WITNESSES: ROGER C. ALTMAN, FORMER DEPUTY TREASURY SECRETARY
ROBERT RODRIGUEZ, ATF SPECIAL AGENT
CHUCK SARABYN, FORMER ATF SUPERVISOR IN HOUSTON
PHILLIP CHOJNACKI, FORMER ATF SPECIAL AGENT IN CHARGE IN HOUSTON
SHARON WHEELER, ATF SPECIAL AGENT
DAN HARTNETT, FORMER ATF DEPUTY DIRECTOR OF ENFORCEMENT
DANIEL BLACK, ATF PERSONNEL OFFICE
LEWIS C. MERLETTI, DEPUTY DIRECTOR, TREASURY REVIEW TEAM
JAMES CADIGAN, FBI FIREARMS EXPERT
RONALD K. NOBLE, UNDERSECRETARY OF TREASURY FOR LAW ENFORCEMENT
JOHN MAGAW, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO & FIREARMS
AFTERNOON SESSION
2:30 P. M. (EDT) MONDAY, JULY 24, 1995
REP. MCCOLLUM: The joint subcommittees on the Waco matter are reconvened. The hearing is reconvened. If we could get some order in the house, as they say, or order in the committee meeting room, we're back aboard at this point. When we recessed a few minutes ago, we recessed for lunch under an understanding that we would have the reservation of time. Ms. Thurman and I each had five minutes on the first round and only real round of questions we have for this panel. But because we had quite a number of other questions to ask that we hadn't gotten to that we thought were very important, we had gotten by unanimous consent permission for each of us to control, in addition to those five minutes, 15 minutes each on our side to conclude the questions of this panel.

And with that in mind, I'm going to yield myself at this point such time of my time as I may consume, and I'm going to ask the first question I have to Mr. Altman, who has a plane to catch. And I'm going to go to Mr. Zeliff for an Altman question as well, and anybody on your side, Ms. Thurman, who wants to, so we could let him go. He's been very good to be down here on an extra day.

Mr. Altman, I understand from testimony last week that you did not know at any time before this raid on February 28th occurred anything about it, its planning or the fact it was going to happen or anything else about it. But we need for you to say for the record whether you did or not.

MR. ALTMAN: Well, that's largely true, Mr. Chairman. But on the Friday evening before the Sunday raid, I was called -- I think I had left the office already, but I was called by my then-special assistant, who told me simply that there would be a major ATF activity over the weekend, that it might generate some press, and that if I saw the press, not to be surprised. I wasn't asked for my approval. I wasn't told Waco or Branch Davidians or anything to that effect. I was told only what I just told you.

REP. MCCOLLUM: And you did not inquire and learn any more at that point?

MR. ALTMAN: I didn't.

REP. MCCOLLUM: When did you first learn of this raid?

MR. ALTMAN: Apart from what I've just related?

REP. MCCOLLUM: Yes.

MR. ALTMAN: I learned on Sunday morning, sometime around 11:00, I think it was, but I'm not certain, when Ron Noble called me at home in New York and informed me what had happened.

REP. MCCOLLUM: Mr. Altman, before the raid on February 25th, Mr. Higgins testified, the director of ATF, last week that he had not met you, had not even personally shaken hands with you. Could you tell us if that comports with your recollection? Did you at any time prior to the 28th of February, 1993, have a meeting or meet with Mr. Higgins?

MR. ALTMAN: Well, I had a practice of having biweekly meetings of all the bureau heads, which includes ATF, and the first one of those meetings would have occurred before the raid because we'd
been in office a few weeks. I don't recall whether Mr. Higgins attended it; perhaps he didn't. And I wouldn't in any event have had any one-on-one discussions with him. Those were meetings where one typically went around the room and asked for highlights of activities or planned activities.

REP. MCCOLLUM: But in any event, you don't recall specifically whether Mr. Higgins was in attendance at that meeting or not, if there was one, and that you do not recall any specific discussions you had with Mr. Higgins before February 28th, or actually meeting him personally.

MR. ALTMAN: No, sir, I don't.

REP. MCCOLLUM: Thank you. Mr. Zeliff, I'm going to yield to you so we can have you ask Mr. Altman any questions you have.

REP. ZELIFF: Mr. Altman, I've read your letter over and over and over again over this weekend, and I want to congratulate you for your gut, as you described it, your gut instinct that something really bad was going to happen after your briefing and that you felt that your boss, Mr. Bentsen, should be notified. And it just seems to me that we're in government here. You know, when we know of things that are going to happen, somebody has to step up and be responsible, and you did do that. I guess my concern would be is once you did this on April 15th, did you follow up between the 15th and the 19th in talking with Secretary Bentsen? You probably talked to him about 10, 15, 20 other things. Was this one of the things on the to-do list that you might have said, "Well, did you get my letter?"

MR. ALTMAN: Well, Mr. Zeliff, as I said earlier, I don't remember whether I actually had any oral discussion with Secretary Bentsen on this or whether I didn't, because we did have such a large amount of business between us. But I did not seek to press the point, mostly because I felt completely unqualified to make that judgement. It was my instinct, and I reflected it to Secretary Bentsen because that was the type of relationship I had with him. But I didn't have any basis from which to push the point. You'll note that in that letter, I said that it was also my hunch that if the FBI simply waited out Mr. Koresh, then probably he would concede. And having listened to some testimony this morning of Mr. Rodriguez, he's pretty persuasive to the effect that that particular hunch would have been wrong.

REP. ZELIFF: I guess my concern is if I was just walking to the market, and I saw somebody setting a fire, I'd probably see that the proper authorities were notified, and I'd probably stick around and make sure that I'd done everything I could possibly do. But again, I congratulate you for having the instincts that you knew something bad was going to happen; you at least put it on a piece of paper and sent it in.

MR. ALTMAN: Thank you.

REP. ZELIFF: I have one question for Mrs. Wheeler. You were the publicity person for ATF, and you testified that you made informal or informational telephone calls to radio and TV stations. I guess my question is, and maybe you can help me, you were brought down there to do publicity, or your job was to do publicity, and the word that we heard somewhere along the line is the nickname or the code name of this operation was show time? Could you add something to that, and does that
have anything to do with your arranging publicity or having the TV stations available?

MS. WHEELER: Absolutely not, sir. First of all, I contacted no radio stations. Second of all, show time was strictly a word that was going to be used to alert everyone that the agents had stepped off the trucks. It was not the name of the operation; it never was the name of the operation. Show time was strictly a word used, so that -- it was a word used that people don't use in regular conversation on a daily basis. They said if they chose that word, when show time was said, that meant that everybody knew that the agents had stepped off the trucks. And that was all show time meant.

REP. ZELIFF: I just got -- I'll turn my time back to the chairman, but it just seems to me that it's a poor use of words, in terms of show time, in terms of calling those TV stations, in terms of staging a publicity event that was about to happen to be successful, but unfortunately was not successful. And I just think the words show time ended up getting echoed, probably a bad choice of words to use.

MS. WHEELER: It may have been a bad --

REP. MCCOLLUM: Reserving the balance of my time, I want to yield. Ms. Thurman, I understand there may be a question of Mr. Altman on your side, and if there is, we need to get that out so we can leave.

MS. THURMAN: And I will at this time yield one minute to Mr. Scott from Virginia.

REP. SCOTT: Thank you, and I thank the lady from Florida. Just a couple of questions, Mr. Altman. To put the Waco situation in context, when was the New York City World Trade Center bombing in relationship to these events?

MR. ALTMAN: I believe it was the Friday before the initial ATF raid on that Sunday.

REP. SCOTT: And were you involved, was the Treasury Department involved in that investigation?

MR. ALTMAN: Well, the Treasury Department was immediately involved, although I wasn't particularly so personally. Immediately involved --

REP. SCOTT: Okay, let me ask another question, because I'm going to try to get this in a minute. Where was Secretary Bentsen during this time?

MR. ALTMAN: Secretary Bentsen was in London attending a G-7 finance ministers meeting on that Friday.

REP. SCOTT: Were you involved in that?

MR. ALTMAN: No, I was home, minding the store so to speak.

REP. SCOTT: And so you had the World Trade Center; you had the international monetary situation, and after April 15th, what was Treasury's role at Waco?
MR. ALTMAN: After April 15th?

REP. SCOTT: Right, this memo that they keep waving around is April 15th. On and after April 15th, what was Treasury's role?

MR. ALTMAN: Well, Treasury's role was largely limited, I believe, to preparations to conduct the investigation about the original February raid.

REP. SCOTT: But nothing at Waco. You had been taken out of the situation.

MR. ALTMAN: Well, the FBI was responsible. I don't actually recall whether any ATF personnel remained there. But the FBI was responsible.

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

REP. THURMAN: When you testified before this committee a couple of days ago, you had talked about a multitude of questions that you had asked Mr. Rodriguez. Could you again tell us what those questions were?

MR. SARABYN: Okay. As I said, you know, the whole event was a -- (inaudible) -- during this time of my conversation with Robert, I took notes, and the reason I took notes is earlier that morning, I'd met with all the SRT team leaders, and they had three or four specific questions --

REP. THURMAN: Was that a part of the plan as you all were developing the plan, if, in fact, somebody came out to let you know what was going on in there, was that part of the plan?

MR. SARABYN: Yes, yes, that was part of --

REP. THURMAN: And who had -- who helped you develop that part of the plan?

MR. SARABYN: That he would go in that day -- I think it was just a consensus. Like I said, when we developed this plan, it was not one person. There was 15 people --

REP. THURMAN: Right.

MR. SARABYN: -- that participated and we just talked things out and, you know, came to the conclusion that he'd have to go in that day and give us a report after. And when, you know, I said when he reported to me, the word that he spoke -- this morning, he said, "Chuck, they know. "And I asked him again, "What do you mean, you know, 'they know'? "And then he went through, "I got a telephone call, he went in the other room, he came back, and said ATF and the Guard are coming. "And I go, "What do you mean, you know, what was he doing? "And he repeated that again, that he got a telephone call, came back, said ATF, and so I'm thinking, what's -- what's going on, you know?

So I asked him, trying to determine if Koresh was doing something or was he just saying this, as he
had said before? So I said, "Is he telling anybody to do anything?" And he said, "No, he's not telling anybody to do anything." So then I said, you know, "Is -- are there any guns out?" He said, no there wasn't any guns out.

So I went through a series of questions, and then I went back to the team leader, which repeated a lot of the questions, but I just determined -- I don't think there is a disagreement on the words that Robert had said to me, it's just the interpretation of what those meant to me versus what they meant to him.

REP. THURMAN: Mr. Rodriguez, let me ask you some questions, then.

How long had you been talking with Mr. Koresh?

MR. RODRIGUEZ: I entered the compound approximately eight times. First time was on January the 28th, then on the 17th, the 18th, and 19th, the 21st, 26th -- I'm sorry, the 27th and the 28th.

REP. THURMAN: At any of these times, did you ever go back to Mr. Sarabyn and talk to him about your conversations with Mr. Koresh? I mean, was there any reason to believe that he should understand the personality changes here?

MR. RODRIGUEZ: Ma'am, that was one of the problems that I admit that we had in our undercover operation. We didn't have -- we obtained a lot of information, or I had, but the communication was just not there. The only time that I did communicate with Mr. Chojnacki was on a Saturday, when he had been in the compound that day, which was the 27th, and I was in there, supposed to find out what the reaction was to the first issue of the sinful Messiah.

When I came out, myself and another agent met with Mr. Chojnacki, and I advised him, "There's so much that I need to tell you. To keep from rambling, what is it that you want to know that would prevent this raid from being stopped?" He said, "Robert," he said, "if there is a guard in front of the gate with a rifle, that's no problem. We'll take him down. If you see somebody with a gun inside, that's okay. We come upon that all the time doing our work. But if you see somebody with a rifle on the tower, then we'll call it off and do it some other time." At that point, I knew that those were the main issues regarding --

REP. THURMAN: Did we see anybody on the tower with a rifle?

MR. RODRIGUEZ: No, at that particular time, there was -- I found no firearms, I found nobody preparing themselves, and one thing that -- when I left, Koresh was not reading the Bible. I do not know where Mr. Sarabyn picked that up. Everything was -- as I left, the people were there, standing in an area when I left, and that's the way it was.

REP. THURMAN: Thank you.

REP. MCCOLLUM: -- (off mike) ---- (audio break) --

MR. : -- went over the plan, they asked him questions, and, in fact, on his information, several teams
modified their plan that day. Bill Buford's New Orleans team had asked him about some stairs and a couple of other things, so, you know, we had -- as long as we wanted, anybody could ask some questions or whatever, what he thought, how we should do it, and we made changes as a result of that input on the first day in Fort Hood.

REP. THURMAN: And I would yield back, then.

REP. MCCOLLUM: Thank you, Ms. Thurman. Each side has used --

REP. THURMAN: I have about seven and a half more minutes, and then I will yield to you (Mr. Chairman ?).

REP. MCCOLLUM: We've each used five minutes of the time, so there's 15 minutes to a side left at this point.

I'm going to yield myself such time as I may consume of that remaining time.

I want to run, first of all, over to Mr. Rodriguez a second to follow up on a couple of quick questions. At any time when you were in the Mount Carmel compound, did you smell or see or observe any evidence of an active methamphetamine lab or other evidence that would suggest drugs existed at the Branch Davidian compound?

MR. RODRIGUEZ: No, sir, I didn't.

REP. MCCOLLUM: Mr. Rodriguez, is it true, as some have asserted in some of the reading I've had, that the plan that David Koresh with you was an arrangement that you would move into the compound about March 1 if this raid had not occurred February 28th?

MR. RODRIGUEZ: That's correct.

REP. MCCOLLUM: But that was not something that you ever planned to carry out, I gather.

MR. RODRIGUEZ: No, sir.

REP. MCCOLLUM: Okay.

MR. RODRIGUEZ: I did not.

REP. MCCOLLUM: Nobody has ever talked to you about going ahead and doing that. If the date -- supposed date of this raid had been later, would you have done it?

MR. RODRIGUEZ: What I had told him was be sure the raid's on the first, because I am not going back.

REP. MCCOLLUM: Okay. Fair enough.
All right. I've got a question for you with regard to the Bible studies and so forth, religion. Had you been -- there's some evidence that's been presented to us that you had not particularly had a strong background before you took this undercover task in the Bible or in the Book of Revelations, and that you got most of your information in on-the-job training, so to speak. Is that correct?

MR. RODRIGUEZ: I'll tell you how I did that, sir. Prior to the undercover operation, I was thinking in the case that I did go in, see Mr. Aguilera had shown me all the information he had of what they believed in and I do not want to go unprepared, just in case it happened that I went inside the compound. So what I did prior to my entry into the compound, I called my Catholic priest and asked him, "What is the Book of Revelations and the Book of Seven Seals? "And he explained to me very -- very shortly, I mean --

REP. MCCOLLUM: I understand.

MR. RODRIGUEZ: -- what it was.

REP. MCCOLLUM: That's fine. I want to just skip --

MR. RODRIGUEZ: And that's the only -- that's the only part that --

REP. MCCOLLUM: But you had not had any background in it before then. That's all I wanted to get.

MR. RODRIGUEZ: Okay.

REP. MCCOLLUM: Mr. Ballesteros, I want to ask you one quick question, Agent Ballesteros. There has been some writings out there that have said something contrary to something I think you said earlier today, and that was supposedly that you made a couple of statements to the Texas Rangers that the ATF shot first and did not announce. Now, that's not what you said today, but those statements have been made in print. Am I correct that you are denouncing those statements as not true?

MR. BALLESTEROS: The statement I made that was in print was that I had assumed that the gunfire that I heard was coming from our dog (ph) team. In trial I testified that that was not the case, certainly could not have been the case, because as we exited the trailers, I heard gunfire and I was running with the dog (ph) team. I didn't see any dogs -- we didn't see any dogs, and, like I said before, the gunfire had already been coming from the compound. So that was obviously a poor assumption on my part, because, clearly, the fact is -- the facts are that gunfire emanated from the compound.

REP. MCCOLLUM: Mr. Chojnacki, a couple of quick questions to you. Is it true -- let me ask you this way: Why was the film never developed that we understood from, I think, Mr. Merletti last week that was taken in the undercover house was not developed, and why were not the videos reviewed before the raid?
MR. CHojNACKI: The only way I can answer that is to say that I didn't know the film hadn't been developed. We had people assigned to accept the raw film and ensure that it was immediately processed so it could be reviewed when the -- primarily so the planners would have access to it when they were working on the plan.

I was not aware of those facts until after the investigation, when we found out there was film undeveloped.

Mr. Merletti also commented on Chuck Sarabyn's conversation with him and that we had had a phone call during the course of the Treasury review. Chuck called me that evening and advised me that he was in the middle of the review and that they were putting an awful lot of pressure on him to come up with a story that supported the position that I knew the raid had already been compromised.

Chuck said they had told that his family name would be soiled in America, that his wife and children would be embarrassed to be called Sarabyn, and Chuck said, "I just felt so bad about that, I told them, 'Tell me whatever the truth is that you want to hear, and I'll say it.'" And I said, "Chuck, you have to do whatever you want to do. It's your statement, but just tell me one thing: Is it the truth?" And he said, "No, it isn't." I said, "Thank you." Then he went back and retracted that statement.

REP. MCCOLLUM: Mr. Chojnacki, is it true what we heard Mr. Higgins say last week, that a decision was made on or about the 12th of February at a meeting that I gather that you, and maybe Mr. Hartnett and Mr. Sarabyn were participants then -- I'm not sure who all was there -- not to go forward with the idea of arresting Mr. Koresh outside of the compound, but rather to concentrate strictly on going in and having the search and the dynamic entry? That's what the director indicated to us Friday. Is that unfamiliar to you? You're looking a little puzzled.

MR. CHojNACKI: I'm sorry, I am a little bit puzzled. When we went to headquarters with our plan, the plan that we brought forward in writing was the plan for the dynamic entry. We had discussed those other options. Now, it's certainly possible that during the course of the conversation with Mr. Higgins that we pointed out the other options that we had decided against, and I believe you possibly certified our position -- don't do those things -- I do agree with the dynamic entry plan.

REP. MCCOLLUM: Well, essentially, at some point -- a week, or ten days or two weeks out from the raid, you had made the decision not to attempt to arrest Koresh, even if he'd come out of the compound -- is that not true?

MR. CHojNACKI: We felt at that time that if we arrested him outside of the compound, we still had to bear the brunt of attempting to execute the search warrant inside that location, because --

REP. MCCOLLUM: I understand --

MR. CHojNACKI: -- that's where the evidence was.
REP. MCCOLLUM: I understand the reasoning. I just want to know the fact that you had made that decision a week or ten days or two weeks -- sometime in that timeframe before the raid -- you had decided to discard the option of arresting him outside of the compound, even if you had seen him outside of the compound?

MR. CHOJNACKI: I would have to say we probably do. We didn't expect to see him. He said he wasn't going to come out.

REP. MCCOLLUM: I know that. But if you had seen him you had already made up in your mind you weren't going to do that -- is what I am getting at.

MR. CHOJNACKI: That's correct. We had no way to do that at that time.

REP. MCCOLLUM: All right. Why -- a question for you as well -- why didn't you listen, if you heard it from her -- maybe you didn't hear from her -- but Joyce Sparks advised us that she told you her opinion that you should not go forward with this raid, and that if you captured Koresh outside the compound it would cut the head off, so to speak, and that under their religious tenets, the way that he was making himself out as a messiah, they would never have killed themselves, because they all had to die together. That's what she said Friday. And did she discuss that with you, those two points? Did she object to it? And why would you choose not to listen to her on that point?

MR. CHOJNACKI: I never met Ms. Sparks prior to going to Waco for the raid, so we have never had that kind of conversation. She may have had it with ATF people -- I can't deny that. But up until the time I went to establish a command post, I --

REP. MCCOLLUM: All right, then, I understand --

MR. CHOJNACKI: -- and may not have met her even then. I don't remember.

REP. MCCOLLUM: Mr. Sarabyn, do you know of anybody who talked to Ms. Sparks about this, to whom she spoke that --

MR. SARABYN: Well, I think most of her conversations were with Davey Aguilera, and, you know --

REP. MCCOLLUM: All right, but she didn't say it to you?

MR. SARABYN: No.

REP. MCCOLLUM: All right. Were there no telephones carried out at the raid site, Mr. Chojnacki, that were there? In other words, we had a report that Mr. Lynch (sp), the deputy who got the 911 call from Wayne Martin after the raid began, could not get through to anybody at theraid party for 20 minutes because there were no telephones, portable phones -- no way for him to do that. He was the deputy sheriff there who got the 911 call.
MR. CHOJNACKI: My understanding of that situation is that we in the command post had the phones tied up. We presumed that the sheriff's department was maintaining constant radio contact with their headquarters. They had a radio set up in our command post. The radio was on, and they were monitoring transmissions back and forth. I don't know whether that radio was on or not on at that particular point in time.

REP. MCCOLLUM: Well, you did have radios with you, but you didn't have telephones?

MR. CHOJNACKI: ( ) In the command posts, we had both radios and telephones.

REP. MCCOLLUM: All right. Why wasn't a no-knock search warrant sought?

MR. CHOJNACKI: ( ? ) Normally no-knock search warrants are for those kinds of situations that relate primarily to narcotics, where the evidence can be immediately destroyed. In our situation, it could be destroyed, but not in an immediate timeframe.

REP. MCCOLLUM: Did Agents Daryl Dyer (sp) and William Crone (sp) set out to draft a raid plan that was never actually formally drafted? And is it true that it was in Crone's (sp) desk at the time of the raid, the rough draft, the physical draft?

MR. CHOJNACKI: -- the plan -- the document that those two men were attempting to prepare was an administrative plan for the conduct of a national regional response. It was not the raid plan. There are two distinctly different documents. The raid plan is a tactical document, prepared by the leader of the raid, normally the leader of your SRT, if you are having an SRT call-out. In this case, they were all in Fort Hood fine-tuning what their teams were going to do, and they had written plans, but it was handwritten. Those handwritten documents were to be collated into one formal, under an ATF raid plan form document when they came to the command post on that Sunday, the 28th --

REP. MCCOLLUM: All right.

MR. CHOJNACKI: -- when we were executing the warrant on the 1st of March. When we brought the plan up it never came to the command post --

REP. MCCOLLUM: I understand. But you didn't. All right, I just wanted to find out about it. Last question: Ms. Wheeler, isn't it true that there was a film crew on site at the time of the raid, hired by the ATF, not related to any of the outside media? Didn't they film this, somebody you all employed?

MS. WHEELER: The National Guard came in, and I was not involved with that --

REP. MCCOLLUM: All right.

MS. WHEELER: -- that was tactical.

REP. MCCOLLUM: Okay, I'll reserve the balance of my time. Ms. Thurman?

REP. THURMAN: At this point I would yield two minutes to Mr. Taylor.
REP. TAYLOR: I thank the gentle woman -- (inaudible). Mr. Rodriguez, some people who have been openly hostile to the law enforcement community in these hearings, and in statements prior to these hearings, have said repeatedly that if they had just waited a little longer that Koresh had gotten word of the raid, and if they just waited a little longer everything would have been just fine -- David Koresh being a nice, rational guy, would have just walked out. How does that contrast with the statement that he made to you on the day of the raid that neither the ATF nor the National Guard "will ever get me. They got me once, and they'll never get me again"? Is it your opinion that David Koresh would have voluntarily walked out at some other time, had those words gotten to these gentlemen, and they delayed the raid?

MR. RODRIGUEZ: David had already gone through the court system once. You have to understand that he did not believe in the court system. He did not believe in the government and its policies. The only thing that he believed in was the Bible. Therefore, he would not have come out and said, "Well, here I am -- take me and we'll see what happens. "He wouldn't have done that, because that just wasn't his belief. He denounced the government many times, denounced the NRA -- called it as corrupt as our government. He -- that's the way he was. The only thing he listened to was the Bible, and those were his exact words -- almost, pretty close.

REP. TAYLOR: You in a recent -- Mr. Rodriguez, in a previous statement you said Koresh used the Bible. Would a more accurate description be that he misused the Bible, that he picked and chose those phrases that he wanted to justify what he wanted to do?

MR. RODRIGUEZ: Yes, sir -- and I'll give you an example on the second seal. And lo and behold came a man on a red horse, and on his hand he had a sword. "Will you explain that to me? "He said, "Right here, Robert, right here -- that sword is a rifle. "This is what gives me the right to bear the rifles -- not the governments, not the Constitution. It's this right here -- that sword in his hand is the rifle.

REP. THURMAN: Mr. Taylor, reclaiming my time, I need to give an opportunity to Mr. Brewster for two minutes.

REP BREWSTER: Mr. Merletti, I was kind of a surprised a moment ago when the question was asked about the hearings, and the testimony thereof, that you held up the blue book and said, "Everything I've heard in here was in the blue book. "As one who feels I've learned quite a bit out of the hearings, there are several things that I've heard that I don't think are in there -- maybe I've overlooked them. I can't find anywhere in there that said that Mr. Chojnacki is being sued for over $2 billion by different people involved, and that he has some lawsuits against others. I don't find where it has it that Joyce Sparks advised ATF personnel that the raids shouldn't be done. In fact, I don't even find where Mr. Rodriguez, as he testified earlier, stated in there as having the feeling that suicides were inevitable. Are those in fact in there?

MR. MERLETTI: Sir, the -- on Mr. Chojnacki being sued -- that may have happened after the report came out -- I'm not sure of that. There's nothing about --
REP. BREWSTER: So it is true then that --

MR. MERLETTI: There's nothing about lawsuits in the book. The part about -- refresh my memory -- what were the other two?

REP. BREWSTER: That Ms. Sparks testified that she advised ATF not to do the raid, nor the raid at the end, and also that Mr. Rodriguez testified today he had a feeling that suicides were inevitable after talking with Mr. Koresh. And I -- just the point that I think I've learned quite a bit out of this that's not in the book. And you testified everything is in the book.

MR. MERLETTI: The part about the suicides is brought out when Mr. Buford interviews Marc Breault, and --

REP. BREWSTER: But Mr. Rodriguez today -- the guy who had talked with Koresh on numerous times -- I don't find that anywhere in the book. Nevertheless, my point is I think we've had a lot of good testimony that most of us didn't know -- maybe you did -- but it's certainly not in the book. A couple of things. Mr. Ballesteros, Mr. Williams, were you involved in the training at Fort Hood by the Army? Either of you?

MR. : Yes, we were.

REP. BREWSTER: Both of you were?

MR. : Yes.

REP. BREWSTER: Was the element of surprise mentioned there, the fact that they wouldn't know you were coming? Was that part of the plan?

MR. WILLIAMS: Well, the plan with the cattle truck, due to the fact that that's a rural area and cattle trucks are seen all around, and driving up in that would bring up no suspicion as to when we were coming. If we was driving a --

REP. BREWSTER: Did you know, then, when you went to the door, when you started to the door, that he knew you were coming and could have an ambush set for you?

MR. WILLIAMS: Yes, we knew when we went to the door that he knew we was coming, yes.

REP. BREWSTER: You both knew that he knew you were coming and an ambush was possible.

MR. WILLIAMS: We didn't know about the ambush, but we knew he knew we was coming.

REP. BREWSTER: But you did know he was a violent sort of guy.

MR. WILLIAMS: Yes.

REP. : (Inaudible) -- my time and give two minutes to Ms. Slaughter from New York.
REP. SLAUGHTER: (Inaudible.) A lot has been made of the fact that an outside group wanted to go down to Texas and X-ray those guns to make sure they'd really been altered. Now, you're the FBI gun expert. What do you know about X-raying guns?

MR.: Well, in my particular opinion, that would -- X-raying the guns can certainly be done. It would be a waste of time.

REP. SLAUGHTER: Is that a normal procedure, X-ray guns?

MR.: No, ma'am.

REP. SLAUGHTER: How did you determine that guns had been altered?

MR.: I examined each one of the firearms that was submitted to the laboratory. And as I mentioned this morning, it was 297 firearms in various states or various conditions. And of those that I determined were fully automatic, I looked at each one of the firearms and noted by observation under the microscope the parts that were necessary to make those firearms fire in the full automatic mode.

REP. SLAUGHTER: How many did you locate that had been converted?

MR.: There were 48 that had been modified out of the 297.

REP. SLAUGHTER: And one question I want to ask of Mr. Williams, if I could follow up. Did you say that you did know when you started on the raid that Koresh knew you were coming?

MR. WILLIAMS: Yes, from the information we had at the staging area when we was told that they knew we were coming.

REP. SLAUGHTER: That he knew you were coming?

MR. WILLIAMS: Yes.

REP. SLAUGHTER: My understanding was that -- from what I heard, Mr. Sarabyn did not really believe Mr. Rodriguez when he said that. As I understand Mr. Rodriguez' testimony, he said he was nervous. He said, "What is he wearing?" and then hung up the phone. Is that basically it?

MR. SARABYN: I asked a series of questions, but it was clear in my mind, I thought, that he did not know that we were coming at that time. And he had said those words, I repeated those words, but that I thought we could safely execute the warrant.

REP. SLAUGHTER: So you did notify the men in the --

MR. SARABYN: I passed on the words that Robert told to me to all the commanders, to everybody in the staging area.
REP. SLAUGHTER: And Mr. Rodriguez, my understanding from what you had said and what I have come to believe myself is that suicide was inevitable because they wanted to die. Is that not correct? Their prophecy would not come true unless they died --

MR. RODRIGUEZ: In my opinion --

REP. SLAUGHTER: -- in fire and explosion, as I understand it.

MR. RODRIGUEZ: In my opinion, yes, ma'am.

REP. SLAUGHTER: Is it your belief that they set the fire?

MR. RODRIGUEZ: Well, there was evidence that they did.

REP. SLAUGHTER: Did you have any indication while you were there on that morning or had you heard anything at all in your conversations with David Koresh of any event that someone should come that they would set a fire from inside that compound?

MR. RODRIGUEZ: Well, all I did during that time was just refer to the sixth seal, and that would tell you what was going to happen.

REP. SLAUGHTER: I'm not familiar with that, I'm afraid.

MR. RODRIGUEZ: Okay. You know, if you go to the sixth seal, it describes the final destruction of the earth with the earthquake and people dying, people being swallowed up. That is what you would call the final --

REP. THURMAN: I need to reclaim my time now --

REP. SLAUGHTER: Thank you.

REP. THURMAN: -- and yield to Mr. Schumer.

REP. SCHUMER: Okay. I guess I have seven and a half minutes. I yield one minute to Mr. Taylor.

REP. TAYLOR: Just very quickly, Mr. Rodriguez --

MR. RODRIGUEZ: Yes, sir.

REP. TAYLOR: -- again, when Koresh said, "Neither the ATF or the National Guard will ever get me," that's obviously very strong words. It obviously had a very strong effect on you. Did that statement somehow get conveyed to the gentlemen on the other end of the table who made the decision to proceed?

MR. RODRIGUEZ: Mr. Taylor, I very clearly and very emotionally advised them that he knew that
the ATF and the National Guard were coming.

REP. TAYLOR: I understand, sir, but it's one thing to know, for example, that someone is coming to arrest me; get the message that, A, they know they're coming. It's another thing, they know they're coming and he has said, "They will never take me. "Did that second part of the message get conveyed to the people farther up the decision-making process?

MR. RODRIGUEZ: Yes, sir.

REP. TAYLOR: He said -- you got the message across that he said he would never be taken alive.

MR. RODRIGUEZ: Not like that, no, sir.

REP. TAYLOR: What did you get across?

MR. RODRIGUEZ: That he said that the National Guard -- ATF and National Guard were coming, "They got me once and they'll never get me again. "

REP. TAYLOR: You related that message?

MR. RODRIGUEZ: Yes, sir.

REP. TAYLOR: Thank you, Mr. Schumer.

REP. SCHUMER: I yield one minute to Ms. Thurman, who's generously given the rest of her time away.

REP. THURMAN: I'm just curious, because in my opening statements I've talked about that I think the other half of these hearings is what has now happened to change the way we do business. In your -- or in the blue book, as we've talked about, there have been several areas that were looked at -- no meaningful contingency plan, command-and-control flaws, general command structure, those kinds of things. And I want to ask those that are on the line every day, have you seen, Mr. Buford, Mr. Rodriguez, Mr. -- I'll get it wrong -- Mr. Williams and Mr. -- (inaudible) -- can you tell me, in your duties today, have you seen these particular questions being addressed in the agency so that, in fact, this country will never have to go through this again?

MR. : As for me, I have no -- I don't have too much contact with headquarters. I know there are some things that are trying to be changed. Whether there are or not, I really can't tell you because it hasn't been funneled down to the agents.

REP. SCHUMER: Thank you. Two minutes to Ms. Jackson-Lee.

REP. JACKSON-LEE: Thank you very much, Mr. Schumer. Thank you for the time being yielded. Mr. Williams, it seems that there was some questioning of you earlier that either attempted to place blame -- and I'm trying to clarify -- as you were moving toward the door of the compound, you were following orders. Is that not correct?
MR. WILLIAMS: That's true.

REP. JACKSON-LEE: Did you have in your possession a search warrant?
MR. WILLIAMS: No.

REP. JACKSON-LEE: But you were at that time following orders.
MR. WILLIAMS: Yes.

REP. JACKSON-LEE: And you were at the point of moving toward that door under someone's instructions that you were now beginning the raid. Is that my understanding?

MR. WILLIAMS: Yes.

REP. JACKSON-LEE: And all review of details, if they had to be reviewed, some superior had reviewed them. Whether you were involved in the review inside that trailer or whether you were in the trailer, you had to move forward because someone said, "Move forward."

MR. WILLIAMS: That's correct.

REP. JACKSON-LEE: Mr. Rodriguez, you got a crash course, I understand, in the teachings of Mr. Koresh.
MR. RODRIGUEZ: Yes, ma'am.

REP. JACKSON-LEE: We keep trying to isolate or try to understand this sect or this group. I don't want to denigrate them, but I do know that many read the Bible and understand that "Rend unto Caesar what is his," and so that religions can have respect for government. But you went inside there to create an atmosphere in order to make it safer. Were you in there to cause a disturbance or were you sent in there so that some information could come out to help this raid work without loss of life? What did you think you were in there for?

MR. RODRIGUEZ: My main objective was to obtain as much intelligence as possible. And this intelligence, of course, was going to be used to make this raid a success and safe.

REP. JACKSON-LEE: And so when you learned all these biblical things that you didn't know anything about, it was to gain confidence from this individual and to provide that intelligence out to your superiors so it could work in a safe manner.

MR. RODRIGUEZ: Yes, ma'am.

REP. JACKSON-LEE: And you did give the information about finding out about that he knew about it to your superiors.
MR. RODRIGUEZ: Yes, I did.

REP. JACKSON-LEE: Thank you, Mr. Schumer.

REP. SCHUMER: We reserve the rest of our time, three and a half minutes.

REP. MCCOLLUM: All right, I'm going to do similarly. We have, I think, six minutes. I know we have six minutes left over here. I'm going to yield three of those six minutes, divided one minute to Mr. Chabot and two minutes to Mr. Mica. Mr. Chabot, you're recognized for one minute.

REP. CHABOT: Thank you, Mr. Chairman. Mr. Black, at the end of October of last year, you fired Mr. Sarabyn and Mr. Chojnacki. You said they lied. You said that Mr. Sarabyn made false statements in the course of a criminal investigation. You said that they had altered documents. And you said that no penalty short of firing would be sufficient. But then, as you've also testified, you turned around just two months later and rehired them with back pay and even paid their attorneys' fees.

Now, maybe I'm wrong in this assumption, but I just cannot believe that the ATF would rehire people it truly believed had obstructed an investigation by lying and altering documents. I just can't believe that you would hire anyone, any such person, for any position at the ATF without being forced to. So that seems to leave one of two explanations for the rehiring. Either the Treasury report that lays the blame on Sarabyn and Chojnacki is faulty or someone was trying to buy their silence by rehiring them. Mr. Black, which was it?

MR. BLACK: I'd have to say it's neither. We are not questioning and we never questioned the motives of either Mr. Sarabyn or Mr. Chojnacki. We believe they made a good-faith effort to carry out their duties. We believe they were doing what they thought we expected. However, having said that, we faulted their judgment. We faulted their supervisory judgment for going ahead with that raid. I think, as you've also heard today, there's conflicting testimony. They make a compelling case, so the agents make a compelling case.

REP. MCCOLLUM: Mr. Black, I need cut you off because we only have a minute and a half left to give to Mr. Mica, and I need him to ask his question. Mr. Mica?

REP. MICA: Thank you, Mr. Chairman. Mr. Hartnett, did you, in fact, go to Mr. Ron Noble, who was undersecretary for law enforcement, after Chojnacki and Sarabyn had been fired, and say that it was your view that if he did not rehire these agents, their truthful story and the fact that it had been covered up would eventually become public?

MR. HARTNETT: No, sir, I never did. I haven't seen Mr. Noble since two years --

REP. MICA: You never went to Mr. Noble and asked him about this?

MR. HARTNETT: No, sir.

REP. MICA: Did you ask him to rehire these individuals?
MR. HARTNETT: No, I did not.

REP. MICA: Mr. Black, you signed the settlement agreements to rehire Sarabyn and Chojnacki. Is that correct?

MR. BLACK: That's correct.

REP. MICA: Did Mr. Noble participate in negotiating the agreements?
MR. BLACK: As far as I know, Mr. Noble did not participate. I believe that lawyers may have discussed it with him, but he did not participate.

REP. MICA: Was Mr. Noble also in charge of the Treasury report that turned out to be the reason they were fired that everyone's referred to?

MR. BLACK: I think that's fair to say, yes.

REP. MICA: Mr. Black, I'm now providing you with a description of Mr. Chojnacki's new job, which requires him, and I quote -- this is part of the job description provided me -- "serve as an expert witness to present evidence and facts in civil or criminal trial hearings." Does it make sense to you to put someone you just fired for lying into a job where one of the major duties is testifying for the government in court?

MR. BLACK: I believe that in the role that he was in, he would be testifying as a non-agent. He would be giving advice as far as dealing with the U. S. Customs Service.

REP. MICA: Mr. Mica, I hate to cut you off, but I have to do that to keep three minutes of our time over here. I yield to whoever has -- Mr. Schumer -- for the balance of your time, and then we'll close with three minutes.

REP. SCHUMER: Thank you. And let me just say, I think this morning's testimony -- I think a number of things have come out pretty clearly. First is, of course, that Koresh fired first. That's indisputed. Second, that the element of surprise was broken. That's indisputed. Third, that the decision to go ahead once the element of surprise was broken was almost certainly the wrong decision. That's the overwhelming consensus here. And then we get into the debate as to who made the decision to go ahead. The report says that Mr. Chojnacki and Mr. Sarabyn made the decision knowing full well that the element of surprise was broken. That's an error in their judgment. Mr. Sarabyn and Mr. Chojnacki basically say that they weren't clear, or certainly Mr. Sarabyn says he wasn't clear that the element of surprise was broken at that point in time.

Finally, and I think this is a very salient point, the only people on the panel who criticized the Treasury report are the people who are singled out for criticism in the report; in particular, Mr. Sarabyn, Mr. Chojnacki and Mr. Hartnett; that otherwise -- and even they agree with most of the report. They simply disagree with the parts of the report where they are singled out for criticism. And I think that speaks fairly well of the report.
But Mr. Hartnett has issued a very serious charge here, and that is that the report was a cover-up. He said two things. First, he said that, quote, that the element of surprise was important. He had never given an order to the field commanders that if it was lost, they should abort the raid. I would wonder why he didn't, if it was a bad thing to do. Criticizing everyone else, he had the ability to say or certainly advise the head of ATF, "Don't give them the OK unless surprise is not broken. "But second, I'd like to ask you, Mr. Merletti, since you put together the report, was there a cover-up of the report? Just answer that yes or no.

MR. MERLETTI: Absolutely not!

REP. SCHUMER: So what do you think of Mr. Hartnett's charges that there was a cover-up?

MR. MERLETTI: I think they're baseless.

REP. SCHUMER: And why do you think he's doing it?

MR. MERLETTI: I believe Mr. Hartnett, in his heart, feels he was doing the right thing after the raid, and basically what ended up happening is Mr. Sarabyn and Chojnacki now blame the undercover agent Mr. Rodriguez, who was the hero --

REP. SCHUMER: Right.

MR. MERLETTI: -- they blamed him.

REP. SCHUMER: Yeah, I think it's clear from today's testimony, Mr. Rodriguez, that you and Mr. Ballesteros and Mr. Williams are the heroes, and at the very least, Mr. Sarabyn changed his story a bunch of times.

MR. MERLETTI: And I believe that ATF was being criticized quite a bit by the media because the line agents were coming out and saying the element of surprise was lost, management was saying it was not lost.

REP. SCHUMER: Mr. Buford is also a hero --

MR. MERLETTI: I believe -- yes, absolutely --

REP. SCHUMER: -- and I'm sorry for not mentioning that.

MR. MERLETTI: But I believe that Mr. Hartnett -- call it a conscious avoidance of the truth -- wanted to defend his agency and he didn't talk to the line agents. He relied on Sarabyn and Chojnacki, and they kept telling him the story that Robert didn't -- they actually said Robert didn't even tell them that ATF and the National Guard were coming. I believe that's how it all began.

Mr. Hartnett asked the supervisor down there -- whether he lied or whether it was conscious avoidance of the truth, only he knows -- but he chose to side with the supervisors --
REP. SCHUMER: With Mr. Sarabyn -- Mr. Sarabyn -- (inaudible) --

MR. MERLETTI: Yes, and I believe he was trying to do the best he could to bolster the image of -- (inaudible; crosstalk) --

REP. SCHUMER: Is there any iota of cover-up in this report?

MR. MERLETTI: Absolutely not!

REP. SCHUMER: Yield back my time.

REP. CONYERS: Mr. Chairman, could I ask unanimous consent to --

REP. MCCOLLUM: Without objection.

REP. CONYERS: -- enter a --

REP. MCCOLLUM: (Laughs. )I know what you're going to ask, John. Go ahead.

REP. CONYERS: I know I sent it down to you in advance here, but Albert -- Al Schuler (ph) of the University of Chicago has an interesting commentary on the affidavit and the search warrant, and I ask unanimous consent --

REP. MCCOLLUM: Without objection. I have a copy.

REP. CONYERS: I thank you very much.

REP. MCCOLLUM: You're welcome.

I yield -- of the three minutes I have remaining, I yield one minute of that to Mr. Buyer.

REP. BUYER: Thank you, Mr. Chairman.

I just have a couple of very quick questions. One to Mr. Sarabyn and Chojnacki. I was concerned when I read the Treasury report about -- that both of you had not only -- you disclosed not only ATF intent to take action against the compound, but also the anticipated date of that action to the "Tribune Herald. "Is that true?

MR. SARABYN (? ): In my meetings with the "Herald," the meeting was held when we were planning to execute the warrant on February the 24th. I was being questioned as to when that was going to take -- our raid would be --

REP. BUYER: Is the Treasury report accurate that you disclosed that ATF was going to move against the compound? Is that true? From both of you gentlemen?
MR. SARABYN (?): I gave what I thought was a dodge. It turned out that we had to alter the plan and we inadvertently altered the plan to accommodate or come close to that date. It wasn't an attempt to give them the information, it was an attempt to not give the information.

REP. MCCOLLUM: Mr. Buyer, your time is up. I hate to say that, but it is. I know, it is (the truth ?). I have to minutes to close at this point. I'm going to close by asking three different witnesses three different questions. I'd like for you each to respond in the time after I've finished asking the questions of all three, otherwise I won't get these asked. Mr. Rodriguez, I'd like to know if my understanding is correct that you had testified that there was a written raid plan prepared before the raid date, but the plan was altered, and if that's true, I'd like to know how you came to learn the plan was altered and if you're aware of who altered it? Now, I'm going to ask that, but hold on to your answer.

I want to ask a question of Mr. Chojnacki about the helicopters, as to why you were on board a helicopter that day, the final day of the raid? Were those helicopters, any one of the three, armed with weapons and, if so, with what weapons, and were any shots fired from the helicopters, okay?

And, Mr. Hartnett, I want to give you a chance to respond to Mr. Merletti, his last comments that he just made, and if you want to follow up with an answer that was asked earlier about the cameraman that was disturbing you so much, you never got it all out, you'll be allowed to have the last word.

Now, I'm going to go in that order. Mr. Rodriguez, about the plan. Do you know if there was a written raid plan and whether that plan was altered before the raid and then, if it was, how you came to learn about it?

MR. RODRIGUEZ: No, sir, I knew nothing about the raid plan.

REP. MCCOLLUM: All right, that answers that very quickly.

Mr. Chojnacki?

MR. CHOJNACKI: To the best of my knowledge, the ATF personnel on those helicopters would have been armed with their nine-millimeter sidearm. To the best of my knowledge, not a single shot was fired from those helicopters. I was on that helicopter, using it as a command-and-control platform. On previous large-scale raids, we had sent commanders up to view the -- the initial stages of the raid and then to quickly come back to the command post to continue along with the regular course of business, and in this case particularly a bad move. I understand that.

REP. MCCOLLUM: Mr. Hartnett, would you care to respond to Mr. Merletti or comment on the cameraman question.

MR. HARTNETT: (I'd like to do both ? ) if I may.

REP. MCCOLLUM: You may.
MR. HARTNETT: First on the review itself, I wouldn't say it if I didn't truly believe there were omissions, distortions, and false statements in there. I can provide this committee with a list--

REP. MCCOLLUM: I'd appreciate it if you would--

MR. HARTNETT: I will. The report is written in such a way that if you were one of the five managers, anything that's negative, your name is mentioned. If it's positive things you did, you're referred to as supervisors. They take half statements like--the thing about blaming Rodriguez. I was down there a month and a half. Everybody I spoke to had nothing but praise for him. He did a tremendous job. And when I read the review, there's this implication that somehow we're saying because we believe Sarabyn didn't know he lost the element of surprise or whatever term you want to use that that means he's not telling the truth, and that's just not a fact. Both of these men did everything they could. I don't believe either one of them were lying, and I'm not going to stand up here and say that I think one of them was lying or not. Treasury would like to see that, when we were down there at Waco.

I told them from the beginning there were conflicting statements right on up the line two and three times a day, but that has nothing to do with whether they're lying.

Now, as far as what I wanted to say about the cameramen, there were a lot of people in the field who felt this needed to be said for a long time. In recent years, when law enforcement goes on raids around this country, there is more and more media. There's a competition. They all want to be there, they all want to get the first story, they want to be on the news at 10:00 or read about themselves in the paper.

Well, that's dangerous. Not a shot would have been fired, not a person would have been injured, nor would a person have died in that raid if that cameraman hadn't told them that we were coming.

One only has to look at Oklahoma City, and you'll see an FBI SWAT team executing a search warrant on a house, and there's the camera team followed them along. They're in their pocket. It's another Waco waiting to happen. Twenty years ago, I never ran into a news team when I went on a raid. Now every time you go out there, they're crawling all over you. Waco's going to happen again, and if the media can't regulate itself, then this body needs to regulate them. We've got to prevent those kind of things from happening. Why should Sarabyn and Chojnacki and Rodriguez have to even make that decision, have to weigh whether Koresh knew we were coming or didn't know we were coming? If the cameraman hadn't told them, they wouldn't have even had to make that decision. That raid would have gone down without anybody being hurt, and we'd have had those guns away from them. That's all I have to say, sir.

REP. MCCOLLUM: Well, thank you, Mr. Hartnett. I want to thank the entire panel. You have certainly endured a great deal from us over the past few hours, some of you over several sessions of these hearings. We have been indebted to you for both that and, of course, for those of you at the front lines, regardless of whether or not there is fault assessed in this process, for the service that you've given to your country, and we respect that fact, and I think that, again, it is, indeed, our obligation to say thank you for that. Some of you have given more than service, you've given a lot of body parts at times to these things, and we are, indeed, grateful for that fact and understand it.
I want to dismiss this panel now and go on to introduce the next one. Again, thank you for coming today.

As this panel clears, I have the second panel to introduce, but they're not in the room, so we will wait just a moment for that to occur.

Mr. Chabot, in the interim?

REP. CHABOT (? ): -- (off mike) -- that documents 22, 23, 24, 25 are included in the record, the ones I referred to.

REP. MCCOLLUM: The ones you referred to in your questioning? Without objection. You've seen those. Will be included in the record.

(Pause. )

I don't want to destroy anybody's photo opportunity, but the subcommittee will come to order. I think it's time we had an introduction of our second panel -- they have arrived at this point, and we are ready to proceed accordingly. If you'll recall a second -- this last panel of the day, and the last panel of this segment of our hearings, will be two of the folks who are the most key features of all of this from the Treasury Department and from the ATF, and they'll be allowed to make opening statements today. I'd like to introduce the second panel.

Our first witness is Ron Noble, undersecretary for enforcement for the Department of Treasury. This new post, created in 1993, oversees the Treasury's Office of Enforcement, which includes the Bureau of Alcohol, Tobacco and Firearms, U. S. Customs, U. S. Secret Service, and the Executive Office of Asset Forfeiture. Before joining the Treasury Department in May 1993, Undersecretary Noble was an associate professor at the New York University School of Law. From 1988 to 1989, he served as deputy assistant attorney general, special counsel and chief of staff at the U. S. Justice Department's Criminal Division. Undersecretary Noble began his public service career in Philadelphia, where he was an assistant U. S. attorney from 1984 to 1988. He was sworn in as Treasury undersecretary for enforcement on July 7th, 1994.

Our second witness on this panel today is John Magaw, director of the Bureau of Alcohol, Tobacco and Firearms. Director Magaw is a 34- year veteran of law enforcement, beginning with his career with the Ohio State Patrol. He became a special agent with the U. S. Secret Service in 1967 in Columbus, Ohio. As a special agent, he rose through the ranks in investigative and protective assignments within the secret service, serving as head of the Washington field office, deputy assistant director for the Office of Protective Research, and deputy assistant director for the Office of Protective Operations. He became director of the Secret Service in February 1992, and then director of the Bureau of Alcohol, Tobacco and Firearms in September 1993.

I want to welcome both of you here today. I understand, Mr. Noble, you may run over a little bit on your time, but that Mr. Magaw is making up for that, and overall we are going to have it work out pretty well. So with that in mind, since we are allowing you each to making opening statements,
we'll begin, Mr. Noble --

MR. : (Off mike. )

REP. MCCOLLUM: I'll have to swear you in first, that's right. We have got to do this under oath. The opening statements I always have to worry about in that regard.

(Witnesses sworn in. )

REP. MCCOLLUM: Thank you both. If you'll be seated. I would let the record reflect that both answered in the affirmative. Mr. Noble, you may begin your testimony.

MR. NOBLE: Mr. Chairman, members of the subcommittee, I have a longer statement that I would like to submit for the record with your permission.

REP. MCCOLLUM: Without objection, it is admitted to the record. I don't believe we have copies of your statement up here. Do we have copies of anybody's statement?

MR. NOBLE: I was doing last-minute editing, so it should be here shortly.

REP. MCCOLLUM: All right, thank you.

MR. NOBLE: I speak today on behalf of the brave men and women of ATF. After the failed raid, the deaths of four ATF agents and a tragic fire at Waco, President Clinton directed that Treasury and Justice conduct vigorous and thorough examinations of what had led to the loss of law enforcement and civilian lives. Secretary Bentsen designated me to lead the Treasury Department's review. He demanded that the investigation be honest, uncompromising and comprehensive. Secretary Bentsen appointed three independent reviewers to provide an assessment of the Treasury Department's investigation, and report on ATF's investigation of David Koresh and raid of his compound on February 28th, 1993.

Here's what the independent reviewers said about the Treasury Department's investigation and report and letters submitted to the secretary in September 1993. Pulitzer-prize-winning journalist Edwin O. Gusman (sp) stated, quote, "In appointing a panel of independent reviewers you said you expected a, quote, 'thorough, comprehensive, and uncompromising critique,' and that, sir, is what has been given to you. "It was a privilege to participate in the review, and in so doing I must say I gained enormous respect for the professionalism and dedication with which the investigative team leaders and their agents conducted themselves at all times.

Henry Ruth (sp), a former chief Watergate prosecutor, stated, quote, "The report insightfully fulfills the purpose of this self- evaluation. The impartiality, integrity, thoroughness and knowledge of the internal review team members have been evident throughout the five-month intensive investigative process. "Mr. Ruth (sp) concludes, quote, "It's my heart-felt hope that you, Mr. Secretary, as a national leader, can lead the change of orientation, thought and action, so that no more men, women and children need die in these most difficult of circumstances. "
Chief Willie Williams (sp) of the Los Angeles City Police Department stated, quote, "I have found that the investigative team which was assembled is of the highest quality and integrity. These men and women have worked tirelessly to uncover the facts surrounding the events which led up to and included the raid on David Koresh's residence near Waco, Texas, on February 28th, 1993."

The view of the reviewers has been heard, and echoed, by the independent inspector general's office, members of Congress from Treasury's oversight committees, and major news publications throughout this country. I would ask the committee to include in the record the letters from the three reviewers to Secretary Bentsen.

REP. MCCOLLUM: Without objection, Mr. Noble.

MR. NOBLE: Thank you. Treasury's Office of the Inspector General determined that the report provides an accurate account of the events. Then-Arizona Senator Dennis DeConcini found it thorough, impartial, and self-effacing. Representative Jim Lightfoot of Iowa described the report as thorough in its findings. The Wall Street Journal characterized it as extensively detailed. The Washington Post said it was a thorough and candid account. The Los Angeles Times wrote, quote, "Despite all that went wrong with the raid by the ATF on the Branch Davidian compound last February, the thorough and complete report released by the Treasury Department shows that much in its aftermath is going right. "The New York Times called it brutally detailed. And just last week Time magazine stated, quote, "Perhaps the harshest critic of the ATF's Waco raid was the bureau's own master, the Treasury Department. In the raid's aftermath, the department launched an investigation by veteran agents from its law enforcement agencies, backed up by independent outside reviewers, including Willie Williams (sp), the Los Angeles police chief. The result was a 500-page indictment that pulled no punches, yet whose detail surprisingly went largely unreported."

Yet, at these hearings the very people who are most criticized in the report have baldly asserted that the report is only 70 percent accurate. Certain members of this committee accepted that figure as gospel, without any consideration of the source or evidence to support that number. Indeed, none of those criticizing it articulated what if any facts in the report were inaccurate, what analysis is flawed. As Secretary Bentsen observed, it is not surprising that Mr. Sarabyn, Mr. Chojnacki, and Mr. Hartnett disagree with some of the conclusions of the report, because they are among those who were criticized and were detrimentally affected as a result of the review's findings.

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At today's hearings I have with me almost all of those who worked on the report. They are the finest group of agents and colleagues with whom I have ever been associated. Their dedication, competence, and integrity combine to generate what many consider to be the finest examination of a law enforcement action ever produced. We stand by our report's facts, analysis and conclusions, as do our independent reviewers. Yet the report is only 70 percent. It is 500-plus pages. If it 70 percent accurate, show us the 30 percent that is inaccurate.

Now, for the record, I have heard about the 100-plus witnesses that are going to be called. But, for the record, none of the members of the team that generated the Treasury Department's report on
Waco were ever interviewed -- ever interviewed prior to this hearing to determine what they thought about the report, what they thought about Ron Noble.

So let me now ask the agents, lawyers, and individuals who gathered the facts and performed the analysis for the Department of Treasury's report on ATF's investigation to please stand up and be recognized, and identified and associated with this report. Thank you. Every person's name is on this report who worked on it -- the masthead -- every person's name. Why haven't they been interviewed? Why haven't they been called as witnesses? You accept one person's representation that Ron Noble -- lowly Ron Noble -- was able to orchestrate a cover-up, using career, senior special agents from the Secret Service, Customs, IRS, CID, IRS Inspection -- all by myself -- 45-plus people -- people who made their careers during previous administrations. The American public has a right to know that one of its major departments, the Treasury Department, already has examined issues confronted by this hearing, and that Treasury's examination was comprehensive, candid and accurate. By recognizing this fact, these hearings can help to restore confidence in this country's public servants. To ignore or deny the quality of the Treasury Department's self-examination could feed the paranoia and suspicion of a small segment of the American public.

Now, what were the major findings? What did the Treasury Department's report find back in September 1993? The Treasury report concluded that ATF, at the request of the local sheriff, properly initiated an investigation into David Koresh and his followers, based on information provided by the sheriff. This investigation was predicated on evidence that federal criminal firearms and explosive laws were being violated. It was not based on Koresh's religious beliefs.

The Treasury report concluded that there was probable cause to believe that people inside the Branch Davidian compound were manufacturing illegal machine guns and explosive devices and concluded, as did the magistrate judge who reviewed and approved the warrant, that probable cause existed. No facts have emerged during these hearings that undermine that conclusion. Indeed, after the April 19 fire, the Texas Rangers recovered 48 illegal machine guns, illegal explosive devices and illegal silencers and hundreds of thousands of rounds of ammunition from the compound.

Since the Treasury report was issued, 11 Branch Davidsians were brought to trial and eight were convicted of the very firearms offenses that ATF investigated. At that trial, none of the defense lawyers challenged the validity of the search warrant. Indeed, I understand that one of those defense lawyers testified last Friday that the warrant was legally sufficient. The Treasury review team and the six tactical operations experts all concluded that ATF's raid planning was seriously flawed. We admitted it. We said it. We wanted to save lives in the future.

Specifically, almost two years ago the report concluded that, first, intelligence system flaws, including an improperly conducted undercover operation, seriously compromised the planning for warrant service. Second, because of the flawed intelligence-gathering and processing system, the planners did not give sufficient attention to other options such as trying to arrest Koresh away from the compound. Third, ATF should have consulted with experts in order to better understand Koresh's likely response to different law enforcement options. Fourth, the planners did not develop a meaningful contingency plan.

Despite the flaws in the planning process, four of the review's five tactical experts who volunteered
their time -- they were unpaid -- concluded that the plan had a reasonable chance of success if all the planners' major factual assumptions had been correct. The Treasury report concluded that ATF did not mislead the U. S. military or the Texas National Guard in obtaining assistance. Nevertheless, this report found that the standards for non-reimbursable military support were unclear and that more precisely defined criteria needed to be developed.

Although I have not watched all the testimony, it is my understanding that the military witnesses testified that the assistance provided ATF was legal and appropriate, and none testified that ATF had lied to the military. I also understand that Congressman McCollum in effect took the military-related charges off the table in his statement this morning.

The Treasury report also found that the Treasury Department in Washington DC did not require sufficient advance notice of significant enforcement operations to exercise meaningfully its oversight of these operations. We didn't say in the report that the investigation began in June 1992 under a previous administration and continued until January 20th, 1993. We didn't say that. We didn't attack a previous secretary of the treasury, deputy secretary of the treasury, assistant secretary of the treasury. We attacked the institution of the office of enforcement for not having the proper rules and guidelines that require bureaus to report highly sensitive or unusual operations. We could have, but we didn't.

Nevertheless, even though main Treasury didn't find out about it until February 26th, two days before the raid happened, on the very day that the World Trade Center bombing occurred, where we had people, we had lives, we had offices there affected by the World Trade Center bombing, what did we do? We didn't know what Waco would be. I didn't even know Waco existed. I'm sorry to say that to those of you from Texas. But what did we do on a day when we were worried about the biggest terrorist act in this country's history? Did we do what we could have done? Did we wash our hands of it? Did we say, "We're not required to give approval. We don't have to give approval. We'll just ignore it. You do what you want to do. "We didn't. We inserted ourselves into the process and got assurances that if anything didn't look right, the raid wouldn't go forward.

Now, I've heard, time and time again, people mentioning the element of surprise. I want you to look at the section that evaluates the office of oversight's role, our role, the office of enforcement's role in this book, and tell me where it says "element of surprise. " And even if it does, a condition precedent to a dynamic entry is surprise. Condition equals element. The report also concluded that the raid should not have gone forward once ATF learned that Koresh knew that ATF was coming 45 minutes in advance of the raid.

The report found that the raid commanders failed to appreciate the significance of the information provided by the undercover agent on the morning of the raid and the dangers of proceeding when surprise and the Davidians' conduct were not as planned. The report also stated that the flawed decision to go forward was not solely a question of individual responsibility on the part of the raid planners. It was also the result of serious deficiencies in the intelligence-gathering, processing structure, poor planning and personnel decisions and a general failure of ATF management to check the momentum of the operation as the circumstances demanded.

Moreover, it found that ATF and Treasury bore responsibility for ATF's late notification on the
26th. Both ATF bore responsibility and Treasury bore responsibility. The Treasury review also uncovered and reported disturbing evidence of misleading statements and of deliberate attempts by the raid commanders, Phil Chojnacki and Chuck Sarabyn, to shift blame to undercover agent Robert Rodriguez. And you heard more of that today.

Finally, the report concluded that ATF agents were brave, they were loyal and disciplined following David Koresh's murderous ambush. They risked their own lives to save one another and to reduce the chance that innocent Davidians would be killed.

Why do I care about the Treasury Department's report? I feel very strongly about the Treasury report and I'd like to tell you why. I don't believe a day has passed since February 28th, 1993 that I haven't thought about the murders of Comrie LaBlue (sp), Todd McKeon and Rob Williams and Steve Wallace. I know I was in a position to influence the acting assistant secretary for enforcement not to permit the raid to proceed. No matter what assurances ATF's then-director, Steve Higgins, gave him, I gave the same advice -- first to stop the raid, then to permit it to go forward -- that I would have followed had I been the assistant secretary for enforcement.

I have never shied away from taking responsibility for my advice then, nor do I now. I was confirmed by the Senate unanimously as assistant secretary in 1993 and again unanimously in 1994 as undersecretary with everything about my involvement on the record. In early March 1993, I attended funerals of three of the four murdered agents. Two were held the same day in different states, so I could only attend three. I do not have the vocabulary to describe the impact of attending the funeral of a law enforcement officer slain in the line of duty.

Police officers from throughout the country -- state, local and federal -- attend or send flowers in recognition of the unity of law enforcement. Moreover, I felt that the surviving family members gave me more comfort than I gave them. I remember holding Comrie LaBlue's son Cameron's hand while I knelt before him. He was 18 months old. I remember Rob Williams' mother holding me in her arms for a long time and telling me that everything would be okay. I remember Steve Wallace's father's strength. He said that he was proud of his son because he died doing what made him happy. While I wasn't able to attend Todd McKeon's funeral, I spoke later with a close family member who said, "Please send me a copy of your report of what happened at Waco before it's made public. I want to know the truth."

Three funerals in three states in three days. I'm reminded every day of the dangerous world in which law enforcement operates. Since joining Treasury, I have attended 14 funerals of Treasury agents and employees killed in the line of duty and eight funerals and memorial services of non-Treasury agents. Before coming to Treasury, the last funeral I had attended was when I was nine years old. I do not forget that four ATF agents were murdered, three wives were widowed, children are without a father and parents, brothers and sisters are without a loved one. During the Waco funerals, I saw and met ATF agents for whom I would one day be responsible. I saw the bond among them. Men and women cried openly and proudly as they laid their brethren to rest. Black and white agents held each other. Female and male agents held each other.

I don't believe that Comrie LaBlue had been buried before press reports surfaced that ATF went forward with the raid after learning that Koresh had been tipped to the planned raid on raid day.
ATF management did not confirm this fact; it denied it publicly and frequently. I committed myself to find the truth using the most comprehensive and authoritative review process possible. And since I don't do the work of the brave and good ATF agents or other Treasury agents who risk their lives each and every day enforcing the law against the country's most dangerous criminals, I committed myself to ensuring that they have the leadership, training and resources necessary for the work they do. By setting out the truth, the Treasury Department's report honors the memories of the ATF agents killed at Waco. By instituting reforms, Treasury and ATF have worked to ensure that a tragedy of this kind never again occurs.

There's been a lot of discussion at these hearings about the need to restore faith in federal law enforcement. I do not believe the American people need their faith restored. They have faith in federal law enforcement. Last week, as these hearings continued, everyday work continued for line agents of the Bureau of Alcohol, Tobacco & Firearms. That work often places them in the most dangerous neighborhoods pursuing the country's most violent criminals.

On the Monday before these hearings began, an undercover ATF agent shot and killed a suspected member of a murderous crack distribution ring in a crime-ridden New Orleans neighborhood who, while pointing a Beretta 9-millimeter semiautomatic pistol, threatened to blow the heads off both the agent and the person in the vehicle with him. The agent, a Waco veteran, was working on a Drug Enforcement Administration task force along with officers from the New Orleans task force -- excuse me, officers from New Orleans police and the Jefferson Parish sheriff's office; excuse me. The task force targets violent narcotics offenders. We thus must remember the violent world in which ATF agents operate.

When the New Orleans Times-Picayune reported on the episode on the front page, it did not mention Waco. The people of New Orleans know that whatever mistakes ATF made two years ago, it carries out a critical, difficult and dangerous law enforcement mission -- fighting violent narcotics offenders and armed career criminals, gangs, illegal gun traffickers, arsonists and bomb-makers. ATF agents daily place their lives on the line to help make our citizens safer. If the American people are reminded of that during these hearings, I believe the mission of law enforcement and ATF will be strengthened as a result.

Now, what has changed since the report was released? First, ATF has new leadership. Director Higgins announced his intention to retire before publication of the report and without reading the report. Secretary Bentsen selected John Magaw, the person seated to my left, then-director of the Secret Service, to become the new ATF director. John Magaw didn't have to do it. He could have stayed at Secret Service. But he cared about Treasury and he cared about ATF.

After issuing the report, Secretary Bentsen placed five ATF officials on administrative leave, including Mr. Hartnett, Mr. Chojnacki and Mr. Sarabyn. Mr. Hartnett and Mr. Connery (sp) retired rather than challenge the report's findings. Mr. Troy accepted a demotion in light of the report's findings. Mr. Sarabyn and Mr. Chojnacki were fired because they refused to accept giving up their guns, badges and ability to enforce federal criminal law. Eventually they appealed the firing and ultimately agreed to give up their guns, badges and rank. ATF Director Magaw believed that it was in the best interest of his bureau that ATF settle with them to avoid the possibility that the MSPB would later reinstate them with guns and badges despite the validity of the report's findings.
The second change is that I issued a directive in August 1993 requiring that the office of
enforcement be informed of any significant operational matters that affect any of the bureau's
missions, including major high-risk law enforcement operations.

Third, I instituted new guidelines for sensitive undercover operations. ATF, Customs, Secret
Service now have all sensitive undercover operations reviewed by a multi-agency committee to
ensure maximum planning and oversight. The multi-agency committee includes not only
representatives from all Treasury enforcement bureaus, but also representatives from the
Department of Justice's criminal division. This procedural safeguard shows the increased oversight
by Treasury officials over the most sensitive and dangerous law enforcement operations of the
bureau. Indeed, had the undercover guidelines been in place in 1992 and early 1993, the
investigation of Koresh would have come under close scrutiny by a sizable group of agents and
lawyers from a broad spectrum of enforcement activities.

Fourth, we took steps to improve oversight, including formal and informal communication between
Treasury's law enforcement bureaus and Treasury. To that end, I established a weekly meeting
between the undersecretary's office and the heads of each of the Treasury enforcement bureaus in
key offices. I also have periodic one-on-one meetings with each of the bureau heads, where policy
matters are discussed in greater detail. Of course, I also speak regularly and informally with the
bureau heads on both significant and more routine matters.

Finally, I reactivated the Treasury Enforcement Council. The TEC consists of all the bureau heads.
There also are TEC working groups that focus on more specific subject matters. Based on these
reforms, an operation contemplated by any Treasury bureau of the scope and complexity of the
Waco raid will come to the attention of a variety of law enforcement authorities, as well as my
office, well in advance of the planned action. Ordinarily, operational matters are the domain of law
enforcement bureau heads. The job of Treasury is to ensure that the bureaus have strong leadership
and high standards for personnel, that they institute proper training and are supported with adequate
resources and enforce the laws impartially. I thank you very much.

REP. MCCOLLUM: Thank you very much, Mr. Noble. Mr. Magaw, we'll now hear your
testimony.

MR. MAGAW: Chairman McCollum and Chairman Zeliff and members of this--

REP. MCCOLLUM: (Off mike) -- microphone, Mr. Magaw, I'm afraid.

MR. MAGAW: Chairman McCollum and Chairman Zeliff and distinguished members of this
subcommittee, it's not unusual for me to have to follow Mr. Noble, our distinguished
undersecretary, on speaking events. I know how difficult it is. Today it's even more so. But I am
proud to come before you today as the director of the Bureau of Alcohol, Tobacco & Firearms.

I emphasize my pride because I know the valuable contributions made by ATF as an agency and the
quiet heroics of the men and women of ATF who are dedicated to a simple goal of making our
communities safer for all. I emphasize my pride also because I know that the portrayal of ATF as an
agency that is out of control is unfair and the demonizing of our employees is slanderous.
I feel privileged to lead an agency where, in the face of unrelenting attacks, agents continue to put their lives on the line every day to protect the American public. And they protect them against the most extremely violent and dangerous criminals in our society. Every day, ATF inspectors and support personnel quietly and efficiently oversee the business compliance through the federal laws that apply to alcohol, tobacco, firearms and explosives, and collect $13 billion yearly in revenue.

Make no mistake about it; I take all criticism of ATF to heart. If criticism is fair, I will move vigorously to correct the problem. If criticism is unfair or unfounded, I will defend our bureau with equal vigor.

ATF is no threat to the private ownership of firearms. The law-abiding citizens have no reason to question our agenda. In the area of firearms, our mission is simple: To combat gun violence. The more successful we are in keeping guns away from criminals and prosecuting those who use guns in crime, the less impetus there is for more gun control. ATF is a neutral regulator. They're neither pro-gun nor anti-gun. The bureau is tasked with equitably enforcing the laws passed by Congress, implementing the regulations and collecting those taxes.

Unfortunately, there are many who do not trust our motives. Their perception that we pose a threat to legitimate firearms ownership could lead to actions by this body and others, as have occurred in the past, that would cripple our crime-fighting efforts. I strongly believe that only the criminal will benefit from weakening of ATF. State and local law enforcement will lose, the victims of gun violence will lose, and even those interested in less gun control will lose. We recognize that Waco has contributed to the current level of mistrust. We are hopeful that these hearings will clear the air and finally disprove the sinister betrayal of ATF's -- portrayal of ATF's actions.

When I came to ATF 22 months ago, I found an agency still mourning the loss of its agents -- you saw it here today in the testimony -- and still healing its wounds, both literally and figuratively, as well as they were experiencing sympathy and pain for the Davidians injured and killed during the Waco incident. I saw it as my responsibility to provide direction, compassion and leadership and to see that ATF emerge from the Waco experience improved and more effective in carrying out its dangerous law enforcement mission.

One thing that I confirmed early was that the image of ATF personnel as sinister agents looking for a fight is utterly at odds with their training, with their character and with the disposition of the ATF agents I have come to know. In fact, most ATF agents go through their entire career never firing their weapon except in training. There is no evil in the hearts and minds of the personnel of ATF.

Mistakes are made every day in every field of human endeavor, including law enforcement. We cannot eliminate mistakes. But we can learn to manage and greatly minimize them. In addition to that, we can make sure that there are no mistakes, no mistakes made of the magnitude of Waco. In the aftermath of Waco, we re-examined completely our way of doing things. We have moved to correct and improve management, training, operational systems and address the weaknesses identified in the Waco review.

We also needed to address operational deficiencies exposed by Waco in order to emerge better
prepared to execute our law enforcement responsibilities in the future. To this end, we engaged in a careful self-assessment of what went wrong and why.

We have considered the views of our own personnel. We have studied the Treasury review and examined the comments of all the tactical operation experts as well as those of the independent oversight panel. Today and for the past few days I have been listening very well to what each of you say in relationship to this event. We have made significant changes in planning, in execution, in post-raid aspects, including improved capabilities in the area of tactical intelligence. Many of you brought tactical intelligence up in your questioning. Huge errors made there. Any contingency plans. You've talked about those. Operational security. Oversight and liaison.

As I said before, no law enforcement operation is risk-free, and not all mistakes can be eliminated by systematic changes. The human factor of making very difficult decisions under very stressful times in split seconds are inherent in law enforcement.

The existing ATF systems and quality of the people involved have, in fact, established a remarkable track record as a result -- as it pertains to the deployment of their special response teams. What we have learned from Waco however is that despite these successes there are a number of areas where we are deficient. The tragedy of Waco taught us painful, but important lessons that will enable us to improve our ability to safely and effectively carry out our mission. That brings us, as I said before, every day, every thing that we're doing, in contact with the most violent and dangerous criminals in America.

In order for these changes to truly make a difference, though, I am determined that we also needed to completely revamp the way we do business on a broader scale. I determined that we needed to improve our organizational structure and to establish a guiding vision that would give all of us guidance to the action of our operations.

I have completed the restructuring of our headquarters and am now examining the field structure to see what adjustments are needed there. The successful future of ATF is dependent on a well-trained, professional workforce, and to this end I have elevated the training function to an executive level by creating a training and professional development directorate.

In a constant effort to do more with less I have established a science and information, technology directorate to ensure that ATF would keep abreast with all the changes in science and technology and that will improve our effectiveness.

I have also strengthened our internal review process to provide for a strong, well-staffed inspection and oversight unit, to conduct both operational reviews and internal investigations. This unit reports directly to me.

Additionally, I've established the office of the Ombudsman to provide all levels of this bureau direct access to the office of the Director. Eight peer groups have been put together, representing a segment of our -- each segment of the diverse workforce within ATF, and have implemented to focus on equal opportunity concerns. As I mentioned before in other testimony, 49. 1 percent of this bureau is minority. The personnel who oversee the EEO program with ATF have been placed in the Director's office so that I may have personal daily oversight. The final and most important change
that was needed, in my view, was to define the future of ATF; if we are to know where we're going, we have to know how to look for it. The outstanding work done by ATF has been lost over the months and years since Waco because of the haze of Waco, as well as the fact -- as well as the fact that all ATF jurisdictions are highly controversial.

For the outstanding work to be recognized of our personnel, it needs to be part of the defined mission, approved by the United States Congress and understandable to both the ATF personnel and the American public that we serve. Whether we believe it's fair or not, the fact remains that there has been a critical loss of public confidence in ATF. Our greatest challenge is to recapture public confidence by providing clear accountability for all of our activities. To accomplish this larger goal I have instituted a strategic management process that began with an analysis of the issues critical to ATF's functions. Attached to my statement is a written outline of ATF's strategy for the future. And it's a document that looks like this. (Holds document up.)

This strategic management process is already beginning to radically alter the way we do business. These plans will define our future as an agency committed to ensuring a sound and safer America through innovation and partnerships. From the guiding principles to the basic operational strategy, this process will redefine ATF from top to bottom. Our new strategic plans will impact on every aspect of our work from the type of employees we hire, how we train them, what they work on and how they are expected to relate to the public that they serve. The basic enforcement strategy has already been defined in terms of what impact can we make on violent crime in this country. That's the priority.

Laws and regulations will not be enforced or resources expended from this bureau in a vacuum, but as a carefully defined approach that will demonstrably contribute to the overall goal of the violent crime strategy for this bureau.

The strong partnership and the spirit of cooperation we have long enjoyed with other regulated industries in the law-enforcement community are being extended to the firearms industries and firearms owners.

The strategic management process also calls for measurable results in all areas to verify our success or demonstrate the need for additional changes. Since the strategic planning process will drive budget requests, this feature will also allow appropriators and others to verify that the programs they are funding are being carried out in the proper manner and are providing the benefits promised.

While this hearing is an important process for publicly examining ATF's actions at Waco two and a half years ago, it is critical that we not overlook the substantial changes made at ATF since that raid. Thank you, ladies and gentlemen, on behalf of every man and woman in the Bureau of Alcohol, Tobacco and Firearms, for allowing me to make this statement.

REP. MCCOLLUM: Thank you very much, Mr. Magaw, we're going to now begin a series of five-minute questions into the five-minute rule. I'm going to take the first five minutes to myself. Mr. Magaw, first of all, I want to say that whether or not those of us up here agree always with the policies of ATF, or whether or not there have been mistakes made, and certainly there have been by ATF agents and administrators from time to time, I think you should know, and the men of ATF
should know that we recognize that the vast majority of the almost 2,000 ATF agents every day perform dedicated service to this nation, and that they act with great bravery on many occasions. And we're proud of them for that, and we understand their public service.

Mr. Noble, I've got a couple of questions for you. In predicate to one of them, I'd like to point out to you that over the last few days, we've had several different pieces of information, quite a number disclosed that were new to us, that we did not find at least in the Treasury report regarding what happened at Waco and the events leading up to it. Among those were Agent Aguilera's invitation by David Koresh to visit the compound, to examine the guns that occurred, I guess, at McMahon's gun shop; Mrs. Sparks' warnings to ATF not to go forward; the fabrication of drug labs by the ATF, or apparent fabrication, to get free unauthorized assistance; Director Higgins lack of general supervision by Treasury; the Army Judge Advocate General who caught an illegal request by ATF before it was granted fortunately; the failure of ATF agents leading the raid to have warrants on their possession, and quite a number of other things, I could go on listing them.

I just want to make sure that I'm correct. It is not your testimony today, is it, that these hearings have failed to disclose any new information that's not already in the Treasury report. I assume that you recognize we have disclosed things that are not in that report; that it is not total or comprehensive.

MR. NOBLE: Well, you've said a number of things. That's a very complex set of --

REP. MCCOLLUM: Well, I don't expect you to respond to every one of those --

MR. NOBLE: Well, whether they're right or wrong --

REP. MCCOLLUM: I mean, I just gave a summary of (ideas ? ).

MR. NOBLE: You gave a summary of facts that I agree with; facts I think are completely false. You've made a concluding statement that the report is not total and comprehensive, which I disagree with. Your general principle, I believe, is that hearings are important. I agree with that principle. Facts have come out; I agree with that. Critical facts, facts that make this report less than 100 percent accurate, facts that make this report less than comprehensive, I don't agree with.

REP. MCCOLLUM: All I was asking is whether or not you thought there were facts that came out during these hearings that were not included in the Treasury report, and you've answered the question, I believe. Yes, there are facts, quite a number of them, whether you or I would characterize them one way or the other is not what I was asking. I would also ask you, did you bring the Texas Rangers, who are scheduled to testify tomorrow before this joint committee, to Washington before -- week before last -- or weekend before last at taxpayer expense? Did you meet with them or have any of the Treasury officials meet with them over a period of approximately four days, and did you tell them to focus their testimony?

MR. NOBLE: Again, there are at least four or five parts to the question. Were the Texas Rangers asked to come to Washington in order to make certain that we were prepared and they were prepared? Yes, they were. Did the U. S. government pay for it? I believe it did and should have since they were the ones who represented the U. S. government in the murder trial and the other
federal firearms violations and explosive violations in Texas. And if I remember correctly, I thought I saw Zeliff meet with the Texas -- with Ms. -- some news reporter who was playing some video footage of the Texas Rangers, so I'm quite aware that you were aware of it. Did we tell them to focus their testimony?

REP. MCCOLLUM: Well, did you coach them?

MR. NOBLE: The Texas Rangers?

REP. MCCOLLUM: Well, did they come here at taxpayer expense? U. S. taxpayer expense?

MR. NOBLE: Just like the witnesses. I won't even answer the question if I tried to coax the Texas Rangers into giving anything other than a forthright and honest testimony.

REP. MCCOLLUM: I didn't ask you if you asked -- coached them to give them anything other than a forthright testimony, Mr. Noble. I just asked you if you coached them, prepared them or attempted to prepare them, that's all.

MR. NOBLE: Okay, if Ron Noble prepared them, the short answer is no. Did they meet with people on my staff with the intention of being prepared so they could give you full and comprehensive testimony? Absolutely. Do I think that's appropriate? Absolutely.

REP. MCCOLLUM: Mr. Noble, would you describe for us, in the meetings that you had or the telephone conversations that you had, joining Mr. Simpson on the 24, 48 hours before the raid on the 28th of February, with Mr. Higgins, the director of the ATF at the time, could you describe for us what transpired in terms of those things that Higgins told you that were of concern to you, that caused you to advise Mr. Simpson not to go forward with the raid on the very first go around. And then, if you could, what changed your mind that caused you -- what did Higgins tell you? What new information came to light that caused you to advise Mr. Simpson to then decide to tell Higgins to go forward with the raid?

MR. NOBLE: Mr. Chairman, the first part of your question asserted that I had talked to Mr. Higgins prior to advising Mr. Simpson that the raid could proceed. If I could just go through the chronology to the best of my recollection --

REP. MCCOLLUM: (Inaudible) -- I would appreciate it, so there's no more confusion about it. We've heard Mr. Simpson testify and (I'll ?) try to do anything more than give you the opportunity to explain it.

MR. NOBLE: -- if you don't mind. Okay, okay, thank you, I appreciate that. I was advised mid-afternoon on the 26th, Chris Cuyler who was the liaison from ATF for main Treasury was waiting outside the office that I was occupying, wearing a blazer and sort of nervously pacing around while I was trying to gather information relating to the World Trade Center bombing. Eventually, he entered my office and began to talk about this planned raid near Waco, Texas on that weekend. And while he was talking to me, I was thinking that this is something more appropriate
for him to tell a person with line authority over ATF. So I suggested that he brief Mr. Langan and Mr. Simpson, the acting deputy assistant secretary and acting assistant secretary respectively. And he did brief them.

Eventually, later in the afternoon or early evening, they all came down to my office, and we reviewed this one-page advisory. And based on what I saw in that one-page advisory, it raised more questions than it answered about the safety of the people both executing the warrants and inside the compound. And I just remembered my experience in Philadelphia when the (move ?) raid occurred and advised John Simpson that he ought not to permit the raid to go forward. At that point, there was a theoretical discussion for some time about what the jurisdictional posture was of the Office of Enforcement's role vis-a-vis, the one-page advisory. Was approval required? Was it being asked? If it wasn't required or wasn't being asked, couldn't we just say it's something that ATF ought to handle?

And we eventually decided that we had to approach it as if in light of our positions, would a reasonable person occupying these positions be expected to act affirmatively despite not being required to do so, to intercede in preventing something from going forward that ought not to go forward. And I took the position that we had to act, and that if I were he, that I would not let the raid go forward.

REP. MCCOLLUM: And then what changed your mind? You've got to follow up and answer that question, I believe, in telling us what changed your mind.

MR. NOBLE: I was paged while at dinner after having left the office, and having believed that the raid would not go forward, because John Simpson, the acting assistant secretary had called Steve Higgins and told Steve Higgins that he believed the raid ought not to proceed. When I called back the main Treasury, or the number that was on my pager -- I don't recall whom I called, but eventually John Simpson was on the phone, and he said that Steve Higgins was also on the line, and that Steve Higgins had additional information which he wanted me to hear. And the information concerned the length of time that ATF had been planning this operation; the precautions that would be taken to make sure that ATF could tell whether or not Koresh would be alerted to the media stories, the series, the sinful messiah series that would be published the next day; that they were going to send an undercover agent in both Saturday and Sunday, and that that person would know whether or not something was amiss, and that they had this plan that they had planned for where at a certain hour, at a certain day, except the Sabbath, 10:00 in the morning, I believe, there would be men located in one place, women and children located in another place, and the weapons under lock and key in the arms room. That's the general discussion.

And based on those assurances, their training, that they had planned for it; they had an undercover agent in, I had no more reasons that I could articulate besides an emotional concern, in or non-articulable sense of worry or anxiety, I had no reason to say, in light of this briefing and the assurances being given by the director of ATF, that his people had been told that if anything didn't look right, they were to call it off. They were going to send an undercover agent in there for that reason, I could no longer say that there was an articulable reason or set of reasons why I would advise the acting assistant secretary to not permit a raid to proceed; that we were not required to approve the proceed in light of the assurances given. That's the best sense I have, sir.
REP. MCCOLLUM: Ms. Thurman, you're recognized -- Mr. Conyers, Mr. Conyers, you're recognized for five minutes.

REP. CONYERS: Thank you, Mr. Chairman. And because of an important line of questions, no objection was made about the number of minutes that the chair went over time, and it's quite appropriate except that he ought to note it, like he does with all the rest of us.

REP. MCCOLLUM: (Inaudible) -- I just let him answer the question, and I will do the same for you.

REP. CONYERS: Well, that's great. I'm glad I pointed it out. Mr. Magaw, let's talk about the positive here, and I begin by commending both of you for a very -- two very important statements. Under secretary Noble, your's was especially poignant, and I don't think it was lost upon anybody that heard it. It almost justifies the huge number of hours, days and time that we've spent in going over this matter. Mr. Magaw, let's talk about the changes that have been made as a result of the Waco raid experiences. Could you enumerate them briefly?

MR. MAGAW: Let me start with the structural changes. I believe that in the coming year and listening to employees, looking at Waco, looking at their history, which I went back into the70s and looked at the history, I believe that virtually every mistake that was made at Waco is as a result of lack of training when you look at each one of them. You had commanders out there who had not been trained to carry out their task. You had an undercover operation that was, as you look back on it -- remember now in all these answers, this is hindsight. Many things I look at here, I can say but for the Grace of God, there go I, so please remember that as I go along. But as you look at the undercover, their ability to transfer information. Agent Rodriguez doing a good job of bringing material out of there, but it not being transmitted properly. The automobiles were not the automobiles of students. Their appearance was a little too old for students, so we probably should have, if we're going to use those -- have those people at that age, shorten their hair and change their (positions ? ) a little bit, a number of those things.

But almost everything you look at, it goes back to did they have training? And over the years, ATF's budget has been cut many times because of the controversial jurisdictions. And this dedicated group has always, instead of doing less out there or not enforcing the laws and taking the chances they do, they took their money out of training; they took it out of computers; they took it out of a lot of office space and equipment. When you look at their office space and equipment, it doesn't compare with any bureaus in the government their size, not near as well done. At any rate, so I wanted to make sure in the structure, where was training? Well, it was buried in management. So as a result, it didn't get an equal say. And also, in our black suit, black agents suit and in some of the complaints that the agents would bring to me, and the personnel throughout the bureau is that we don't have a training process by which we're trained every few years. So all of those kind of things were important to me, so the structure was a key thing. I wanted to make sure our technology was up to where it should be, because they've taken money out of that in the years, and (they ? ) also wanted to make sure (our ? ) inspection and oversight.

Now, in terms of -- the other side of the issue is the operational parts of it, well first of all, I don't
believe that a bureau of this size, I don't believe virtually any law enforcement bureau in this country, by itself, individually, could take on an operation or should take on an operation like this again in the future. It needs the input of everyone. It needs the input of the public sector; it needs the input of the people who know, you know, you saw Rodriguez this morning, how he feels and how he knew, and how he had a feeling for how they would react. You need to confide in all of the outside experts, the people who used to be in the organization. We didn't do a great deal of that.

I believe that the loss of surprise was important. But I believe if we would have changed our decision, had our two supervisors been in the right place, the two primary supervisors who made the decision to go ahead, Sarabyn and Chojnacki, were in the wrong place. You don't belong in a helicopter, and you don't belong on the raiding party. You have to be away from where the excitement is. You're not there putting your helmet on like the rest of the people, because once you start that, you're too close, you're too emotional, and they didn't hear what was being said to them.

REP. CONYERS: Absolutely.

MR. MAGAW: They didn't hear what was being said. So --

REP. CONYERS: I want to congratulate you on that. I know that you have more, but let me just get to Under secretary Noble very quickly. You weren't confirmed at the time that the raid was planned, were you, Mr. Noble?

MR. NOBLE: No, sir.

REP. CONYERS: And let me commend you for another thing you did here this afternoon. You didn't come here looking to point the finger somewhere else. You didn't come here looking for cover. And you could have easily faulted a previous administration in terms of the condition of that Office of Enforcement, and you haven't mentioned that one time. The policies and the procedures, and the practices you had nothing to do with, and this tragedy has shaken all of us up, and certainly yourselves, and I think it's to your credit that you're both here today, testifying like you are.

MR. NOBLE: I would say, sir, that I had the greatest respect for the people who occupied my office prior to me. And I would say also

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that we benefit because despite whatever procedures they didn't have or policies they didn't have, for however many years that Steve Higgins certainly was the director of ATF, nothing like Waco had ever happened. No tragedy had happened; they'd done their job quite well, yes, sir.

REP. CONYERS: Thank you very much, and thank you, Mr. Chairman.

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

REP. ZELIFF: Mr. Noble, Mr. Altman and you have something in common, I believe. You both had that gut feeling in your stomach that this thing wasn't right, didn't feel right that Friday
afternoon that you had a chance to review it.

MR. NOBLE: I don't think Mr. Altman -- I've never heard Mr. Altman --

REP. ZELIFF: Well, he had a letter that went forth in the April 15th (sic), and the only thing I'm saying, the two of you must have this great ability that when you look at something, something gets described to you, and you see something that may be wrong, you put up the red flag (as ? ) you want more information. It's a compliment. And --

MR. NOBLE: I just didn't know that Mr. Altman had any feelings like that prior to the raid on the 28th, I'm sorry.

REP. ZELIFF: Yeah, he wrote Secretary Bentsen on April 15th, that he felt very bad about the thing moving forward; he felt that something tragedy -- a tragic situation would develop, that he felt very bad about it, and I think wanted someone to address it.

MR. NOBLE: Are you talking about --

REP. ZELIFF: You had a chance --

MR. NOBLE: Are you talking about the raid on the 28th or something else?

REP. ZELIFF: Now, going back to you on that Friday before the raid on the 28th --

MR. NOBLE: No, sir, I'm sorry. I don't understand the premise. Are you talking about Roger Altman's -- (inaudible) -- on the 28th?

REP. ZELIFF: I'm talking about you. Maybe I confused you a little bit. Let me just go back, the Friday afternoon when you were brought into this thing, and I was trying to compliment you where you had that gut feeling that things were not right; that you didn't feel that the raid ought to go forward, am I right?

MR. NOBLE: That's correct, sir.

REP. ZELIFF: Okay. And you specifically -- you didn't feel that -- why did we need such a tremendous amount of force to execute the warrants? This is out of the (report ? ) on page 178. What precautions were taken to ensure the safety of the agents? Why did the ATF have to achieve its mission -- could they do it without a shoot-out? These are really good concerns. And I think they were the kinds of things that you, before making your decision, you wanted more information about, am I correct?

MR. NOBLE: I did believe more information was needed, yes, sir.

REP. ZELIFF: Right, and that all got taken care of in a phone call that you got at dinner?
MR. NOBLE: As I recall, sir, there was a phone call on Friday night, and during that phone call, Mr. Higgins was attempting to address the core concern which was that the newspaper series that was going to be published on Saturday might alert Koresh to the investigation by ATF and cause him to change his pattern in some way --

REP. ZELIFF: But --

MR. NOBLE: Wait, may I finish, please?

REP. ZELIFF: Okay.

MR. NOBLE: Therefore, Steve Higgins said that they had decided to send an undercover agent in on Saturday morning to determine whether or not there had been any change in Koresh's routine, to determine whether or not he'd been alerted in any way by the published newspaper story. And that following that entry and exit, the undercover agent would report to his supervisors, who would report to Washington so --

REP. ZELIFF: So, I don't want to use all my time -- I only have five minutes.

MR. NOBLE: But it's -- you asked me a question about whether or not I decided to let the raid go forward based on what was told me to me during a phone conversation on Friday night, and I'm trying to say that that's not all that happened; that I got a call Saturday where Steve Higgins had talked to John Simpson and reported that the undercover agent had been in the compound on Saturday, and had seen nothing to suggest that the newspaper story had alerted Koresh in any other way.

REP. ZELIFF: So, to make a long story short, you felt very comfortable now. You felt good about it, making that decision that if you could move forward --

MR. NOBLE: I didn't feel comfortable about --

REP. ZELIFF: -- concerned about the use of force -- (inaudible).

MR. NOBLE: I did not feel very comfortable about it. I did not feel very good about it. I worry quite frequently when I know that my agents are executing search and arrest warrants. I rarely feel comfortable about it, sir.

REP. ZELIFF: Okay, but I'm just concerned where you had all these good questions that later on, none of them got really answered.

MR. NOBLE: I disagree with you, sir. Which questions --

REP. ZELIFF: The use of force.

MR. NOBLE: Pardon me?
REP. ZELIFF: The use of force. So much force -- I think one of the first questions you had here, why do we need so much force to deliver these search warrants?

MR. NOBLE: And the reason for the number of agents involved was that the men were supposed to be in one location; the women and children were supposed to be in another location, and the arms were supposed to be under lock and key in another location.

REP. ZELIFF: You indicate that, in your opening statement, that the military involvement was off the table. I don't know where you got that from. Just as a point of information, I think that we're still talking about the military involvement.

MR. NOBLE: I thought I was talking about whether or not the use of the military was illegal, and whether or not the use of the military was based on false information.

REP. ZELIFF: On the blue book that you were responsible for, and you feel that since then and during all these hearings and the opportunity and the passage of time, do you think anything can be improved on, any new information as received? Anything at all that could be beneficial?

MR. NOBLE: Absolutely. I wonder how we will confront the next armed extremist group, co-located with weapons and explosives and women and children, in a barren area with a fortified compound, willing to do anything and everything to keep law enforcement away. I still don't have the answer to that question.

REP. ZELIFF: Mr. Noble, we heard from one of the defense attorneys, Mr. Tim Evans, that his client, Mr. Allison, was involved in the secondary shooting involving individuals who tried to sneak back into the Davidian compound. Mr. Evans described two affidavits filed by two different ATF agents, one of whom lied and said Mr. Allison's gun had not been shot. Mr. Noble, that story was not in the Treasury report, was it?

MR. NOBLE: I'm not familiar with that story, sir. I'd like to see the affidavits and the statements, and then certainly before this hearing's over, I can have someone behind me get the bottom of it. But I'm just not familiar with that.

REP. ZELIFF: We learned that the Justice Department attorneys and the deputy general counsel tried to avoid creating exculpatory evidence by shutting down the shooting review and other interviews designed to get at the truth, and the Justice (star ? ) prosecutors testified that such practice was irregular and inappropriate. That story is not in the Treasury review as well.

MR. NOBLE: I don't agree with the facts as you've asserted them. I worked at the Justice Department for some time. I respect the people in the Justice Department; I think it's a great institution, and I think anyone who would characterize careful prosecutorial work as an attempt not to get or permit Brady material or any other exculpatory material to be given to the appropriate
defense attorneys doesn't understand the Justice Department.

REP. ZELIFF: Thank you, I'm afraid my time's run out.

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

REP. SCOTT: Thank you, Mr. Chairman. Mr. Noble, just for the record, you and Mr. Magaw, what was your position on the day of the raid?

MR. NOBLE: I was a consultant for the Department of the Treasury. I had been named as someone who, following a background check and following his nomination and hopeful confirmation, would one day occupy the position of assistant secretary for enforcement.

REP. SCOTT: You hadn't even been nominated?

MR. NOBLE: I had not been nominated.

REP. SCOTT: Thank you. Mr. Magaw, what was your position on the day of the raid?

MR. MAGAW: Director of United States Secret Service.

REP. SCOTT: Thank you. Mr. Noble, prior to the entry, did you believe that the element of surprise had been lost, based on what you knew at that time.

MR. NOBLE: What time precisely, sir?

REP. SCOTT: Prior to the raid going on.

MR. NOBLE: Prior to the raid going on, the most recent information I had was Saturday morning when the undercover agent came out, and at that point, I was told that things were as they had been historically. So I was not aware.

REP. SCOTT: Thank you. And just following up on the facts that we have had come out of this hearing, have any significant facts -- have you heard any significant new facts that would lead you to any different conclusions than what's in the book that was prepared almost two years ago?

MR. NOBLE: Absolutely not.

REP. SCOTT: Thank you. Do you have any different way of dealing with cults based on your experience?

MR. NOBLE: Yes, we have a different way in that everyone involved in federal law enforcement, certainly at Treasury, and I would let Director Magaw to follow up, we don't have the answer. We don't have the answer in terms of how to deal with these groups, except to say that we have to recognize that they have to be dealt with very carefully. And as Director Magaw has already stated, we know we can't do it alone as a department. It would not be wise to do it alone as a department. It
would not be wise to do it without consulting the necessary experts in psychology, religion or whatever the special interest might be. But I don't know if Director John Magaw has anything to follow up on it.

MR. MAGAW: I guess the only thing that I would say, Congressman, is that it's very important for the public and everybody here to know that we don't target cults, or we don't target religious groups, or we don't target militias. It's usually guns and explosives that bring us to those groups. And so when you're working guns and explosives, a lot times it does bring you to them. But obviously, the things learned at Waco, what makes them tick? What is their logic? What are the concerns? And most of those groups are not only anti-ATF or anti law enforcement, they're anti-government all across the board. They don't want to pay state and local taxes; they don't want to pay federal taxes; they don't want to do anything that you and I normally do in carrying out our obligations. On the other hand, there has to be some work done, and Mr. Noble has started that between Justice and all other law enforcement, so that we do develop better plans to work together.

REP. SCOTT: In questions that have been raised about the warrant, let me first ask whether you have a different procedure in obtaining a warrant if it's a no-knock warrant versus a regular warrant.

MR. NOBLE: I don't believe there's a difference in procedure between a no-knock warrant and a regular warrant in federal law as I understand it. I'm not authorized to practice law in this current position, but it's my understanding that the agents are supposed to make a determination as to how to best serve the warrant, based on the circumstances confronting them at the time.

REP. SCOTT: The questions have also been raised about the sufficiency of this warrant. We've had introduced into the record an analysis from a professor at the University of Chicago Law School that goes into great detail about the sufficiency of the warrant. His conclusion is, it's not only sufficient, but it's more than sufficient, so that my judgement and I believe certainly his judgement is the legality of the search and the arrest were certainly beyond question. This weekend, Senator Bradley on I believe Meet the Press told -- described an incident where a second-year law student at Harvard was the guest of some -- who was black -- was a guest of a partner of his law firm he was interning with in Los Angeles where he was attending a brunch at one of the partner's houses.

He was traveling with a white female (and turned ? ) to the brunch, and he was pulled over for no apparent reason, handcuffed and thrown to the ground. The exclusionary rule has been the traditional tool that we have to protect us and to protect innocent people from the indignities of such arrests. We've had testimony from one of your officers earlier that he certainly has no problem obeying the law, but he is unaware of any sanctions for individuals for making an illegal arrest -- sanctions like prosecution for burglary, for being somewhere you're not supposed to be or cuts in pay, or being fired.

We have also heard from the -- testimony from the attorney for one of the witnesses that this sole tool that protects innocent people is virtually worthless when you're dealing with a warrant because of the 1984 Leon decisions. Even if it were illegal, the evidence would be admissible under the good faith exception, and then there's no point in questioning the warrant, and therefore no disincentive for making illegal searches. Mr. Magaw, on page 3 of your testimony, you have indicated that law-abiding citizens have no reason to question the mission of the ATF, so my
question is whether or not there is any reason that you can't confine yourself to only legal searches and let law-abiding citizens know that they'll be left alone because we have a strong exclusionary rule?

MR. MAGAW: I like the exclusionary rule. I don't think we need to change it. I've used it for 34 years very successfully. If you make a mistake, it won't allow you to do that.

Miranda was set up years ago because -- and I can remember learning that as a young officer -- because law enforcement officers did things they ought not to do. And so while we're out here trying to be the very best professionals we can, we need guidelines, we need restrictions, and so I'm not one to ask for that exclusionary rule change. I don't think we need it.

REP. MCCOLLUM: Mr. -- (name inaudible) -- your time is expired.

REP. SCOTT: Thank you, Mr. Chairman.

REP. MCCOLLUM: Mr. Hyde, you're recognized.

REP. HYDE: Thank you, Mr. Chairman. I've heard from previous witnesses that nobody connected with this event made a written statement. That kind of surprised me because I thought when shooting is involved and people are killed, everybody who participated in it would file a report. That's the bane of law enforcement, filing reports, the paperwork. Is this unusual, that nobody filed a written statement or made a written statement?

MR. NOBLE: What happened, Mr. Chairman, is that ATF began what was called a post-shooting review. And at the time they began the post-shooting review, two things happened. A U. S. attorney who was handling the murder investigation had turned over that investigation to the Texas Rangers; and there were reports in the press that ATF management was trying to prevent the truth from being told, that ATF went forward with a raid knowing full well in advance that Koresh was expecting them. And for that reason and the reason that the U. S. attorney was conducting a murder investigation through the Texas Rangers, what would have been an ordinary practice and a common practice did not occur.

REP. HYDE: Well, in other words, winning the case became more important than really getting at the facts because it was the Department of Justice. It doesn't say the Texas Rangers. It doesn't say the -- it says the Department of Justice does not want Treasury to conduct any interviews or to have discussions with any of the participants who may be potential witnesses.

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The prosecutors don't want us to generate additional jinx -- (inaudible) -- material, in other words, exculpatory material, that might prove one of these 11 who were locked up, one at least for a year, might help them prove their innocence. So let's not discover anything, let's not take statements, even though it would be helpful in this comprehensive review of what happened and what went wrong, but for God's sake, we can't help prove anybody's innocent.
I mean, that's really what we're talking about. I'm not very proud of that, are you, Mr. Noble?

MR. NOBLE: If those were the facts, I would be not proud of it, but the facts are that the fact-gathering was done by the Texas Rangers almost immediately after the event, a disinterested law enforcement agency. And the fact is that we avoided line agents continuing to feel as though ATF management was trying to get them to change the story about the truth of what happened near Waco on February 28, 1993.

REP. HYDE: But you refused to take statements from people who were involved. I should think that's the first thing you'd want to know what happened. Let the chips fall where they may, but the--

MR. NOBLE: I wouldn't want to have statements taken by people who are accused of trying to orchestrate a cover-up. That is not the way to conduct an investigation.

REP. HYDE: Well, then, send somebody else out to take --

MR. NOBLE: That's why the Texas Rangers conducted the fact-finding.

REP. HYDE: Well, then, is it true or not, because this memo to you, a preliminary investigation plan from Robert M. McNamara, assistant GC enforcement, dated 14 April 1993: "DOJ does not want Treasury to conduct any interviews or have discussions with any of the participants." Now, how -- "DOJ does not want us to make any findings or draw any conclusions from what we review." I mean, either you wanted --

MR. NOBLE: What document are you referring to, sir?

REP. HYDE: -- to win the case and were willing to compromise truth or you wanted to find out what happened. Do you want to know the document?

MR. NOBLE: Please.

REP. HYDE: I'm sorry.

MR. NOBLE: Please.

MR. MAGAW: Congressman, while that's being done, let me just mention to you that since I came to ATF, we created that inspection unit, that oversight unit, and now they do review every shooting.

REP. HYDE: Are there shooting reviews?

MR. MAGAW: Every accidental --

REP. HYDE: When you were in the Secret Service, sir, did you require your agents to file a shooting review?

MR. MAGAW: That's right, and when --
REP. HYDE: Even if it might cost you winning a lawsuit?

MR. MAGAW: That's correct.

REP. HYDE: That's the right way to do it.

May I ask you, Mr. Magaw, have you instructed your people now to leave the press at home next time they go on a raid?

MR. MAGAW: Well, we've -- we certainly have talked about the press and we want to make sure that if the press are going to be there -- sometimes they find out about other -- about these circumstances from other places, and so we want to make sure that if they are there and are going to be there, that they're properly handled, in a safe spot and those kind of things.

But as far as us advertising, trying to reach out to the press, trying to give them early warning, none of that is to be done.

REP. HYDE: Good. Mr. Noble --

MR. MAGAW: May I follow up, please?

REP. HYDE: Yes, please.

MR. MAGAW: With all due respect, Mr. Chairman, I believe that there is a blurring of time frames that's occurring here. This memo is dated on the 14th of April, 1993.

REP. HYDE: Right.

MR. MAGAW: It's not talking about the fact-gathering that occurred in early March of 1993 with regard to the post-shooting review. What it's talking about is the methodology that will be used for conducting the Treasury Department's independent review. So there are two separate issues that are going on here. This memo is talking forward, in terms of how we were going to generate this document, not looking backwards in terms of how the Texas Rangers had already gathered information.

REP. HYDE: That makes me feel even less comfortable because that says DOJ doesn't want you to take any statements, doesn't want you to reach any conclusions.

I thought my government would want to find out what happened and who's at fault and who isn't. Instead it's willing to keep people in the dark, especially if they're defense counsel, to win a lawsuit. That's what that English means to me.

MR. MAGAW: Mr. Chairman, with all due respect, I think that is an unfair characterization of what was at issue here. You have two departments with separate and independent interests. One department is concerned about gathering information for purposes of preparing a prosecution.
Another department's concerned about gathering information not to use in that prosecution, but for purposes of dealing with administrative matters.

And all this memo said to me was that the Department of Justice wanted to make sure that one investigation didn't undermine the other investigation. And that is --

REP. HYDE: Oh, that isn't what it says. It says, "Don't produce and don't take any statements from witnesses." That's what it says.

MR. MAGAW: I'm telling you, with all due respect, that I worked at the Department of Justice, I know the people who were at the Department of Justice, and one of the reasons why you don't want two statements taken from the same witness by two different individuals is because in court, just like is happening in this hearing, someone will take one statement and inadvertently or innocently read into it something that perhaps that author didn't intend. And that's why you don't want multiple statements generated in a case. Purely innocent reason, sir.

REP. HYDE: Okay. I know my time is up. I just want to make one very quick statement. It's very unusual that nobody connected with this debacle made a written statement. I think that classifies as a unique event in the history of law enforcement.

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

REP.: Mr. Chairman -- (inaudible) -- had Mr. Noble seen that before?

REP. MCCOLLUM: I don't know whether he had or not. I presume his staff, somebody had. Mr. Taylor.

REP. TAYLOR: Thank you, Mr. Chairman. Let me begin with an observation. One of the people that I have the most respect for in this whole chamber is Henry Hyde. One of the guys I like the most in this whole chamber is Henry Hyde. But it does strike me a bit ironic that just last week, my friend Henry Hyde voted not to subpoena the people who wrote these infamous articles and left town for fear for their lives, and is jumping Mr. Noble's case because they didn't seek witnesses.

REP. HYDE: Sir, I'll sign a subpoena for anybody in America you want.

REP. TAYLOR: You're a good man. Thank you, sir.

REP. HYDE: You just tell me who you want. (Laughter.) Not you, John.

REP.: Okay, and if you could give me about five more votes, Mr. Hyde, we'll be --

REP. HYDE: Yours I'll take under advisement. (Laughter.)

REP.: (Inaudible.)

REP. HYDE: Well, when we get over this hearing, let's talk about it. Sure.
REP. : Okay, fine. Thank you.

REP. TAYLOR: My time's running, so Mr. Noble, let's go back to the -- everything. Let's start again. Why was the ATF -- and I'm going to give you a series of questions --

MR. NOBLE: Yes, sir.

REP. TAYLOR: -- because I have limited time. Let's refresh the American people's memory why the ATF was there in the first place. When it was all said and done, was it found that after you had the raid, did David Koresh possess a large number of illegal firearms? I happen to own a semi-automatic weapon that Mr. Schumer calls an assault weapon. I don't think it is. He thinks it is, and I voted against his bill. But we're talking about real assault weapons here, real fully automatic weapons.

MR. NOBLE: I believe the conservative estimate by the FBI agent was 48 machine guns and multiple grenades.

REP. TAYLOR: The third question is, and it's been asked over and over, did your review show that any shots were fired from the three helicopters on loan from the Texas National Guard?

MR. NOBLE: Absolutely, unequivocally not.

REP. TAYLOR: Nowhere along the line has that been shown?

MR. NOBLE: Nowhere along the line.

REP. TAYLOR: Was Mr. Koresh being looked into because he happened to be a religious man or because there was talk of child abuse, because there was talk of illegal weapons, because there was talk of a hit list being compiled by him against former members who were talking to the police and to the press, because he was holding people against their will -- in the case of one woman, for at least three months? Or did the ATF literally throw a dart at the map of the United States of America and say let's go find a country preacher somewhere to go harass?

MR. NOBLE: He was being investigated because he was believed to be amassing an arsenal of machine guns and grenades in violation of federal criminal law, over which ATF has jurisdiction.

REP. TAYLOR: Mr. Noble, in the review of all of this -- because we're seeing a lot of nitpicking out there, and maybe that's how some people enjoy spending their time -- have you seen anything illegal? Have you seen anything immoral? And as a matter of fact, have you seen anything at all, and I'm going to open this to Mr. Magaw as well, that would justify the death of four ATF agents, the wounding of 20 more, by David Koresh and his followers when they ambushed the ATF?

Do you see anything at all that justifies the murder of those ATF agents or the shooting of those 20 others?
MR. NOBLE: Nothing that I could conceive of justifies David Koresh's ordering his followers to lie in wait with machine guns and hand grenades in order to murder and wound ATF agents.

REP. TAYLOR: Mr. Noble, I'm going to ask one last question, and it is the question that's now being turned around: Should we have had these hearings?

I'm personally glad we had the hearings. I think considering that we're spending a million dollars every two minutes on the interest on the national debt and the nation's got $150-billion-a-year trade deficit, that there are certainly other big fish out there that we need to go after. But four good men did die; 20 more men good men were wounded. But hasn't it given the ATF an opportunity to talk about in some instances some things that need to be said? And also, in fairness to those four agents who died, don't you think it would make sense to subpoena the two reporters who left town after the writing the series for fear for their lives, and then --

MR. NOBLE: You had me nodding until you got me involved in the subpoena question.

REP. TAYLOR: Okay. (Laughter.) And don't you think it would be fair to have the woman who said she was held for three months against her will and the woman who says Koresh was compiling a hit list? I mean, my goodness, we're talking about the deaths of four good people, one of whom volunteered to serve in Desert Storm.

MR. NOBLE: I respectfully would like to answer the first part of your question with regard to the importance of these hearings. I think they have been important because they reflect that a department of this government in the executive branch consisting of these brave and fine career law enforcement officials can take an honest, hard look at itself and report back what is painful to many comprehensively and candidly. And I think that will help to restore confidence of the American people in those of us who occupy positions of trust.

MR. MAGAW: What you have also done, sir, is that you have brought the attention of every law enforcement officer in this country, however small or however large their departments are, to look at their procedures, look at their operations, look at how they're doing business and how they're planning.

And ATF is trying to be helpful with that, as painful as it is for us to share the examples learned and the mistakes made. We are doing that at the requests of police departments all over the country, and most of you have seen and heard from Mr. Buford, and he is doing a lot of that as he travels around the country. It's good for him therapy-wise, and it's very good for these departments, and we will continue to do that.

REP. TAYLOR: Thank you, sir, and reclaiming my time, Mr. Chairman, although I was not sworn in like the other witnesses, the nice things I said about Henry Hyde are really me. (Laughter.)

REP. MCCOLLUM: That's fair enough. You don't have to say that under oath, Mr. Taylor. We believe you.

At this time, I yield five minutes to Mr. Clinger.
REP. CLINGER: Thank you very much, Mr. Chairman. I would just like -- before yielding my time, I just would like to comment that I think we're all here trying to establish a record that will restore confidence in law enforcement in this country, but I would also say that I think one of the purposes is that we don't want to in any way downplay what went on. I mean, I don't think we want a -- I wouldn't use the word cover-up, but certainly the idea that if there is any effort here to try to obfuscate or make it appear that mistakes were not as serious and as horrendous as they were, that would not be a good service to us. At this point, I'd like to yield 2-1/2 [minutes] of my time to the gentleman from New Hampshire and 2-1/2 to the gentleman from Florida, Mr. McCollum.

REP. : Mr. Noble, I believe there was a first attempt during the initial days after the raid by the Justice Department to elevate the criminal cases above getting at the truth and to cover up evidence that may have led to the innocence of particular individuals, such as Mr. Evans' client. Now, isn't that true, that during your review, you had to operate in a constant atmosphere created by the Justice Department, and particularly by Mr. Webb Hubbell, that the Treasury review not produce any information that would hurt the all-important criminal cases?

MR. NOBLE: That is 100 percent false. There was no effort made by the Justice Department to cover anything up. Within days of the raid, the Texas Rangers had taken 85 written statements of ATF agents and others involved in the raid. And as I said before and I will continue to say, I have the utmost respect for those prosecutors at the Justice Department. I think they do a very, very important job and they do it quite well.

REP. : I'd like the clerk to pass out document marked No. 6, and I direct your attention to the last paragraph on the first page, and I quote: "I'm raising this with you again today because at this morning's with Justice, we heard that Webb Hubbell, associate attorney general designee, is so concerned about the impact of our review on the criminal case that he planned to raise it directly with the president. "Unquote.

Mr. Noble, I have already given you a major example of possible obstruction of justice in the conflicting affidavits by ATF agents related to prosecution of Mr. Allison. Is this the kind of thing that the Justice Department, and particularly Mr. Hubbell, did not want covered in the Treasury review that might hurt the criminal cases?

MR. NOBLE: Absolutely not. The Treasury Department conducted over 500 interviews of people who have knowledge with regard to the occurrences near Waco and leading up to Waco on February 28, 1993. There was no -- no intention by anyone in the Justice Department or any other department to do anything other than make sure that we allow the criminal process to run its course and the criminal case, and also let's make sure that the Treasury Department and the Justice Department don't collide as they conduct reviews with different objectives.

REP. : What was -- you say you feel that's what Hubbell was talking about?

MR. NOBLE: I served as the chief of staff and deputy assistant attorney general in the Criminal Division in the Justice Department under President Bush. And I know that if I were in that position, I would have had the same concern as any prosecutor who is involved in overseeing prosecutions or
investigations.

REP. : I yield to the chairman, Mr. McCollum.

REP. MCCOLLUM: I thank you very much on the remainder of Mr. Clinger's time, and for his yielding. I want to ask you, Mr. Noble, about a comment you made on the "60 Minutes" program on May the 14th of this year in which you were asked about the Branch Davidians. And your answer -- in describing them, you said, and I quote: "This was not a religious group. This was a group of criminals engaged in serious violations of federal criminal laws."

You did not mean by that answer to suggest that the many women and children who were part of that Branch Davidian group were criminals in violation of serious federal laws, did you?

MR. NOBLE: I meant exactly what I said, that though they might call it religion, there is no protection for any group that attempts or in fact does manufacture machine guns and grenades in this country in violation of federal criminal law.

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REP. MCCOLLUM: But did you mean that the children and the women were engaged in that manufacture?

MR. NOBLE: I don't believe I said the women and children, but I will tell you, sir --

REP. MCCOLLUM: You didn't say --

MR. NOBLE: May I finish?

REP. MCCOLLUM: Sure.

MR. NOBLE: I will tell you that we did uncover at least one woman who used a firearm, and we have female agents who go out every day. So the fact that there are women doesn't mean that I don't believe that they pose a potential threat to law enforcement officers.

REP. MCCOLLUM: Well, I don't think you would believe, nor do I believe that Kiri Jewell was a threat. I don't think the children were. And my only point in making it isn't that there wasn't a problem there. There was, clearly. It is just that you made a very broad, sweeping statement that in my judgment over-encompassed the people in that compound, some of whom were very innocent of criminal violations.

Let me ask you one last question. Before today's --

MR. NOBLE: I would simply say, Mr. Chairman, that that's what made David Koresh so dangerous is that he would use children like Kiri Jewell or other children in order to protect himself from law enforcement officers executing lawful search and arrest warrants. Those are the most dangerous criminals.
REP. MCCOLLUM: Well, they may -- it may be that Mr. Koresh was a dangerous criminal, but the fact --

MR. NOBLE: He and his followers. Mr. Koresh wasn't the only person --

REP. MCCOLLUM: -- the fact remains that all the women and children there were not dangerous criminals. And I'm sure you don't disagree with that when you reflect on it. Let me ask you one question, left on the remaining time, though. Were you aware before today -- or I shouldn't say before today -- before these hearings of Mrs. Spark's, the Child Protective Service representative who testified before us last week from down there in Waco, were you aware before these hearings that she had advised against -- ATF against the raid, that she had advised them, as she testified, that David Koresh, in her judgment, should have been taken outside the compound rather than having an entry, that she was afraid that if he were not taken outside, that there would be a calamity, and if he were taken outside, because of her long association with this, he would probably be cut off and the group would not commit suicide because of the nature of the religious group, of the nature of their belief in him as a messiah, in the nature of the belief that on the key day that was to arrive in Armageddon, that they would all have to go up in flames together? Were you aware of that before these hearings?

MR. NOBLE: I believe the most -- I believe I have it right. I believe that Joyce Sparks was the person who reported that David Koresh had said on April 30th -- I might have the date wrong, April 30, 1992 -- in any event, the day following the L. A. riots, that when he revealed himself, the L. A. riots would pale in comparison. The detail that you went through just now, sir, I don't have a very clear recollection right now, but I'll think about it throughout this hearing. Thank you.

REP. MCCOLLUM: Thank you. That was just my point. I didn't think it was because it wasn't in the report.

But in any event, Ms. Lofgren, would you -- you have five minutes.

REP. LOFGREN: Thank you, Mr. Chairman. Let me give 10 seconds to Mr. Scott, who has a quick question.

REP. SCOTT: Thank you. Mr. Noble, when you were responding to the gentleman from Illinois about getting involved in the investigation, you mentioned specifically not developing Brady material. It looked like it was the first time you had seen that. I'd like you to review that and get a little background on it and then report back to the committee of what your reaction is after you've had an opportunity to review it.

MR. NOBLE: I will do that.

REP. SCOTT: Thank you.

REP. LOFGREN: Thank you. Thank you. Now, I do have some questions, but there's been a lot of discussion and questioning about religion and cults and who broke the law and who didn't. And I think the First Amendment allows people to believe whatever they want, and that's important. It
made this country great. But when those beliefs lead you to do things that violate the criminal law, then that's where there becomes a problem. And you can believe that it's good for 11-year-old girls to be raped, and that's not against the law to believe that, but when you rape those 11-year-olds, then it is. And I just think it's important to say that. And I would add further that any parent, and I would include mothers as well as fathers, who give up their 12-year-old daughters to become rape victims to their messiah, not only has done something I think very wrong, but has also committed a crime. Having said that, I'm very interested, Mr. Magaw, about your recommendations on page 9 of your testimony. There were a lot of things wrong and some things right in this whole investigation. We had Agent Aguilera and Rodriguez had developed lots of information, but it's not clear to me that they -- they were trained as police officers, and from what I can see of them, they're tough guys and took their work seriously and worked hard at it, but they weren't trained to really understand the cult nature of what they were dealing with. And they weren't investigating it because it was a cult, but because of the violations of the firearms laws.

We had information dribbling in from the -- Ms. Sparks, the CPS worker, former cult members who had left, the DA's office, I guess had information. You know, what I'm wondering is how are we going to organize ourselves in the future to assimilate this information and be able to evaluate it with some expertise? I mean, people have mentioned that Ms. Sparks had the opinion that if Koresh had been arrested off-site, that would have been the end of it. Agent Rodriguez reached a contrary conclusion. I think both individuals cared about their job, worked hard, knew a lot, but neither one of them was really trained to sort through that.

How are we developing a structure so that that information can actually get to people who have access to expertise to evaluate it from the non-law-enforcement point of view?

MR. MAGAW: Prior to the Waco investigation, ATF did not have an intelligence division or intelligence unit. They reached out throughout the field. Now, when I talk intelligence, I don't mean intelligence like the CIA or the Secret Service would have in terms of trying to judge the risk to the president. What I'm talking about is operational intelligence.

First of all, we should have identified it. Now we have evidence that's working on a cult, so that intelligence unit now, it's their responsibility to go out and find the experts in the field and to bring them forward to give us all the advice that we can. And so now within each one of our divisions is a person who is responsible for operational and functional intelligence as it applies only to ATF functions. If we receive intelligence that involves another bureau, then we would pass it to them.

REP. LOFGREN: Let me ask you another question along that -- you know, just sort of reading through the report and listening these days of testimony, there were state law violations, there was child abuse really that reached the criminal, there was rape going on within the compound, there was kidnapping. There was kidnapping across state lines of a child for the purpose of sexual abuse. There were arms violations, and there was at least some allegation of drug violations.

Noting that you would have state violations, FBI jurisdiction as well as ATF, how -- is there a way to do a collaborative, to -- would there require a change in federal law, or for that matter, state laws, to do a team approach to go after all the violations? I know the focus of this whole thing for ATF was arms, which is proper, and that's your jurisdiction. But it has occurred to me as I listened that
we might have been better off had we had the opportunity to have a consortium of law enforcement officials with various jurisdictions to go after the whole ball of wax? Do you have an opinion on that?

MR. MAGAW: That's a very valid idea. It's one that we work with every day in terms of task forces. Whenever you see ATF function, it will almost never be alone. It will be with state and county and city police officers working. And so that we do trade that information, and we do keep it together. And many times, when we arrest somebody on a gun violation, a lot of times, it will go to state court; it will go to the state system, as opposed to federal. So we do -- and that's one of the functions of this intelligence unit and the task forces, to make sure all of that kind of information is not only coordinated on a local level, but wherever else it might apply throughout the country.

We just finished a very large gun trafficking case which took a lot of intelligence work. It came out of the South and went all the way across the country to California and north up to New York. So that kind of thing is really taking place now because -- not that they didn't know to do it before, they just didn't have the vehicle to do it. Now they have the vehicle, and they also have the training and are getting more and more as we go along.

REP. MCCOLLUM: Ms. Lofgren, your time has expired. I yield five minutes to Mr. Chabot.

REP. CHABOT: Thank you, Mr. Chairman. Mr. Noble, Mr. Black testified today that no one outside of ATF had been involved in the rehiring of Sarabyn and Chojnacki. "The Legal Times" has suggested that you were involved to some extent in that decision. Were you involved in that rehiring decision? And if so, why? Or were you not? And if not, why not?

MR. NOBLE: I was not involved in the -- can I just answer? I don't know if I can do -- (inaudible). Let me try to tell you what my involvement was.

REP. CHABOT: Sure.

MR. NOBLE: I was -- I wanted to make sure that whatever happened to Mr. Chojnacki and Mr. Sarabyn was within a range of discretion that I would accept from a bureau director. So, for example, if no action were taken against Mr. Chojnacki and Sarabyn, I would think that that would be inappropriate. So I was kept informed of what was going on. And I think for that reason, I would say I was involved. But in terms of the decision-making process, Director Magaw set up a decision-making process. Perhaps he should answer that.

REP. CHABOT: So you didn't make the decision, but you knew what was going on? You were aware of the --

MR. NOBLE: Towards the end, at some point -- at some point, sir, I became aware of what was going on, that's correct.

REP. CHABOT: Thank you. I believe Mr. Black this morning said that there wasn't anybody involved at that level.
MR. NOBLE: I'm being generous in saying knowing is being involved. Maybe Mr. Black thinks I wasn't involved because I didn't interfere.

REP. CHABOT: Do you talk to -- you talked to other administration people about it, about the hiring?

MR. NOBLE: No. No, I talked to my staff about it.

REP. CHABOT: You talked to -- okay, you talked to your staff about the hiring.

All right. Also, you were directly involved in the decision to permit the raid to go forward, is that correct?

MR. NOBLE: Again, I want to answer all these questions about my role as though if I were the assistant secretary for enforcement, what I would have done. I don't want to nitpick about whether I was a consultant or not a consultant, but I gave advice that was followed that led to the raid going forward. That I accept responsibility for. Whether I -- whether it was de jure or de facto, I'm not drawing a distinction between that.

REP. CHABOT: You were notified of the plan on February 26th, which was two days prior to the raid and basically knew about it at that point, is that right?

MR. NOBLE: That's 100 percent correct.

REP. CHABOT: Okay. And after concerns were expressed about the wisdom of such a massive undertaking, you and Mr. Simpson spoke with Mr. Higgins, and he told you that the raid would not go forward if things did not look right. Is that correct?

MR. NOBLE: After Mr. Simpson and others and I discussed the situation, reviewed the memo, Mr. Simpson called Mr. Higgins and told Mr. Higgins that he would not authorize a raid to proceed. Thereafter, as I tried to say earlier, Mr. Higgins called back with additional information on Friday and then again on Saturday, and the raid was permitted to proceed. That's correct, sir.

REP. CHABOT: Okay. Well, I guess this is my question. Given that you were one of the very few top people at the Treasury Department to have been involved in the process of signing off on the raid, wouldn't it have been better for someone who hadn't been as involved in the underlying controversy to conduct this particular report, somebody who would have been more independent than yourself?

MR. NOBLE: I believe the report speaks for itself. It is comprehensive, it is candid, it is thorough, it's been reviewed by three independent reviewers.

REP. CHABOT: I understand that, but I don't think that answers my question.

MR. NOBLE: May I finish, please, sir? You've asked me a question. May I please finish? Three independent reviewers --REP. CHABOT: I didn't ask you that question. What I asked you is, don't
you think there would have been somebody --

MR. NOBLE: Yes, you did. You said, wouldn't it have been better for someone other than me to have generated this report? And I'm explaining to you why it would not have been better.

REP. CHABOT: So your answer is no?

MR. NOBLE: My answer is that the independent reviewers, the inspector general and others who have looked at this report say that it is a comprehensive, candid and thorough account of what happened, and I have not heard anyone point to any part of this report, other than the words "70 percent," and say what is wrong and what is not accurate.

REP. CHABOT: Okay. Also, Mr. Noble, your report fails to cover one critical aspect of the disastrous decision to go forward with the raid even though the element of surprise was known to be lost. And that's who in Washington knew that the raid was suddenly being moved up in time. The report doesn't deal with that at all.

Do you know if anybody in Washington knew that the report -- that the report was being moved up.

REP.: The raid.

REP. CHABOT: The raid. I'm sorry, not the report, but the raid.

MR. NOBLE: From May -- from March 1st to February 28th?

REP. CHABOT: No, in time. From -- well, it was supposed to be 10 o'clock in the morning and it got moved up once the element of surprise apparently had been lost.

MR. NOBLE: It's my understanding that no one was told at ATF, and I know no one was told at main Treasury, that Robert Rodriguez had come out of the compound and told various supervisors that Koresh knew ATF and, quote, "the National Guard," unquote were coming. So I'm not sure I understand your question, sir.

REP. CHABOT: All right, let me follow up with one final question, because I'm almost out of time here. Your report has some very harsh words for some of the line commanders that were actually out in the field, but it seems to have almost criticism at all for top Treasury officials who allowed a very poorly planned raid to go forward on the basis of very little information.

We've been told that the secretary of the Treasury had never met the director of the ATF prior to the raid, that those high up in Treasury who had doubts about the wisdom of the raid let it go forward without ever even asking to see a tactical raid plan, and that in fact there was no contingency planning. Isn't it true, notwithstanding your report, that some of the blame for the government's mistakes lies with Treasury officials and not just with the ATF folks that were involved?

MR. NOBLE: The Treasury report makes it very clear that responsibility for the raid lies with the Treasury Department, ATF, ATF senior managers, ATF raid commanders. The Treasury report
makes it absolutely clear that if Treasury's directive had been followed, the raid would not have
gone forward.

So I would submit to you, sir, and anyone else who thinks about this honestly, that you ought to
look at what the career Treasury officials did on February 26th, the day the World Trade Center
bombing occurred. And I would say they acted properly and honorably. And I would just like
someone to tell me what should have happened, what else should have happened, what else these
two individuals could have done but tell Steve Higgins they had concerns, stop the raid, and once
their reason for concerns evaporated, to let it go forward and trust that the raid commanders would
know that a raid premised on surprise ought not to go forward once 45 minutes elapsed, sir. Thank
you.

REP. CHABOT: That's the purpose of this hearing, to find out those answers to those questions and
make sure this never happens again.

REP. MCCOLLUM: Mr. Chabot, your time has expired. We now have a series of roll call votes in
progress on the floor. I think there are four of them. We're going to take a recess until five minutes
after the conclusion of the last of this series of votes. The subcommittees are in recess.

(Recess.)

REP. MCCOLLUM: These joint hearings of the two subcommittees on Waco will come to order.
When we recessed, it was the time for Ms. Slaughter to have her five minutes, and I give you the
five minutes that you now have, Ms. Slaughter.

REP. SLAUGHTER: Thank you, Mr. Chairman. I want to say for the record that I have
learned something new at these hearings, and it's been reinforced over and over, that until the new
administration came in under Secretary Bentsen, you made an enormous amount of changes in the
way the ATF will work and the reporting system that it's going to have. And I thank you for it. I
think we'll all be better for it.

Numbers of things that we've heard have been troubling, and one thing that I want to say is that I
don't need to be reinforced in my admiration for law enforcement. As I said the other
day, it still amazes me that people will go -- no matter how that thing was planned or whether it was a botch or
not, those men were willing to walk up to that door and get killed. Robert Rodriguez's pain was
apparent to me, sitting in this chair.

And as far as Ms. Sparks was concerned, I spent a good deal of time talking with her, and my
recollection of her testimony was that she had been asked by the FBI, I believe, to be prepared to go
in and take -- have clothing for children in case of the use of CS gas. My -- that's the only comment
I recall that she had with any of the authorities, and that they told her not even to worry about it.
And indeed, the weekend of the raid, she was away. She was out of town, she said. And when she
saw the ladders go up against the house, she thought the children would be killed.

She and I discussed at some length Mr. Koresh. She seemed to have much more faith in him than I
did that he would go to jail quietly and then his followers would just give up. I didn't think that
followed any of his preachings. And she had said she had only had three contacts, I believe, with him on the compound.

But one of the things that I do want to talk about is the new regulations. I think that's terribly important. I hope I'm not stretching it to say, the reason those people died and the others were shot is because it was tipped off, and it was tipped off because a television man told a postman. And the television man was told by a woman who worked for the ambulance company that the ATF had hired three ambulances from. And then the district director, Mr. Royster, I believe his name was, had given directions to his PR person that he wanted a single person notified that something wonderful was going to happen, or might happen, and this was to be done on Friday evening, to notify. He wanted this one person called when it happened.

And it does make me question whether or not Mr. Royster -- and you may be able to answer this for me -- Mr. Royster had talked it over with the man and said, "You know, something really big is going to happen in Waco, and when it does, I'll tell you first." And another point that keeps sticking in my mind here is the newspaper articles. Everybody was afraid of what was going to come out in those articles. And it makes me question again, had somebody talked to the reporters that -- what was going to be going on?

So whatever you do to change those regulations and what happened, it seems to me, Mr. Magaw, one of the most important things that you can do is get some control over what I think I would call loose lips. I'm surprised that your regional director thought that one of the most important things he was doing on Friday was making sure that the proper person would be notified at a television station.

Would you give me your views on what you've done to change what to me -- and do you agree with me that the absolute fact is that those people were killed because that raid was tipped, and it was tipped because people talked?

MR. MAGAW: And if it wasn't tipped in the way it was, it should have been tipped in 15 or 20 other ways.

REP. SLAUGHTER: Too much talking.

MR. MAGAW: This organization, ATF, one of the first things I realized, that they really never -- did not pay much attention to operational security, and they didn't think about it. It's not that they didn't want to do it. They didn't think about operational security.

So we have now a person on assignment from an organization that does very well in operational security, and they're going to spend six months with us. I have a new person that I have just assigned to that, and it'll be that person's full-time responsibilities to oversee operational security for this entire bureau.

One of the first things we have to do, we're in the process of doing now, is sensitize the individuals, cause the individuals to think about it, from what piece of paper they throw in the waste basket as opposed to the burn bag, and what they say to who, and even in a restaurant or other places, about
operational security, and only as it applies to ATF. We're not getting into any other business in terms of operational security.

REP. SLAUGHTER: In the case of Mr. Rodriguez, it wasn't clear to me, and maybe you can answer this as well. He was going to be sent into the compound on Saturday and Sunday. What method of escape was he to have on Sunday if the raid happened?

MR. MAGAW: That's probably the most -- one of the most frightening aspects of the review. Mr. Rodriguez was sent in on Saturday and again on Sunday despite his being worried about the unnecessary attention that would draw to him and despite his being concerned about his safety. Each time he went into the compound, he went in at risk of serious bodily injury or death to himself. So there was really no plan for him except as he was -- as he stated and it's reported in our review, what he thought about was jumping out of the window and just running for his life when David Koresh first came back into the room.

REP. SLAUGHTER: Do you have any reason, Mr. Noble, from Mrs. Sparks, is there any difference in what I had said that her conversation was really with the FBI and not with ATF at all?

MR. NOBLE: I don't have a specific recollection so I would defer to you, ma'am.

REP. SLAUGHTER: Thank you very much. I see my time is just about up. Thank you, Mr. Chairman.

REP. MCCOLLUM: Thank you, Ms. Slaughter. Next, Mr. Mica, you're given five minutes.

REP. MICA: Thank you, Mr. Chairman. Mr. Noble, welcome. You're the one that produced this document, I guess, and --

MR. NOBLE: I will take -- I will take responsibility for whatever is wrong in it, but I will give credit for whatever is right to the people sitting behind me.

REP. MICA: What's interesting in -- on page 7 is an overview, and it says -- I said this before, but the investigation 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.

Do you concur with that conclusion?

MR. NOBLE: I do, sir.

REP. MICA: And Mr. Noble, you agreed with those accusations just now, but you said earlier that you didn't participate in the -- directly involved in the settlement process for rehiring Mr. Sarabyn and Mr. Chojnacki, is that correct?

MR. NOBLE: That's correct. The role I played was to make sure that whatever decision was made
with regard to Mr. Chojnacki and Mr. Sarabyn was consistent with what was --

REP. MICA: And you also said that you --

MR. NOBLE: May I finish, please, sir? What --REP. MICA: Well, just -- I don't have much time, but you also --

MR. NOBLE: Fine.

REP. MICA: Just a clarification. You also never acted -- said you never acted as a negotiator and spoke primarily to staff, or only to staff, I think were the words. And you never called anyone outside to discuss the settlement negotiations, is that correct?

MR. NOBLE: That is not the way I recall what I said, sir.

REP. MICA: Well, you again said that this is the basis on which these people were fired, and yet they --

MR. NOBLE: What is the basis, sir?

REP. MICA: This -- your report and what I read.

MR. NOBLE: I never said that. I never said that, sir.

REP. MICA: So what was the basis on which they were fired, Mr. Sarabyn?

MR. NOBLE: This report --

REP. MICA: Well --

MR. NOBLE: This report stands on the following, and this is what this report was supposed to find.

REP. MICA: Well, I don't want to get into the --

MR. NOBLE: On page 182 --

REP. MICA: Are the reasons for firing? Page 182?

MR. NOBLE: On page 182 are the concerns that this report articulated --

REP. MICA: But as far as --

MR. NOBLE: -- which I would like permission to finish, please, sir.

REP. MICA: No, sir.
MR. NOBLE: Well, if you don't want me to answer your questions, that's fine.

REP. MICA: Again, I just want your reference, and I'll look that up and the other members can. But I've got some other questions that I need to get into. I understand that you said that you did not directly participate in the negotiations.

MR. NOBLE: The negotiations?

REP. MICA: To rehire Sarabyn and Chojnacki.

MR. NOBLE: The negotiations concerning --

REP. MICA: Yes, the rehiring decisions. When Mr. Chabot asked you those questions.

MR. NOBLE: The negotiations concerning the hiring of Mr. Sarabyn and Mr. Chojnacki?

REP. MICA: Rehiring, rehiring.

MR. NOBLE: Yes, sir. Thank you.

REP. MICA: Is that correct, you did not?

MR. NOBLE: I'm trying to answer the question, and each time I try, I'm interrupted.

REP. MICA: Did you participate as a negotiator in the rehiring settlement with Mr. Chojnacki and Mr. Sarabyn?

MR. NOBLE: Mr. Chojnacki and Mr. Sarabyn had lawyers who consulted and negotiated with the lawyers from the Treasury Department's general counsel's office assigned to ATF.

REP. MICA: And you did not participate in the negotiations?

MR. NOBLE: The negotiations were between the lawyers, that's correct.

REP. MICA: Well, I received a letter from the sister of Mr. Sarabyn, who said that in fact, "I talked to Mr. Noble on November 8th. He discussed the possibility of an MSPB settlement. We had a second conversation. During the second conversation, he discussed MSPB settlement. During this conversation he said I could tell Chuck and his attorney about the conversation. I did so. It is my understanding that Chuck then told Mr. Gardiner (sp), his attorney, who immediately contacted Mr. Lopez, the Treasury attorney."

Were you negotiating with the sister of Mr. Sarabyn on the settlement?

MR. NOBLE: Sir, Mr. Sarabyn's sister called me because a retired ATF agent called her and said that I sounded like a reasonable person to speak to after the agent had left a message saying --
REP. MICA: Did you --

MR. NOBLE: May I --

REP. MICA: You did speak with her on three occasions, sir? Did you?

MR. NOBLE: I'm trying to -- sir, with all due respect, I'm trying --

REP. MICA: Did you speak with her on three occasions?

MR. NOBLE: Sir, with all due --

REP. MICA: Sir, did you speak with her on three occasions? Yes or no.

REP. MCCOLLUM: You need to allow the witness to answer, Mr. Mica. If he can complete his first answer, then you can ask him the second one. And I'll allow both answers, but he has not finished his first answer. I think that's the problem. Mr. Noble, would you please finish?

MR. NOBLE: Thank you. I spoke with Chuck Sarabyn's sister.

REP. MICA: On how many occasions?

MR. NOBLE: Two or three occasions. I did not know and am surprised to find out that Chuck Sarabyn's sister was his negotiator. I thought he had hired counsel.

REP. MICA: So you were negotiating with his sister on the terms of the settlement and the rehiring?

MR. NOBLE: Sir, that is a mischaracterization of what I said.

REP. MICA: Mr. Noble, did Mr. Hartnett come to you at any time after Mr. Chojnacki and Mr. Sarabyn had been fired and say that it was his view that he -- if these agents were not rehired, their truthful story and the fact that it had been covered up, their truthful story would eventually come out?

MR. NOBLE: Mr. Hartnett never made any statement like that to me, nor have I heard Mr. Sarabyn or Mr. Chojnacki say anything during these hearings or in any MSPB hearing or any other context that suggests that anything in this report is untrue, that there is anything to cover up, that there is anything more they have to add. You have had them testify. What have they said that's incorrect about this report?

REP. MICA: Mr. Noble, you testified earlier when questioned by Mr. Cabot, my colleague here, that no one in Washington was told that the element of surprised was compromised on the morning of the raid. I'd like the clerk to distribute --

MR. NOBLE: That is not what I said, sir.

MR. NOBLE: Sir, that is not what I said. What I said was, I was certain that no one in main Treasury had been made aware of it. I had no information with regard to whether anyone in ATF --

REP. MICA: Well, in document 21 --

MR. NOBLE: -- had been made aware of it.

REP. MICA: All right. In document 21, if you'll look at it, sir, when I read this, it sounds to me like someone in Washington did know, and that Mr. Cavanaugh, who could abort the raid, was on the phone with him. Why didn't Mr. Avida (sp) call off the raid and why didn't Mr. Cavanaugh call off the raid?

MR. NOBLE: I have not heard any information from any witness here or at any other time saying that there was someone in Washington who was notified of that raid and who could have called it off who didn't call it off. This is news to me.

REP. MICA: Mr. Noble, why --

REP. MCCOLLUM: Mr. Mica, your --

REP. MICA: -- isn't this phone call that I've presented, the document we've presented, some information about that in your report?

MR. NOBLE: Sir, nothing you said in the questioning suggests to me that the report should have been changed in any way. Thank you.

REP. MCCOLLUM: Mr. Mica, your time is up. Ms. Jackson Lee, I believe your time is available, and you are recognized for five minutes.

REP. LEE: Mr. Chairman, thank you very much. And I -- for fear of being redundant, I will offer to acknowledge, as I have made a commitment to do, that lives were lost and this was a tragedy. And I have not heard any response, Mr. Noble, from you to suggest you did not think that this was in fact a tragedy, an extreme loss of life.

MR. NOBLE: Very unfortunate, and it saddens me to this day.

REP. LEE: Let me, if I might, just pursue a line of questioning with you. One, to acknowledge your indignation for a variety of things that may have been said or you may have read. But if I can have a yes or no, and you partly answered it. It is not an indignation or a lack of respect for the loss of lives, whether they be ATF -- and you've already made that clear -- but the Branch Davidians. Is that my understanding?
MR. NOBLE: Yes.

REP. LEE: I also note that during this period of time, you've received several promotions, or at least one, where you're now undersecretary for enforcement. In the report that you so noted and allowed us to see the numbers of individuals involved, there was seemingly a suggestion and maybe even a statement on the record about cover-up. Was your introduction of these individuals to inform us of the wide number of persons who were part of this report?

MR. NOBLE: That's correct.

REP. LEE: And these persons, were all of them under your jurisdiction or at least in a position to be, if you will, subjugated by you and told what to do? Or were they allowed to fully investigate and to come up with independent assumptions and conclusions, or were you actively involved in their determinations?

MR. NOBLE: They were permitted to investigate this matter thoroughly and comprehensively, which is what they did.

REP. LEE: It also has been noted in the record, and I'd like to have a clarification or at least an explanation by you, that at least, even though there was not a coordinated coordination in effect, there was a point where you did say, "Hold up," and that was the day before your -- at least, either the day of or the day before your dinner phone call that you got, but there was a point, I believe, where you asked some questions about whether we -- and this was in the midst of the Trade Center tragedy as well. Is that my understanding?

MR. NOBLE: That's correct.

REP. LEE: Did you actually voice some concerns? Can you tell me your words, please, if you can recollect them -- to the best of your recollection?

MR. NOBLE: I have a clear recollection of telling John Simpson that I wasn't the acting assistant secretary for enforcement, but if I were the acting assistant secretary for enforcement, I would not let the raid proceed based on the limited amount of information that he had before him.

REP. LEE: And you likewise had a limited amount of information?

MR. NOBLE: That's correct.

REP. LEE: And this was about the first -- this period of time was about the first time it had come to your attention?

MR. NOBLE: This was the first time it had come to my attention, the day of February 26, 1993, late afternoon or early evening.

REP. LEE: And did you subsequently learn that -- I assume you came on board sometime the month
of January or February to this present department?

MR. NOBLE: I worked as a consultant Wednesday afternoons through Friday afternoons from January 25th through April 29th, I believe. (Inaudible.)

REP. LEE: In the final conclusion of the reviewing, did you come to understand that this Waco investigation had in fact proceeded January 1993, and in fact was going on during the previous administration?

MR. NOBLE: During our investigation, we learned that it was begun on June 20, 1992, I believe.

REP. LEE: So when this call came in during your dinner, you had still had reservations. But what then was the reinforcement, or at least -- I shouldn't say reinforcement -- the data that you got that caused you to make the remarks that you did? And I don't want to put words in your mouth as to what you said.

MR. NOBLE: The director of ATF, a person whom I knew had occupied that position for 10 or 11 years, had personally investigated the matter, had personally been in contact with whomever, either the associate director for law enforcement or the field commanders in Waco, and had gotten assurances that they were sending an undercover agent into the compound, and if anything looked unusual, if Koresh had learned about the raid or anything looked unusual at all, that they were not going to go forward with the raid, and he had made that clear to them.

REP. LEE: So you heard that there was a backup of not going forward from the person who should be in charge and I assume those under him? You heard the signal or the words: If -- if Koresh was notified or had knowledge of, would not go forward; if there was any sign of publicity or any element that would remove the surprise or the secrecy or whatever, would not go forward. Is that what you heard?

MR. NOBLE: That's correct. If Koresh acted suspiciously or altered the plan that was the basis for their 10 o'clock in the morning raid, that it would be called off.

REP. LEE: And most of all, did you hear that it would be a setting where the women and children would be separated and -- let me not put words in your mouth, so you can correct me if I'm not recounting it correctly -- that the guns would be locked up and that Koresh would be separated or the men would be separated? Did you hear that as well?

MR. NOBLE: That's correct.

REP. LEE: You have had a very diverse background. I understand you were a law professor for a period of time.

MR. NOBLE: I hope one day to become a law professor again.

REP. LEE: It's an excellent profession. I have a spouse that does that quite well. What did you teach?
MR. NOBLE: Evidence, federal criminal law, criminal law, and lawyering.

REP. LEE: While you were in that setting, would it have been your style to teach incorrect practice?

MR. NOBLE: I hope not.

REP. LEE: And so, even though you were not at the cutting edge of the decision, certainly as now the new undersecretary for enforcement and your previous position, would you have been concerned about any sort of indicia in the search warrant that would have made it a search warrant that would have failed in court? Would you have been concerned about that?

MR. NOBLE: Absolutely.

REP. LEE: And you have the experience then, based upon your teaching credentials, to at least be noted about the failings of any search warrant that would not have made muster in court?

MR. NOBLE: And I was a line prosecutor for some years.

REP. LEE: Thank you very much.

REP. MCCOLLUM: Your time has expired. Mr. Schiff, you are recognized for five minutes.

REP. SCHIFF: Thank you, Mr. Chairman. Mr. Noble, I think first that -- with respect, contrary to your opening statement, the issue of the military has not been taken off of the table. I just want to say I believe that the posse comitatus act may not have been violated, but I think military policy was very seriously violated.

Second of all, you said here that if you were -- and I don't want to misquote you certainly -- I believe you said if I were Assistant Secretary for Enforcement of the Treasury Department I would have -- I knew enough to have called off the raid. Did I hear that correctly?

MR. NOBLE: Very close. I believe I said that --

REP. SCHIFF: Close enough for this purpose?

MR. NOBLE: I believe I said that if I were the Acting Assistant Secretary for Enforcement, which was the person whom I was advising, I would not have let the raid go forward.

REP. SCHIFF: Well who was the Acting Assistant Secretary?

MR. NOBLE: John Simpson.

REP. SCHIFF: Pardon?

MR. NOBLE: John Simpson.
REP. SCHIFF: And he had the authority to call off the raid?

MR. NOBLE: We believed and acted as though he had the authority to call off the raid.

REP. SCHIFF: And he did not do so.

MR. NOBLE: He called off the raid on the evening of February 26th. He told Steve Higgins that in light of the information that he had available before him, and certain concerns that were raised, that Steve Higgins was not authorized to proceed with the raid.

REP. SCHIFF: But the raid did happen anyway.

MR. NOBLE: Steve Higgins called him back on Friday evening and again on Saturday. The concerns that John Simpson had and the concerns that I had were addressed and therefore the stoppage if you will was lifted.

REP. SCHIFF: But the authority to say it can't go back on still was with the Treasury Department, is that right?

MR. NOBLE: We acted as though we had the authority to order Steve Higgins not to permit a raid to go forward and we acted upon that authority on February 26, 1993.

REP. SCHIFF: By ordering him not to go forward?

MR. NOBLE: By directing that in the evening when John Simpson called Steve Higgins, based on the concerns that John Simpson had, he would not authorize the raid to proceed.

REP. SCHIFF: I'm just making the point that the Treasury Department could say no, and did say no at least at one point. I wrote down a part of a quote you said, Mr. Noble. I believe it was if the Treasury Department directive had been followed -- and I don't have the exact words after that -- but the implication was the tragedy would not have occurred. Am I pretty close on that?

MR. NOBLE: I believe I said that if the assurances that Director Higgins gave to John Simpson that the people near Waco or at Waco were told that if anything didn't look right, if Koresh was not acting as previously planned, that the raid would not go forward, that's correct.

REP. SCHIFF: So you are saying that there was a violation of the directives from the Treasury Department. And I would like to ask --

MR. NOBLE: I'm saying that the assurances that Steve Higgins gave were not followed and that was a tragic mistake that led to the loss of lives.

REP. SCHIFF: Are any of these assurances in writing? I mean is there any paper trial here that we can go back to that you found in putting together the report, that we can trace back and forth as to
what was said back and forth?

MR. NOBLE: You have the memoranda of interview of Steve Higgins, John Simpson, Michael Langon (ph) --

REP. SCHIFF: I know that, but are there any written --

MR. NOBLE: Ron Noble -- they have testified under oath before you.

REP. SCHIFF: Any written memorandum of --

MR. NOBLE: You have the memoranda of interview of Mr. Chojnacki.

REP. SCHIFF: Pardon me, sir, but my question was more specific, if I could interrupt for this purpose. Were there any written memoranda that went back and forth contemporaneously to these conversations?

MR. NOBLE: These were phone conversations.

REP. SCHIFF: Did I also understand that you expressed some -- you learned about the FBI plan -- this is at the other end of this situation -- in April, after the Justice Department and the FBI had taken over the matter -- that you learned about their plan to try to go into the compound with tear gas and so forth and end the siege. Did you learn about that before it occurred?

MR. NOBLE: Did I learn about it before what occurred?

REP. SCHIFF: Did you learn about the intent of the FBI, now that the Justice Department had taken over this situation, to try to end the siege by moving into the compound?

MR. NOBLE: Before April 19th.

REP. SCHIFF: Before April 19th.

MR. NOBLE: Yes, sir.

REP. SCHIFF: Did I understand that you felt certain apprehensions about that plan? Did you feel that it posed any specific problems or were you concerned about it?

MR. NOBLE: I was concerned about it. The FBI had stated to me what the plan was very generally, what the risks were, and that the Attorney General was going to get some independent input and then make a decision.

REP. SCHIFF: Well of course the -- well did you have some concerns -- I'm sorry -- about what you were being told from the FBI?

MR. NOBLE: The concerns as I recall originated with the FBI, that they understood or at least
communicated to me, therefore I assume they understood, that there were risks associated with the plan, but they felt that in light of the circumstances and all of which they didn't go into, this would be the appropriate thing to do and that's what they had recommended to the Attorney General and she was going to get independent input of some sort.

REP. SCHIFF: Well Mr. Altman, as you know, wrote a memorandum to the Secretary of the Treasury expressing reservations about this plan. Did you have similar reservations?

MR. NOBLE: It's possible that -- I saw the memo you are referring to either yesterday or the day before -- and I guess what Roger Altman did was communicate to Secretary Bentsen some of what I told him.

REP. SCHIFF: Did you have concerns similar to Mr. Altman's? And if so, what did you do about them.

MR. NOBLE: The concerns originated with the FBI, the concerns and the plan -- and I say plan in quotes because it wasn't given in any detail -- were communicated to me and I communicated them to Deputy Secretary Altman.

REP. SCHIFF: I'm going to ask one more time, did you have any concerns and reservations about the plan as it was explained to you by the FBI? That's a yes or a no.

MR. NOBLE: I've tried to answer it straightforwardly, sir. The concerns I had were the concerns that the FBI had, the concerns that I believe any one who would think about this would have, yes.

REP. SCHIFF: All right, now, once you had those concerns as you heard the plan, you being at the rank you were in the Treasury Department, did you go to anyone either in the Treasury Department or the Justice Department to express those concerns?

MR. NOBLE: Concerns that they already knew about?

REP. SCHIFF: Well how do you know they already knew about it?

MR. NOBLE: Because they told me.

REP. SCHIFF: No, that's the FBI, how do you know the Attorney General --

MR. NOBLE: FBI is in the Justice Department.

REP. SCHIFF: Yes, but how do you know the Attorney General knew about those concerns?

MR. NOBLE: Listen, I operate one way, I assume that career civil servants, career law enforcement officers, people I've worked with, are honest and are going to report things to their boss comprehensively. I don't assume people who tell me things are not going to represent them accurately to their bosses.
REP. SCHIFF: Of course --

REP. MCCOLLUM: Your time is up Mr. Schiff.

REP. SCHIFF: Of course you report charges -- career law enforcement officers --

MR. NOBLE: That's right, when 61 people say that a Mr. Chojnacki and Mr. Sarabyn pointed the finger at a rank and file agent, yes, that's something we act on.

REP. MCCOLLUM: Mr. Brewster, you are now recognized for five minutes.

REP. BREWSTER: Thank you, Mr. Chairman. To take a little different tack in some of the questions, it's my understanding from some discussions I've had that the Texas Rangers felt they were not treated well at all during the siege time at Waco. Are you aware of that feeling?

MR. NOBLE: Sir, I say this with all due respect to the question, I very much would like to leave this hearing not saying anything bad about any law enforcement component unless necessary. I know having been with the FBI's hostage rescue team that when they come into an operation they take over. And I've been with other law enforcement officers when that happens and it is not something that makes law enforcement officers who believe they are able happy. That's just the way it is.

REP. BREWSTER: Was that a yes?

MR. NOBLE: Yes.

REP. BREWSTER: Okay. Along that same line, it was my understanding that Koresh at one point asked to negotiate with the Rangers and they at one point asked to negotiate with him. Is that correct? If we could make it shorter, I don't have a lot of time.

MR. NOBLE: Okay, this is going to be fast. I saw it on TV, yes.

REP. BREWSTER: I'm sorry.

MR. NOBLE: I saw the Texas Rangers interviewed on TV where they said that, so that's the source of my information.

REP. BREWSTER: Okay, I haven't seen that. Mr. Magaw, I'm certainly impressed with the discussion you and I have had previously and also with your discussions of the many things that went wrong here and how you feel that you are making progress and keeping it from happening again that way. Also I think you've been very straight up in talking about the fact that the tactical intelligence was not good, that you changed the press (ph) structure, that you've made many changes in ATF. On that same line, and I am just asking a rhetorical question, why would we not be better served for ATF to be part of FBI and FBI do the intelligence part, ATF do the firearms part?
MR. MAGAW: My personal and professional view here, sir, is that if you give firearms to the FBI, firearms take you into every jurisdiction. And once you're into that jurisdiction, you can work it if you come in to it through a -- and what you would be doing is making almost a federal police force. There would be almost nothing they couldn't reach through those firearms in each jurisdiction.

I believe that it would not be the proper thing to do. I think you need the checks and balances like we have now. And Director Freeh and I and Mr. Constantine, we confer all the time. But I think you need the checks and balances. The other reason is that they've tried to tear this organization apart, as I've studied since I've been over here, since 1972, under that administration. Again, in '82, and now again in '93 and '95. And each time when it's been looked at, and vetted, you have here a tax collector, you have here a regulator, and you have here an enforcement. If you move any one of them you also have to move proportions of the other because they intertwine. It's very different from a normal law enforcement organization.

So to tear it apart just -- and in everybody's view, after they've vetted it, each time, to include Vice President Gore's national performance review team just a few months ago said that it ought to remain where it is, single, close oversight. This bureau needs close oversight. It needs close oversight because every jurisdiction is controversial. Somebody said to me the other day, well arson's not controversial. Well it is when it involves an abortion clinic. And so you have to be very careful in these jurisdictions because of the kinds of things. And we have to make sure that we have close oversight so I understand exactly how you want us to work these jurisdictions.

For instance in the Crime Bill which just came up, there's a weapon in the Crime Bill that has -- that says that if you have a magazine of 10 or more rounds, it's not a valid -- it's a violation of the Crime Bill. But when you looked at a couple of weapons that are out there that the old western style that you cock each time did have 10 magazines -- a magazine for 10 rounds. We worked that out with the industry to try to -- that isn't what your intent was. We knew it wasn't your intent. So to come across and say no you can't have that weapon -- we've got to make sure we're doing that kind of thing. And I think this bureau has done a great job of interfacing with the alcohol and the tobacco industry over the years, not so good a job interfacing with the firearms industry, and we're going to do a better job at that.

REP. BREWSTER: You make a very good argument in that. You made a statement earlier too -- the more successful you are in keeping guns from criminals and prosecuting criminals, the less gun control would be needed. I certainly agree with that statement. I was glad to hear you say that. If you had an identical situation today -- and I happen to believe that Koresh and the Davidians were not the only group like that out there across the country -- if you had an identical situation today, how would you handle it?

MR. MAGAW: Well the first thing I would have done a long time ago if I had the identical situation and were thinking about how to investigate it is that I would confer, not only with Treasury -- Mr. Noble has placed a lot of oversight on these bureaus that was never there before. And he's kind of at a disadvantage in answering some of these questions because there weren't procedures before. I've served seven administrations and I think in that period of time eight assistant secretaries for law enforcement, and there has never been the oversight before. Nor did they have guidelines,
which he's now constructing working with us. So I think that part -- obviously if you are talking about it, and we're doing some of that now with Justice and all the other departments around the country that have law enforcement, to try to draw on the best way to handle the situation, not operating in a vacuum.

I've already discontinued two undercover cases because I couldn't protect -- if we went the next step, I could not protect the under cover agent, and I went through that in a -- we'll still make those kinds of judgments as we go along, sir.

REP. BREWSTER: So your answer is that you are working on how you would actually work one of those, and you and Mr. Noble can give us an answer at a later time as to exactly how you would address that. I appreciate your forthright attitude and I appreciate the work you've gone through to make some significant changes at ATF. Thank you.

MR. MCCOLLUM: Mr. Bereuter, you are given five minutes.

REP. BEREUTER: Thank you, Mr. Chairman. Mr. Noble, bear with me for a second. I've been out of the committee room for about an hour and a half, so if I'm redundant, just say you're redundant and I'll move on, all right? Thanks. I'll give you that courtesy and extend it likewise.

MR. NOBLE: You'll forgive me if I'm slurring at this point.

REP. BEREUTER: All right, thanks. (Laughter.) Something that did catch my attention because of all the reading that I've done is -- this is the first time that I've now learning that prior to the raid, when you had learned -- someone had briefed you I guess on what some possible plan was -- that you said uh-uh, let's not do this. So I have a few questions on that. When was that -- when did you receive a briefing that caused you to have concerns about the raid, if you could help me.

MR. NOBLE: On page 178 of the report -- second full paragraph -- it explains that for you, sir.

REP. BEREUTER: All right, good, I can read, so I'll cover that. Let me ask you the question about your order that the raid not go off. How did you -- tell me how you --

MR. NOBLE: I'm trying to be honest and yet not make it seem as though someone else is responsible. So when you say order -- I was not authorized to order anything, I was a consultant. However, I'm saying that I addressed the situation as if I were in the position so when I was giving advice to the Acting Assistant Secretary I, like many lawyers do, put myself in his position. So I'm trying to be accurate for the record, but not distance myself from the decision that was made.

REP. BEREUTER: If you were the Acting -- if you felt uncomfortable not having the authority -- did you bounce it --

MR. NOBLE: I didn't feel uncomfortable, I just didn't have the authority.

REP. BEREUTER: Okay, then did you bounce it up to whomever did have the authority?
MR. NOBLE: That's what I'm saying, is the person who had the authority, his name is John Simpson, he was the Acting Assistant Secretary for Enforcement. He's the person whom I advised about all the concerns I had. He's the person with the de sera and de facto authority to have called off the raid or permit the raid to proceed.

REP. BEREUTER: All right. Whatever your gut reactions were, I salute you. I've got about 19 years of military background and with regards to the tactics and planning, it was very, very poor. Part of Mr. Brewster's question that he asked you, Director -- I'm not sure if I'm in agreement with your response. Because as I sit through these hearings I'm asking about the legitimate roles of government and our oversight functions and I agree with you when you said ATF is an agency that needs close oversight. I mean not only within Treasury but that's our purpose and function constitutionally. And I have been bothered that -- I guess from the Watergate hearings, it's almost laid down the marker in this town that if you have a Congressional oversight hearing that there must be a smoking gun. And I don't think that's necessarily true either. So I want you to know that. I'm being upfront with you. And I also -- that's not a question.

MR. NOBLE: I just appreciate it.

REP. BEREUTER: I also though know all the political garbage that's going on in the town too, back and forth, back and forth, and I wish we could just get on with the business. But part of the questions that I go through is is there a future for the ATF, that's what I am asking myself. And if there is a future for the ATF, what kind of future is it? Or do we go back to the don't call them ATF, call them revenuers again I guess. And moving firearms to FBI. I mean I've been asking that question. I think Mr. Brewster's question was very good. And when you say well let's not really do that because wouldn't that make them just a federal police force. Well isn't that what ATF is now? So would you help me answer that question. See I disagree with that.

MR. MAGAW: ATF has fairly limited jurisdictions. Firearms -- we don't get into financial institution fraud, we don't get into bank robbery, any of those things. And so the firearms, by the fact that it's a regulatory industry, it's also tax collected on that, it all fits very well in the Treasury scheme. And because firearms are so controversial and there's so much passion throughout the country pro and con for them, I believe that you leave them in an agency like this where you have the close oversight. And that's strictly my opinion and my judgment.

REP. BEREUTER: All right, well we're going to keep on that issue because that will be some of the carry over issues after this hearing. Right now I am going to yield the balance of my time to Mr. Ehrlich.

REP. MCCOLLUM: Mr. Ehrlich, you will be recognized. I don't think we have somebody else on this side of the aisle that wants to go right now anyway. So you have the 30 seconds plus your own time, so go ahead.

REP. EHRLICH: Thank you, Mr. Chairman. Please indulge me for a second. We're talking about political garbage, my colleague to my right used the phrase political garbage, and a lot of us on both sides of the aisle were actually trying to get facts. We appreciate your testimony here today. The source of my utter frustration with this town, being here six months, is comments like the following
that were made at the White House press briefing today.

In answer to a question to Mr. McCurry, how specifically are the Republicans trashing law enforcement, this answer was elicited. By implying to the American people that somehow or other the conduct that they are looking at in Waco is representative of the way law enforcement officers behave. And the President is going to stand forthwith with law enforcement officers, four square with law enforcement officers. He is standing up for the law enforcement officers in this country who put their lives on the line while this Republican majority and this committee attempt to undermine confidence in law enforcement officers. I assure you both, that's not my purpose, and I have a couple of very specific questions for you. Mr. Noble, revisiting hopefully for the last time this whole military issue, I'm just trying to get your conclusions straight. Is it your testimony that ATF, by training with the joint task force number six -- it's my understanding that that training occurred only because of the presence of the allegation of a drug nexus. And is that a misunderstanding on my part first of all, and if it's not, was that training appropriate in your view?

MR. NOBLE: It's my understanding that ATF gave information to the military about the drug related activity, albeit back in 1989.

REP. EHRLICH: I think it was '87, but -- whatever, whatever.

MR. NOBLE: I think it was '89.

REP. EHRLICH: Okay, '87 or '89.

MR. NOBLE: And that the military was satisfied that that information was such that a particular component of it could assist ATF. And I believe that is the component that you just referred to, sir, yes.

REP. EHRLICH: All right, thank you, thank you very much. Now you both have talked about new guidelines that have been promulgated with respect to sensitive operations. What I would like you to do, and I really appreciate your testimony today from both of you -- and I've tried to take pretty copious notes with respect to questions like Mr. Brewster's and a number of questions that have come along over the course of the last hour -- with respect to if a similar situation occurred today, what changes would -- what would take place today that would not have taken place under the old procedures, under the old personnel that were in place at the time.

And I've tried to write down a number of the observations you both have made. One, supervisors were in the wrong place; two, you would have consulted cult experts where cults are involved; three, inspection, oversight, shooting review team now in place; four, the press would have been out of the way; five, operational security would have been in place and personnel sensitized to the importance of operational security. And you've made a more general statement, not with respect to Waco, that you've discontinued a number of cover cases because you could not secure your personnel.

Could you both please take a shot at giving us more examples of specifics that have changed as a result of this incident, both with respect to personnel and procedure.
MR. NOBLE: Maybe I could take a shot at the policy level and then whatever Director Magaw would like to say about the operational. At the policy level what I believe has to happen, and what I've tried to make sure happens, is that once a case is initiated as, let's say a sensitive case with undercover implications, that when that case is presented to the undercover review committee that we have a diverse group on that committee to make sure that whatever decisions are made are made from as wide a range of perspectives as possible. So we have undercover review committees embracing more than one bureau, the first point. Second point--

REP. EHRLICH: And that certainly was not in place prior to Waco?

MR. NOBLE: That's correct, sir. The second point is that we invite the Justice Department's Criminal Division lawyers to have a seat on that undercover review committee and therefore get the benefit of their oversight over Justice based operational matters, so that again we have information coming in. That's just one concrete example of how early on we can address policy decisions, not two days before the raid goes, but when the case is first investigated or initiated. And I would ask Director Magaw to talk about operational.

REP. EHRLICH: Thank you very much.

MR. MAGAW: Well first of all, ATF will never again as long as I'm the director take up an operation this large by itself. So it cannot happen again because we won't take this kind of an operation on. We're not capable of handling it by ourselves. Having said that, there are a number of things that we would work on and we're in the process working through Treasury and with Justice and everybody under Justice to try to put some plans together so that we will be able to function in a large capacity like this as a team member.

And some of the things you've already mentioned I won't repeat. But what we've done already is we've provided crisis management training for all of our headquarters staff and we're also doing it for all of our special agents in charge and the supervisors of our SRT teams. The other thing that -- when I came here there were 24 SRT teams, there was one for each division. You have to remember now that ATF does an awful lot of search warrants because obviously explosives and guns are hidden. And so we execute an awful lot of search warrants. But 24 teams -- how do you keep them properly trained and do you overuse them when there is that many. My judgment was that you do and therefore I've reduced that number to six. They will be better trained, less used.

And one of the things that is an overriding policy now is that when you have a search warrant or you are going to make an arrest, or you have to search a property, try to find every way possible that you can without using a dynamic entry. Dynamic entry is absolutely the last choice and you better kick it up to a supervisor above you, above the field level, at the headquarters, before you activate that dynamic entry.

REP. MCCOLLUM: Mr. Ehrlich, your --

REP. EHRLICH: I want to thank you for you answer from both of you. The points you raise are the kinds of specifics and the reason that we're here. Thank you very much.
REP. MCCOLLUM: Mr. Ehrlich, thank you very much. Mr. Coble, you are recognized for five minutes.

REP. COBLE: Thank you, Chairman. Gentlemen, it has been suggested that Oklahoma City triggered these hearings. Not true with me. Two years ago I tried to get these hearings conducted. Not to bash anyone, not to embarrass anyone, but to illuminate an area of the federal government that appeared to be awash with conflicting stories. The post-Waco environment cried out for a hearing it appeared to me. Mr. Magaw, as you well know, law enforcement is a risk assumption business. And I care not what sort of perfections you insert, you will never be able to assure your law enforcement men and women that they will not have to assume risk. And I along with the gentleman from Oklahoma and Maryland would like to -- I'm interested in the changes and I want to get with you at a mutually convenient time.

Let me revisit a point I made last week. We are today enjoying -- not enjoying, strike that -- we are today experiencing the luxury of applying 20/20 hindsight. Unlike the guys and gals and women who were there the day it went down. The most plaguing feature of the Waco episode to me is the non-arrest of the charismatic, self-proclaimed prophet, head of the snake, the lead dog, the nerve center of the compound, call him what you will, but by the way of an arrest warrant, get him off the premises, remove him, maintain custody and control, even for just a few hours, execute the search warrant, conduct the search out of the presence of the leader of the compound.

Now that is very simplified I will admit. Here is what bothers me. The Treasury report at one point says Koresh "apparently never left" and therefore couldn't be arrested. At the criminal trial, however, it was revealed that he did from time to time leave, in fact as recently as four days prior to the raid. Then Treasury's defense, perhaps subsequent defense, and I believe Mr. Noble in your words, "an arrest would not have been a good idea because it would have resulted in evidence having been destroyed" or in the words of others, the Davidians resisting.

Now, Mr. Noble, if you can, resolve this enigma for me. On the one hand, it appears that the Treasury report implied he never left, and therefore precluding arrest. Subsequently, it appears the Treasury report reflects that it would not have been a good idea to arrest for this reason or that reason. Talk to me, Mr. Noble.

MR. NOBLE: First I'd like permission following today's hearing to answer your question in writing specifically. I'll do it from my memory right now.

REP. COBLE: That'll be fine.

REP. MCCOLLUM: (Inaudible.)

MR. NOBLE: Oh, I'm sorry. I'm sorry I asked you. I apologize.

REP. MCCOLLUM: That's fine.

MR. NOBLE: The first point is, the Treasury Department report makes absolutely clear a bright-line
distinction. ATF believed, the raid planners believed, based on faulty intelligence, that Koresh never left the compound. This report, the Treasury report, states expressly that Koresh left the compound on a number of occasions -- few, few, low number of occasions.

The Treasury report expressly states that the option of arresting Koresh off the compound was not adequately considered. The Treasury Department report does not go through all the permutations that make your hypothetical realistic in New York City or Washington, D. C., or any city, but not realistic in Waco, Texas. And I say that for the following reason:

If Koresh did not leave the compound on a patterned basis so that the law enforcement agents could say, Sunday morning, 8 o'clock, he always goes into town; every Sunday, 8 o'clock he's in town. We can get all the law enforcement agents ready. When he goes into town, grab him and then immediately execute the search warrants for the compound.

If Koresh doesn't leave the compound on a patterned basis, then you have to have the number of agents necessary to execute search warrants secreted somewhere near Waco, Texas. Our report exposed the fact that even the hotel reservations that occurred on February 27th would have alerted someone as to the operational security risks involved. So I say it's just a hypothetical, it's a theoretical premise that you can both arrest someone and execute search warrants without the world finding out when the world is as modestly populated in that area, and I say that with all due respect.

I also would, just for the record, say on page 140, footnote 39 states the number of times we were able to identify that Koresh left the compound, sir.

REP. COBLE: If you will, Mr. Noble, as you -- and folks, I reiterate, I realize applying 20-20 is a whole lot easier than having been there, but we are trying to keep it from repeating itself. That should be the purpose of the hearings.

MR. NOBLE: We understand that.

REP. COBLE: Gentlemen, thank you all for being here, and I thank the gentleman from Florida.

REP. MCCOLLUM: Mrs. Thurman is still reserving her time, as is Mr. Schumer, so I will now recognize Ms. Ros-Lehtinen.

REP. ROS-LEHTINEN: Thank you, Mr. Chairman. I would like to yield my time to you.

REP. MCCOLLUM: Thank you. Mr. Noble, I want to ask you just a couple of follow-up type of questions to clarify some of the record on this. At any time on the 26th, 27th or 28th of February prior to the raid, did you have any contact by telephone or otherwise with any other ATF agent or officer other than Director Higgins.

MR. NOBLE: And Mr. Cuyler, sir.

REP. MCCOLLUM: And Mr. Cuyler.
MR. NOBLE: Yeah. No, sir.

REP. MCCOLLUM: All right, that's fair enough.

MR. NOBLE: You're saying prior to the raid?

REP. MCCOLLUM: Prior to the raid.

MR. NOBLE: That's correct, sir.

REP. MCCOLLUM: I'm not worried about the rest. I just want to know prior to the raid.

MR. NOBLE: That's correct.

REP. MCCOLLUM: Fair enough. Now, I'd like to get to the bottom, if we could, of what has been somewhat a confusing trail of words over the past few days about the, quote, "lost element of surprise." I think what disturbed Mr. Hartnett a great deal was a comment I'll quote that you made on a "60 Minutes" program, May 14, 1995, and I quote:

"What was absolutely clear in Washington at Treasury and in Washington at ATF was that no raid should proceed once the element of surprise was lost."

Now, let me track this back with you for a moment. As we've heard testimony here over the past couple of days, Mr. Sarabyn and Mr. Chojnacki have told us that they did not ever perceive that they had instructions of directions that if the element of surprise, or let's call it whatever, secrecy, was not there, that they were not to proceed with the raid. But they did say they understood that secrecy was an important part of this, but just that they didn't have any directions not to proceed if it wasn't there.

Then we've heard Mr. Hartnett describe the situation, who was of course above them as the former deputy director of ATF. And he said as recently as today, nobody ever called and said, Abort the raid if the element of surprise is lost. And I think that's probably true because Mr. Higgins testified to us as well last week that at no time did he tell them, Abort the raid if the element of surprise is lost.

Now, he did say he assumed that they would not proceed if the element of surprise or if the secrecy involved was lost. The bottom line is, I haven't heard it said anywhere, and I don't think you said it when you were on "60 Minutes," that the Treasury Department, that you or Mr. Simpson or anybody else ever actually gave a direction straight out to Mr. Higgins or to Mr. Cuyler not to proceed if surprise or secrecy was lost.

You indicated to us, and so did Mr. Simpson, that you had received assurances from Mr. Higgins that it wouldn't -- that that would not happen. You didn't elicit, I mean you didn't demand from him, don't go do this if it's lost. You just assumed, too, from these assurances it wouldn't happen. Isn't that really what we're talking about here? Am I correct? I've tried to review this as fairly as I know how.
MR. NOBLE: The report reinforces what you say. Director Higgins gave assurances to John Simpson that if anything unusual or out of the ordinary occurred, the raid would not proceed. In my view, it seems it goes without saying that when you plan a raid to surprise someone and you learn 45 minutes in advance they know you're coming, that -- if your plan was based on surprise and you're risking the lives of 76 agents, that you're not going to go forward with it.

So our view wasn't one -- and the report doesn't say it. The report says the director of ATF was personally involved, and he gave assurances that the people were told, were alerted, knew, would not go forward if anything unusual occurred following the undercover agents going into the compound, following the --

REP. MCCOLLUM: Right, but you gave no orders that that be the case. That was just an assurance you had. I understand that.

MR. NOBLE: And that's what the report says. The report --

REP. MCCOLLUM: No, I understand that. I'm not arguing with you. I'm just trying to clarify.

I also want to make it clear that -- because Mr. Hartnett and I think, to a certain degree, Mr. Higgins also have been concerned in their testimony before us that there indeed was a spin that was put on this around terminology "element of surprise." And whether we agree with it or not, that undoubtedly is their perspective on this, and they believed that that point was being overdone because, as Mr. Hartnett put it to us today, his men were being left out there when he felt they really did not ever have orders to proceed and did not proceed without the element of surprise that had been lost. And I think that's understandable, too. And I just want to clarify those so that the difficulties of talk and language here can be broken. And I think we have.

MR. NOBLE: Well, I would just like to say for the record that the report, on page 179, says, "Higgins asserted that those directing the raid were instructed to cancel the operation if they learned that its secrecy had been compromised or if those in the compound had departed from their established routine in any significant way." It also states that -- on page 180: "Had the Waco raid commanders adhered to Director Higgins' assurance to Simpson and Noble that the raid would not go forward unless ATF had the advantage of surprise, the operation might have ended differently."

REP. MCCOLLUM: But I --

MR. NOBLE: It's been our contention in the Department of the Treasury's report that only Mr. Hartnett and Mr. Chojnacki and Mr. Sarabyn and I, because Mr. Simpson -- I mean Mr. Higgins made it absolutely clear that this raid was not supposed to proceed if the advantage of surprise was lost. And Mr. Aguilera testified about that being clear on February 12th as well.

REP. MCCOLLUM: We won't dispute that either, but the fact that they dispute it is clear.

I want to ask you one other question on my time. It has to do with the opportunity to do things that were not done, because this is a question, I think, of some great import. And it is not you personally
we're dealing with, but I just want to ask you the question because it does have to do with comments you made earlier today in testimony.

It certainly is understandable that after you get to the point in time when you've got 48 hours to try to review something before a raid is going to happen, you've just been there a short time advising Mr. Simpson, he hasn't known about this, and the procedures are such as they were at the time at the Treasury, which you did not create, then the actions that you've described and the reactions are perhaps fairly understandable.

But something that disturbs me a lot, and it disturbed me when I first learned it -- I didn't expect to learn it here -- the other day was the fact that when Mr. Bentsen and, for that matter, Mr. Altman first came aboard, which was somewhere around, give or take a couple of days, 30 days before this raid -- the new administration had come into office in January and they had become in their respective -- affirmed in their respective categories, secretary of Treasury and undersecretary -- that in the interim between then, they did not have a sit-down meeting, particularly the secretary himself, with Mr. Higgins, either in a staff group, as you now do, apparently rather regularly, and Mr. Altman apparently did after the 28th and said he might have done one time without maybe Mr. Higgins there before it.

They didn't have a sit-down with the heads of the agencies and they didn't have a particular personal contact, certainly the secretary didn't with Mr. Higgins, to just simply say, Hey, tell me what's going on, give me an update, give me a general idea of what your agency is doing, I'm your new boss, if you will. The type of thing you and I probably would normally do. And if that had happened within a week or two of the time they'd taken office, there would have been, instead of 48 hours of time for you to look at this and snap judgments to be made and go back and forth with Simpson and you talking about this, and so on, as happened on the 26th and 27th of February, just maybe there would have been a more deliberate look at all of these things that were going on down there, that you would have discovered there had been no raid plan, that people's attention would have come about, because surely Mr. Higgins would have raised the number one thing on his plate at that time if that type of discussion had taken place.

Am I not correct in that assumption, that that is a criticism that should be placed? Not a huge thing to come down with a great big hammer and say, you know, these guys are the primary villains in this piece, because they're not, but I mean is it not fair for some of us to question that and to criticize the fact that those meetings never took place in that time frame, which I would assume -- and I don't know, I'm asking you -- most people would assume would normally take place when a secretary takes over a new position and an undersecretary does. In the first month, surely they'd meet with their principal law enforcement officials, at least to say hello and what's going on in your shop?

MR. NOBLE: I say that your characterization is unfair and inaccurate, and the reason for it is I met with Mr. Higgins shortly after being named as someone who might occupy the position of assistant secretary for enforcement. Met with him for about an hour and a half, two hours before February 26th. And Steve Higgins never mentioned to me that they were undertaking a significant law enforcement operation.

Now, if he didn't mention it to me during a two-hour meeting, I don't know how anyone could
reasonably expect a secretary of the Treasury, who has 25 or 30 presidential appointees or bureau heads below him, just like an AG, who has 25 or 30 of that rank below him, would raise this when he didn't raise it with me. So I would say it's unfair and inaccurate, sir. Thank you.

REP. MCCOLLUM: Well, you're welcome. Thank you for explaining that.

And I will yield five minutes, then, to Mr. Heineman.

REP. HEINEMAN: Thank you, Mr. Chairman. Let me just pick up a little bit where you left off. And certainly answering the first perhaps question or issue facing us when you took the floor, Mr. Noble, was the fact that you were upset about people questioning your report. And I was one of them and maybe the first, I don't know, but I did speak to it perhaps two days ago.

And there were issues that did concern me about that time, and I don't think these issues have been cleared up. I think throughout the hearings, they have just been -- it's just raised more questions as it relates to Mr. Sarabyn's characterization of your report as being 70 percent accurate and 15 percent false and 15 percent somewhere between.

And I'm well aware that Mr. Sarabyn was -- he called it convicted of lying and demoted, but I don't know whether he was telling the truth here. I hope he was. He was under oath. And then to hear Mr. Hartnett characterize your report as distortions, falsifications and omissions. And I'm well aware that he left the service right after the raid. I don't know whether he was retired voluntarily or he was asked to leave.

But somehow I get a very strong feeling that Mr. Hartnett was candid with us, although I didn't hear much here to discredit the report other than that characterization. And hopefully -- when he left here today, he said he would expand in writing to us relative to what he meant by that characterization of your report.

And prior to reading the book, I did hear rumors that David Koresh could have been captured as he was jogging each day, and of course it was rumors. And I read your report, and I even passed on -- what the report had to say was that he seldom left the compound, and that's what's in the book when they were brainstorming is how to take David Koresh or conduct the raid. And in the book, it said that David Koresh seldom left the compound.

And lo and behold, we get a witness here who lived inside the compound, Mr. Thibbideaux, who under sworn testimony said that David Koresh generally jogged, I believe, the last two months, pretty much on a pattern.

Now, I don't know whether that's -- he testified under oath, and I don't know whether that's true either, because he was a Branch Davidian and David Koresh did have a -- have power over them and he may have just been speaking in retaliation to ATF. I don't know about that.

But then as I read on about a plan -- and I've been chasing a plan now since I've been speaking here for the past four days. Now, I've been in the business for some time, and I know an operation that takes 80 people -- certainly the SRTs were from different cities, we had the military involved, we
had DEA involved, we had INS involved, and we had one of the largest ATF operations that ATF has ever conducted. Yet I look for a comprehensive plan, as Mr. Higgins spoke to in this book, when he spoke to Mr. Cuyler and mentioned that he sent a memo and assures that a well-reasoned, comprehensive plan had been approved, allowing for all contingencies.

Well, that's reasonable. You would expect that. I would expect that. But yet there's no plan. I know I'm told that there are little plans. Perhaps each SRT has a plan, I don't know. But certainly if I'm responsible to my superiors and I have to let them know what's happening, especially if they're new, I would have to -- and I would agree with you on Mr. Higgins, he should have brought it up -- I would have to know that I have to send up a comprehensive plan dealing with several agencies.

And I don't see that plan. The plan does not exist. And I have concerns about that. Did it ever exist? I just don't know. The basis of my doubts about this report reflect around that. And we also have -- here it states, "Higgins asserted that those directing the raid were instructed to cancel the operation if they learned that its secrecy had been compromised. "Yet I hear testimony here that -- I believe Mr. Hartnett and Mr. Chojnacki said, Well, that was never an issue. But I have to say, it's always an issue when you're conducting a raid. I mean, if you don't have secrecy, there's no need to raid the place.

But that raises a lot of doubts in my mind about this, not that you and your colleagues here tried to shade the impact of this report, but it's just hard for me as a professional law enforcement officer in my past life to accept some of these things as it relates to the plan and the questions raised by Mr. Hartnett.

So I hope you don't take it personal that we question the -- your work here, but it does raise a lot of issues that I think need to be resolved. And that's why I personally took issue with this, because I had a lot of concerns about things that I thought belonged in there and that just wasn't in there. And I'm not saying you left it out on purpose, but it's just a report that I have a little trouble with. Would you care to comment?

MR. NOBLE: I would love to comment, if I may, Mr. Chairman.

REP. HEINEMAN: You've got the red light.

REP. MCCOLLUM: Go ahead.

MR. NOBLE: Red light means go now, okay. A number of points, if I can recall them all, were made. First is whether or not this report is accurate. I believe that's a fair inquiry.

What I object to is when people say that the inquiry is -- is this report a cover-up, especially when the people making the allegations are never put to the test of saying. Tell me what fact that's in this report is inaccurate or what fact that's not included in this report ought to be included and how that changes the core or central points.

That's with regard to the report. I will wait to see what Mr. Hartnett says about why he believes there are omissions, distortions or falsifications, I believe were the words he used.
Second point, with regard to your comment about the plan. You referred precisely to the language at the bottom of that one-page advisory that said, All contingencies and blah-blah-blah-blah-blah have been accounted for, the classic boiler-plate language.

In fact, there was no raid plan even generated until the last minute. We included what they called the comprehensive raid plan in this report.

Next point, with regard to your reliance on Mr. Chojnacki and Mr. Sarabyn. We have in this report the altered raid plan, how they tried to change it after the raid went bad, putting in facts that if they were in before the raid went bad would make them look more credible. So I know, Chief, you have a lot of experience, and I respect your taking issue with certain points or aspects of this report. I would only hope that having heard these allegations made by interested parties, that you would wait to see what actual omissions or commissions they point to before concluding finally whether this is a hundred percent accurate or 99 percent accurate. Thank you, sir.

REP. MCCOLLUM: Mr. Blute, you are recognized for five minutes.

REP. BLUTE: Thank you very much, Mr. Chairman and the witnesses for their testimony. And I just want to follow up on what my colleague had to say, just briefly, about the plan.

It's true that there was no plan, and there were a lot of things going on that would indicate that there probably should have been a plan, and I think your report indicates that.

MR. NOBLE: Written plan -- written plan, Mr.

REP. BLUTE: A written plan. I'm sorry, a written plan. But it's also true that high-level Treasury officials okayed a massive quasi-military operation without a written plan. Is that the case?

MR. NOBLE: We have never shied away from what we did.

REP. BLUTE: So, clearly, at the highest levels of the Treasury Department, they okayed a --

MR. NOBLE: Well, if the highest levels of the Treasury Department are the acting assistant secretary for enforcement, then that's correct, sir.

REP. BLUTE: Okay, because, as you know, a Department of Defense memo indicated that the plan had been okayed by the highest level of the Department of Treasury.

MR. NOBLE: Well, if it says that, it's inaccurate, because I don't consider the acting assistant secretary for enforcement the highest level of the Treasury Department.

REP. BLUTE: I understand. Beyond that, let me say that I personally believe these hearings have been very beneficial. I am a relatively new member of Congress in my 2-1/2 years or about. I look down the aisle here and I see a lot of people who have been here about six months. We think these are important hearings. We are learning about how the Bureau of ATF operates and how we can
perhaps make it improved in the future. We're certainly learning about the mistakes that were made by the bureau during this incident.

I personally resent any inference by anyone on this committee or in the White House or anywhere that we shouldn't ask the tough questions of federal law enforcement, and that in asking those questions somehow we are undermining federal law enforcement. I think that's totally absurd and I think it's totally wrong. And I wondered if you think that by asking tough questions of federal law enforcement that somehow we're trashing federal law enforcement?

MR. NOBLE: Well, let me respond to the first part and the second part. With regard to the approval by main Treasury of the raid plan, I would say that of the five tactical operations experts who looked at this and volunteered their time, four of the five said that the plan, as the raid planners understood it, had a reasonable chance of success. So not just main Treasury, experts who looked at it.

The second point, in terms of these hearings, I agree with you in part and take issue with you in part. I agree that you can ask any question you want. It's your right, and we're obligated to answer. What I am personally offended by -- personally offended by -- is when people will attack something as a cover-up or as being dishonest as the first line of inquiry. I think that you can attack the report and assume that it's been generated by honest, hard-working, dedicated career and other civil servants who are trying to do the right thing.

If there are mistakes, then we should learn the mistakes and it will help us all be better. But to move from, "I find a word that's not here or a sentence that's not here," and say "cover-up," I think is a disservice to people who dedicated themselves to get to the truth.

REP. BLUTE: But even agreeing on that point, if it is true that somehow some people on the committee didn't characterize that plan -- or the report the right way, do you believe that asking tough questions is trashing federal law enforcement?

MR. NOBLE: I believe it's a very important role that you play in asking the tough questions that you ask on both sides of the aisle.

REP. BLUTE: Well, I would hope that you would mention that to your colleague Mr. McCurry, the White House press secretary, who just today said that these hearings somehow are trashing federal law enforcement.

Nothing could be further from the truth. We're trying to exercise our constitutionally mandated oversight responsibility. I'm someone who voted for the Brady bill, voted for the assault weapons ban, think that the ATF has an important role in our federal law enforcement efforts. And I just think that any inference by anyone, particularly as high as the White House, is absolutely too bad, because this is our responsibility. And I take my responsibility serious to the 600,000 constituents that I represent.

Beyond that, let me just finally ask a tough question, because I think it's important. We've heard a lot of testimony about the good in the ATF. We've heard about the bravery of Mr. Rodriguez and
Mr. Buford and many others on that raid, and many other raids that the ATF are involved in. But, frankly, we've also heard about the worst of the ATF, and the report indicates some of the worst. I think this hearing has brought forth some of the worst of the ATF, the fact that warnings were ignored about the fact that Koresh already understood that a raid was happening. That's an incredible revelation to hear about, both in your report, but also hear in person. And beyond that, we have also had indications of ATF agents attending things like racist roundups, which has been in the news recently and I know which is an issue for another day.

I think this is a legitimate question. Is there within the ATF, according to all of your reviews, some type of Rambo element? Not everyone, but is there a group of ATF agents, from your review of what has been happening, that are out of control, that are not following proper procedure?

MR. : Let me answer that as directly as I can. In my observation and my talking with our personnel and seeing them in action, they live in a very, very violent world. They live in all kinds of old clothes, long hair -- a great percent of our work is under cover. When they make arrests, they need to go into these buildings and take quick control for the safety of everyone, and they do it every day with a lot of success, so that there is a self-assuredness, there is a strongness of voice, there is a get-control-of-the-situation. You saw in Rodriguez today a very quiet person, but also a very strong person in terms of what he said: "I will go in there knowing they know it, facing the weapons, if you ask me to do it." So what I am attempting to do as we go along is that -- when you live in that kind of a violent world, it's very difficult when you come out of that violent world for a few hours to deal with a gun collector or a gun dealer or a manufacturer, that you don't carry some of that activity. So what I want to make sure is that we do an interchange back and forth and an interfacing better, and we do that through training and sensitivity and awareness. And so there is not the Rambo, but it does have some smoothing that we need to do.

REP. BLUTE: Well, let me thank you, both of you, for your testimony, and say that I look forward to working with both of you to strengthen the ATF, to make it a viable federal law enforcement agency in the future, and most importantly, to regain the confidence of the American people in this agency -- and others, particularly in light of what happened at Waco, Texas. Thank you very much, Mr. Chairman.

REP. MCCOLLUM: Thank you, Mr. Blute. Mr. Watt, you're recognized for five minutes.

REP. WATT: Thank you, Mr. Chairman. Mr. Noble, Mr. Magaw, I assume both of you know what a Monday morning quarterback is. You're familiar with that term. It seems to me that by definition, a lot of what we are doing on this committee and have been doing is Monday morning quarterbacking. We have the benefit of what has already transpired to inform us, to make us better able to make decisions, because we can make those decisions and evaluate those decisions through hindsight and with information that you did not have available to you at that time.

So I'm going to give you an opportunity to do a little Monday morning quarterbacking and satisfy us, if you would. In hindsight, knowing what you know now, is there anything that you would have done different with respect to the Waco incident? And if you would, then take away some of the facts that you now know that you didn't know then and work your way back to the decisions that you made at the time.
Mr. Noble, let me ask you to go first on that question.

MR. NOBLE: I've been struggling with this for a couple of years now, trying to write an article to address similar problems in the future, and I don't have the answer. I have a couple of off-the-cuff thoughts, but they're not completely worked out.

One thing that comes to mind in a traditional law enforcement matter raises alarms in this matter, and that is the possibility, if you had some kind of bug in the compound at the time the undercover agent went in there, and if it was clear in the way that it gathered information and you could process it immediately, think about how we would know prior to our raids going forward whether or not the people inside were taking any defensive actions.

This is one quick observation. Another observation would be the whole question of how do you approach this group and how do you determine how to deal with someone who is as powerful and has such control over his followers as David Koresh, and are able to do what Mr. Coble suggested, sort of get him away from the compound and yet have your people positioned to move in.

Those are not very articulate observations, but I would have pushed everything to the front end, to June and July of '92 and '93, and had all of that time to think about how to approach this individual and this group and not had such critical decisions or factors being considered for the first time on February 26th.

REP. WATT: Mr. Magaw.

MR. MAGAW: My answer, Congressman, would be, first of all, that I would not handle an event like this again by myself. So if you'd back up somewhere after the delivery company talked about weapons being delivered to the compound and I realized that it was a large number, and I realized now that I had a religious group that had a questionable background in terms of their violence and that, at that point I would have reached out and included some of the experts who knew that kind of information about them, had background, had history. I would have involved other members of Treasury, such as the Secret Service and Customs, and gone over to Justice and involved the leaders of those organizations in terms of how do we plan that. And that's in fact what we're doing right now, trying to plan how an event like this could have been handled in the past.

Specific things. I still believe if those two supervisors would have been in the right place, if they'd have been in the observation house across the street, away from all the excitement -- you can't be in a helicopter. Of course, my experiences told me that a long time ago because I've had a lot of experience with helicopters and protection. You can't communicate very well unless you put your own communication system in, so you can't count on that as a communication. And then your other one was right there where all the activity was going on.

I believe if those two men would have been over there and they would have seen Rodriguez's face and his expression and what he said and the emotion he said it with that day, they would have stopped that raid right then.
REP. WATT: And both of you have been very responsive, but I have not heard either one of you say anything that would -- that we could as a Congress, or as two committees of Congress, recommend to Congress we write into law to force this kind of retroactive knowledge that you've talked about. None of the things that you've mentioned here are things that we could have required you to do legislatively.

Is there anything in retrospect legislatively that you could recommend that we could do as Congress to keep some future incident of this kind from occurring again?

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MR. NOBLE: I would say that having the opportunity to have people in the position of oversight matters. This Congress has cut my budget by a third beginning October 1, 1995. So what I'm fearful about is, when October 1st rolls around, my office, which is already thin, is going to be down a third, and that something might go wrong and I'll be explaining why I didn't read a memo that came across my desk more carefully, why I didn't take a phone call that I should have taken, why I didn't return a phone call. And that's not purely legislatively, but it's certainly in your function.

And the other part I'm really reluctant to mention because it raises a whole host of civil liberties issues, and that is the question of whether or not law enforcement agents ought to be empowered to use electronic surveillance or bugs purely for safety reasons on the day of the raid or a day before the raid, as opposed to for collection of evidence that might be used to implicate someone.

REP. MCCOLLUM: Mr. Watt, your time is expired. Mr. Bryant.

REP. WATT: Can Mr. Magaw respond?

REP. MCCOLLUM: Oh, Mr. Magaw - yes, he may, certainly.

MR. MAGAW: I don't have any legislative thoughts in mind because I'm concerned about legislation and those people who want to get around legislation can figure out how to do it, and it also may tie our hands. What I am concerned about each time an administration changes is that this position is often not filled and confirmed for seven or eight or nine months. And during that period of time, we don't have the oversight that we ought to have. And this administration has more oversight, and did from the very day that Mr. Noble walked on board. Prior to -- even though he wasn't confirmed, he was here as a consultant -- prior to that, it was very clear, all the bureau heads, myself still sitting over at the Secret Service, knew that there was going to be much closer oversight. I welcome that. I welcome the questions that congressmen are asking all across the committee.

So that -- but I don't think of any specific legislation, sir.

REP. WATT: Thank you.

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

REP. BRYANT: Thank you, Mr. Chairman. Welcome, Mr. Secretary. Would you, while you've got
your book out, go ahead and turn to page D16?

MR. NOBLE: Page what, sir?

REP. BRYANT: D16. And welcome, Mr. Director, also. I'm trying to get to the point, Mr. Secretary, to clarify a thing going back to Mr. Chabot, the issue of whether or not on the day of the raid of February 28, 1993, how far up in Washington was it that people knew that the element -- the so-called element of surprise had been compromised.

And beginning -- this is a diary by time that's an ATF diary. It's in your report. Beginning about 9:05 in the morning, we see that Rodriguez departs compound at 9:05 in the morning, talks to Cavanaugh, calls Sarabyn, who's at the command post. And then Sarabyn, Chojnacki and Roister discuss Rodriguez's information and decide to go.

So clearly, this illustrates that Rodriguez left, talked to Sarabyn, and then Sarabyn, Chojnacki and Roister talked about what Rodriguez told them, and then they made the decision to go at that point. And then at 9:10, about five minutes later, Chojnacki called the National Command Center in Washington and informed them that the operation is go. Now, what is this National Command Center? Is that sort of the crisis center in Washington?

MR. NOBLE: It's the ATF headquarters office, where I believe Mr. Gardiner (sp), Mr. Vida and -- those are the only two I'm certain were there at that point. I don't recall who else. There was someone else who was there, I just can't recall what his name is. But it's like a phone bank, if you will, set up precisely to take information with regard to the raid, yes, sir.

REP. BRYANT: So, in effect, that's the Washington point that's monitoring this raid that day?

MR. NOBLE: That's correct.

REP. BRYANT: If these folks down in the field need to call Washington, they call the command center and talk to one of these two

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gentlemen, and then they can contact you or Mr. Bentsen or Mr. Altman or whatever.

MR. NOBLE: No, no. You can stop right at ATF, and I know people would love to take this up the chain of command, and unfortunately the facts aren't there. In an operational matter like that, you would not want civilian oversight. If you could design the model, you do not want civilian oversight to be engaged in an operational matter that close to the time it occurs.

The call, as I understand it looking at this, went from Texas to Washington, and the critical point is, to this day, Mr. Chojnacki doesn't admit, will not admit to this committee or to anyone, that he knew that surprise had been lost. So whatever he communicated, if he's consistent with his communication today, he won't admit to this day that he knew surprise was lost.
REP. BRYANT: So there's no proof, as far as you're concerned, that Washington was ever told that morning before the raid that the element of security or secrecy had been compromised?

MR. NOBLE: I'm saying the proof is the opposite. The proof is, with Mr. Chojnacki making the phone call and protecting himself now, there's no doubt in my mind that he will go on and on and on and on refusing to accept responsibility for having authorized the raid to proceed.

And I understand it; part of me understands it. But what he did to Robert Rodriguez, I think is unforgivable.

REP. BRYANT: Well, if Mr. Chojnacki would confess up to this, if in fact it occurred, that he did call Washington and tell them that the element had been compromised, what would Washington's obligation have been at that point, whoever answered the phone there?

MR. NOBLE: You're asking me a hypothetical premised on a fact I know not to be true.

REP. BRYANT: I certainly can ask you a hypothetical.

MR. NOBLE: Hypothetically, if a raid commander called Washington and said that the undercover agent left the compound and reported to him in a very nervous fashion that Koresh had dropped a Bible, that he was shaking --

REP. BRYANT: Okay, all right. I see --

MR. NOBLE: -- that he looked out the window and said, "ATF and National Guard" --

REP. BRYANT: Okay, fine.

MR. NOBLE: Thank you.

REP. BRYANT: If you would look at number 21 there, that document that was given to you. (It's redacted on it ? ). And I think members have this copy of the document. Number 21, and I'd refer you --

MR. NOBLE: I have it, sir, thank you.

REP. BRYANT: -- specifically to -- it's unnumbered, but paragraph 4. You see here that "Blank" -- and I'm going to refer to blank because it's redacted -- "Blank entered the CP," which I guess is Command Post in Waco, "and proceeded to the radio room. Blank asked the clerk to get headquarters and Cavanaugh at the undercover on the telephones. Blank informed Vida," whom you referred to as in Washington at the Command Control, "informed Vida in Washington that the teams were en route and that they were almost at the compound. Vida asked Blank why the teams were going so early -- or going early. And Blank informed him of Howell's" -- and I guess that's Koresh -- "Howell's comments to the undercover," who I assume is Rodriguez. "Vida again asked why they were going early based on these statements, and Blank said he did not know. Blank kept
the telephone line between headquarters," and so forth.

And it goes on to say that -- well, it talks about the rest of the raid there. But here, very clearly, is where whoever-Blank-is talked to Mr. Vida in the headquarters in Washington and informed him of Mr. Koresh's comments to the undercover agent when Mr. Vida asked why they were going so quickly, why they were leaving early.

MR. NOBLE: May I ask the chairman's indulgence and stop the clock for just a second, let me ask my colleagues back here and then give you an intelligent answer.

REP. BRYANT: Okay, good.

MR. NOBLE: May I?

REP. MCCOLLUM: You certainly may.

REP. BRYANT: Mr. Chairman, while they're talking, could I make this an attachment to the record?

REP. MCCOLLUM: Certainly, without objection.

REP. BRYANT: Number 21. I might also, for the record, indicate that this document, Number 21, was not a part of the report, the blue report. I think that's a document that came over --

MR. NOBLE: It's one of the -- it looks like one of the -- a photocopy of a memorandum of interview, and there were thousands of sheets of the memoranda of interview, and this report, as Chief Heineman said before, is already too long. So not all those memoranda of interview are included in this report.

REP. BRYANT: Right. It appears to have been generated by the investigation, and it was disclosed, it looks like, as a part of the documents from the White House. It has the number on the bottom.

MR. NOBLE: It looks like we have serious discussions behind me back here, but we'll get to the answer, I'm sure.

REP. BRYANT: If I might ask while we're waiting --

MR. NOBLE: Sure.

REP. BRYANT: -- can I switch gears on you?

MR. NOBLE: Sure.

REP. BRYANT: Your -- when did you start working as a consultant with the ATF?
MR. NOBLE: I was a consultant with main Treasury --

REP. BRYANT: Okay, I'm sorry, main Treasury.

MR. NOBLE: -- and my responsibility included ATF. I was trying to find out the date. I believe it's January 25th or 26th or 27th. It was either a Wednesday or a Thursday or a Friday, towards the end of January, and I just don't remember the exact date. It's one of those things I keep saying on my check list, I should find out when I first started, but one of those days.

REP. BRYANT: And I recall you said that you worked on Wednesday, Thursday and Friday.

MR. NOBLE: That's right. My last class at NYU Law School concluded at 10 o'clock in the morning, I'd take a cab to La Guardia, fly down, and then take a cab to the office.

REP. BRYANT: Now, your meeting that you said you had with Mr. Higgins, who was the director of the ATF at that time, that was just simply a get-acquainted meeting?

MR. NOBLE: Well, I don't know if Director Magaw would admit it, but once they learn that there's someone who might occupy the position, it travels like wildfire, so I went to pay courtesy calls on all the directors. John Magaw was director of Secret Service, Steve Higgins ATF, Brian Brew (sp) was FINSEN (ph), George Weiss was not yet nominated so it was Michael Lane, and then my office directors today.

REP. BRYANT: Did you meet with other people in Mr. Higgins' office? I mean, did you go to his office or did he come to yours?

MR. NOBLE: They were not. They were not -- at none of the offices I visited, for some reason. At yours?

REP. MCCOLLUM: All right, Mr. Bryant --

MR. NOBLE: Wait, wait. Director Magaw, I met with him privately in his office, then you took me to a staff meeting. Okay.
REP. MCCOLLUM: Mr. Bryant, your time had expired. They're still trying to figure out this document. When the appropriate time comes, Mr. Noble --

MR. NOBLE: Okay, I'll --

REP. MCCOLLUM: -- you'll be able to answer the question, but I cannot let Mr. Bryant ask more at this point. And so I'm going to yield time now to Mr. Condit. You've got five minutes.

MR. NOBLE: Thank you, sir.

REP. CONDIT: Thank you, Mr. Chairman. Mr. Secretary and Mr. Director, nice to have you here today. And I know it's been a long day, and I'll try to be quick.

I'll still a little unclear about the investigative part of this, the process by which you folks do your internal investigation if you have a shooting, an officer goes down or what have you. It's my understanding that the Texas Rangers did an investigation, that the Justice Department did an investigation. Do you not have an internal process by which, when you have an incident, a gun has been fired, that you automatically go --

MR. NOBLE: The standard --

REP. CONDIT: -- and investigate --

MR. NOBLE: I'm sorry, sir.

REP. CONDIT: I'm sorry, go ahead.

MR. NOBLE: The standard operating procedure for ATF at the time was, following a shooting, there would be a post-shooting review. They began the post-shooting review process, and during that time, two things happened. One is, the assistant U. S. attorney in charge, Mr. Bill Johnston, made what I thought was the right decision and concluded that if ATF agents were the case agents for this murder investigation, then they would be accused of a whole host of misdeeds which might make the case less strong than it otherwise would be.

Therefore, Mr. Johnson (sic) asked the Texas Rangers whether they would agree to be special deputized U. S. marshals and conduct a federal criminal investigation.

At the same time this is going on, there are reports in the newspaper and in the media, and in fact, I believe one agent went on TV, saying that we knew -- we being the ATF agents involved in the raid -- knew that the surprise was lost and went forward nonetheless. And ATF headquarters was putting out the story that they didn't know that surprise was lost.

Therefore, if we had permitted ATF to continue its post-shooting review as it ordinarily had, then that critical fact of what did you know when, coupled with agents saying there's a cover-up going on, would have made that a dangerous thing to permit to continue. And for those reasons, the ATF
was told to discontinue the post-shooting review, and the Texas Rangers began their criminal investigation.

REP. CONDIT: Well, is that part of the procedure? If you think there is a problem with integrity, you automatically move to another agency?

MR. NOBLE: Absolutely. Let me put it this way. I say with the exception of the FBI. I think the FBI conducts its own internal investigations and has a component that does it nonetheless. But while I was at Treasury, while I've been at Treasury, if any of my components are accused of integrity violations, then I would pull it out of that component and have one of my other investigative components conduct the investigation, or have the IG conduct an investigation.

REP. CONDIT: So this would be one where you would say integrity was challenged, not necessarily just based on fact?

MR. NOBLE: Right.

MR. MAGAW: Congressman, an example of that is the good ol' boy roundup in Tennessee. We were the first bureau to start working that case, and as I developed it, I saw that in addition to ATF being involved, that others were involved, and I wanted to make sure that nobody would look back and look at this as a tainted investigation. I'm satisfied we would do a very good one.

So I went over to see Mr. Noble as soon as I had a reasonable amount of information, and it was his judgment it should be turned over to the inspection general so that has been done. So that's an example of what we would do.

REP. CONDIT: Am I correct, the Texas Rangers did their investigation and the Justice Department?

MR. NOBLE: They did.

REP. CONDIT: How about the Treasury Department? Then what?

MR. NOBLE: Pardon me?

REP. CONDIT: The Treasury Department as well?

MR. NOBLE: The Texas Rangers within a matter of days and weeks of the raid conducted, I believe, 82 interviews. They were tape recorded and transcribed. And the Treasury Department conducted over 500 interviews. We were all able to conduct the investigations the way we thought were appropriate.

REP. CONDIT: Okay, and each investigation, Texas Rangers, the Justice Department, the Treasury Department, and you did not do your own internal, do you think they're all accurate?

MR. NOBLE: Do I think --
REP. CONDIT: What are the findings of the three investigations? Would you agree with --

MR. NOBLE: I believe -- what we did was a comprehensive, honest look at what happened. We turned the memoranda of interview over to the trial lawyers involved in the prosecution of the 11 defendants, 8 of whom were convicted and I think 6 of whom got 40 years plus. So I believe the Treasury Department's investigation and the criminal prosecution's confirm that what's in here is accurate and what came out of trial is accurate. And unfortunately, what Mr. Chojnacki and Mr. Sarabyn and Hartnett continue to say is not the truth.

REP. CONDIT: Did the Justice Department encourage you not to do your own internal?

MR. NOBLE: Absolutely not, and if they had, I would have referred it to someone for criminal prosecution.

REP. CONDIT: Okay. Mr. Magaw, do you want to respond to that?

MR. MAGAW: Well, back in time, I was sitting at the Secret Service as the director, and Mr. Noble I know confided in me one day as to how to conduct this investigation so that it would be looked at by all when it was finished to be a valid one. And we decided that ATF should not be involved at all, and we talked to Steve Higgins and he agreed with that.

I then selected -- personally, as the director -- personally went through our roster and selected seven outstanding people from the Secret Service, never realizing I'd be in this position today. And I had them all in the director's office, and I said, "You're under -- you're taking on a tremendous task here. You have to let the chips fall where they may, and if anywhere along the way, you run into something that somebody's not allowing you to pursue, I want to know about it immediately.

And interfaced with the leader of that group, Lewis Merletti, who you saw testify here in the last couple days, and we checked -- he checked with me almost weekly. And there was never a case where they were not allowed to pursue anything that they came about. So I believe the report.

I also look back as a young agent at the Kennedy investigation, and there are Secret Service agents today who will look at the Warren Report, and say, well, this isn't quite the way it happened. So there's always going to be that, and I believe that's what we have here more than anything else.

REP. CONDIT: Thank you. I appreciate it.

REP. MCCOLLUM: Thank you, Mr. Condit. Mr. Souder, you're recognized for five minutes.

REP. SOUDER: May I announce on the record that the conversation with Mr. Vida is not in the time log, and I hope that will be in the explanation as well, because that's the type of thing that leads people to wonder why the Treasury wouldn't have included phone calls to itself in Washington when you were doing the investigation. And there may be a good explanation, I know you're working at that, but if you'll include that. It's on page D16. This memo says 9:10 to 9:15. There is no such phone call reported in the document. Also you made a reference, Mr. --
MR. NOBLE: I'm sorry, I'm not sure -- (inaudible). What is the omission?

REP. SOUDER: The phone call to Washington to Mr. Vida.

MR. NOBLE: There is a 9:10 entry that says, "Chojnacki calls the National Command Center in Washington, D.C., and informs the operation is a go." What is missing? I'm sorry.

REP. SOUDER: My understanding is -- that's what I would like clarified in the question -- is that this call?

MR. NOBLE: Oh, so is that -- okay, we'll check into it.

REP. SOUDER: To Vida, because if that's the call, then it would have been helpful to note who it's to, but if it's not the call, then we need to identify who the caller is.

MR. NOBLE: Yes, sir.

REP. SOUDER: Otherwise there will be a whole cottage industry that develops around that.

Also as far as you made a reference to a reduction in your office and that not knowing how oversight hearings are going to be, I would suggest that whenever you send two cattle trailers of agents into a raid and with helicopters, then probably you ought to know what's gone on, particularly if four agents get killed and 21 children, you'll probably have some kind of oversight. I don't think we're expecting you to know every little detail of every raid, but this was the largest raid in ATF history, and that's why there are so many questions with it.

I also --

MR. NOBLE: I don't understand your comment, sir.

REP. SOUDER: You made a comment about the size of your office, you're getting a 30 percent reduction, you can't watch over everything. We're not talking about everything in your office here.

MR. NOBLE: You don't need to impress upon me the loss of four agents' lives, sir, and I resent that. I resent that.

REP. SOUDER: Well, you've dealt in a very flippant way to our oversight hearing, and I was responding that when you said --

MR. NOBLE: I resent that. I just want the record to be absolutely clear on this one point. Not you, not anyone needs to impress upon me, sir, about what happened to four agents on February 28, 1993, near Waco, Texas. So I made no flip remark about it.

REP. SOUDER: Don't you lecture us about what our oversight authority is and talk about cutting
the budget and how that makes it difficult. Obviously, we both know --

MR. NOBLE: I was asked a question by Mr. Watt.

REP. SOUDER: Both of us know --

MR. NOBLE: I was asked a question by Mr. Watt about what we could do --

REP. SOUDER: It's my time, sir.

MR. NOBLE: -- legislatively.

REP. SOUDER: It is my time. And all -- I was not trying to insult your integrity. What I what saying is, when there is a large event such as this, of course there's going to be oversight whether or not your budget is reduced or not. You know that and I know that.

MR. NOBLE: Sir, it makes a difference. I have one-third less people there, then that means everything I do, I do less thoroughly, so maybe I will miss that. Maybe I just don't read the memo.

REP. SOUDER: When it is the largest raid in history, it has nothing to do with this hearing, and you know that.

MR. NOBLE: I don't know that, sir. I take issue with what you're saying.

REP. SOUDER: My question to Mr. Magaw, I have a couple questions. On the -- what percentage are alcohol, tobacco arrests in your agency, as opposed to guns? Do you know, just ballpark?

MR. MAGAW: They'll just be around 5 or 6 percent total.

REP. SOUDER: What percentage of your arrests are convicted, people you arrest? Is it a high percentage?

MR. MAGAW: It's in the 90s, in the 90 percent. It's somewhere around 96 or 97 percent.

REP. SOUDER: Are most dangerous, dangerous in the sense of imminent danger or potentially dangerous?

MR. MAGAW: This is what I'm addressing, our priorities, and it's one of the things that we're looking down the road on. I want you to work on cases that are violent offenders, the drug traffickers or I mean the gun traffickers and those that are committing the violent offenses throughout our neighborhood. Those are the key cases that we work, and that's what we're putting our attention towards.

REP. SOUDER: One of the things that I really appreciate about your demeanor and how you've handled yourself here is you're very soft-spoken, I think, you seem very responsible, I think, and with all the tension in the country with ATF, that's important right now. And I don't think any of us,
particularly on the Republican side, want to see a bunch of flower children going into these type of things, but we do want to make sure there's caution.

And I was concerned in your statement where you said, I think it was about the fourth page, you said down further that the image of ATF personnel as agents looking for a fight is utterly at odds. And then the paragraph before, your speechwriter, and I don't think they quite meant it this way, said your central mission was fighting dangerous criminals.

Part of your responsibility, and I think you're trying to communicate that to the agency, and it's one of the things we want to see happen, is much more caution, much more concern about what Mr. Blute was raising about whether they are hot-dogging or too aggressive. At the same time, we're not asking them to be passive going in because of dangerous situations. But I think the terminology is important. Many of these are not criminals in the sense they've not been convicted yet, and that needs -- that's a fine line that we need to keep in mind in American law, no matter how evil we see a David Koresh.

I have another question, too, and that is that, according to the report, it says that the reason the agents didn't go in was because they were concerned about a siege and a mass suicide. One of the questions that I have had, and we're going to get into the fire and other things, is that the first raid, in fact, didn't lead to fire. There was no evidence of gas being spread around, no evidence of mass suicide in the compound, and it -- in fact, even in the second, until the tanks started to knock down the walls and there was some exchange going on as the gas was coming in, did the gasoline start to get spread on that.

Now, the core question that I have with that is that this report suggests that the main reason was the siege question. Yet another document, if that could be distributed to you as 0019385, suggests that the reason that ATF did not go in was because you didn't have the negotiators or expertise as opposed to the mass suicide question.

Your very -- Mr. Magaw, your very point that you don't think you can do these things alone anymore acknowledges that, but why do you think the report said the reason you didn't go in was because of mass suicide, and yet this document suggests it was because of the siege?

MR. MAGAW: I'm not your best witness on that report. I came -- I mean, I came after that.

REP. SOUDER: Mr. Noble, do you know why --

MR. NOBLE: What is this document that I have been handed, sir? Can you tell me its source?

REP. SOUDER: It's a Treasury report. I assume it's a similar one of the interviews.

MR. NOBLE: I'm really sorry, but would you mind if we try to find out the answer to that? I would simply say that the report catalogued and listed the reasons which ATF had for why it concluded that a siege would not work and why the absence of negotiators -- I just will have to think about this. I just -- I'm hearing it for the first time now. So if you could give me a moment, maybe after
everyone concludes, I can --

REP. SOUDER: Okay, we can sort out -- because --

MR. NOBLE: There are two -- there's one now for Mr. Bryant and one for you, sir.

REP. SOUDER: Right. And the core question here is that, was the thrust the mass suicide, because there wasn't evidence that there was going to be a mass suicide until the, you know, actions started, not under ATF, but under FBI. And there wasn't in the ATF raid any attempt at mass suicide, and yet that was what really the report stresses, whereas this document --

MR. NOBLE: Well, that was ATF's reason. One of ATF's reasons for why a siege didn't occur was the risk of mass suicide. Another reason was that because they had .50 caliber rounds, the perimeter would have to be so great a distance.

Another reason was, they had provisions, ammunition -- provisions to last them for several months. So there were a number of reasons why the siege option was -- and then there was also the destruction-of-evidence risk. But we'll find out that answer.

REP. SOUDER: Thank you.

MR. NOBLE: Thank you, sir.

REP. MCCOLLUM: Mr. Noble, you're not yet ready to answer those questions of Mr. Bryant, I guess, are we? If not --

MR. NOBLE: Do you know, Mr. Chairman, whether there is going to be another vote or a break at any point?

REP. MCCOLLUM: We are going to have it coming right up. If you need that time, you're going to get it.

If we can, Ms. Thurman, if you are ready to go, we would have time for five minutes of questions, so why don't we do that?

REP. THURMAN: Okay.

REP. MCCOLLUM: I yield to you five minutes.

REP. THURMAN: Okay. First let me yield to the gentleman from North Carolina, Mr. Watt.

REP. WATT: I thank the gentlelady for yielding, and I just want to take enough time to make it absolutely clear to Mr. Noble that I did not think that his response to my question was flippant at all. I thought it was thorough and in the spirit in which I offered the question. And I appreciated it.
MR. NOBLE: Thank you, sir.

REP.: Could I ask one question, please? Is the --

REP. THURMAN: I will yield.

REP.: Are the witnesses in some stage of duress? Should we --

MR. NOBLE: I am. I've been crossing my legs, but it's not visible, for some time now. (Laughter.)

REP.: Well, you know, I think, Mr. Chairman, they've only been here since 3:30. Don't you think that we might be able to accompany the witnesses in their request --

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REP. MCCOLLUM: Accommodate.

REP.: -- accommodate them in their request while we take care of our duties on the floor?

REP. MCCOLLUM: We are. We're going to definitely accommodate them. But I was just letting Ms. Thurman have her time.

MR. NOBLE: I can go five minutes longer.

REP. THURMAN: Could I reclaim my time here so that -- I mean -- thank you.

Mr. Noble and Mr. Magaw, one of the things that my constituents --

REP.: Mr. Chairman.

REP. THURMAN: Excuse me.

REP. MCCOLLUM: Ms. -- (name inaudible).

REP.: Could we break because the gentleman has already indicated that he is in --

REP.: Some duress.

REP. MCCOLLUM: We will take a break. We will come back and let Ms. Thurman have her full time here --

MR. NOBLE: Thank you very much.

REP. MCCOLLUM: -- as we need to have it. We will recess until five minutes after the last of --

REP.: Thank you.
REP.: Thanks for your generosity, Mr. Chairman. You're a wonderful person.

(Recess)

REP. MCCOLLUM: This joint hearing of the subcommittees on the Waco matter will come to order. At the time that we had our recess commencing a few moments ago, we were ready for Mrs. Thurman to have her five minutes. And I will give you your five minutes. Now you may take it.

REP. THURMAN: Thank you, Mr. Chairman, and I appreciate your indulgence.

One of the questions that's been going on all day on this dynamic entry, I'm just -- I'm curious in training, when they're being trained in this area. I mean isn't dynamic entry -- the one thing that they talk about is that with secrecy or the element of surprise or however you do that, I mean shouldn't they just know that? I mean, does it really have to come from a higher command? I mean, is that not part of their training to know that that is supposed to -- that's what's supposed to happen? I mean, I'm just curious to know the answer.

MR. MAGAW: When you're referring to a dynamic entry, if they don't know it, they should know that that is knock, announce yourself, give them a reasonable time to open the door, and if they don't get it opened, then you go on in because evidence may be destroyed or moved or somebody arm themselves.

And clearly, surprise is part of that, and that's why you do it, so that you -- it's the same thing, people come up and knock on the door and sometimes get shot straight through the door if they're not smart enough to stay to the side of the door. So, you know, it's a -- a dynamic entry, clearly, is one of surprise, to catch them before they can either destroy evidence if it's in a case of drugs, or if it's in a case of weapons, before they can arm themselves.

REP. THURMAN: So they would know that? I mean, there should be no question in their mind that if in fact that is -- that surprise is taken away, that they should be looking at either, one, an alternative, which was not available to them, or abort that particular procedure at that time?

MR. MAGAW: That's correct, and that happened here in the District of Columbia just a few weeks ago when we were going to -- you may have read about it in the paper. We caught a lot of heat. You know, ATF messes up again, and an announcement got out. Well, our forward teams were out the night before, and they saw things they didn't like. As a result, they realized, by seeing what they didn't see and used to see, that something was up.

Well, it showed later, in a couple of days, that a city official unintentionally let the information get out and it was on the radio. So our leader, with about 180 or 190 people, all different departments out at Andrews Air Force Base, being briefed at 3:30 in the morning, and said, "We're not going."

And so it does happen, and you have to have that element of surprise.
REP. THURMAN: And I would think, Mr. Magaw, when somebody -- when you've been training them and they're in this kind of a situation, that there is a certain amount of responsibility that they take individually as being in the positions they are, that we give them that leeway to make that determination?

MR. MAGAW: You have to give them the leeway, and you know, that knock and announce, sometimes that's a very short period of time. If they hear people scrambling around behind the door or they hear things that are just -- that would give them concern. So you don't want to put too many tight binds on them.

REP. THURMAN: Let me do a follow-up with that, too, because one of the issues that many times that we in public office, when we're first sworn in, we're sworn in to uphold the Constitution of the United States. And the constituents that I have are certainly about the Constitution. And in fact, even today you mentioned the Second Amendment in your opening remarks. Ms. Lofgren mentioned the First Amendment, Mr. Scott mentioned the Fourth Amendment, I think, and sometime during the hearings, Mr. Conyers has actually talked about somewhere in the 14th Amendment. We've heard the issue with the good ol' boy roundup.

What do you do in your agency to make sure that your officers know and understand the rights of the American people?

MR. MAGAW: In their training in Georgia, when they first come on, there is a lot of time spent in terms of the constitutional rights, how you perform your duties and making sure that you recognize and uphold those constitutional rights. They're reminded in their refresher training courses, anytime you have a major court case where somebody has made a mistake and caused a problem along those lines, we make sure that it's out there and it's shared with them. And so that's the way we do it. In terms of their practical application of our special response teams and things of that nature, all of those items are covered so that we are not violating the Constitution.

REP. THURMAN: Is there disciplinary action at all taken, or is it on an individual basis if we uncover that that in fact has not happened?

MR. MAGAW: Well, there's disciplinary action taken if they violate those guidelines. It depends on the certain circumstance and exactly what happens, so you have to treat them as individual cases. And one of my concerns since coming to ATF and what my employees have told me is that they don't perceive, as they sit out there in the field, that there's equal justice in terms of a penalty for somebody doing -- committing a violation and somebody of a higher authority committing a violation. They don't get the same penalty.

So I have set up a review panel that has to review every one of these cases that come in, and they review faceless, and they review them on the actual facts and what have we done in the past and what is fair and like judgment. So that should be corrected within the next -- it's operational as of August 1.

REP. THURMAN: And I appreciate that response. And at this time, I know that the gentlewoman from Texas -- I'll yield the balance of my time.
REP. JACKSON-LEE: I thank the ranking member and the gentlewoman from Florida. And I'll try to focus on just one point, Mr. Noble, and I'll ask -- put it in the form of a statement and then a question. And Mr. Magaw, you can add to the answer, if you would, please, because you came from the Secret Service.

Sometimes in the zealousness of defending our staff and those we work with in our departments, people assume bias. Mr. Noble, you have been a prosecutor, and my question would be, do you have any fear in prosecuting -- if you were a prosecutor or previously you may have had experience -- police abuse cases or any fear in ferreting out any violations of the law that may come to your attention along with the good ol' boy camp or any other aspects? Can you step aside from the personal feelings, the great tragedy, the loss, and be able to ferret out, to purge out, and if you stood in a prosecutorial posture, could you in good conscience prosecute those who are law enforcement officers who had violated the law? Mr. Magaw, you may answer it in the terms of how you would -- I'd like Mr. Noble to answer first, and then Mr. Magaw, you might answer it in terms of how you would discipline, and would you be fearful of doing so because of your colleagues? Thank you.

MR. NOBLE: I can tell you that as a prosecutor for four-plus years in Philadelphia, I never turned down a case. There were cases which I believed didn't merit prosecution, and I said so. I never indicted a person whom I didn't convict, and I never took someone to trial or had a trial where the person wasn't convicted of something. I prosecuted public corruption cases, organized crime cases, drug trafficking cases. There wasn't a case I was afraid to prosecute despite the fact that I was threatened and attacked and spat upon. Now, it doesn't mean that I don't feel emotional when I see some of the things the victims go through, but I know how to investigate a case and I know how to prosecute a case.

REP. MCCOLLUM: Thank you. I think your time has expired, Mrs. Jackson-Lee.

REP. : Mr. Magaw was answering the question as well.

REP. MCCOLLUM: Oh, Mr. Magaw. Sure.

REP. : Thank you.

MR. MAGAW: It was my policy at the Secret Service, it's my policy here that if when the inspection team is out looking at an incident or a complaint, if they find anything that is a violation of law, I expect them to take it to the United States attorney as if they would any other case and present it, not presenting it in any tone that they would want it declined, but presenting it based on the facts, and when they come back with the U. S. attorney's opinion, that I have no problem moving forward with the prosecution. Absent of that, I have no problem, and I try to make sure, and I think my past will have shown that, that I take fair, but forceful action in all employee matters.

REP. MCCOLLUM: Thank you, Mrs. Thurman. Thank you, Mrs. Jackson-Lee.

REP. JACKSON-LEE: Thank you, Mr. Chairman.
REP. MCCOLLUM: Mr. Noble, are you yet prepared to respond to Mr. Bryant's inquiries about this memorandum of February 16, 1994, that you were looking into? Or if not, we'll--

MR. NOBLE: Yes, I am prepared, but I will qualify my answer that I'm not thinking as clearly now as I was several hours ago. So if I could amend it in writing, I would greatly appreciate it.

If I can direct your attention to page D-16. We see an entry on page D-16 at the 9:10 AM mark that says, "Chojnacki calls the National Command Center in Washington, D.C., and informs the operation is a go." During that phone call, Mr. Chojnacki did not say that Mr. Rodriguez had come out of the compound with any particular information.

If you turn to page D-17, you will see at the entry marked 9:55 AM, it says, "NCC is notified by the TSTC command post, warrant executed, agents receiving gunfire." If you'd look at the document marked 12,953, the first, second, third full paragraph, that conversation captured in that paragraph reflects the phone call that occurred at 9:55 AM. And these entries were entries that were generated based on telephone records, so they are correct as listed.

REP. BRYANT: May I follow up?

REP. MCCOLLUM: You may follow up to the extent of getting clarification, Mr. Bryant. I think that was part of the rules of the game at that time. In fact, you still had a minute left when--

REP. BRYANT: At least a minute left. At least a minute.

REP. MCCOLLUM: When Mr. Noble asked it, you had that time, so go ahead. Go ahead.

REP. BRYANT: Again, I understand it is late, but I'm still concerned about the telephone call that occurred prior to the raid that's in paragraph--again on numbered paragraph 4 on that document 12953. It's apparently a call that Mr. Chojnacki did not make because he's referenced early on. This is from some--

MR. NOBLE: That's correct.

REP. BRYANT: --unidentified person.

MR. NOBLE: That's correct.

REP. BRYANT: And he made the call to indicate that Mr. Howell or Mr. Koresh, what he told Mr. Rodriguez. And I still do not see that reflected in your log.

MR. NOBLE: No, Sir, if you look at the 9:55 AM entry, that is the phone call that's reflected in the third paragraph of this memorandum of interview.

REP. BRYANT: Okay.
MR. NOBLE: Now --

REP.: That's the third full paragraph.

MR. NOBLE: I'm sorry, I'm sorry, big paragraph.

REP. MCCOLLUM: (Inaudible.) That's the one Mr. Souder was asking about, I recall -- I believe, right?

MR. NOBLE: Am I looking at the wrong --

REP. MCCOLLUM: No, you're looking at the right one. They -- both Mr. Bryant and Mr. Souder asked you about that.

REP. BRYANT: The third full paragraph?

MR. NOBLE: Right.

REP. BRYANT: Right, but look at the paragraph above there. If this is chronological, they're talking about approximately 9:10 to 9:15.

MR. NOBLE: Well, that's -- and what I'm telling you is I have talked to the agent who interviewed this person. The agent's name is Robert M. Gadison (sp). And the time sequence between the paragraph that begins with the blackout portion and then entered is not immediately following in time, like 9:16, what preceded the previous paragraph.

REP. BRYANT: Well, there still seems to be some confusion. Perhaps we can straighten it out.

MR. NOBLE: I'm telling you that Mr. Vida has been interviewed. We read the report of Mr. Vida's interview, and it says that he received the phone call after the raid had begun. So that has been able -- we've been able to confirm that this is what this paragraph is referring to with the blanked-out agent's phone call to headquarters, that it happened afterwards.

And what happened is the agent who entered the command post made a phone call to Washington after Mr. Chojnacki had already departed and flown towards the compound, the raid began, and during the phone conversation, they hear Cavanaugh repeatedly calling for the helicopters over the radio.

So what I'm telling you is that that paragraph, it occurred at the 9:55 Texas time phone call entry.

REP. MCCOLLUM: Just for a last comment on clarification, Mr. Noble, and I know you're digesting this, and you said it's late, yourself, but in that third full paragraph, it would appear that the person who is receiving this call is saying that he's aware at that point that Rodriguez, being the undercover person referred to there, had been informed of Howell's comments, et cetera. And so, in other words, they learned about it at that point.
That was not reflected as an entry at 9:55 in your log at the end of the -- on that list. Now, whether that means anything or not I don't know. I'm not disputing your word that that's what that call is, but I think you would agree with me that --

MR. NOBLE: Absolutely, that you're clarifying or elucidating what additional language we could have included at the entry for 9:55. I simply wanted to make clear, and the clarification that you made is worth noting. It took us awhile to figure this out, so it's a very good point you're--

REP. MCCOLLUM: So it was at 9:55, essentially, the first report came back to Washington that clarified Rodriguez -- that Rodriguez had made some report?

MR. NOBLE: That's right, and the fact that there was -- that the raid had gone bad. That's correct, both of those details.

REP. MCCOLLUM: At the same time, at 9:55?

MR. NOBLE: Correct.

REP. MCCOLLUM: All right. Are you satisfied, Mr. Bryant? Does that--

REP. BRYANT: I believe I am.

REP. MCCOLLUM: All right, thank you very much.

MR. NOBLE: Sorry about the delay.

REP. MCCOLLUM: Then, Mr. Barr, you're recognized for five minutes at this time.

REP. BARR: Thank you, Mr. Chairman. Mr. Magaw, one of the very serious problems that I see in this as the role of the early contacts with the media, and that is pre-raid on the 28th, and I know that's dealt with extensively in the ATF -- Treasury Department report. But I was a little bit disappointed in your written statements on page 10.

You address the question of the media, but more in the context of the ability of the bureau to respond accurately and effectively to the media. The problem that I see is not so much the ATF's ability to respond effectively and accurately to the media, but pre-raid leaks to the media.

I think the lady this morning was a little bit disingenuous. I think in the context as detailed in this report of the days leading up to the raid, it was very clear that there was a great deal of information out there. Whether or not they were -- the media was tipped off by somebody in ATF or not, we'll probably never know, but I think it's very clear that when she made her call that Sunday -- or Saturday evening, whenever it was, that that certainly didn't help maintain the secrecy of it.

And I would hope that ATF would be coming up with some very clear and very strict guidelines on pre-operation contacts with the media, because, I think very clearly, and I think Mr. Hartnett made this point very emphatically, that this may be one of those situations where perhaps if leaks had not
occurred, maybe this tragedy would not have occurred. Mr. Noble, if--

MR. MAGAW: May I make comment on that -- (inaudible)?

REP. BARR: Yeah, just very briefly, please. You know how limited in time we are here.

MR. MAGAW: The operation security officer that I told you we have working full-time now, that's going to be their responsibility. Each of these groups, like the press group, is rewriting those, and we want to wait until the op sec person has a chance to approve them and we all agree, but we are on that item. It's very serious.

REP. BARR: Okay, because I know that was a problem that I saw with ATF when I was in a prosecutorial arena. Mr. Noble, following up on a line of questioning that Chairman Hyde and you -- or a dialogue that you and he engaged in earlier with regard to the ATF's shooting review. I'd like -- Mr. Bush, there are a few documents here. You probably already do have them, but since I'm going to refer to them specifically, Mr. Bush will give you those.

One is a memo dated September 17th, but it refers to a March 1, 1993, incident. Then there's the April 9 McNamara to you memo. And then there is the April 14th memo from McNamara to John Simpson.

The first of these is the entry on March 1, 1993, and this is one I think that Chairman Hyde referred to. The ATF begins its shooting review, which is entirely appropriate, I believe, immediately. It's apparent, according to this note, that the stories do not add up. And then comes the, I think, very, very strange entry concerning stopping the interviews and taking no more notes.

Then we have the April 9th memo, which deals with press releases. And there I think that's somewhat different, and I think it's not entirely wrong to make very clear that discussions and statements that are released, both agencies need to be very careful so that in their public statements they don't say something that could prejudice an investigation or a prosecution.

But then the April 14th memo is somewhat problematic again in that it says very clearly, the DOJ is directing that no further interviews or discussions with any participants who may be potential witnesses be undertaken. It very clearly states that they do not want to generate any additional James Brady or Giglio material. And then it goes on from there.

We have had, as I presume you're aware, some discussions with other witnesses on two, or if not all three days last week concerning whether or not this is indeed either standard or appropriate procedure. I don't think it's either in my experience as a United States attorney. And Mr. Johnston, the assistant U. S. attorney in Waco, when he was asked about these, he agreed with that, that it was not standard operating procedure.

And I just wanted to clarify that. Do you think it is in fact standard operating procedure that once a shooting review has been initiated very properly where there has been a shooting, particularly one as serious as here, that it's appropriate or standard for the Department of Justice to explicitly state, We don't want this to proceed forward because there might be, heaven forbid, exculpatory evidence
created, and there are to be no further interviews or discussions and no notes are to be taken?

MR. NOBLE: At no time during the investigation by the Treasury Department of the Waco tragedy did any Justice Department official tell me that I or my employees should not or ought not to disclose any Brady material to them or to anyone. So that is my understanding, based on personal conversations I had with --

REP. BARR: I'm not sure this has with disclosing Brady material. That's not my question. This has to do with the generation of potential Brady, Giglio or Jenks material, and the Department of Justice through these memos is directing that no further evidence be gathered in the shooting review.

My question is not about disclosure within the executive branch, but is that sort of directive to those conducting a shooting review, which is a very serious incident, standard operating procedure, or indeed is it appropriate?

MR. NOBLE: I believe it is quite appropriate for the Justice Department when it's prosecuting very serious crimes, as those with which the 11 defendants were accused of committing, to make certain that if there is a complementary investigation by another component, that that investigation not jeopardize the criminal investigation in a lawful manner.

And what I am saying, sir, is nothing in my experience at the Justice Department nor my experience at the Treasury Department would lead me to believe that the Justice Department would ever want the Treasury Department not to disclose or uncover or reveal Brady material. And I see a bright-line distinction between Brady and Jenks.

REP. BARR: You don't think that these memos by their explicit terms do precisely that?

MR. NOBLE: I do not, sir, and I will tell you that we conducted over 500 interviews, the Texas Rangers conducted 80-plus interviews. At no time were we not permitted to interview anyone we wanted to interview, and the Justice Department was quite supportive of our investigation.

REP. MCCOLLUM: Mr. Barr, your time has expired. Mr. Schumer, you're recognized for five minutes.

REP. SCHUMER: Thank you. Mr. Noble, I know it's been a long day for you, but I think it's been a worthwhile day because both with the previous panel and with this panel, the report that Treasury did holds up extremely well.

In fact, the only real dissents we have heard from it are from people who were criticized in the report, the most outrageous of which was Mr. Hartnett, who talked about a cover-up. And yet, first, he didn't point out what was covered up; second, his main criticism was that there were no explicit instructions from Treasury down to ATF -- from the top -- sorry, from the top levels of ATF down to the folks in the field to call off the raid if there was surprise (lost).

The irony of that -- and I wish Hartnett were back here; I just didn't get a chance to question him
after this -- is that Hartnett himself could have made that explicit. So he's blaming the report for a cover-up, and yet at the time, he could have said that. And so I don't consider his words very dispositive, particularly -- and then when you look at the main critics of the report, there may have been a little fact left out here or not, but it's extremely comprehensive. It didn't talk about what, you know, an agent's favorite color was, but it had all the material facts in it, none of which were in dispute.

And a few people here tried to bring out, well, it didn't have this, this or this, but those are not material facts. The only people who disputed it in the long amounts of questioning we have had, the only witnesses who disputed what was in the report were people who were criticized in it, namely, Sarabyn, Chojnacki, and particularly Hartnett. And I have to say, I found Hartnett's performance --

REP.: Dismal.

REP. SCHUMER: Dismal is a good word. I was going to use another D word, despicable, but maybe I wouldn't go that far. It was certainly dismal, and I find it sort of strange because you could see within him, he wants to defend the agency, but I guess he felt so badly about his role and the fact that he was severely chastised that he wasn't.

But the overall point I want to make is, your report holds up real well. And I would say, for instance, by way of contrast, if the FBI had issued -- had done what you did and went for outside review and was as comprehensive at Ruby Ridge, it would be in a lot better shape than it is today.

My -- I'd like to just go back and reiterate Mr. Barr's point. He keeps bringing this up, and I don't agree with him, and I think we've made it clear all along. Just to reiterate, is it usual procedure -- it doesn't happen every time, but it happens rather frequently -- that to not jeopardize an ongoing criminal prosecution, Justice will tell an agency, Treasury, ATF -- they've done it in the Whitewater a few times, the prosecutor has -- to not do certain things because it might jeopardize the criminal case, which is paramount? Is that standard procedure? Have you heard of it many times?

MR. NOBLE: I would say it's not only standard procedure, but if you think about what happened here, here you had an agency that was conducting a post-shooting review and was being dishonest with the results of the review, and you have Justice not saying, Stop the review, but saying, Let's shift it from ATF to the Texas Rangers. So we just had to go from party A to party B.

REP. SCHUMER: I can imagine the critics if ATF were continued. On the issue of the guns and whether they were made into automatic guns, their whole beef is that there was an ATF agent, a Treasury agent who looked at the guns first. You know, they want it each way. On the one hand, to have the agency involved investigating immediately thereafter is very bad, can lead to cover-up or whatever, and on the other hand, when an impartial agency comes in or a different agency comes in, that is very bad, too. You can't win with some of the critics, I suppose, Mr. Noble, but you're used to that.

And Mr. Magaw, let me just ask you with your years of experience in both the Secret Service and now in ATF, again, is it in any way unusual, a deviation from the norm and apart -- being apart from the standard operating procedure for Justice to come in and say, Please halt your preliminary
investigation, we don't want to jeopardize the criminal investigation, we're going to do it?

MR. MAGAW: Not at all.

REP. SCHUMER: Not at all. Okay, I'm not going to get any further into my views of why that point is being pushed.

And let me ask you another question here. Mr. Noble, we have heard from members on both sides of the aisle -- and I believe this; I believe this of many of my colleagues on both sides of the aisle -- that we want to use these hearings to strengthen federal law enforcement, and I think they mean, although maybe they wouldn't say it explicitly, to strengthen ATF. I certainly believe that, to strengthen it, not to tear it down, and they want the hearings to strengthen the public image of federal law enforcement, not tarnish it.

From your perspective, could you tell us what you think Congress can do from here to be constructive rather than destructive to law enforcement agencies that you represent here? I'd like to ask Mr. Noble and Mr. Magaw to answer that question.

MR. NOBLE: The first thing Congress can do is that when an agency like the Department of the Treasury and a bureau like ATF engages in the kind of self-examination that produced this 500-page, very thoughtful, very comprehensive report, and where no one -- where no one other than people criticized challenge it in the core accuracies it contains, that we can get a pat on the back instead of having our parents listen on television or see on television where someone says there was a cover-up or I engaged in a cover-up or the department engaged in a cover-up without showing what fact was missing or not disclosed.

REP. SCHUMER: Mr. Magaw. You get that pat on the back from most of us. There are a few people who have been irresponsible with the word cover-up, but you get that pat on the back from most of us, Democrats and Republicans and from the majority of the American people. Mr. Magaw.

MR. MAGAW: Well, as I said before, I welcome the oversight. I think it's needed. I'm a law enforcement person for 34 years. I look at things like a law enforcement officer does. I need it to be looked at by a former United States attorney, as many of you are. And also it's such a controversial issue that we deal with. You have to understand what the problems are and what we're trying to do in order to give us the support we need in terms of budgets and other things when there is a huge lobby out there that will be trying to get you to do other things. So I welcome it, and it will make us a much better organization.

This hearing here will make all of law enforcement, local, state, county, and federal, better.

REP. MCCOLLUM: Thank you, Mr. Schumer. Your time is expired. Mr. Shadegg, you're recognized for five minutes.

MR. NOBLE: Mr. Chairman, may I at some point --

REP. MCCOLLUM: Who is asking here? Oh, Mr. Noble. I'm sorry.
MR. NOBLE: I'm sorry.

REP. MCCOLLUM: I was looking so busily at my members, I wasn't looking at the witness.

MR. NOBLE: At some point, I would just like to answer the question of Mr. either Souder or Souder (pronounces name two different ways) with regard to this document.

REP. MCCOLLUM: You may do that now, before Mr.--

MR. NOBLE: May I do that?

REP. MCCOLLUM: -- Mr. Shadegg goes ahead. Please.

MR. NOBLE: Mr.-- is it Souder or Souder?

REP. MCCOLLUM: I believe it's Souder.

REP. SOUDER: Souder.

MR. NOBLE: Souder -- correctly pointed out that the document marked 19,385 included that ATF did not possess the expertise or the negotiators necessary for a siege, and that was a factor that ought to have been included in the list of reasons that were articulated on pages 134 to 142 explaining why ATF or how ATF did not fully exhaust other options. So I just want to point for the record, that's a fair criticism, and Mr. Souder is correct.

REP. MCCOLLUM: In other words, what you're saying is that the negotiator -- they didn't have either the negotiators or the expertise to do a siege, and that was not--

MR. NOBLE: That they didn't have the--

REP. MCCOLLUM: That's what that comment read.

MR. NOBLE: That they did not have -- possess the expertise or the negotiators necessary for a siege that they -- it goes on further--

REP. MCCOLLUM: Right.

MR. NOBLE: -- anticipated would last several months. Yes, sir.

REP. MCCOLLUM: Right. Thank you.

REP. SCHUMER: Mr. Chairman, I have a unanimous consent request.

REP. MCCOLLUM: You may state it.
REP. SCHUMER: The Treasury has put together a bunch of documents -- they all come from the requested documents -- that show that there was, that at least they believe there was a significant drug purpose in the compound when they made the request to the military. And I would simply ask unanimous consent that these documents be put in the record.

REP. SHADEGG: Reserving the right to object.

REP. MCCOLLUM: There is a reservation of the right to object over here.

REP. SHADEGG: It mystifies me that throughout these hearings whenever we request documents, we don't get them for days or weeks, when we request weapons, we don't get them for days or weeks, and then suddenly the minority can produce them. I just find it absolutely baffling that that happens over and over and over and over again, and now it's happening one more time.

I'd like to make this conditional request. We started this hearing with testimony of the author of the book who said that there are hundreds of reports prepared by the Texas Rangers that he can't get access to, that he has to file suit to. It seems to me that Mr. Schumer has some miracle power to get anything he wants.

REP. SCHUMER: Hey, if you're nice, I may tell you what it is. (Laughter.)

REP. SHADEGG: I'd love to have these documents come in, but could we condition upon him also getting the Texas Rangers reports in so the American people can see those?

REP. SCHUMER: Well, listen, if you want to make an arrangement and together we'll make a whole bunch of joint requests that will then be automatically honored by the chairman --

REP. SHADEGG: I haven't seen you fail yet.

MR. NOBLE: These documents have already provided to the committee.

REP. SCHUMER: Can I just --

REP. MCCOLLUM: Will the gentleman yield on your reservation? Will the gentleman yield?

REP. SHADEGG: Certainly, I will yield.

MR. NOBLE: The documents have already been provided to the committees, so these are documents that you already possess.

REP. SCHUMER: And if the gentleman would yield just for a minute, these are all documents that came in the large number that were sent over, and I had asked the folks to put them together. They did, but only now. I would have rather -- believe, if I had my druthers, I would have liked these documents to be available when we had the military panel.
REP. ZELIFF: Can we use your index? Can we get a copy of the index, because we got 48,000 pieces of paper with no --

REP. SCHUMER: Well, I don't --

REP. MCCOLLUM: Wait, wait.

REP. ZELIFF: -- with no index, which I think is absolutely irresponsible in the way that this thing has been set up, and it's wrong. And you know it, Chuck.

REP. SCHUMER: Well --

REP. MCCOLLUM: Well, now, hold on. On the reservation that Mr. Shadegg has, would he yield to me, please?

REP. SHADEGG: I will yield.

REP. MCCOLLUM: (Inaudible) to order here. I would like to make the observation, not to just simply concur in what Mr. Zeliff just said, because I -- the failure to get the cooperation of the Treasury Department to provide us with an index has been a very difficult problem. That's why we don't know what all these documents are. It takes hours to try to figure out what one of these numbers is. You're reading it over, and you wonder what the heck it is.

And I'm just wondering if on your reservation, Mr. Noble might assure us that even though it might not be as timely for us as we would have preferred it to be, that somebody be assigned to provide us, at as early a date as possible, at Treasury an index to the documents that have been sent down here because it is very difficult. We can pick them up and then we're out here working with you, and while we don't expect in the future to have more opportunities to ask more questions necessarily, and we sort of want to protract the hearings, we are going to be writing a report, and it would certainly be nice to be able to have our staff be given an index so that we could intelligently look at what you have sent over here. Would you mind asking that?

MR. NOBLE: I wish you only asked me for that. If you only asked me, I would have provided it gladly. I will provide it.

REP. MCCOLLUM: Can we ask you now?

MR. NOBLE: I will provide it.

REP. MCCOLLUM: Thank you.

REP. SCHUMER: And I would just renew my unanimous consent request, making it -- I just asked for these. It took a few days to get them, and they weren't delivered. Someone mentioned, I don't remember if it's Mr. Zeliff, Mr. McCollum or Mr. Shadegg, that they -- that the request wasn't timely. This one isn't timely either for my best purposes. I wish I had had it a few days ago.
REP. SHADEGG: But continuing my right to object, will Mr. Schumer join me in a letter to the Texas Rangers saying that it is important to the people of America that we be able to see those reports, as this investigation was conducted by the Texas Rangers.

REP. SCHUMER: Sure, I'd like to. Will you join me in a letter to the Texas Rangers asking that the guns, all the guns that were found in the compound be made available? That's being blocked by the majority. Will you?

REP. SHADEGG: My understanding is that you've already made it clear you can produce those here.

REP. SCHUMER: It's been blocked by the majority, sir.

REP. MCCOLLUM: Well, if you will yield on your reservation over here, we did not--

REP. SHADEGG: I'll yield.

REP. MCCOLLUM: These documents are here. I don't know about the Texas Rangers documents, but these documents that we're talking about here are here. We did not wish to see a road show up here of guns at this late hour when we didn't have time to examine them.

REP. SCHUMER: You have the Texas Rangers documents, but--

REP.: Yes--

REP. MCCOLLUM: Hold on. We still have Mr. Shadegg on a reservation. If somebody wants time, they got to ask him to yield or they got to reserve the right to object.

REP. SCHUMER: All right, will the gentleman yield?

REP. SHADEGG: I'll withdraw my objection.

REP. MCCOLLUM: The rejection has been withdrawn.

REP. SCHUMER: Unanimous consent request--

REP. MCCOLLUM: Unanimous consent requested. Without objection it is so ordered.

REP. SCHUMER: Yeah, point of clarification. First, as I understand it, you have the Texas Ranger documents. Second, I would welcome the opportunity to have a joint letter, do a joint letter with Mr. Shadegg with both requests. Is he willing to do that? And I'd yield to him to answer.

REP. MCCOLLUM: Well, Mr. Schumer, that's--
REP. SCHUMER: It's always good that we should join you in getting your stuff, but you never join us in getting our stuff.

REP. MCCOLLUM: Mr. Schumer, that's not in order at this point in time. You can certainly ask him at some point down the road.

Mr. Shadegg, you're recognized for your five minutes.

REP. SCHUMER: Mr. Chairman, just one other question.

REP. MCCOLLUM: Not at this time.

REP. SCHUMER: Are we down the road yet?

REP. MCCOLLUM: It's not in order now. Mr. Shadegg is being recognized for his five minutes.

REP. SHADEGG: Thank you, Mr. Chairman. I appreciate it very much.

It's not probably too surprising that Mr. Schumer and I differ on some points, and perhaps if he'd been here more of the day, he would not make such a bold statement as that all of the material facts are revealed in the report.

REP. SCHUMER: (Inaudible. )First of all, wait a second, Mr. Chairman. Point of personal privilege.

REP. SHADEGG: You made that point --

REP. SCHUMER: Point of personal privilege, Mr. Chairman.

REP. MCCOLLUM: You may make the point.

REP. SCHUMER: Fine. The point is, first, I was here for all but one hour. I don't know if Mr. Shadegg was, but that kind of ad hominem, unrelated to the issue attack, I would match my knowledge of what happened and what the witnesses said to Mr. Shadegg's any day of the week, and we don't need that kind of poison further contaminating the hearings. And I yield back.

REP. MCCOLLUM: Well, Mr. Schumer, you have made your point of personal privilege, but Mr. Shadegg has a right to make his observations. So Mr. Shadegg --

REP. SHADEGG: Thank you, Mr. Chairman.

REP. MCCOLLUM: -- you have your full five minutes.

REP. SHADEGG: As someone who spent eight years of my life in law enforcement with the Arizona attorney general's office, and whose father was a deputy sheriff, and who believes deeply in their mission, I think what we're about today is extremely important. I think it is important to review
incidents of this type to try to assure that they don't go again, that they never occur again.

Mr. Noble, I commend you for starting the process which led to this report, and I commend you for the apparent thoroughness of the report. And if what you are seeking is an 'at-a-boy, I'm glad to give you one.

However, if you think that that should be the end of it, that it should never have to be discussed in a hearing such as this or aired, I think you are mistaken.

In your opening statement, you say, "In this report, Treasury presented the full facts to the American people. "You go on to say, "Therefore, I look forward in the report of these subcommittees to a resounding affirmation of the Treasury report."

Well, I'm willing to give you an affirmation that I'm glad you started the process, but I think you ought to be willing to objectively review it. Let's start with the document we just discussed, the document that details these telephone calls.

You testified in response to questioning that Mr. Chabot that in fact no one in Washington that the secret -- the intelligence agents had discovered that Mr. Howell was aware the ATF was coming. In point of fact, this document --

MR. NOBLE: I said before the raid.

REP. SHADEGG: Well, that's not what you said. That's not what I heard in response to --

MR. NOBLE: Well, the record will verify what I said. I said before the raid went bad, that Mr. Rodriguez had come out of the compound saying that Koresh was expecting the ATF.

REP. SHADEGG: You would agree with me that this document establishes that they knew at least contemporaneously with the raid, would you not?

MR. NOBLE: That they knew at least contemporaneously with the raid.

REP. SHADEGG: Your own log says that they received a phone call. You said that's this memo. This memo clearly says that Howell knows the ATF is coming.

MR. NOBLE: The memo does not clearly say that. What the memo says is it says that the person whose name is blocked out contacted Washington at 9: 55 AM Texas time to report what he'd been told.

REP. SHADEGG: No, it doesn't. It says, "Vida asked why the teams were going in early and the agent informed him of Howell's comments to undercover."

MR. NOBLE: That's right, and what it doesn't say, sir -- with all due respect, what it doesn't say is the precise time that that particular statement was made. The log says 9: 55 AM.

REP. SHADEGG: Well, are you questioning the time?
MR. NOBLE: All I'm saying is -- all I said for the record is, my testimony, the best of my knowledge, as honest as I can be, is that ATF headquarters was not told about the contents of Mr. Rodriguez's statements prior to the raids going forward. That's the best of my knowledge.

REP. SHADEGG: And this memo is not revealed in your report, and the fact that ATF --

MR. NOBLE: But the information is consistent.

REP. SHADEGG: If I could continue. Within the first two days of this hearing, we discovered that Mr. Aguilera had been offered a chance to go in and look at the weapons by Mr. Koresh. He did not take that offer up. That is -- although that conversation is discussed at page 26 of your report in the discussion of Mr. McMahon, the fact that he did not -- that he was offered the chance by Koresh to go into the compound and look at the weapons and the fact that he declined that is not in the report.

We also learned from Mr. Aguilera that he told Mr. Sarabyn of this offer. He had been offered a chance to go in. He -- yet, although there is a discussion of Mr. -- the conversation with Mr. McMahon, once again, the fact that he reported this to Sarabyn, that he had been offered the chance to go in and see the premises and see the weapons, is not in the report.

We learned that Mr. Harchek and Mr. Sarabyn, in discussing the decision to go forward with the dynamic raid, discussed the fact that they'd been -- Aguilera had been offered the chance to go in and look at the building, and they rejected that and decided not to ever take up Koresh on that offer. Again, that is not in the report. And we learned in the course of these hearings that there were a number of occasions when Mr. Koresh was off of the premises that are not disclosed in the report.

I think when you tell the American people that the full and -- that the full facts are presented and you look for a resounding affirmation, and you find that kind of series of errors, it seems to me that the American people have a right to look beyond the language of the report. I commend you for starting it, but I think it is important that the American people have the right through the oversight process to go in behind it and to look.

On that point, I want --

MR. NOBLE: May I comment -- briefly?

REP. SHADEGG: You might. I just want to make a couple more points.

MR. NOBLE: Will I be able to remember all of them?

REP. SHADEGG: I don't know, but it's my nickel, just like it was Mr. Schumer's.

MR. NOBLE: Okay, so you're going to ask me 20 questions and I'm going to try to remember 20 questions, or can I at least do it in parts?

REP. SHADEGG: You seem to have been doing quite well all afternoon. None of those were
questions, in any event. I think they were mostly my opinion.

I want -- there is a statement that you made in your opening statement where you said point blank, "Mr. Hordachek and Mr. Sarabyn were fired," and you said, "because they refused to give up their guns and badges and agree to stop enforcing the law. "That was a direct quote from you in your statement.

That conflicts with your written statement, and yet I listened carefully to what you said in the hearing. I want to know what proof you have or what proof you -- and here's a question you can answer, or attempt to answer -- what proof do you have to give these committees that in fact the reason they were fired was because they refused to give up their guns and refused to continue (may mean stop) enforcing the law?

MR. NOBLE: Let me start with the last first, if you don't mind, and try to get to the others. The point I was making in my oral remarks and to the extent they are different from my written remarks is that I was working most recently on my oral remarks and I believe I made it clear to the chairman. So I apologize for the inconsistencies, but I promise to reconcile them right now to the extent that I can.

There were a number of reasons why Mr. Sarabyn and Mr. Chojnacki were fired. It's my recollection of the events -- and if my recollection is not a hundred percent accurate, please forgive me at this point, but I will follow it up and clarify the written record, if you don't mind -- that they had a chance during the settlement discussions to agree to certain conditions, including giving up their gun, their badges, their rank, and the right to enforce federal criminal law, and that they did not agree to that.

So I believe -- and again, I will let the lawyers clarify the record; this is just based on my recollection -- I believe that because they didn't agree to those conditions and since those conditions were the most essential conditions -- may I continue to answer even though the red light's on?

REP. MCCOLLUM: Sure.

REP. SHADEGG: Those reasons, that -- the reason you gave is not cited in either of the papers dismissing them or in the settlement agreements when they were rehired, is it?

MR. NOBLE: I'm just telling you of what my understanding was of the final settlement package, and whether or not those conditions were offered previous to the final settlement package. I may be wrong it, but let me just tell you what was important, most important to me.

In the report on pages 182 to 183, we say that any individual whose judgment or integrity cannot be trusted by those who must rely on those qualities must be removed from a position of discretionary authority. So that's all the report wanted to say with regard to that. I'll ask the lawyers to amend my statement if my recollection doesn't reflect reality.

With regard to the report's not mentioning the number of times Mr. Koresh left the compound, I
take issue with you. I can't remember the footnote or the page, but again, I will cite that later. I cited it earlier during this hearing.

With regard to your overarching comment about what I expected from these hearings, I will tell you what I expected. I endorse your right to have hearings; I embrace it. But what I expected to happen was that this document, a very comprehensive document that you've made better with the points that weren't included that you believe ought to have been included -- when Chief Heineman says we included too much, it's too long as it was -- that people would write the reports differently perhaps. If you were authoring it, you might write it differently. You might have included certain facts that I excluded.

There are thousands and thousands and thousands of pages of memoranda of interview that form the basis for this report. I expected this Congress to closely scrutinize it assuming that it was generated in good faith, assuming that it was not a product that was designed to cover up, and that if you found the details that you thought should be included, you would say, Mr. Noble, Dr. Magaw, whoever generates a report again, make sure that when you have a log, you include this fact; make sure when you have a footnote, you don't put it in this place; make sure that you do A, B, C, or do -- A, B, C, or D, that you would give us constructive feedback, not that we would be defending the integrity of a report that no one has challenged but those criticized in it, sir. Thank you.

REP. SHADEGG: Well, at no time will I challenge the integrity of the report. I do think there are things that should be brought out.

One last point I want to make. In your opening statement -- and it shocked me, and I hope it's incorrect and you'll disavow it now --

MR. NOBLE: Is the red light on? (Laughter.)

REP. SHADEGG: Rather not answer?

REP. MCCOLLUM: It is, and Mr. Shadegg, your time really has expired. Make your point and we're going on. (Laughter.)

REP. SHADEGG: He's that worried about this question. I thought it was a softball.

REP. MCCOLLUM: Make it and we're going to go on.

REP. SHADEGG: You said, and I quote: "I do not believe the people of America need their faith in federal law enforcement restored. "Those were your words. I assume you didn't mean them because it is absolutely clear to me and the people I talk to in day-to-day life that the people of America do need their faith restored and that that's why you initiated the report and that's why we're conducting these hearings, that we've got to. If we're to have an ordered society where people obey the laws and respect law enforcement officers and don't meet them with gunfire, we've got to restore the faith of the American citizens in their law enforcement.

MR. NOBLE: I struggled with that sentence for quite some time.
REP. SHADEGG: And again, it conflicts with your written report. Your written opening statement simply applauds the hearing and says --

MR. NOBLE: No, I didn't -- the oral statement didn't take issue with the appropriateness of a hearing designed to help law enforcement officers avoid tragedies like Waco. It didn't -- didn't -- there's no difference in the oral and written in that regard. But with regard to your comment about the American public, I thought about that sentence quite a bit, and especially with the good ol' boys roundup and some other unfortunate things that have occurred just as of late, I just hope -- I guess in my heart, I would rather believe that the vast majority of Americans have confidence in their federal law enforcement officers and prosecutors because I happen to believe the very vast majority of federal law enforcement officers and prosecutors are good people, are hard-working people who risk their lives protecting you and me and everyone else.

So maybe I shouldn't have used that sentence because someone could take issue with it right now in light of some comments that I believe are episodic and not systemic, so I take your point.

REP. SHADEGG: I share your confidence --

MR. NOBLE: Now I know the red light is on now.

REP. SHADEGG: I share your confidence in the law enforcement officers of America.

REP. SCHUMER: (Inaudible) -- any longer. Regular order.

REP. SHADEGG: But I plead that we do have to restore faith.

REP. MCCOLLUM: Well, I thank you, Mr. Shadegg. We have let you go a little longer. I think the comments Mr. Noble was making were a very good way to close these hearings, which I even think the minority concludes are true.

REP.: Absolutely.

REP. MCCOLLUM: But on the other hand, we've got another full day tomorrow to go through before we recess.

MR. NOBLE: Could I ask a point of personal privilege, if that is permitted from a witness?

REP. MCCOLLUM: Personal privilege from a witness is always taken into account.

MR. NOBLE: Chairman Zeliff led Mr. Hartnett down the road on the question of a cover-up, giving him a chance to say whether or not there was a cover-up or wasn't a cover-up. I would ask this committee that whatever it decides about a cover-up or not -- about there being a cover-up or not being a cover-up, that if it concludes that there was a cover-up, that it focuses on me and not the many individuals who dedicated their time and efforts to generating a comprehensive report.
REP. MCCOLLUM: Let me respond to that, Mr. Zeliff, if I can, because you didn't do that, so you can, too.

REP. ZELIFF: As long as I also have some time.

REP. MCCOLLUM: Yeah, you may. But let me say to you that as I recollect it, because the cover-up word was first used in response to a question that had been asked by Ms. Jackson-Lee, and that I then elicited a comment from Mr. Hartnett on the very first time he appeared, not today. And during his answering the questions I asked him the other day, he said, after it was all said and done that the word cover-up was probably not appropriate. He didn't mean that.

What he meant, as I understood it, and he meant it again today, is that he felt that when you in that--the rest of that "60 Minutes" interview said with regard to the element of surprise and some other things that the ATF officers were directed not to proceed with the raid without surprise and that the spin came down that way, that somehow you were cutting the cord between the ATF agents and yourself. And there was a --

MR. NOBLE: Today he expressly said -- he expressly -- I watched it, I watched it in shock. My mother called me up afterwards, so there is no doubt in my mind what he said today. And all I'm asking is, after the evidence is settled, if you conclude that there was a cover-up, which I don't think you will, that you point it on me and not the people who dedicated their lives to this report.

REP. ZELIFF: If I could just mention -- and we really -- it's a good point to bring out the president's criticism as well, and we don't like what we think is unfair, irresponsible comments. And really what we're doing is trying -- we have all the faith and the trust of those wonderful law enforcement people who risk their lives 24 hours a day, 7 days a week.

What we're trying to do, and I think when you and others say that, hey, this blue book is a Bible, man, don't question it, it's perfect -- well, we have oversight responsibility and we have a right to ask the questions. And you who investigate yourselves may do a perfect job, but I think there is some evidence that was brought out here that some things may have been missed. And I think we're all really trying to do the same thing here. And I think at the end here, we will have credibility, and I don't think anybody is going out to try to -- I mean go after you or go after anybody else, for that matter. We're just trying to get at the truth.

REP. MCCOLLUM: Well, I think -- Mr. Conyers.

REP. CONYERS: Might I just thank you? As the ranking member on the Democratic side, I want to thank you for a very long day's hearing. I think you've conducted it very well. And I especially want to say that these two witnesses have been here off and on since 3:30 answering questions from 32 members of 2 different committees. They've been before this committee longer than any other witnesses here, and I think that we should recognize the incredible stamina and ability to respond as best they can.

I notice that the undersecretary has committed himself to a number of further details in writing which will be submitted to the committees, and I thank them very, very much for their--
REP. MCCOLLUM: Well, Mr. Conyers, we do thank them for that. I'd just like to take one note. While they've been here a long time and they deserve whatever for that, I don't think they've been here longer than some others. We've had some pretty long times and breaks that lasted quite a long time so far already. And speaking of that, we're going to have to announce our schedule here.

REP. SCOTT: (Inaudible.)

REP. MCCOLLUM: I will in a moment. I want to announce the schedule for tomorrow. Then I'll let you have a moment, Mr. Scott, but not for much -- not for much discussion, let's put it that way.

REP. SCOTT: Just a little tiny bit.

REP. MCCOLLUM: Just a little tiny bit? Well, take it right now then.

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REP. SCOTT: Mr. Chairman, earlier today I asked Mr. Noble to respond to a question, to review some material and respond. I think he has subsequently responded, and therefore that will not be necessary.

MR. NOBLE: Thank you.

REP. MCCOLLUM: All right.

REP. JACKSON-LEE: (Inaudible.)

REP. MCCOLLUM: If it is nothing than the type of thing Mr. Scott did, Ms. Jackson-Lee.

REP. JACKSON-LEE: Mr. Chairman, because you elicited my name on information that I queried one of the witnesses regarding the cover-up, let me thank you for clarifying. I hope -- I don't know how much further we'll go on this issue, but I hope that we can clarify or at least put on the record however comments might have been made, out of emotion or whatever else, and whether you take the brunt of it, Mr. Noble, that we all are thinking that there is not -- or has not been a cover-up. I think that was the clarification that was being made.

REP. MCCOLLUM: Well, I don't think we're going to take any votes, Ms. Jackson-Lee. But the bottom line of this, we're going to issue a report later. We don't need to get into a discussion of this or interpret what the witnesses had to say or intended. The record really speaks for itself. I was simply making a point to Mr. Noble in response to his point of personal privilege, as did Mr. Zeliff, of how all of this language got started. There still was an obvious problem and disagreement between quite a number of the witnesses, including Mr. Hartnett, over certain aspects of what they thought was right or wrong. We know that, that's on the record. We've had a full discussion about it.

MR. NOBLE: If the three people who were criticized is "quite a number," I agree.
REP. MCCOLLUM: And so consequently we're at that stage where we're not going to do any good to rehash that.

REP. MICA: (Inaudible. )

REP. MCCOLLUM: The record will --

REP. MICA: -- the other side had three.

REP. MCCOLLUM: Well, Mr. Mica --

REP. MICA: (Inaudible. )

REP. MCCOLLUM: We're not here to make a lot of points now, Mr. Mica.

REP. MICA: No, it's not another point, but I did not complete a number of very serious questions I have relating to personnel and civil service matters, hiring, rehiring.

REP. MCCOLLUM: Would you like to submit some questions for the record?

REP. MICA: I will submit that, and I am announcing today that in September or October, if I do not get sufficient answers to those personnel questions and civil service questions, there will be hearings on this subject. Thank you.

REP. MCCOLLUM: Thank you, Mr. Mica. For tomorrow, a 9: 30 AM start in this committee room. We'll have a break in the afternoon for a briefing. I'm not exactly sure what time it will occur, sometime late in the afternoon. We will go until Panel C is finished, which will probably be very late tomorrow evening.

On Wednesday, we're going to have a 9: 00 AM start, I want everybody to be aware of that, because we're going to have to take a break shortly before 11 o'clock for a joint session. But we want to get started. We've got a long day of hearings. We'll resume approximately 12: 30 that day.

And on Thursday, because of the oversight -- Reform and Oversight Committees hearings that they have to have, which we already knew about, we will not have a day of these hearings. That means we will go on Friday and Monday, according to the schedule, to complete our eight-day session. You may ask a question, Mr. Schumer.

REP. SCHUMER: Thank you, Mr. Chairman. First, I was going to ask it of Mr. Shadegg, but he's gone already, so I will ask you. Is it possible, and I've talked this over with a number of people in the minority, since Monday is a day in which we don't have votes, and I don't need an answer now, that instead of going Monday, we go Tuesday, when we do have votes and all have to be here? We're going to all be here Friday when there are no votes on the floor, but --

REP. MCCOLLUM: Mr. Schumer, we want to accommodate to a large extent, but right now, the chair is -- both chairs, I think, are inclined to suggest that you be prepared for Monday because there
are reasons from the scheduling standpoint of the committees, and so forth, that it is highly improbable that this will get changed till Tuesday.

REP. SCHUMER: Well, if the scheduling issues change, I'd just ask both chairs to consider it.

REP. MCCOLLUM: Certainly. I understand that. I understand it very well.

REP. SCHUMER: Thank you.

REP. MCCOLLUM: This hearing is in recess till tomorrow.

#####END OF PANEL