

WITNESSES: PHILLIP CHOJNACKI, FORMER ATF SPECIAL AGENT IN CHARGE IN HOUSTON

CHUCK SARABYN

WILLIAM BUFORD, ATF RESIDENT AGENT IN CHARGE IN LITTLE ROCK

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2141 RAYBURN HOUSE OFFICE BUILDING

EVENING SESSION

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REP. MCCOLLUM: Then that will be accepted without objection. At this time, I want to call our last panel for the day. As I announced earlier, this is the third panel. The fourth panel will be put off till tomorrow, but our third panel is a very important panel concerning the question for the plan for the raid on the 28th of February, 1993. The first witness that we have today on this panel, and there are four and I'd like them to come in and take their place:

Philip Chojnacki, who was formerly the special agent in charge of the ATF's Houston office; Chuck Sarabyn, who was with us yesterday, as was the previous witness, was the assistant special agent in charge of ATF's Houston office; William Buford was the resident agent in charge of the ATF's Little Rock office; and Lewis Merletti was the deputy director of the Treasury Department review team that investigated the Waco matter.

This is a compact panel compared to what we just had, four of you gentlemen. If you could find your seats, if all of you are here. When you've found them and we've got all of you in, then I will swear the witnesses to this panel. (Pause while panelists find their seats.)

I think I have all four of you here. If you would stand and raise your right hand, please.

Mr. Buford's not here? Is he downstairs? All right, let's wait till he comes up, then. I was thinking somebody else was Mr. Buford. Who was it? I apologize. We'll wait a couple of moments as he gets here. (Pause. )

I'm not going to take a recess unless I am told we're going to have a longer wait than I think. Sometimes there are pauses in these, I suppose that's the best way to put it, and I apologize for that time.

If any of you want to be seated while we're waiting for Mr. Buford, please feel free to do so. I don't want to make you stand during that time.

Mr. Buford, if you would join us up here at the witness table. Thank you for coming. I would like now to ask all four of you to stand and be sworn in.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth? Would you answer?

PANELISTS: I do.

REP. MCCOLLUM: Please be seated. Let the record reflect that each of the witnesses answered that in the affirmative. This part of the hearing is commenced, and at the beginning of it, the chairman usually yields to himself. I'm going to take my five minutes and yield to Mr. Buyer.

REP. : Mr. Blute.

REP. MCCOLLUM: Mr. Blute. I'm sorry, Mr. Blute. I apologize. Mr. Blute, you have the five minutes.

REP. BLUTE: Thank you very much, Mr. Chairman. I want to thank the witnesses for being here this evening, I guess now. I'd like to direct my questioning first here to Mr. Sarabyn, Chojnacki and Buford. According to the Clinton administration review of the raid, you three had a major role in the planning of the raid. Is that correct?

MR. SARABYN: Yes, sir, it is.

MR. CHOJNACKI: I was the special agent in charge of the Houston field division at that time. According to the programs and orders that we use in ATF, I was designated to Houston -- (inaudible) -- commander. And in the Houston division itself, I was the highest ranking ATF person, so the overall supervisor of the investigation.

MR. SARABYN: I was the coordinator for the operation, and I was the assistant special agent in charge under Mr. Chojnacki.

MR. BUFORD: I was the co-team leader of the New Orleans special response team.

REP. BLUTE: According to that Clinton administration review, you first met to discuss the raid or the siege on about -- on December 4th, is that correct, 1992?

MR. : I was not present for that meeting, sir.

MR. : I don't believe I was present at the first meeting, either.

MR. : I have to presume that's correct, sir. I don't know the exact date.

REP. BLUTE: Okay, it was early December, though.

MR. : (Inaudible) -- establish that.

REP. BLUTE: And then you all participated in a number of other meetings through February 28th in which the raid was planned. During this time, we've heard testimony that you spoke with the Department of Defense and the Texas National Guard requesting military assistance.

MR. : That's correct, sir.

REP. BLUTE: And on January 11, 1993, you established a surveillance operation at the compound?

MR. : That's true.

REP. BLUTE: And then on February 9th, you requested official authorization for the raid from ATF officials?

MR. : What date?

REP. BLUTE: On February 9th.

MR. : I think it was February 11th and 12th we went to Washington.

REP. BLUTE: But within that period of time?

MR. : Yes, sir.

REP. BLUTE: My question is, after about approximately two months of planning and involvement of the Department of Defense, the Texas National Guard and other people higher up in the Treasury Department, why did you not have a written plan on this raid?

MR. : Sir, we -- at that time, we were still basically planning it. We were using three SRT teams, which Mr. Buford was the co -- the leader of one of those teams. Each team at that time was developing an individual plan. And our plan was to then go to Fort Hood for three or four days before the execution of the raid.

At that time, we would get up-to-date photographs, we would have briefings by the undercover agents, the updated surveillance, and at that time, we would fine-tune our plan.

REP. BLUTE: But -- go ahead.

MR. BUFORD: Well, I was going to say, I did have a written raid plan for my special response team and also a written raid plan for the outside cover teams.

REP. BLUTE: But there was no overall written plan until just a few days before the raid, is that correct?

MR. : There never was a written raid plan for the -- combining all the teams together. They had individual plans, but there was not a plan that was completely combining all those together.

REP. BLUTE: Well, let me ask you about a document that I have in front of me which is called the National Response Plan. Did you, Mr. Sarabyn, have some involvement in writing that plan?

MR. SARABYN: No, that's not -- well, I had some input into the people that wrote it. Now, let me explain that this is an administration plan, not a tactical plan.

REP. BLUTE: When was that plan issued by the ATF?

MR. SARABYN: When we were actually considering this operation, it was still a draft. When we went to Waco, in our minds it was still a draft. Apparently, it was signed off sometime in --

REP. BLUTE: I'm sorry, I'm talking about the National Response Plan --

MR. SARABYN: Yes, sir.

REP. BLUTE: -- that the ATF established as the -- which defined the "objectives, policies and

deployment procedures for activations and response to incidents of major proportion. "When did that plan become active within the ATF?"

MR. SARABYN: It was actually sent to the field in March after --

REP. BLUTE: Prior to the --

MR. SARABYN: After, yes.

REP. BLUTE: After the initial raid.

MR. SARABYN: Yes, sir.

REP. BLUTE: Okay, so was this a response to the Waco raid, this --

MR. SARABYN: This plan was in the process of being written up. In fact, I participated in it several months before, writing up like a draft plan. When the investigation occurred, at that time, this was kind of a draft to see how this was going to work, and after that it would be evaluated and see which changes needed to be done. But that was not the written raid plan. There's some confusion about --

REP. BLUTE: Well, my point is that there seemingly was a tremendous amount of activity with regard to planning this raid, including ATF agents receiving special forces training, as we heard from the previous military panel, National Guard overflights and intelligence operation, and authorization from high-level Treasury officials, all of this without a written plan. Is that, do you think, a good situation?

MR. SARABYN: Sir, there was individual written raid plans. When we did this, there was going to be like six individual teams. Originally --

REP. BLUTE: (Inaudible. )

MR. SARABYN: Originally, we were going to execute the plan on March 1st. Because of the newspaper, it was moved up one day. Originally, that's when that plan was going to be put in its final form. In other words, we had trained, everybody had walked through it. That day, the teams leader would have got together -- put together and written up one raid plan, after it was all practiced, everybody knew what they would do at that time.

REP. MCCOLLUM: Mr. Blute, your five minutes is up.

REP. BLUTE: Thank you, Mr. Chairman. I'll yield back to you.

REP. MCCOLLUM: You're welcome. We will come back. Mr. Schumer, you're recognized for five minutes. And I'll fudge the 30 seconds or so for you, too.

REP. SCHUMER: Thank you, and I want to thank all of you for your bravery, especially the three

who were on the raid. Mr. Buford, I want to talk to you because there has been a lot of talk about who fired first, and you would be in the best position, I suppose, of anyone surviving to know. You were riding in the second cattle trailer on February 28th. What was your assignment that day?

MR. BUFORD: I was to take a three-man team to the east side of the building, put a ladder up on the roof, climb the ladder and make entry into the arms room and secure it.

REP. SCHUMER: Right. And you're the only survivor of your team, as I understand it?

MR. BUFORD: No, sir. I was the team leader of a 12-man team. On my team, we had -- three of my agents were killed, three others were wounded, and I was wounded myself.

REP. SCHUMER: Right. And the bracelets you wear on your wrist are in memory of those men --

MR. BUFORD: That's correct, sir.

REP. SCHUMER: -- men who were lost. Thank you.

Now, when you got off the trailer, what did you see and hear?

MR. BUFORD: Prior to my getting off the trailer, just as I was exiting the trailer, gunfire erupted at the front of the building. It sounded to me as though it was coming from all the way across the front of the building. The first rounds I remember hearing fired sounded to me like a .50-caliber weapon or a M-60 machine gun.

REP. SCHUMER: Right. Now, did any of -- we know from what was found there that both those type of weapons were found in the compound later, is that correct?

MR. BUFORD: I don't believe they found an M-60 in -- totally intact, but they did find the barrel to it and others part of it.

REP. SCHUMER: And we also heard testimony that parts of it were sold yesterday. Now, you would recognize the sound of machine-gun fire if you heard it, is that right?

MR. BUFORD: Yes, sir.

REP. SCHUMER: You served in Vietnam and heard plenty of it.

MR. BUFORD: Yes, sir. I was with the Fifth Special Forces in Vietnam.

REP. SCHUMER: Right. Did any of the men from ATF on the mission have a gun, a machine gun that would have sounded at all like the sound of the initial shotgun -- the initial machine-gun fire you heard?

MR. BUFORD: No, sir, none.

REP. SCHUMER: Do you have any doubt in your mind that the shots that were fired were fired by machine gun and not by ATF agents?

MR. BUFORD: No doubt.

REP. SCHUMER: Do you have any doubt in your mind that the people you were going to serve a warrant on fired first?

MR. BUFORD: There is no doubt in my mind.

REP. SCHUMER: None whatsoever?

MR. BUFORD: None whatsoever.

REP. SCHUMER: And you were the team leader and you were one of the people who went up the ladder? We all see that on the clips of what happened.

MR. BUFORD: Yes sir.

REP. SCHUMER: I'd like to ask any of the -- any of the other gentlemen on the panel, Mr. Sarabyn and Mr. Chojnacki, both of whom have been through plenty, do you have any reason to doubt Team Leader Buford's account?

MR. SARABYN: None whatsoever, sir. I was on the first truck coming in, and we went down further, and as soon as I opened my door, there were shots coming all out of--

REP. SCHUMER: Was it perfectly clear to you as well, Mr. Sarabyn, that it was the first shots fired when you went to serve the warrant and make the search were from the compound, not from ATF agents?

MR. SARABYN: Yes, sir, as soon as I opened the door.

REP. SCHUMER: Is there any doubt whatsoever in your mind?

MR. SARABYN: No, sir.

REP. SCHUMER: Mr. Chojnacki, do you agree with that?

MR. CHOJNACKI: Yes, sir. I was in the command and control helicopter approximately 350 to 500 yards behind the compound. I could see ATF agents departing their vehicle. Then our helicopter started taking fire. At least three rounds hit the helicopter I was in. The damage was sufficient for the red lights on the console to go off. The pilot commented that we had red lights, we had a problem, and he had to bring the thing down, so I don't know anything more after that.

REP. SCHUMER: Thank you, Mr. Chojnacki. And Mr. Buford, just tell me, as somebody who was team leader, saw three men die, someone who wears every day the bracelets of those three, how do

you feel when you read all these stories and hear everything else about these theories that you, the ATF, simply attempting to serve a peacefully -- although using the usual pattern of dynamic entry -- a warrant on this compound, how do you feel when people hypothesize that you or your men shot first?

MR. BUFORD: Well, I -- it's very difficult, sir, to deal with this on a personal level and also on a professional level. The men that I served with there were fine young men. They had families. I think many people have forgotten that not only were there Davidians in there with their families, but we have wives and children without husbands and fathers. And in fact, it's very similar to the way I felt when I first came back from Vietnam. I felt like I had done a service to my country and was being criticized for it.

REP. SCHUMER: Mm-hmm, mm-hmm. I thank you and want to say to all of you, I for one, and I think most Americans -- there may now be a few on the fringes who are trying to use this for other purposes, but most Americans have tremendous sympathy for what you went through. And I very much appreciate your clear, concise testimony that, if I may summarize, without taking any liberties, that the shots came from the compound first -- uncontroverted, at least according to the three gentlemen who were on the scene.

REP. MCCOLLUM: Thank you, Mr. Schumer. Mr. Schiff.

REP. SCHIFF: Thank you, Mr. Chairman. Mr. Chojnacki, did I understand that were in charge of this overall raid?

MR. CHOJNACKI: Yes, sir, that's true.

REP. SCHIFF: All right. Then I'd like to ask you first, sir, who told the Army that the purpose of this raid was to take down a methamphetamine lab?

MR. CHOJNACKI: I don't know that I can really answer that question, sir. The only contact that I had directly with anybody representing the military regarding those terms was a conversation with an individual by the name of Bill Eeny (sp), who represented the Texas National Guard. My subordinates --

REP. SCHIFF: Well, then who was in charge -- you were in charge of this operation.

MR. CHOJNACKI: Yes, sir.

REP. SCHIFF: So let me ask you, who was in charge of contacting the military?

MR. CHOJNACKI: One of my supervisory agents was assigned the task of coordinating that kind of effort, and he would have made that contact in my name, sir.

REP. SCHIFF: All right, so the person who contacted the military worked for you?

MR. CHOJNACKI: Yes, sir.

REP. SCHIFF: All right. But you don't know if he said -- do you have any idea where the military got the idea, as they have testified to in an uncontroverted fashion, that they thought this was a raid to take down a methamphetamine lab? Do you have any idea where they got that idea?

MR. CHOJNACKI: No, sir, I don't. I heard that testimony. To the best of my knowledge, we had found remnants -- or we were aware that there should have been or may have been remnants of a methamphetamine processing lab that had been left behind in 1987. We were aware that it was supposed to have been turned over by a David Koresh to the sheriff's department. Dave Aguilera, the case agent, checked the sheriff's department.

REP. SCHIFF: Was this raid ever to take down a methamphetamine lab?

MR. CHOJNACKI: The raid, as far as I'm concerned, sir, was for firearms violations.

REP. SCHIFF: Thank you. Who made the decision not to try to arrest David Koresh outside of the compound?

MR. CHOJNACKI: I would have to say that it was a joint decision based on the impression of all the planners that it would not have been a good idea. First, we didn't even have a signed arrest warrant till the 25th of February, not sometime prior to that.

At that particular time, we were under the impression from the briefings we had had from the undercover agents and the people that were monitoring their activity that David had said he wasn't coming off the compound, he was concerned about the attitude of some of his people and didn't want to leave the premises, and that we felt that if we staged and waited for him to come off, we could spend several days waiting for an event that wasn't going to take place.

REP. SCHIFF: But witnesses had seen him come out of the compound a number of times. You did know that?

MR. CHOJNACKI: Yes, sir, I -- (inaudible).

REP. SCHIFF: All right. Who made the decision not to consider taking up David Koresh's offer to let someone from ATF come into the compound and look at his firearms?

MR. CHOJNACKI: To the best of my knowledge, that would have been a decision made by the case agent, Mr. Aguilera.

REP. SCHIFF: Did Mr. Aguilera ever tell you, as the agent in charge of the overall operation, that that offer had been made?

MR. CHOJNACKI: Either Mr. Aguilera told me in the course of one of our briefings or I read it in one of his reports, but I was aware of something along those lines, sir, yes.

REP. SCHIFF: All right. You are in charge --

MR. SARABYN: May I answer, sir?

REP. SCHIFF: Yes, Mr. Sarabyn.

MR. SARABYN: There's -- (inaudible) -- he doesn't know about. We discussed in a group, the tactical planning group, the option about letting him go back. And we discussed it, and there were several reasons that we didn't, you know, try to do that.

One was, when the Health and Human Services, who had helped us out a couple times, went out there, she was very restricted on where she could go. They would just take her into one room or whatever. She didn't have access to all the rooms. So we were concerned if he went back in, that, you know, he wouldn't get access, wouldn't really see anything in there as far as illegal guns. Obviously, he's not going to say, you know, "Here's my machine guns and explosives. "

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REP. SCHIFF: Well, sure, but let me just ask, you were planning a dynamic entry raid at that point, is that right?

MR. SARABYN: Yes.

REP. SCHIFF: Well, now, wouldn't it have been helpful, even if Mr. Koresh would not have shown you illegal weapons voluntarily, to have gotten a further view of the inside of the compound so you knew better what you were dealing with?

MR. SARABYN: Yes, sir, but we had had information that, you know, at one time from all our original reports that he had 24-hour guards outside. And apparently, the information we were getting from current member -- family members that were still in there, that he was getting paranoid. And the last time they had done a major news story, there was an Australian news story, and after that he got kind of scared that they -- the government or whatever was going to do something, he put armed guards out again. So we thought if we sent him back in and he knew that ATF was investigating him, he would put the armed guards out and it would be harder for us to be able to, you know, execute any type of warrant.

REP. SCHIFF: Well, I want to say, I think he already knew ATF was investigating him based upon the telephone conversation with the -- (inaudible).

MR. SARABYN: It wasn't really an investigation. It was just a question, where were the guns? And he said, you know, they were here.

REP. SCHIFF: Mr. Chojnacki, could you --

MR. SARABYN: (Inaudible. )

REP. SCHIFF: Excuse me, because time is short here, pardon me. Mr. Chojnacki, could you clarify,

perhaps once and for all, as the agent in charge, was the element of surprise ever a key element, a critical element in the plan of this raid?

MR. CHOJNACKI: Sir, surprise and speed are always key elements in a raid of this nature. The primary element in the raid, as far as we were concerned, was the safety, the safety of my agents, the safety of the innocents inside that compound, and even the safety of the potential defendants.

REP. SCHIFF: Sure. But if the -- and if the element of surprise were known to be lost, wouldn't that suggest not going ahead with the dynamic entry raid?

MR. CHOJNACKI: In this situation, it certainly would, sir.

REP. SCHIFF: But the raid went ahead anyway.

MR. CHOJNACKI: I have never been spoken to by anybody regarding the element of surprise or my knowledge of that fact, sir. I was not aware that we had lost the element of surprise when I made that decision to go forward.

REP. SCHIFF: Thank you. I yield back, Mr. Chairman.

REP. MCCOLLUM: Thank you very much, Mr. Schiff. Mr. Conyers.

REP. CONYERS: Thank you very much, Mr. Chairman. Gentlemen, Mr. Merletti, you've seen the Treasury report put out on this, some 300 pages?

MR. MERLETTI: Yes, sir.

REP. CONYERS: Is your mike on?

MR. MERLETTI: Yes, sir.

REP. CONYERS: Okay. Just speak up a little louder. Pull it closer. And is there essential agreement that the Treasury report on this subject matter and on Koresh is essentially correct that this committee has?

MR. MERLETTI: Absolutely, sir. I would like to say that I take strong issue with the accusations that were made by another witness yesterday.

REP. CONYERS: Tell me about it.

MR. MERLETTI: He's making the accusations that this report was unfair, biased and a cover-up. I stand behind the solid integrity of this report. I speak for myself and for the remainder of the review group. I was the deputy assistant director for the Secret Service's inspection division, which would be the equivalent of an internal affairs unit, in April of 1993. I was selected to head up this investigation. I was not a volunteer and I did not have any agenda. I was -- I went to the Treasury Department and met Mr. Noble and Mr. Moulton, who was the project director. I was told I was to find the truth. I interviewed candidates.

REP. CONYERS: This was after the siege?

MR. MERLETTI: This was after the fire, yes, sir, a few days after the fire, when we were going to begin our investigation. I interviewed candidates for investigators. I interviewed people from the Customs Service, IRS and Secret Service. These are other Treasury agencies.

REP. CONYERS: Well, what have you heard that you took exception to with one of the witnesses?

MR. MERLETTI: Yesterday one of the witnesses said that this report was unfair, biased and a cover-up.

REP. CONYERS: And who was that?

MR. MERLETTI: That was Mr. Hartnett.

REP. CONYERS: And what is your position that you can avouch from your point of view and experience with this that it was accurate, in fact?

MR. MERLETTI: It's absolutely accurate, sir.

REP. CONYERS: Do any of you have any exceptions to this report or any comments about it that you'd like to put in this record at this time? Mr. Chojnacki, Mr. Sarabyn?

MR. CHOJNACKI: Yeah, I don't feel that it's completely accurate.

REP. CONYERS: In which respect, sir?

MR. CHOJNACKI: Well, this is my personal opinion --

REP. CONYERS: Sure.

MR. CHOJNACKI: -- that I feel that 60 or 70 percent of it is very accurate. It has some legitimate criticisms, it has some legitimate things. I think there is 10 or 15 percent that has a twist or turn, where three or four people may have been interviewed and one selected to go with the story, and then I think part of it is accurate. I think there are some very serious allegations against me in the book. I feel if they were true, I should have been fired. If they were true, I would have resigned. But I do not feel that they are true and accurate.

REP. CONYERS: Let me ask you, Mr. Merletti, that even though the raid plan was flawed, it was not recklessly put together, was -- is that correct?

MR. MERLETTI: I would not characterize it as reckless.

REP. CONYERS: And the fact that it didn't work doesn't mean that it wasn't planned as well as it could be under the circumstances?

MR. MERLETTI: That's correct. The planners, actually, I feel they did a good job. However, they were not receiving good intelligence. The intelligence operation that was set up was very poorly set up, and they did not feed the correct information to the planners themselves.

REP. CONYERS: And that's been generally conceded. Is it true also that the element of surprise being blown made it more difficult to carry -- to execute the strategy that had been agreed to?

MR. MERLETTI: Absolutely. The dynamic entry is hinged on the element of surprise. You cannot have one without the other. The element of surprise was lost.

REP. CONYERS: So the result that was feared by most people that there would be a suicide activity was actualized?

MR. MERLETTI: Yes, sir.

REP. CONYERS: Mr. Buford, could I suggest -- get your comments on this matter, sir?

MR. BUFORD: Oh, yes, sir. When we were planning the raid, we first looked immediately at a situation that would cause us to put a perimeter around the compound, to arrest Mr. Howell off of the compound. In fact, we went to great lengths exploring different ways we might be able to arrest him off the compound.

REP. CONYERS: But with the guns on the compound and with that the object of the warrant, it doesn't make sense to arrest him off and what you're trying to seize isn't there.

REP. MCCOLLUM: Mr. Buford's is going to make some answer, Mr. Conyers, but your time had expired even before that question. Please, Mr. Buford, go ahead.

MR. BUFORD: Yes. The -- that plan was later, we felt like that it would not be possible to do that, sir. We began with a -- what we called a siege type operation, putting a perimeter up around the compound and calling in and asking Mr. Koresh to allow us to come in and execute the warrant. However, the tactical intelligence that we gained between the first meeting in December and the later meeting in January changed our minds. And there were a number of reasons that we decided to go with a different type entry, a dynamic type entry. First and foremost among those was that I had interviewed numerous people, and each of those individuals related to me that if we went to a siege type operation, there would be a mass suicide on the inside after a long period of time. And as we all know, that is in fact what happened.

REP. MCCOLLUM: That you very much, Mr. Conyers.

REP. CONYERS: I want to thank you all very much. And thank you, Mr. Chairman.

REP. MCCOLLUM: Thank you.

Ms. Ros-Lehtinen, you're recognized for five minutes.

REP. ILEANA ROS-LEHTINEN (R-FL): Thank you, Mr. Chairman. I'd like to yield my time to Mr. Blute.

REP. PETER BLUTE (R-MA): Thank you. I'd like to thank my colleague for yielding her time.

I'd like to follow up on some of the interesting issues that Mr. Conyers raised, and some of the statements that have been made by the table, because I think it's very important. There seems to be a split as to the accuracy of this report -- particularly amongst those who were most closely involved. And I think that's an important difference that we should examine here.

Mr. Sarabyn, I wonder if you could tell me who Larry Sparks is.

MR. SARABYN: Larry Sparks is a supervisor. He used to be an ATF supervisor in Austin. He was subsequently fired for sexual harassment. He had worked for me.

REP. BLUTE: Are you aware of a recorded telephone conversation between yourself and Mr. Sparks?

MR. SARABYN: No, I'm not, sir.

REP. BLUTE: Recorded on July 6th, 1993. This is a document that we received from the Justice Department. And it is a conversation between you and Mr. Sparks -- apparently talking about your particular problems in the fallout from the Waco incident.

MR. SARABYN: Yes.

REP. BLUTE: And I'd just like to quote you, according to this transcript, if I could. You say, "Well, they got this. You know, they're chasing windmills. They think that there's this big conspiracy thing, or whatever. And now, obviously, some people way up said some things after that that weren't true. "Do you recall making that statement in that conversation?"

MR. SARABYN: Not right off the top of my head, sir.

REP. BLUTE: Does it stimulate any type of --

MR. SARABYN: I mean, obviously, during the interview, as far as this, there was a feeling being interviewed that there was some conspiracy by ATF to cover something up, possibly because of some things that were said in the press after that were inaccurate.

REP. BLUTE: So, you believe that some ATF higher ups said some things that weren't true about what happened on the ground -- what happened in the planning of the raid and the conduct of the raid?

MR. SARABYN: There were -- I don't if they weren't true or spoken correctly or whatever.

REP. BLUTE: Let me mention another statement that you said in this conversation. "No, I mean, you know, they wanted, you know -- we got to this point where I said, you know, this supposed truth you're trying to get to, I would have to lie to get beyond truth, or whatever. You know, I wasn't sure exactly what they were. "I wanted to know what you were referring to in that conversation.

MR. SARABYN: When I was being interviewed by the Treasury review team, trying to go through and explain some things. They said, "This is where -- you know, this is -- everything will be all right. "You know, this is the way kind of things went down. And I made that statement that, you know, for me to tell your truth, I'd have to be telling a lie.

REP. BLUTE: And later in the conversation, Mr. Sparks -- referring to his particular situation, I assume, with regard to the sexual harassment problem -- says, "I'm dead. I'm dead. You know I'm dead. But I'm not going out without a fight. I mean, look how -- look at Austin now, how they're turning on you. "Did you sense that the Austin ATF office was turning on you at that time?

MR. SARABYN: Regarding the interviews, or whatever, that the Treasury review did with me, there were several times that the Austin agents had said things that I didn't think were true.

REP. BLUTE: Later on, Sparks says, "Obviously, they are making lies against you. "Did you feel that the Austin office were making lies against you at that time?

MR. SARABYN: Some of the things that the Treasury review asked me, yes.

REP. BLUTE: Well, I think it's pretty clear. I'd like to ask Mr. Merletti to respond, first of all to Mr. Hartnett's strong statement last night, that he felt that this report was flawed, and indeed covered up some of the more damaging statement made by higher ups. And secondly, I wonder if you'd respond to some of the concerns that Mr. Sarabyn made in this conversation -- which was an extemporaneous conversation between himself and another agent.

MR. MERLETTI: Let me say again, I stand by the solid integrity of this report. As far as Mr. Sarabyn, he's referring to the loss of the element of surprise. And upon his arrival at the staging area, he announce -- repeatedly -- "We have to hurry up. Koresh knows we're coming. "When I interviewed Chuck Sarabyn, I had already -- we -- the group had already interviewed approximately 100 people. I had reports from 61 individual -- one of them being Mr. Buford -- who heard Mr. Sarabyn say, "Hurry up. Koresh knows we're coming. "I asked Mr. Sarabyn, "Did you say this? "And he said, "No. "I was quoting from Mr. Rodriguez. Once I showed him that we 61 statements, he said, "Well, I was trying to say what Robert told me. "

Later on in the interview, he admitted that he knew that Koresh knew the ATF were coming. He was asked, "How certain of that are you? "

REP. BLUTE: In my last moment here --

MR. MERLETTI: And he said, "I'm 100 percent certain. "

REP. BLUTE: In my last moment here, I wonder if Mr. Chojnacki could comment on what he

thinks about this report, and its voracity.

MR. CHOJNACKI: I would have to say that my position is very similar to Mr. Hartnett's and Mr. Sarabyn's. I tried to explain how the perception of the review team, that Agent Rodriguez -- provider of sufficient information -- couldn't be questioned by me. And what I tried to provide them was my perception that, while he may have thought he gave us the message that he intended to deliver to us -- that the raid was compromised -- that unless we understood that, we couldn't act accordingly.

And in my understanding, I thought I had received the same kind of briefing from Robert Rodriguez, through Chuck, that I has received on other briefings where he said, "Every time he talks to me, Koresh tells me to be careful. ATF is going to come for him. ATF is going to come for me. "That same kind of rhetoric. I went through the comments that he had made in my mind, and then said to Chuck, "What does that all mean? What's different about what we always hear? "And Chuck said, "I don't know. "I asked Robert the same question and he didn't know. And then Chuck went on to point out that he had asked a series of questions that the team leaders had asked him to ask about Robert's last minute observations inside the compound. What was he wearing? Was he armed? Was anybody armed? Was he giving them any instructions? Those kinds of questions. And all the answers were negative. I said, "I don't see any reason to not go forward, do you? Chuck and Ted Royster (sp) -- the other (sect ? ) that was with me at the time -- I said, "Do you men see any reason for us to not go forward at this time? "Nobody responded that they saw a problem. So I said, "Well then, let's go. "I knew of no reason to not go. I did not understand or believe that we had been warned that the raid was compromised.

REP. BLUTE: I thank you for your testimony. I would just finally say, Mr. Chairman, that this testimony, I think, is very important, because it indicates a tremendous difference of opinion.

REP. : (Off mike).

REP. MCCOLLUM: Well, hold on, hold on, hold on. Order in the House. I'm going to let -- Mr. Blute's going to get another comment in one of these days, but right now, his time is up, and I recognize that sensitivity over here.

Mr. Collins, you have the time. And I think we have time for your questions before we have to vote. We haven't had the second bells. So, I yield five minutes to you.

REP. CARDISS COLLINS (D-IL): Mr. Chairman, I'm not sure. It's about -- almost time for the second bells to ring now. So, I wonder if I could come back and ask my questions.

REP. MCCOLLUM: If you would prefer to do that, we could take -- now, we're going to have apparently more than one vote.

REP. COLLINS: Yes.

REP. MCCOLLUM: And as I indicated on previous recesses, we are at the stage now where we're going to come back within five minutes of the last vote. I don't know if this is two votes or three, or

something like that. But we will take a recess until five minutes after the final vote of this series.

The Subcommittee is in recess.

REP. COLLINS: Thank you, Mr. Chairman.

(Recess. )

REP. MCCOLLUM: This hearing of the subcommittee, joint subcommittee on Waco is reconvened. When we went for recess for votes, we were just about to let Mrs. Collins ask her questions and yield five minutes to you, Ms. Collins.

REP. COLLINS: Thank you, Mr. Chairman. Mr. Buford, it was your responsibility to lead some of the ATF agents to the roof of the compound, was it not?

MR. BUFORD: That's correct, ma'am.

REP. COLLINS: Well, can you describe for us what it was like when you and your men first came out of the trailers?

MR. BUFORD: Yes, ma'am. Initially, prior to exiting the trailer, I heard a tremendous amount of gunfire at the front of the building. It seemed to be all the way across the building -- automatic weapons fire, machine gun fire. My team went to the east side of the building; we put our ladders onto the roof. As we were ascending the roof, we were receiving a lot of fire. I could hear the rounds cracking around my head as we went onto the roof. Almost immediately upon getting on the roof, Conway LeBleu (sp), one of my agents, was shot through the head and killed immediately. After he was shot, the Davidians continued to shoot into his body, even though it was obvious he was dead. This happened on several occasions. The window I was going to make entry through, we broke the window out, entered the window and received a withering a gunfire on the inside.

I encountered one armed individual on the inside. He had backed through a doorway. I went to the doorway, and he attempted to enter the room again with an AK-47. I shot; I believe I hit him. He fell, I shot him in the doorway there. Almost immediately, Special Agent Glen Jordan (sp) yelled that he had been hit, and I went back to where Glen was. The amount of fire coming into the room was just tremendous. I remember thinking, I can't believe I'm not getting hit. I asked Glen how he was. It was obvious he was severely wounded; there was already a large pool of blood under his right arm. I asked him if he could go, that we needed to get out. And about that time, I was shot the first time. A round came through the floor, an M-16 round I believe. It struck me in the left buttocks and traveled up my thigh, and lodged next to my thigh about midway in the thigh.

I, at that point, was knocked back and looked down and observed this was the arms room as we had thought it was. There were weapons in a gun rack there. There was also a box of hand grenades that I was kneeling beside. And I remember thinking to myself, I'm glad that those didn't get off, because I had deployed a distraction device, a flash-bang upon going into the room. I again asked Glen if he thought he could go, and the other agent in the room, Keith Constantino (sp), said he could give us cover. And about that time, I was shot twice, once in the hip, once in the upper thigh, with an

AK-47, I believe. At that point, I realized that I was severely wounded, and we needed to get out of the room. I again helped Agent Jordan (sp) get to his feet. Agent Keith Constantino (sp) covered for us as we made our way out the window.

After I got out onto the roof, I was unable to get to my feet. I rolled off of the roof, fell to the ground and broke several ribs when I hit the ground, and that pain led me to believe that I'd been shot again; however, I hadn't. But two of our agents drug (sic) me around to the side where they thought I would be out of the line of fire. They left me there -- I mean, didn't leave me there, but when to get some medical equipment to take care of me, and as I laid there, obviously no threat to anyone, they began to shoot at me again. The rounds were hitting all around my head. I was unable to move because of the wounds that I'd already received. I was struck in the face at that time with a round, and Special Agent Ken Chisolm (sp) ran over and jumped on top of me and covered me with his body. They then took me to -- dragged me around to the side of the building where I remained for the remainder of the fire fight, which lasted about two and a half hours.

REP. COLLINS: Various members have expressed disbelief that an ATF agent would refuse a so-called invitation by David Koresh to view his guns. Mr. Buford, four of your colleagues were killed by overwhelming gunfire at the Koresh compound in an attempt to serve a legally issued warrant. Isn't that a good reason why an ATF agent might not want to take Koresh up on an invitation?

MR. BUFORD: Well, that's exactly one of the reasons. There was a lot of information that I was not in a position to make that, but had I been able to make that decision, I would not have allowed one of my agents to go in there. We knew that Koresh was -- could very well be intent on taking a hostage. I would convinced he would never show them any illegal weapons anyway. In a similar situation, in a religious-type group that I dealt with in Arkansas, calling themselves The Covenant, The Sword, The Arm of the Lord, I attempted to serve a subpoena on Jim Ellison (sp). This was in a rural area. When I arrived at the gate, I was surrounded by a large number of armed men. I was -- I told them that I wanted to serve the subpoena on Mr. Ellison (sp). I was disarmed; I was able to finally execute the subpoena on Mr. Ellison (sp), but was very concerned that I would be killed or taken hostage at that point, and I feel like that's a very real possibility had Agent Aguilera gone in there by himself to examine those weapons.

REP. MCCOLLUM: (Inaudible) -- has expired.

REP. COLLINS: Thank you, Mr. Chairman.

REP. MCCOLLUM: You're welcome. Mr. Coble, you're recognized for five minutes.

REP. COBLE: Thank you, Mr. Chairman. Gentlemen, (tempers ? ) have a way of (learning ? ) how (this hill ? ) at hearing times, so you all bare with us. You may hear some tempers flaring now and again. This hearing has been called by some as a witch hunt. I think that's unfair. I think the purpose of this hearing is to hopefully restore public confidence in law enforcement. And I think at this point, it may well be -- (inaudible). I don't think there's anybody on this committee who would declare that David Koresh is a good man, nor that you all are bad men. I don't think that's the case at all. And so you all keep in mind that when we're critical of what went down that day, that's not to

say that we're bashing ATF or bashing FBI, it's that we're trying to keep it from happening again. And I will stipulate, Mr. Chairman, that at this hearing and for that matter, since the hearing went down, we have the luxury of applying 20-20 hindsight, and that is luxurious at times.

I have tried to get these hearings underway for almost two years. I requested that these hearings, just as we're having today, tonight, that they be commenced almost two years ago. And I was not successful in that attempt. Let me think aloud gentlemen for a minute or two. Some of the questions yesterday seemed to be framed in such a way that oh, to have arrested Koresh would just have been a mere incidental, but that's no big deal. What we really wanted to do was get onboard the premises. Well, sure you wanted to get onboard the premises, but I think also to have arrested Koresh would have been far more than incidental. I think that would have been significant, indeed. I mean here's a guy who's a charismatic leader of the self-proclaimed prophet, Jesus Christ, if you will. That's what he claimed I'm told. Get him out of the pocket; remove the nerve center, even though you may have him in custody for just a few moments or a few hours, at least that would free up the compound for a search to commence. That's the part in hindsight that I wish had been done.

And having said that, any (either ? ) of you four gentlemen, was there ever any consideration to extend the time to maintain the operation of the undercover house? I think that was an operation for only about a month prior to the raid. I'm thinking aloud again. Now if that could have been extended maybe for four or five, six weeks, perhaps more information could have been assembled concerning Koresh. I'll hear from any of you.

MR. BUFORD: I would respond one, again sir, I would go back to the situation that I dealt with The Covenant, The Sword, The Arm of the Lord in Arkansas. This was a group similar that the leader professed an Armageddon if you will. He had prophesied that this Armageddon would take place at a certain time. When it did not happen, then he had to do something in order to save face with his people to make it happen. In this case, he bombed a natural gas pipeline leading from Houston to Chicago, thinking that by cutting off the flow of natural gas into Chicago, it would cause the riots that he had predicted.

REP. COBLE: Mr. Buford, I'm sorry sir, but my time is short. I'm talking about the undercover house.

MR. BUFORD: Okay, my concern about extending that time, sir, was that Mr. Koresh had also preached an Armageddon, and we know now that there was a plot to go to the McDonalds and murder the people at the McDonalds and retreat to the compound. And this, in my mind, was one reason that this needed to be done not recklessly quickly, but it needed to be done as quickly as possible.

REP. COBLE: Alright, now I recall having read in the volumes I have read about this, as have my colleagues, at some point a request was made of the military to drop smoke canisters just prior to the beginning of the raid. Now I think those smoke canisters were never dropped. Why?

MR. BUFORD: There was never a request, sir, for smoke canisters to be dropped. In our contingency plan, had we been able to -- if we had received fire as we turned into the driveway, we had requested to use smoke to cover our exit from the trailer to go to a blocked house which was a

short distance away, and from there, we would set up the perimeter. The smoke would have been used if we had been drawing fire to help cover our withdrawal to an area to set up a perimeter.

REP. MCCOLLUM: Mr. Coble, -- (inaudible).

REP. COBLE: Well the ubiquitous red light illuminates, and I will withdraw, Mr. Chairman. I thank you. Thank you, gentlemen.

REP. MCCOLLUM: Thank you, Mr. Coble. Mr. Scott, you're recognized for five minutes.

REP. SCOTT: Mr. Chairman, have the gentlemen sitting right behind the witnesses been identified?

REP. MCCOLLUM: I don't think we have, but I believe they're counsel for the witnesses. We'd be glad to identify them, though they're not testifying today. Would you mind identifying yourselves gentlemen?

MR. CARLSON (sp): I'm Dave Carlson (sp), counsel for Philip Chojnacki.

REP. MCCOLLUM: And --

MR. GARDNER (sp): Steve Gardner (sp) representing Mr. Sarabyn.

REP. MCCOLLUM: And --

MR. : My name is Joe -- (inaudible) -- and I represent Bill Buford.

REP. MCCOLLUM: Alright, they're counsel, but they're not witnesses, Mr. Scott.

REP. SCOTT: Okay. Thank you Mr. Chairman. Mr. Buford, could you tell me a little bit about what precautions were taken to protect the lives of the officers going in, in terms of clothing or any other precautions that were taken?

MR. BUFORD: Yes, sir. We wear protective gear -- helmets, vests. I have some of the items that were actually used on that day if you would like me to show you those, some of the equipment that we used. I have a -- we wear the Kevlar helmet. We never wore a mask. There's been a lot of talk that we wore Ninja masks or something. No one ever wore masks, but we did wear a Level 3 ballistics vest, or a bullet -- it's not a bullet-proof vest, because rounds can go through it.

REP. SCOTT: Were any of the officers shot through the vests?

MR. BUFORD: Yes, one -- many of the agents lives were saved as a result of wearing the vests; however, one of our agents, because the high velocity round that is fired by an assault rifle, there's no vest that will stop that round, and he was through and through the chest three times by an AK-47, even though he was wearing a vest.

REP. SCOTT: Is that ammunition legally purchased?

MR. BUFORD: I have no knowledge that it was illegally purchased, sir. This is just a normal round, not a armor-piercing round.

REP. SCOTT: I yield to the gentleman from Michigan -- I yield the balance of my time to the gentleman from Michigan.

REP. CONYERS: I thank my friend from Virginia, Mr. Scott. Question: How can we get to the bottom of whether there was an order given that if the element of surprise was compromised, then this strategy would not proceed?

MR. : May I answer that, sir?

REP. CONYERS: I'd love to, Mr. -- (inaudible).

MR. : In our original briefings at headquarters, we spent one day briefing the law enforcement executive staff. The following morning, we provided a briefing for the director of the bureau, Mr. Higgins. We acknowledged during the course of those briefings that speed and secrecy is a critical element in the kind of enforcement action we're taking. At all of those conferences, and a subsequent conference after the second briefing that I had one on one with the Associate Director for Law Enforcement Dan Hartnett, the executive level people stressed to me that safety was the important issue. The term that you just used was never mentioned to me as something that was a critical factor. It was a known critical factor.

The element of surprise is critical in that kind of an operation. We talked of safety. We talked of safety for the agents, the safety of the people that were inside the compound, whether they were innocents or defendants. My instructions at that time were to make use of my undercover people and the forward observers, the people that would have been in the undercover house and other locations. And if it appeared that the operation could not be exercised safely, we were to terminate and go home.

REP. CONYERS: Well, now, when you talk about secrecy, that's the other side of the element of surprise, isn't it?

MR. : Yes, sir. The problem we had is that we were ambushed. I did not know at the time I gave the order to go forward that we had been compromised and they would be laying in wait to shoot the people that I was sending forward to execute that warrant.

REP. CONYERS: Mr. Merletti, does that version comport with what's in the Treasury report?

MR. MERLETTI: It does not, sir.

REP. CONYERS: Why not?

MR. MERLETTI: The element of surprise was lost and the commanders knew the element of surprise was lost. They announced that. I should say Mr. Sarabyn announced that. He had a

conversation on the tarmac, at the command post, with Mr. Chojnacki and Mr. Ted Royster (sp). Initially Mr. Royster denied even being at that conversation. However, after he was presented with, I believe it was 12 witnesses that later, that immediately after this conversation heard him say, "They know we're coming," he then admitted, "Yes, I was there. "And, in fact, Mr. Sarabyn said, "Koresh knows we're coming. I think we can do it if we do it quickly. "

REP. CONYERS: Mr. Sarabyn, well, you just heard it.

MR. SARABYN: Well, let me start at the beginning with the conversation with Robert. We -- I got a telephone call from Robert Rodriguez, which was the undercover agent. Okay, the first thing on the phone he said to me, "They know. "And obviously I was surprised or whatever. I go, "What do you mean, they know? "And he said, "I was in there in Bible study with Koresh. He got a telephone call, went in the other room and came back and said, 'I know about ATF and the Guard coming. "'And I said, "What do you mean, he knows about ATF and the Guard coming? "And he says, "I don't know. "He says he got the call. He repeated exactly what he said to me.

Now, at this conversation, I took notes. And everybody has to remember that this is probably the most traumatic incident in all our life. Mr. Buford was in Vietnam and a few other people, and they said it was worse than what they are in Vietnam. So all of us has remembered things at different times, remembered things later after we've had conversations. I feel my notes are fairly accurate because they can't be traumatized because they were right there. It wasn't something to be remembered or whatever.

So after he said to me -- because the second time he just repeated what he said; in my mind I'm thinking, "What's going on here? "He has said this numerous times before. I think you heard in the testimony of some of the other people, he always talked about ATF coming to get him, the government coming to get him, several other things. We were briefed at our -- (inaudible) -- meetings by Dale Littleton that he had told Robert that on videotape of the training. Robert tells us -- he's always talking about, "Come and get it, ATF. " So I'm saying he's saying this again.

So I'm trying to determine what is he doing. So I say to Robert, "What is he doing? "Robert said, "He's preaching. He's reading the Bible. "And normally, after we talk to everybody, all our intelligence, from 9: 00 to 10: 00, that's when he reads the Bible. So I said, "Well, do you see any guns in there? "He says, "No. "I says, "Is he telling anybody to do anything? ""No. "So in my mind I've heard something that I've heard over and over and over again. Okay, he's not taken any action. He's not telling anybody to do anything.

So then I had a list from my commanders that I met with that morning that went over some additional. So I said to Robert, "You know, what is he wearing? Are the dogs out? Did you see any guns? What's his mood? ""Nervous and shaking? "And I put, "Doesn't know; not about coming," because I concluded that that was just the statement. So I go out to the deputy commander, deputy incident commander, which is Phil Chojnacki and Ted Royster, and go over the conversation of what Robert had said. Now, these people had also been on the same briefings as the other people. Phil asked a couple of questions; says, "Go ahead. "

The helicopters are going. You know, they're already going because I'd pulled them off the

helicopters to actually talk to them. He said, "It's a go. "I get on the phone. I call the deputy (tackle? ) commander, which is Jim Cavanaugh. Now, he's in the room where Robert just came across. He has forward observers that are watching both the front and the back. And I said to Jim, "Did you talk to Robert? "Yes. "How does it look? ""Fine. ""What are they doing? ""Got some people carrying the buckets, which they do every day. He's got a couple of guys standing by the car. ""Okay, I'm on the way to the staging area. Hang up the phone and I'll call you when I get the staging area to walk us into execution of the warrant. "I get to the staging area. And in my mind, when I got there, you know, I pictured the guy -- I didn't know what time it was, but, you know, it's ready to go. The helicopters are going up and I get into a large area and there's 75 agents all over the parking lot.

REP. CONYERS: You're saying it was too late to call it off.

MR. SARABYN: No, I'm not saying it's too late to call it off.

REP. CONYERS: It wasn't too late to call it off.

MR. SARABYN: No. We had a plan that we could have called it off till we went right in the driveway, and I'll go through that. Can I finish?

REP. CONYERS: You sure can. That's why we're here.

MR. SARABYN: So, you know, by calling -- or I pull into the staging area and there's guys all over just standing around, talking at the end of the trucks. There were some hoods that were supposed to be on top of the vehicles, and one of those were off. So I'm like, "Why aren't these guys ready to go? "So I do say, "Hurry up. He knows. "And I say that to a couple of people outside. I go inside and then I go over the conversation which I had with Robert. Robert got a call; you know, said he knows about ATF and the Guard, you know, shaking, reading the Bible. No one's doing anything. No guns are out.

So I think Bill and Pete -- (inaudible) -- asked me a couple of questions. We say, "Let's go. "So we rode in the trucks. I call Cavanaugh again. "How are things at the place? ""Everything's fine, normal. "We drive in. We get about halfway there. And Cavanaugh -- any of these commanders I talked about could have called it off any time -- myself, Ted, Phil, Cavanaugh, Pete. I mean, there didn't have to be any cause or whatever; just say, "Something's wrong" or whatever; went through all this. Not one of these persons said, "Something's wrong. Anything different? "

We had heard this over and over again -- "They're coming to get you" or whatever. So, you know, the words didn't mean what they should have meant. So as we drove up to the driveway, it was the last point Cavanaugh could call it off. And I said, "How does it look? " He said, "Fine. "I pulled in the driveway. Now, I had the authority, driving down the driveway, until we turned, where I could have aborted the mission. If I saw anything abnormal -- guns, whatever -- I'd just say, "Abort. " We had a plan which Bill had described. That didn't happen. We turned the corner and then we were ambushed.

REP. CONYERS: Does that comport with your experience, Mr. Buford, that particular point in time?

MR. BUFORD: I can only speak when Mr. Sarabyn arrived at the staging area, and that's basically the way I understood it, yes, sir.

REP. CONYERS: Same with you, Mr. Chojnacki?

MR. CHOJNACKI: Yes, sir. As far as the conversation on the tarmac, that's the way I recall the situation. I explained it in a previous question. I was convinced at that point in time that we could safely execute that warrant and believed firmly that because of the people we had watching that we had up until the last second or two -- there is a point of no return in these kind of actions -- to abort and safely remove all the agents from that scene.

REP. CONYERS: So why didn't, Mr. Merletti, that get in the Treasury report?

MR. : (Off mike. )

REP. : You may go ahead -- (inaudible).

MR. SARABYN: (Inaudible) -- when I talked with them, articulating that staging area. And the reason being is in my mind, when I talked to Robert, until I drove up there, I thought we could safely do it. I mean, I was in front of the first truck. So, I mean, it's silly to think I'm going to have somebody else up there. I'm not going to kill myself. So I was in front of the first truck. So I thought we could safely do it. Now, when everybody wasn't ready, I spit that out -- (inaudible) -- before I went into the phone conversation. I had trouble explaining that because I think you're talking about a word you said versus a feeling you had inside. And that's why, when I was talking with them, I did at that point have trouble trying to explain that.

REP. : Go ahead, Mr. Merletti.

REP. MCCOLLUM: Because we want to bring this out in some kind of order, I have intentionally, by agreement with the other side, allowed this to run well over 10 minutes. And so our side of the aisle is going to have about seven minutes, I think, to the time we have on --

REP. CONYERS: That's absolutely fine.

REP. MCCOLLUM: That's fine? And I want to take one of those minutes right now myself, just one of those additional seven minutes, to ask Mr. Chojnacki a question. At the time that Mr. Sarabyn was going through this process, at some point he informed you, I believe, that Rodriguez in some way had made some comments to him in this just imminent raid time. Did you at any time, from the beginning of this raid process that Mr. Sarabyn was just describing, until the action started, call Washington, anybody in Washington?

MR. CHOJNACKI: Yes, sir.

REP. MCCOLLUM: Who'd you call?

MR. CHOJNACKI: After the conversations that we had on the tarmac, I walked back to the command center. We had a command post at the Texas State Technical Institute Airport. At that location I called the ATF headquarters command post. During that call, I believe that I talked to special agent John Jensen (sp), who was one of the people staffing the command center. I advised John that the undercover agent was out of the undercover house; that as far as I could tell, everything was fine. We were going forward with the raid.

REP. MCCOLLUM: Is that the only call you made?

MR. CHOJNACKI: Yes, sir.

REP. MCCOLLUM: All right. I am going to reserve the balance of the additional time we've added over here and I'm going to yield for his normal time at this point to Mr. Blute. I know there are many, many more questions about the raid. I do want to make the comment for anybody and all of us that we have a whole panel on the raid itself. And Mr. Sarabyn and Mr. Chojnacki will be back actually for that later panel. That doesn't mean we can't ask those questions here, but there's going to be a lot of discussion we're going to get into as we walk through this process. Mr. Blute, your regular time.

REP. SCHUMER: Would the gentleman yield just for a second?

REP. MCCOLLUM: I yield for a question.

REP. SCHUMER: It's a procedural question. Mr. Chojnacki and Mr. Sarabyn will be back, but Mr. Buford was part of that raid, too. Why isn't he on the panel about the raid?

REP. MCCOLLUM: Well --

REP. SCHUMER: He was one of the front leaders.

REP. MCCOLLUM: We'd be glad to bring him back again. There's no -- it's just the size of the panel; that's all. So at any rate, let's proceed right now in order. Let's get back in order again. I don't know whether it will or not. We'll see -- if it's permissible and we can work it out, we will.

Mr. Blute, you have your five minutes.

REP. BLUTE: Thank you very much, Mr. Chairman. I'd like to get into another issue that I think is very important in the whole scheme of things here and during the build-up to the raid, and that is the relative quality and professionalism of the surveillance and undercover activities. We have heard testimony and gotten testimony from Davidians who say to us that they marked these agents who were allegedly undercover fairly soon after their arrival near the compound. They noticed that the so-called college students were in their 40s, for example.

We have testimony from Mr. Thibideaux that although these students said that they attended the local technical school, when asked what their major was, they said philosophy. We also have testimony that it was noticed by the Davidians that these undercover agents as students were driving

expensive cars and had Rolex watches. And indeed, Mr. Koresh himself traced down the license plates -- we have testimony to this effect -- that looked into whether there was any liens against any of the cars and found out indeed that there were not. It would seem to me that undercover work is very important, number one, but it's also very dangerous. Is that true?

MR. : Yes, sir.

REP. BLUTE: And it would seem that it would be very important that the quality of the cover be very good.

MR. : When we selected these undercover agents, we took them from a diverse background. And let me address the age first. The college right there was a technical college. It was very, very common for people to be 30 or 40 years old and go to the college. In fact, in their conversations undercover, one of the persons the same age had also attended the college.

We tried to get a couple that were from the SRT teams. And that -- because they would think tactically versus anything else. We selected Robert Rodriguez, who had an excellent background as far as firearms. We knew Koresh liked firearms. We selected somebody that was a musician, that, you know, maybe -- we knew Koresh was a musician, maybe he could get in.

So, we got them from a diverse background. They had undercover ID obtained from the college. You know, a regular photo ID, the whole thing. When -- I believe, in one of the conversations, the Davidian came over there and they talked about classes. They even went and got a, you know, brochure as far as what classes they had, or whatever. There was some discrepancy right at the end, where they pulled out. And apparently they quit that because it was spring break. That was part of the reason that --

REP. BLUTE: Were you aware of heavy drinking amongst those undercover agents?

MR. : No, sir.

REP. BLUTE: Well, I have, in that -- if I could refer back to the conversation between Mr. Sparks and yourself. Mr. Sparks, during that conversation on June 15, 1993, says, "Health and Human Services are full of it, too. And I think the surveillance teams up there -- you need to get up with Rodriguez and find out how much drinking that was going on. "

MR. : As I said earlier, Mr. Sparks was terminated for sexual harassment of several of the agents in the Austin office. And so, obviously, he --

REP. : (Off mike).

MR. : Mr. Sparks was terminated for sexual harassment for several of the agents and the secretary in the Austin office. He's talking about Austin agents here. I think he may just be a little bit bitter.

REP. BLUTE: Well, let me go on. He later said, "Ask Rodriguez" -- who was the agent, right, that was undercover?

MR. : Yes, sir. Yes, sir.

REP. BLUTE: He asked Rodriguez about the guys going in with him, just to pick him up, about how they had to drink liquor just to have enough nerve to go into the compound.

Now, I would also point out that in your responses here, you don't refute any of that. And perhaps it was not something that you wanted to refute at the time. But my overall point is that we seem to -- the undercover work, I think, was less than adequate. And the testimony we received from a number of sources seemingly put a mark on these individuals early on in the undercover operation. And I think perhaps endangered them. And I wonder if you think that this is true? Were they in any danger because they had been marked, and their undercover was not very good?

MR. : It's a very tough role, sir. And I've done a lot of undercover myself. And I can't tell you how many people I've arrested. And they said, "I knew you were a cop." And I said, "Well, why did you do what you did and sold me the guns," or whatever. But it's a common thing that once it's over or whatever, it's easy to say, you know, I knew you were a cop. Obviously, we looked back, you know, maybe different people, maybe, you know, older persons, or whichever.

REP. BLUTE: Well, let me just say, if you look at the big picture and you hear earlier testimony about Mr. Aguilera being offered a phone to talk directly with Mr. Koresh earlier, and then you hear about some of these indications that Koresh and the Davidians had marked them as agents from early on, and then you hear about Mr. Rodriguez saying that, "They know about this," and not being taken very seriously, I think you see -- I think, a flawed intelligence and undercover operation in my own view. Would you agree with that? And would you agree that there were problems with the undercover operation?

MR. : I really can't speak to the problems in the undercover operation, sir, because most of that was coordinated at Mr. Sarabyn's level with people that were supervising the activity from the Austin office. But I believe that, in any investigation -- regardless of the number of investigators -- there are mistakes made. And when you look back upon the case or the way you planned your investigative scenario, you say, "Gee, I may have gotten more information if I had done it this way, or something better." That's going to happen. And in hindsight, when we review any kind of case, we find that kind of thing.

REP. BLUTE: Well, let me make one last point that -- I assume that when there's an undercover operation, for example, involving drug operations and drug trade, that the cover is very important because of the danger to those agents. And I think that would be correct. And I think this is one area where the ATF, I think, needs to look at, I think, at how they participate in undercover operations. And I yield back the balance of my time.

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REP. MCCOLLUM: Thank you very much, Mr. Blute.

Mr. Watt, you're recognized for five minutes.

MR. MELVIN WATT (D-NC): Thank you, Mr. Chairman. I yield to Ms. Jackson Lee.

REP. SHEILA JACKSON LEE (D-TX): Thank you very much, Mr. Watt. And Mr. Chairman, thank you. I note, despite any distinctions between the present status -- certainly the majority of the individuals on the panel are ATF officers, and made a commitment to follow the law. And so, particularly, I thank the witnesses for being here, and note the witness from Houston as well.

I do believe that we should be focusing on the consistency and, as well, getting at the fact, but realize that there were human failures. And that's how we rid ourselves of some of those abuses. Mr. Merletti, if I can query you. I have heard, since yesterday, a number of questions have been asked based on notes that are said to have been made by Mr. Larry Sparks. And I have a document here marked with the base stamp number 00010226. And I believe they are passing that document out for your review. And I would like to have you also look at 00614, which should also be passed out. And I'd like to direct your attention to paragraph 26 of the last document I mentioned. Do you have the 00614, sir?

MR. MERLETTI: Yes, I do.

REP. JACKSON LEE: Okay. And do you see paragraph 26?

MR. MERLETTI: Yes.

REP. JACKSON LEE: Would you be kind enough to read that for me please?

MR. MERLETTI: "Sparks stated that he blamed the Austin agents for destroying his career, and that he would do anything to get even. He characterized the Austin agents as sissies and snakes. "

REP. JACKSON LEE: Okay. Now, that came from -- and I know how confusing it can get with a lot of numbers -- but that came from the document that I previously mentioned -- 00010226. My understanding is that these are notes by Mr. Sparks. And it appears that the notes reflect that they were done after June '93 -- 1993. And it's come to my attention that Mr. Sparks was fired in May 1993, and was notified that he was going to be fired in 19 -- in January of 1993. Can you tell me why he was terminated?

MR. MERLETTI: He was terminated for sexual harassment.

REP. JACKSON LEE: So, he was not employed, I guess, at the time of this tragedy?

MR. MERLETTI: That's my understanding, yes.

REP. JACKSON LEE: And so, this reflect -- if we are to look at trying to resolve what happened, can we find any substance to rely upon by a non-witness? I understand that he was not present. Is that my understanding at the particular scene or the tragedy as I understand it.

MR. MERLETTI: That's correct. He was not present.

REP. JACKSON LEE: But he is making representations at this time?

MR. MERLETTI: Yes.

REP. JACKSON LEE: Do you -- can you give us any explanation of the item in Paragraph 26 -- the comment in paragraph 26?

MR. MERLETTI: Mr. Sparks was fired, and he was upset, and he would do anything he could to get even with ATF.

REP. JACKSON LEE: And so, the survey of his noted, that if you peruse them, you'll find comments about Mr. Sarabyn and comment about -- I see a statement here, statements that the ATF was outgunned, and was true, and Mr. Hartnett had had prior to the raid -- just a series of summaries. Is this information that he did based in official capacity?

MR. MERLETTI: I believe this was after he was fired. However, I would just like to say, as an investigator, I would discount what he says.

REP. JACKSON LEE: I would -- I think that because we need to determine, firsthand -- and I appreciate your comments, because Mr. Blute has been reading from this gentleman's remarks, and they're quite extensive. And they appear to be a summarization of a eye witness. You have just indicated to me that this gentleman was fired. You've indicated that he was fired -- you've at least confirmed my statement -- that he was fired around May 1993. It appears that this document was written in June 1993. That we have a problem here of -- a sexual problem, which we're trying to get at.

Mr. Chairman, then I would ask that the chair subpoena Mr. Larry Sparks as a witness, because we have been relying upon this written statement or statements. And we now have a document that is based upon an interview where Mr. Sparks stated that he blamed the Austin agents for destroying his career, and that he would do anything to get even. And he characterized the Austin agents as sissies and snakes. And I would ask that this Mr. Larry Sparks be subpoenaed as a witness.

REP. MCCOLLUM: The Chair will take that under consideration, along with the other requests that are being considered about other witnesses.

MR. MERLETTI: Could I --

Your time has expired at this point, Ms. Jackson Lee.

MR. MERLETTI: Could I --

REP. JACKSON LEE: Mr. Chairman --

MR. MERLETTI: Could I add --

REP. JACKSON LEE: -- may he answer the question?

REP. MCCOLLUM: Yes.

MR. MERLETTI: Could I add that --

REP. MCCOLLUM: Mr. Merletti may add.

MR. MERLETTI: I don't know the exact date of his termination. However, at a point during the investigation, he was removed from the Austin office. I believe he was taken, or reassigned to the Houston office. But I would still -- I stand by my statements that he would do anything he could to get even with ATF. And as an investigator, I would discount these statements.

REP. JACKSON LEE: Can you tell me when he was notified that he might be fired? Would you have at least a ballpark estimate of that time period.

MR. MERLETTI: Mr. Sarabyn or Chojnacki may be able to handle that.

REP. JACKSON LEE: Mr. Sarabyn, could you answer that please, sir.

MR. SARABYN: You -- you -- I don't know the date. I know he was on administrative duties at the division. But I don't actually recall the actual date.

MR. CHOJNACKI: He was still an active supervisor at the time of the initiation of this investigation. But just shortly thereafter, within a matter of a few weeks or a few months, the allegations against him had come out. And we had to put him on administrative duties. Since he was the agent in charge in his home office, we couldn't leave him there. And we brought him into Houston to work in the division office performing an administrative function, until the investigation was completed, and the decision -- or proposal letter and decision come out on his -- regarding the allegations against him. So, sometime around August probably of 1992 -- approximately -- he was brought into the division office. And the following spring, he was actually terminated.

REP. MCCOLLUM: Thank you very much. Ms. Jackson Lee, your time has expired.

REP. JACKSON LEE: Parliamentary inquiry just on your response. When we have a conflict in testimony, does that raise the level of necessity, or at least urgency of having the witness come forward higher than possibly some other exploratory question that have been made. We have these documents being used as facts. I have not presented contradictory testimony. And my concern is --

REP. MCCOLLUM: Ms. Jackson Lee, if I could respond to you. There is no rule. There is no regulation. There is no precedents, I guess, that we follow with determining who you bring or call as witnesses. That is a decision the committee makes, that normally the chair -- and in this case, the co-chairs make those decisions with consultation with all parties, and we are doing that with you. And we will do that further. But I have to tell you, at the moment, that is not a decision spontaneously the chair wishes to make. I don't think I should get in the habit of doing that. I think we need to talk about it, along with witnesses such as those Mr. Taylor --

REP. JACKSON LEE: Mr. Chairman --

REP. MCCOLLUM: -- suggested and so forth. We're going to have regular order right now. I am going to recognize Mr. --

REP. JACKSON LEE: I'd only ask for fairness, Mr. Chairman. Thank you.

REP. MCCOLLUM: -- Mr. Barr for his five minutes.

REP. BOB BARR (R-GA): Thank you, Mr. Chairman.

REP. : (Inaudible) -- a key witness here.

REP. MCCOLLUM: I've already recognized Mr. Barr, if you'll hold off, please. Go ahead, Mr. Barr.

REP. BARR: Mr. Bush will distribute to each one of the four witnesses a handwritten document, number 14216. While he is distributing that, this is a handwritten note. It says something to the effect, "Leroy, Statements from agents -- should they go to USA or us? Do they want us to create new blank, asking questions to which would require us to create new documents -- exculpatory. Do any one of the four of you recognize the handwriting on that document?"

MR. MERLETTI: I do not, sir.

MR. SARABYN: I do not.

MR. CHOJNACKI: I do not.

MR. BUFORD: I do not.

REP. BARR: Okay. And I presume that means that none of you wrote that -- the original of that document.

MR. MERLETTI: I did not write it, sir.

REP. BARR: And have you ever seen that document before.

MR. BUFORD: No, sir.

MR. CHOJNACKI: Never.

MR. SARABYN: No, sir.

MR. MERLETTI: No, sir.

REP. BARR: Do you have any idea what it's referring to?

MR. SARABYN: I haven't got a clue.

REP. BARR: Okay. If Mr. Bush would distribute document number 14137, which is another handwritten note.

MR. : (Off mike).

REP. MCCOLLUM: If the gentleman is requesting copies, we will see if we have enough copies --

REP. BARR: This document is -- it says basically, as far as I can tell, "T. Rangers, Ray Jahn does not want them. Chojnacki -- Phil re-interviewed because Jahn does not want any more exculpatory statements generated. Do any of the four of you recognize the handwriting in that document?"

MR. : I do not, sir.

MR. : No, sir.

MR. : No.

REP. : Okay, none of you wrote that -- the original of that document?

MR. : No.

MR. : No, sir.

MR. : Correct.

MR. : No.

REP. BARR: I'd like Mr. Bush (sp) to distribute Document 19941, which you'll be happy to know is a typed document. This is a memorandum from Ron Noble to Sara Elizabeth Jones, dated September 17th, 1993. It summarizes various events, including one that I would draw your attention to dated March 1, 1993. It says, as you can see among other things, ATF initiates a shooting review. David Troy and Bill Wood interviewed; Rodriguez and Masten (sp), Chojnacki, Cavanaugh, Sarabyn. Troy tells review they immediately determined these stories did not add up. Further on it says, note, Johnston at this point, advised Hartnett to stop the ATF shooting review, because ATF was creating Brady material. Because Chojnacki had not yet been interviewed, Johnston authorized that interview, but no notes were created. Were any of you at any time instructed or told that you would not be interviewed as part of the ATF shooting review?

MR. : I was interviewed by the shooting review team.

REP. BARR: Okay, is that the one that's referred to here, that was authorized by Assistant U. S. Attorney Johnston?

MR. : I can only presume it was, sir. I was interviewed one time and one time only.

REP. BARR: Okay, were any notes taken of that interview?

MR. : I do not recall.

REP. BARR: Did you see any notes being taken?

MR. : I just can' recall, sir. I don't remember.

REP. BARR: Did you take any notes?

MR. : No, sir.

REP. BARR: Were you allowed to take notes?

MR. : I never inquired.

REP. BARR: Does anybody else here -- any of the four witnesses familiar with directives to stop interviews so that no further evidence would be accumulated, and no notes taken at a shooting review interviews?

MR. CHOJNACKI: I'm somewhat familiar with the incident. I believe as the assistant U. S. attorney testified yesterday, he wanted and we wanted the Texas Rangers or some completely impartial law enforcement agency with the appropriate jurisdiction to conduct an investigation of the shooting situation. At this particular point in time, I'm not sure about the transition of information between Mr. Johnston and the executives of ATF, but I believe he recommended that we stop our interviews so we didn't create a number of different kinds of statements relating to the same situation. Each would create a Brady situation for the defense, or whatever. And --

REP. BARR: Mr. Merletti, does that sound to you as an appropriate way to conduct an investigation or review that has as its source, should have as its objective a search for the truth? Just yes or no. I mean, it's --

MR. MERLETTI: Sir, I'm really not sure what this refers to.

REP. BARR: Okay, this refers to something called a shooting review. If you're not familiar with that, that is -- are you familiar with the shooting review?

MR. MERLETTI: Yes, I am.

REP. BARR: Well, that's what this refers to. It says in one of the documents, it's a shooting review, a review or an investigation conducted in an effort to determine certain facts and circumstances surrounding the discharge of weapons during ATF operations.

MR. MERLETTI: Yes.

REP. BARR: Okay. Would therefore a purpose of that be the accumulation of evidence?

MR. MERLETTI: Yes.

REP. BARR: Okay. Would it be then, in furtherance of that search for the truth and the accumulation of evidence, to receive directives from the Department of Justice not to conduct interviews, not to gather evidence and where interviews are necessary, that no notes be taken?

MR. MERLETTI: Sir, the only thing I can gather from this is basically what Mr. Chojnacki said, that the Rangers were going to begin to conduct interviews, and that the ATF shooting review team was to stop. And that's speculation on my part. I think that's what this is about.

MR. : I would like to answer that. It is not uncommon in some jurisdictions for us to slow down the shooting review situation if the local jurisdiction, for example, a homicide division of a police department is very adamant about creating only one record. They would want one statement only from each particular witness, and it is not uncommon for us to slow down or let them conduct the interview and use their interviews to go by record for the shooting review. That has happened throughout the country.

REP. BARR: Well, there's some other documents which we take -- (inaudible) -- right now that don't indicate that this has anything to do with the Texas Rangers; it has to do very explicitly with not accumulating evidence, and this is directives coming from the Department of Justice and --

REP. MCCOLLUM: Mr. Barr, your time is expired.

REP. BARR: -- the Treasury Department. We won't go into those further documents.

REP. MCCOLLUM: Thank you, Mr. Barr. Ms. Jackson Lee, I believe you have your own time now if you wish it.

REP. JACKSON LEE: Thank you, Mr. Chairman, I'd like to yield my time to Mr. Schumer.

REP. SCHUMER: I thank the gentle lady from Texas for yielding to me. First, a couple of points. One, I would like to admit to the record the administrative review documents that talk about Mr. Sparks' (sp) that Ms. Jackson Lee mentioned in her testimony. So I ask unanimous consent that they --

REP. MCCOLLUM: Without objection.

REP. SCHUMER: In your questioning, sorry, excuse me. Second, I guess I'd just make a comment here. Many on this side of the aisle, including those who I have a great deal of faith in, are trying to persuade us that these are just objective hearings to find out the truth. And some of us sort of put our back up a little bit, and why is that? Well, here's an example; there are several. Mr. Sparks (sp) is a

rather discredited individual, and he is one individual, and he was removed from the ATF, and there's obviously some bitterness there. And yet, time -- and it's not just that he's mentioned on the other side, but time and time and time and time again, they go back to Mr. Sparks (sp). There are 60 people on the other side who say one thing. Mr. Sparks (sp) says another. Questions on that side don't ask about the 60 people, none of whom have been removed from an agency for a bad purpose, and here, same thing --

REP. MCCOLLUM: I'll give you an extra minute, but would you yield to me on that?

REP. SCHUMER: I'd be happy to yield.

REP. MCCOLLUM: I just want to make the point that at least in two of those instances, the comments and questions were based upon telephone conversations transcribed, and one case intercepted by the FBI according to the records produced by the Justice Department, involving not just Mr. Sparks (sp), but in this case, Mr. Sarabyn who is the witness here. I think that's far different from simply relying on some statement Mr. Sparks (sp) gave. I just want to make --

REP. SCHUMER: Correct, but we're relying in most of these instances, with most of the questioning on Mr. Sparks (sp) recollection, such as reading in that Mr. Sparks (sp) said people had drinks and things like that.

REP. : -- (Inaudible) --

REP. SCHUMER: If I get extra time, I'd be happy to yield.

REP. MCCOLLUM: I'm going to give you whatever we need.

REP. : Thank you, Mr. Chairman. The documents that I referred to which related to alleged drinking by the undercover agents at the compound were from -- not from any statement of Mr. Sparks (sp) that was taken under oath or taken after the fact, it was a phone conversations between Mr. Sarabyn and Mr. Sparks (sp) that was recorded by the FBI. It was given to us by the Treasury Department. Now the issue is that these conversations were at the time just an exchange of views between two colleagues.

REP. SCHUMER: Reclaiming my time, Sparks (sp) seems to me in a court of law to be a totally impeached witness. And yet, we are not in a court of law; everyone reports allegation, counter-charge, allegation, counter-charge. If the folks on the other side had such concern as they profess, for law enforcement and just to make things right, I don't think allegations like that would be -- not mentioned -- mentioning them is fine, but just repeated time and time again. I'll bring up another one. The methyl amphetamine issue has been probably the number-one issue talked about today. And let's just assume that the other side is right, that someone in ATF didn't tell the truth, which is debatable, but let's assume it. It has very little to do with what happened at Waco. Because whether there was methyl amphetamine or not, the military involvement, as every one of the witnesses I asked said, and it was not disputed, would have been allowed to do exactly the activities they did.

So there was one agent in ATF who might not have told the truth. That does not discredit the agency, and that has very little -- almost nothing in my judgement -- to do with Waco. Now again --

REP. : Would the gentleman yield on one point?

REP. SCHUMER: I just want to finish my point and then yield to my good colleague from Florida. If it was brought up once, I'd say that should be part of the record. It has something to do with what's going on, no question. And probably we should bring out that not all federal law enforcement officers always tell the truth all the time. The same would be true for congress people, the same would be true for American citizens, doctors, lawyers, Indian chiefs, name it. But it just is hopped on time and time and time again. So what it seems to me here is we have a picture that is a complete picture, and there are some warts on the picture, warts that are rather tangential to the story. And the majority, who professes to simply want to get out the whole truth, that professes that they very much care and want to build up law enforcement and of course don't like Koresh, focuses on those warts far disproportionately than I would think an objective observer would. And I yield to the gentleman from Florida.

REP. MCCOLLUM: I thank you for yielding, and I am giving you the additional time, but the bottom line of the methyl amphetamine lab is that it was a very central core. A lot of the critics who published a lot of writings out here, and the question of whether the military was properly involved or not was a very important essence for us to examine today. We discovered a lot of things about that for the most part, clarifying that indeed what was done was apparently proper. But there was one point about --

REP. SCHUMER: (Inaudible) -- need to repeat that -- what was done was --

REP. MCCOLLUM: For the most part -- for the most part, I said.

REP. SCHUMER: What was not proper?

REP. MCCOLLUM: Well, I was about to get to that -- (inaudible) -- to yield. But it's very clear from the witnesses' testimony on that panel today that the particular unit that trained this ATF outfit did not have, as a matter of policy, the authority to train any law enforcement -- civilian law enforcement agency -- unless there was a drug involvement. And ATF went to that particular outfit, asking for that particular help, and got it with the methyl amphetamine lab as the excuse. And in addition to that, it was very clear from the testimony today that there was a question of cost reimbursement involved, and it involved being able to go to that unit where ATF would avoid the cost.

Now, I'm not casting aspersions, but those were the facts brought out today. I just think that needed to be brought out for the record. When nobody's trying on this side of the aisle, to my knowledge, Mr. Schumer, to distort the facts or to mislead anybody, our objective is indeed to bring out the facts. Let the chips fall where they may.

And for the most part, you characterized it correctly today as far as the results of that particular panel as I observed it. But the latter point was a serious point. We needed to clarify. We spent that

time doing it. And we'd still, at the end of the day, had something out of it which said, "Hey, this really did smell kind of bad. "It wasn't as bad as it could have been, but it wasn't all perfect either.

REP. SCHUMER: Okay, and thank you. And I presume now I have some time.

REP. MCCOLLUM: You have an additional, let's say, three minutes. How does that sound?

REP. SCHUMER: I thank the gentleman. It's three minutes plus what I have left, which makes me have about nine or 10 minutes.

REP. MCCOLLUM: (Laughs. )I can't quite do that, but I'll be generous here.

REP. SCHUMER: But in any case, I would say again, let's assume, first of all, we didn't -- I appreciate the gentleman's integrity, which again I don't question. I haven't heard that from most of the others on the panel, that what the military did and what the -- and their training was -- I think his words were "basically correct," "for the most part" were his words, correct. That's not the tone. And if you look at some of the stories that came out, I'd say to the AP reporter, wherever he is, he didn't report it that way. I'd say one of the news stories tonight did not report it that way. So the impression that was given was different.

Second, I would say even if the gentleman is correct that the training shouldn't have been given because no drugs were involved, I would say not "so what," but that's very minor. The training the military gave was minor in terms of this whole story. And the fact that it didn't break the law seems to me to (predispose? ). So again, I make my point -- little (warts? ), not important to the whole picture, focused on by the other side; the big picture, not. It makes me -- and I'll just speak for myself -- doubt that this is simply an endeavor to even-handedly bring out the facts.

And one other point I would make to my good friend from Massachusetts, again, no -- I think he's a wonderful person and I think he has complete integrity -- the Sparks conversations were not taped by the FBI. They were tapes -- they were tapes that Sparks himself secretly made. Treasury, not DOJ, produced those transcripts. I just think that should be put in there for the record as well. And now we're using --

REP. : Would the gentleman yield?

REP. SCHUMER: I'll yield if I get an additional minute or so.

REP. MCCOLLUM: I'll be glad to add whatever time we take on this. You have used up one and a half minutes of the three.

REP. SCHUMER: Thank you. The gentleman is a careful and fair timekeeper.

REP. : I thank my good friend from New York. But frankly, many of us have been hearing a lot from our good friend from New York, and we have a great deal of respect for his leadership and for him personally. But he seems to have made final judgments on every aspect of this case. He seems to know everything about this case. And I have to tell you that I have not made final judgments

about every aspect of this case and I think some of my colleagues have not made final judgments. I don't know everything about every aspect of this case and I don't think all my colleagues here know everything about every aspect of this case. That's why we're having this hearing.

We're trying to put things on the table to get information so that the American people can make a final judgment ultimately on the events at Waco.

I would hope that the gentleman would please give us credit for trying to listen, trying to probe and trying to put the information on the table without any agenda. As I said earlier, the NRA is not -- if you want to talk about harping on certain facts, the NRA is not a friend of mine. I have a zero rating from them. I'm not here for them or for anyone else. I'm here to represent my 600,000 constituents in Massachusetts who I think deserve to know what happened at Waco.

REP. SCHUMER: Okay, I would just say --

REP. MCCOLLUM: The gentleman has another minute and a half. We're in regular order here. The gentleman has a minute and a half. We're going to close this part of this down.

REP. SCHUMER: Okay. I would say to my good friend from Massachusetts, I have not made up my mind completely, but I haven't found in these two days a single new fact that I haven't read somewhere in the materials that I was given and spent weeks reading to prepare for. Sparks is not new. Methamphetamine is not new. Nothing is new. So I would say to the gentleman that these hearings are simply there -- eight days, big expense, lots of sound and fury, some of which I've contributed to, but lots of sound and fury -- some of you have contributed to it, too -- but lots of sound and fury. And it doesn't bring up a single new fact, which the first two days have not. Then I think that should be part of the record.

And it's true, I have some predispositions because I've spent a lot of time reading this and reading that and reading Mr. Reavis's book and reading all the other things. Believe me, it wasn't my choice to spend all my time poring through these details. I even had to learn how to say Mr. Chojnacki's name, which took me about a half hour or 45 minutes. But no new facts have come out; no significant new facts, in my judgment.

REP. : Would the gentleman yield just on that point? Just on that point.

REP. SCHUMER: No, I'm not going to yield any further. I am not going to yield any further. You can get some yielding from your time.

REP. MCCOLLUM: The gentleman's one and a half minutes is just about up. I'm being very liberal with this. I'm not --

REP. WATT: Mr. Chairman, parliamentary inquiry.

REP. MCCOLLUM: Mr. Watt, you can state a parliamentary inquiry, but it had better be one because I really do want to go on.

REP. WATT: My parliamentary inquiry is whether all of this time that you are yielding is being done by unanimous consent, or does the chair have the right to grant unlimited time to every member without unanimous consent?

REP. MCCOLLUM: Well, the chair has the right to be fairly liberal with this, and I was very liberal earlier. Your side actually has (chopped? ) up -- I think I still have six minutes left of additional time --

REP. WATT: I'm not talking about my side, Mr. Chairman. I'm asking about whether you are granting additional time --

REP. MCCOLLUM: The chair --

REP. WATT: -- by unanimous consent or whether you are doing it on the prerogative of the chair.

REP. MCCOLLUM: Well, let's put it this way. Technically it requires unanimous consent, but we have established that already earlier by the (precedents? ) we are. Nobody has been objecting to these discussions. I think they're very healthy to have a full and fair hearing, Mr. Watt.

REP. WATT: We've just engaged in 20 minutes of discussion here. Not one question was asked to the witnesses.

REP. : Regular order --

REP. MCCOLLUM: Okay. Well, Mr. Watt, you've made your point. Mr. --

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REP. WATT: I just want to make it clear that I'm going to object from now on to additional time so that we can get through these hearings. You all were the ones that started these hearings out talking about wanting to get through the process --

REP. MCCOLLUM: Well, Mr. Watt --

REP. WATT: -- and getting to the bottom of the facts.

REP. MCCOLLUM: -- reclaiming the chair's time, you have the right to object, but the chair has the right to have a second round of questions or whatever it takes to get through this. We are going to explore the facts, however it takes to get the facts --

REP. WATT: Well, that's fine, but let's do it in regular order, Mr. Chairman. That's all I'm asking.

REP. MCCOLLUM: Well, I think we are.

REP. WATT: Follow the rules of the House. If we're going to do it, follow the rules of the House.

REP. MCCOLLUM: Mr. Watt, we --

REP. : Regular order; follow the rules of the House.

REP. MCCOLLUM: We are following the rules.

REP. SCHUMER: Do I have 30 seconds?

REP. MCCOLLUM: You have 15 seconds.

REP. SCHUMER: I'd ask Mr. Merletti just one question.

REP. WATT: I object.

REP. MCCOLLUM: All right, the objection has been heard.

REP. SCHUMER: But I have 15 seconds left.

REP. MCCOLLUM: Yeah, you have -- he has -- he's right; he has 15 seconds left, and there's no -- you go ahead. You proceed. The chair rules you're in order, Mr. Schumer.

REP. SCHUMER: Thank you, Mr. Chairman. I would simply ask Mr. Merletti a general question, which is, has he heard things here that he hasn't had an opportunity -- that he thinks are incorrect or give the wrong impression that he hasn't had an opportunity to rebut and give him time to do that.

MR. MERLETTI: I still stand by what I said earlier, that the element of surprise was lost, that they knew it, and they proceeded.

When Mr. Rodriguez came out of that undercover house, he had the golden egg of intelligence but he didn't pay attention to it. Actually, what they did was they sped up. There was a sense of urgency. They went to the compound prior to 10:00 a. m. There was no one outside. There were all parts that were critical to that raid. That's what we say in this book. And I take issue with the fact that they say this did not happen. I have 61 witnesses that heard what took place at the staging area. As an investigator, if I had 61 witnesses on other things that I investigated, I would have never had an unsolved case. I can't see how the facts on that can be disputed.

REP. MCCOLLUM: Thank you, Mr. Merletti. At this point in time, I have, by previous agreement and consent, still six minutes of extra time, so to speak, that the chairman has at his discretion because of what happened -- I don't know if Mr. Watt was even in here earlier when Mr. Conyers was here. But I want to use one of those six minutes that have been reserved, just one; I'm going to yield to myself. That one minute, I just want to make an observation.

The observation is this. One, Mr. Schumer says there have been no new facts. At the end of this hearing we're going to list a lot of new facts that came out. I think anybody watching these knows that a lot have. There may be an interpretation of which shading is this or that or the other, but there have been. Number two, even if not one new fact came out of a single set of these hearings, even if

not one new fact, the hearings would still be serving the purpose for which they're intended; that is, to allow the American public one complete comprehensive opportunity to chronologically walk through the events of Waco.

We've had entirely too much questioning and doubt. If we're going to restore credibility to law enforcement in this country at the federal level and we're going to find the American public having faith in the congressional system of inquiry, these hearings were obviously necessary. In fact, even today the president of the United States, President Clinton, said at 2: 30 this afternoon, "We have to hope some more good things will come and we can learn how to do our jobs. And if Congress wants to have further hearings today, that is their right and it's entirely appropriate. "

He later said, "When people make mistakes, they ought to be held accountable and appropriate action ought to be taken. "We agree with all this. He says, "I think it's important to get the facts out here quite clearly. "So the bottom line is that's what we're doing, even if not one new fact came out. But I believe at the end of the day quite a few new facts will have come out. Now, in regular order again, I'm going to yield to Mr. Clinger. It's his time, his turn. You have five minutes, Mr. Clinger.

REP. CLINGER: Thank you very much, Mr. Chairman. I must say how much I'm enjoying the witty give-and-take, the parrying and thrusting that's going on on the panel. But I think we are interested in hearing from our witnesses here, and for that purpose I would like to yield to the gentleman from Georgia, Mr. Barr, the balance of my time.

REP. BARR: I thank the gentleman. Do you all have before you document number 18994 dated 14 April, '93? Would Mr. Bush please distribute that? This is yet another typed memorandum from Robert McNamara, deputy general counsel, Department of Treasury, to John Simpson, Mike Langan. And the subject of this memo, gentlemen, is "Preliminary Investigative Plan. "And this document on the second page, under the paragraphs entitled "Constraints," goes on to, in some detail, what I was getting at earlier both in what appeared to be in the handwritten memo, handwritten notes, as well as very clearly in the typed memos, "The prosecutors do not want us to generate additional (Jenks? )-Brady -- (inaudible) -- material or oral statements which could be used for impeachment. At some point we're going to have to interview the crucial witnesses. "

Then it goes on to talk of passage of time, dimming memories. Prosecutors are concerned that anything negative, even preliminary, could be grist for the defense mill. And then the last page goes on to talk about not generating expert witness information. Are any of you familiar with the subject matter of this memo with regard to the shooting review?

MR. SARABYN: No, sir.

MR. CHOJNACKI: No, sir.

MR. BUFORD: No, sir.

MR. MERLETTI: I'm going to take a stab at it.

REP. BARR: A quick one.

MR. MERLETTI: In order for the Treasury, the Waco administrative review to do their investigation, we had to conduct interviews. There was a murder investigation being conducted by the rangers. In order for us to come into that investigation, we had to reach an accommodation with the Department of Justice. We had to have access to the witnesses. Now, I have never seen this before, but I believe that's what this is referring to -- that we had to reach an accommodation.

REP. BARR: No. Why don't you take a look at them and see if you can find out. I don't think you're correct, because there's absolutely no mention of that in these documents. And I would expect -- Mr. McNamara, being a good attorney -- certainly would have set forth the basis for that, if that were the case. The basis for this is something very different -- and that is to stop interviews so that no further evidence is accumulated.

I'd like to ask Mr. Sarabyn and Mr. Chojnacki -- in your settlement agreements before the Merit System Protection Board -- and I might say that, for your personal reasons, you were very well represented on these. Both of them talk about -- I think basically identically -- removing information from the files of the case and not disclosing information, and removing and destroying certain files from them. What was the purpose for that sort of language being included in there?

MR. SARABYN: There's two references there. I'm not sure which one you're talking about. But one is -- which we wanted, which was to expunge our personnel records to show no adverse action was taken against us.

REP. BARR: Right.

MR. SARABYN: The second section was -- when they tried to remove us, they used the Treasury Review Book as the basis for removing us. And with that was supplemental statements supporting their proposal to remove us. And what they wanted as part of the agreement, to take that all away, and take that back. And so, they took, from the Merit Protection Board, all those records. They took the, you know, the statements that were obtained during the Treasury review. That was something that they wanted to do, is to get all those --

REP. BARR: And that would include the -- that would include the shooting review that we've been talking about.

MR. SARABYN: Part of it is the shooting review notes.

REP. BARR: Right.

MR. SARABYN: Yes, sir.

REP. BARR: Okay. And how about those later provisions -- paragraph 15, for example -- that relates to removing and destroying files. Where did the -- did the government insist on that, or was that --

MR. SARABYN: I believe so. Could I see the agreement? Just so I speak correctly.

REP. BARR: Well, I'll just read it to you. We're about to run out of time here. But it says, "Any documents in these files relating to or concerning disciplinary action will be removed and destroyed."

MR. SARABYN: Those were our personnel files that they would be showing no disciplinary action.

REP. BARR: Well, no. Those are -- those are the subject matter of a previous paragraph that talks about those very explicitly. Documents filed, which will be withdrawn from the official record of the repeal -- of the appeal. And that's the one that talks about the administrative review team notes, the ATF shooting review notes.

MR. SARABYN: Right.

REP. BARR: In other words, there are two different sections here.

MR. SARABYN: But I think the one you're referring to is just, you know, in our records, everything would be expunged and destroyed, so there would be no record of any adverse action ever taken against us. It would just show a clean record. The only thing it would show was a voluntary reassignment.

REP. BARR: And that's fairly standard. You'd have language in these type cases. The one that is not standard -- and I spoke with folks with the MSPB -- are those that relate to removing and destroying files.

MR. SARABYN: My attorney is here that represented me. Now can they speak on that issue.

REP. BARR: Well, they'd have to be put under oath. I don't know how an attorney would feel about being put under oath. (Laughter. ) But that would be the only circumstance.

REP. MCCOLLUM: Does the attorney wish to be put under oath to respond to this question?

MR. STEVE GARDNER, FORMER ATTORNEY FOR CHUCK SARABYN: I have no opposition to that, Mr. Chairman.

REP. MCCOLLUM: All right. Let me ask you, if you would, raise your right hand. Do you solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth?

MR. GARDNER: I do.

REP. MCCOLLUM: Please be seated. And you may answer that question, and then, after that answer, Mr. Barr's time is expired.

REP. ZELIFF: If the witness could also identify himself for the record, please.

MR. GARDNER: I'm Steve Gardner, together with Gail Dickinson, who is also here. We

represented -- I, Mr. Sarabyn; she Mr. Chojnacki -- before the merit system. Could I hear the question again, though, sir?

REP. BARR: Well, I'm somewhat familiar with these type of proceedings as well. And I know it is standard procedure -- or at least not unusual procedure -- to contain or to require or insist on, as part of a settlement agreement of this sort, that the adverse action -- the subject matter of the adverse action be removed from the appellants or the former employees personnel folder. This -- both of these go beyond that, and talk about removing and destroying files. And that, to me, is somewhat unusual.

MR. GARDNER: Yes, sir. I think it is. I will note, for the record, that as far as I have been able to determine, Treasury has not lived up to the promise to destroy -- correct the personnel records to reflect the settlement.

But leaving that aside, the insistence by Treasury on removing these files from the public record was either unique or rare in the process before the merit system board.

REP. BARR: That's my

MR. GARDNER: I have limited experience. And I'll tell you, I'd never heard of doing that -- taking files that had been made a part of record in courts. Ms. Dickinson is a former judge with the Merit System Board. And I'm looking at her to make sure I'm being accurate here. This is, I think, unheard of by her in several hundred or even several thousand matters that the board has considered.

REP. MCCOLLUM: Mr. Barr, I believe your time is -- (inaudible).

REP. BARR: Where -- who insisted in Treasury on that?

MR. GARDNER: I would just call it rather a monolith. They were just the other side, Mr. Barr. And they would not settle with us without it. And we did not feel that it was worth fighting with Treasury in order to get our guys back to work.

REP. BARR: Okay. I've got -- thank you. I thank the witness, and I appreciate the chairman's indulgence, and certainly Mr. Watts's indulgence.

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REP. MCCOLLUM: Mr. Condit, you have five minutes.

MR. GARY CONDIT (D-CA): Thank you, Mr. Chairman. I'd like to ask Mr. Buford -- we've heard a great deal of information and insinuations in the last few minutes and the last couple hours about you and your colleagues made up the possibility of the existence of a meth lab in order to justify not having to pay for the support of the National Guard for the helicopter. And you've heard some of this. I'm shocked if that's the case. Let me ask you some specific questions about the possibility of the meth lab. Did you simply make up the idea of the drug nexus to get support without paying for it?

MR. BUFORD: I had -- first of all, I had nothing to do with that. And I have absolutely made up nothing about a drug lab. In fact, in our preparations for the raid, we were taking into consideration the possibility that there would be a drug lab, and had DEA agents standing by at the command post to come in if the lab was found.

MR. CONDIT: So you -- your men had prepared themselves with whatever equipment, because there is some chemicals that you have to deal with, and so on, and so forth.

MR. BUFORD: Not the -- not specific equipment. But we did discuss the possibility of it being there, and the cautions that need to be taken in the event that a meth lab -- a dismantled meth lab was located.

MR. CHOJNACKI: May I assist him with that?

MR. CONDIT: Mr. Chojnacki, did you want to respond to that?

MR. CHOJNACKI: Yes, sir.

We felt that the potential existed for a meth lab to be there. Historically, everybody's aware that there had been the components for a lab back in the late '80s. David Koresh contended that he was going to give that back to the sheriff's department. Davey Aguilera, the investigating agent, checked with the sheriff's department, found that no such incident had occurred.

One of the -- at least one of the receipts that Davey found in his research of things that were coming into the (magbay ?), into the compound, included a list of assorted glassware and chemicals that he thought might be precursor chemicals. He passed that information to DEA. At the time of the raid on the 28th of February, we had a DEA lab team supervisor on board in the command post. His lab team was standing by for a call in case we did find those kinds of chemicals or a lab, so that they could take over that very sensitive area of making that area safe, while we began our search of the premises.

MR. CONDIT: So, when you say he was standing by, where was he standing by at?

MR. CHOJNACKI: The DEA supervisor was in the command post in Waco, and his people were standing by at their office, I believe.

MR. CONDIT: Okay. I want to go back and ask --

MR. SARABYN: Can I add one more thing?

MR. CONDIT: I'm sorry, Mr. Sarabyn.

MR. SARABYN: The information -- you know, this was a firearms and explosive investigation. All this information about the meth lab came to us from other people in affidavits. There were some court records from Michigan that were about this. All this information, you know, came to us. It was

nothing that we sought out. There was another individual -- Mr. Butler -- that was a resident at the compound. And he had a -- he was there from '90 or '92, and had an amphetamine conviction where he got three years. And, you know, a lot of times, in some of the conversation with the military today, they talked about, "We might not have been addressing it like a lab case. "They work with DEA all the time. And when they're working with DEA, they're focusing on the meth lab, because that's what the whole case is about.

Our case was a firearms and explosive case. We were aware it was there. We're taking preparations, but never were we investigating this. It just turns out the information just kept coming up from ex-Davidians, or whatever. And when they asked us what's there, we just turned over, you know, either their criminal histories, or the affidavit.

MR. CONDIT: I'd like to get back to that, but I would like have Mr. Chojnacki to respond to this, to the planning. Besides the dynamic entry, what other options were considered? Why were there -- why were the other options rejected? And what would you do differently today?

MR. CHOJNACKI: We had probably considered any gamut imaginable. Some of the people that were on the planning committee came to me afterwards and said that they were surprised at how much latitude I gave them to free think the different kinds of techniques that we might exercise. We had talked about waiting for a search -- or for the arrest warrant to be approved, and trying to take David Koresh off at some other location. I have heard testimony earlier regarding that kind of scenario.

And one of the things that we considered very strongly in that area was that if we had him in our custody, while we still had him in our custody, if his people found out because of his supporters -- who could make a phone call -- that we had him, what would their reaction be? They would know we were coming with a warrant. They would have plenty of time to set up a defensive position, if that was their intention. We didn't know what their mindset was going to be. Would they collapse because we had their messiah, or they come to his defense? Would they possibly come into the community to get him out of the county jail? We didn't know what they would do.

So, we thought that that was a tactic that we didn't want to employ based on our own history of having used the kind of raid that we used in firearms and narcotics cases with some regularity. We have probably done -- I think, statistically -- some 10,000 raids over the last several years. Forty-nine percent of the defendants that we arrest are people that are actively engaged in narcotics violation, as well as the firearms violations. They kind of run hand in hand. So, we're always involved with people of that nature.

And as was testified to earlier this morning, in almost every situation where we use a rapid entry and an overwhelming force, and what we think is overwhelming firepower, that people surrender rather than fight law enforcement. Occasionally, one or two might do something. And usually, with a minimum amount of injury to either side, you take care of that situation. We did not anticipate that these people would set up to ambush and kill us.

REP. MCCOLLUM: Mr. Condit, your time is expired.

MR. CONDIT: Yes, thank you. Thank you, Mr. Chairman.

REP. MCCOLLUM: Sorry, Mr. Condit, but I think that was a very full answer.

Mr. Mica, you have five minutes.

REP. JOHN MICA (R-FL): Thank you, Mr. Chairman. If my staff could distribute some copies of this little organization chart to the witnesses. And I think they're been distributed to the other members. But you might like to look at them.

I don't know how good it is in chart-making and organizational charts. But I hope it's somewhat reflective of the chain of command for the Waco operation. And at the bottom, we have Chuck Sarabyn and Phil Chojnacki who are civil servants. I happen to be chairman of the House Civil Service Committee, and I have a great interest in you and your service.

Mr. Merletti, you helped produce this document here?

MR. MERLETTI: Yes, sir.

REP. MICA: This document -- the Treasury -- known as the Treasury Report.

MR. MERLETTI: Yes, sir.

REP. MICA: And on page seven of it, doesn't it say that the investigation also found disturbing evidence of flawed decision-making, inadequate intelligence gathering, miscommunication, supervisory failures, and deliberately misleading post-raid statements about the raid and the raid plan by certain ATF supervisors. That's your -- that was your conclusion?

MR. MERLETTI: Yes, sir.

REP. MICA: And wasn't this report in September part of the basis on which these gentlemen were fired?

MR. MERLETTI: Sir, I don't know. I was not involved in any of the administrative action, as far as discipline.

REP. MICA: Mr. Chojnacki, you were fired -- among other things, the ATF alleged that your gross failure to properly supervise the raid, and for lying to the Treasury investigators and the Texas Rangers. Is that correct? Are those the charges they brought against you?

MR. CHOJNACKI: Basically they are, sir.

REP. MICA: Mr. Sarabyn, you were fired -- among other things -- because the ATF alleged that your gross error in recommending that the raid of the Branch Davidians go forward, even though you knew it was compromised, and for lying to Treasury investigators and the Texas Rangers. Isn't that the basis on which they --

MR. SARABYN: Yes. Basic substance there.

REP. MICA: And then we had, yesterday, your supervisor here -- Mr. Daniel Hartnett. And he testified before us. And his comments were -- that report, this report here, dedicated to the four ATF agents -- right in the front. Do you see that? Dedicated to the men that were killed in this. The four agents -- this text is dedicated to. He testified and he said that this was a statement from January 9th, and it tracks what he says. That report was filled with distortions, omission, and, in some cases, things that were simply untrue. I believe it was done for political purposes. The politics of the situation became more important than the people involved. And these two people are civil servants, and were fired.

Then you are here testifying to my colleagues that there's a destruction of disciplinary action records. Is that correct? They've been destroyed.

MR. CHOJNACKI: They were supposed to be destroyed. I don't know that they are.

REP. MICA: And we have no record. We have no record of that.

Mr. Sarabyn, do you agree with the comments of your supervisor, Mr. Hartnett?

MR. SARABYN: Well, Mr. Chojnacki was my immediate supervisor.

REP. MICA: Well, I'm sorry. Mr. Hartnett, what he said before this committee yesterday, and Mr. Chojnacki -- both of you -- what do you think of his comments to this committee.

MR. SARABYN: Specifically, what comment? I mean, he testified for a long time.

REP. MICA: His comment -- this report was filled with distortions, omissions, and, in some cases, things that were simply untrue.

MR. SARABYN: I feel that the report is like 70 percent very accurate. It has some good comments. It has some good things. And the other 15 percent is distorted, in my opinion. And then 15 percent isn't true. I mean, that's just an approximate.

REP. MICA: Do you -- go ahead.

MR. CHOJNACKI: I happen to agree with that sentiment as well.

REP. MICA: Do you feel that they -- I feel that they made you the scapegoat. You're the little guys down the pike. They fired you. Everybody else got some retirement. In fact, there are people here with full retirement benefits. And some people went by the wayside. But they fired you two. Is that correct?

MR. CHOJNACKI: Sir, just for the record, I was eligible for retirement. I sought to appeal the decision.

REP. MICA: And both of you were reinstated with back pay.

MR. CHOJNACKI: Yes, sir.

REP. MICA: So, there is a little bit of justice. I have a question, Mr. Merletti, is ATF developing a table of penalties to provide guidelines for future disciplinary actions? This is the ATF's guidelines, and what penalty would you recommend the ATF adopt for lines of law enforcement officials who are conducting an investigation, such as this Treasury report produced by you and Mr. Noble, who will soon be with us, and lied about these incidents and these civil servants.

MR. MERLETTI: You're asking me what I think ATF should do?

REP. MICA: Yeah, there's no penalty in here. I read the whole darn thing, and there's--

MR. MERLETTI: Sir, I don't work for ATF.

REP. MICA: I know, but what do you think should be in here? Do you think there should be a penalty? You helped write this report.

MR. MERLETTI: Sir, I can tell you, I helped write this report. We did in excess of 500 interviews. As I told you earlier, we have 61 witnesses. If you recall, right after the raid, the big point was, was the element of surprise lost, or was it not? The line agents stood up and told us the truth. I have 61 witnesses that said they heard that. Do you expect me to ignore that? That is much more probable cause than I would expect on anything.

REP. MICA: This report was the beginning of the basis in September of which these gentlemen became the fall guys and were fired. And then they were rehired, is that correct?

MR. : Reinstated.

REP. MICA: Reinstated.

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

REP. MICA: I hope to get back to this line of questioning. I thank you, Mr. Chairman.

REP. MCCOLLUM: Ms. Lofgren, I believe you're next in line. Five minutes, if you wish.

REP. LOFGREN: Thank you, maybe I won't need the whole five. Mr. Chojnacki, what kind of training did you get before you became an officer in psychology and that sort of field? What kind of preparation did you get?

MR. CHOJNACKI: In terms of psychological training?

REP. LOFGREN: Mmm-hmm.

MR. CHOJNACKI: I can't recall that in the ATF basic schools that we had --

REP. LOFGREN: Or subsequent. Was that something that you got trained in as an agent?

MR. CHOJNACKI: No, ma'am, not really.

REP. LOFGREN: How about you, Mr. Sarabyn, was that part of your training?

MR. SARABYN: I have a degree in criminal justice, which was like a, you know, a minor where there was psychology classes, and you know, we have had some training throughout our career where it addresses that.

REP. LOFGREN: Mr. Buford, about the same experience?

MR. BUFORD: Whether I had any formal training in psychology?

REP. LOFGREN: Yes.

MR. BUFORD: I took a couple of psychology courses in college and work on the street for as many years as I have, I've had a lot of time --

REP. LOFGREN: So you didn't have -- the department doesn't make that part of the training for its agents?

MR. BUFORD: No, ma'am.

MR. : What I could say about that though is that in the management scheme of things, there are courses that could be considered psychology, in terms of how to deal with people, disgruntled employees and things like that. But not formal training in -- necessarily dealing with --

REP. LOFGREN: I was interested in the comment, I want to ask Mr. Merletti as the author of the report. Going way back, the details of the raid and the surprise has been adequately covered, but as I see the picture, I mean there were reams of material available to the federal government from the district attorney's investigators, from Mr. Aguilera, from even during the hostage -- the negotiations sessions that painted this picture. We had a man who thought he was the messiah. We had a pattern of that man raping very young girls, ten, eleven-year-old girls and having them have his babies. The men in the compound had been separated from their wives and forced -- or willingly agreed to be celibate, and their wives also became sexually available to Mr. Koresh. The parents did not object to their little girls being made available to Mr. Koresh ; information that eight- month-old babies were beaten until they bled and the parents agreed with that. This is not normal behavior that you find every day. And I'm wondering, based on that, I certainly accept your testimony that in more than half the cases, the element of surprise (or people will give up ? ), but I'm wondering on page 134 of the report, you're talking about the failure to adequately look at other alternatives.

What part of the team should be involved? What was lacking in ATF in terms of expertise to really psyche these people out, what they would do, what would work in this situation, and what do we

need to do in the future to make sure we can do the most prudent thing.

MR. MERLETTI: First of all, I would like to say that I do agree with your description of David Koresh. I feel that he was maniacal, megalomaniac. I think what ATF could have done different, and again, this is in hindsight, their intelligence gathering system really was not providing to the planners the information that was necessary for them to put the plan together.

REP. LOFGREN: Had that information been provided to the planners? Did the planners have the expertise to fully evaluate it?

MR. MERLETTI: Mr. Buford was involved with the case dealing, as he talked earlier, about Covenant, Sword, Arm of the Lord. And he did have a lot of experience. The other planners had experience in a number of smaller street raids. It is difficult to answer. I think that with the intelligence system being improved, they would have had a better chance.

REP. LOFGREN: I'm not trying to be a Monday morning quarterback, I'm trying to look and see how we can be better prepared in the future. And thinking about say, causing this dissonance, I think it's reasonable to think that people who bought into this so much that they would allow their own eleven-year-old daughter to become the wife of this man who was the messiah are not going to say, oh, well, we've been under siege for a while, let's give up. I mean that is not the pattern of behavior in this material. And this kind of behavior -- I know Mr. Buford had reservations throughout about the siege. I'm just sort of wondering what kind of team do we need to bring in beyond just law enforcement so that the appropriate steps to really bring closure in a way -- you know, and I'm not even faulting the agents here. I mean, they were apparently not trained to have that information; they were trained to be cops, and I respect that. But the question is what additional expertise do we need to bring in. It looks like Mr. Buford would like to comment as well (he's grabbing the mike ? ).

MR. BUFORD: Well, it's very difficult going into an investigation of this type. I've been involved in two; one where I was -- there were several case agents through the several years that the investigation took place, but I ended up with the investigation and had been the supervisor of the investigation the entire time. I know that in both of these cases, there was a lot of reference to the Book of Revelation in the Bible. And during the CSA investigation, I spent hours pouring through the Book of Revelation and discussing this with people, trying to get the mind set of the individual. And in the future, if anyone in law enforcement, not just ATF, has to deal with religious or whatever -- I hate to even use that term --

REP. LOFGREN: Try cult.

MR. BUFORD: Well, I didn't want to use the word cult either. I think that's overused sometimes. But with a group of people who have a -- what they claim to be a religious philosophy, we need to have as much input from biblical scholars as possible to try to get into their mind set. However, the decisions to make -- that have to be made on how to execute the warrants still have to be made by the law enforcement people who feel like, that with this information, they can make this raid as safe as possible. Psychologists and religious people can definitely give you some insight and should be contacted. But the actual raid planning and how to best neutralize this situation in order to execute a

warrant or an arrest has to be left to the law enforcement officials with the expertise to do so.

And each individual situation is different. With the CSA, we did a siege-type operation that was extremely successful; not a shot was fired. I was convinced that a siege-type operation, based on what I knew and my experience with the CSA would end in a mass suicide, and I felt like that by doing a dynamic entry, for lack of a better term, neutralizing the situation as quickly as possible, would prevent loss of life on either side. And believe me, we were as concerned about the children inside that children as anyone. That distresses each and every one of us. I see those children every day.

REP. MCCOLLUM: Thank you very much, Ms. Lofgren.

REP. LOFGREN: Thank you.

REP. MCCOLLUM: Your time has expired. Mr. Buyer, you're recognized for five minutes.

REP. BUYER: Yes, thank you, Mr. Chairman. And it is a shame that Mr. Chairman is not present in the room, because I wanted to extend a compliment to him. I guess I can extend the compliment to him in his absence. He shouldn't be quite surprised -- I guess he was upset that members might try to characterize what's been said, because Mr. Schumer is quite a verbal artist with regard to -- actually, perhaps one of the best when it comes to articulation in the Congress, and characterizes issues a lot. It's interesting, Tim Russert of New York, who many people know from Meet the Press, and he was on the Today Show, does a political commentary on the 20th of this month, gave a quote. And Tim Russert -- actually Tim Russert is a former staffer of the late Bobby Kennedy, and Tim Russert said about these hearings, he said "David Koresh may be a whacko; he may be weird, anything you want to call him, the fact is whenever the government kills people, you have to look at it and look at it hard. "

And so I thought that was a pretty interesting comment. Something that I heard here in testimony concerns me, because in our request, and there are a lot of documents, thousands and thousands of documents, and there's some we haven't even actually been able to get to when they got dumped on us here at the last -- but with regard to a methyl amphetamine lab, all the sudden we hear today for the first time that there was DEA present when we had the director of the DEA say DEA wasn't involved in the case. They weren't contacted. So could you clear that up for me?

MR. : Sir, I don't know who that -- I don't know where the panel member was or the witness came from, but the DEA person that we requested was from that Austin area, you know, someone in their headquarters would have no idea. I mean that's just something that would be done on a local level. I mean he wouldn't know what anybody else --

REP. BUYER: In addition to that, sir -- okay, go ahead.

MR. : I have seen DEA (6's ? ). That's their standard report of investigation, indicating their acknowledgment that Davey Aguilera came to them with that information. So I know that he passed the information, and I met the supervisor myself; there's no doubt they were there.

REP. BUYER: Are the three of you OSHA certified to take down a methyl lab?

MR. : I am not, sir. But on my staff I have a DEA certified individual. He was not there with the responsibility of taking down the lab. The DEA supervisor was there to initiate that action if it was actually there --

REP. BUYER: Not DEA certified; the question if OSHA certified. So you're not OSHA certified to take down a methyl lab. Mr. Sarabyn, are you?

MR. SARABYN: No, sir.

REP. BUYER: Are you, sir?

MR. : I am certified to execute a warrant, secure the premises and call in the OSHA. I have taken the DEA training on how to secure the area prior to the OSHA team coming in.

REP. BUYER: With regard to some of the testimony of other witnesses about the dynamic entry and if there's a methyl lab, you don't go in shooting, and the concerns -- was that talked about in the planning, tactical planning stage?

MR. : Yes. Yes, sir, only briefly because this was a firearms investigation. The methyl lab was very secondary, and we are not a -- we don't normally investigate methyl labs. It was my understanding that if there was, in fact, a lab there, it would be dismantled. And we were taking all precautions. Our agents have had the training. If they saw something that looked like a methyl lab, they know to isolate that area and secure it until the proper people can get there.

REP. BUYER: Were the three of you present in Houston at this meeting when the medic who testified on the panel before us said that he wrote this paper on how to take down a methyl lab -- Sgt. Fritts -- were the three of you present there?

MR. : I was present.

REP. BUYER: Did you receive that report from him?

MR. : No.

REP. BUYER: You did not?

MR. : They normally work with DEA, and their whole focus of their search warrant is to get the labs. So when they're working to give assistance, they plan it out; they go through it. We made all our agents aware that it was there. You know there's a lot of things involved, so we were going for explosives also. So obviously, they have to be very careful when they come on that and deal with it. But we had the people standing by to assist us with that.

REP. BUYER: Alright, Mr. Merletti, are you familiar with any documents out there that you found

in your investigation with regard to the methyl lab?

MR. MERLETTI: Sir, in our investigation, we did find that there were two DEA agents requested to be at the command post; they were there.

REP. BUYER: Okay.

MR. MERLETTI: And two others were on call.

REP. BUYER: Okay, good. That's helpful to me. These three -- the ATF special response teams came from three separate cities, is that correct? Had they ever worked together before? Had these three teams ever worked together?

MR. : The -- (inaudible) -- concept is relatively new. In previous investigations a few years earlier than that, the Dallas division and the Houston division of ATF worked very closely together in a massive arrest and raid situation, but we didn't have SRTs at that particular time. Some of the teams do train together. And even in their initial training, I think it's usually two teams at a time that train together to get accustomed to working on a coordinated fashion.

REP. BUYER: I see my time is up. I'll return to this.

REP. MCCOLLUM: Thank you very much, Mr. Buyer. I think, Ms. Slaughter, you are next up. Would you like to take your five minutes?

REP. SLAUGHTER: I would. Thank you very much, Mr. Chairman. Gentlemen, first I want to say how glad I am that you survived, and I'm continually proud that we have people in this country, when their government asks them to go in and do a job like that and put their lives on the line, that you'll go.

Mr. Buford, I'd really like to kind of concentrate on you, if I may. I really just want to let you talk. There was a lot of conversation here yesterday. Witnesses talked about the kind of uniforms that you wore, the kind of equipment that you had with you, implying it was greatly overdone, and also that the grenade shells there were just paper weights. I know you made it into the window of the gun room. But I wonder if you'd tell me about the equipment you wore, Mr. Buford, and whether or not you even found it adequate to the job.

MR. BUFORD: The equipment we wore, ma'am, in fact, I have a couple of -- I don't know if "ma'am" is a proper term, I'm sorry, but that's what I -- I'm from the South; that's what they use.

REP. SLAUGHTER: Me, too.

MR. BUFORD: I have a helmet here and a ballistics vest and a carrier --

REP. SLAUGHTER: I'd like to see --

MR. BUFORD: -- that were actually used. I would like to show you those, if I might.

REP. SLAUGHTER: I'd like to see them. Is this the same equipment, Mr. Buford, that the agents that were killed were wearing?

MR. BUFORD: The vest that I'm going to show you, actually one of the Texas Rangers has the helmet and the vest carrier outside, and hopefully he'll have that in here very shortly. But we wore a standard Kevlar helmet. We wore safety goggles that are to protect your eyes from anything that might come along. We wore no Kevlar masks or the -- not Kevlar -- the Bacalavas (sp), the ski masks, as many have accused us of doing. That's just an absolute lie on their part. We wore the level three body armor, which gives you added protection. Many of us had a ceramic shock plate in the front which would take a high-velocity round. And over that we wore a vest carrier, which plainly identifies us as ATF agents.

The vest itself -- this is a level three type vest, but our special response teams use a vest that is larger than this that actually has a collar on the front which helps protect your neck area. On the back on bold letters is the fact that we are ATF agents. This is the standard vest that we wear. It is the standard vest that is used by most police departments. There is -- the general rule as far as special response teams are concerned is that they will -- almost all teams now wear the Kevlar helmets. The Kevlar helmet will at least deflect high-velocity rounds and have saved many lives of our law enforcement agents. In fact, we had several agents who took rounds to the helmet that would have been killed had they not been wearing the helmet. But this is all standard not only just for SRGs or SWAT teams but just for our agents when they run their warrants.

REP. SLAUGHTER: Tell me about the grenades.

MR. BUFORD: The --

REP. SLAUGHTER: You witnessed -- you saw grenades with your own eyes.

MR. BUFORD: Yes, ma'am. When I went into the arms room after I was first shot, I fell back and landed next to a box. In this box, there were mark two or the pineapple-type hand grenades. There were a large number of them in there. I didn't take the time to count them. But they did not appear to be paper weights. I remember very distinctly that the bottom on one that would be used for a paper weight -- there's a hole in the bottom; these are practice grenades. The holes in these had been welded up, and on the end of the grenade was the fuse that is used with the pins in place. I believed those to be live hand grenades.

REP. SLAUGHTER: Were any of those used against any of the agents at all?

MR. BUFORD: Yes, ma'am. We had a number of agents that were wounded when hand grenades were thrown from inside the compound out. In fact, the special response team leader from the Dallas team received 44 separate shrapnel injuries when one of these hand grenades went off in his face.

REP. SLAUGHTER: And you did as well?

MR. BUFORD: No, ma'am. Mine was all gunfire.

REP. SLAUGHTER: Were any -- did any of the shrapnel fragments penetrate that vest or that helmet that you were wearing, on any of the other agents?

MR. BUFORD: The vest stopped a lot of the shrapnel and a lot of the bullets that were being fired.

REP. SLAUGHTER: Can you say something about the boots, the jack boots that people have all accused you of wearing?

MR. BUFORD: Ma'am, we don't wear any -- I know a lot of people like to think we wear jack boots.

REP. SLAUGHTER: "Jack-booted thugs," I believe.

MR. BUFORD: But I think that's a term that is probably not appropriate. We wear a standard lightweight boot that is nylon on the sides and it's got a rubber sole.

REP. SLAUGHTER: Thank you.

REP. MCCOLLUM: Ms. Lofgren, thank you. Your -- Slaughter, I mean. Thank you. Your time has expired.

Mr. Chabot, I believe you're next.

REP. CHABOT: Thank you, Mr. Chairman. Mr. Merletti, your report clearly stated that Sarabyn and Chojnacki had lied to their superiors and to investigators about what Rodriguez had told them, basically the fact that Rodriguez had told them that Koresh knew they were coming. That seemed to be one of the big issues involved in this whole case. You stand by your statement and by the report that they both knew that. Is that correct?

MR. MERLETTI: Yes, that is.

REP. CHABOT: Okay. And you also, I believe, say in the report that they actually altered documentation. Is that correct?

MR. MERLETTI: The raid plan.

REP. CHABOT: Okay. Tell us about that.

MR. MERLETTI: At some point in the Ranger murder investigation, the Rangers asked for the written raid plan. When they received it, they received two documents and they were different. There had been some additions. And these additions -- the investigation showed that these additions were put in after the raid. These additions were not so much -- not that they were lies; it just -- it puts ATF in a better light. Or I should say it put the raid commanders in a better light.

REP. CHABOT: In other words, after the raid occurred, the original records that explained what was going to happen with respect to the raid, those were changed later on to make ATF not look as bad. Is that correct?

MR. MERLETTI: I would say not to make the raid commanders look as bad.

REP. CHABOT: Okay. And by the raid commanders, you're talking about Mr. Sarabyn and Mr. Chojnacki? Is that right?

MR. MERLETTI: Chojnacki, yes. (Corrects pronunciation. )

REP. CHABOT: Chojnacki. Okay. Now, lying to investigators is a criminal offense, is it not?

MR. MERLETTI: Yes, it is.

REP. CHABOT: And, in fact, changing documents is also a criminal offense.

MR. MERLETTI: Yes.

REP. CHABOT: In fact, let me read from the United States Code right here which states, under "Fraud and False Statements," "Whoever in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact or makes any false, fictitious or fraudulent statements or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years or both. "So clearly a criminal offense.

Now, did you or anyone in the Treasury Department, knowing that these individuals had lied or that they had changed documents, did you or anyone in the Treasury Department recommend that either one of these folks be referred for criminal prosecution?

MR. MERLETTI: Sir, I investigated the case. You really would have to ask the attorneys that were involved in that. I'm not sure. It's just (if? ) a case is presented to a U. S. attorney. I don't know where that went. We dealt --

REP. CHABOT: It didn't -- not to interrupt you, but it didn't happen, to your knowledge, correct?

MR. MERLETTI: Pardon me?

REP. CHABOT: It didn't happen. They were not referred for criminal investigation.

MR. MERLETTI: I can't say that.

REP. CHABOT: Well, have you heard that they were charged with a crime, that they went to trial on the basis of any charges?

MR. MERLETTI: I know they didn't go to trial on it, but it may have been referred to the Department of Justice. It may have been referred to the --

REP. CHABOT: Let me ask the gentlemen. Were either one of you gentlemen referred for prosecution? Were charges brought against you for either lying or for changing documents?

MR. : On September the 29th of 1993, Secretary Bentsen advised us, or advised the public in his public statement on television, that the Waco -- the administrative report would be forwarded to the Department of Justice for them to look at it in relationship to a criminal prosecution of the two of us.

REP. CHABOT: Okay. And were either one of you charged?

MR. : We have not been charged but we have not been provided any documentation to show that we won't be charged.

REP. CHABOT: Mr. Merletti, were you aware of any recommendation that they be charged?

MR. MERLETTI: I now know that the inspector general's office referred it to the Department of Justice. That's all I can tell you.

REP. CHABOT: But at this point, neither gentleman has been charged. I'm not suggesting they should or should not be, but the fact of the matter is they've not been charged at this point in time, and this is two years after the fact.

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

REP. CHABOT: Thank you.

REP. MCCOLLUM: Mr. Taylor, you're recognized for five minutes.

REP. TAYLOR: Thank you, Mr. Chairman. I want to -- like Ms. Slaughter, I want to thank you gentlemen for putting your lives on the line in what you thought and what you knew in your hearts was to protect other Americans against someone who was dangerous, someone who Mr. Merletti's testimony here tells that the paper that printed the article about these people changed the locks, issued building passes, took the identifying decals off of their automobiles, and got the two reporters who wrote the story out of town. Now, Mr. Merletti, why do you think they did that?

MR. MERLETTI: They were afraid of Mr. Koresh.

REP. TAYLOR: They were afraid of Mr. Koresh, a dangerous man.

MR. MERLETTI: Absolutely.

REP. TAYLOR: Absolutely. Mr. Buford, I want to thank you additionally, and those of you who I'm not familiar with, for your service in Vietnam.

MR. BUFORD: Thank you, sir.

REP. TAYLOR: Did you ever suffer that bad an ambush in Vietnam? Were you ever outgunned that badly in Vietnam?

MR. BUFORD: I was in several ambushes that we didn't win, but that was as devastating a fire fight as I was ever in.

REP. TAYLOR: You're talking a group that is supposed to be a religious group, has more fire power than the Viet Cong, who was supplied by the Soviet Union and the communist Chinese--

MR. BUFORD: That's correct.

REP. TAYLOR: -- in the two experiences that you had.

MR. BUFORD: Yes, sir.

REP. TAYLOR: Again, I think some people are getting way off on tangents. They're forgetting who the good guys are and who the bad guys are, and we shouldn't. There are four dead ATF agents and 20 who have been wounded, and we cannot forget that. Don't you think, in fairness to those agents, that we should get these two reporters who wrote the story, who were so afraid for their lives that they left town, don't you think we should subpoena them and have them tell the story so that the people of America can know the events that led up to this tragic raid? Don't you think that's fair?

MR. BUFORD: I would love to see that happen, along with the television news reporter who actually told the Davidians that we were on the way. I think that would be an excellent idea.

REP. TAYLOR: I appreciate the additional remarks, and I will certainly add that to my request. I want to follow with the same question I'm going to ask every remaining panel and the two previous panels. You're the most familiar with this case. You were there. Mr. Merletti, you were not there but you have done all the research on it. Has anything that any of you have seen or heard or read justified the murders of those four ATF agents or the wounding of 20 more by David Koresh and his followers on the morning of February 28th? Has anything that you've seen caused those people to react in a way that was so unlawful?

MR. : Absolutely not.

MR. : No, sir.

MR. : No, sir.

MR. : Absolutely not.

REP. TAYLOR: Mr. Merletti, again, for the record, you are not an ATF agent but you have gone in

as an independent --

MR. MERLETTI: Yes, sir.

REP. TAYLOR: -- contractor to do the research on this.

MR. MERLETTI: Yes.

REP. TAYLOR: Does it not come as a surprise to you, sir, that there can be some conflict here in what Mr. Sarabyn is saying when he says, on one hand, "I didn't know," and yet he did? I mean, let's face it. A lot of people got hurt. They made the decision to go in. There's got to be -- and follow me here -- in their hearts some regret that people who were in their charge got hurt. That is human nature. Isn't there something in the human psyche that's just called denial? It's not being fraudulent. It's just called denial. "Gosh, I wish it wouldn't have happened." It happens to people in car wrecks. It happens to people when they see their kid fall out of a tree. "Maybe I shouldn't have let them get in that tree." That's not criminal. It's just denial in a person's heart. Do you think that is entirely possible?

MR. MERLETTI: Let me explain this. I do not believe at all that they led them into an ambush. They certainly did not know what Koresh had waiting for them. They wouldn't do that. From the interviews I've had with -- I know they wouldn't do that. What happened to them, that was horrible, and I know they regret it. I'm referring to the continually evolving story about the element of surprise; that's all I'm referring to.

REP. TAYLOR: And I appreciate you making that point, and I hope the record will reflect that. And additionally I hope the record will reflect the fact that I do not think the ATF agents are being treated fairly. I really resent that this committee is talking about things way off on the peripheral; (that they're going out of their way ? ) -- and I have one last question of you, Mr. Buford. Yes or no, did you have any reason to believe that there was an amphetamine -- methyl -- whatever, lab on that compound that day? Did you have any reason to believe that?

MR. BUFORD: I had been told that there was the possibility that it was there. Yes, I had reason to believe that there was one there.

REP. TAYLOR: I hope the record will reflect that. Thank you very much.

REP. MCCOLLUM: Thank you, Mr. Taylor. Mr. Zeliff, you're recognized for five minutes.

REP. ZELIFF: Mr. Sarabyn, were explosive flash bag devices used in the February 28th raid on the Davidian compound?

MR. SARABYN: Yes, sir.

REP. ZELIFF: And did you know at the time that 25 children were in the compound?

MR. SARABYN: Yes, sir, and let me explain that answer. We had three SRT teams, and it was at

the point -- I said that SRT teams were just beginning to come about. And so we were just getting into using flash bags. Only two of the teams were actually certified to use flash bags. The Dallas team was not. We knew that the women and children were on the second floor and higher up, so we put the Dallas team to clear that area, because they could not use flash bags, and we did not want to endanger any children or women with that, sir.

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REP. ZELIFF: But you knew -- but you did use them, and you knew that children were in the compound.

MR. SARABYN: We didn't use them -- just throwing them in anywhere. I think the only way that they're actually diverted, and it was Bill up in Koresh's armory.

REP. ZELIFF: I'm going to ask the clerk to distribute a copy of the ATF manual to the subcommittee; it's by Treasury, but it says that hazards (enhancers ? ) under certain conditions may exist that may limit or prohibit the use of flash bags. When children are known to be in the location, more care must be taken. Injuries that would be minor to an adult are often aggravated in young children. What measures did you take to protect the children when you saw the flash bags?

MR. BUFORD: There's a standard procedure, sir and it's our policy, we must look into the area where you are going to deploy a diversion device. If there is any children present, you may not deploy that device. It goes on further that we must, in fact, look inside -- you can't just blindly throw one through a window; you must ensure that there is no children, or I believe the policy goes on further, elderly people who may be on medication or on some type of a -- such as oxygen or something like that.

REP. ZELIFF: It says a fire hazard exists when using flash bags. The room must be thoroughly checked for fires. If the flash bag lands on combustible material, laundry, newspaper, clothing stuffed chairs, a fire is not only possible, but likely. And I guess my question is, and what surprises me is that you really -- limited amount of training to use these, knowing full well that there are a certain amount of safety hazards in using them, you went ahead and used them anyway.

MR. BUFORD: We had used them on numerous occasions -- not on numerous, but on several occasions before that. And one of the requirements that we have is that we take along a fire extinguisher with the team any time you're going to deploy those.

REP. ZELIFF: Is that what you did?

MR. BUFORD: Yes, sir.

REP. ZELIFF: And you took one fire extinguisher?

MR. BUFORD: One fire extinguisher, yes, sir, with my team. The other teams at the front of the building, the Houston team which was also certified to use the devices, had a fire extinguisher also.

REP. ZELIFF: If Koresh had surrendered at the door, wouldn't the acknowledged lack of communications between agents have meant that the agents were entering through windows and up ladders on the side of the compound would still have -- be using flash bags? I mean, did you have a problem communicating with the other groups?

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MR. BUFORD: No, sir. We had two radios. Agent King, my co-team leader could communicate with all of the other team leaders. He would have known immediately, and we would have still made entry into those rooms, but it would not have been necessary to deploy a flash bag.

REP. ZELIFF: Did the tactical plan designate an agent to carry the warrants? And did that agent have in his or her position the warrants on the date of the raid.

MR. : I had the warrant, sir.

REP. ZELIFF: You personally did?

MR. : Yes, sir.

REP. ZELIFF: Okay. The ATF tactical plan called for agents to be on different sides of the Mt. Carmel center at the same time, so would it be fair to say that the SRTs did not have continuous visual contact with the other SRTs?

MR. BUFORD: I'm sorry sir, I didn't understand that?

REP. ZELIFF: Okay, the ATF tactical plan called for agents to be on different sides of the Mt. Carmel center at the same time. Would it be fair to say that the SRTs did not have continuous verbal -- visual contact with the other SRTs. In other words, could they see each other?

MR. BUFORD: Verbal contact, yes; visual contact, no. But that's only for the New Orleans team that was on the east side. The Houston and Dallas teams had full visual contact.

REP. ZELIFF: Given that scenario, shots were fired. Did the raid plan have some type of verification signal that agents were taking incoming rounds?

MR. BUFORD: Well, it was obvious the 50-caliber rounds were not ours, sir.

MR. SARABYN: Additionally, as soon as I got off the truck, I went right over to the radio, and I was on a command channel that we're taking fire, we're taking heavy fire. It went out to everybody within seconds. It's on the audio tapes.

REP. ZELIFF: Isn't it true that the special agent who was first at the front door of the Mt. Carmel center told Texas Rangers investigating the raid that the ATF (dog ? ) team shot first?

MR. : First of all, there were dogs there in the front, and we were carrying a fire extinguisher, and

that was the first thing we were going to use -- just do that to get the dog to go away. If not, he was going to shoot the dog if it became offensive. I asked the agent this week -- I said what happened, because I was never clear. He said, I went to spray the dog, and I got shot. You know, so he was using the fire extinguisher, not even his weapon to (do away with ? ) the dog, and that's when he was shot.

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

REP. ZELIFF: Okay, thank you.

REP. MCCOLLUM: Thank you, sir. We have time for Mr. Brewster's questions. We haven't even begun to get the second bell, so I'll yield to you, sir.

REP. BREWSTER: Thank you, Mr. Chairman. Do I note that three of you have counsel with you today?

MR. : Yes, sir.

MR. : Yes, sir.

MR. : Yes.

REP. BREWSTER: Does that mean then that you're either suing someone, or someone is suing you over this happening?

MR. : Yes, sir.

MR. : Yes, sir.

MR. : Yes, sir.

REP. BREWSTER: So, are you suing the government, or is some other person that was involved in the raid suing you, or what is the status?

MR. : We have approximately two billion dollars worth of civil suits lodged against us by family and friends of the former -- or the deceased Davidians.

REP. BREWSTER: Okay, what about anybody else that was involved in the raid?

MR. : We are being sued -- Mr. Sarabyn and I -- by one of the agents involved in the case, and we are participants in another civil suit against the AMT -- the medical company, the Cox (sp) Publishing Company that put out the newspaper article and the TV station that leaked the information to the Davidians that caused the death of our agents.

REP. BREWSTER: So you're being sued by families of the Davidians, another agent and you're suing a medical company, the TV company and the newspaper.

MR. : Yes, sir.

REP. BREWSTER: And Mr. Buford?

MR. BUFORD: I'm being sued by some of the members of the families of the Davidians, and I'm also a party to the lawsuit against the television station, the newspaper and the ambulance service.

REP. BREWSTER: Okay, and let's see, do I understand that you two were fired after the conclusion of Mr. Merletti's investigation, is that correct?

MR. : That's correct, sir

MR. : Yes, sir.

REP. BREWSTER: And you were reinstated by the (merit ? ) protection board after a review of your case, with back pay?

MR. : Yes, sir.

MR. : Yes, sir.

REP. BREWSTER: So, Mr. Merletti, doesn't that pretty well exonerate them?

MR. MERLETTI: They're no longer agents. They no longer carry weapons. They've been reduced in grade. I don't think it completely exonerates them.

REP. BREWSTER: But they're reinstated with back pay.

MR. MERLETTI: That's due to the merit system promotion board that does not allow you to take a pay cut or a cut in pay.

REP. BREWSTER: Okay, one other thing, I was involved in the hearing that the Ways and Means Oversight Committee had shortly after this occurred. There was no mention of an amphetamine lab. And I went back and reviewed that testimony just yesterday or the day before , I have not found any mention of the amphetamine lab. And that was somewhat troubling to me. Mr. Buford, what part of the building did you think the amphetamine lab was in?

MR. BUFORD: I didn't have a clue, sir. It was mentioned to me, and really my major concern was on the firearms and the explosives there. I didn't really take that much of a precaution about the lab. I was just aware that there was the possibility that there would be one there.

REP. BREWSTER: I'm a pharmacist by profession and have a little understanding of the way that would be manufactured. Would it not be important from a safety standpoint for agents to know what part of the building that lab was supposed to be in if you're using flash bags and other devices that could certainly cause some of the chemicals to explode?

MR. BUFORD: Absolutely, sir. I agree with you one hundred percent, it would be very important. That's the reason we were so protective of how we deployed the flash bags, and that was information we would have liked to have had, but there was no way to gather this information. If we could have gathered that information, we certainly would have. I know I've raided many methyl amphetamine labs, and in most cases, we don't know exactly where they are.

REP. BREWSTER: Another point, you mentioned that you were outgunned there. I think the group knew this bunch were not good folks, and they had a heck of a lot of weapons that you knew had been converted to fully automatic. Why was everybody in your group not carrying at least equal fire power or greater? And besides -- you also mentioned that someone was killed when an AK-47 bullet penetrated a vest. Would not any high-powered rifle such as a 270, 30-06, 22-250 that travels about 3,000 feet per second, would it not penetrate a vest as well?

MR. BUFORD: That's correct, sir. Those rounds would all penetrate the vest. Miraculously, Agent King who took three rounds through the chest survived. The other agents that were killed were shot with the high-powered weapons, and the first part of your question --

REP. BREWSTER: The first part is, why didn't you guys go with at least as good a weaponry as they had?

MR. BUFORD: Well, sir, we knew for a fact that there were children there, and that there would be some of the women would be non-combatants. And regardless of what they have, our standard issue is the 9-mm handgun, the 9-mm MP-5, and the shot gun. We did have a couple --

REP. BREWSTER: So you're telling me that you do not have fully automatic weapons in ATF?

MR. BUFORD: ATF has a two-shot MP-5 that is used by our SRTs. We do not have a fully automatic weapon in our arsenal with the exception of the two-shot MP-5.

REP. BREWSTER: Mr. Merletti, one other point with you. If you could provide me in writing the changes that have been made to make sure that nothing like this occurs again in the future. It's my understanding with Treasury that you can get that information for me?

MR. MERLETTI: I can get it to you -- someone who can get it for you. Again, I investigated the case. I didn't follow up on --

REP. BREWSTER: Okay, maybe I misunderstood Treasury earlier today when they were talking with me; I thought they gave me that information.

REP. MCCOLLUM: Mr. Brewster, your time has expired. But I think Mr. Sarabyn wanted to respond at one point, or his attorney did, to something Mr. Merletti said. We'll allow you to do that if you wish to do so.

MR. : Thank you, Mr. Chairman. And since I've already gone out on a limb and taken an oath, just to clarify, the merit system protection board did not reinstate Mr. Chojnacki and Mr. Sarabyn; they

were reinstated by Treasury as part of the settlement agreement. I didn't want any misunderstanding. This was not an adjudicated matter; it was a settled matter.

REP. : (Inaudible) -- U. S. merit system protection board.

MR. : I've read it in a lot of papers too, Mr. Brewster, that's why I wanted to stick my two cents in.

REP. MCCOLLUM: Thank you very much. We're going to be in recess now; we are going to come back. We still have other questioners. I know it's late, but it will five minutes after the last vote. Apparently we have at least two votes; probably that's all it is, and if the panel can be patient with us, we don't have much longer. Thank you, we're in recess.

(Recess.)

REP. MCCOLLUM: The joint subcommittee hearing will come to order. When we recessed a few moments ago for the vote, we did not realize that we were going to wind up with quite a debate in itself on the floor over what happens the rest of the night. I think many members, knowing they may be here quite late voting on bills, have stayed over there to hear that debate, which has now concluded, as I observe from watching C-SPAN, which I guess is a good source when you come back over as chairman from a committee to a committee room, and we are now in the process of beginning these hearings again. I'm going to yield at this point in time to the gentleman from North Carolina, Mr. Heineman, for five minutes of questioning. Mr. Heineman?

REP. HEINEMAN: Thank you, Mr. Chairman. It's a shame that our colleagues on the other side of the aisle are not here now. I kind of objected to the gentleman from Mississippi characterizing us as not knowing who the good guys and the bad guys are. We know who the good guys are and the bad guys are. In fact, I was a good guy for 38 years, and I like to think I'm still a good guy. I did get elected to Congress, and because I'm in Congress, I take my job very seriously.

We're not here to bury ATF or anybody else, but I am here to ferret out the 15 percent of the warts in here that Mr. Schumer mentioned some time ago, and that's why we have to ask questions. Some of them probably are repetitive. Some of them you've answered before at another hearing, but I think for the comprehensiveness of what we're doing here, you'll just have to bear with us as we go through this.

Mr. Sarabyn, when Mr. Rodriguez, after leaving the compound after his conversation with David Koresh, exited the compound and spoke to you, where were you?

MR. SARABYN: I was in the command post.

REP. HEINEMAN: Now, the command post was not that house that overlooks the --

MR. SARABYN: No, that was --

REP. HEINEMAN: -- compound?

MR. SARABYN: -- the undercover surveillance house. He'd left the compound, went to the undercover surveillance house, which is across the street. I was approximately a couple of miles away in what was the command post.

REP. HEINEMAN: Okay, now you said approximately a couple of miles. I somewhere seem to have read that the technical school was a good 10 miles from the compound. Is that correct?

MR. SARABYN: You could actually -- we didn't really realize this until after, but from the steps of the command post, you could actually see the compound. I mean, to actually drive it, it might have been, you know, longer, five or six miles. I don't think it was 10 miles.

REP. HEINEMAN: And where was the raiding team?

MR. SARABYN: They were at a staging area which was approximately eight miles away from the compound and probably four or five miles away from the command center.

REP. HEINEMAN: And you had a conversation with Mr. Chojnacki --

MR. SARABYN: Yes, sir.

REP. HEINEMAN: -- relative to your conversation with undercover agent Rodriguez?

MR. SARABYN: Yes, sir.

REP. HEINEMAN: And you told him that the security was breached, that Koresh knew that, as he characterized it, the ATF and the National Guard was on their way?

MR. SARABYN: He didn't say "on the way." He said "coming."

REP. HEINEMAN: Oh, coming.

MR. SARABYN: Yes, sir.

REP. HEINEMAN: And, Mr. Chojnacki, when you received that information, can you tell us what you did?

MR. CHOJNACKI: When I received the information from Mr. Sarabyn -- one thing I'd like to clarify. Nobody said that security was breached. Mr. Sarabyn pointed out that he had finished talking with Agent Rodriguez, and that Robert said, "He knows we're coming." He said, "The ATF and the National Guard were coming to get me," those kinds of comments, that I took to be a repetition of the same comments we had heard from his other preaching episodes, where he preached the ATF will be coming to get us, the ATF is coming to get us.

REP. HEINEMAN: Well, I think -- I think a little differently than you do about that. The fact that he told Rodriguez, he was shaking, and he told Rodriguez that, "They're coming, they're coming to

get us, the ATF and the -- and the National Guard. "I interpreted that -- and I believe Rodriguez, although he'll be here at some point to testify to that, he believed that Koresh knew that you were coming.

MR. CHOJNACKI: I do not challenge Agent Rodriguez's perception of what he told us --

REP. HEINEMAN: Well, did you --

MR. CHOJNACKI: -- I'm not --

REP. HEINEMAN: -- well, did you believe he knew you were coming?

MR. CHOJNACKI: Not at that time, no, sir.

REP. HEINEMAN: Well, who was it that said, "Let's hurry up. Let's hurry up. "

MR. CHOJNACKI: I never made a comment like that.

REP. HEINEMAN: Well, perhaps Mr. Sarabyn --

MR. SARABYN (? ): I said that in the staging area.

REP. HEINEMAN: So apparently you believed that the security was breached.

MR. CHOJNACKI (? ): When I -- when he made those comments, he said ATF and the National Guard. I heard ATF several times. I never heard National Guard. I was concerned --

REP. HEINEMAN: -- (inaudible) -- in the book.

MR. CHOJNACKI: What?

REP. HEINEMAN: I believe it's in Mr. Merletti's book. But then you had a quarrel with -- 15 percent of that book you said was questionable.

How many SRTs (ph) were there, Mr. Chojnacki?

MR. CHOJNACKI: Beg pardon, sir? How many --

REP. HEINEMAN: -- (inaudible; crosstalk) --

MR. CHOJNACKI: -- at the site or in the America?

REP. HEINEMAN: In the raiding party.

MR. CHOJNACKI: Three.

REP. HEINEMAN: Three SRTs?

MR. CHOJNACKI: Yes, sir.

REP. HEINEMAN: Totally, how many ATF people were part of that raiding party?

MR. CHOJNACKI: I don't know the exact number. It was somewhere between 75 and 95, somewhere in there.

REP. HEINEMAN: Seventy-five and 95. That's a large raid. I think somebody said it was the largest that you engaged in.

MR. CHOJNACKI: That's not true, sir. Someone might have said that, but that's not true.

REP. HEINEMAN: Okay. And you say you had no written plans?

MR. CHOJNACKI: We had handwritten plans produced by the various SRT (ph) team leaders. It hadn't been collated into a tight document because we moved the raid up one day. They day that they were to come into Waco to prepare the raid plan was eliminated because we had bumped it up a day.

REP. HEINEMAN: Well, you had a written plan had it been for Monday, is that correct?

REP. MCCOLLUM: -- (off mike) -- your last question. You are well over the time, unfortunately. Please answer.

MR. CHOJNACKI: We had a raid plan, yes, sir, but it was not collated into one document as is required by the bureau for the execution of a warrant.

REP. HEINEMAN: That's the national response plan?

MR. CHOJNACKI: No, sir. That was not the raid plan. The national response plan was a plan for the use of multi-division resources for a critical incident, and it was an instruction to provide an administrative plan, how you ran your command post, who did this, who did that, not the technical plan, but the administrative plan, and that particular requirement was not in -- in a signed order at that particular time.

When we started using that guideline, we were using it as a test. Each division had gotten a copy of the preliminary order for comment. We thought we would try to organize our program to parallel those requirements so that we could effectively comment or suggest alternative recommendations to the plan. While we were at Waco, that plan was signed off by the director or the assistant director and became a formal ATF order. We had no knowledge of that at that time.

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REP. MCCOLLUM: Mr. Heineman, your time -- your time is up.

REP. HEINEMAN: I yield back my --

REP. MCCOLLUM: Mr. Shadegg, you're recognized for five minutes.

REP. SHADEGG: Thank you, Mr. Chairman. Let me begin by just making a comment about something that bothers me in the comments that have been made today. Mr. Schumer, at the start of this panel, made a major point and in a great, flamboyant way, said he really objected, strenuously and vehemently objected to the fact that there was repetition over and over and over of the fact there was, in fact, little evidence whatsoever to support a methamphetamine drug lab there, and therefore very little evidence to support the claim of a drug nexus.

Well, I think there is, indeed, very little evidence of that, and his point was it really didn't matter, because you could have gotten this Army equipment even without a drug nexus. Well, I think the evidence shows there was virtually no credible evidence that there was a current, active methamphetamine lab, and I think that the kind of deception which I see in this record of the Army on that issue deserves repetition and deserves to be heard.

But there is another point that goes on that bothers me. My colleague on the other side tonight, Mr. Taylor, asks and says he's going to ask over and over of this panel and of every panel in the future and of the last two panels if any one of you gentlemen is aware of anything you've heard in the record which justified by Mr. Koresh and his followers the murder of four BATF agents on the 28th of February.

Well, let me tell you, I don't know an American who believes that Mr. Koresh and his followers were justified in murdering four BATF agents. It is a tragedy, it is an outrage, but nobody on this side of the aisle, nobody on that side of the aisle, and nobody in America believes that this hearing is about whether or not David Koresh was justified. You are never, ever justified -- and I'm a former assistant attorney general, I devoted eight years to the fight against crime. It matters to me deeply. My father was a deputy sheriff. He was involved in the fight against crime. I have his service revolver and his badge, and the notion that this hearing is about whether or not David Koresh was justified in murdering four BATF agents or in firing -- or in firing the way he did or responding the way he did is dead wrong.

But there is, in fact, a serious oversight function to be conducted here, and you deserve to be asked serious question. It is a tragedy that all this happened. It is a tragedy that you have to be here. It's a tragedy for me to hear, as Mr. Brewster brought out, that you are all deeply involved in litigation. I used to work with an assistant attorney general who got sued doing their jobs. My heart goes out to you over the fact that you are being sued over doing what you thought was your job, because I believe that each of you at least thought at the time you were acting in good faith.

But there is a function to be asked here, there are questions to which the American people deserve answers. One that troubles me, and it troubles me over and over again, goes to the question of intelligence. Mr. Chojnacki, as I understand it, you were Mr. Sarabyn's supervisor for this raid. Is that right?

MR. CHOJNACKI: Yes, sir.

REP. SHADEGG: Yesterday, Mr. Sarabyn acknowledged and Agent Aguilera acknowledged that, in fact, an offer was made in Mr. McMahon's home by Mr. Koresh, the despicable human being that he was, for Agent Aguilera and the agent with him to come to the compound and examine the weapons. As they were there asking questions about those weapons, Mr. McMahon called Mr. Koresh without Agent Aguilera's knowledge, and said, "You know, gee, these guys are talking to me." Koresh said, "Come and look at them."

Mr. Sarabyn said he never once took up that offer. He did take it up all the way to the day of the hearing. I can't understand that. Mr. Sarabyn said they didn't take it up. Mr. Chojnacki, were you aware that there was a standing offer by Mr. Koresh to let an agent go into the compound and look at those weapons and, if so, why didn't -- why wasn't that offer taken up?

MR. CHOJNACKI: I was aware and am aware that at the initiation of the investigation, David Koresh made the offer for Agent Aguilera to come out to his place to look at the weapons. Now, at that particular point in time, the weapons in question were completely legal firearms. They were purchased from Mr. McMahon, for which David Koresh --

REP. SHADEGG: Well, how did you know they were completely legal at that point in time?

MR. CHOJNACKI: At the time they were purchased, they were Title I firearms that were being transferred from a licensed firearms dealer to an individual.

REP. SHADEGG: Well, the evidence that you put in the affidavit says that by then you had reason to believe they'd been converted and were now fully automatic and were dangerous. Why wouldn't you want to go take a look at them?

MR. CHOJNACKI: I don't think any reasonable person would expect that he would show us those firearms. He would show us the ones that hadn't been converted.

REP. SHADEGG: Well, the truth is we don't know whether he would have shown you or whether he would have let you in the compound or whether he would have let you inspect every inch of the compound or whether he would have let Aguilera and the other assistant go in with him and show you anything or everything. We don't know that today because no one bothered to call him back or to have Mr. McMahon call him back and say, "You remember that questioning we had? We'd like -- you've made an offer to let them come in and look, they'd like to come in and look."

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

REP. SHADEGG: I'm mystified and will be always mystified by that.

MR. CHOJNACKI: May I respond to that, sir?

REP. MCCOLLUM: You may respond, but his time is up. I just have to cut it off somewhere, but you can respond.

MR. CHOJNACKI: Thank you, sir. At that particular point in time, I believe Mr. Aguilera had interviewed Ms. Sparks, realized that when she was allowed to come to the compound to conduct her investigative activities, she was completely shadowed. She was only allowed to visit in a public access area at the very front of the building. She had no access to the sleeping quarters or anything else. At another time when family members had come to visit a family member who was in the compound, they were restricted to the same common stage area where they couldn't get past the foyer of that location.

Now, I don't know if that had any impact on Mr. Aguilera's decision to not go, but I do believe that most of us in that circumstance would have found a situation where we wouldn't have wanted to tip our hand as to what we were after. At that particular point in time, Mr. Aguilera was trying to determine why the paperwork hadn't been filled out. That was a problem for the dealer, not for Mr. Koresh, and that decision was his decision to make at the time, sir.

REP. SHADEGG: My time for questioning may be over, but we don't know whether Ms. -- all those people left safely --

REP. MCCOLLUM: We have to -- (inaudible; crosstalk) --

REP. SHADEGG: -- we do not know why -- whether or not you would have been shown any more than that, because you didn't try.

REP. MCCOLLUM: Mr. Shadegg, your time is up. I'm going to go now to Ms. Thurman. You are recognized, Ms. Thurman.

REP. THURMAN: Mr. Chairman, first of all, I'd like to have some documents; Department of the Treasury and a telecommunications message. There were some questions about the flashback that I think Mr. Chojnacki had talked about how they had gotten the authorization. And we, in fact, have the documents that show what you went through to get that okay to use those. So if I could, I'd like to submit these for the record.

REP. MCCOLLUM: Without objection.

REP. THURMAN: Mr. Buford, yesterday we had heard from Kiri Jewel, one of the Davidians that was there when she was from, I guess, six to 10. And she had talked to us about the suicide issue, which I think you know something about. It's my understanding that she actually came to Waco prior to the raid. And I don't know if anybody up there can collaborate that, but evidently they talked to agents. Do any of you know about that and what information she gave? Maybe not just Mr. Buford, but anybody else?

MR. : Well, I was aware of that situation prior to the raid, but I never interviewed her and never saw her in Waco.

MR. : Are you talking about interview before the raid?

REP. THURMAN: Right.

MR. : Yeah. She was -- the state's attorney was going to issue an arrest warrant -- (inaudible) -- and she and her father flew to Waco. And she was interviewed, and with the state's attorney she got up to the point of the hotel room and she couldn't go on. And so otherwise there would have been a state arrest warrant for --

REP. THURMAN: So you had awareness of what you thought was going on in the compound.

MR. : Oh, undoubtedly, from several people.

REP. THURMAN: Okay. And then, of course, Mr. Buford, your past experience with the issue in Arkansas kind of gave you that same feeling of this whole idea of what might happen. Is that--

MR. BUFORD: Yes, ma'am.

REP. THURMAN: Mr. Buford, you know, I've never been in a situation that you have been in, nor any of the others at this table,

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and I commend you for what you've done. You know, I want to know -- I mean, I get excited just having to give a speech sometimes. I mean, I'm not talking about going in to do a raid. Can you give this panel an idea of what the emotion is and what is going on, what you're going through at that time, knowing that you're dealing with children and women, what you may come up against, the life and safety of your agents, your responsibility? I mean, I can't even imagine that. Can you give this panel this human element of what that morning must have been like?

MR. BUFORD: The morning was very tense, as it generally is prior to a raid, but there was a heightened sense of the possibility of danger because of the newspaper reports that had been put out.

REP. THURMAN: And what in that particularly might have heightened?

MR. BUFORD: Well, we felt like the fact that Mr. Koresh's livelihood or -- I can't think of the word, but that he was finally being revealed was going to make him more hyper, make him more active, and probably put him in a heightened sense of alert. And that concerned me. I was concerned at the time, when we were in the staging area and getting ready to go on the raid. When Mr. Sarabyn came in and he made the statement that "They know we're coming; we need to hurry up," I don't think he takes exception to the fact that I realized that was said. I asked him certain questions. I said, "Well, what's going on? "

The bottom line, in order to shorten this, is that there were no guns present. The men were -- and women, I felt like, were in the chapel area. Part of the raid depended on the men being separated from the firearms. And if they were in the chapel, they were in the firearms. We, rather than get my people together in a hurry, I told them to do it as quickly as possible, but I wanted them to make sure they had all of their equipment, that all of their radios worked.

I was very concerned for their safety. I didn't want them to go into any situation, but especially this one, where they may have hurried and got something done. I was -- I felt very, very responsible for these young men. When we loaded into the trailers, again, I looked around and I remember looking at Rob Williams, a young man out of my Little Rock office. This was the day before his 27th birthday. And he was looking over there with a big grin on his face, giving me the thumbs up, and I remember thinking, "Get serious, Rob. Get serious. This is serious business. "

I was very concerned as we exited the trailers when I heard the gunfire at the front, because I knew that was not our guns being fired. When I saw the agents going down, I actually wished that it was me instead of them because I was responsible for them. It was -- there is a certain -- and I hate to use this term, because I don't want to sound like I'm creating a Rambo-type image here, but there's a certain rush that is involved with a dangerous situation. And that adrenalin flow gets going and you're going to do what your mission is. And our mission was to go to the east side of that building and go up.

I've asked myself many times, why didn't I just stop when I heard the gunfire? But my job, the job of our team, was to ensure that no one inside that compound could get into that arms room to get additional weapons and more hand grenades to use against our agents. And it was vital for us to complete our part of the mission, because we didn't know that they hadn't made entry at the front and were depending on us to do our job. In hindsight, since they didn't get in the front, I maybe could have saved some lives of our agents. And that's something I have to live with. And I'm willing to do that and I do that, but it's a terrible responsibility to have the lives of people in your hands and then to lose them. And I don't know whether I can explain that.

REP. MCCOLLUM: Without objection, the gentlelady is given an additional five minutes and the chairman will have an additional five minutes reserved. This line of questioning obviously is pursued slightly beyond the time limit.

REP. THURMAN: Thank you.

REP. MCCOLLUM: You may proceed.

REP. THURMAN: Mr. Merletti, first of all, in one of the statements earlier by Mr. Sarabyn or somebody, and I think also in the report, the issue of the element of surprise has been kind of talked about. However, there has also been the issue of speed. So it seemed to me there was kind of a two-prong test in the report in itself. I think that it talks about certain questions that the group had put together that they would ask, which is, I guess, what he carried through with.

But I guess, one, I want to give you an opportunity, since you had and were the person in charge of getting this done, an opportunity, you know, to finish whatever it is that has not been started or finished today. But I also would like, since I believe probably over the years we will see more reports, is there a human element that can never reach a report like this of not being there and on the scene that we all should be cognizant of?

MR. MERLETTI: Yes. And let me begin by first recognizing the many acts of bravery and heroism of the men and women of ATF that day in Waco. I wish that I would have been able to tell all of

their stories, every one of them. I also want to -- I would like to thank the ATF line agents for stepping up the way they did. It was not easy for them to come and tell the truth when they realized that they were telling some stories that involved their supervisors and may come back to haunt them.

I also -- there's a lot of people I have to thank. I want to thank the blue-ribbon review panel that guided this review along with me, and that's the Pulitzer prize winner, Ed Guffman (sp), former Watergate prosecutor, Mr. Ruth (sp), and Chief Willie Williams. We met with them routinely. They guided our investigation and approved of everything in here. I also want to thank the six tactical experts who we relied on heavily, and they did (contain? ) the report in here also. And again, all these people, I do want for the record to say, again, all agree with what's in the book.

I want to thank the other 17 investigators that worked numerous hours every day. This was not a pleasant task. Sometimes getting the truth is not pleasant. This was not pleasant for any of us. None of us really wanted to do this. We are proud of the work product that we put out. We feel that it will set the standard of investigative inquiries. When I look back at the hours that we worked and all the travel we did and reliving what a lot of the line agents, members of the SRT, what they went through that day, I wondered, was this worth it. One of the young men that was killed that Mr. Buford just spoke about, Rob Williams, his father is a Secret Service agent that I work with on occasion. About two months after we put the book out, Jim Williams called me and said, "I want to thank you for telling the truth of what happened to my son the day he died. "That made it worth it.

REP. MCCOLLUM: Thank you, Ms. Thurman. Mr. Bryant, I believe you have not had a chance to ask questions. You're given five minutes if you wish.

REP. BRYANT: Thank you, Mr. Chairman. Mr. Sarabyn, who, on the day of the raid, actually had the task of carrying forward the affidavits for service, affidavit for arrest and --

MR. SARABYN: Who carried it?

REP. BRYANT: Who had the warrants?

MR. SARABYN: I did.

REP. BRYANT: And where were you located?

MR. SARABYN: In the front of the first vehicle.

REP. BRYANT: And did you go to the door?

MR. SARABYN: I was going to the door. I never got there.

REP. BRYANT: Did other officers precede you to the door?

MR. SARABYN: Yes, sir.

REP. BRYANT: How far back were you from the door when whatever happened stopped you?

MR. SARABYN: Seventy-five feet, 100 feet.

REP. BRYANT: What was the job of the people who preceded you, if they didn't have the warrant?

MR. SARABYN: They had to deal with, you know, making entry into the place. There were some dogs that were out front that they had a fire extinguisher spray so they wouldn't get in the way. They were to make entry, and soon as they were in, I would come in after them with the warrant.

REP. BRYANT: I know these have been long hearings today and I appreciate all of you being here, but I do understand now for the first time that you did not intend to knock on that door and ask -- and hope someone would come and you could serve the warrant. You planned to kick the door down?

MR. SARABYN: They always announce when they're going through.

REP. BRYANT: Okay. But you had the warrants to serve and you were back 75 feet.

MR. SARABYN: Yes, sir.

REP. BRYANT: Do you know what happened to those warrants?

MR. SARABYN: What happened to the warrants?

REP. BRYANT: Yes, sir.

MR. SARABYN: They probably got shot up. They were sitting on the seat of the truck. And then they got new ones after that.

REP. BRYANT: Okay.

Let me ask each one of you to -- for a yes or no answer, if you can give it to me, because this is a critical issue on the element of surprise. It seems to me, when you're doing this and you lose the element of surprise, one of two things is going to happen. You're either going to go and the people are going to cooperate with you and accept the warrant, or they're going to shoot at you.

Now, very clearly, the element of surprise was lost -- whether or not you all admit it or not, or whatever. But my question is, was there an order -- an operating order that day that said if the element of surprise was lost, that you were to abort the raid? Yes or no. Was there or was there not?

MR. CHOJNACKI: The operating order, sir, related to safety. And the issue was, if we could execute the warrant safely, we were to go. If we could not execute the warrant safely, we were to abort.

REP. BRYANT: Okay. Okay. Mr. Sarabyn?

MR. SARABYN: I received no order not to go if they lost the element of surprise.

REP. BRYANT: Mr. Buford?

MR. BUFORD: I knew nothing of that order.

REP. BRYANT: Sir?

MR. MERLETTI: The investigation shows that Treasury spoke with Director Higgins on the 26th, and was told by Director -- Director Higgins told Treasury that the raid would not proceed unless they had the element of surprise. That's what the investigation has turned up.

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REP. BRYANT: And that comes from --

MR. MERLETTI: Now, what happened after Mr. Higgins, who he told, you'll have to ask him.

REP. BRYANT: Okay. But that, as far as you can tell, originated from Director -- then-Director Higgins.

MR. MERLETTI: Yes.

REP. BRYANT: Thank you. We'll have him later on.

Mr. Buford, did -- I know there were many rooms within the compound. Did your agents -- were they equipped with CS canisters to use as they went into these various rooms?

MR. BUFORD: No, sir. We had no gas capabilities whatsoever. We carried no gas. We intended on using no gas whatsoever.

REP. BRYANT: Is there a reason you didn't CS gas?

MR. BUFORD: Yes, sir. We weren't authorized to use it.

REP. BRYANT: How would you have been authorized to use it?

MR. BUFORD: We would have had to receive the training and, even yet, in ATF, we are not allowed to use any type of gas.

REP. BRYANT: Was that ever considered?

MR. BUFORD: It wasn't an option that we had, because we didn't have the authority or the training to use gas.

REP. BRYANT: Let's see. Mr. Chojnacki, did you -- after the first day or so -- did you ever cede or concede to the FBI taking over charge of the area?

MR. CHOJNACKI: Yes, sir.

REP. BRYANT: Was that voluntary, or did you --

MR. CHOJNACKI: It was -- on my part, I thought it was the right thing to do. When I called headquarters and advised them that we were under fire, that I had no idea how many people were injured, and we needed assistance, I felt that if I started a siege, surrounded the place with ATF resources, and any of those people did anything -- say pretending to come out and surrender, and then took some kind of action that caused one of my people to defend themselves, it would be considered an assassination potentially by the public or by some critics. So, I felt we had to bring in an agency that had the authority to conduct that kind of action, the expertise to do it, and couldn't be considered an attachment of the ATF. So, I asked headquarters to consider bringing in the HRT. At the same time they were making that decision independently, and they went out and did it.

REP. JOHN BRYANT (D-TX): Thank you, gentlemen.

REP. MCCOLLUM: Thank you, Mr. Bryant.

Mr. Souder?

REP. SOUDER: Thank you, Mr. Chairman.

I want to make a brief comment -- and that is, I've been carefully listening (mighty ? ) to question our coming. I'm one who has gone back and forth. But listening very intently as we've gone through the different panels. I did not come in with a particular agenda. I'm interested in the truth.

I must say that I hope tomorrow morning we don't go through what we've gone through the last two mornings. I hope we don't get more lectures about bias. I think it's been useful from both sides -- both drawing out the difficulties that you encounter in raids, and your dedication to your service. At the same time, we have an obligation. If we don't ask tough questions -- and this hearing is viewed, by many people around the country who have grave questions, as a whitewash. None of us are going to be in good shape. And I hope that is understood by people watching, and those of you here, that the questions have to be asked. They have to be asked toughly. With that, I yield to the Chairman, Mr. McCollum.

REP. MCCOLLUM: Well, thank you. Thank you very much for yielding the balance of your time, Mr. Souder. I want to announce to everybody, so we know the ground rules here, that I have accumulated the balance of Mr. Souder's time. I also have -- because of the unanimous consent two times earlier today -- have an additional ten minutes. Five each from Mr. Conyers extended time, and Mrs. Thurman's. So, I intend to use most of that to ask a few questions, myself, this evening of you. Mr. Zeliff, I may yield to for a moment. And I believe we will have concluded all of the questions from the panel this evening. And I hope we can wrap this up. We may have an intervening vote, but we'll try.

First of all, gentlemen, what I'm most interested in getting at is something -- going back to the very beginning of your testimony today -- that this particular segment of the hearings was really designed primarily to get at -- and that's the planning of the raid itself. Though we've talked a lot about the raid tonight. And I am curious.

I've heard, Mr. Buford, you state some things about it, and a little bit also from the two primary witnesses here. But why did -- what was the imperative -- let's put it this way. Why was it so important to get on with this raid, instead of waiting -- instead of February 28th or March 1st even, two weeks, six weeks? What would have been wrong with June the 5th? What risk was posed to the community? I heard you mention one thing, I think, Mr. Buford, earlier. But what went through your minds? What was involved in making it necessary to conduct the raid at the time you did it? And I don't mean what happened that day or the newspaper article necessarily that was being printed that day. But in the general broad time -- scope of things, what made that happen.

I guess I should ask you that, Mr. Chojnacki, since you were the principal leader of this. But I know Mr. Buford and Mr. Sarabyn had a part in the plan.

MR. BUFORD: I believe, at that particular point in time, we were reaching what we felt was the natural conclusion to that phase of the investigation. We had developed sufficient probable cause for the search and arrest warrants. We felt an obligation to take action in that instance. On the contrary side, against the concept of waiting additional time, we had the concerns for things that were going on inside the compound, that were really not an issue for the ATF, but an issue for the public and people in general -- at least from my perspective.

There was no way that we would have any control or knowledge as to what Mr. Koresh intended to do with those firearms -- other than what we had heard from the people that we had talked to, and the kinds of information that we had while they were -- it may have seemed like wild stories. We know from recent history, occasionally groups like that do go out and commit some sort of crime with those kinds of firearms -- either to gain financial resources or to make a point of some kind. We couldn't sit still and let that kind of thing take place.

REP. MCCOLLUM: Well, what imminent danger to the community were you really afraid of in this case? I heard Mr. Buford say something about somebody might be murdered at a McDonald's. Could you explain that -- either one of you? Where did you hear that? What were you hearing and from whom were you hearing it -- that there might be an actual danger to the community from the group that was in that compound at Waco, if you didn't go ahead and moved when you moved. Mr. Buford, could explain the McDonald's? You mentioned that earlier.

MR. BUFORD: Yes, sir. And I was not aware of that until after the raid, because Kathy Schroeder (sp), who was one of the Davidians, I believe in a statement to the Texas Rangers, talked about at least a discussion -- if not a plot -- to arm all of the mighty men, as he called them, in the compound, and in order to bring about this Armageddon that he had prophesied, go into Waco. And I McDonald's is the restaurant that he talked about to kill everyone in the McDonald's, and come back to the compound, and wait for law enforcement to come after them, so that he could have his Armageddon.

REP. MCCOLLUM: But as far as before the raid was concerned. I haven't seen any evidence in what I've looked at -- and that's why I'm asking you this tonight, gentlemen -- of any specific indications you had that Mr. Koresh or the group in that compound was proposing a imminent danger to the local community around them.

Mr. Sarabyn?

MR. SARABYN: I think, when Joyce Sparks was interviewed at one time, she had a conversation with Koresh. And he made the statement of, you know, the LA riots aren't nothing, or something. I can't remember the actual context of it. But it was something that you ain't seen anything yet, as far as violence of whatever, in LA.

REP. MCCOLLUM: Is that it?

REP. : Will the gentleman yield?

REP. MCCOLLUM: Anything else? I'm not going to yield right now. I want to hear the answers of the witnesses.

MR. SARABYN: I mean, as far as -- the investigation was concluded. You know, the fact that we had enough probable cause.

REP. MCCOLLUM: I know. But I meant, was there anything else that was given to you in the way of testimony -- observations, intelligence -- that told you that there was an imminent danger to the community if you waited. In other words, that Koresh was going to go out --

MR. SARABYN: Just danger in the community, not --

REP. MCCOLLUM: -- and hole up in town, or hurt anybody, or do anything that caused you to feel you needed to protect the community, to actually go in from that standpoint at the time you did, as opposed to just carrying out the search warrant, and trying to get to the bottom of the weapons investigation you were after -- which you had a legitimate reason to do.

MR. SARABYN: You're talking about just outside the community, not what was going on within the compound.

REP. MCCOLLUM: No, not what was going on within the compound. Outside.

MR. SARABYN: That was the only thing that I was aware of -- that statement.

MR. : There was, sir, the fact that there were violations of federal that we had plenty of information that there were federal laws being violated. And I think we would be negligent if we ignored those.

REP. MCCOLLUM: You're talking about the arms laws -- the firearms laws?

MR. : Yes.

REP. MCCOLLUM: All right. I understand that. And I understand you had the -- you thought you had the evidence, and you got a warrant and all of that. I wasn't asking that.

What I'm really getting at is that a lot of people question very seriously -- even though I've heard you say some things about it tonight to the contrary -- that David Koresh could have been captured outside the town -- or outside the compound, I should say -- at some point, if you'd waited. That even though you had some indication that he might not come out again right at that period of time, there's been a lot of testimony and a lot on the record about several times that he did come out in January and February. And we have log books that show that somebody in your house out there watched that, and watched him come out. If you'd waited six weeks or six months even, one would assume you could have captured him. Now, you said earlier -- one of you, that I recall -- that you didn't think that capturing David Koresh was necessarily a good idea. Was that a conclusion the planners made, that you really did not want to arrest him outside the compound, that that would have hurt your chances of success, or not? Mr. Sarabyn?

MR. : No, sir. No.

REP. MCCOLLUM: Mr. Sarabyn?

MR. SARABYN: Sir, the goal of the thing was to execute a search warrant. Arresting Koresh was just a side thing. They were manufacturing --

REP. MCCOLLUM: Yes, but if I can interrupt you -- taking Koresh out would have cut the head of the lion off, so to speak, according to those who would argue to the contrary. And as a result of that, probably would have made your job a lot easier inside, and the danger to your agents going in there, and the loss of life, a lot less.

MR. SARABYN: What we --

REP. MCCOLLUM: He was the leader, was he not?

MR. SARABYN: We discussed that extensively, and we didn't know -- would he become a martyr that they always said they're coming, and now the government's got him, and they potentially go into a mass suicide there or --

REP. MCCOLLUM: Well, then, did you decide not to do it?

MR. SARABYN: -- try to --

REP. MCCOLLUM: Did you decide then not to do it? Did you decide not arresting him was the bottom line. I haven't heard anybody here tonight say that, at some point along the way in planning this raid, you made a conscious decision you did not want to arrest him outside the compound?

MR. SARABYN: Well --

REP. MCCOLLUM: That your objective was to go ahead and do the search. And that's what I'm getting at. If you'd had him out there, if you knew he was going to come out that week and go around town, would you still not have waited and arrested him outside the compound, because you wanted to go in and get him?

MR. SARABYN: Sir, if --

REP. MCCOLLUM: And get the search. Yes, Mr. Buford.

MR. BUFORD: Up until the time we arrived at Fort Hood, we as raid planners were contemplating any way possible, and were looking at any way possible that we might still be able to arrest Mr. Koresh, or at that time, we didn't have an arrest warrant -- at least to detain him off of the compound. There were a couple of things that we had to consider, though. And I agree with you, there's a very good possibility that had we had been able to detain him off the compound, that we may have cut the head off the snake. But on the other hand, we still had 100-plus armed individuals inside that compound that we would have to move on almost immediately to prevent the destruction of any evidence that might be there. And to have 100 agents sitting around for six weeks, eight weeks, or two months on the -- maybe the fact that he might come out, was not logistically sound.

REP. MCCOLLUM: But he'd come out within a week, according to what we've got in evidence so far -- a week before your raid. Let me ask you this question. Why did you fear that the Davidians really would destroy the evidence, and you -- considering the amount of weapons that you thought were in there, and the difficulty of destroying large armaments like this?

MR. BUFORD: Oh, that's very simple to destroy those. In fact, during the three days that we were in a siege and the CSA compound, they destroyed numerous firearms. A cutting torch can do wonders to them.

REP. MCCOLLUM: All right.

MR. BUFORD: You can disarm the hand grenades.

REP. MCCOLLUM: I wanted to know. I just wanted to know that. Let me ask you another quick question. Why didn't you consider another ruse to get David Koresh out? I understand, from the evidence that we've gotten at least from the Treasury Report Book -- and I don't think any of you have talked about it today -- that Joyce Sparks was asked to be a ploy at one point, and she refused to do that. And there were others who've testified before us -- religious leaders and all -- who suggested things that they thought would have worked to get him out of that compound. Is there -- was there no other consideration of another ruse, besides Joyce Sparks?

MR. BUFORD: Yes, sir.

REP. MCCOLLUM: Mr. Sarabyn or Mr. Buford? Mr. Sarabyn?

MR. SARABYN: To my knowledge, we considered McMahon, the dealer, in the grand jury

subpoena, and -- was there any others?

MR. CHOJNACKI (? ): Staging a car wreck with a school bus, stating that some of the children were injured, hoping that he might come out -- not staging it, but at least stating that that had happened.

REP. : Well, why didn't you do one of those?

MR. CHOJNACKI (? ): We weren't assured that that would work and by doing so, if there wasn't a wreck there, and we had --

REP. : Well, but you had other options. You had -- that was just one of them. Let me ask another question --

MR. CHOJNACKI (? ): There were still --

REP. : -- why did you plan to make a daytime raid? Why was it important to make a daytime raid at 10: 00 a. m. in the morning. Most people have said you can't have a surprise raid -- or at least it's not nearly as likely to be a surprise if it's a daytime raid, especially with all the logistics problems you've described and the open territory and everything. Why a daytime raid?

MR. CHOJNACKI (? ): We discussed that at length in making a decision to go at 10: 00. We discussed the possibility of moving in early in the morning, while it was still dark, and getting into a position where we could move as quickly as possible.

The reason that 10: 00 was decided on, there were a couple of factors. One is that when the men -- our information was that when the men had been issued their weapons, they were kept under their beds and that they were kept unloaded except for a loaded magazine being close at hand. The routine in the church, for lack of a better term, was that from 9: 00 to 10: 00 in the morning, there was a Bible study. At times, Koresh would preach. At other times, it would merely be a Bible study which the people would do inside their own living quarters.

Prior to that, there was not a lot of activity on the outside of the compound. Our desire was to wait until 10: 00 so that there would be the men going to work or at least doing some activity that would take them away from their rooms where the firearms were, and what we would hope to do was to find the men in a place other than their bedrooms, because that's where we understood the firearms were kept -- at least the ones that had been issued to them.

So by separating them from those guns -- and that wouldn't happen until 10: 00, for the most part -- and then there was the factor of having enough light to be able to see. The interior of the compound, as I was told by Davidians who had lived there, would be quite dark and that it would be important for us to be able to see simply because a figure moving down the hall, we wanted to make sure we could determine --

REP. : Well, I can understand the light and I can understand a lot of the explanation. I think we'll see in the next day or two in hearings that a lot of the intelligence you had about inside the compound was not very good. I still have a minute or two left here, and I want to yield a little bit of

time to the gentleman, Mr. Zeliff, if you would, please.

REP. MCCOLLUM: Mr. Zeliff?

REP. ZELIFF: I just -- a lot has been said today about cooperation from various government agencies and, as we're getting towards the end of a long session, I just want to make a final point of clarification. We've received a total of 48,000 documents from Treasury and Justice. We just got another six boxes yesterday from Justice and another batch from the Treasury last week.

My point is -- and basically talks about the theme of cooperation. We just learned that Treasury, through minority staff here, has an index to their numbered documents, and it unfortunately may have just been an oversight, but that index never got to us, which is kind of disappointing. Most of the Justice Department pages aren't even numbered. In a normal document production, that shouldn't happen, and I hope we can get past this problem.

We do appreciate the documents that we have received, and we're hoping to get through them all. It's certainly going to be a challenge. We try to be cooperative, and we would appreciate the index. Since we've learned that the minority has provided one, we think that we should, as well.

I just look and listen to all of this testimony, and I am very, very much trying to figure it all out in my own mind and I'm trying to keep an open mind. I appreciate your coming here, and I appreciate how tough it is -- I just hope that we can come up with the right answer to tell the American people exactly what happened and why we went forward, and I yield back --

REP. : Reclaiming the little bit of time that I have left here, I just want to have three quick questions about the plan again, because we just have -- that was the primary purpose of this panel, and I apologize for going over some of these very rapidly, but they were questions that just weren't asked earlier in the process.

Why was no written raid plan ever prepared? Mr. -- I'm sorry. I'm getting tired tonight mentally. I know your name but I have a hard time saying it sometimes, please.

MR. CHOJNACKI: The intention was fully there to prepare the appropriate raid plan on Sunday, February the 28th. The agents that were conducting the actual fine tuning of the raid plan were at Fort Hood, practicing and working on what the assignments were. That day was going to be the transition day for when they came back from Fort Hood and we executed the warrant on March the first.

At that particular point in time, March the first, we would have had a completely written and typed raid plan, as required. When we found -- the security director of Cox (ph) Enterprises that the Waco "Tribune Herald" was going to print the first story in their sinful messiah series on Saturday morning's paper, rather than Sunday morning's paper, or actually some other time in the future, we tried to move the raid up so that we could execute the warrant without having to be concerned about the paranoia that might develop inside the compound based on the commentary -- inflammatory commentary in those articles and what we perceived to be an editorial comment that there was no law enforcement initiatives to do something --

REP. : -- (off mike) -- so you really didn't have time to prepare it, is what you're saying.

MR. CHOJNACKI: -- (inaudible; crosstalk) --

MR. BUFORD: Sir, if I could respond?

REP. : Yes, Mr. Buford.

MR. BUFORD: Sir, at the late January meeting that we had in Houston, each of the special response team leaders created a written raid plan for their teams, and I created one for the outside cover teams, and these were all written down and were all given to all of the special response team members. They were never consolidated, as I understand it now, into a -- one document, but each team, raid team, did have a written raid plan.

REP. : All right. Well, let me -- last question. I understand there were videotapes that were taken at the undercover house, there were photographs, many of them taken from the undercover house, that they either were never developed or they were never reviewed by any of you in the raid planning operations or you who were making the decisions. Is that correct?

MR. : I saw some pictures that were developed.

REP. : Did anybody look at -- do you know if the pictures were developed, other than a handful of them? There were a bunch of them taken.

MR. : I have no idea, sir, how many were developed. At the very beginning of the undercover phase, we had difficulty with operator error. After that time, Mr. Sarabyn assigned a senior -- we sent technical experts to show the undercover agents what problems they might be having with the cameras and --

REP. : Is the same thing true with the videotapes?

MR. : Well, I --

REP. : Mr. Merletti, do you want to comment on that?

MR. MERLETTI: During our investigation, we found -- and this is an approximately -- let's say about 35 to 40 percent of these photographs that were taken had not been developed. We developed them. There was a VHS tape taken of the men working in the pit, and that was never shown to the planners. There -- one particularly disturbing photo is of a female at the front door of the compound, holding what appears to be a shoulder weapon, and the planners were never shown that.

REP. : Well, thank you, Mr. Merletti, for explaining that. The time is gone, except for one -- what do you want? A clarification, Mr. (Zeliff?).

REP. : -- (inaudible; crosstalk) -- clarification. The minority brought it to our attention. I think it's

only right to correct. I believe Mr. Mica had indicated that we did not get, earlier today, two personnel files of both of you. I understand that we have now received them. I just want to make that point clear.

REP. : Well, I want to thank you for that --

REP. : -- (off mike) -- question.

REP. : You may. Without objection.

REP. : You mentioned McDonald's twice, and that there was apparently a plan by the Davidians to go raid a McDonald's or something. I've not read that anywhere else anywhere or heard the testimony from anyone else. Are the rest of you aware of that, as well?

MR. : I said I think the Jahns discussed that when they --

REP. : I'm sorry?

MR. : I think the Jahns discussed that when they testified earlier.

REP. : Mr. Brewster, if you may, Mr. Buford clarified that by saying that he'd heard about it after the raid was over with. They did not know about this plan or the Kathy Schroeder (ph), I believe you said, Mr. Buford, who had said something about something like this, so at the time of the raid --

REP. :

MR. did not have any effect on their decision, because they didn't know anything about it before the raid.

REP. : Okay. Thank you.

REP. MCCOLLUM: I want to thank all of you for coming. I know how trying it is. Two or three of you will be back with us again. I don't know if you will, Mr. Buford. We've discussed that.

But in any event, we really appreciate as much time as you put in as late as you have tonight, not to mention the fact we understand, despite all the difficulties of our questioning, what you went through with respect to this raid.

But anyway, tonight's hearings and this panel's testimony is concluded and we're in recess until tomorrow morning at 9: 30 here in this hearing room.

#####END OF PANEL