins has agreed, and I think Mr. Conyers if you would, Mr. Barber has to run out. I don't know if either of you have questions of Mr. Barber, but he's got to catch a plane. I have a question; Mr. Clinger's going to yield to me to ask, and out of accommodation to this -- you don't have any questions of Mr. Barber?

REP.: No, I don't.

REP. MCCOLLUM: Nobody does. Then I would ask with unanimous consent then that Mr. Clinger could have some portion, a minute of his time to yield to me, and I'll ask Mr. Barber --
REP. CLINGER: I would be delighted to yield to the chairman.

REP. MCCOLLUM: Thank you very much. Mr. Barber, I just want to clarify something completely for the record. I asked you some questions and then some more were followed up at the end here by some other people today about the grenades and about drug labs and all of that. My understand is that from your testimony that the reason you primarily turned over -- maybe the reason I think you said -- you turned over the case or called up ATF was because of these grenades that the UPS folks had gotten or found, or whatever, in the mail system. Is that correct? I just want to corroborate that.

MR. BARBER: It was a combination of the grenade bodies and the explosives materials that they were receiving.

REP. MCCOLLUM: But the bottom line is those grenade bodies, as I understand it, were bodies. There was some evidence, there were other materials there, but the bodies themselves were not live grenades, is that correct?

MR. BARBER: They were not live grenades the first time I saw them. No they were not.

REP. MCCOLLUM: And what other material were you concerned about besides the grenades, besides these grenade bodies we call it.

MR. BARBER: It was the Potassium Nitrate and the powdered metals.

REP. MCCOLLUM: Now where had you been aware of those from? What was your source for that information?

MR. BARBER: Graduated from the bomb technician school at --

REP. MCCOLLUM: Well, no, no, no, no. I mean, how did you know they were getting that stuff?

MR. BARBER: That was also obtained from UPS.

REP. MCCOLLUM: That material was obtained from the UPS?

MR. BARBER: The documentation was.

REP. MCCOLLUM: But you didn't have any of the -- you had some of the grenade bodies, but you didn't have any of the chemicals.
MR. BARBER: No, sir, I did not have any of those.

REP. MCCOLLUM: Yeah, you were just listening to UPS fellows talk about delivering stuff out there.

MR. BARBER: And I would actually get a copy of the receipt.

REP. MCCOLLUM: Okay. Last question, and again just to clarify, you told me earlier that several years before the raid, there was some evidence of methamphetamine lab, but there was nothing current at that time. There's no current evidence within the last year or so, to your knowledge, of any other drug activity, production of drugs or any of that sort of thing on the compound property, was there?

MR. BARBER: No, sir, not to my knowledge.

REP. MCCOLLUM: Alright. I don't have any other questions in to Mr. Barber, and I'm going to yield back to Mr. Clinger, reserve the balance of his time, which I think is three and a half minutes at this point, and I would yield then to -- Mr. Conyers is ready for his five minutes to Mr. Conyers. Mr. Barber, you're excused. I hope you catch your plane. Thank you very much for coming and being with us. Mr. Conyers?

REP. CONYERS: Thank you, Mr. Chairman. And I compliment you, as I have, about the fairness in which you've conducted the hearing and Mr. Zimmer as well. And I'm hoping that we can resolve the outstanding question of the subpoenas this evening after we've concluded our activity. Let me just ask Mr. Thibideaux a yes or no answer as to whether the NRA or anyone on its behalf has contacted you in connection with this hearing.

MR. THIBIDEAUX: No.

REP. CONYERS: In any way?

MR. THIBIDEAUX: Not any way, no.

REP. CONYERS: Alright. Mr. McMahon, may I ask you that same question please?

MR. MCMAHON: Yes, sir, those were the only people that wished to hear the truth.

REP. CONYERS: Did you say yes, you have been contacted?
MR. MCMAHON: I was contacted like right after the raid and fire. This was a while back.

REP. CONYERS: No, I meant in connection with the hearing that we're having today.

MR. MCMAHON: Oh. Yes, sir, I have been contacted, sure.

REP. CONYERS: And can you give us a little idea of when you were contacted? Well, I mean, was it yesterday?

MR. MCMAHON: Have I talked to them yesterday?

REP. CONYERS: Yes.

MR. MCMAHON: I did talk to them yesterday.

REP. CONYERS: Sure.

MR. MCMAHON: And I talked to them -- (inaudible) -- before.

REP. CONYERS: And was the day before?

MR. MCMAHON: The day before?

REP. CONYERS: Yes, the day before yesterday.

MR. MCMAHON: No, sir. I didn't get the letter to come here until yesterday.

REP. CONYERS: I see. And what was the nature of the discussion between you and them?

MR. MCMAHON: Just what will I be doing there? What's going on? I mean, I've -- I didn't testify in front of a trial or anything; this is the first time I've been in front of anybody.

REP. CONYERS: Well, let me ask you this -- I understand. Let me ask you this --

MR. MCMAHON: And (I ?) wanted to know what's going on.

REP. CONYERS: Who was it that you talked to there?

MR. MCMAHON: I talked to Jim Warner -- Mr. Warner -- a fellow by
the name of Mr. Warner.

REP. CONYERS: Right, right. The deputy general counsel.

MR. MCMAHON: I believe (he ?) --

REP. CONYERS: He sounded like a lawyer?

MR. MCMAHON: (Laughing.)

REP. CONYERS: Okay, let's move on. We'll get more -- I'd like to ask you to amplify that, but we don't have time in the period of five minutes. What I need to bring to this part of our hearing is that just recently in the GOP Contract with America, and specifically H.R. 666, we voted on a bill with nearly unanimous Republican support that didn't require that we have exceptions to the exclusionary rule, good faith exceptions. We said that -- we went a lot further than that -- they did, not me, and said that we would throw the whole warrant requirement out of the window if this part of the Contract on America becomes law, because we would have an expedited exemption to the whole exclusionary rule. We pointed out that this was eroding the whole Constitution, and now I am so pleased to find that the same people that voted to further erode the exclusionary rule, of which Mr. Goldstein has very adequately complained of, are now very worried that there aren't teeth in it; there wasn't enough; it was very shoddy. And now we have this incredible conflict of the bill that -- the crime bill we passed out says warrants aren't even needed for searches. It says there's no need for a magistrate to determine whether there's probable cause. It gives total discretion of probable cause to the law enforcement authorities, as long as they believed that there was probable cause, then no warrant would be required at all. That's the law coming down the pike. Now, Mr. Descamps, before drawing up his affidavit, Agent Aguilar had spoken with several former compound residents who told him there were machine guns at the compound. He also spoke with firearm dealers who told him they'd delivered kits that could be converted -- convert semi-automatic guns into automatic weapons; he spoke with a UPS employee who saw a hand grenade fall out of a package before being delivered to the compound. He spoke with Lt. Barber who told him that a rancher living near the compound had heard machine gun fire. After the raid, machine guns and hand grenades were found. Is there any case law, anywhere, that would say that such a factual predicate could, under any circumstances, be insufficient for probable cause in order to obtain a warrant?
MR. DESCAMPS: I'm certainly not aware of any such case law.

REP. MCCOLLUM: Mr. Conyers, your time is gone.

REP. CONYERS: Well, I want to thank all of the witnesses, and I'm hopeful that Mr. Jewell, who had not completed his testimony with Mr. Taylor would be given an opportunity to do so, because I wanted to hopefully ask him, Mr. Chairman, who I praise for such eminent fairness, that did Mr. Koresh personally tell you that if the authorities ever came back to him, he'd shoot them?

REP. MCCOLLUM: Well, it may be that we can let Mr. Jewell answer a question like that after we're done if Mr. Thibideaux is also given a couple of minutes and wants to say something too. But let's see what happens in our time. We've got a whole other --

REP. CONYERS: So you don't think that's a very important question.

REP. MCCOLLUM: Oh, I think it's an important question. I think that maybe what Mr. Thibideaux wants to say is important too, but we've got to be judicious. Mr. Clinger has three and half minutes left, and I yield to him.

REP. CLINGER: I thank the chairman for yielding, and I apologize for not having been here to listen to the testimony, and I just had one question, and I'm going to yield the balance of my time to the vice chairman of the committee who has been here for the entire testimony, Mr. Schiff. But my question would be to Mr. McMahon. I think you indicate, sir, that you had been -- had had conversations with a representative of the NRA.

MR. MCMAHON: I have.

REP. CLINGER: And my question is simply this, was there an attempt made to influence or direct your testimony? Were you in any way influenced in the way you were supposed to testify here today?

MR. MCMAHON: No, sir, they did not.

REP. CLINGER: I thank you very much. And at this point, I would like to yield the balance of my time to Mr. Schiff.

REP. SCHIFF: Thank the gentleman for yielding. Mr. Thibideaux, you indicated that there were several points that you thought could be and should be refuted. On what subject? About what?
MR. THIBIDEAUX: Okay, the first subject that I think needs to be brought out is the fact that in 1992, not the federal government, but the state authorities came and investigated the children. And they went through the signs of the physical, the mental and the sexual abuse, and they couldn’t find any, and they dropped their case.

REP. SCHIFF: Didn’t a state official actually come out to the compound?

MR. THIBIDEAUX: Yes, that is correct.

REP. SCHIFF: Was the state official fired on by anyone?

MR. THIBIDEAUX: Absolutely not.

REP. SCHIFF: Was the state official -- (inaudible) --

MR. THIBIDEAUX: They came up with the Sheriff’s Department.

REP. SCHIFF: -- So that he or she -- I believe she in this case -- couldn’t leave?

MR. THIBIDEAUX: No, she was free to come and go.

REP. SCHIFF: Okay, thank you. Go ahead.

MR. THIBIDEAUX: As a matter of fact, when asked about the underground (bus ?), David Koresh took her down there and showed it to her. So I mean, from what my understanding was, he pretty much opened the place up to her. But anyway, they found no signs of the abuse that’s been discussed, and they dropped their case. The next day in the Waco Tribune Herald, the health people said that these were the nicest, most well-behaved children we’ve ever had the pleasure to work with. And you know, I think if we’re going to check out the child abuse issue, that’s a pretty powerful statement for a health worker to make for kids that are abused readily as we have heard. And also the Sheriff’s Department --

REP. SCHIFF: I just want to say that the child abuse issue, in my judgement, has absolutely nothing to do with this hearing.

MR. THIBIDEAUX: I agree with you --

REP. SCHIFF: That it was not a matter that was being investigated by federal law enforcement. That doesn’t mean it’s not an
important issue. But since it's been brought up time and time again, I thank you at least for putting in the other side. Go ahead, please.

MR. THIBIDEAUX: Yeah, one more thing. The Sheriff's Department also came out with -- and the next day in the press, David spent a lot of time talking with the people from the Sheriff's Department because of what happened in 1987 with George Roden (sp), he felt he was misfairly (sic) (sic) treated. But he spent a long time talking to them; invited them out later on to go fishing or whatnot.

REP. SCHIFF: And who are they? I'm sorry --

MR. THIBIDEAUX: He invited the Sheriff's Department -- some of the Sheriff's Department officials, I do not know the names.

REP. SCHIFF: But who invited them?

MR. THIBIDEAUX: Koresh did, himself, when they came up with the health workers. And they said the next day in the Waco Tribune Herald that the only problem with people up there at Mt. Carmel is that they're misunderstood. You know, I mean these are quotes from the legal representation of McLennan County, and I think it's pretty much well documented that David Koresh knew Jack Harwell (sp), the sheriff, on a first name basis. And I think that the ATF definitely should have gone through Jack and come out with the sheriff to knock on the door and not -- by the way, the search warrant, if I just may say this really quick, that was a knock search warrant. You're supposed to go to the door, knock on the door and present it. I don't understand how you can serve a knock search warrant with helicopters coming into the back, three different groups of ATF agents, one going up the side to throw in flash bang grenades to get the evidence, while another team goes and shoots the dogs, while yet another team is going to the front door to serve the warrant. That's spontaneous; it's happening at once, and that is not -- and you can get a no-knock search warrant, sir, if my understanding is correct. They did not have one, and I don't understand why they would choose a dynamic entry with having a knock search warrant.

REP. SCHIFF: Well, let me go back to the Sheriff's Department. Are you saying that sheriff's officials were invited out to the compound?

MR. THIBIDEAUX: Yes.
REP. SCHIFF: You actually saw them there?

MR. THIBIDEAUX: No, they never came out later, but David always made the invitation open to them to come out if they wanted to fish on our pond, because we had a stocked bass pond.

REP. SCHIFF: Okay, so he wasn't hesitant about having law enforcement agents there?

MR. THIBIDEAUX: No, and you know, there was one more interesting incident I just thought of. When the initial reports came in about all these automatic weapons, Steve Schneider actually went into the Sheriff's Department and put a hell-fire trigger switch on the desk and said, this is legal, I believe, under the ATF? That's probably what you heard out there. Now, you know, I'm not saying that's right or wrong, sir; all I'm saying is that all the way along, Koresh tried to work with law enforcement, and I know this from experience. Koresh always tried to work with people.

REP. MCCOLLUM: Mr Schiff, your time has expired.

REP. SCHIFF: I thank the chair.

REP. MCCOLLUM: At this time, I will yield five minutes to Ms. Collins.

REP. COLLINS: Mr. Chairman, before this clock starts running, I need to ask for some verification. I will tell you what it is. I have a split second yes or no answer that I would like and then I would like to yield another 15 seconds to Mr. Conyers and then two minutes to Mr. Gene Green and two minutes to Sheila Jackson Lee. I don't have a time watch here. Are you going to keep the time?

REP. MCCOLLUM: We will take care of it. We will do our best.

REP. COLLINS: I just want to make sure because I know those lights go off real fast.

REP. MCCOLLUM: We will do our best. Maybe we will do this by hand. We will do our own stop watch over here. You get going now. I will yield to you now. Your clock starts running right now.

REP. COLLINS: Thank you, Mr. Chairman. I yield to Mister --

REP. CONYERS: Thank you, Ms. Collins. First of all, Mr. McMahon,
would you give us some statement about your contact with the NRA that we were discussing, please?

MR. MCMAHON: Yes or no?

REP. CONYERS: No, that wasn't a question. I was asking him to do that.

MR. MCMAHON: I don't understand why. Are you saying -- are you ordering me to? Are you saying do it or are you saying not do it?

REP. CONYERS: Yes, I would like you to do it, please.

REP. : I will consider.

REP. : I think the time -- I think the time is up that she yielded to you, unless she wants to yield more.

REP. CONYERS: Let me quickly ask Mr. Thibideaux, on Turning Point last Thursday night on ABC, you testified that you saw Koresh when the raid occurred, you saw Mr. Koresh hold out his hand and said, let's talk about this. Do you remember that testimony?

MR. : Yes, I do remember that testimony.

REP. CONYERS: And today you said you were nowhere near the door with him, that you were way at the back of the room.

MR. : Because what I said with that testimony, sir, Mr. Conyers, what I said with that testimony is I said that I heard from three separate eye witnesses who were at the front door who told me the same thing, that that is exactly what occurred.

REP. CONYERS: You didn't see --

REP. : No, I made that clear that I was not at the front door, but eye witness testimony told me --

REP. COLLINS: Mr. Jewell, can you tell me from your own knowledge what perhaps Mr. Koresh told you he would do if authorities ever came after him?

MR. JEWELL: I will try to make this as short an answer as I possibly can but over a period of years, in trying to maintain contact with my daughter, I have called the compound and twice got Mr. Koresh on the phone and was engaged in a conversation with
him. Mr. Koresh and I shared a common religious ancestry in that we were both raised Seventh Day Adventist, we had that in common and, as Seventh Day Adventists, we understood that in the time of the end that God's people would be persecuted and perhaps put to death. He told me during the course of that conversation that that was true, however when they came after him and his people, they were going to fight back and kill anybody that they had to.

REP. COLLINS: Thank you very much. I yield to Mr. Green, Gene Green. (Inaudible.)

REP. GREEN: Let me -- I don't know if we still have the grenade paperweight that was shown earlier but maybe it's just because I'm from Texas and I've seen them before in Army surplus stores and -- but I don't have a case of them and Mr. McMahon, if you could tell me, we heard testimony from Mr. Barbour of UPS saying that there were cases of those paperweights that were delivered and that was one of the reasons for the -- his concern in calling in ATF. In your experience as a fire arms dealer, do you know if at that location if they were using those hollow grenades to pack explosives in?

MR. : I never seen any hollow grenades. I never seen them out there. I have seen those type of grenades at gun shows as a paperweight but I have never seen any at David's.

REP. GREEN: So you never saw none of them. Do you know of any of them that have ever been used to pack explosives in and then use them as a grenade?

MR. : By the Branch Davidians?

REP. GREEN: No, do you know if that is available, is that possible?

MR. : I guess it is possible. I mean, I am not qualified to answer that.

REP. COLLINS: I yield my remaining time to Sheila Jackson Lee.

REP. LEE: Thank you very much and I imagine I have to talk like the speeding bullet. I hate to use that terminology. Let me say how proud I am of Kiri. I have a 15-year-old and I am just -- you have stood here so long. Mr. Jewell, if you can help me, you have said very clearly you are not a theologian, you are not a pastor, but we talk about this is for the American people and people hear
the word "religion" and they hear the fact that we should, in this country, respect it. Help me understand from what your daughter went through, would you say that he would gone beyond and that we had reached now a point of a cult. What is your sense of it? And I have a quick question for Mr. McMahon and you see how fast I am going.

MR. JEWELL: The one thing that I think God expects of us is that we use our own minds to develop ourselves and become everything that we can be. That differs from what it is my understanding that David Koresh encouraged his followers to do in that he encouraged them to listen only to him and he could change his mind any time he wanted to and his word was still law.

REP. LEE: I think for the American people that is important because you have mentioned a certain religion and I would not want it to be indicted for what really was a true cult and took away the minds of people. Mr. McMahon, did you visit Mr. Koresh in the compound?

MR. McMACHON: At David's house? Yes, ma'am, I did.

REP. LEE: You just mentioned, was that his home?

MR. McMACHON: Yes, Ma'am.

REP. LEE: Were there women and children there?

MR. McMACHON: Yes, Ma'am.

REP. LEE: Were there some children under five?

MR. McMACHON: I would think so. Children spent most of the time with the --

REP. LEE: Was he a licensed gun dealer?

MR. McMACHON: No, ma'am, not that I know of.

REP. LEE: Would you say -- could you describe maybe the amount of weapons that were in the home there or maybe as much as you sold to him?

MR. McMACHON: I just turned a list in to --

REP. LEE: Just give me an -- just give me an estimate.
MR. MCMAHON: I sold him around 223 guns.

REP. LEE: Pardon me?

MR. MCMAHON: I sold him around 223 guns.

REP. LEE: Would that be the average amount of weapons you find in a normal American family's home or do you have any way of estimating that?

MR. MCMAHON: No way of estimating. I mean, they have estimated it to be like three guns per person and that is below the average.

REP. LEE: But it is, however, a home, children, wives, and you said 223 that you sold and, of course, that doesn't account for what else he might have had. Let me move -- and thank you very much for that. But that was his home --

REP. MCCOLLUM: I think I have been very liberal about the time.

REP. LEE: Have you been liberal? And I've got so many more questions --

REP. COLLINS: Mr. Chairman, let me thank you for being so liberal with your time. You have certainly been very fair, have extended time. I greatly appreciate it.

REP. MCCOLLUM: Well, you are quite welcome and it has been a pleasure today. I think I have pretty well --

REP. LEE: (Inaudible) -- I hope our earlier question about being able to ask questions will be considered. Thank you.

REP. MCCOLLUM: Well, we are doing our best here. I think that we have pretty well completed all the formal questions we are supposed to have. If we let this continue, we will never get to another panel and as I have questions I would like to ask actually but, nonetheless, I think they can be submitted in writing and any of them who want to submit them, please do. And somebody asked earlier about statements. Before I ask this panel and turn the gavel over to Mr. Zeliff, I want to make sure everybody understands, without objection, anybody's statement, any of the witnesses and any of the panel members' statements may be submitted for the record. Mr. Thibideaux, you had wanted to make a statement on the record. We don't have time, no one has got a
question.

MR. THIBIDEAUX: May I submit them in writing?

REP. MCCOLLUM: You may submit it in writing, absolutely. You may submit it in writing. And we have done the best through Mr. Schiff we could to give you some verbal time. With that in mind, Ms. Thurman --

REP. THURMAN: And, of course, that would be offered to all of the witnesses here today --

REP. MCCOLLUM: All of the witnesses. I have just made that statement. All of the witnesses have a right to submit a statement in writing if they desire.

REP. THURMAN: How long will we hold the record open for?

REP. MCCOLLUM: Well, the record is certainly going to be open through the period at least of the time of the hearings, which are over a period of the next couple of weeks. So certainly through the end of this month, I would suggest, they will be open. Yes, Mr. Mica?

REP. MICA: Just a question of parliamentary inquiry. I have a copy of Ms. Jewell's notes or statements. I wasn't in when she testified and I wondered if this statement had been made a part of the record and also, Mr. Chairman, when this was presented?

REP. MCCOLLUM: If I might say, if you were not here, the record will reflect that Ms. Thurman was asking the questions, she asked Ms. Jewell to read the entire statement and she read it verbatim. So it has been read into the record, Mr. Mica.

REP. MICA: But when was it given to the Committee?

REP. MCCOLLUM: I believe the Committee received it this morning or this afternoon.

REP. MICA: My understanding was at the time she was speaking. Is that right?

REP. MCCOLLUM: Well, it was before she spoke but during this morning.

REP. MICA: Because I didn't see that our side had this and --
REP. MCCOLLUM: This morning, I know that they were at the desks here this morning. Well, with those parliamentary inquiries, I want to thank this particular panel, you have been very gracious, you have spent your time, some of you have had some pretty tough questions to answer. But we thank you very much for coming and now I am going to turn the gavel back over to my co-chairman, Mr. Zeliff, and for the last panel of the day. Thank you.

REP. ZELIFF: Okay, I would like to thank this panel and have the next panel come forward to be seated and sworn in. (Pause.)

REP. ZELIFF: While you are proceeding to the witness table, I would like to in the order that I call everybody and introduce you, it will be on your right, my left. I will start out with Davey Aguilera, David, on your far right, my left. He is a Bureau of Alcohol, Tobacco and Firearms special agent. Chuck Sarabyn is the former Bureau of Alcohol, Tobacco and Firearms special agent in charge in Houston. Earl Dunagan is the former Bureau of Alcohol, Tobacco and Firearms special agent in charge in Houston. Bill Johnston is the assistant U.S. Attorney in Waco, Texas. Dan Hartnett is the former Bureau of Alcohol, Tobacco and Firearms deputy director for enforcement. Ed Owen is a firearms expert for the Bureau of Alcohol, Tobacco and Firearms. H. Jeffrey Moulton, Jr., was the project director of the Treasury Department review team. Dr. Bruce Perry is an associate professor of psychiatry and behavioral sciences at Baylor Medical College. I thank you, gentlemen. (Panel sworn.)

REP. ZELIFF: Let the record note the answer was in the affirmative. I know that each of you come with a -- each of you comes with a very special story, we appreciate your being here. Some of you appear on future panels during these hearings to address different concerns. Today, by previous agreement, we will try to focus on the investigation and the warrants portion and we will begin with questions. The Chair now recognizes the Vice Chair of our National Security Subcommittee and my friend, Robert Ehrlich of Maryland for the --

REP. EHRLICH: Thank you, Mr. Chairman. I thank you all for appearing before us today. Before I begin my formal remarks, I would just like to make a couple points.

REP. ZELIFF: Bob, we have re-changed the order and I apologize. Would you be willing to hold off?
REP. EHRlich: Sure.

REP. ZELIFF: What I would like to do is have our colleague, Mr. Barr, for 15 minutes first.

REP. BARR: Thank you, Mr. Chairman. Mr. Johnston -- is it Johnson or Johnston?

MR. JOHNSTON: It is actually Johnston, with a "t".

REP. BARR: That's what I thought. You have a law degree?

MR. JOHNSTON: Yes, sir.

REP. BARR: And you serve as an assistant United States Attorney, a prosecutor?

MR. JOHNSTON: Yes, sir, I do.

REP. BARR: I have a law degree and I served as a U.S. attorney so we have two things in common. I suspect we have something else in common and neither of us are particularly enamored of Mr. David Koresh; am I correct that we share that in common?

MR. JOHNSTON: Based on what I know, he did some bad things.

REP. BARR: Based on what I know, he did, also. And I think that is something that we do have in common. Let me, if I could, Mr. Johnston, ask you a few questions. Define very succinctly for me "dynamic entry."

MR. JOHNSTON: I hadn't heard that term, "dynamic entry" --

REP. BARR: Neither had I.

MR. JOHNSTON: I suppose it means some active movement in a search warrant.

REP. BARR: Well, let me kind of back up then. Do you know what the term dynamic entry means?

MR. JOHNSTON: I could give you a definition that I think it means.

REP. BARR: Okay.

MR. JOHNSTON: Shall I?
REP. BARR: Please.

MR. JOHNSTON: A search warrant or police activity in connection with a search warrant that involves an entry, where the persons are not invited in. In other words as opposed to, like, where police call ahead of time and are invited in or do some low profile entry. It would be more in the nature of a moving search warrant, like you might see on television, where agents are running instead of walking and so forth.

REP. BARR: Was the entry in this case a dynamic entry?

MR. JOHNSTON: I wasn't there but, based on what I have seen on television, in keeping with the definition I have just given, I think it was.

REP. BARR: You were not at the scene?

MR. JOHNSTON: No, sir.

REP. BARR: And did you have any discussions at any time prior to the dynamic entry or whatever it was on February 28 of 1993 with ATF concerning a dynamic entry?

MR. JOHNSTON: Not concerning that term. They discussed -- they mentioned, almost in passing, that they were going to do something, I learned, in the nature of having agents in cattle trailers. I didn't know the details of the raid plan.

REP. BARR: Are you familiar with testimony in a previous court case concerning efforts by a defense attorney to question -- raise questions with a witness as to whether or not you had told them that your office or you would not approve a search warrant or an affidavit in support of a search warrant unless it contemplated a dynamic entry?

MR. JOHNSTON: I have and it is a gross mischaracterization of anything I said.

REP. BARR: You are familiar with that in the proceedings?

MR. JOHNSTON: Yes, sir, I heard it during the trial, yes, sir.

REP. BARR: Would it be fair to say, Mr. Johnston, that the purpose of an investigation in support of a potential prosecution involves
an effort to see that justice is done?

MR. JOHNSTON: Absolutely.

REP. BARR: Would you share with me a concern that federal employees, whether they are involved in law enforcement or non-law enforcement activities, if they violate the law or engage in wrongdoing that they should be prosecuted and brought to justice?

MR. JOHNSTON: Absolutely.

REP. BARR: And would you also agree with me that an effort to do so through an internal -- that is, within the government investigation ought to be a search for the truth?

MR. JOHNSTON: I think any investigation ought to be a search for the truth or it is not much of an investigation.

REP. BARR: Certainly one involving allegations of wrongdoing on the part of officials sworn to uphold the law?

MR. JOHNSTON: Yes, sir.

REP. BARR: With that in mind, then, I would ask you would it be appropriate in an investigation of alleged wrongdoing by federal officials that the government deliberately and explicitly direct that evidence not be gathered, that witnesses not be interviewed, that no record of interviews be kept, that the passage of time, hopefully, will cause witnesses' memories to dim, would that be a fair search for the truth or would that be more in the nature of damage control or a coverup?

MR. JOHNSTON: What you are describing doesn't sound like -- and I don't know if you are asking that as a hypothetical with reference to this case, sir?

REP. BARR: It is not hypothetical; I am going to show you some documents that establish it is not hypothetical. If I could have a clerk. If you would please, Mr. Johnson, these are three documents which were contained in the documents made available to this body by virtue of the subpoenas. One is a memo from Robert McNamara to John Simpson and others, Treasury Department, dated 14 April 1993, subject preliminary investigative plan. It says that this is law enforcement sensitive and it involves an investigation of ATF. And it states on page 2, "DOJ does not want Treasury to conduct any interviews or have discussions with any of the
participants who may be potential witnesses." Then later in that same subparagraph it talks about, "while we may be able to wait for some of them, witnesses, to have testified in the criminal trial, the passage of time will dim memories." Then later on, it states at the very bottom of page 2, "the prosecutors are concerned that anything negative, even preliminary, could be grist for the defense mill." And that document goes on. Another of the documents that you have before you is another Treasury Department document, this one from Ron Noble, Assistant Secretary for Enforcement, dated September 17, 1993. And it reflects an interview that took place on March 1, 1993, and I quote, "ATF initiates a shooting review." And then it goes on, "Troy tells review they immediately determined that these stories did not add up," that is interviews with Rodriguez, Maston, Conackie, Cavanaugh, Sarabyn. Then it says, "Johnston at this point advised Hartnett to stop the ATF shooting review because ATF was creating Brady material. Because Conackie had not yet been interviewed, Johnston authorized that interview but no notes were created." A third document which you have before you is another Department of Justice document dated April 9, 1993, again from Robert McNamara to Ron Noble. While the subject matter at the beginning of that document has to do with Waco press release, in the middle of it, it says, "Justice prosecutors in Washington and in Waco said that any words which could be interpreted as being critical of ATF must be avoided since it would play into the defense attorneys' hands and aid the defense attorneys in making ATF the issue." And then that document goes on. There are some other documents that I have before me and I will make these available. These are not as clear as these typewritten documents. They are notes that, again, were furnished to us pursuant to subpoena and if I could have a clerk deliver those to Mr. Johnston. One reads as follows, and this is document number 00014137. It says, "T Rangers," perhaps for Texas Rangers, "Ray Yon does not want them, Conackie, Phil, Re interviewed because John does not want any more exculpatory statements generated." The other one I think that we have already dealt with in previous testimony had to do with Mr. Yon advising Ron Noble not to open an envelope. And the final one here involves, again and I apologize for the lack of clarity but we have to deal with what we have, it again involves some handwritten notes. The first word at the top of the page looks like Leroy and it says, "Statements from agents," a- g-t-s, I presume that means agents, "should they go to USA," which I presume is United States Attorney, "or us, do they want us to create new," and then there is a blank and then it concludes by saying, "asking questions to which would require us to create new documents." Parenthetically it says, "exculpatory." These documents, to me, Mr. Johnston,
raise very troubling questions about what was going on here. We
heard at the very beginning today an article here in the paper
talking about damage control and this is dated today, July 19, and
I have some very serious concerns here that this started a long
time ago, and I have a background as a prosecutor and I would
presume that these sorts of memos, and I know you didn't generate
them, at least it doesn't appear that you did, they came from
another lawyer at the Department of Justice, Mr. McNamara, I
believe, and I don't know who wrote the handwritten notes, but
these are documents that were furnished by the government,
presumably generated by the government as part of an investigation
to determine, I suppose, among other things, what went wrong and
what agents might have done wrong. I mean, we know there were
things done wrong and that agents were terminated because of that,
because of misstatements, because of misleading activities. Was
this -- I mean, what is going on here?

MR. JOHNSTON: I cannot speak to the references to Ray and Leroy
Yon. They were here and it appears there are references to them
and exculpatory matters. I was not concerned about exculpatory
matters. The truth is the truth. I can speak to the note that has
my name in it which talks about Hartnett and the shooting review.
The typical protocol with ATF, my understanding is, is that after
an incident, a shooting incident occurs, a shooting review team is
created, sometimes out of Washington, sometimes elsewhere. They
normally go down and interview the agents, they -- I don't know if
it is normally recorded or not but at least notes are taken. That
process started. There were at least a couple of -- there were
some interviews. I don't know how many. This was in early March, I
believe. It was fairly soon after the incident. ATF began --
immmediately received a great deal of criticism for what they had
done and it became obvious, at least to me, that ATF probably
should not investigate ATF as far as the criminal case goes and I
don't have the authority to direct ATF to do something but I did
talk to I think Mr. Hartnett, I'm not sure, he can state whether or
not, and told him that in line with our hope or at that point
maybe the fact that the Texas Rangers have agreed to investigate
this case, let them investigate it, please. Because for ATF to
interrogate ATF with the built-in bias and suspicion that already
existed, I thought would be not healthy. I had no reason to think
ATF would, in their own interviews cover something up but there
were a lot of people that did. And the Texas Rangers, I believe,
would be an objective, qualified body to investigate it and, yes,
sir, I asked the Rangers to do the investigation all in all. Now,
for ATF to have come in and had a shooting review team member
interview someone and have the Ranger come in three minutes behind
and do the same thing, I thought was very imprudent. The Rangers, I believed, could ask questions, get straight answers and develop the truth of what happened. And, may I add, in terms of the timing of it, there is some feel you have alleged, on someone's part, maybe mine, that I want people's memories to dim. In fact, I asked the Rangers to -- I asked the Waco Police Department the night this happened to begin interviewing ATF agents before their memories dimmed. Waco police detectives, I could name two or three, at my request went to the Hillcrest Hospital in Waco and taped interviews with agents while they were still on codeine and so forth and the Rangers I asked to, as quickly as I could, get interviewing and they did, sir, and they were all audio taped and all made available. And there were some exculpatory --

REP. BARR: The reference to memories being dimmed was contained in this memo by Mr. McNamara and it would be very interesting to ask him some of these questions. But in terms of your prosecutorial background, which from everything I can tell is exemplary, why would -- why would the federal government first of all be committing things like this to writing but, more importantly, why would they be deliberately directing that in terms of an internal investigation to uncover potential wrongdoing, why would they be explicitly directing that evidence not be accumulated, that interviews not be conducted, that when there are perhaps there ought not to be any notes taken. I mean, why would that happen? And let me also say, I know as a prosecutor, Brady material can sometimes be a pain in the neck to deal with in court but we have mechanisms for it. But it seems to me that the government was trying to cover something up here.

MR. JOHNSTON: Well, I sure wasn't. In fact, I was trying to avoid the question of a coverup. If ATF had done this investigation themselves, as I say, I have no reason to think they would have coached their own agents or would have suggested answers to their agents, but I thought it would have been a real easy thing to criticize and quite objectively, because ATF was under attack so strongly, they may have bonded together in interviews. I don't know. I don't think they would have done it intentionally but it was extremely important to have objectivity. My desire for the Rangers do it was to seek the truth in the most unintimidating circumstance possible. In other words, so that the Rangers could ask ATF agents, one on one, which they did, audio taped, everything that happened and I felt the Rangers -- the ATF agents would be comfortable talking to the rangers; whereas, they may not be comfortable talking to ATF supervisors and a Treasury review --

(Inaudible.)
MR. JOHNSTON: Okay, I will try to quickly finish the answer, sir, Mr. Chairman. Because there was conflict within ATF by this time, a lot of agents at the staging area felt the element of surprise had been lost, there was a lot of conflict. The shooting review teams are often comprised of people involved in supervisory capacities. There was conflict between line agents and supervisors and I felt to give it the best chance of being a truthful interview of each agent, the Rangers should do it, sir. And as to Brady, I am not afraid of Brady. As to exculpatory matters, I am not afraid of exculpatory matters and was not.

REP. BARR: Your sentiments do not seem reflected at all in these documents.

MR. JOHNSTON: I certainly didn't create them, sir.

REP. BARR: These certainly will be looked into further. I thank the Chairman and I thank Mr. Johnston.

REP. ZELIFF: Thank you. I think what we are going to -- anybody know how long this vote is going to be? One 15-minute vote? Okay, we are going to recess for 15 minutes. We have a vote and we will be right back. Thank you. (Recess.)

REP. ZELIFF: The committees will come to order. The Chair recognizes Mr. Schumer from New York for 15 minutes.

REP. SCHUMER: Thank you, Mr. Chairman. I want to thank all the witnesses for being here. I have a whole series of questions, but I would like to make one point first. I am sorry most of my colleagues on the other side aren't here. We have heard a lot of talk about faulty warrants, search warrants, and you know that it might be some "i" might not have been dotted, some "t" might not have been crossed. If I am not mistaken, these are the same folks, my colleagues to the right here, who voted to eliminate the need for search warrants with the good faith exception to the exclusionary rule. Now I think that is -- you know, I didn't support that. I can see an argument. But it does strike me as a little strange that just a few months ago people voted that there should be good faith. No one doubts the good faith of the people here, and yet here we are making a huge fuss about warrants not being perfect. It is the topsy-turvy nature of this hearing altogether, it is my belief that, as I said in my opening statement, that this idea of moral equivalents that, well, here we have Koresh and where we have ATF and FBI, and they are sort of
the same, they have each made some mistakes, maybe ATF is the villain, or FBI is the villain, and Koresh is a misunderstood guy is going to lead the other side into trouble throughout these hearings if that is their view, and it seems to me that is in many ways. Now I would like to ask first Mr. Aguilera some questions. I want to focus on the warrant. First of all, Mr. Aguilera, how many warrants have you put together in your career as an ATF investigator, approximately?

MR. AGUILERA: Approximately 30 or more.

REP. SCHUMER: 30. Have any ever been thrown out?

MR. AGUILERA: No, sir.

REP. SCHUMER: So you have had a 100 percent record in putting together decent warrants?

MR. AGUILERA: Yes, sir.

REP. SCHUMER: Warrants at least that met the tests that courts impose?

MR. AGUILERA: Yes, sir.

REP. SCHUMER: Thank you. Let me ask you this, what made you initiate the investigation of the possible manufacture of machine guns and explosive devices by Koresh and other members of the Davidians in the compound in Waco, and from whom did you receive the information, what got you into this is the vernacular question?

MR. AGUILERA: I received the information from Lieutenant Gene Barber from the McLennan County Sheriff’s Department.

REP. SCHUMER: This didn't come out of your head or some higher up in Washington, or anything like that. This came from local law enforcement?

MR. AGUILERA: Yes, sir. That's correct.

REP. SCHUMER: And they don't call you very often to do something like this, do they?

MR. AGUILERA: No, sir.
REP. SCHUMER: This was because of the extreme nature of what Mr. Koresh was doing?

MR. AGUILERA: That's correct.

REP. SCHUMER: Okay. In your experiences, do people generally order cases and cases of grenade casings and then order the metal parts and the -- what's it called -- nitrate, no it makes aluminum nitrate, I guess hydrogen nitrate or ammonium nitrate.

MR. AGUILERA: Potassium nitrate.

REP. SCHUMER: Potassium nitrate, thank you. Do they do that -- I mean, do they do that unless usually they have some kind of bad purpose in mind?

MR. AGUILERA: No, sir, not usually.

REP. SCHUMER: You don't need, just to clarify for the record, you don't need ammonium nitrate or magnesium or aluminum powder to help a paperweight?

MR. AGUILERA: No, sir.

REP. SCHUMER: No, the casing alone might suffice for the paperweight. I thought so. Let me -- even Mr. Zeliff is smiling at that question. Mr. Barr is not here, I wanted him to hear it, too. But, in any case, okay, let me -- I am on a roll, right. Well, it is not hard to be on a roll when the facts are on your side. In any case, let me ask you, other than arms dealers -- we saw one of the arms dealers -- who else did you interview in an effort to find out if the Davidians possessed or were manufacturing illegal weapons, and what did you learn?

MR. AGUILERA: I interviewed numerous former Davidian members, and I obtained --

REP. SCHUMER: I am interested in the neighbor. Tell us a little about the neighbor since we had wanted him to come testify, Mr. Survenka, if I am pronouncing his name correctly.

MR. AGUILERA: Yes, sir, Mr. Survenka. He is not allowed, so we will have to rely on your testimony about this.

MR. AGUILERA: Yes, sir. I initially received the information from Gene Barber, who was told by Mr. Survenka, that he had heard
machine gun fire throughout the evenings and, thereafter, I personally interviewed Mr. Survenka who told me the same thing.

REP. SCHUMER: Okay, thank you, Mr. Aguilera. At least I think the case has been made overwhelmingly that you met the appropriate standard in this warrant, and that we are getting some crocodile tears about it. My next questions come from Mr. Johnston, who, I must say, has as reputation of being a fine prosecutor. How many years have you been a prosecutor?

MR. JOHNSTON: A little over ten years, eight years in the Federal system.

REP. SCHUMER: How many search warrants have you reviewed?

MR. JOHNSTON: Several hundred.

REP. SCHUMER: Did you feel that Special Agent Aguilera had done a decent, a good job on the investigation of violations in the firearms law at Davidian when you saw the warrant?

MR. JOHNSTON: I felt he had done a very good job, and the affidavit, itself, while he gave the information and drafted it, it was worked on by Assistant U.S. Attorneys, including me, and there has been a lot of talk today about the sexual abuse being in the affidavit--

REP. SCHUMER: Yes, I was going to ask you that.

MR. JOHNSTON: That was my call.

REP. SCHUMER: And why did you put it in there?

MR. JOHNSTON: For a number of reasons, primarily a woman named Joyce Sparks had given information--

REP. SCHUMER: Yes, we have heard about her. She was interviewed by a member of the Waco Committee team named Ms. Haga.

MR. JOHNSTON: There was quite a bit of information, I think a page or more, about Joyce Sparks, and the information she had received. In and of itself, it didn't say they had machine guns, but it demonstrated that they had, apparently had, weapons. There was some threatening discussion by Koresh involving Ms. Sparks. Further, there was evidence of a buried school bus that may act as a shooting range. At any rate, to explain to the magistrate why
Ms. Sparks was there, I made the decision to include in there why she was there. She was there to investigate allegations of sexual abuse of children, and the allegations of sexual abuse, in my mind, were referenced generally in the affidavit. Had I wanted to --

REP. SCHUMER: I am sorry, I don't mean to hurry you up, but my ten minutes and I have a lot of other questions.

MR. JOHNSTON: Had I wanted to prejudice the affidavit and the warrant, I would have put it -- I knew Kiri Jewell's story before the affidavit was drafted, and I would have put in all the details, the gory details about how he -- what he did to her. I didn't want to prejudice the magistrate, but I did want to put the context of Ms. Sparks' visit. It was put in there to show why she was there and that she was there legitimately. There was evidence of sexual abuse. She didn't drop out of the sky. She had a good reason to be there.

REP. SCHUMER: Of course, and I think we haven't been -- I mean, it has been pretty clear the warrant is okay. So I am not going to bother you with many more questions just reiterating the fact, defense lawyers, very capable, didn't challenge and, furthermore, we found, and I will get to that with Mr. Owen, we actually found violations of law, you did, on the compound. But just one other quick answer. You also found some other things. I think some of those are the books that you have next to you. Could you just briefly, if you could, Mr. Johnston, explain what the -- or let me ask you, and then you can corroborate, as I understand it, those books explain how to make bombs and things like that, and they were found on the compound?

MR. JOHNSTON: These books were ordered and sent to the Davidians. They, in and of themselves, they might just be interesting reading, but they go with the materials they had. This one, which they had, these were introduced at trial, Congressman.

REP. SCHUMER: Improved land mines, it says.

MR. JOHNSTON: Improvised land mines, their employment and destructive capabilities. CIA field expedient methods for explosive preparation.

REP. SCHUMER: Okay, et cetera, et cetera. We will submit for the record all of the names. Those weren't being used as paperweights, were they, when you arrived, when you saw them?
MR. JOHNSTON: The things they had fit into the talk in the books.

REP. SCHUMER: Thank you. Okay, Mr. Owen, and again I apologize, all of these witnesses have put lots of their lives into this case, and it is sort of unfair to rush through, but I have so many points I want to make, I have to, and Mr. Johnston, I think you have done an excellent job on this case, and we very much appreciate it. Mr. Owen, would it be fair to say, and don't be modest, that you are an expert on firearms?

MR. OWEN: Yes, sir. I have been recognized as an expert.

REP. SCHUMER: Okay. Here is my question, you were on the scene, you identified guns from the compound. Could you tell us briefly about that?

MR. OWEN: I was assigned to assist both the FBI and the Texas Rangers at the evidence collection point.

REP. SCHUMER: This is how many days after the--

MR. OWEN: This was the day the search began. It was several days after the fire.

REP. SCHUMER: Got it. Could you identify any of those weapons that you actually saw at the compound?

MR. OWEN: Yes, sir. In fact, the representative of the Texas Rangers has several weapons.

REP. SCHUMER: They happen to have them here. Good. Could we see--could one of the Rangers please show us one of the illegal weapons that were found at the compound, the actual weapon is here. You are from the Rangers, sir, we thank you for your help.

MR. MILLER: I am Sergeant Jim Miller of the Rangers.

REP. SCHUMER: Thank you, Sergeant. Could you just hold that up? Now, Mr. Owen, do you have to go over there and examine them, or is it sufficient for you to see from here, are those weapons that--could you name what they were? Could you hold that one up, please, sir? Stand up please.

MR. OWEN: I need to see it a little bit closer.
REP. SCHUMER: Go over, please. And could the other gentleman just stand up so the committee can get some idea. Now that one is obviously charred. Can you just tell us what these were, and if you found them at the compound?

MR. OWEN: This was a converted AR-15 type rifle manufactured by the --

REP. SCHUMER: Converted means being made into an automatic, I presume?

MR. OWEN: It gives me every indication it has been modified due to the presence of a pivot pin hole that mounts an M-16 automatic seer. The barrel has been modified by drilling holes through the sides of it. A copper wall pad is wrapped around the barrel with an outer casing. This is very typical of sound suppressor or silencer construction.

REP. SCHUMER: Thank you. And the other one, just briefly, just let me ask you and you can answer, is that a weapon illegal that you found at the compound?

MR. OWEN: This is an AK-47 type rifle that has been converted to permit full automatic fire.

REP. SCHUMER: Making it illegal?

MR. OWEN: Yes, sir.

REP. SCHUMER: Thank you, Mr. Owen. Mr. Aguilera, this is what you were afraid that you might find, I guess, when you put the warrant together?

MR. AGUILERA: Yes, sir.

REP. SCHUMER: Thank you. My final questions are for Dr. Perry, who -- Dr. Perry, you interviewed the 21 children released from the compound during the standoff. Based on your team's interviews, what type of lifestyle were the children exposed to and how healthy was this? Did the children understand who their families were? I am going to let you finish up, so I want to ask these quickly.

MR. PERRY: We worked extensively. We didn't just interview them. We basically lived with these kids for two months. We had a large team of experts with much more expertise than the religious and
the social apologists who have tried to make this sound like it was a benign religious community. I know of no religious sect that practices grooming children from the age of four and five to be sex objects of the leader. We basically found --

REP. SCHUMER: It almost defiles the name of calling it a religion.

MR. PERRY: Well, it actually is, I think, for many people who are practicing Christians, it is very offensive to suggest that engaging in sex with children is a legitimate part of our belief system.

REP. SCHUMER: And how about discipline, what did you find about that?

MR. PERRY: We found that the kids were inappropriately and excessively disciplined, physical discipline that was clearly abusive. We found a whole variety of other practices which I have described in my statement and the appendices which I would like to have entered into the record, please.

REP. SCHUMER: Without -- I can't do that. Can we enter that?

REP. ZELIFF: Yes.

MR. PERRY: What we found was, and I think that we can't really be any more -- our conclusions were very independent of the very compelling story of Kiri Jewell. We received -- we came to a very similar understanding of the belief system, the apocalyptic views, the sense that there was a willingness to engage in an abstract suicide, completely independent of any information from Kiri Jewell.

REP. SCHUMER: Two other questions, my colleague Ms. Slaughter, in asking both Kiri and Mr. Thibideaux questions as to things about paddling so that the bottoms were black and blue of very, very young children. I think eight or nine months was mentioned. Did you find that to be the case?

MR. PERRY: Kids reported that, and we found two of the children, and all of the children, actually, very openly spoke about being paddled with the helper. Two of the children had physical lesions at the time of release after the shoot out where they had -- initially, they would not disclose what that was, later on they told us that was from being paddled with the helper.
REP. SCHUMER: Right. And, second, the instance that was mentioned about putting a child, I think it was, in a garage without --

MR. PERRY: We heard that story from the children. We also hear many other instances of withholding food, of physical isolation, of a whole variety of inappropriate --

REP. SCHUMER: And you heard this directly from the children.

MR. PERRY: We heard this directly from the children.

REP. SCHUMER: So maybe Mr. Thibideaux didn't talk to enough people there.

MR. PERRY: Well, I think that one thing that is very important to remember is that the men in the compound were kept and lived separately from the women and children. So Mr. Thibideaux's ability to make comments about the lives of the children, I think, is quite limited.

REP. SCHUMER: Thank you, Mr. Perry. I heard even you did a comparison of the children's heartbeats?

MR. PERRY: Yes, we did. We were -- one of the things that has been commented on in these hearings and by many people who do not understand what happens to traumatized kids is that just because they are compliant and they behave well that there is the assumption that they are mentally healthy. I think that there is no way to predict in this room, because everybody has been essentially compliant, which one of us is depressed, which person is mourning the loss of a loved one, and so forth. Children are no different than adults in their ability to hide their inner feelings. When we examined these children and looked at their base line heart rates over the entire period of the two months that they -- between the original shoot out and the fire, we found that they were abnormally elevated, and this elevation was consistent with an internal sense of extreme distress which was, we believe, was from a variety of --

REP. ZELIFF: We let you go over now for two minutes.

REP. SCHUMER: You are very generous. I was just wondering if the children could be characterized as traumatized?

MR. PERRY: Absolutely.
REP. SCHUMER: Thank you.

REP. ZELIFF: Mr. Ehrlich from Maryland for 15 minutes.

REP. EHRlich: Thank you, Mr. Chairman. I want to thank everybody for appearing here today. Before I begin my questions, I would just like to make a few points. I think they are important to make. The purpose of my questions is not to choose sides, certainly, it is not to hold up anything. I am bad on photo ops. It is certainly not my intent to put anyone on trial with respect to their careers, nor is it my intent to put anything on trial, including the NRA, including the Contract with America. I am just keeping a list today, the BATF, the militias, the assault weapons ban, gun control generally. It is not even my intent to put David Koresh on trial. I am convinced David Koresh was a bad guy. He had sex with kids. He is a real bad guy. I am just a freshman from Maryland, and I represent a couple hundred thousand people, and a fair percentage of those people have some legitimate questions about the way this whole thing was handled, and that is where I am coming from. I know it is Washington. It is fun to spend -- I am interested in some facts, and I have some very specific questions for you all, and I would really appreciate your answers today. My first question and, Mr. Johnston, you have touched on this with respect to a question from Mr. Barr, and I wanted to develop it further. I believe you were asked whether or not you had stated that during planning meetings with ATF you would not support the search warrant for the Davidian Center unless the dynamic entry was utilized. I believe you disagreed with that testimony. I believe that testimony came from the trial. Can you elaborate further, please?

MR. JOHNSTON: Yes. I disagree with it. It wasn't testimony at trial. It was an allegation by a defense attorney, and it was something that came up in court having to do with -- it was out of the presence of the jury. At any rate, it has been an allegation, there have been a number of allegations against me like that. The other day someone said I suggested the call an airstrike on the compound and I put Attila the Hun to shame, and that is just as untrue, of course. But, at any rate, I don't know about Attila the Hun. At any rate, I was not involved in planning meetings with ATF as to the raid, only into the preparation of the search warrant. I did not tell them what kind of raid to do. I didn't know exactly what kind of raid they were going to do. I did know it involved cattle trailers, and I did know that it was some kind of a ruse they were going to try to pull, you know, pull in the disguise of cattle trailers, but I didn't know all the details,
and that wasn't my function.

REP. EHRlich: Thank you for that. I asked a very specific question and I got a very specific answer, and I appreciate it very much. Secondly, with respect to the whole military involvement, and Mr. Schumer developed this line of questioning, you would all agree, I believe, that aircrafts from the National Guard, the use of flash bangs, the MP-5 rifles, et cetera, they are not specific to military type missions; would that been generally agreed upon? Does anybody want to answer that?

MR. : Yes, sir, that's correct. They are not specific to military application.

REP. EHRlich: Now, sir, you would agree, however, that the use of Bradley fighting vehicles would be specific to a military mission, correct?

MR. : My knowledge of the Bradley is a military vehicle, it is a combat vehicle.

REP. EHRlich: And, sir, at some point in time, ATF made a request that was subsequently withdrawn with respect to, I believe, either seven or ten, I have read different versions of it, requests for seven or ten Bradley fighting vehicles with respect to a proposed raid; is that correct?

MR. : I have absolutely no knowledge of that.

REP. EHRlich: Does anyone on the panel have any knowledge of that?

MR. SARABYN: I think there was an original request in our early planning for what we were going to do. We were talking about doing a siege and, at that time, there was a request that went forward.

REP. EHRlich: Sir, let me just follow up. Mr. Sarabyn?

MR. SARABYN: Yes.

REP. EHRlich: It is my understanding that there is no formal standard in law by which the military defines a drug nexus. It is my understanding that pursuant to law and regulations promulgated by the Department of Defense or the Army that there needs to be a drug nexus allegation prior to military involvement; is that correct?
MR. SARABYN: It is my understanding, and you will have to ask the military which will be on later, that at the time there was a nexus request. Now they can supply certain things. If there is a nexus, then it depends on who would pay for it.

REP. EHRLICH: Right, because if you get the military -- if you prove the nexus, you get the military and it is free, correct? The military involvement is free?

MR. SARABYN: That is correct.

REP. EHRLICH: Now I guess with respect to Mr. Schumer's line of questioning, I am confused because I understood the answers he received from the subsequent panel about -- although he did not get into the Bradley fighting vehicles, the bottom line to his line of questioning was, no military involvement, period. Yet I read in today's Washington Post, Ron Noble, Assistant Secretary of the Treasury, made this statement, the kind of support that the ATF received from the military in this case was the kind of support you want them to receive, lives were saved because of the assistance they received from the military. Now I realize Mr. Noble is not here, but does anyone possibly know what assistance he is referring to?

MR. : Yes, sir. I believe the assistance he is referring to there is probably the medical -- emergency medical training that was provided by Special Forces to ATF agents, to ATF medics in advance of the raid. We did document in the report acts of sheer heroism by the medics at ATF at the raid. They were trained by Army medics in battlefield like lifesaving techniques, and certainly lives were saved as a result of that.

REP. EHRLICH: Sir, your answer is that, to your understanding, and I realize he is not here, you are only suggesting a possible answer, only refer to the military training -- I am sorry, the medical training, and not training with respect to training for the actual raid on the compound.

MR. : I obviously can't answer as to what Mr. Noble had in mind when he made that quote. The lifesaving assistance provided by the military that I am familiar with is the emergency medical assistance that was provided to ATF medics.

REP. EHRLICH: Thank you. Let me switch my line of inquiry here. It appears from everything that we have been informed concerning this raid that ATF at some point lost the element of secrecy.
Koresh himself visited the -- and this is Mr. Thibideaux's testimony from the earlier panel, visited his next door neighbors and stated that he believed the, "college students" were too old and had new cars, were probably FBI agents. Koresh complained to the local sheriff the UPS delivery man was an undercover police officer. He did not appreciate being investigated. Davidians visited their new neighbors. They were not treated as new neighbors would be expected to have been treated, et cetera. My question really is, was there any thought prior to conducting this raid that the element of secrecy had been lost? The second part of that question is, if the answer is yes, why was the warrant attempted to be served according to the procedure which occurred? I will let anyone answer that question.

MR. : Sir, I would like to have the opportunity to answer that question, and I certainly think it is appropriate if the representative from ATF does as well. Those were really the central questions that we addressed in the Treasury review two years ago. A good portion of our report was devoted to examining those questions and offering answers.

REP. : I will come back to you. I will come back to you. And I understand your role here. I would like the ATF agents present to answer the question and then I will come back to you.

MR. : With respect to the element of surprise.

REP. : Yes, sir.

MR. : On February the 1st, a decision was made -- and I'm sad to say I was a part of that decision -- to entrust the news media at the Waco Tribune Herald with certain information about our investigation. And that was because they continued to make contact with folks in the U.S. Attorney's Office and other law enforcement agencies with the threat to break a series of articles about the Branch Davidians that they had been working on for a long period of time. We met with a Barbara Elmore who, I believe, was a managing editor at that time -- when I say "we," Mr. Sarabyn and I -- and we asked if we could speak with her off the record, and she agreed. We explained to her that we had a very sensitive investigation going on, and that an untimely breaking of the news about the Branch Davidians would certainly hamper the success of any search warrant that would come about, and could, and probably would, put the safety, if not the lives of both Federal agents and those occupants of the compound, into jeopardy. Ms. Elmore said in response that she wasn't going to make any promises. That she
would talk to her supervisors at the paper and would let us know at a later time. Not to belabor this or take it too far, but on the Wednesday prior to the warrant being executed in the afternoon at about 3:00, Mr. Hanowski met with members of the Waco news media, newspaper specifically, at their office. And as he began his statement of appreciation for his cooperation, he was immediately interrupted by one of the supervisors there, and was told -- the newsman said: I want it clearly understood that this newspaper is not cooperating with law enforcement in any shape or form. Our search was planned for March the 1st. We were notified after that meeting with Mr. Hanowski and the news media that they intended to break their lead article on February 28th, Sunday. We set in motion activities to back the date of the warrant execution to Sunday hoping that we could at least execute the warrant on the same day that the lead article came out, and then we were notified, after having made those arrangements, that the newspaper decided they would break their lead article on Saturday, which they did. When the raid team arrived at the compound, there was news media personnel all over the area already, one of whom had been contacted by David Jones, and he, the newsman, tells David Jones, you better get out of here, ATF is fixing to raid this place. Now, when we talk about element of surprise, is the element of surprise lost when the first article comes out, or is the element of surprise lost and we were unaware that the news person had told David Jones that until afterwards --

REP. : If it could cut you off for a second. I realize we are short for time. Isn't it your testimony that the press awaited you all when you arrived at the compound to conduct the raid?

MR. : Yes, sir.

REP. : Did that give you any hint that the element of secrecy may have been compromised?

MR. : We did not recognize them as the press. As the raid team was coming in, they didn't recognize them as the press as the time.

REP. : Let me ask you this question. Besides the formal -- besides the formal avenue of the press, did any of the other testimony produced here today or any other facts come to your attention that would have raised a question in your mind as to whether the element of secrecy had been compromised at any point prior to the raid.

MR. : When we talk about the element of secrecy as opposed to the
element of surprise, the element of secrecy about our raid we didn't feel was compromised at that point.

REP. : So your testimony is that you all believed -- and I am just trying to get your viewpoint here.

MR. : Yes, sir.

REP. : Prior to that raid, ten seconds prior to the beginning of that raid, you did not feel as though the element of secrecy or surprise had been comprised; is that correct?

MR. : No. That is not correct, sir. Ten seconds prior to the raid, I felt like the secrecy was lost at that point.

REP. ZELIFF:: Your time has expired.

REP. : Thank you. I will have an opportunity to follow-up. Thank you, Mr. Chairman.

REP. ZELIFF:: We are going to have to recess. I think there are two votes. If you would be patient, we appreciate that. We will be back five minutes after the second vote. (Recess.)

MR. : (In progress) -- methamphetamine lab facility to them. There was -- the person telling us the story said they never saw that abandonment take place. We checked with the Sheriff's office. They had never received a methamphetamine lab from anyone from the compound and that is how that came about.

REP. BREWSTER: Who was first contacted by the Deputy Sheriff? You, Mr. Aguilera?

MR. AGUILERA: Yes, sir, I was.

REP. BREWSTER: Is it common to be contacted by a Deputy Sheriff as opposed to the Sheriff or Under-Sheriff?

MR. AGUILERA: Well, actually, sir the information was given to me on paper by Special Agent Charles Meyer, out of the Austin office.

REP. BREWSTER: Okay.

MR. AGUILERA: Who in turn received the information from Lieutenant Barber.
REP. BREWSTER: But is it common -- have you ever been contacted by a Deputy Sheriff as opposed to the Sheriff?

MR. AGUILERA: Sure. Yes, sir. That is common.

REP. BREWSTER: I guess I am thinking back to Oklahoma where we had a Sheriff that a Deputy attempted to frame with the FBI a couple years ago. At any rate, were all of you involved or any of you involved in the decision on dynamic entry? You are the top-ranking man, Mr. Hartnett, are you not?

MR. HARTNETT: Yes, sir. I was advised of it.

REP. BREWSTER: You were involved in the decision on dynamic entry?

MR. HARTNETT: I approved the plan which has been termed "dynamic entry." I really don't know a good definition for it.

REP. BREWSTER: Nor do I.

MR. HARTNETT: But the raid plan, yes, sir, I am the person who approved it.

REP. BREWSTER: What about the rest of you? Did you have any involvement in making -- helping make the decision on the way we addressed the problem there?

MR. : You're talking as far as the dynamic entry or -- yes, well, there was really a panel of several SACs, which are Special Agents in Charge, several Assistant Special Agents in Charge, several of our SRT team leaders which discussed the various options or whatever and came to a conclusion to do the dynamic entry.

REP. BREWSTER: I happen to be one who's convinced myself at least that Mr. Koresh was a bad guy. I am convinced that he had altered some weapons. From the testimony we've heard you certainly have to believe there were some child abuse cases and some others, but it is hard to under how you arrived at the decision of dynamic entry. Isn't it true that Mr. Koresh went to town on a fairly regular basis?

MR. : He had been there on several occasions and one thing that has been misunderstood I think for the last couple years is during this investigation we determined that at the compound machine guns were being manufactured and explosive devices. Our goal through this investigation was to execute a search warrant on that house
to obtain those illegal weapons. Other people were involved in the manufacture and possession of those. The arrest of Koresh was just a side issue. If we arrested him we still had to do the search warrant on the house. As you know, it turned out there was machine guns and hand -- that was our goal. We knew that machine guns were being manufactured. We had to get into there one way or another. If we arrested him off, we still had to do the search warrant, because a lot of people had felt, you know, the whole thing was to arrest David Koresh. That was not our goal.

REP. BREWSTER: Was there anyone else anywhere in the group that had the charisma, the leadership ability of a David Koresh to convince people who were engineers and lawyers to follow him in some of the crazy things that were done here?

MR. : There were several professional people in there but he was very charismatic and they followed him --

REP. BREWSTER: Was there any reason to believe that had you arrested him it would have not been fairly easy to do the rest of it?

MR. : Well, there's two things that could happen. If we arrested him, he could have turned into a martyr and then they would say they have taken our leader. Here we have all these machine guns and hand grenades. He has taught them for years -- you know, the time has come -- and, you know --

REP. BREWSTER: You could have lost a whole bunch of people?

MR. : Yes.

MR. : If I may, Mr. Brewster, another point I would like to make out here is that Koresh was observed outside of the compound on two occasions. One was I believe January 17th of '93 and the other February 24th of '93.

REP. BREWSTER: Which was what, three days, four days before the raid?

MR. : No, sir. That was 17th; this was maybe weeks before the raid.

REP. BREWSTER: I thought the raid was the 28th.

MR. : The 28th, February 28th.
REP. BREWSTER: I'm sorry, I thought you said February 24th.

MR. : I'm sorry, February 24th, yes, sir.

REP. BREWSTER: That's four days before.

MR. : Yes, sir -- I'm sorry, I made a mistake here, but we didn't actually obtain the warrant and a warrant wasn't issued until February 25th.

REP. BREWSTER: So you started planning this about six months ago, right, and actually the planning, the way I read it, started in December on the dynamic entry, the raid on the facility?

MR. : We started planning it in December but at that time we were planning for a siege. We were not planning to do a dynamic entry.

REP. BREWSTER: At what point did you determine to do the dynamic entry?

MR. : It was in January.

REP. BREWSTER: And you brought special response teams in, right?

MR. : Well, their team leaders came in and that's why I said we had these meetings for months that we went through and basically, you know, we weighed the options of the assault versus the siege, you know, and we got a lot of new information that kind of put us over the hump, but if we did a siege, I mean one thing, as you have heard some of the testimony today -- mass suicide. As we talked to everybody the day he was on the interviews we had our SRT team leaders go -- there was a big fear of everybody that there would be mass suicide. Secondly, you know, if we tried to do a siege we knew that there was machine guns in there. We knew that there's hand grenades that have a long time to prepare. In other words, by doing a dynamic entry they wouldn't have time to prepare. We knew that they had supplies of food and water that could last for a long time --

REP. BREWSTER: What is a long time?

MR. : I think they had MREs for three months and, you know, their own water well. We knew it would be a disruption to the community if you did that. It would be a long-term financial commitment. You know, Koresh was in control. If you do a siege, you know, he
calls the shots, you know. We were concerned about the sexual abuse, that this was going on and that would continue on. We were concerned about the destruction of evidence, you know, that if they made those machine guns, if they made those hand grenades and we said, hey, we are here as, you know, to do a search warrant, come out, and they don't come out, they could take them apart as quickly as they put them in.

REP. BREWSTER: Yes.

MR. : And as it turned out, every one of these things happened and that was one of the reasons we switched from the siege to the --

REP. BREWSTER: Ms. Thurman, when you have special response teams, isn't it generally in response to people being heavily armed that you generally bring them in?

MR. : When we would use those?

REP. BREWSTER: Yes.

MR. : We would use them in a high threat situation. They are very highly trained individuals and we use them as safety both for the people and for the agents because they --

REP. BREWSTER: They will arm themselves?

MR. : Pardon, sir?

REP. BREWSTER: Are the special response teams well armed themselves?

MR. : Yes, sir, they are.

REP. BREWSTER: What is their ordinary armament?

MR. : They would have, you know, their 9 millimeter standard gun and then an MP-5 or, you know, maybe a shotgun, depending on where they were going or what the specific, you know --

REP. BREWSTER: What we have heard then about some of the agents only having 9 millimeter sidearms is not correct?

MR. : No, some of them only had 9 millimeter. I mean they had the option. Each operation they kind of plan out what they think they'll need or whatever. Some that day we knew, you know, that
obviously there was women and children and there was some expression by some of the undercover agents that we may have to get in a fist-fight with some people or whatever so some of them were actually concerned that they didn't take a second gun that they actually had there because if they got into a fight they didn't want to be trying to hold one gun or whatever.

REP. BREWSTER: If you are going into a well-armed situation, why would you not arm them completely to the best of anything possible?

MR. : I mean there were so many things to consider here. There was women and children. You know, we knew that they were separated. We had, you know, teams divided in different areas to take care of that but, you know, you need to have, you know, the weapons that you need but we didn't feel they would be armed at that time where we would, you know --

REP. BREWSTER: If you had staged this at three in the morning, why wouldn't that have bee a better time for surprise than ten in the morning? The men and women were separated 24 hours a day.

MR. : There wasn't a lot of light inside the compound and normally we do execute our warrants first thing in the morning. We are talking about eight or ten agents going into a room or a house where maybe there's four or five people. We estimated that there were 75 people in there. We knew there was 100-plus members but they always, you know, came and left and there wasn't a solid number. We're sending 75 agents into a building and you get inside going in different directions, it's dark. One round goes off and, you know, we had a real concern that the women and children whatever -- we wouldn't see who shot where, whatever, and it could turn into a tragic incident.

REP. BREWSTER: The more I listen, the more I can't understand why David Koresh was not arrested outside. You used flash hand grenades at the start of it, correct?

MR. : There was no plan to just use them. When upstairs, which people have seen the video on TV, where there's the two rooms where they're going into, one of those rooms was David Koresh's bedroom. The other room was his armory where they had the machine guns, the hand grenades in there. They were going to look to see if anybody was in there. Before they can throw it they have to make sure there is nothing flammable. Then they throw it in and it's really just a distraction device. I mean it makes a loud
noise and it's a flash and the purpose of it is not to harm anybody or whatever but just to stun them for a second so you can get in and safety -- it's for their protection and for the agent's protection, not an offensive type weapon.

REP. BREWSTER: Mr. Hartnett, there is a rumor -- certainly it's unfounded -- that the publicity person or public relations person for ATF had released some kind of a press communication the night before to media around the country that something big was going to come down in Texas?

MR. HARTNETT: Yes, and we heard that, and the person -- I believe her name was Sharon Wheeler -- she's testified before committees and she just did not give any information out about Waco, Texas at all. She was in -- she was in Dallas and she called, called a reporter to ask if he was going to be in, or called two reporters -- I'm not quite sure, I don't recall -- and said are you going to be in, we're going to have something coming up in the next day or two. As I recall, that's how it came out. She never mentioned Waco.

REP. BREWSTER: Why did she do that?

MR. HARTNETT: She wanted to be able to get ahold of them if there was a story and they recovered these arms. Now this all came up after the fact that we heard this and it came out at hearings before.

REP. BREWSTER: Wouldn't there be ample time after they were recovered?

MR. HARTNETT: Oh, yes. I mean -- but what came out, it didn't come out the way, you know, she was accused of calling them and saying there is going to be a raid at Waco tomorrow and that is just not what occurred.

REP. BREWSTER: It's always easy to look at something in hindsight -- hindsight is 20/20 and foresight isn't nearly that good, but when you have had four Federal employees killed, 20 wounded and a large number of civilians that were killed in the process, I have got to think that you're looking forward to making some changes in the way that you would do things in the future. Have those changes been made to make sure that a Waco never happens again?

MR. HARTNETT: I'm retired now and --
REP. BREWSTER: You don't have to worry about that anymore then.

MR. HARTNETT: Well, I still worry about it.

REP. BREWSTER: I understand.

MR. HARTNETT: I still worry about it. I worry about it every day of my life. I think there are changes. I see things that happened at Waco that we should have done differently. I think those agents are, within ATF, are some of the best-equipped, best-trained, most professional law enforcement people in this country and always have been and I think always will be. I think that their dedication, you know, going in that day, they felt they were well-prepared and they felt they were doing the right thing and we need to correct the things that went wrong there and there were things that went wrong.

REP. BREWSTER: On the helicopters, it just occurred to me, that were flying that day, were they National Guard or were they Army?

MR. HARTNETT: National Guard.

REP. BREWSTER: Did the Governor give permission to use them or who had done that?

MR. HARTNETT: They come out of a J --


REP. BREWSTER: They were Texas National Guard?

MR. HARTNETT: Yes, sir.

REP. BREWSTER: Under the Governor's direction?

MR. HARTNETT: That's correct.

REP. BREWSTER: So the Governor had given permission to use them?

MR. HARTNETT: Yes, sir.

REP. BREWSTER: Okay. You mentioned too about the training of your forces, and I understand they are well-trained, yet do I understand that the Army spent three days or more working with them as well?
MR. HARTNETT: At Fort Hood. We had asked to use the facility down there so that everyone knew where they were going and the plan and the military actually gave advice on things that they saw that they felt that we should change or whatever, but it was not that we asked them "Come and give us training." It was we were borrowing their facility to use that, to have a mock-type situation so that there could be some training and everybody be familiar where everybody else was going during the raid.

REP. BREWSTER: And you had approximately 100 BATF personnel there?

MR. HARTNETT: I think pretty close to it, yes, sir.

MR. : I think it was like 80 actually down there at Fort Hood.

REP. BREWSTER: So you were expecting problems bringing that large a force in, is that correct?

MR. HARTNETT: I don't think we were preparing for any event. There was in the plan things that took -- it was so spread out, the compound, and so large, that we wanted to make sure that we could separate and get those guns separated before anybody could get to them. We wanted to make sure that we would get the men before they got to the compound --

REP. BREWSTER: When the element of surprise was lost, who made the decision to continue?

MR. HARTNETT: The Commander in charge of the raid.

REP. BREWSTER: And that was?

MR. HARTNETT: Well, I don't know if the Commander knew that he lost the element of surprise and that is Chuck Sarabyn here.

REP. BREWSTER: Did you know about the loss of the element of surprise, sir?

MR. SARABYN: First of all, as far as the element of surprise it's been an issue that has been also popped around in the newspaper or whatever for years and it appears that at some level there was an order given or someone told somebody, you know, not to go if you lost the element of surprise.

REP. BREWSTER: Let me see if I can understand this in my mind. Somebody goes up to the door, knocks on the door with a search
warrant in their hand. Is there someone else standing there with a weapon as well?

MR. SARABYN: In this particular incident?

REP. BREWSTER: Yes.

MR. SARABYN: I was not at the front door so I can't --

REP. BREWSTER: But somebody, somebody at the ATF goes to the front door, knocks on it with a search warrant in hand and says we are here to arrest David Koresh and search the building, am I correct?

MR. SARABYN: Well, they would say "to execute a search warrant," I believe.

REP. BREWSTER: And there is another guy standing here with a weapon and it's a guy by himself?

MR. SARABYN: That I don't know.

REP. : -- if you can kind of condense and bring it together quickly.

MR. HARTNETT: I have been told that as our people came up in front of the compound and were disembarking that David Koresh was standing in front of his front door and --

REP. BREWSTER: Outside?

MR. HARTNETT: Outside. By the door -- and that two different agents, I believe it was two, called Federal agents with a search warrant. He stepped back inside and the agent who was there in the front door or by the front door was wounded. They fired, just came right out and shot the agents. Now Mr. Johnston was there at the trial and heard all the testimony and could probably --

REP. BREWSTER: But those agents were armed themselves as well?

MR. HARTNETT: Yes, they were.

REP. BREWSTER: Thank you, Mr. Chairman.

REP. ZELIFF: Thank you. The gentleman from North Carolina, Mr. Heineman, for five minutes.
REP. HEINEMAN: Thank you, Mr. Chairman. I would like to continue this line of questioning but I see there that day two covers the planning of the raid. I will restrict myself to the intelligence gathering prior to that meeting where the raid was planned. I did read this book by Mr. Noble, the report of the Department of Treasury on the Waco incident, and of course he'll be here on the fourth or fifth day to answer questions but in that book on page 9 it indicates that the Treasury Department stated that they chose not to try to lure David Koresh away from the compound because intelligence reports "He rarely ventures off compound grounds." That is found on page 9, and certainly today we have heard conflicting testimony from someone, Mr. Thibideaux, from the compound, and I would like to address to Mr. Sarabyn or perhaps the agent himself as to when that house, that observation house was set up outside the compound.

MR. SARABYN: The house was started up in January and some on the conflicting reports as far as what you are hearing on how many times he was off, the surveillance at the beginning was for 24 hours and then it broke down to where they were just basically doing it from sunlight to late at night. Actually there are vehicles in there. The surveillance house actually I believe only saw him one time leave, as far as the agents observing him leave. There was cars going and coming. Obviously he could have been in a car that they didn't see it. There was also conversation with the undercover agent that, you know, he didn't go off the compound. He said he was getting paranoid about law enforcement or whatever, so the combination of the information we had at the time was that we only observed him the one time and what he had told the undercover agent, you know, we didn't feel that he was going off the compound.

REP. HEINEMAN: Who was in charge of that house?

MR. SARABYN: There were several agents there. Dale Lilton was actually to supervise the undercover agent and then he was under Earl and then Earl would report to me and the Dale would also call me with the information directly.

REP. HEINEMAN: Well, where did that flow of information terminate? Did that stay with you in the Waco area or did it go to --

MR. SARABYN: No, it would -- you know, after -- their reports would be put on an ATF Form 3270.2, which it would come through Earl and then it would come to me, and this was distributed to all the SACs, all the SACs, all these different SRT team members so
they got all the information and then any time that we had a plan as far as meeting in a group of 15 or 20 to discuss both the case and what we were going to do tactically Dale would come and represent, you know, all the undercover agents and give us a briefing on what was going on.

REP. HEINEMAN: What use did you make of the local agencies, either the Texas Rangers or the Sheriff's Department relative to intelligence?

MR. SARABYN: I spoke to DPS intelligence and obtained information, information that I already had and secured. I requested information through headquarters. Most of the information that I had or that they had I already had them provided with so there wasn't much they could give me other than what I had.

REP. HEINEMAN: Let me at this point I pretty much touched on what I wanted to touch on but the previous gentleman across the aisle took what I was going to ask but at this time I would like to yield the balance of my time to Mr. Barr to continue his line of questioning.

REP. BARR: I appreciate the gentleman from North Carolina. Mr. Johnston, following up just briefly on our line of questioning earlier and my concern over destruction of evidence or nonproduction of evidence, there apparently was a settlement agreement in the Wynowski case. Are you familiar with that?

MR. JOHNSTON: Yes.

REP. BARR: The reason I am asking is apparently the settlement documents provided for destruction of certain discovery files and I am wondering if you are aware of that.

MR. JOHNSTON: Wynowski had a, I guess a civil service claim?

REP. BARR: Right.

MR. JOHNSTON: I know nothing about that. I guess that's something that Treasury handled.

REP. BARR: Would that be unusual if there's a case handled not by the civil service but by its successor agency, the Merit System Protection Board, and as part of a settlement in this case, reinstatement with back pay, that documents would be destroyed, including in this case apparently or perhaps documents relating to
possible wrongdoing. Would that be something that would concern you as a Government attorney?

MR. JOHNSTON: If you are saying destroyed as in all in all destroyed, no copies, well, then that's obviously a concern because you don't have any -- there's no evidence so I don't -- I guess I have never heard of that process.

REP. BARR: I hadn't either but then again I haven't heard of the documents that I showed you earlier, but that would concern you as a prosecutor?

MR. JOHNSTON: Yes, sir.

REP. BARR: Okay, thank you. I appreciate the gentleman from North Carolina.

REP. ZELIFF: The gentleman's time has expired. The Chair recognizes Mr. Ehrlich, the Vice Chair of the Subcommittee for five minutes.

REP. EHRLICH: If we could direct -- I have five minutes. I would appreciate -- I'll try to frame my questions concisely and I would appreciate concise answers. Mr. Aguilera, did any person in a supervisory chain above you ever ask you to gather information with respect to the issue of arresting Koresh outside the compound?

MR. AGUILERA: The information -- I didn't -- they didn't request for me to obtain the information to try and arrest Koresh outside, no. No, sir.

REP. EHRLICH: Okay, now earlier today Mr. McMahon testified that you specifically declined an offer from Koresh over the telephone wherein he allegedly said come visit, I'll show you the guns. Is that a true statement of fact?

MR. AGUILERA: That's true. That's a true statement. However, the only reason I didn't want to talk to Koresh was because I had prior knowledge and information that Koresh had dealings with McMahon and I wanted to further check his records in order for me to find out whether or not Koresh was dealing without a license.

REP. EHRLICH: So you thought that offer was premature at the time, that's why you declined the offer?
MR. AGUILERA: Yes, sir. Yes, sir, it would have been nonproductive for my case, for my investigation.

REP. EHRlich: Thank you. Mr. Sarabyn, my question to you, sir, is did you ever have occasion to draft a memo wherein you suggest that Koresh be arrested outside the compound?

MR. SARABYN: I don't remember drafting a memo. I do know that we did consider it and tried two or three options to try to do that, but I don't remember drafting a memo.

REP. EHRlich: So your recollection is you did not actually draft a memo but is it your recollection -- I don't want to put words in your mouth but is it your recollection that you remember observing or --

MR. SARABYN: Well, we --

REP. EHRlich: -- reviewing a memo?

MR. SARABYN: We considered and actually tried to do a couple of things where we could arrest him off but I don't remember or recall preparing any memo.

REP. EHRlich: And there came a point in time where that option was rejected, correct?

MR. SARABYN: We actually, one of them was to go to the Health and Human Services where they would call him off and say, you know, we want to talk to you or whatever, and we went and talked to them and they said well, he doesn't show up for three or four days and we couldn't plan when and -- which I tried to explain earlier, no matter where or when we arrested we still had to do a search warrant on the compound and we knew that would involve a lot of people so like with the Health and -- they declined at AFTN but had we done that, you know, we couldn't have sat around with 100 agents for five days until he showed up because we still had to execute the search warrant on his house.

REP. EHRlich: Sir, is it fair to say that at some point in time you changed your mind with respect to the appropriateness of arresting Koresh outside the compound?

MR. SARABYN: Yes, I would say what I am talking, of our decisions, so there was a group here of about 15 or 20 people that would discuss this, you know, at various times, and yes, we did -- did
change. He was from -- the undercover and as Davey got information some of the people that had left the compound still had people on the compound or whatever, and the sense was that, you know, he was getting, you know, very paranoid and not trusting his own people or whatever.

REP. EHRLICH: Thank you. Mr. Hartnett, two questions real briefly. Is it your testimony, sir, that the element of surprise was lost prior to the raid on February 28th?

MR. HARTNETT: I have of course heard the element of surprise since the day after the raid.

REP. EHRLICH: Yes, sir.

MR. HARTNETT: Prior to that time I never heard the term "element of surprise." The -- whether or not that -- and Mr. Hanowski was the SAC in Houston and I have asked him many times since the raid did you feel the raid was compromised when you went in and he has said no to this day and I believe him.

REP. EHRLICH: Thank you, sir. Sir, earlier you testified that mistakes were made. In the remaining time that we have, and I realize it's very easy as has been repeated many times here tonight, it's very easy being a Monday morning quarterback, what would you have done differently in retrospect?

MR. HARTNETT: There was a -- when the undercover agent came out of the compound and met with -- well, I thought he was going to meet with Chuck Sarabyn. When I was briefed he was going to come out and let Chuck know the status after the Waco Trib had come out were they getting out guns, were they going to battle stations, that type of thing. At the time of the briefing I never asked the question as to how they were communicating. They communicated by phone. The most important conversation we had in this entire raid took place over the telephone between the undercover agent and Mr. Sarabyn. I didn't ask the question at the time the plan was given to me. If I had of or if I'd thought of it, that would never have happened. They would have met in person. They would have discussed what they saw. There would have been no communications gap between what the undercover agent saw and felt and what Chuck was thinking. That to me was a serious mistake and I didn't catch it at the time.

REP. EHRLICH: I know our time is up. Have you finished your answer, sir?
MR. HARTNETT: Yes, sir.

REP. EHRlich: Thank you.

REP. ZELIff: Mr. Taylor from Mississippi, five minutes.

REP. TAYLOR: Thank you, Mr. Chairman. Mr. Aguilera, is that right?

MR. AGUILERA: Aguilera, yes, sir.

REP. TAYLOR: I'm sorry?

MR. AGUILERA: Ag-u-lar-a.

REP. TAYLOR: Aguilera. On page 19 of this, it talks about your conversation with Deputy Barber, who unfortunately has already left us, talking about an attempt for Koresh to kill George Roden or Rodden, his predecessor, the preacher he replaced at gunpoint.

MR. AGUILERA: Right.

REP. TAYLOR: Do you feel like there was adequate evidence given to you by Mr. Barber that this actually took place, that he ran off the previous preacher at gunpoint, actually shot at him, that he was found hiding behind a tree.

MR. AGUILERA: Well, yes, sir, I read the report.

REP. TAYLOR: Do you believe that to be true?

MR. AGUILERA: Yes, sir.

REP. TAYLOR: Did that influence your decision on how you were to serve this warrant, the fact that this man had been shown to have violent tendencies in the use of firearms even against another preacher?

MR. AGUILERA: I had no -- I didn't partake in the planning of the raid or the execution of the warrant.

REP. TAYLOR: Did that influence your decision? Okay -- let me get a little bit farther. On page 27 again these are statements attributed to you but not direct quotes. It says "Aguilera sought information from former cult members who gave him some insight into the extraordinary degree to which Koresh dominated the lives
of compound residents. Cult members surrendered all their assets to Koresh and permitted him to have sex with all female members of the cult." While Koresh -- "While reports that Koresh was permitted to sexually and physically abuse children were not evidence that firearms or explosives violations were occurring, they showed Koresh to have set up a world of his own where legal prohibitions were discarded freely." Do you believe that to be an accurate statement?

MR. AGUILERA: From the information that I had received from former members, it was placed in my probable cause, the affidavit. Yes, I do believe it was true.

REP. TAYLOR: Do you think that in fairness to the four officers who lost their lives and the 20 officers who were wounded, in fairness to their widows, in fairness to the two children who will not now have a father that maybe some of these things ought to be brought to the attention of this Committee and do you think that in fairness to those people this series that was about to be printed in the Waco Tribune and in a sense been printed should be entered into the record?

MR. AGUILERA: Yes, sir.

REP. TAYLOR: Don't you think that in fairness to the ATF agents that you should be treated the same as every criminal and that is at least you are given the presumption that you are innocent until proven guilty?

MR. AGUILERA: That we should be treated as criminals?

REP. TAYLOR: No, sir. (Laughter.)

REP. TAYLOR: That you should be treated at least as well as the criminals in this country and given the presumption that you are innocent until proven guilty and given the opportunity to prove yourself innocent. Don't you think it would be fair for this Committee to do that and don't you think it would help your case if you were able to talk about the events that led up to the raid?

MR. AGUILERA: Yes, sir.

REP. TAYLOR: My final points I'd like to make is after talking to Deputy Barber, at some point in those conversations did he request or did a member of the Sheriff's Department request the help of the ATF or did the ATF just on their own decide they were going to
descend upon Waco, Texas to pick on some poor country preacher?

MR. AGUILERA: I did the complete investigation on my own. I didn't request any assistance from the Sheriff's Office except for the intelligence that I had been receiving from them.

REP. TAYLOR: The question was the other way around. Did the Sheriff's Department at some point request your help?

MR. AGUILERA: Yes, sir, they did initially. You know.

REP. TAYLOR: So you did not just pick Waco off the map of the United States and decide that you would go down there?

MR. AGUILERA: No, sir.

REP. TAYLOR: You were requested by a local governing authority, a law enforcement authority --

MR. AGUILERA: Yes, sir.

REP. TAYLOR: -- to come down and help them?

MR. AGUILERA: Yes, sir.

REP. TAYLOR: Do you think that ought to be included in the record?

MR. AGUILERA: Yes, sir. In the raid?

REP. TAYLOR: Well, don't you think we ought to talk about the events that led up to this?

MR. AGUILERA: Yes, sir, sure.

REP. TAYLOR: So people will know that?

MR. AGUILERA: Yes, sir.

REP. TAYLOR: Because I can assure you there are a heck of a lot of people in this country who think that you all just picked that town and that preacher and I don't think that's fair to the four men who died.

MR. AGUILERA: No, sir, it's not.

REP. TAYLOR: I don't think it's fair to the 20 men who got
wounded.

MR. AGUILERA: No, sir.

REP. TAYLOR: Is there anything else you would like to say, Mr. Aguilera?

MR. AGUILERA: No, sir.

REP. TAYLOR: Okay. Thank you very much, Mr. Chairman.

REP. ZELIFF: Thank you. The gentleman's time has expired. Mrs. Laughlin of California, you have five minutes.

MS. LOFGREN: Thank you, Mr. Chairman. Dr. Perry, I have read through all of the material you provided about the evaluation of the children who were evacuated by yourself and the team and also the transcript of your transmittal -- I think of March 11th, if I am reading the date correctly -- to the FBI where you recount the status of the children. Can you tell this committee what your impression was about the level of sexual molestation going on in the compound after you had examined these children as well as what information you had gathered from them about explosive materials, weapons and things of that nature and what of that did you transmit to the FBI?

MR. PERRY: We within the first week after working with these children in a variety of ways it became clear that there were two primary areas of secret that they wanted to keep from the Babylonians, the nonbelievers -- who we were in their minds. These included over time as these kids slowly revealed in a variety of ways what these were they included two major themes. One was that there was this -- and they had been told that people would not understand this special relationship that they were going to have with David --

MS. LOFGREN: And of course they were right in that.

MR. PERRY: -- the sexuality, the fact that sex was openly talked about, that young children were exposed to inappropriate sexual content and that by the age of 12 all children were considered adults and all girls were therefore available to David for his wife. As we heard today, obviously the age of 12 is pushing the limit. He clearly partook of his pleasures in younger children as well. At that time it was also clear that these kids looked at us with smugness and said, well, you'll see what'll happen and you
don't know what's going to happen --

MS. LOFGREN: Could I specifically ask a question --

MR. PERRY: Yes.

MS. LOFGREN: I wasn't very direct. On the second page of your memorandum you talk about that the children knew beyond what their years would indicate about weapons and one young boy in particular discussing his grenade launcher. Was that --

MR. PERRY: These children knew a lot more about guns than you would expect for children this age. Children as young as six years old would pick up a toy wooden gun, pull the bolt back, lay it as if giving the balance, lift down the barrel and say this isn't a real gun.

MS. LOFGREN: Could I ask, Mr. Johnston, were you aware of this information about the evidence and the children as to weapons and possible violations when you reviewed the information seeking a warrant?

MR. JOHNSTON: There was some information. Joy Sparks spoke with a young child that said can't wait till I'm a man, something of that nature, and she said why, and he said because then I'll get a long gun, and that in and of itself, long gun may not mean a machine gun but it indicated the kids had knowledge of guns. As far as the question concerning sexual abuse the Kiri Jewell story we did know.

MS. LOFGREN: Let me ask finally and then I want to yield to Mr. Scott, Mr. Sarabyn, you mentioned that you were aware that there was sexual abuse going on in the compound as you were readying for the final days. I wonder if you could tell me, you take an oath to uphold the law, and the law that you are upholding is to enforce alcohol, tobacco and firearms, but as a law enforcement officer was it in your mind that little girls were being raped inside the walls of this compound while you were and the rest were waiting to execute this warrant? Was that a factor in timing, even subconsciously?

MR. SARABYN: Definitely as law enforcement officer. As a human being it was inside of you. I heard the testimony earlier today and as we interviewed these people we heard those stories. We had talked to her before so --
MS. LOFGREN: And you I guess had seen the sinful Messiah story. Mr. Chairman, I wonder if we could ask unanimous consent to put this news article in the record. It's "The Sinful Messiah" from the Waco Tribune-Herald that has been referenced several times.

REP. : Reserving the right to object, this is an article that appeared before the raid on the compound?

MS. LOFGREN: Yes.

REP. : Does it mention anything about firearms violations?

MS. LOFGREN: I think it talks about the sexual abuse and I think was in the minds of the agents and as human beings and law enforcement officers was a factor and an understandable one if I am hearing Mr. Sarabyn correctly as to timing.

REP. : Well, continuing my reservation, did the agents have anything in writing, any memos from this particular time that demonstrate that because of alleged sexual abuse that motivated their thinking about the planning of this firearms law enforcement raid. This is the first I've heard of all of this.

MR. SCHUMER: Would the gentleman yield?

REP. : I yield to the gentleman from New York.

MR. SCHUMER: I thank the gentleman. This article, which occurred the day before the raid, which was published by the Waco whatever -- Herald something -- Tribune-Herald --

MS. LOFGREN: Tribune-Herald.

MR. SCHUMER: -- which was published the day before the raid, plays a very important role in what happened in a variety of ways. If you read the report of ATF there is a whole chapter on it because, and this is an important question we will deal with today and tomorrow, one of the timing of the -- the ATF people went to the Waco Herald-Tribune -- Tribune-Herald and asked them to not run the article. When they decided they would run the article they moved the day up. It may account for some of the speed with which the raid went. I think any of the gentlemen who were involved will back me up that this was an extremely important article in terms of what happened and by all means it should be in the record whether it mentioned firearms or not. What is also important here is what ATF thought, correctly or incorrectly, and we can debate
that, is that the publication of the article would influence Koresh's state of mind and that was an important factor in determining when and how to do that raid.

REP. : Reclaiming my time, I understand the gentleman's point but continuing my reservation for the moment, I'd asked two questions. I would be grateful if the person offering this into the record or one of the witnesses can clarify it. My first question, very simply, is did that article have anything to do with firearms violations.

MS. LOFGREN: I think it does, yes.

REP. : The second is with respect to the reference in that article to sexual abuse and now the testimony that because of this sexual abuse that motivated the ATF to have to do this raid all the faster --

MS. LOFGREN: If I may interrupt, I don't think that was the testimony, sir.

MR. SARABYN: That was not my testimony.

REP. : I'm sorry. I did not mean to alter your testimony. I'll let you phrase it. It's getting kind of late for all of us, so I apologize if I have misstated anything.

MR. SARABYN: The article made us move the raid up, okay? She asked me as a person did I have a feeling that I knew that sexual assaults or rapes were going on in the compound, did that affect me as a human being. I said yes. As a law enforcement officer or whatever I had a feeling about that.

REP. : As a law enforcement officer, do you have anything in writing from right before the raid that indicated the raid had to take place in a certain way in a certain speed because of your concern as a human being about child sexual abuse?

MR. SARABYN: No.

REP. : Thank you. I think I have made my point, Mr. Chairman, about the document. I think the point's been made in its favor. We have been letting in about everything to be fair, so I will withdraw my reservation.

REP. ZELIFF: Without objection, so ordered. It's entered in the
testimony. Mrs. Laughlin, you have two minutes left.

MS. LOFGREN: Thank you, Mr. Chairman. At this point I would like to yield the balance of my time to Mr. Scott.

MR. SCOTT: Thank you. I thank the lady from California. Mr. Johnston, have you ever gotten evidence in court under the good faith exception to the exclusionary rule?

MR. JOHNSTON: I have had a judge rule in the alternative that evidence would be admissible under that.

MR. SCOTT: Say that again.

MR. JOHNSTON: In other words, I have had courts rule that there was proper cause that if the appellate court were to find not then the agent would have good faith in relying on it, in other words, an alternative finding, but I don't think I have had to rely entirely on it.

MR. SCOTT: Have you had evidence excluded from court because it had been illegally obtained?

MR. JOHNSTON: No, sir.

MR. SCOTT: Do you know of any evidence that's been offered in your jurisdiction where the evidence was found to be illegally obtained and was excluded?

MR. JOHNSTON: I don't recall any in the Waco Division. In the Western District of Texas it's huge. Sure, there has been somewhere but not in our division that I recall.

MR. SCOTT: Let me ask Mr. Aguilera, do you have any problem obeying the law?

MR. AGUILERA: Sir?

MR. SCOTT: Do you have any problem obeying the law?

MR. AGUILERA: No, sir.

MR. SCOTT: Are you aware of any officer who has been sanctioned for illegally obtaining evidence?

MR. AGUILERA: No, sir.
MR. SCOTT: So the exclusionary rule is about the only sanction we have against officers violating the law?

MR. AGUILERA: I'm not --

MR. SCOTT: If you illegally obtain evidence and it's not admissible in court, that's about the only sanction you have heard of --

MR. AGUILERA: Yes, sir.

MR. SCOTT: -- for illegally obtaining evidence?

MR. AGUILERA: Yes, sir.

MR. SCOTT: And it is the only sanction we have and only protection we have against law enforcement officers breaking the law?

MR. AGUILERA: Yes, sir.

MR. SCOTT: Thank you.

REP. ZELIFF: Thank you. The Chair yields to the gentleman from Arizona, Mr. Shadegg.

MR. SHADEGG: Thank you, Mr. Chairman. Before I start my questioning, let me make a couple of statements. I spent eight years as a prosecutor, eight years with the Arizona Attorney General's office --

REP. ZELIFF: I'm apologize. I had two people talk in my ear. By prior arrangement, can I just hold you up for a second?

MR. SHADEGG: Certainly.

REP. ZELIFF: Can we shift back over to Jackson Lee of Texas.

REP. LEE: Thank you very much, Mr. Chairman. I would like, Mr. Chairman, if I could raise a question with the Chair. So that my questions will be understood by the witnesses, I want to ask questions and I will ask the witnesses to give me yes or no answers. I want to make it clear that I am not in any way trying to limit their response as much as I am trying to get a number of questions in, and I wanted to make and clarify my particular questions. Let me also, Mr. Chairman, before my time starts, and
I see that it has, ask you to allow me to do that before my time starts to thank Cardiss Collins on the record for yielding time to me previously. Mr. Moulton, you have had to be exceedingly quiet over there and so let me try to cull from you some of the concerns that I have. It seems that little Kiri Jewell said it all when she was trying to suggest that a lot of people were trying to get things out of this and we just need to fix it. I hope that if we can all eliminate the garments of hypocrisy -- that that is what we're trying to do -- is to fix it. So it is my understanding that there was an investigation that proceeded for how long, Mr. Moulton?

MR. MOULTON: Approximately five months. An investigation conducted by the Treasury Department.

REP. LEE: Can you tell me what this book is, Mr. Moulton?

MR. MOULTON: That is the Treasury Department report issued in September, 1993 that addresses virtually all, if not all, of the questions that have been addressed today.

REP. LEE: You have gone beyond my need to know.

MR. MOULTON: I'm sorry. I will do my best to say yes or no.

REP. LEE: That's all right. Did you participate in this inquiry?

MR. MOULTON: Yes. I was the project director of that investigation.

REP. LEE: In the course of trying to review extensively what occurred in this tragedy, loss of lives of adults and children, loss of lives of our law enforcement officers, I want to get right to the point of focusing on corrective measures. In this document, is there a corrective measure that says, let us eliminate a portion of the exclusionary rule meaning that search warrants are not good any more, let's base them all on good faith. Is that in this document?

MR. : There is no suggestion of alteration of the exclusionary rule in the document, no.

REP. LEE: So that worked for you in terms of this document?

MR. MOULTON: That's correct.
REP. LEE: We've had a problem, as we've heard some of the witnesses testify that there was a point when there was no retreat. This is a point when we heard possibly that someone tipped the media. In this report, do you have at least a suggestion of some intervening factor or line authority that would have given the opportunity for fair analysis so that a possible retreat could have occurred, therefore saving lives?

MR. MOULTON: The report discusses the importance of an operation like this being reviewed at the Treasury Department substantially in advance of the raid rather than 48 hours before the raid as was the case here.

REP. LEE: One of the things that I heard also mentioned, because the American people need to know, we hold in high regard this whole idea of religion and respect for people's differences. I've heard the Seventh Day Adventist Church being mentioned. I would wonder in this particular document -- for it is quite distinguishable from a religion and cult. Do we have in this document any suggestion of further training or enhanced training for our law enforcement agencies about cults?

MR. MOULTON: That the document addresses the need for law enforcement agencies to consult experts in organizations or groups like the Branch Davidians before they conduct -- in order to evaluate the information that is being given by members of the cults and others?

REP. LEE: Do you think cults are different from religions?

MR. MOULTON: Yes. I think that Dr. Perry expressed the difference quite well earlier.

REP. LEE: Mr. Chairman, I have a joint statement of Mr. Rosedale, President of the American Family Foundations, and William Ryland, President of Cult Awareness Network. And you had indicated to me, Mr. Chairman -- I hope I can have a moment with the clock that's stopping -- that we would be open to potentially having witnesses come in and talk about issues that have long-standing impacts on our ability to reform. I would like this statement submitted for the record, but I would like the opportunity to raise with the Committee the possibility of a cult expert coming in and testifying, Mr. Chairman. I ask unanimous consent.

REP. SCHIFF: (Inaudible) right to object. The document is what I ask the gentlelady from Texas?
REP. LEE: I will be happy. It is the joint statement of the President of the American Family Foundation and the President of the Cult Awareness Network. It is relevant, Mr. Schiff, and I appreciate your inquiry because one of the suggestions was that our law enforcement agencies, in terms of reform, needed additional training in cult awareness, for they may come upon these kinds of groups across the nation and, of course, that played into the tragedy that occurred. This document is simply a report on cults, and it also addresses the particular incident in Waco.

MR. SCHIFF: Continuing my reservation, first I believe that Mr. Perry is on the board of this organization, and he has been a witness here at this proceeding. He did not get an opportunity to give all of his testimony?

REP. LEE: No, Mr. Perry I don't think -- that's Dr. Perry, am I correct? DR. PERRY: Dr. Perry, and I am not on the board. I am on a research advisory board for the American Family Foundation which is comprised of six or seven academic institutions. That is the extent of my relationship with those organizations.

REP. SCHIFF: Continuing my reservation, if I could just ask the lady offering this document, does that mean we are committed to the idea that the Branch Davidian group was a cult?

REP. LEE: I don't offer it in that capacity at all, Mr. Schiff. I offer it as an explanatory document, not at all -- I don't think it is a truth -- it is a veracity question.

REP. SCHIFF: I withdraw my reservation.

REP. ZELIFF: As far as the admission in the record, without objection, so ordered. As far as a potential witness, as we have talked about earlier, we would certainly be willing to consider it.

REP. LEE: Mr. Chairman, I wonder, because of the colloquy we just had -- the red light is on.

REP. ZELIFF: You have 30 seconds left regardless of what the red light says.

REP. LEE: Let me just ask Mr. Moulton: was there a cover up?
MR. MOULTON: Absolutely not.

REP. LEE: Let me go quickly to Mr. Owens --

MR. : Not by the Treasury Department in the preparation of that report. Absolutely not.

REP. LEE: Let me ask Mr. Owens so that my question can be out and you can answer the question. If you would go again to one of the weapons there that the gentlemen were kind to bring, I simply need you to point to a weapon that could be converted. Was there a weapon in that group that could have been converted or was a product of being converted?

MR. : Yes.

REP. LEE: Was there anything in that --

MR. : Yes, ma'am.

REP. LEE: Could you show me that quickly, sir? Mr. Owens, I thank you very much. Could you explain whether that was found in the compound?

MR. : This one has been converted, and I believe it was found in the vehicle --

REP. LEE: I'm told you can't be heard.

MR. : This particular weapon has been converted. It is a semiautomatic AK-S type rifle that has been modified. I believe this weapon was recovered from a vehicle located in front of the compound.

REP. LEE: Thank you very much, Mr. Chairman.

REP. ZELIFF: Your time has expired. Thank you. I would just like to make a comment on behalf of our side as far as these weapons are concerned. We tried at great length to try to have access to those weapons, and received a letter dated July 11 from Mr. Kent Marcus, Principal Deputy Assistant Attorney General, U.S. Department of Justice saying -- a comment that this will cost the taxpayers of Texas and the United States many thousands of dollars. We would have enjoyed the opportunity to have worked with both sides here to examine those weapons as well. I think it would have been helpful. I just make that statement. I yield to
the gentleman from Arizona.

REP. : As I understand it, a letter was sent offering that same letter -- offering you ability to examine the weapons. The problem was, as I understand it, twofold. One, of course, failure analysis whatever their last initial is, but which is in great dispute now. Secondly, they just didn't want to break the chain of -- I forget what the legal term is -- custody because these weapons are still part of a legal process ongoing.

REP. ZELIFF: Just because of the interest in terms of getting at the evidence, can I ask a question? How much did it cost to just bring those weapons up, because it would have been helpful for our side as well.

REP. : I have no idea.

REP. ZELIFF: Does anybody have any idea? Just a ballpark?

REP. : Mr. Chairman, just a question. Wouldn't it be possible -- these weapons are now here and I just heard some conflicting things. First, I heard that this was recovered in the compound and then the gentleman just testified that the weapon he held up was in the vehicle in front of the compound, and then the other one is sort of charred. I am not a weapons expert. I've never even held one of those weapons. Isn't it possible now to turn those over, temporarily, to the Committee and have someone independently look at those?

REP. ZELIFF: If I could make a comment, exercise the prerogative of the Chair, I think what we tried to do is to get a third party or at least get the Justice Department to x-ray these weapons, make information available to all of us to determine which weapons were altered. You know, you have a serious heat problem in a fire. Certain materials did get melted down. So what we were looking for was to bring in an expert on a third-party basis to look at it, or at least get all of us involved in the process so we can examine the evidence, because I think it is an important piece of evidence to consider.

REP. : Mr. Chairman, for a very brief clarification --

REP. ZELIFF: And the problem is the -- because the process required would be expensive, cumbersome and difficult and of little or no evidentiary value to the public whom we both serve, we recommend against the process which you have requested. Besides that, it would cost the taxpayers in the state of Texas and the
United States many thousands of dollars, and we see the evidence presented here.

REP. : Mr. Owens said the weapon had been modified. Modified to do what?

MR. OWENS: Machine gun.

REP. : Thank you, Mr. Chairman.

REP. ZELIFF: Modified by whom?

MR. : I have no idea.

REP. ZELIFF: I guess we don't either.

REP. : Mr. Chairman, again, which weapon are they referring to? One is charred. The other weapon he said was found in a vehicle in front of the compound. Again, we have these weapons here, and I see no reason why we can't have an independent responsible authority look at the weapons and make a determination for the benefit of the two subcommittees.

REP. ZELIFF: Would the gentleman yield? I think at this point we need to move on.

REP. : There are a couple of points unanswered here. Number one, they were found, as I heard Mr. Owens said, a vehicle in front of the building which is part of the compound. The compound is not just the building, but it is the surrounding area that was indeed on the compound. If you read any of the literature, that is what the compound is referred to. Second, to hand over the weapons, whether it be to this Committee or to a third group, the majority asks that failure analysis be paid for by the NRA, hardly an impartial source to do it, a ridiculous suggestion.

REP. : How about the Department of Justice.

REP. : Well, to hand it over to any third party would break the chain of custody and ruin the cases. Now, if you want to try to sit down and work something out, that is fine. Finally, the letter that you requested didn't request two weapons, but requested all the weapons be flown up here and done. That is much more extensive than --

REP. ZELIFF: Now that we know that it can be done, maybe that is
an issue for another day. The Chair now recognizes the gentleman from Arizona.

REP. LEE: Mr. Chairman, your discussion came out of my questioning, and I would just like a clarification. I will say it to you. I think Mr. Owens may not have completed his answer to the extent that the question was calling for him to answer whether there were devices on the property, on the compound or inside the facility, that could modify to a fully automatic. I assume he didn't complete his answer on that, that there were device modifications, equipment to modify to a fully automatic on the premises. Is that my understanding?

MR. : I cannot testify to that, ma'am.

REP. LEE: You are not familiar with that?

MR. : No, ma'am.

REP. ZELIFF: The Chair would now like to recognize Mr. Shadegg from Arizona for five minutes.

REP. SHADEGG: Thank you very much. Let me resume where I was. I've spent a good deal of my career defending law enforcement. I come to these hearings with mixed emotions. I'm not here to assess blame or to point guilt. My goal isn't political. It is not to point at the Administration. But there is an important goal that goes on here today. First of all, I am pleased to see my colleagues on the other side defending law enforcement because I find historically they don't do that --

REP. : Mr. Chairman, I object to that statement.

REP. SHADEGG: I think it is important we answer some questions here.

REP. : I object to that statement. I think what he is doing, Mr. Chairman -- it is an insult to this body.

REP. ZELIFF: I know the evening is getting late. You probably didn't hear it. He is trying to compliment you. I think that is the way he intended it. Let's move forward.

REP. : No. That is a funny remark, Mr. Chairman. It is an arrogant denunciation of those of us on this side of the aisle.
REP. ZELIFF: Will the Committee come to order.

REP. : We are owed an apology.

REP. ZELIFF: The Committee come to order. Mr. Shadegg, please proceed.

MR. SHADEGG: Thank you, Mr. Chairman. It seems to me the goal of these hearings is to try to enable the American people to have faith in law enforcement at the Federal level once again. Regrettably, this particular incident has eaten away at their faith in law enforcement. It seems we can achieve that goal by doing one of two things. One, ascertaining what mistakes were made, if any, and two, ascertaining whether or not corrective measures have already been taken to correct those mistakes. I think we've spent the day focusing on all kinds of issues that are not issues. For example, whether or not Mr. Koresh was a gross base human being who had no business being in the position he was in and no business being able to access children as he did. That is not, I don't believe, the issue here. But I would like to get to some of the issues that I think are important for the American people, because it is my goal to rehabilitate their faith in law enforcement because if they have no faith in law enforcement, we don't have an ordered society. In that regard, let me begin with you, Mr. Aguilera. First, as I understand your testimony, it is that you were offered by Mr. Koresh and you understood you were being offered by Mr. Koresh an opportunity to come and look at the weapons that he had in his -- weapons or parts of weapons that he had in his possession.

MR. AGUILERA: Mr. McMahon had telephonically contacted Koresh, and he asked me to come to the phone, and --

REP. SHADEGG: I've got very little time. Did you understand -- I believe you said you did -- did you understand that you were being offered an opportunity to go look at those weapons?

MR. AGUILERA: Yes, sir.

REP. SHADEGG: Now, I can understand why, as a law enforcement officer, you would not want to take that up at that particular moment in time. My question of you is, did you later take that offer up?

MR. AGUILERA: No, sir.
REP. SHADEGG: Did you ever take that offer up?

MR. AGUILERA: No, sir.

REP. SHADEGG: Did you tell your supervisor specifically, Mr. Sarabyn, that you had been offered a chance to go into the compound at Mr. Koresh’s invitation and to look at the weapons?

MR. AGUILERA: Yes, sir. It has been in my reports.

REP. SHADEGG: You told Mr. Sarabyn that?

MR. AGUILERA: Whether he read the reports or not, I don't know, but they were in my reports.

REP. SHADEGG: Mr. Sarabyn, were you aware when you planned the dynamic raid that one of your agents had been offered an opportunity to go in and look at the weapons and see what was there?

MR. SARABYN: Yes, I was, sir.

REP. SHADEGG: And Mr. Aguilera never went. Did some other agent from ATF go?

MR. SARABYN: No.

REP. SHADEGG: Is there a reason that no one ever went --

MR. SARABYN: We discussed this, as I said, when we had this committee of people planning the raid. That was one of our options that we considered, why don't we try to call the dealer and then see if we can get Koresh off that way. But from all the intelligence we were getting at that time, when we started this investigation, everything we were told -- there were armed guards, and at one time there was, there was a guardhouse or whatever -- but things had changed from the information that we were getting back from people still in the compound that he was now paranoid of his people, that the guns were put up. We didn't want to alert him by, you know, going the second time, talking about guns, and then he might put the armed guards up and go back to the way he was before.

REP. SHADEGG: I'm absolutely baffled that when he had this standing offer for you to be able to go and look at these weapons, you chose never to call him back and take that offer up and find
out what was in there, and why you would not do that and instead plan a dynamic raid is beyond me. I guess I'm trying to understand why the dynamic raid was necessary when he had a standing offer that he could come in and look at those weapons.

MR. SARABYN: Like I said, the panel considered this. We talked about it. We just thought it would put him in an offensive mood, and go back to having armed guards.

REP. SHADEGG: Do you now wish you had gone back in and at least taken a look at the weapons? Tried to take him up on his offer?

MR. SARABYN: We could have, yes.

REP. SHADEGG: I'm a little puzzled about the whole timing and sequence of the actual entry itself. You, I understand, Mr. Sarabyn, were in charge of the actual raid the day it occurred. Is that right?

MR. SARABYN: My title was Tactical Coordinator. I was the head of the SRT team.

REP. SHADEGG: I was puzzled earlier, and I understood that you did not know and couldn't answer Mr. Brewster's questions about how many agents went to the door. Tell me that isn't true. I assume you knew how many agents went to the door?

MR. SARABYN: No. I don't know the specific number that went to the door. It was broken into six different teams, and we had several teams making entry in the front door. Three teams that were going around. But, I mean, I could find some list and give you the specific number, but I do not know it off the top of my head.

REP. SHADEGG: But you had overall supervisory authority for the entire raid that day?

MR. SARABYN: I was like the Tactical Coordinator, and then each member under me was responsible for his own team.

REP. SHADEGG: Okay.

MR. SARABYN: And those were the teams that would be making entry.

REP. SHADEGG: Can you give the American people any definitive answer on the question of whether or not agents fired from the helicopters, and whether or not they fired before or after people
from the compound fired themselves?

MR. SARABYN: He will give you his analysis.

MR. : I was in one of the helicopters. No, nobody shot from the helicopters to the compound.

REP. SHADEGG: You were in one of the helicopters. I guess I was asking Mr. Sarabyn because he was in charge of the whole raid. What can we tell the American people on the issue of whether or not armed Federal agents fired first or didn't fire first?

MR. : We didn't fire first. According to the testimony during the trial, when they were getting out of the cattle carts, they fired upon us.

REP. SHADEGG: I'm a little -- I appreciate that. I still was asking Mr. Sarabyn because he was in charge of the raid, and I guess if he doesn't know how many agents were at the door, I'm troubled with how he now knows whether or not we fired first.

MR. SARABYN: Sir, I was in the first vehicle pulling up on the compound. We had two vehicles. We don't have a picture right now, but we went down a 250-yard driveway and then we made a left-hand turn. I was in the first vehicle. I went in the front of the compound and actually stopped at the end of the compound. The second vehicle stopped at the front door. Before I opened by door to get out, we were being fired on from the compound. I was going to the front door, but I never got but a few feet from -- when they began to fire at us, so that is why, consequently, I do not know what happened at the front door --

REP. SHADEGG: I will repeat: we would like to believe we didn't fire first. May I have just one follow-up question? With regard to this issue of child molestation, which has been a major issue today and I think a major distraction, did you ever contact the Texas law enforcement authorities who would have had jurisdiction over that? You clearly did not. Did you ever contact Texas law enforcement authorities who would have had jurisdiction over child molestation or statutory rape and invite them to participate in the raid?

MR. SARABYN: No, sir. I did not invite them to participate in the raid. However, I did have conversations with the district attorney there to pursue state charges on child molestation.
REP. SHADEGG: And were they invited to be involved at all, other than --

MR. SARABYN: No, sir.

REP. ZELIFF: The gentleman's time has expired.

REP. SHADEGG: Thank you.

REP. ZELIFF: I'm going to do my five minutes, and the we are going to have to recess to a vote and come back. Believe it or not, we do this every once in a while. It just happens to coincide with the hearing, so thank you for your patience. I passed out -- would like the clerk to pass out Document Number 3. My questions -- I will start with Mr. Hartnett. Document Number 3 says the raid was approved by the Bureau Headquarters on or near 2/11/93 or so. I know that Special Agents in Charge Sarabyn and Aguilera met with high-ranking Bureau officials prior to the raid. Were you one of those officials?

MR. HARTNETT: Yes, sir, I was.

REP. ZELIFF: And the raid was approved in Washington by high-ranking Bureau officials on or near February 11, 1993. Did you approve that on or near that date?

MR. HARTNETT: Yes, sir. I did.

REP. ZELIFF: Do you know whether or not -- when it was approved it was said to halt the raid if the element of surprise was lost?

MR. HARTNETT: I never heard the term "element of surprise." Now, let me say surprise was a part of the plan, but nothing was ever said about the other.

REP. ZELIFF: The document also says several pages of surveillance log had been torn out. Have you ever heard that before?

MR. HARTNETT: No, sir. I haven't.

REP. ZELIFF: Who is responsible for safekeeping of the surveillance logs?

MR. HARTNETT: Littleton, I believe, was the supervisor at the surveillance house. I just never heard that before.
REP. ZELIFF: But pages were removed?

MR. HARTNETT: I mean, I never heard that before that pages were removed.

REP. ZELIFF: You might want to refer to that Document Number 3 that we handed you.

MR. : (Inaudible) Mr. Chairman. We have a copy of the document. We don't know what it is. It just has a lot of writing on it. Is it a note from who to who?

REP. ZELIFF: Okay. This is part of the 13,000 pieces of loose paper the Treasury gave us that was unorganized, and we were trying to piece it together. We think it is pertinent. It certainly involves --

MR. : Do we know who wrote it?

REP. ZELIFF: Well, it refers to Mr. Higgins. It refers to -- I think it is very pertinent.

MR. : I just wanted -- I'm not trying to be a separatist here. I just wanted to --

REP. ZELIFF: It is supposed to -- okay.

MR. : -- find out who wrote it. We don't know, is that it?

REP. ZELIFF: The post-raid interview with one of their agents, and what I'm asking is the gentleman that was in charge, if he could shed some light. It says -- there are markings on the left-hand side -- Agent John Bryant, Dallas, is about all we can figure out. We have the same concerns you do. Where were we? Were you, Mr. Hartnett, about read to answer?

MR. HARTNETT: I'm sorry, sir. You mentioned that notes were torn out of the surveillance log.

REP. ZELIFF: I was just wondering how does that happen?

MR. HARTNETT: I don't know, sir. I have never heard that before or I don't recall ever hearing it before.

REP. ZELIFF: Do you know if it was true?
MR. HARTNETT: No, sir. I don't.

REP. ZELIFF: So this may or may not apply then. The interview with the unnamed agent also says, quote, "Personal knowledge that the surveillance notes for the ATF were poor and incomplete." Do you have any reasons to believe that the agent being interviewed is not telling the truth?

MR. ZELIFF: Mr. Chairman, how can he answer when he doesn't know who the witness and who the writer was.

REP. ZELIFF: Why don't you let him answer it. I know you're good, but. (Laughter.)

MR. ZELIFF: So is he.

MR. HARTNETT: I don't think I understand what you're asking, I guess.

REP. ZELIFF: I guess that this is an interview with one of your agents. I'm just trying to get out if the fact that if these logs get changed or tampered with or pages get pulled out, I'm just wondering if you know anything about that.

MR. HARTNETT: No, sir. I don't.

REP. ZELIFF: Halfway down the ATF agent's interview, documents says: Statement that the ATF was outgunned was true. Mr. Hartnett had, prior to the raid, had mandated that we all turn in our AR-15s, even though several RACs voiced their complaints. Mr. Hartnett, is that true? Did you mandate that the agents turn in their AR-15s, and what is an AR-15? So were these agents knowingly outgunned before they started? Why did you have them turn in their AR-15s?

MR. HARTNETT: We were in the midst -- first of all, they had all the AR-15s that they wanted in their raid plan. I think the number, as I recall -- and I could be wrong -- was eight. But what was taking place at the same time was that we were converting from the AR-15 to the -- to a nine millimeter weapon. The reason we were doing that is that the AR-15 fires 223 rounds. 90 percent of our work are in the cities, and that round would go through one house and through another and keep on going. When these new weapons came out, I made a decision -- after Tactical Support and everybody tested these weapons -- that the nine millimeter was a much better weapon to use. But at Waco they came into us and said
we want eight -- at least I think the number was eight -- AR-15s. They were all issued to them. But there are still a lot of -- we put some AR-15s back in the field because of places like Texas that felt they still needed long-range rifles, but for the most part we were removing them for the field. But we weren't outgunned at Waco. That's for sure.

REP. ZELIFF: Mr. Sarabyn, Document 3 says the raid was approved by the Bureau Headquarters on or between 2/11/93 or so. It says that the special agent in charge met with high ranking bureau officials prior to the raid. Is that true?

MR. SARABYN: There was a briefing on the 11th and 12th of February that we were there, and it was Mr. Hart, Mr. Conroy in the Executive Staff, and I think the following day you met with Mr. Hanowski, and that's when they approved the raid. On the 12th actually, I believe.

REP. ZELIFF: Thank you, very much. My time is expired. We will now recess for -- is it one vote? We will now recess for 15 minutes.

(Recess.)

REP. : (In progress) -- ask him to share this question after Mr. Johnston responds.

REP. : And I found -- and I will just refer to what I found that gave me this feeling that we --

REP. : Please do.

REP. : U.S. v. Bachelor, a nine-month interval was not too stale in the silencer case; U.S. v. McCall, a seven-month interval in a revolver case; U.S. v. Brinklow, an 11-month interval in a firearms case; U.S. v. Rahn, there was a two-year interval, that seems extreme, but there was a two-year interval between the facts that occurred, the alleged illegal activity and the search warrant affidavit; and a one-year interval in the U.S. v. Sims; and a 13-month interval in U.S. v. Mariott. Now, obviously, you don't want to put yourself in a position of having an arguably stale affidavit, but after the research I felt like we were okay with it, sir.

REP. : Okay. Thank you. Mr. Moulton, could you make any additional comments about the staleness argument against the warrant application?
MR. MOULTON: Certainly, Congressman. I think courts when they are evaluating claims of staleness, as Mr. Johnston suggested, look at a couple of different factors. There is no mechanical test in terms of the number of months or days or weeks that renders information stale. Two of the things they look at is the nature of the criminal activities in an isolated event like a bank robbery and the cash from that bank robbery versus an ongoing pattern of criminal activity. The other thing they look at is the type of evidence. Is it evidence that is likely to be dissipated or taken somewhere else quickly again like cash.

REP.: Like drugs or cash.

MR. MOULTON: Drugs or cash or even something that has more permanence to it and is likely to remain. I think Mr. Johnston accurately suggested that here we have a type of evidence, a firearm, that is not ordinarily disposed of quickly. Clearly Koresh over a substantial period of time expresses interest in possessing automatic weapons and, again, the criminal activity here continued over a substantial period of time. I think that most courts, if not all courts, would conclude here that the information in the warrant was not stale. I want to remind you as well as point out that the warrant did include information in the late fall, early winter, about hearing bursts of gunfire at the compound. So it is not the case that all the information was eight months old or so.

REP.: You are familiar with the Fifth Circuit case of Baptista v. Henderson on staleness?

MR.: I may have read that case.

REP.: It just goes along with the same direction that we were moving in. Mr. Sarabyn, isn't it correct that the document that was introduced by Chairman Zeliff before the break that was unidentified is now identified as to be one of a Mr. Larry Sparks?

MR. SARABYN: Yes.

REP.: Do you have it in your hand?

MR. SARABYN: Someone just told me that when I came back to my seat, that it was a document from Mr. Larry Sparks.

REP. ZELIFF: Who established the identity?
REP.: Let me continue the questioning, thank you very much, Mr. Chairman. How has this been established as belonging to Mr. Sparks?

MR. SARABYN: That I don't know. I just walked back to the table and a number of people said that it came from Mr. Sparks.

REP.: You are not sure.

REP.: Mr. Chairman, I can't hear the witness. Could he pull a microphone closer.

REP. ZELIFF: Pull your mike up a little closer, sir.

MR. SARABYN: I just came back to the table, and several people standing there just said that this came from Larry Sparks.

REP.: Okay, we will come back to it. I have two colleagues that would like a little time. Mr. Green, the gentleman from Texas, I will yield to you.

REP. GREEN: Thank you, Mr. Chairman. Let me ask first, Mr. Moulton, one of the allegations about this hearing is that who asked for the investigation that was made. Do you know who asked for this report to be made?

MR. MOULTON: Yes. Yes, Congressman, I do. It was the President of the United States who asked that the report, that the investigation be conducted.

REP. GREEN: Okay. So, even though we are two years late, the President asked for this report much earlier, right after the --

MR. MOULTON: He asked for the report, I believe, on April 19th, 1993.

REP. GREEN: Okay. Mr. Owen, since you brought out the AK-47 with the folding stock, let me ask you a little bit about some of the weapons. Again, looking at this report, in the charred remains we see the grenade casings and also a picture that looks like a warehouse, that bus that was used as a bunker. In the findings, did you find any AR-15s or AKs that had been converted?

MR. OWEN: Yes, sir.
REP. GREEN: Okay. How many? Because under earlier testimony from the gun dealer, he had sold at least 200 weapons to Mr. Koresh, and no telling how many more he could have bought at gun shows on his own, but do you have any idea from the inventory?

MR. OWEN: From a very preliminary examination as the weapons were brought to the evidence collections point, I identified 50 probable machine guns.

REP. GREEN: When you say probable machine guns, again, it is not illegal for me to own 200 AKs that are semi-automatic.

MR. OWEN: That's correct.

REP. GREEN: But it is illegal if I own them and they have been converted, or they are automatics or machine guns?

MR. OWEN: That's correct.

REP. GREEN: Okay. So you feel pretty confident there were 50 automatic weapons that were found in the charred remains at Mount Carmel?

MR. OWEN: Yes, sir.

REP. GREEN: What about the grenade casings. Did you see any of them that had any filament in them, or anything that -- you know, because we also heard testimony that not only were there cases of casings, but there are also ingredients to be able to stuff them. Did you find, did anyone find any in there?

MR. OWEN: Congressman, I cannot speak to the hand grenades.

REP. GREEN: Okay. Does anyone else on the panel who did any investigation can speak with personal knowledge because I guess I don't like to hear -- I guess I have heard hearsay so much today that it would be nice to have personal knowledge.

MR. : I believe the FBI did the work on the hand grenades and you will have to ask them.

REP. GREEN: We will have them here.

REP. ZELIFF: The gentleman's time is up.

REP. GREEN: Thank you, Mr. Chairman.
REP. ZELIFF: The Chair now recognizes Mr. McCollum.

REP. MCCOLLUM: Thank you very much. I just want to clarify a few things with you in the brief time I have this evening, gentlemen. Mr. Sarabyn, who is Larry Sparks?

MR. SARABYN: He was the previous supervisor in Austin, Texas.

REP. MCCOLLUM: At any time did you have a conversation with Mr. Sparks or anyone else where you said to them that you believed that several of the items mentioned in the arrest and search warrants in this case were not true?

MR. SARABYN: Never.

REP. MCCOLLUM: That has been reported in some conversations that we see in the record of Mr. Sparks. Are you aware he has made such a statement?

MR. SARABYN: I don’t know if Mr. Sparks --

REP. MCCOLLUM: Not necessarily that on that piece of paper. I am not referring to that piece of paper.

MR. SARABYN: What was your question, sir?

REP. MCCOLLUM: I am just asking if you are aware that Mr. Sparks may have made such a statement at any time?

MR. SARABYN: No.

REP. MCCOLLUM: Fair enough. Mr. Aguilera, I don’t have you back as a witness on another day. In order to avoid bringing you back, I want to ask you a couple more questions about the raid day itself, even though that is not the primary topic here, you were in a helicopter that day as I understand it, correct?

MR. AGUILERA: Yes, sir, I was.

REP. MCCOLLUM: You had guns on that helicopter; is that correct?

MR. AGUILERA: Yes, sir, I did.

REP. MCCOLLUM: Were those guns ordered to be downloaded?
MR. AGUILERA: I had a gun. I had my gun.

REP. MCCOLLUM: You had a gun. Well, was there only one gun on that helicopter?

MR. AGUILERA: I don't know if anybody else had one. I know I had my pistol with me.

REP. MCCOLLUM: How about any rifles?

MR. AGUILERA: No, sir.

REP. MCCOLLUM: Were there any rifles on that helicopter?

MR. AGUILERA: No, sir, not that I --

REP. MCCOLLUM: Were you aware of whether there were any rifles on any of the other -- there were two other helicopters, were there not?

MR. AGUILERA: Yes, sir, but I don't know if there were --

REP. MCCOLLUM: You don't know whether there were or not?

MR. AGUILERA: No, sir.

REP. MCCOLLUM: Were you ordered to have your gun downloaded?

MR. AGUILERA: No, sir. I had mine --

REP. MCCOLLUM: You had it loaded?

MR. AGUILERA: Loaded, yes, sir.

REP. MCCOLLUM: Do you know if there were any shots fired from your helicopter that day?

MR. AGUILERA: There were no shots fired.

REP. MCCOLLUM: Do you know whether there were shots fired from either of the other helicopters, do you have personal knowledge?

MR. AGUILERA: No, I couldn't testify to that.

REP. MCCOLLUM: All right. Isn't it true you took fire, your helicopter took fire?
MR. AGUILERA: That's correct.

REP. MCCOLLUM: Could you have fired back because of it under the rules of engagement as you knew it that day? I am not asking you whether you did, I am asking you whether you could have.

MR. AGUILERA: Could I have fired, no, sir, not from the position I was in.

REP. MCCOLLUM: No, but you would have been permitted to have fired back is what I am getting at?

MR. AGUILERA: I wouldn't have fired.

REP. MCCOLLUM: Not whether you physically thought you could, but under the rules of engagement that day, when you were fired upon, could you not have then fired back?

MR. AGUILERA: Yes, sir. If I was being fired at, yes, sir.

REP. MCCOLLUM: And you were being fired at at some point, were you not?

MR. AGUILERA: Yes, sir.

REP. MCCOLLUM: Thank you. I have to clarify one other thing here. Mr. Hartnett, Mr. Moulton earlier this evening said, as I recall, to the response of a question of Ms. Jackson-Lee, if I am not mistaken, that there was no cover-up involved in this matter by the Treasury Department at all. Do you agree with that comment?

MR. HARTNETT: No, I don't.

REP. MCCOLLUM: Why?

MR. HARTNETT: I feel that the Treasury Department has said things since the time of the raid at Waco that have been incorrect. I feel that the Treasury report, where it says some very good things that should be done, things that we could correct in law enforcement. I think it also had many omissions, distortions and false statements in it.

REP. MCCOLLUM: Why do you believe those omissions and false statements are in that report?
MR. HARTNETT: I believe that they were concerned about the fallout from the media that they couldn't just say that management at the scene there made mistakes, but that wasn't the tone of the report. They felt that they had to write a scathing report, which made a lot of people suffer, like Chuck and some of those other people down there that were just doing their job, and it was, I think, very biased and unfairly written.

REP. MCCOLLUM: And you think that was a coverup of sorts for what?

MR. HARTNETT: I think they felt like -- and I don't know if coverup is a term that I would use. I would say that they felt that they had to, at least when it came to the press, show that they were taking some very strong action, and they weren't responsible for anything, and these managers down there had done this intentionally, and that just was not the case.

REP. MCCOLLUM: You said earlier that the element of surprise, the first time you ever heard of it was when that -- after the day of the raid?

MR. HARTNETT: That's correct.

REP. MCCOLLUM: Is that part of your concern?

MR. HARTNETT: Certainly it is because I think that the media picked up on it and I would have to say that I used it, too, we all started using it after the raid, and it was a foolish thing to do. I sort of got trapped by the media, trapped myself. But it throws a whole different perspective on what those commanders did down there, and I just -- I think it is three weeks ago I saw the Assistant Secretary Noble on a national broadcast say that Treasury and ATF had ordered those commanders not to go forward if they lost the element of surprise, and I am the only person who was giving principally direct orders to those commanders, and I never gave such an order, and I never received such an order. Now we did talk about safety. I mean we must have talked about safety 100 times. The Director called me the night before the raid and said, be sure to mention it again to them. If anything isn't right, you see guns, anything, shut it down. Yes, we did talk about that constantly. But the term "element of surprise" I never heard it until the media started using it, our own public affairs, after the raid.

REP. MCCOLLUM: Thank you very much. We will undoubtedly pursue questioning along these lines further as the hearings progress.
Thank you, Mr. Hartnett.

MR. AGUILERA: Sir, if I may interject, I attended a meeting with Mr. Higgins, Mr. Hartnett, Chuck Sarabyn, and I was asked the same question, and I told them that I didn't recall quite clearly, but I do believe that the element of surprise was asked by Mr. Higgins. If the element of surprise was going to be lost, don't continue on the raid.

REP. MCCOLLUM: When was this meeting that you attended, Mr. Aguilera?

MR. AGUILERA: This was the meeting that I went up to headquarters with Chuck Sarabyn and Mr. Hartnett.

REP. MCCOLLUM: When, what date?

MR. AGUILERA: I don't recall. I don't have my notes with me.

REP. MCCOLLUM: Before the --

MR. AGUILERA: It was prior to the raid.

REP. MCCOLLUM: How long before, roughly?

MR. AGUILERA: I would say maybe two to three weeks.

REP. MCCOLLUM: All right. We will have to come back and revisit this. Thank you very much.

REP. : Mr. Aguilera, Mr. Yon testified that all rifle or all gun chambers were to be emptied by the ATF, and I would just like -- this is a pertinent question, and you have indicated that your weapon was loaded. Did you miss -- did you violate any rule by that?

MR. AGUILERA: I didn't violate any rules. I never heard of that until today.

REP. : Thank you very much.

REP. : Mr. Chairman, I appreciate your kindness. Since Mr. McCollum brought up my questioning, and I just needed to know whether Mr. Hartnett intended to make a blatant statement that this was a coverup by the Treasury Department. There may have been some misstatements, and we are here to correct and to improve, but
are you saying that this was a blatant five months report that covered up all of the wrongs that might have occurred?

MR. HARTNETT: No, I am not saying that, ma'am.

REP. : Thank you, sir.

REP. ZELIFF: Thank you very much. It has been a long day. We appreciate --

REP. : Can we get a pertinent question?

REP. ZELIFF: I think you just got one, and let's not start another two hour siege here. I am going to conclude the hearings. I would like to thank you, all of the witnesses very much for their testimony. We will adjourn. The meeting stands adjourned until 9:30 tomorrow morning.

REP. : I would like unanimous consent that the documents that I distributed to Mr. Johnston earlier be included in the record.

REP. ZELIFF: Without objection, so ordered.

REP. : Mr. Chairman, for another unanimous consent.

REP. ZELIFF: Go ahead.

REP. : Mr. Chairman, I would like unanimous consent that Mr. Hartnett be required to come before this committee again and explain the extent of the coverup.

REP. ZELIFF: He will be there, if you look at your scheduled witnesses, he is scheduled. Thank you very much. The meeting is adjourned. #### END