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
2141 RAYBURN HOUSE OFFICE BUILDING
MONDAY, JULY 24, 1995
REP. MCCOLLUM: (Sounds gavel.) This joint hearing of the subcommittees on the Waco matter will come to order this morning. I would like to ask the witnesses who are here to please go ahead and be seated. We're going to have the four opening statements that we have each morning beginning the hearings before we swear the witnesses and introduce you. So please join us, and we will get started on these hearings.

I am going to start the discussion this morning, assuming that we have whatever we've got here. I'd like to make that opening statement. We begin day four of these hearings by focusing on the day of the ATF raid, February 28, 1993. Our witnesses are those who actually participated in and directed the raid. Later today we will finish our examination of the Treasury Department's part of the Waco study by receiving the testimony of Ron Noble, undersecretary for law enforcement at the Treasury Department, and John Magaw, the current director of ATF.

I've got a couple of thoughts to give you this morning and share with my colleagues. After listening to the President's chief of staff, Leon Panetta, discuss the Waco hearings on "Face the Nation" yesterday, I realized how trivialized these hearings are in danger of becoming as a result of the administration's political overreaction to this. The events of Waco in 1993 were tragic: 90 Americans, including 22 children and four ATF officers, were killed, and many more wounded. All of America was stunned, and today I share the sorrow -- all of us do -- of Waco, with the families of those killed and wounded. These hearings were and are designed to allow our nation to fully vet the pent-up feelings of sorrow, dismay and anger that arose from the ashes of Waco, to do the first and only comprehensive congressional review of what happened at Waco, to debunk outlandish conspiracy theories, but at the same time hold all of those responsible publicly accountable, and to begin the process of healing necessary to restore confidence and credibility in two of our key federal law enforcement agencies.

Apparently out of fear that revelations in these hearings could damage the Clinton presidency, the White House, Congressman Schumer, and some at Treasury and Justice set out this past week to ridicule, trivialize and discredit these hearings. First, a political operative was hired by the White House just for Waco political damage control. Then the line was put forward that these hearings were being held just to please the National Rifle Association -- somehow they were tainted. By the end of the week, the President's press spokesman, Mike McCurry, said, quote, "The NRA bought and paid for these congressional hearings," unquote. Whatever one thinks of the NRA, this is just plain political hogwash.

Then the argument was put forward that there was nothing new coming out of these hearings; and, despite this gross misstatement of reality, it has been repeated ad nauseam presumably on the premise that if you tell a big enough lie long enough enough people will believe it, or at the very least they'll turn off their TV sets.

Along with that came the effort to focus the public's entire attention on the child abuse committed at the Davidian compound by David Koresh, with both Mr. Schumer and the President implying that these moral atrocities alone justified the ATF raid, and perhaps even excused all of the tragic mistakes of the ATF, the FBI, the Treasury, the Justice Department, and whoever else. Of course this conveniently ignores the fact that federal law enforcement has no jurisdiction over child abuse; and disregards the fact that not only David Koresh, but also the mistakes of law enforcement of
higher-ups in the administration, bear responsibility for the tragic deaths at Waco. And then came the repeated expression of concern that these hearings would do nothing more than fan the flames of those espousing conspiracy theories, and further undermine the ATF and the FBI.

So determined has the administration been to derail these hearings, that it has revealed last week that Treasury Secretary Rubin called Congressman Brewster, requesting that he not ask questions that could embarrass the administration, and it was learned that the Justice Department is considering bringing up all of the guns from Mount Carmel to Washington, just to give Mr. Schumer a convenient and great publicity prop. Now, it occurs to me that it is the Clinton administration, and Mr. Schumer, and perhaps some others, by all of these activities to detract from the hearings, who are running the risk of fanning the flames of conspiracy theorists, for one can logically ask, Why go to all of this trouble if the administration has nothing to hide? Frankly, I suspect that they just don't want the public to take note of the testimony that has been coming out, which reflects pretty badly on some higher-ups in this administration, past and present.

For example, last week we learned former Secretary of the Treasury Lloyd Bentsen not only was informed of the ATF raid before it happened -- was not informed -- but he had not even met with the ATF Director Higgins in the 30 days or so Bentsen had been in office. One can only imagine how different it could have been if Bentsen had simply met with Higgins and routinely ask him what most new bosses ask: Is there anything you've got going on I should know about? Surely Higgins would have told him about Waco -- and Treasury officials. And they could have been paying attention to this a lot more -- with more care a lot sooner had they received the notice at the same time or much earlier than the ATF notified lower-level officials, which was less than 48 hours before the raid. Or what about Bentsen's cavalier attitude exhibited last Friday toward a memorandum from Deputy Secretary Altman raising great concern about the potential use of CS gas by the FBI in the final assault? One wonders why Secretary Bentsen didn't at least call Attorney General Reno to discuss these concerns, if not President Clinton.

And then there's the incredible set of memoranda we heard about Friday, showing the Treasury Department yielding to the request from Justice to stop gathering information in this review of what went wrong at Waco, so that Davidians from the compound couldn't use such information to help them defend themselves in their criminal trials.

And last but not least, we heard serious questions raised about the accuracy of some portions of the Treasury Department report on Waco with the clear implication that somebody at Treasury might have been trying to make sure key ATF people took the fall and nobody at Treasury took any of the blame.

Today I'll be sending a letter, along with co-chairman Bill Zeliff, to President Clinton, asking him to order his staff to stop this mass public relations and damage control campaign. The American people deserve an opportunity to hear the unadulterated truth about what went wrong at Waco and who was responsible.

If Mr. Schumer and the administration will simply join us in the search for the truth, we can put an end to some of the conspiracy theories, such as we did last week with respect to the military involvement with the February 28th raid.
We have a chance for a fresh start this week. I urge my colleagues on both sides of the aisle to put aside the temptation to score points against each other and just concentrate on getting the facts out. If these hearings proceed without show rhetoric and bickering of the past week, the chances of this succeeding on all counts will vastly improve, and perhaps we can put much of this tragedy behind us and begin to rebuild public confidence in federal law enforcement. I think that is the key to this week's hearings and to the concluding five days of hearings that we have before us. We need to join together and simply try to search out the truth. There are a lot of us who believe in the same cause and the same principle in this regard.

With that in mind, I yield to Mr. Zimmer, my -- Mr. Zeliff, excuse me -- my co-chairman.

REP. BILL ZELIFF (R-NH): Thank you, Mr. Chairman. I appreciate your remarks and I couldn't have sized it up any better, and I think that's a good way to start off the week. I'd just like to say from the start that it's amusing to hear the president of the United States criticize these hearings and ask the American public to weigh the moral (equivalency?) of David Koresh and ignore the bungled conduct, perhaps even covered up, of agencies in President Clinton's administration. That's like focusing on the crimes of Rodney King instead of the beating he received.

To focus on the horrible statutory rape of Kiri Jewell and ignore the fact that more than 80 people died, including 22 children, because the government decided to conduct a military-type raid instead of capture Koresh outside the compound is, in my judgment, irresponsible. Depravity doesn't justify a hands-off attitude toward wrongheaded government behavior. No one is above the law. In short, Mr. President, the ends do not justify the means. And the way I see it, that lesson has a lot of applications.

Let me just say again that these hearings focus on the conduct of the executive branch. They are part of the constitutional process. We cannot in good conscience shy away from tough or embarrassing questions. And if we did, there would be no reason to have hearings and no reason to believe that checks and balances are alive and well in America.

Today is the fourth day of oversight hearings into executive branch conduct at Waco. Today we will hear about the raid execution itself. We will hear about how the ATF agents felt as they approached the raid, about how decision-makers in Washington understood the original plan and about other events that were discussed in the Treasury documents.

The first three days of these hearings have established that there remain serious questions relating to how the executive branch acted and reacted. We're here today for one purpose, and that is to answer these questions. For any doubters, I think it now should be clear that we have opened the door to witnesses of every stripe and every opinion. We have heard from Branch Davidians and investigative journalists, from law enforcement officers and leading representatives of our nation's law enforcement community. We have heard from members of the special forces unit (that trained?) ATF, from ATF commanders and DEA drug lab experts. We have heard from Treasury reviewers, legal experts on both sides, and a child abuse investigator who went into the Davidian compound. Finally, we have already heard from the former secretary of the treasury, the former head of ATF and a brave child who escaped the fire but didn't escape David Koresh, 14-year-old Kiri Jewell.
My point, in short, is that these hearings are clearly open and fair, as they must be, and we are here to pursue the truth. These events were troubling in 1993 and they remain troubling today. In fact, the need for congressional oversight seems to be validated a little more each day. More than 80 Americans died in the events we are discussing -- courageous line agents who should never have been fired on and innocent children who should still be alive.

Our job, which we take up again today, is to ask how pivotal decisions got made, by whom, when and why. I approach these hearings with deep respect for the oversight process and for what it's intended to do. I also approach them with great personal respect for the differing convictions that members of this dais hold. I believe we're all seeking the real answers, and I think the American public should know that. My sincere hope is that our mutual respect will guide us through this difficult and at times emotional oversight process and yield a truly constructive result for the American people at the conclusion of these hearings one week from today.

The bottom line is in the end we will be happy to be judged by our results. And I certainly hope that as we get the results and get the truth out that we can add credibility to the law enforcement agencies, the people that we respect that are so very, very valuable to our daily way of life. Thank you, Mr. Chairman.

REP. MCCOLLUM: You're welcome. I yield now to Mr. Schumer.

REP. CHARLES SCHUMER (D-NY): Thank you very much, Mr. Chairman, and I appreciate again the opportunity to make an opening statement. I would say the statement of my good Bill McCollum from Florida reminds me of the old lawyer's aphorism, which is if you don't have the facts, pound on the law. If you don't have the law, pound on the facts. If you don't have either, pound on the table.

As we enter the second week of the Waco hearings, I think it's appropriate to look back at what we've learned so far and look ahead to the upcoming panels. Clearly the most memorable witness last week and the person who has set the entire tone of the hearings so far was Kiri Jewell, and we know what she described -- how when she was 10 years old, she was sexually assaulted by David Koresh. She also told about the widespread sexual and physical abuse within the compound.

We also discovered a very troubling new connection between the National Rifle Association and these hearings. Joyce Sparks, a witness subpoenaed by the majority, with some critical things to say about the Waco raid, was approached by a woman claiming to be from the Waco hearing team, but who was being paid for by the NRA. This was the third incident of direct contact between the NRA, which calls the ATF "jack-booted government thugs," and this hearing.

In fact, one NRA official was quoted in today's "Washington Post" as saying, quote, "NRA people at headquarters are dancing in the hallways with glee at the fact that the Waco hearings are on. This is their dream," unquote.

As I've repeatedly said, there's nothing wrong with holding hearings into Waco. They're worthwhile if we discover new facts, if we see old facts in a new light, and, most importantly -- and this should
be all of our goals -- if we can use the mistakes at Waco to learn from and to strengthen and improve federal law enforcement.

What concerns me is that the NRA's involvement shows that the real purpose of these hearings might be different, at least to some, and that is to discredit and so weaken the ATF that they can no longer enforce Brady, the assault weapons ban, and the other gun laws of this country.

It's our job to make a stronger, more effective ATF, as many have said. In light of the NRA covert actions surrounding these hearings, we've asked the committee to subpoena NRA employees to get to the bottom of their involvement. Until we clear the air, these hearings will continue to have a cloud hanging over them.

This week, we're going to hear about the tragic 51-day siege at the Davidian compound, and today we'll learn about ATF's April 19 raid of the Davidian compound -- (tone) -- what's that?

(Off-mike comments. )

REP. SCHUMER: Oh, morning business. Okay. You'll hear -- (tone) -- you'll hear that the element of surprise was lost, that Koresh knew about the raid before it happened and that it should have been called off. All of that, in my judgment, is true. To raid without the element of surprise was, in my opinion, the greatest mistake of the entire Waco tragedy.

But remember, when David Koresh found out that law enforcement was on their way, he didn't lay down his guns, he attacked. Koresh and his followers greeted law enforcement with machine guns and grenades, more firepower than even the ATF agents had themselves. Nothing -- nothing -- excused that ambush. Nothing in American law excuses it, nothing in the Bible excuses it. You do not meet a warrant with a machine gun, even if you believe the warrant was illegally and fraudulently obtained.

And who can blame the ATF for acting? Who here, knowing that there were dozens of more Kiri Jewells inside the compound, possibly being sexually and physically abused by a madman armed to the teeth, can excoriate the women and men who put their lives on the line to protect us?

Yes, they made mistakes, and, yes, it is legitimate for us to hold hearings on these mistakes, but it is wrong, fundamentally wrong, to make them feel like William Buford, whose ATF team, assault team, led the raid. Mr. Buford said he felt like he did after coming back from Vietnam, quote, "I did a service for my country, and we're being criticized for it," he said.

We can criticize their actions, but no one should dare criticize their motivation. There is not one iota of evidence that the ATF and FBI acted for anything but legitimate reasons. I ask those on the other side of the aisle to say as much, and I appreciate Chairman McCollum and his generally fierce opening statement to admit that there was no -- that we did clear the air of the military conspiracy part, that the military was not involved, even though we've heard that on the news and other things, that the military may have stepped over the line, to hear Chairman McCollum say that we have cleared the air of that myth.

Over the last couple of days, and just one other point here, Mr. Chairman, over the last couple of
days, some on the other side of the aisle have been grasping at straws to divert people's attention from the Kiri Jewells and William Bufords. They yell cover up when the administration has been completely forthcoming in giving every document that has been asked for so far, including documents that had the president's own little notes and handwriting.

They cried foul when they've been treated fairly, and they say they've uncovered new facts when all they can show are the ones that have already come to light. Last week, the majority complained, the gentleman from Florida and earlier, I believe, the gentleman from New Hampshire, that they'd been unable to see the guns seized from the Branch Davidian compound. One member went so far as to call it obstruction that they couldn't see those guns. Yet, when Chairman Zeliff realized that the guns may actually be sent to Washington, and the American people would see what the ATF agents were facing at the Davidian compound, he changed course and wrote to the Department of Justice, asking that the guns not be sent. Let's bring these guns to Washington to prove once and for all that the weapons were illegally converted machine guns and the warrant was legitimate. That's what we want them here for.

Now the Republican majority is asking that John Podesta, who apparently has been helping the White House with their hearing preparation, or spin as they call it, be called as a witness. First, I say fine, call anyone you wish. Let's clear the air. Let's get rid of all of the lingering questions. But if you're going to call witnesses who we feel are tangential to these hearings, then you should allow us to call our witnesses who you may feel are tangential to the hearings. Let's bring the NRA employees here to find out how exactly great their role was in organizing these hearings. And finally -- well, one other point, and talking about spin, that the White House had spin control on this hearing? My goodness, this is like Claude Raines saying in the cafe in Casablanca, gambling here? My goodness. Does it exist? I don't see anyone on the majority side saying they don't need a press secretary anymore. Now come on.

Finally, as we move into the fourth, fifth, sixth, seventh and eighth days of the Waco hearings, the issue of balance and perspective becomes more apparent. We're investigating these events again. That's fine. But it's outrageous that we still have not had a single day of hearings into a problem that concerns a lot more Americans and poses a far greater risk than the supposed abuses by the ATF or the FBI. The prevalence of paramilitary militias, many of whom are motivated by the events at Waco. Finally, I'm confident the panels this week -- that's the third finally I've said, I realize that -- finally, I'm confident that the panels this week will show once again that we already know that the ATF and the FBI messed up, but only because they were faced with an armed madman who was sexually abusing little girls inside his compound.

REP. MCCOLLUM: Mr. Schumer, you went over well, quite a bit of time, and I want to make a couple of quick comments in response before I yield to Ms. Thurman. First of all, we have no intention of calling John Podesta. He will not be called as far as I know, as a witness; that is not our intent. Secondly, with respect to the question of the military, when I did make that statement, I still believe that, and I did not read all of my statement, because I was running out of time. I let you run over. And I want to read the fact that I would have said after an exhaustive review of the ATF's contact with the Army last week, it became very clear that our military neither directed nor took part
in the Waco raid by the ATF, and the Posse Comitatus laws were not broken. But where there is responsibility which, to date, has been shirked as such as appears to be the case with some at the Treasury Department, these hearings have brought these facts to light. So I think that that needs to be said as well. And last but not least, while we have not talked about it, and I did not intend to inject them into these hearings as you have been attempting to do, we will hold hearings, probably a couple of days of hearings, on the so-called militia, among other things, after we reconvene in the fall.

REP. SCHUMER: (Inaudible.)

REP. MCCOLLUM: So all of that has been attempted and planned, but to interject some of these things that we've been interjecting in these hearings and to have all the bickering and disagreement has not been helpful to the process. So I hope you and I can together work along with Ms. Thurman and Mr. Zeliff to make sure that we get just out on the facts this week and get on line with what we need to be doing here.

REP. SCHUMER: Mr. Chairman, just one quick point.

REP. MCCOLLUM: Very quickly.

REP. SCHUMER: I want to thank you for saying that we will have militia hearings. I think they are important and I think that means a great deal to us.

REP. MCCOLLUM: Ms. Thurman, you are recognized for five minutes.

REP. SCHUMER: (Off mike)

REP. MCCOLLUM: I don't believe we ought to get into that, Mr. -- (inaudible) --, because if we do we'll just on forever this morning.

REP. SCHUMER: He referred that members of this side of the aisle had press secretaries -- (inaudible) -- I've never had a press secretary and --

REP. MCCOLLUM: It's noted you do not intend to employ one --

REP. SCHUMER: And we do all have press secretaries, but as he well knows --

REP. SCHUMER: I did not, sir.

REP. MCCOLLUM: In addition -- except for you -- in addition to press secretary, which clearly the President has, he hired Mr. Podesta just to do damage control. Ms. Thurman.

REP. THURMAN: Thank you, Mr. Chairman. As we begin our second week of hearings I would like to take this opportunity to review what I have personally learned from these hearings. To begin with let me reiterate that I truly believe that these hearings can serve a constructive purpose. Starting on Wednesday we heard compelling testimony into the character and beliefs of David Koresh. Well
I still believe this is a vital component in this process. They were collaborated by Mrs. Joyce Sparks of the Texas Department of Protective and Regulatory Services, Division of Child Protective Services, and then again by Dr. Bruce Perry of Baylor University.

On the second day we heard from Bill Buford recall the horror of the raid itself as he watched his friends and fellow officers wounded and killed. Every one of us was moved by Mr. Buford account. Few, if any, of us in this room have ever faced a situation as dangerous as the one Mr. Buford and his fellow officers faced that February day outside of Waco. This past Friday we took testimony from the distinguished former Secretary of the Treasurer, Lloyd Bentsen. While many of my friends on the majority side spends their five minutes assigning blame to the mistakes, and there were many significant mistakes in the raid, few took the time to understand what the chairmen have told us on this joint subcommittee, the real purpose of these hearings are, to see what corrective measures have been taken and what we here in the Congress can do to make sure a tragedy such as this never occurs again.

Secretary Bentsen walked us through the detailed process of the review of the raid. Here are some important facts that may have been overlooked. No ATF personnel participated in the review to help guarantee the independence of the findings. Seventeen senior investigators from the IRS, Secret Service, the Customs Service and the Financial Crimes Enforcement Network helped with the preparation of the blue book. In addition, 10 outside experts, some of whom we have already heard from, were also brought in to analyze the problems. All involved served without pay. They took over five months to complete an exhaustive and thorough approach.

As a result of the findings of the review board, the ATF leadership in Washington and in the field was replaced and other agents were dismissed. Finally, lessons were learned and actions were taken to correct the problems. Secretary Bentsen freely stated that there was a pattern of inadequate oversight by main Treasury and insufficient communication between the offices of law enforcement and the bureaus it's charged with supervising. Mr. Bentsen concluded by reminding us that steps were taken to improve formal and informal communications within the Department of Treasury.

The blue book, while very detailed, may have some minor and important facts missing from its final product. However, up to this point I have heard nothing here and would lead me to believe that there was a cover up of the facts. Remember, the blue book is still being praised by many inside and outside Washington for its frankness and detail.

Today we will wrap up the Treasury portion of the hearings as we hear from more ATF agents who participated in the raid and Secretary for Enforcement, Ron Noble, and current ATF Director John Magaw, the former head of Secret Service. I want at this time to welcome our witnesses. But in closing, I would like to go back to a few statements contained in Ms. Sparks' written testimony from Friday.

Ms. Sparks stated that once the raid occurred, it was a certainty that the siege would end with a fire. She had taken the time to gather intelligence into Koresh's views. This is one important lesson that I hope has been learned by the Treasury Department. In addition, however, Ms. Sparks' said that we must address what has happened here, learn from it, and move forward. I agree completely with these sentiments and I thank you, Mr. Chairman, and I yield back the balance of my time.
REP. MCCOLLUM: Thank you, Ms. Thurman. What you just cited about Ms. Sparks and much of what she had to say was new and revealing and had not come out before, and I thought it was interesting. I am now going to bring forward our witnesses by introduction and then after we've done that I will ask you all to stand, but not until after we've done it, and swear you in as witnesses. The introductions by the way are not in the order in which you are seated, so fear not, you are seated in the right places, just my sheet is a little different from where you are.

First of all, we have Robert Rodriguez, ATF special agent. We have Chuck Sarabyn, former ATF assistant special agent in charge of the Houston office, and tactical commander for the raid at Mount Carmel. We have Phillip Chojnacki, former ATF special agent in charge of the Houston office, and overall incident commander at Waco. We have with us today Sharon Wheeler, ATF special agent and public information officer on raid day. We have Dan Hartnett, former ATF deputy director for enforcement. Daniel Black, an official in the ATF personnel office; Lewis C. Merletti, secret Service agent and assistant project director of the Treasury Department review team; James Cadigan, FBI special agent and an expert in firearms; William Buford, ATF resident agent in charge of the Little Rock office, and commander of one of the special response teams on raid day; and Roger Altman, former deputy secretary of the Treasury, who could not be with us Friday, and we are glad you are here with us today, Mr. Altman.

Now, at this point in time I would like to ask if each of you would rise, and I will swear you in under oath.

MR. : (Off mike) -- two additional names.

REP. MCCOLLUM: We have two names that we didn't have in the introduction? Roland Ballesteros, who is an ATF agent -- was at the time, and John Henry Williams, who also is an ATF agent. I apologize for not having caught that.

If you want to raise your right hand please, gentlemen. Do you swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth? Would you please answer.

(Witnesses answer affirmatively. )

Please be seated. Let the record reflect that all of the witnesses answered in the affirmative. Today we have a very large panel. We do not have a system for going through the process of having opening statements, and we go right to questioners. And the first person I'm going to recognize this morning on our side of the aisle is Mr. Chabot. Mr. Chabot, you have five minutes.

REP. STEVE CHABOT (R-OH): Thank you, Mr. Chairman. Mr. Merletti first. Sir, you've already testified that Agent Rodriguez, who was under cover at the time, warned Agent Cavanaugh and then Agent Sarabyn, that David Koresh knew the raid was coming -- is that correct?

MR. MERLETTI: Yes.
REP. CHABOT: Okay. And then Agent Sarabyn reported to Agent Chojnacki that Koresh knew they were coming, and that both Sarabyn and Chojnacki, quote, and this is your quote I believe, "lied to their superiors and investigators about what Rodriguez had reported" -- correct?

MR. MERLETTI: Correct.

REP. CHABOT: Okay. In fact, Mr. Merletti, you went so far in your Merletti last week to suggest that the implication of your findings is that in lying to investigators Mr. Sarabyn and Chojnacki could be guilty of federal offenses -- correct?

MR. MERLETTI: Felony offenses, not federal -- (inaudible) -- yes.

REP. CHABOT: Okay, I believe after looking at the documentation you agreed with that at the time?

MR. MERLETTI: Yes.

REP. CHABOT: And in fact you had 61 witnesses to support the findings that the agents had lied about those after the events -- correct?

MR. MERLETTI: Yes, sir.

REP. CHABOT: Now, Mr. Black, I have some questions for you, sir. As we know, the ATF proceeded with the raid, even though the element of surprise was lost. Many people, including some very brave law enforcement officers, in fact wound up dead. The Treasury report concludes, and I quote, "Sarabyn and Chojnacki lied to their superiors about what Rodriguez had reported. "The department right up to the present moment has never retracted that very strong statement -- correct?

MR. BLACK: That's correct.

REP. CHABOT: And the report says that not only did Agent Sarabyn and Chojnacki lie, but they also tried to shift blame to Mr. Rodriguez, who is also here this morning, who is a junior agent, and that they later altered documentary evidence. Isn't it true, Mr. Black, that as a result of all of this alleged misconduct you, as the deputy director of the ATF, fired Agent Sarabyn and Agent Chojnacki by removing them from federal service?

MR. BLACK: That's correct.

REP. CHABOT: And you reviewed the Treasury report, you reviewed the testimony of all the witnesses, you met with both agents, and you decided to remove each of them from federal service for four separate reasons, including intentionally making false statements? That's correct?

MR. BLACK: That's correct.

REP. CHABOT: Now, your decision to fire these agents comes in some documents dated October 26, 1994, and I'll ask that copies of your memos firing these men be distributed, and that they be
included in the records -- so if the clerk would have those distributed at this time. They are documents 24 and 25. I'd like you to look at each of these memos -- you don't have to read them completely, but they are copies that you have seen before. And I'd ask that you'd confirm that you made these findings and signed these documents of removal.

REP. D: Can the minority side just get copies of these documents here?

REP. : Certainly.

REP. CHABOT: Absolutely -- (off mike). That's your signature?

MR. BLACK: That's correct -- those are the memos.

REP. CHABOT: With regard to each man, you stated that you found that the charges warranted removal from federal service, and that, quote, "a lesser penalty would be inadequate, and that removal is necessary to promote the efficiency of the federal service. "I assume you believed that when these memos were made that -- and when you signed them that that was true?

MR. BLACK: That's true.

REP. CHABOT: Okay. In fact, you made a number of harsh statements in both of these memos. But then when they contested their firings, you turned around less than two months later and signed voluntary settlement agreements reinstating each man to federal service, despite having branded them as liars, despite having said that a penalty of less than removal would be inadequate. You reinstated them with back pay and benefits, and you even had the taxpayers pay for their attorneys' fees, and I believe the attorneys' fees approached around $40,000 -- at least for Mr. Sarabyn's. That's all correct, isn't it?

MR. BLACK: I'm not quite sure about the attorney fees -- I know that's still being discussed.

REP. CHABOT: You're not sure of the amounts, but the fact --

MR. BLACK: I'm not sure of the amount.

REP. CHABOT: Thank you. Now, one key question in all this, Mr. Black, is why the ATF would ever rehire two agents who had lied and altered documents in such a tragic episode. You signed the settlement agreements along with legal counsel. Isn't it true, Mr. Black, that the decision to rehire these two, and to shut down the case in effect, was made at a much higher level within the administration?

MR. BLACK: No, that's not correct. That decision was made by myself and the director of ATF.

REP. CHABOT: You didn't talk to anybody higher than you?

MR. BLACK: I did not talk to anybody higher.
REP. CHABOT: What was it that Mr. Sarabyn and Mr. Chojnacki knew that people didn't want them talking about?

MR. BLACK: I'm not familiar with anything that they knew that people didn't want them talking about.

REP. CHABOT: You were present, were you not, Mr. Black, in a meeting with Mr. Sarabyn and his lawyer on March 24th of '94 where Mr. Sarabyn gave his oral reply to your charges against him?

MR. BLACK: Yes, I was.

REP. CHABOT: And we've been given documents that provide a summary of that meeting, and I ask unanimous consent that these documents be included in the record.

REP. MCCOLLUM: Without objection.

REP. CHABOT: Isn't it true that Mr. Sarabyn's lawyer told you that to that point Mr. Sarabyn had honored a, quote, "gag order" imposed by Director Magaw but that if he was removed from the federal service, he would talk and that notes, including Mr. Noble's notes, would be made public and that, quote, "Treasury doesn't need this and ATF doesn't need this"? Isn't that what the lawyer said?

MR. BLACK: I recall the lawyer saying something to that effect, but I'm not aware of any gag order.

REP. CHABOT: Isn't it also true that the lawyer for Mr. Chojnacki said basically the same thing?

MR. BLACK: That's correct. And, in fact, Agent Chojnacki himself told you that he has another side to the story that has not come out but that he believed that it was in the best interest of the ATF not to go forward with the story, and he mentioned a specific incident. And he had stated that the most critical parts of the incidents were witnessed by himself, Cavanaugh, Sarabyn and Royster. And he said, quote, "The successful prosecution of the Branch Davidians is all they have left to offer. "And I ask you, Mr. Black, what did they know that in their view could have undermined the prosecution and that they would keep quiet about if they were rehired? You don't know what that is?

MR. BLACK: I don't know what that is. No, sir.

REP. CHABOT: Okay, my time has expired.

REP. MCCOLLUM: The gentleman's time is up. Ms. Thurman, I understand you want me to yield to Mr. Schumer. Is that correct?

REP. THURMAN: Yes.

REP. MCCOLLUM: Mr. Schumer.
REP. SCHUMER: Thank you very much. And I guess there are two key issues here today. One is the element of surprise and what happened. The second is who fired first. And to me, the second issue is probably -- is certainly the number one issue that faces the entire day today. And I'd like to get some statements about that on the record, even though we went over it a little bit last week.

First, I would like to address questions to Agent Buford. You testified last -- first of all, is it true, sir, that you were the team leader and you were right on the front lines the morning of the raid?

MR. BUFORD: That's correct, sir.

REP. SCHUMER: And that you ascended -- the pictures we see going up the roof and trying to get into the room with the guns, you were one of the people on that ladder.

MR. BUFORD: Yes, sir.

REP. SCHUMER: And you were wounded that day as well. Is that correct?

MR. BUFORD: Yes, sir.

REP. SCHUMER: Okay. Sir, who do you think fired the first shot?

MR. BUFORD: To the best of my knowledge, the first shots I heard fired were coming from the inside of the building to the outside, fired by other than ATF agents.

REP. SCHUMER: And how do you know it was other than ATF agents?

MR. BUFORD: I could tell by the type of weapons that I heard shooting, the 50-caliber weapons, the AK-47s. We had no 50-calibers. We had no AK-47s.

REP. SCHUMER: Do you have any doubts that you were fired on first?

MR. BUFORD: To the best of my knowledge, no, I have no doubt.

REP. SCHUMER: Thank you. And would you describe what happened? Could you describe it as sort of an ambush?

MR. BUFORD: It was definitely an ambush, a very well planned ambush, I believe. The firing was from -- it appeared to me as though nearly every window along the front of the building.

REP. SCHUMER: I see. So it wasn't just one or two people firing but a large number.

MR. BUFORD: A large number, yes, sir.

REP. SCHUMER: Okay. Thank you, Mr. Buford. And I'd like to now ask Mr. Williams some questions. Mr. Williams, you were one of Mr. Buford's team. Is that correct?
MR. WILLIAMS: No, I was on the Houston team.

REP. SCHUMER: You were on the --

MR. WILLIAMS: Houston --

REP. SCHUMER: -- eastern team.

MR. WILLIAMS: Houston. Houston, Texas team.

REP. SCHUMER: Oh, the Houston team.

MR. WILLIAMS: Yes.

REP. SCHUMER: Okay, but you were also on the front lines that morning. Is that correct?

MR. WILLIAMS: Yes, I was.

REP. SCHUMER: Okay, who do you believe fired the first shot?

MR. WILLIAMS: From all indications, it came from inside as we approached the front door.

REP. SCHUMER: And would you describe what happened to you and the other agents as an ambush?

MR. WILLIAMS: Yes, I do.

REP. SCHUMER: Were you kind of shocked that people, when you were serving a warrant, would fire back in such -- with such fire power?
MR. WILLIAMS: I was stunned from all the high power that came from the compound.

REP. SCHUMER: Okay. How do you -- why do you believe with such certainty that you fired -- that the other side, that the people inside the compound, Koresh's people, fired first?

MR. WILLIAMS: My assignment that day was to enter the front door. As we approached the front door, David Koresh came to the front door dressed in like camo-fatigues. As he closed the door, before we reached the door, one of the agents reached the door. At that point, that's when the doors erupted with gunfire coming from inside. It was 10 seconds or more before we even fired back.

REP. SCHUMER: Mmm-hmm. Did there appear to be any coordination of the shooting from inside or was it just random?

MR. WILLIAMS: It was a coordination and they were shooting through the windows, through the walls, everywhere.

REP. SCHUMER: Did you see any agents shot?
MR. WILLIAMS: Yes, I did.

REP. SCHUMER: Okay. And did you hear any voices from one of the walkie-talkies inside the compound, sort of directing how and where the fire ought to be?

MR. WILLIAMS: Yes. They only had walkie-talkies which pinpointed -- any time any agents outside moved, they would relay that we had one moving in the back, pinpointing the agent's position on the compound.

REP. SCHUMER: Thank you, Mr. Williams. And again, I think all of us appreciate your bravery. I want to ask any member of this panel, does any member of this panel -- and I know you all have different views on the aspects of secrecy and surprise and who knew and when. But on the crucial issue of who shot first, does anyone -- and raise your hand by indicating so the record could show -- does anyone believe that ATF fired first? Please raise your hands. Do all of you believe that the first shots were fired from within the compound? If you believe that the case, please just raise your hand.

(Hands are raised. )

REP. SCHUMER: Let the record show that every member here of the panel, I believe, with the exception of Mr. Cadigan, has raised his or her hand in believing that the shots were fired first by Mr. Koresh. And Mr. Cadigan, could you explain why you didn't raise your hand?

MR. CADIGAN: Yes, sir. I wasn't there.

REP. SCHUMER: You weren't there.

MR. CADIGAN: Yes, sir.

REP. SCHUMER: You have no -- you don't have an opinion one way or the other.

MR. CADIGAN: No, sir.

REP. SCHUMER: Thank you, Mr. Cadigan. You got me worried there for a moment. Okay, let me then ask -- go back to Mr. Buford. Just a final question, because I think you touched all of us, Mr. Buford, when you mentioned last week how you felt after going on this raid and finding your agency so criticized for it, when you were just doing your duty. If you were on this side of the table, and had the opportunity to ask questions, or had the opportunity to bring out anything that hasn't been brought out, what would you -- what kind of questions would you ask? What would you bring out?

MR. BUFORD: I think it would be important for everyone to know one of the things you've just brought up, that they did, in fact, fire first; that we were, in fact, ambushed. And I think the thing that has bothered me a lot is that it seems as though many people think that we went into that situation without any concern for those children. And our main concern in conducting this raid the way we did was concern for those children. Had we have gone to a siege-type operation, I was
convincing in my mind that all of those children would be murdered, as they were, and if we were successful, with the type of entry we were trying to do, and were able to neutralize the people on the inside, that no one on either side would be hurt, and that's what we were striving for. We even took extraordinary measures to make sure that we had people there to take care of the children after the situation was neutralized, and were even going to bring happy meals out for all of the children once we got them outside of the compound, from McDonald's.

REP. SCHUMER: Thank you. The only point I'd make, Mr. Chairman --

REP. MCCOLLUM: Your time has expired, Mr. Schumer. Would you please reserve that point? Mr. Buyer?

REP. BUYER: One thing, I just wanted a quick comment before I yield on, I think what Mr. Schumer was doing, laying down the predicate of sort of an ambush, gives a fairly accurate scene, and that's why the importance of the element of surprise; that once that was removed, that's why you shouldn't have been surprised that there was an ambush. That's why we're going through this process. And you know, this isn't just serving a warrant; this isn't a federal marshall going and knocking on the door and saying, are you so and so, and I have a warrant when we have 75 agents and a dynamic entry; going to lay down discriminating fields of fire; children present. We've got federal agents with 9 mm, AR-15s, MP-5s, two-shot repeaters. But look what also the fire power you're going up against. So this isn't just going to the door and saying, I'm going to serve a warrant. Let me yield to Mr. Chabot the remaining balance of my time.

REP. CHABOT: Thank you. I'll ask that Documents 22 and 23 be distributed to Mr. Chojnacki and to the minority. And while they're being handed out, I'll read to Mr. Chojnacki from Document 23, which is the Treasury Department's summary of Mr. Chojnacki's oral reply to Mr. Black about the incident. Chojnacki said that he had been contacted by the press and told that they knew he had another side of the story. However, he believed it was in the best interest of the Bureau not to go forward with his story. He stated that the most critical parts of the incident were witnessed by himself, Cavanaugh and Sarabyn, and Royster. He stated that most of the other 100 people there were not witnesses. They only knew about information third or fourth-hand. He had answers to the questions that people had, but he was not given an opportunity to answer those questions. The successful prosecution of some of the Branch Davidians is all that they have left to offer.

Now, Mr. Chojnacki, you said that by keeping quiet about the incident, you could offer the successful prosecution of the Branch Davidians. What specific incident was it that you were talking about?

MR. CHOJNACKI: My concern at that time related to the contact that I had with Mr. Sarabyn on the tarmac at the airport, with the Ted Royster the SAC of Dallas present, where discussed the information that had come from Robert Rodriguez, the agent in the undercover house. My feeling at that time was that while I thought I understood the information that Robert was passing to us, I did not understand at that particular point in time that he meant that Koresh was aware that we were coming then. I understood that Koresh talked that way to him at all times. I didn't see new information, and I in good faith was going forward with the warrant.
REP. CHABOT: Let me ask you -- I just want to stop you there. The Treasury report downplays this point a little bit. But something I wanted to ask you, it notes that after you learned that Koresh knew the ATF and the guard were coming, you called ATF headquarters in Washington, correct?

MR. CHOJNACKI: That's correct, sir.

REP. CHABOT: Okay, and that's where the higher ups were, in Washington of course. What was their reaction to you talking to them?

MR. CHOJNACKI: There was no reaction, sir. I was reporting to the Emergency Command Center at headquarters. The agent that I spoke to, I believe, was John Jensen (sp), who was one of the agents staffing the command center, and I was merely advising him of the status of the investigation at that time.

REP. CHABOT: What time was it at that time -- 9:10?

MR. CHOJNACKI: It would have been somewhere approximately 9:10 to 9:15, somewhere in that time frame.

REP. CHABOT: Okay, and the raid was initially supposed to start at 10:00, because it was thought all the men were going to be out in the pit working at that time, correct?

MR. CHOJNACKI: That was an approximate time of arrival, yes, sir.

REP. CHABOT: And that was one of the keys to this whole raid, that the men would be in the pit and separated from their guns, correct?

MR. CHOJNACKI: Well, the key would be that they would not be in their rooms, but separated from their guns, not necessarily outside. If it was raining, we didn't expect them to be out of doors.

REP. CHABOT: And you had just learned, or you had just discussed with Sarabyn, the information about Rodriguez prior to making that phone call, is that right?

MR. CHOJNACKI: That's correct, sir.

REP. CHABOT: Okay. And the raid was supposed to happen at 10:00.

MR. CHOJNACKI: We presumed that Robert would come out at approximately 9:15 that morning; contact Chuck Sarabyn; Sarabyn would pass the information to me. Then Sarabyn had to drive to Belle Meade (sp) --

REP. CHABOT: Excuse me, not to interrupt you, I've only got a couple minutes left. You had changed the time, or you speeded the time up after that conversation on the tarmac, correct?

MR. CHOJNACKI: Rodriguez came out ten minutes early, sir. So when the final -- if all the steps in progress took place as we had predicted, he came out ten minutes early; we got there
approximately ten minutes early. We did not intentionally do anything to speed it up. We were anticipating how long it would take to go from point A to point B, the Belle Meade (sp) Center, and then for the men and women to travel from that location to the raid scene. It wasn't like a military thing, where we had other resources doing things simultaneously; we were estimating that time, and we exceeded that by ten minutes, because we initiated our conversation on the tarmac by ten minutes.

REP. CHABOT: Okay. There's one document, Mr. Chojnacki, that basically suggests that when you talked to Washington that you told them that Koresh knew they were coming, that Washington told you, "You're on the site, you make the decision." Is that what really happened?

MR. CHOJNACKI: I don't remember any such conversation, sir. My conversation, to the best of my recollection, was reporting to somebody who was not a superior but somebody who was staffing that office, that Robert Rodriguez had come out, that we had had the conversation, I saw no reason for the raid to not go forward. They were not aware of us so we could--

REP. CHABOT: Yeah. I'm almost out of time here. Mr. Sarabyn, only a quick question here. I'm going to ask you about some telephone conversations you had with former ATF agent Larry Sparks. I know that some of the members here have opined that Mr. Sparks may not be a reliable source of information, so I'm only going to ask you about something you were recorded saying to him. Do you recall saying, and I quote, "Obviously some people way up said some things after that that weren't true, and it goes right down to the decision to go, and they were part of it." Do you remember making that statement.

MR. SARABYN: Something to that, yes.

REP. CHABOT: Okay. And, finally, let me address this question to both Mr. Sarabyn--

REP. MCCOLLUM: -- (off mike) -- your time has expired.

REP. CHABOT: Thank you.

REP. MCCOLLUM: Mr. Scott.

REP. SCOTT: Mr. Chairman, I want to yield 30 seconds to the gentleman from New York so he can complete the points that he was making.

REP. SCHUMER: Yes, the point I wish to make is I would say to everyone listening to this hearing and particularly those writing and reporting on the hearing that the most important point today is who fired first, and simply because there's no controversy about it, it shouldn't be forgotten. In other words, we may debate other, more trivial points, but the number one salient feature here is who fired first, and even if the element of surprise was lost, it does not justify firing on agents serving a warrant. Thank you, Mr. Scott.

REP. SCOTT: I'd like to follow up on that with Agent Williams. Can you go through just very briefly -- you're walking up to the door, and how close to the door were you when the shooting
started?

MR. WILLIAMS: About 10 feet from the door.

REP. SCOTT: Was it your intention prior to that to -- had Koresh come out by then?

MR. WILLIAMS: Yes.

REP. SCOTT: And how far from the door were you when he closed the door in your face?

MR. WILLIAMS: We were probably about 15 feet from the door.

REP. SCOTT: And did you continue walking forward?

MR. WILLIAMS: Yes.

REP. SCOTT: And how close were you when the shooting started?

MR. WILLIAMS: Basically about 10 feet. After that, the shooting started immediately after he closed the door.

REP. SCOTT: And is there any question in your mind as to where the shooting was coming from?

MR. WILLIAMS: None.

REP. SCOTT: Thank you. Excuse me, that was from the inside coming out.

MR. WILLIAMS: Yes, from the inside coming out.

REP. SCOTT: Mr. Cadigan, you're a firearms expert.

MR. CADIGAN: Yes, sir.

REP. SCOTT: We've had reports that several agents were shot through their vests. My question is whether or not there was any illegal ammunition, because bullets that pierce bulletproof vests are supposed to be illegal.

MR. CADIGAN: Well, there's certainly --

REP. SCOTT: -- (inaudible) -- ammunition on site that you could tell?

MR. CADIGAN: Not that was -- that we found. We found a lot of ammunition, hundreds of thousands of rounds of ammunition, but none of which would be, to my understanding, that are illegal.

REP. SCOTT: Do the laws against ammunitions that go through bulletproof vests, do those include
the high-powered rifle ammunition?

MR. CADIGAN: It is my understanding that some vests that are worn offer protection only up to a particular caliber, and that high-velocity or high-powered rifles is not one of them.

REP. SCOTT: Thank you. Mr. Rodriguez, was there any question in your mind, having been inside the compound, that Koresh knew that the agents were coming that day?

MR. RODRIGUEZ: Sir, there was no question in my mind that Koresh knew -- there's no question in my mind that Koresh knew that we were coming, yes, sir.

REP. SCOTT: And can you describe briefly his emotions when he got the word?

MR. RODRIGUEZ: Yes, sir. We were -- I was inside the compound on that day, that morning. I had asked him some questions regarding a newspaper clipping. He sat down and started to explain to me the difference between his preachings and another subject's preachings. As we were discussing the Bible, one of his subjects, Mr. Jones, came in and advised him that he had a telephone call.

He ignored the call and continued to talk to me. At that point, everything was normal. There was only three people in that living room at that point. Everything was calm. He was normal. He was talking to me as he always talked to me in all our sessions. Nothing was wrong.

Mr. Jones again came to the living room and advised him that he had an emergency call from England. At that time, he quickly got up and left the room. At that time, there were still just Mr. Snyder and Sherry Jewell were in that room with me at that time.

He came back approximately three to four minutes later, and when he came back, I mean, it was like day and night. As he approached me, he was shaking real bad. He was breathing real hard. At one time, he put his hands in his pocket, in his jacket pocket, to -- probably to keep his hands from shaking. He sat down next to me, probably about this far, and he continued to try to finish what he was talking to me about.

When he grabbed the Bible, he was shaking so bad that he could not actually read it. I grabbed the Bible and I asked him, "What's wrong? "At that time he stopped, and -- and as I sit here, I remember clearly -- he took a deep breath, he turned and looked at me and said, "Robert, neither the ATF or the National Guard will ever get me. They got me once, and they'll never get me again. "

REP. SCOTT: Now, was there any question -- were you surprised at what happened after the ATF came? Were you surprised that he had prepared the ambush?

MR. RODRIGUEZ: I'm sorry, sir?

REP. SCOTT: Were you surprised that he had prepared the ambush?
MR. RODRIGUEZ: No, sir.

REP. SCOTT: Knowing what you know, did you convey that information to your superiors?

MR. RODRIGUEZ: Yes, sir, I did.

REP. SCOTT: Did you -- was there any question in your mind that they got the message?

MR. RODRIGUEZ: Sir, there's no question in my mind that they got the message.

REP. SCOTT: Did you have any reason to hold back information that you had that the agents were, in fact, in danger?

MR. RODRIGUEZ: Sir, in memory of the four agents that were killed and all of the agents within the Bureau of Alcohol, Tobacco, and Firearms, as I sit here, I tell you I told them what happened inside the compound. I advised them that they knew we were coming, that Koresh knew. I advised all the people in the undercover house -- Mr. Cavanaugh was one of them. I then called Mr. Sarabyn, and the first things I said to him when he picked up the phone was, "Chuck, they know. They know. They know we're coming." I can remember that as long as I live. I remember those words.

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

REP. COBLE: Mr. Chairman, I just came from another meeting, and I will yield to the gentleman from Ohio, but I want to make this brief point. The gentleman from New York reminded us earlier what the most important point is. This may well be subject to interpretation. I think clearly the most important point before these two subcommittees, Mr. Chairman, is to determine what went wrong and to prevent a duplication during subsequent raids.

Having said that, I will yield to the gentleman from Ohio. I don't know how much time I have, Mr. Chairman -- four and a half minutes, I guess.

REP. CHABOT: Thank you. Mr. Sarabyn, I'd just like to follow up again with your statement, where you said, "Obviously, some people way up said some things after that weren't true. It goes right down to the decision to go, and they were part of it."

By way up, you're talking about upper echelon officials, I assume. Is that correct?

MR. SARABYN: What I was making reference to, sir, is the element of surprise. Throughout -- at this point, it became a very big issue. The point I was trying to make is I was never given the order not to go if we lost the element of surprise. There'd been much conversation after that about the element of surprise, and I was trying to say I do not know who up above me, how far, whatever, gave that order to somebody, but I never received that order.

REP. CHABOT: Okay. And could you again relate what exactly your position was in the raid?
MR. SARABYN: I was the tactical coordinator. I was in charge of coordinating all the SRTs -- there was three SRT teams and three support teams with that, and then my job was to pass information on to the instance commander and his deputy for action.

REP. CHABOT: And so no one had ever conveyed to you how important the element of surprise was?

MR. SARABYN: The--during a dynamic entry, the element of surprise is a part of doing a dynamic entry, but with the book and the things everybody was saying--or people were saying after, they were saying, you know, "You were given the order not to go if you lost the element of surprise," which I was never given. In those statements I was making earlier, I was trying to explain that all this was going on above me, but that order never came to me.

REP. CHABOT: Okay. That order never came to you?

MR. SARABYN: Right.

REP. CHABOT: Mr. Chojnacki, just a couple follow-up questions. You just testified that you told Mr. Black that you knew it was in the best interests of the ATF not to go forward with your story, because you did not want to go public with facts that could undermine the prosecution. How would what you knew undermine the prosecution?

MR. CHOJNACKI: My concern was that after having lost four agents and another 20 or so wounded, I did not want to create a controversy over terminology or an understanding of terminology as to what happened on the tarmac. I accept responsibility. I called a decision based on what I thought was the right thing to do and what -- and based on what I thought my understanding of the situation was.

For me to create a situation that -- that might cause dissension within our own ranks over what I was told and the semantics of that kind of thing I felt would be foolhardy, because our objective at that point was to see that if those people shot and killed are agents, that they were, in fact, successfully prosecuted and not create a side issue which could undermine that prosecution.

REP. CHABOT: At the time you made the remark, which was in early '94, the Treasury report had already been released and discussing the loss of the element of surprise was already discussed in there. So was there anything else that you knew -- that you knew that the agency did not want disclosed?

MR. CHOJNACKI: There wasn't new information, sir, just that the -- from my perspective, the review report was matter of fact. It said that I understood that we had lost the element of surprise and I had been ordered not to go forward if I had lost the element of surprise, and that with that knowledge that I had not only lost, I had disobeyed orders from my superior and forced my agents into a situation where several were killed.

REP. CHABOT: Let me address this question to both Mr. Sarabyn and Mr. Chojnacki. You both
read the Treasury report, correct?

MR. SARABYN (?): Yes, sir.

REP. CHABOT: Both of you, and you're both nodding affirmatively.

MR. CHOJNACKI (?): Yes, sir, we've read it.

REP. CHABOT: Thank you. Do you find that it fairly apportions blame for the mistakes that were made, or do you see it as an effort to blame those agents who were out in the field while shielding some of the people higher up in Washington?

I'd ask each of you to respond.

MR. CHOJNACKI: As I previously stated, sir, I accept the responsibility for making the field decision. I was the incident commander. I was the person to make that decision. Those people reporting information to me were bringing it to me for me to make that tactical decision and recommendation to Chuck.

The people in Washington, at that particular point, could not impact or effect on that decision whatsoever.

MR. SARABYN: Sir, I also accept the responsibility for the decision to go. I just think the Treasury review book focused just on one person, or two people or whatever. There were several commanders there, there were several people that participated and, you know, we just asked to be treated fairly, and I don't think we were in there.

REP. CHABOT: What was the final part?

MR. SARABYN: I don't think we were treated fairly in the book.

REP. CHABOT: Okay.

Mr. Black, let me ask you a follow-up question here. You said that you believe the report -- the report is accurate as far as you can tell, correct?

MR. BLACK: That's correct.

REP. CHABOT: And that you believe that these people, these two gentlemen lied and that they lied to investigators and that they changed documents, correct?

MR. BLACK: That's correct, yes.

REP. CHABOT: And yet you hired them.

MR. BLACK: We did -- we did hire them back. I think, as you're aware, under the civil service
rules, if an individual is fired for cause, they have that opportunity to appeal to the (Merit ?) Assistance Protection Board, at which time the decision can be taken out of our hands. We believe it was in the best interests of the government to rehire those individuals, keeping in mind that we rehired them no longer as supervisory special agents, no longer with the authority to lead special agents or to carry a gun or make arrests.

REP. CHABOT: But you did rehire them, feeling all those facts were true.

MR. BLACK: Yes, sir.

REP. MCCOLLUM: Your time is up. Ms. Lofgren.

REP. LOFGREN: Thank you, Mr. Chairman. Mr. Cadigan, you're the expert on guns, and you examined the guns from the compound after the fire. What did you find?

MR. CADIGAN: Well, my responsibility in this case was twofold. It was, first, to respond after the fire, to conduct a preliminary survey of the compound, to determine how many individuals from the FBI laboratory and our evidence response teams should proceed, and I did that.

Following the collection of the evidence for the 17 or 18 days that the Texas Rangers and Texas Department of Public Safety and FBI law enforcement officials did, I then examined the evidence that was submitted. It was approximately 2,000 items, and in that evidence, I found approximately 297 firearms or the remnants of firearms, and I examined those firearms to determine whether or not any of those had been altered to -- from the semi-automatic mode -- that is, one -- the firearm fires one shot for each time the trigger is pulled -- to the full automatic mode, which means the firearm fires as long as the trigger is depressed.

And that's what -- I examined those 297 weapons to determine if any of them had been altered.

REP. LOFGREN: And did you find any -- (inaudible) --

MR. CADIGAN: Yes, ma'am. I have a chart to my right that is a listing of the firearms that I examined and that I found to break out into the particular categories. I found in the AR-15 category -- that is, the AR-15 being the semi-automatic version of the assault rifle that is known in the military in the full automatic as the M-16. There were 34 of those. There were 61 -- I'm sorry, 61 M-16s; 61 AK-47s, the Chinese or Russian assault rifles; then there were various 12-gauge shotguns; other assault rifles; and inclusive were the two Barrett .50-caliber semi-automatic rifles.

Now, in the categories that are -- in the categories that are shown there, under the M-16 category, not all of those was I able to make a determination if they had been altered, and the reason for that is that in order to accomplish the alteration of a firearm from semi-automatic to fully automatic, you need, for this particular firearm, at least six parts. I have a chart here in front of me -- excuse me, sir -- of those particular parts that are necessary to change an AR-15, which is the semi-automatic version, to an M-16, which is full automatic, and in the firearms that I examined that I testified to in the trial in Waco -- actually in San Antonio, but about Waco -- in the ones that I said were altered to fire from the fully automatic position, I found each one of these parts in that particular firearm.
Now, many of them -- as a matter of fact, most of them -- were not -- I was not able to fire them, but what I was able to do was take one of them --

REP. LOFGREN: Is that because they were damaged?

MR. CADIGAN: Yes, they were damaged in the fire. And I was able to take one of them and test fire it. I made a videotape of the test firing that I have brought with me. I also, in the videotape, have the AK-47, the assault rifles that were altered, test firing those.

These parts I found in the M-16, or the ones that I caused to fire in the full automatic mode, and I was as conservative as I could be as far as calling which ones were altered.

Now, in the M-16 category, there were 22 firearms that I found to be modified to fire full auto, and in the AK-47s, there were --

REP. LOFGREN: And it was not (legal ? ) to do that?

MR. CADIGAN: -- 20. It is my understanding it's not, yes, ma'am.

REP. LOFGREN: All right. Thank you very much. I appreciate it.

You know, Mr. Rodriguez, I -- you were undercover in the compound and had a -- an opportunity, I understand, to really observe Mr. Koresh and -- now, when you were there, were you separated from, as were the other men, from the women, as we've had testimony from others?

MR. RODRIGUEZ: No, ma'am. Every time that I entered the compound and met with Koresh, it was always on a one-to-one basis.

REP. LOFGREN: I see.

MR. RODRIGUEZ: It was always the one thing we did for hours was to -- he would preach the Bible to me.

REP. LOFGREN: Mm-hmm (acknowledgement). So you really had an idea from all of that kind of what his philosophy and religion was or what he thought?

MR. RODRIGUEZ: Yes, ma'am.

REP. LOFGREN: Can you tell us what he was preaching and what was involved in, and, based on that, was he going to give up? Was there some other -- would a siege -- you know, what would have worked, in your judgment?

MR. RODRIGUEZ: I'll answer that question and advise you that everything that I say here regarding the Bible is -- are items that I learned from him. I was not an expert on the Bible when I went inside the compound and first met with David, or Mr. Koresh. Everything that I can say about
him are things that are planted in my head, which I really wish that I could get rid of, but the difference -- and it's easy.

The difference between Koresh and, I would say, normal people -- I would use me as an example. I'm Catholic. As a Catholic, I've been brought up and believe that one of these days, Judgment Day will come, and that we always need to prepare ourselves because we never know when it's going to come. If it comes, it comes, and if we're ready, we're ready.

In their belief, you have to understand the Book of Revelations and the Book of the Seven Seals was his whole life, was the Book of the Seven Seals.

That is what governed his thinking, his beliefs, everything was right there in those seven seals, and the difference between his and mine was that he also believed that judgment day would come, but the difference is that he would go -- or they would go and make judgment day arrive. In other words, they were going to make it happen. That's the difference. We wait, and they were going to make it happen. That's where the four horsemen on the seven seals come in. He emphasized the violence and destruction that occurred or was done by the four horsemen.

REP. MCCOLLUM: Thank you, Ms. Lofgren. Your time has expired. Mr. Zeliff?

REP. ZELIFF: Mr. Hartnett, I think you may be probably one of the most important witnesses we've heard from so far. Last week you testified that the Treasury report that reviewed the ATF raid was, according to your own understanding of the facts, filled with omissions, falsifications and false statements. You also alluded to the idea that these omissions and falsifications may not have been accidental. In particular, you suggested that the element of surprise, which the Treasury report portrays as a condition of the requirement of the original raid plan, was, in fact, never discussed, at least not in those terms, as a condition or requirement prior to the raid.

Now, if I'm not mistaken, the implications of this are serious. It seems to me that what you are saying is that this condition or requirement may have been invented, the idea of a condition known as the element of surprise, by someone writing the report after the fact. And the significance of such an invention, of course, is that it would relieve the top leadership at Treasury of any blame. It would relieve Undersecretary Ron Noble of any blame and would place the blame instead on the line agents and the commanders. They would be blamed for having not followed the plan. They would be fired and Treasury would have cleaned house, despite the fact that the condition that they were held to have violated never existed in the first place.

Now, I want to be sure that this is the impression you meant to leave, to give us. So if you could confirm my understanding and answer a very pointed question, are you suggesting that Ron Noble and those who approved the final Treasury report knowingly misled the American public and invented a condition called the element of surprise in order to protect themselves?

MR. HARTNETT: I saw Ron Noble testify in a national program several months ago or a month ago where he said both Treasury and ATF ordered the commanders at Waco not to proceed or to abort the raid if they lost the element of surprise. And what I'm saying to this committee is that I have never heard the term "element of surprise" until after the raid, when we started using it ourself
and the media started using it.

But I have to also add that in the briefings, the briefings that I had and Mr. Higgins had, the secrecy of the raid was discussed and was an element of the raid plan that was given to me and to Mr. Higgins. It was just that nobody ever called and said, "Abort the raid if you (use?) the element of surprise." That just never happened. But secrecy was a part of the plan, secrecy and safety. I mean, it was discussed over and over again.

REP. ZELIFF: Do you think you were set up?

MR. HARTNETT: By Mr. Noble? I think Mr. Noble felt that he had to be very careful in a new administration not to look as if he was whitewashing anything. When I gave my statement to the review team, it was a lengthy statement. There's pages missing out of it. I got it for the first time the other day and there were things that I said to the review team that have never appeared. They aren't even in my statement. They've never appeared in the review. One of those statements is, "Why did Waco happen and what could we do to prevent it in the future?" It's not there. It's not in my statement. It never ended up in the review report.

REP. ZELIFF: If Ron Noble is so devoted to the line agents at ATF, would he have framed the Treasury report in such a way that it led to the firing of ATF agents for a supposed failure that was never in the original plans?

MR. HARTNETT: I can't answer that sir, but I know what he said. I know what I read in the Treasury review. And what I'm saying is there were false statements in there, distortions, very significant omissions, testimony of Davidians who were there and what they said, what the other agents said. It's like only one-half was given, like these men, one side or the other, are lying, like nobody's ever been involved in a homicide or a tragedy before. And that's not true.

They called conflicting statements lies, and that's not right. These men went under the greatest tragedy they ever had in their lives, and because they have conflicting statements, that's a lie? That's not right. These men went through a very traumatic condition. And it's not unusual; I've handled 100 homicides, hundreds of them, and people remember things the day after, six months later, a year later, and that doesn't mean they're lying. That means they've just been through a very traumatic condition.

REP. ZELIFF: Did you ever see the words "element of surprise" anywhere in writing prior to the start of the review of the raid?

MR. HARTNETT: Prior to the -- I saw it in the media.

REP. ZELIFF: But you never saw it written down? You never saw it in a report? You never saw the words "element of surprise" anywhere at all?

MR. HARTNETT: Prior to the raid?

REP. ZELIFF: Prior to the raid.
MR. HARTNETT: No, sir.

REP. ZELIFF: So basically it was not a part of the raid plan itself, that terminology.

MR. HARTNETT: That's correct.

REP. ZELIFF: In fact, the report describes a meeting at which the condition of the element of surprise is allegedly discussed, and Mr. Noble is assured that it is in the plan. But as we saw from Mr. Higgins’ handwritten notes in that meeting just Friday, the only reason to abort that was mentioned is embarrassment to Secretary Bentsen if it should go wrong. In fact, the element of surprise was never in that plan. Is that correct?

MR. HARTNETT: The terminology. Secrecy was a part of the plan, sir.

REP. ZELIFF: One final question so that the record may stand clearly on its own. Do you believe that these facts demonstrate an intent to cover up the truth by the Treasury report?

MR. HARTNETT: Yes. Yes, sir.

REP. ZELIFF: By Ron Noble specifically?

MR. HARTNETT: Yes.

REP. ZELIFF: Okay. There is one area that I would like to visit with you, Mr. Hartnett, while we have the benefit of your remarkable candor. If you would, just how did Mr. Chojnacki and Mr. Sarabyn get their jobs back?

MR. HARTNETT: I don't think I could answer that, sir. I know that they appealed and they got their positions back. The only thing I've heard, that one of the charges against them was that they lied to their supervisor. I was their supervisor. They didn't lie to me. They made mistakes, mistakes in judgment, but I don't believe they intentionally led our people into that disaster. I never will.

REP. MCCOLLUM: Thank you very much, Mr. Zeliff. Your time has expired. Ms. Slaughter, I think you're next in line.

REP. SLAUGHTER: Thank you, Mr. Chairman. Mr. Hartnett, I want to follow up on that a little bit, if I may. This plan, dynamic entry, does that say to you element of surprise? Can you do a dynamic entry if somebody knows you're coming?

MR. HARTNETT: As I testified the other day, dynamic entry is being tossed around here. And I've been on thousands of raids and I couldn't give you a definition.

REP. SLAUGHTER: Well, wasn't that -- my understanding after all these hearings is you have two plans -- siege and dynamic entry.

MR. HARTNETT: That's what the command --
REP. SLAUGHTER: Dynamic entry was chosen. You were part of that choice?

MR. HARTNETT: I approved the plan but not the terminology.

REP. SLAUGHTER: Well, okay, you approved dynamic entry over siege. Does dynamic entry to you say anything about surprise?

MR. HARTNETT: I don't think I understand your question, ma'am.

REP. SLAUGHTER: Well, what would you think would be an element of dynamic entry if it would not be surprise?

MR. HARTNETT: That raid -- a condition of that raid was secrecy, surprise -- absolutely.

REP. SLAUGHTER: Well, does secrecy to you mean surprise?

MR. HARTNETT: Yes, absolutely.

REP. SLAUGHTER: Okay. Then why did you have some sense that that was not important.

MR. HARTNETT: Because after the raid it was used against my people. That terminology is what sets them up. It's like because they didn't catch everything that happened, because they didn't recognize things that were said to them or see certain things, that they didn't follow the order, an order that Ron Noble said was given to them to abort if they didn't have the element of surprise. And I didn't give them that order. But did I expect that raid, a condition of that raid, was based on safety, security, surprise? Yes. That's why I sent the undercover agent back in the night before. I wanted to know what Koresh was doing.

REP. SLAUGHTER: Did you approve the notification of the press, the media?

MR. HARTNETT: Approve the notification of the press?

REP. SLAUGHTER: As I understand, Ms. Wheeler had talked with the media ahead of time.

MR. HARTNETT: No, ma'am, I had nothing to do with the press.

REP. SLAUGHTER: You didn't know anything about that?

MR. HARTNETT: No, ma'am.

REP. SLAUGHTER: Wouldn't that have kind of taken some of the element of surprise off what you were doing since --

MR. HARTNETT: I don't think Ms. Wheeler --
REP. SLAUGHTER: -- the tip-off, as I recall it, Mr. Hartnett, came from a postman who got it from a television man, correct?

MR. HARTNETT: That's correct. He got it from a TV cameraman. That TV --

REP. SLAUGHTER: Who had been told by --

MR. HARTNETT: By an employee. Well, no, told by another Channel 10 person. Here's the way it went. The EMT, the emergency medevac people, were hired. A woman there had a boyfriend with Channel 10.

REP. SLAUGHTER: Uh-huh.

MR. HARTNETT: She tells her boyfriend. Her boyfriend -- they have a meeting. Now, this is what I've been told, this part.

They have a meeting at Channel 10 and they send their people out to the compound to see if there's going to be a raid, and this cameraman --

REP. SLAUGHTER: And they are staked out, aren't they? Out there -- they're at the road out there where they say to the postman, if he comes by, "We are here because there is going to be a raid -- ATF is coming?"

MR. HARTNETT: No. The postman, from what I understand -- that cameraman was lost, and he walked --

REP. SLAUGHTER: Was lost.

MR. HARTNETT: Lost. And he sees the postman -- now, it's Sunday and this postal truck is driving down the road, and he flags him down and asks him where the compound is, and the Davidian says to him, "Why do you want to know?" -- and he says, "Because ATF is going to conduct a raid here, and there's going to be shooting. "You know, I have never been asked why all these people died --

REP. SLAUGHTER: Well, what I --

MR. HARTNETT: -- and it's because of that irresponsible act that everybody -- and why we are here today.

REP. SLAUGHTER: Well, and I'd like to find out how that irresponsible act came about, because it seems to me that in all the planning and all the work that you did, somehow or other the media got involved in that, and I'm pretty curious about that connection.

Let me yield the rest of my time to my colleague from New York, Mr. Schumer.

REP. SCHUMER: I thank the gentle lady for yielding. So in effect what you're saying, Mr. Hartnett,
is that surprise and secrecy basically mean the same thing?

MR. HARTNETT: You can call them the same thing if you want.

REP. SCHUMER: So when Mr. Zeliff said well, you never heard the terminology element of surprise, you did hear talk about secrecy and not letting Koresh know of the raid?

MR. HARTNETT: Yes.

REP. SCHUMER: Okay. So the one thing you would dispute, just to be fair and put it on the record, is that you never were -- that you hadn't heard that the raid should be called off if the element of surprise or secrecy was broken? Is that correct?

MR. HARTNETT: That's correct.

REP. SCHUMER: That's your dispute -- not that there wasn't surprise, intended to be surprise, secrecy, call it what you will?

MR. HARTNETT: That's correct.

REP. SCHUMER: Because if you were throwing a surprise party for one of your colleagues, you'd want some secrecy there, right?

MR. HARTNETT: Yes, sir.

REP. SCHUMER: Thank you. The next question I have is of Mr. Merletti, who did the review. Mr. Merletti, what would you -- and, by the way, I would say that -- well, go ahead -- Mr. Merletti, you've heard Mr. Hartnett's critique of what you found in the report. First, do you see any difference between elements of surprise and secrecy?

MR. MERLETTI: I see no difference. The element of surprise is secrecy.

REP. SCHUMER: Exactly.

MR. MERLETTI: It's basic to a dynamic entry.

REP. SCHUMER: So it's a difference without a difference?

MR. MERLETTI: Correct. It's terminology -- it means the exact same thing.

REP. SCHUMER: And everyone, from Mr. Hartnett to Mr. Chojnacki, to Mr. Sarabyn, to Mr. Buford -- everybody thought that this raid should be conducted under some form of secrecy?

MR. MERLETTI: Absolutely. If they had reached the position in ATF -- top management --
REP. SCHUMER: "Absolutely" does the job, because he's going to cut me off pretty quick these days.

The next question I have is: What is your reading of whether -- and you interviewed everyone under the sun in this, and came out -- what is your reading as to whether it was part of the plan to go ahead if the element of secrecy, shall we now call it, was broken?

MR. MERLETTI: They should not have gone ahead if the element of surprise was lost.

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REP. SCHUMER: Did the higher-ups know that?

MR. MERLETTI: Everyone knew that. That is so basic to law enforcement. They even approached the compound in two trailers --

REP. SCHUMER: So, just let me -- we're trying to do it within five minutes -- I don't mean to cut your off, because I know you're a friendly witness to us. But, as Ms. Slaughter had said, part of dynamic entry is obviously an element of surprise or secrecy, without any question, and anyone, from top people through Mr. Hartnett on down, would know that that had to be part of the case -- correct?

MR. MERLETTI: Absolutely.

REP. SCHUMER: Thank you. Thank you, Mr. Chairman. I thank the gentle lady.

REP. MCCOLLUM: I yield five minutes to Mr. Mica.

REP. MICA: Thank you, Mr. Chairman. One of the things that I hope to do today is try to get into some of the personnel aspects of this. As you know, I chair the House Civil Service Subcommittee, and really, you know, I think ATF and law enforcement -- federal law enforcement has taken quite a few bruises the last few weeks. First of all, discovering, you know, last week when Mr. Hartnett made certain accusations or comments relating to hiring and firing and blames and omission -- and that was again repeated here, and I think we need to find out through these hearings, or if necessary I intend to conduct hearings in September and October in the Civil Service Subcommittee if we don't get to the bottom of some of these personnel matters.

But, again, I think the public just may -- just going home this weekend, you know, they wonder what's going on with ATF, with the Good Ol' Boys Roundup, with the hiring and blame, sort of the finger-pointing on who is responsible for this. And it's not sort of like Congress or some other bureaucratic activity: we are dealing with law enforcement, federal law enforcement. So there is a lot of serious concern about what's going on. Mr. Potts, who I guess is with the Department of Justice, who oversaw this later part of this, and was disciplined, and then elevated to deputy FBI director. Since I think they found some shredded documents and has now been demoted. Don't you think -- well, Mr. Black, you're a personnel -- you are in charge of personnel -- don't you think that this raises some serious questions about federal law enforcement, all this going on?
MR. BLACK: I'm not sure what your question is, congressman.

REP. MICA: All these incidents -- what's been described here, the finger-pointing, the blame, the hiring, the firing, the demotions, the elevations, and then the re-hiring -- don't you think this sends a bizarre message to the American public?

MR. BLACK: Let me just say the official responsible for the decision to remove the two individuals, Mr. Sarabyn and Mr. Chojnacki, from their positions, in no way when we made that decision did we doubt --

REP. MICA: But, again --

MR. BLACK: Okay --

REP. MICA: -- all of these things do cast a bad light on ATF and the other agencies -- is that correct?

MR. BLACK: Yes, I think they do.

REP. MICA: Mr. Noble, when you were up before I asked you about this report. When was this report produced, the Treasury report?

MR. MERLETTI: (?) (I'm not Mr. Noble. ?)

REP. MICA: I'm sorry -- Mr. Noble.

MR. MERLETTI: (?) Mr. Noble is not here.

REP. MICA: I apologize. Mr. Merletti, when was this produced?

MR. MERLETTI: Sir, when you say "produced," what do you mean by that?

REP. MICA: What's the publication date.

MR. MERLETTI: When it was printed?

REP. MICA: When was the publication date.

MR. MERLETTI: September 30th.

REP. MICA: September 30th.

MR. MERLETTI: Nineteen-ninety-three.

REP. MICA: Are you at all aware -- were you aware of this document, "Recommendations of
Experts for Improvement in Federal Law Enforcement after Waco”?

MR. MERLETTI: Sir, that is the Justice report.

REP. MICA: Yes, but it's also -- it was signed by -- it's from Treasury, and also Justice -- a directive memo in the very front -- is that correct?

MR. MERLETTI: I don't know. I had nothing to do with that publication of that book.

REP. MICA: Were you aware of this publication when you were working on this report?

MR. MERLETTI: I don't believe that publication existed. When we were working on our report, I believe they were working on that report.

REP. MICA: Are you aware of some of the contents of this report?

MR. MERLETTI: I was never given the report.

REP. MICA: And -- well, in this report -- and I'm not sure if any of the other of you are aware of this report -- I guess one of the major points that I want to get to before we get into personnel is the question of the build-up of arms and this situation at the Branch Davidian compound. This report -- and they've retained I guess the director of Harvard Religious Studies as one of the experts -- says under his report indeed it seems possible that the large arms build-up that led ATF to carry out its initial February 28th, 1993 assault on the compound may have been in response to Koresh's interpretation of a three-days-long session of police target practice held within earshot of the Mount Carmel compound in March 1992. It was reported in our July 1st briefing that Koresh and his group interpreted the target practice of Los Angeles Police Department and other police groups which the Davidians apparently attributed incorrectly to ATF, in religious terms is a brazen show of force. Were you agents aware of this incident a year before?

MR. SARABYN: (?) No, sir, we didn't find out about that specific incident until after the raid.

REP. MICA: And, Mr. Black, were you aware of this?

MR. BLACK: (Off mike.)

REP. MICA: One of the other things that seems to be the question of the day here is that -- and also the head of New York University Medical Center, and a psychiatrist who was also retained to look at this matter, said -- and I quote from his report: "Certainly an armed assault by a hundred agents had to be seen as an attack independent" -- underlined -- "independent of who fired the first shot. If an armed individual enters your home by force, and you have reason to believe that person represents a mortal threat, you are allowed to fire a weapon in self-defense in most states. "Is that correct, Mr. Sarabyn? Is it correct in Texas? I'm not an attorney.

MR. SARABYN: Well, you know, an agent going forward there, if he's in fear of his life he can take the first shot.
REP. MICA: But this says that really -- that these people -- well, first of all, in the first part of the report, it said the Branch Davidians had an apocalyptic world view in which they expected the attacks -- an attack from the outside world. The reason for arming themselves was to protect themselves from such an expected attack. Were you aware that they were expecting this attack?

MR. SARABYN: Well, yeah, through his preachings, that's, you know --

REP. MICA: And Mr. --

REP. MCCOLLUM: Mr. Mica, your time is up. I'm sorry.

REP. MICA: Okay.

REP. MCCOLLUM: The red light's been on a while.

REP. MICA: Thank you.

REP. MCCOLLUM: I hate to cut you off at this point. Mr. Brewster.

REP. BREWSTER: Thank you, Mr. Chairman. Mr. Rodriguez, you say you were very clear in explaining that the element of surprise had been lost?

MR. RODRIGUEZ: Yes, that's correct.

REP. BREWSTER: You don't have any doubt in your mind that you explained that quite well?

MR. RODRIGUEZ: There is no doubt in my mind, sir.

REP. BREWSTER: Okay. Did you expect the raid to be called off when it was lost?

MR. RODRIGUEZ: If I could explain a little bit further, when -- once I contacted Sarabyn, I did leave the compound for two reasons. One, as I had told two of my colleagues that followed me outside, I had to go and talk to Chuck. I knew I still had time, and I new Mr.

Sarabyn was at the command post, and besides, I had told the people at the compound that I was going to go meet somebody for breakfast.

But I left for the sole purpose of contacting and talking to Mr. Sarabyn at the command post and talking this over with him, because we did not have a really long enough conversation on the telephone. Therefore I went to the command post, I went there for the sole purpose of talking to him, and yes, I wanted to stop the raid, of course. They knew --

REP. BREWSTER: You wanted to stop the raid?

MR. RODRIGUEZ: They knew we were coming. Unfortunately, I got there too late. When I got
there, they had already proceeded with the raid.

REP. BREWSTER: Okay. You apparently were fairly close to Koresh and were in the compound from time to time and went to Bible studies, et cetera. In your opinion, what would have happened had he been arrested in town prior to the raid? Was there anyone else in the compound that had the charismatic ability to put together the resistance that occurred with Koresh there?

MR. RODRIGUEZ: In my opinion, knowing how they were and their structure, in order for that to work, you would have had to have taken down Koresh, Mr. Snyder and their attorney. If you just took down Mr. Koresh, you still had Mr. Snyder and the attorney and the people to deal with. What they would have done is they would have gone to negotiations that they wanted to talk to Koresh and wanted to hear a sign from Koresh as to what to do. Therefore, in my opinion, taking Koresh down would not have solved the problem.

REP. BREWSTER: So in your opinion, even if they had taken Koresh down and a siege had begun, there would have been the same ending that occurred?

MR. RODRIGUEZ: Sir, you got to realize -- you got to know these people. Their destiny was set way before ATF got there, way before the FBI got there. That's what they lived for. Their destiny was to die and then later come back as the chosen few by God, and that was their destiny.

REP. BREWSTER: Okay, a couple of other questions, very quickly. Mr. Cadigan, we talked about ammunition briefly awhile ago. I think you correctly stated that any high-powered rifle, .22, .250, .270, .30 -- (inaudible) -- .301 mag, would penetrate a bullet-proof vest with ordinary hunting ammunition. Am I correct?

MR. CADIGAN: Most of the vests that I know of, yes, sir.

REP. BREWSTER: Okay, and there's what, maybe 50 million of those weapons across America in ordinary citizens' hands that are hunting weapons?

MR. CADIGAN: Yes, sir.

REP. BREWSTER: With no special ammunition, just with regular hunting ammunition?

MR. CADIGAN: In the -- with all of the people in the United States?

REP. BREWSTER: Yes.

MR. CADIGAN: Yes, sir.

REP. BREWSTER: Okay. Ms. Wheeler, I heard statements that you had contacted some of the media the night before. Is that correct?

MS. WHEELER: What happened and -- I'm sorry. What happened is that the day before the raid, my boss, Mr. Roister (sp), came up to me and he gave me the name of a reporter at Channel 4 in
Dallas and said that, "When the raid occurs, after it has occurred, I want you to contact this reporter." And I told him, you know, it ended up being on a Sunday instead of a Monday, and I did not have weekend contact numbers. And I told Mr. Roister that if I just contacted one station in Dallas, that the other two stations would eat me alive.

REP. BREWSTER: What was going to be the purpose for contacting the stations? I mean, my goodness, wouldn't they find out quickly enough?

MS. WHEELER: Well, we expected it to go smoothly, sir. We didn't expect this to happen. What happened, if I may continue, is that I contacted Channel 8 and Channel 5 in Dallas. I never mentioned the word "Waco," I never mentioned the word "raid." I just said, "We might have something going on here in Dallas this weekend, and I'd like to have a weekend contact number."

REP. BREWSTER: Well, once again, what was the purpose of contacting them? Were you actually seeking publicity for the agency?

MS. WHEELER: Absolutely not, sir.

REP. BREWSTER: Okay. Maybe then I don't understand the purpose for contacting them.

MS. WHEELER: Well, he wanted me to contact one station. The only reason I made the two calls was so that I would have weekend contact numbers. And that was Mr. Roister's--

REP. BREWSTER: Yes, ma'am, I understand your call.

MS. WHEELER: Okay. Mr. Roister's decision was to give me just one number. If -- we were planning on having a press conference when the raid was over, that's true, and if there was evidence of a violation found. That's common procedure after you have a raid, or a large raid of that kind. We had prepared -- were prepared to have a press conference, and I was just getting numbers for that purpose.

We did not alert the media and tell anybody about the raid in advance. That is not what happened. I could be--

REP. BREWSTER: Okay. One--

MS. WHEELER: I'm sorry.

REP. BREWSTER: One other question. My time is about out. I don't know who to ask this one to, but in the Ways and Means oversight hearing that we had when I was on Ways and Means, a question came up concerning, in the second warrant, it asked for a raid in the cover of darkness. "Therefore I seek permission for a nighttime, after 10 PM warrant." I take it, Mr. Merletti, that was the FBI because this was after the siege had begun, and I was curious then about the daytime aspect of the final conclusion.
MR. MERLETTI: Sir, I'm not sure exactly what you're talking about. I --

REP. BREWSTER: Okay. Well, it's an affidavit of the warrant, the second warrant that was done. I'll talk with you after the break.

REP. MCCOLLUM: Thank you, Mr. Brewster, your time is up. Mr. Souder.

REP. SOUDER: I yield my time to Mr. Mica.

REP. MICA: Again, before we get into some of the specific personnel questions, although this is somewhat related, Mr. Rodriguez -- I can't see without my glasses, but I can't read with my glasses -- Mr. Rodriguez, this is really sort of a -- a very strange, unconventional religious group, wasn't it? But they had some elements of beliefs that were common with other common religions. Is that correct?

MR. RODRIGUEZ: As I understood Koresh, he broke away from those that were -- from those religions that were very common to the Book of Revelations. That's why he broke away and started his own --

REP. MICA: But it was a -- you know, they shared some common beliefs, even some things that you talked about a little while ago, about maybe Judgment Day and things of that sort, didn't they?

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But it was really strange when it went -- and this is again from this report of the experts on the improvements in federal law enforcement after Waco. In their report, they said that this group, you know, had such a different philosophy of propriation, which apparently motivated wives to leave their husbands' marital beds for Koresh's, those husbands to embrace celibacy and parents to allow Koresh sexual relations with their minor children. Did you know about this at the time of the raid?

MR. RODRIGUEZ: Yes, sir, I had some prior knowledge of that, yes, sir.

REP. MICA: So you knew about this? In fact, isn't it true that in the group you spoke about that he broke off with back in, I guess in 1990, there was a meeting in I believe the Waco Federal Courthouse in which the other sect had brought affidavits, I believe from Australia, and paid $6,000 to an investigator, and told federal officials that this was going on. Were you aware of that at the time of the raid?

MR. RODRIGUEZ: I was just aware of whatever information I obtained from Mr. Aguilera at the time.

REP. MICA: So this was -- but this was again a highly unusually motivated group. Had you had any training to deal with this particular type of religious group or cult or whatever you want to call it?

MR. RODRIGUEZ: No, sir. Everything that I learned, I learned it when I was inside.
REP. MICA: I don't know if you've read this, but --

MR. RODRIGUEZ: And I would like to answer your question.

REP. MICA: I don't know if you've read this, but the report says that -- that really that ATF and other law enforcement agencies should have some independent counsel and advice and also some training for some of these agents that deal with these groups. There are other groups like this out there, aren't there?

MR. RODRIGUEZ: No, sir. They're all different. That's why I wanted to (answer ? ) your question. Koresh had his own version of what he believed. He discussed that with me many times, how other priests or philosophers from the University of Baylor had attempted to argue with him in his beliefs. He spoke many times of that. And his was unique. His was very unique, and they're not all the same.

REP. MICA: Mr. Sarabyn and Mr. Chojnacki, through your intelligence from Agent Rodriguez, you knew that Koresh expected ATF to come for him some day, didn't you?

MR. SARABYN: Yes, sir.

REP. MICA: You did. And Mr. Chojnacki?

MR. CHOJNACKI: Yes, sir.

REP. MICA: Rodriguez told you that Koresh spoke about ATF coming all of the time, didn't he? Did he tell you that?

MR. CHOJNACKI: (Yes ? ).

REP. MICA: Did you also know that Mr. Koresh expected to lead what was termed a fierce battle?

MR. CHOJNACKI: Yes, sir, but we didn't know if he meant in the physical sense or in the metaphysical sense.

REP. MICA: Mr. Sarabyn?

MR. SARABYN: In the same thing, he'd talked about, you know, with Joyce Smith, as far as, you know, we haven't seen the LA yet, or whatever. So we weren't exactly sure what he was talking about.

REP. MICA: But wasn't it, you know, a given fact that in fact if his fear of ATF and what you'd heard from Mr. Rodriguez and others that you would expect Mr. Koresh to defend himself and his other followers? Is that correct?

MR. SARABYN: It's hard to say, because you know, every criminal or whatever that we deal with, a lot of them say, you know, I'll never be taken alive; I'm never going to do that.
REP. MICA: I'm not an attorney, but you -- this incident took place in Texas, and it's my understanding that they have some very specific laws, pretty much on the side of the individual citizen, when someone comes and attacks their residence, is that correct? I mean, their right to defend themselves.

MR. CHOJNACKI: I really don't have much knowledge of the Texas statute regarding defending your premises. Although --

REP. MICA: You don't consult that as federal agents when you get into a situation like this, what the local situation is?

MR. CHOJNACKI: Well, I have no knowledge of any laws that allows a person to fire at an appropriately identified police officer attempting to execute a warrant, now that's the distinction I think. We weren't burglars.

REP. MICA: Mr. Hartnett, you had said you disagreed with Mr. Merletti -- excuse me, again without my glasses, but with some comments he made about assessing the element of surprise. Did you want to respond now?

MR. HARTNETT: Well, I've always disagreed with that terminology ever since the Waco review came out. I think that it's a created phrase, and I don't mean to mislead the committee. You know I've testified many, many times that a part of the raid was secrecy. But a part of the raid was not specifically directed towards those commanders when they say they were given a direct order. That is just not true. They just were not given a direct order.

REP. MCCOLLUM: Thank you very much. Mr. Mica, your time has expired. Ms. Jackson Lee, you're recognized for five minutes.

MS. JACKSON LEE: Mr. Chairman, I thank you very much, and I say almost good afternoon to all the witnesses. I appreciate the seriousness of this morning and also your presence here. I indicated, and I'll do this very quickly, that whenever I would begin these questions I would always acknowledge that a tragedy has occurred, and we have lost lives -- ATF officers, children, adults and it is certainly a tragedy. I'll also admit and indicate that I want this to be resolved, so we don't see this happen again. But we need to coordinate federal law enforcement agencies, so they talk with each other and work with each other. We need to get a greater understanding and knowledge of cults or FECT (ph) sects or however you would want to describe those whose beliefs are far different from many of us.

And Mr. Hartnett, I really appreciate the affection -- this is not a question for you, sir -- I just want to appreciate the affection and respect that you have for the men and women upon which you have supervised. Let me simply suggest, however, that common sense was not in place -- secrecy, element of surprise, semantics. If we were in a situation that would bring about this tragedy because the surprise was eliminated, then we have a situation that we should have pulled back on. But I do want to move forward to questioning, and I want to welcome the deputy secretary of the Treasury. For I know the responsibilities, Mr. Altman, that you would have had, and this is a series of
questions, because last week, in your absence, there was much made about a memorandum that is recorded in a Document as 00019008, and I hope all of the committee members will have this in front of them. It was dated April 15th, 1993.

Much was done with this, and it was waved around, and it was suggested that there was, in fact, a cover up, a conspiracy that you may have been in the midst of it. And I read this simply as a document of information. And I don't want to put words in your mouth, but I view this as part of your responsibility; fair responsibility to apprise your superior, the secretary of the Treasury, and I find some interesting points in it, sir. Let me begin by asking you a question. Simply, why did you write the memorandum?

MR. ALTMAN: It was my practice to communicate, often in writing to Secretary Bentsen, matters of significance that were occurring in the Department or that I was involved in.

MS. JACKSON LEE: And this was written on April 15th. As I understand it, the FBI took over the HRT team on March 1st, 1993. This was written April 15th, 1993, another famous day in your life as well, I imagine, everybody's filing taxes at that time. But in any event, did you by this memorandum, in light of the fact that the FBI had taken charge, expect Secretary Bentsen to do anything with this memorandum -- make any decisions, call of any actions with this memorandum?

MR. ALTMAN: No, I didn't. The memorandum itself makes clear that this was the attorney general's responsibility.

REP. JACKSON LEE: So did Secretary Bentsen have any authority at that time, on April 15th, 1993, to engage in any activity regarding this such very tragic situation?

MR. ALTMAN: No, he didn't. And I find suggestions that he somehow failed to exercise his responsibility in those matters quite misplaced.

REP. JACKSON LEE: You go on to say, and I appreciate the words that you offer here, you talk about the gas, but you have an interesting, and we're not expecting you to be an expert on the gas, and I don't pretend to be an expert, and we will have those who are, but you do say that the gas would not be followed by an assault. A simple statement, but at least a hopeful statement, which might suggest, and again, I don't want to put words in your mouth, that there was not this conspiracy to do something tragic. You obviously were hoping that something more tragic would not happen, because had we not already had deaths that occurred already? So there were tragedies that occurred on the date of the raid -- ATF officers and Davidians were lost. So what do you think you were saying when you said the gas would not be followed by an assault at that time?

MR. ALTMAN: My recollection is that that's what Ron Noble informed me of.

REP. JACKSON LEE: You were conveying that information from another individual in Treasury, who we'll hear from as well, is that my understanding?

MR. ALTMAN: The memorandum begins by noting that Ron Noble informed me of the attorney general's (weighing ?) the FBI request and so on.
REP. JACKSON LEE: You mentioned some comments about the gas, but are you an expert in the elements of this -- qualities of the gas?

MR. ALTMAN: No, I know nothing about that.

REP. JACKSON LEE: About dissipation or anything else, you would not be an expert?

MR. ALTMAN: No.

REP. JACKSON LEE: And so you might also have been conveying information at that time?

MR. ALTMAN: That's the only possibility.

REP. JACKSON LEE: You have another sentence here that says the risk of tragedy, and I think I asked something similar just earlier, but let's try to explore that a little bit. The risks of a tragedy are there. Again, this raid took place at least almost two months prior about that time. A tragedy had occurred already, is that correct? Lives, as I said, ATF officers, you're aware of that?

MR. ALTMAN: Yes, ma'am.

REP. JACKSON LEE: You're aware that lives had been lost -- the Davidians as well. And so, you were not saying anything more than was already going on. It was a tragedy that was now occurring, is that my understanding? Or would you want to expand on that? Let me again not try to put words in your mouth on that.

MR. ALTMAN: Well, I think my point was just to reflect instinct; that using such gas on the compound involved risks. My comment related to the prospective action, not the past action.

REP. JACKSON LEE: And again, was it based upon information that you had received or just that you were making an assessment just on your own, maybe, beliefs or thoughts?

MR. ALTMAN: It was instinct.

REP. JACKSON LEE: And in that assessment, however, you would not call yourself an expert?

MR. ALTMAN: No, ma'am, far from it.

REP. JACKSON LEE: You did not have any ability at that time to call off any potential action?

MR. ALTMAN: No, ma'am.

REP. JACKSON LEE: And so this is an informational memorandum.

MR. ALTMAN: Yes, it is.
REP. JACKSON-LEE: I thank you, Mr. Deputy Secretary.

REP. MCCOLLUM: Thank you, Ms. Jackson-Lee. Mr. Ehrlich, you're recognized for five minutes.

REP. EHRLICH: Thank you, Mr. Chairman. Mr. Rodriguez, I appreciate your testimony here today. I want to get back to the chronology of events just so everyone understands what went down and when. Picking up on your earlier testimony, two phone calls -- you're with Koresh, correct? He gets very nervous. Can you pick up the chronology of events from that time?

MR. RODRIGUEZ: Yes, sir. As I said, he turned to me and said, "Robert, neither the ATF or National Guard will ever get me. "He said, "They got me once and they'll never get me again. "When he said that, I put my head down and what clicked on my head was when he said National Guard. At that time maybe I had stayed in there too long, because I was supposed to come by 9: 15.

REP. EHRLICH: And what time was this, sir?

MR. RODRIGUEZ: Oh, it was before 9: 00.

REP. EHRLICH: All right.

MR. RODRIGUEZ: And I looked down and I kept wondering if I stayed in too long. At that time he gets up and he walks over to the window directly in front of me. He opens up the shades, looks out both sides. And I'm looking at him, and again he turns to me and says, "They're coming, Robert. The time has come. "At that time I knew for sure that he knew; he had been tipped off.

REP. EHRLICH: And what did you do next?

MR. RODRIGUEZ: I quickly -- I felt very threatened. And I stood up. I felt I had to leave the compound. By that time there was more people that had come into the living room. At first it was only three when we first started.

REP. EHRLICH: All right, sir. Now, why did you feel you needed to leave the compound?

MR. RODRIGUEZ: I was threatened because I didn't know -- I was afraid that I would be exposed as to who I was. And as I stood there, I looked and I noticed that the door -- there was people in front of the door, people behind me. There was no place for me to go. As I stood there, Koresh went from one window, did the same thing, looked outside, then came back to the other window and again looked outside and said, "They're coming, Robert. They're coming."

REP. EHRLICH: And there came a point when you left the house, correct?

MR. RODRIGUEZ: Yes, sir. I stood there and it was like he wasn't listening to me. At that point I was trying real hard to keep my composure. And I kept telling myself to relax, relax.

REP. EHRLICH: Now, what was going through your mind at the time? Was it you need to contact your superiors?
MR. RODRIGUEZ: I needed to get out and advise my superiors of what was going on.

REP. EHRLICH: All right, sir. And there came a point in time around 9:15, 9:20, where you left the house. Correct?

MR. RODRIGUEZ: Yes, sir. He finally -- he motioned -- he gave a head signal. They opened the door for me. I walked out. I got into my vehicle. It took me a while to get it started because by then I was pretty shaken. I quickly went back to the undercover house.

REP. EHRLICH: Now, how long did that take you, sir?

MR. RODRIGUEZ: Just maybe two, three minutes.

REP. EHRLICH: Who was present in the undercover house when you arrived?

MR. RODRIGUEZ: We all -- I believe the four -- we call them forward observers or snipers -- were present. Mr. Cavanaugh was present and two of my agents that worked with me in the undercover house for two months were present.

REP. EHRLICH: Now, sir, who were you looking for specifically?

MR. RODRIGUEZ: Well, what I did, I went into the room where Mr. Cavanaugh was, because that's where the phone was. I was supposed to use that telephone to call Mr. Sarabyn. When I got there, we up and I told Mr. Cavanaugh exactly what had happened in the compound and advised him.

REP. EHRLICH: And what was his reaction?

MR. RODRIGUEZ: His reaction was, "Well, you'd better call Chuck right now."

REP. EHRLICH: All right, sir, and you got on the phone and did just that, correct?

MR. RODRIGUEZ: Yes, sir, I did.

REP. EHRLICH: And please detail the nature of that conversation.

MR. RODRIGUEZ: I got on the phone. I called. He came to the phone. The only thing I can't remember was did somebody else answer? I think somebody else answered and he came to the phone.

REP. EHRLICH: Who's he? Mr. Sarabyn?

MR. RODRIGUEZ: Mr. Sarabyn.

REP. EHRLICH: Okay. And the first thing that came out of my mouth was, "Chuck, they know,
Chuck. They know. They know we're coming. "And he says, "Well, what happened? "And I explained to him what happened. I explained to him all the events that took place inside the compound. And his questions were, "Well, did you see any guns? "I said no. "What was he wearing? "And I advised him of what he was wearing. At that time he said, "Okay. "And that was about the extent of the phone call.

REP. EHRLICH: All right, sir, did you request that the raid be called off because the element of surprise had been lost?

MR. RODRIGUEZ: No, sir. At that time I really didn't have a chance. It was a real quick question-and-answer thing. He asked me what he was wearing. He said, "Okay," and he hung up. That's why I quickly left the undercover house to go talk to him at the command post because I wanted to have more of a lengthy conversation with him about the events.

REP. EHRLICH: And, sir, your purpose with respect to the subsequent trip was to convince your superiors the raid had to be called off. Is that correct?

MR. RODRIGUEZ: Yes, sir. I would like to make one point on how I stood on that. If I had arrived at the location and advised Mr. Sarabyn of what had happened, we would have had a chance to discuss it. And even if I highly protested their decision to go, if they would have asked me to go with them as a duty, for my duty as an agent for the government of the United States and to enforce the laws of this country, I would have gone with him even though knowing that the element of surprise had been lost.

REP. EHRLICH: I understand that, sir, and I appreciate that testimony. My time is running out. Please detail for me the next event, which was your meeting with Mr. Sarabyn, correct?

MR. RODRIGUEZ: No, sir. I arrived at the command post and the first thing I asked was, "Where's Chuck? Where's Chuck? "And they advised me that he had left. At that time I started yelling and I said "Why? Why? They know we're coming. They know we're coming. 

REP. EHRLICH: And what reaction did you get? What response?

MR. RODRIGUEZ: Sir, everything was very quiet, very quiet. If I remember right, everybody was really concerned. I went outside and I sat down and I remember I started to cry until Sharon Wheeler came to me and told me what was going on.

REP. EHRLICH: Now, sir, was it your understanding when you arrived --

REP. MCCOLLUM: (Off mike) -- your time has expired. I'm sorry. It's a good line of questioning but I can't let you go on under the rules. Mr. Taylor.

REP. TAYLOR: Thank you, Mr. Chairman. And Mr. Rodriguez, if you would, I'd like to continue with you.

MR. RODRIGUEZ: Yes.
REP. TAYLOR: Mr. Rodriguez, you've had now a couple of years to look back on everything. Do you think that Koresh knew you were either an informer or an undercover agent, now that you look back on it?

MR. RODRIGUEZ: Mr. Taylor, you know, Koresh was suspicious of everybody, everybody -- anybody that drove by the compound, anybody that walked in the compound. It's hard to say. All I can say is whether he knew or not, I was able to obtain the information that was needed. And I knew how far exactly I could go. He wasn't stupid.

REP. TAYLOR: No, he certainly was not; anybody that could control that many other people's minds and get them to do things. My question I'm leading to is what are the possibilities that the minute you walked out of that door, knowing that you had walked out, he then spread the word and started passing out guns, thinking that he had created the impression that led these two gentlemen to make the call to go ahead and continue with the raid, and that is that although they knew, things appeared normal? I know you were concerned, knowing the character you were dealing with, but is there a possibility that that was his intent all along was to further the ambush that Mr. Buford so aptly described last week; let some people in the ATF think that they would be walking into a normal situation, when it certainly was not his intention for that to be?

MR. RODRIGUEZ: If I understand your question, are you asking me if he purposely set me up so that ATF would come after him? Is that what you're saying?

REP. TAYLOR: No, sir. My question is, do you feel like, in retrospect, that he, A, knew you were undercover or suspected you, and then did nothing in front of you that would lead the ATF to suspect that they were going to have anything other than a peaceful reception when actually, obviously as soon as you left, in that time that ensued, he passed out the guns and put people into every possible firing position?

MR. RODRIGUEZ: I do not really feel that he knew who I was. He later found out through the negotiators who I was. And when he did find out, he did mention to the negotiators, "Well, I guess I would have had a hostage. "To your other question, as I said before, Koresh, at the time that I was trying to be -- or he was trying to get me to become one of his followers, I was limited to what I could see. And to that point, you know, I would not have been able to see them arm themselves, not at that point in time. I don't think he had that much trust in me yet to do that.

REP. TAYLOR: But for the record, there is a quote in what's being referred to as the blue ATF book --

MR. RODRIGUEZ: Yes, sir.

REP. TAYLOR: -- where you say, and I'm quoting you, "Neither the ATF nor the National Guard will ever get me. They got me once and they'll never get me again." Is that correct?

MR. RODRIGUEZ: Yes, sir.
REP. TAYLOR: That's almost verbatim what he said?

MR. RODRIGUEZ: Yes, sir. I'll always remember that.

REP. TAYLOR: So he had no intention of surrendering himself alive?

MR. RODRIGUEZ: Mr. Taylor, we could have waited two years. You know, two years we could have waited. We could have sieged -- had a siege for three years. And we would have had the same results.

REP. TAYLOR: Mr. Rodriguez, I do not doubt that. You don't have to convince me. I've read both sides' testimony.

MR. RODRIGUEZ: It was -- he had so much faith in his belief that for him to change his mind in front of his followers would really make him lose face with them. That's why, you know, he held on as long as he could. And the one thing he always wanted to do was he was always upset because nobody ever listened to him. Nobody ever listened to his preaching. And the bad part about it is until this day, he has still gotten everything he's wanted. He was able to use the media. He was able to use all means to broadcast his belief. And until this day, he's still getting what he wanted. And we should -- this guy, in my opinion, as much time as I spent with him, I hated every moment that I was with him. I got into a role I could not get out of. I hated what he preached. I hated being around him and I hated to pretend that I believed in what he was preaching.

REP. TAYLOR: He was a sick individual.

MR. RODRIGUEZ: This man, all he did, in my opinion, spending the time with him and hearing what he preached to me, he used the Bible for his own personal gains. And as a result, his followers believed in what he said. And in the long run, Mr. Taylor, I really and truly believe that we sacrificed four good men and saved the lives of innocent people, because eventually, if nobody would have confronted them, because of their beliefs, they would have caused something to occur and eventually we would have had to confront them.

REP. TAYLOR: Mr. Rodriguez --

MR. RODRIGUEZ: And we did so.

REP. TAYLOR: I appreciate your saying that. And I'm not cutting you off, but I have promised to ask every panelist a question.

MR. RODRIGUEZ: I understand.

REP. TAYLOR: That question -- and I'm opening it up to this panel; some of you are new -- has anything that you have seen or heard or read justified the murder of the four ATF agents you spoke of and the wounding of 20 others? Because if you noticed last week, even the lawyer who defended one of the Davidians who was acquitted read a case law where there is a reason for self-defense should a policeman be way the heck out of line, but then turned around and said in his opinion the
police were not out of line. So for this panel, have any of you seen anything that justifies their deaths?

MR. : No.

REP. TAYLOR: Mr. Williams?

MR. WILLIAMS: I see no reason why we was fired upon the way we were, identifying ourselves as law enforcement officials, no matter what the reason had been. In Texas, being a law enforcement officer from Texas before I came to ATF, they had no grounds to stand on by firing upon us.

REP. MCCOLLUM: If I could, the time clock has expired. If you want to get each one to answer, if they could just yes and no, it would certainly help us.

MR. : There's no reason why they should have fired on us the way they did.

REP. TAYLOR: Mr. Rodriguez?

MR. RODRIGUEZ: No, sir; no reason whatsoever.

REP. TAYLOR: Mr. Buford?

MR. BUFORD: No, sir.

REP. TAYLOR: Mr. Altman?

MR. ALTMAN: (Off mike. )

REP. TAYLOR: Mr. Cadigan?

MR. CADIGAN: No, sir.

REP. TAYLOR: Mr. Merletti?

MR. MERLETTI: Certainly not.

REP. TAYLOR: Mr. Black?

MR. BLACK: No, sir.

REP. TAYLOR: Mr. Hartnett?

MR. HARTNETT: No, sir.

REP. TAYLOR: Ms. Wheeler?
MS. WHEELER: Absolutely not.

REP. TAYLOR: Mr. Chojnacki?

MR. CHOJNACKI: No, sir.

REP. TAYLOR: And Mr. Sarabyn?

MR. SARABYN: No, sir.

REP. TAYLOR: Thank you, Mr. Chairman.

REP. MCCOLLUM: Your time has expired, then, Mr. Taylor. At this time I call on Mr. Heineman.

REP. HEINEMAN: Thank you, Mr. Chairman. Mr. Rodriguez, in spite of a lot of things that have been said here, let me commend you on your activities on the day of the raid. It took a lot of guts to do that and to come here and bear your soul. Were you ever consulted prior to the raid as it relates to tactics and plans?

MR. RODRIGUEZ: I've been in law enforcement for 18 years. I've had a lot of training in all kinds of tactics and training. On this particular assignment, I was not involved in any of the tactical operations or planning.

REP. HEINEMAN: Thank you, sir. Mr. Hartnett, was there a raid plan?

MR. HARTNETT: Yes, sir, there was.

REP. HEINEMAN: Were you at the planning session?

MR. HARTNETT: Let me -- If I can explain that, sir. I was briefed and given an overview of only a couple of pages of what the raid plan was that was on February 11th and 12th of '93. I did not have the entire raid plan. It was put together just for me and staff.

REP. HEINEMAN: And there was a raid plan, however?

MR. HARTNETT: Yes, there was a raid plan.

REP. HEINEMAN: Do you know who put that together?

MR. HARTNETT: The raid plan was put together by Chojnacki, Sarabyn, the (ASRTs ?). We have been criticized because from what I gather, and that's why I want to make sure you understand, that we had pieces of it, if you know what I mean, that they hadn't brought it together -- it was right in the middle of an order going out into the field, giving them specific instructions on how to -- a written raid plan -- how to bring it together and forward it forward. Well, it was out for coordination at the time. Mr. Chojnacki or Sarabyn would have to answer if they actually put it into one package at the time before the raid. What I received was written, but very, very abbreviated.
REP. HEINEMAN: The planning session, Mr. Chojnacki -- and I'm not quite sure how to pronounce your name -- are we doing you and injustice? Is that Chojnacki or --

MR. CHOJNACKI: That's the way my father would say it.

REP. HEINEMAN: Excuse me?

MR. CHOJNACKI: Chojnacki is the way I pronounce it.

REP. HEINEMAN: At the planning session, what were the options as it relates to executing that warrant?

MR. CHOJNACKI: Well, there were several days of planning sessions, sir. When we initiated planning, we started out with preliminary discussion of probably any kind of option any of the participants could come up with -- things that were -- I wouldn't say clearly out of line, but just from the far ends -- both ends of the continuum, and brought it down to -- or narrowed the items that we would discuss further to the kinds of things that we have been discussing all week -- the long-term siege; the -- what's been called over the last several days as the dynamic entry technique; the luring of David Koresh off the property and attempting to arrest him somewhere else, and then coming back to execute the search warrant; and possibly other options that I can't think off the top of my head right now, sir.

REP. HEINEMAN: Were you under any pressure to favor a dynamic entry?

MR. CHOJNACKI: No, sir. The only reason we favored that was because we thought we could do that type of entry and preserve the safety for our people, as well as for the innocents and defendants. As Mr. Ishimoto explained, while it seems to be a threatening type of situation, our impression has always been in law enforcement that virtually everybody -- not everybody, but virtually everybody under those conditions would see overwhelming forces and the surprise and speed with which you get access to the residence or whatever the facility is, were such that you overwhelm them and take control of the situation before they can get to their guns or create a situation as dangerous from both sides.

REP. HEINEMAN: But the surprise element was lost -- is that correct?

MR. CHOJNACKI: Oh, yes, sir, it was.

REP. HEINEMAN: Okay. Now, when you were told by Officer Sarabyn about the conversation he had with Rodriguez relative to his leaving the compound and having spoken to David Koresh, I'll assume you got that information as Officer Rodriguez had given it. But who did you call in Washington with that information?

MR. CHOJNACKI: After we discussed the information, and I made the decision to go forward, I left that location, which was about 50 yards from the command post, walked to the command post, called the ATF headquarters emergency command center, and advised Agent John Jensen (sp), it is my recollection, that we -- that Robert had come out, that we had discussed the
question, I did not see where there was any difficulty with executing the warrant safely, and I had ordered the agents to go forward. And I just passed that information to him. There was no real discussion.

REP. HEINEMAN: What -- where in the pecking order did Jensen (sp) come from? Was he the Houston SAC?

MR. CHOJNACKI: I was the Houston SAC, sir. Jensen (sp) was a headquarters -- an ATF agent assigned to headquarters at that time. I am not sure what his particular assignment was, but he was not one of my supervisors, if that's what you mean.

REP. HEINEMAN: Okay, now where is this headquarters? Is this in Washington?

MR. CHOJNACKI: Washington, D. C.

REP. HEINEMAN: Washington, D. C.? 

MR. CHOJNACKI: Yes, sir.

REP. HEINEMAN: And do you know whether he told anyone in the supervisory rank to him?

MR. CHOJNACKI: I don't have any idea who he communicated with, sir.

REP. HEINEMAN: I thank you. Mr. Chairman, I yield back my time.

REP. MCCOLLUM: Thank you very much, Mr. Heineman. Mr. Conyers?

REP. CONYERS: Thank you, Mr. Chairman. May I add my congratulations to you and to the leadership of this committee for deciding to hold hearings on the militia? After all, that's the -- the militia's involvement in Oklahoma City is really what triggered Waco as some kind of counter-reaction, and I feel that it's important that I let you know that the letters that I and Charles Schumer sent to the speaker and to Chairman Hyde have now been observed, and it's never too late for those hearings.

I would remind you, as you chair this hearing, that the complicity of the National Rifle Association with the investigative process of these Waco hearings has not been responded to. So while we are on this great roll with your leadership, why don't we check that one out -- maybe this weekend. These things are glacial: they come slowly, but we're very patient on this side, and we'll be waiting for a positive response there too --

REP. MCCOLLUM: Will the gentleman yield?

REP. CONYERS: And the answer is yes, I will.

REP. MCCOLLUM: First of all, again, I am going to hold hearings. We will hold a couple of days -- or two at least -- on militia later this fall. But the gentleman -- the chair does not believe there is
any relationship between the origin of these hearings and the events in Oklahoma City.

REP. CONYERS: Well --

REP. MCCOLLUM: I originally -- if you'll continue to yield just for this one purpose -- I had a meeting with both the attorney general and with the FBI director in January indicating the desire to have these hearings on Waco and the need to have them to set the record straight, to clarify matters and so forth. So there really is no relationship there, and the NRA question is entirely separate and unrelated to the militia question.

REP. CONYERS: Okay. That's a lot of my time, but --

REP. MCCOLLUM: You'll have another -- you have a minute or something --

REP. CONYERS: I am as generous as you are at least. So that there is no complicity. There is no connection between Watergate and Waco. Waco is something we just had to get at all the time. If it turns out that your timeline is correct, then I'll tell the millions of people I've already told that this was a poor reaction to Oklahoma City, and I'll stand corrected. But right now this seems to be "get government law enforcement at any cost" last week and this week.

Mr. Buford, I'm glad to see you back again. Did you -- have you really had anything in your experience, in law enforcement, military service, and anything else, that could have prepared you for this possibility of being ambushed?

MR. BUFORD: Well, I had -- in my military experience I had been caught in ambushes before. I had never been ambushed in my law enforcement experience. I'd like to say that I had that experience, but nothing in my background prepared me for what we encountered that morning, no, sir.

REP. CONYERS: All right, thank you very much. You know, sooner or later, with all the testimony pro and con, all the members of Congress's personal views, to which we are all entitled pro and con, we are going to have to come down on this question. This is the -- one of the central questions in what could have been a much abbreviated hearing: How can you anticipate an ambush? You can prepare for the possibility, but if you are ambushed, it seems to me that that contradicts almost anything else. Mr. Rodriguez, who worked inside for so long, based on your experience with the Davidians, did you believe that David Koresh and the Branch Davidians planned to kill themselves all along?

MR. RODRIGUEZ: Yes, sir.

REP. CONYERS: Expand.

MR. RODRIGUEZ: Sir, in order to do that I have to go back to their religious beliefs. And if you follow, as he used to do with me in all my Bible studies with him, is you follow the Seven Seals. And during the siege you could tell that he was following each one step by step. You've got to understand that that is what he believed. He believed that he was the messiah, and he believed that
because he believed that he had received a message from God, which was seven angels when he was in Jerusalem, and that gave him special powers. If you look into the Book of Revelations, the seven angels refers to the Seventh Seal.

REP. CONYERS: So that you thought that death -- the deaths, from your point of view and experience, were necessary to fulfill Koresh's prophecies?

MR. RODRIGUEZ: Yes, sir. If he would have changed his mind in the middle of the whole siege, his people would have lost all faith in him, because all this time this is what he preached.

REP. CONYERS: They were preparing for ultimate death --

MR. RODRIGUEZ: Yes, sir.

REP. CONYERS: -- one way or the other.

MR. RODRIGUEZ: One way or another -- that's why they were there. That's why they were there, you know. They didn't mingle with the public. They didn't go anywhere. These people were there waiting for the time.

REP. CONYERS: Well, what could you and the government have done to prevent the Branch Davidians from doing the things that caused them to kill themselves -- the setting of fires, et cetera?

MR. RODRIGUEZ: That's something I couldn't answer. As I stated earlier, we learned, as I learned has always been what their whole golden life was -- we didn't know that prior to that. I really can't say.

REP. CONYERS: Is Mr. Ballesteros here?

MR. BALLESTEROS: ( ? ) Ballesteros (correcting the pronunciation).

REP. CONYERS: Ballesteros. When you approached the front door of the compound to execute the search warrant, sir, did you attempt to identify yourself as a law enforcement officer? I would think that would be pretty critical.

MR. BALLESTEROS: I had been identifying myself as a police officer since I exited the trailers, as were other people -- agents.

REP. CONYERS: So there is no question that there was -- that they knew who you were, and there was no possibility of misidentification or anything of that nature?

MR. BALLESTEROS: No, there was not.

REP. CONYERS: Mr. Buford, finally, isn't it true that every time the Davidians have the opportunity to escalate the confrontation with law enforcement officers they literally did so?
MR. BUFORD: Well, it appeared as though they were needing this confrontation, and, yes, I believe that they did. And if I might, sir, quickly answer -- or have a response to one of your questions earlier -- you asked how this situation could have been handled. And I believe sincerely that had the media not tipped off David Koresh that we were coming about 40 minutes before we arrived, the plan that we had in place would have prevented any deaths from taking place on that day, and the media --

REP. CONYERS: That is the postman --

MR. BUFORD: That is the postman, yes, sir. And those media people were not invited there by ATF.

REP. CONYERS: Right.

REP. MCCOLLUM: Thank you, Mr. Conyers.

MR. RODRIGUEZ: Sir --

REP. CONYERS: (Inaudible) -- conclude his response?

REP. MCCOLLUM: Certainly, Mr. Rodriguez.

REP. CONYERS: Thank you, Mr. Chairman.

MR. RODRIGUEZ: By being inside the compound that morning, everything was normal. If it had not been for the tip-off of the media, I really and truly believe that the raid would have been successful.

REP. CONYERS: Thank you, Mr. Chairman.

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

REP. SHADEGG: Thank you, Mr. Chairman. Let me follow up just on that point. Mr. Buford, had you known that Mr. Rodriguez had conveyed what he has clearly testified to this morning to Mr. Sarabyn and Mr. Chojnacki -- that is, that the element of surprise was -- and I don't like that term, that -- because I think that's a bureaucratic term created later for finger-pointing -- had you known that David Koresh knew you were coming in 40 minutes before you had gotten there, would you have given an order directing a gents to go on in?

MR. BUFORD: Sir, I'd like to in hindsight say that, no, I would have called it off, but the information that I tried to obtain from Chuck Sarabyn at the time when he came in and told us what Robert had said, I asked, "Where are the men? " -- and my biggest concern in executing this warrant was being able to get in as closely as possible, and having the men separated from their weapons, and --

REP. SCHUMER: It doesn't seem to me you could get in very close when they knew you were
coming and you knew they had tons of weapons.

MR. BUFORD: Sir, we were able to get to the front door before they started shooting. Had they had known that we were in those trailers, they would have started shooting at us as we arrived in those trailers. It was not the correct decision, and I'd like to say that I would have made a different decision, but if I had to make that decision, I probably would have made the same decision, sir.

REP. SHADEGG: Mr. Rodriguez, Mr. Schumer has pointed out he thinks the most significant testimony that's come out today is that this particular panel believes that all the firing started from the inside first and not from any ATF agent. I will tell you I think the most important testimony of the day has been your riveting testimony of the sequence of events of Mr. Koresh flat knowing that you were coming in and that the ATF was -- and that the National Guard was coming in. I want to go back over that. You conveyed that, you believe, to Mr. Sarabyn, is that right?

MR. RODRIGUEZ: Yes, sir.

REP. SHADEGG: Okay. And what was his reaction when you conveyed it to him?

MR. RODRIGUEZ: First of all, when I spoke to him, it wasn't like, "Hey, Chuck, I just came out. They know. I think they know something." No, when I spoke to him, I was very emotional, and I said, "Chuck, Chuck, they know, Chuck. They know we're coming." 

REP. SHADEGG: You thought there was grave danger to your agents lives, given that Koresh knew this and he had all those weapons, for you to go ahead with the raid at that point in time?

MR. RODRIGUEZ: Yes, sir.

REP. SHADEGG: Okay. Now, you said earlier that all this was going to happen anyway because of Mr. Koresh's attitude. I assume that had you been able to conduct the raid with surprise, get through the door before anybody knew you were coming, get through the door without them getting the guns out from under their beds, you believe that the deaths might not have occurred, right?

MR. RODRIGUEZ: Yes, sir.

REP. SHADEGG: Okay. Mr. Sarabyn, let me ask you. You had a conversation with Mr. Rodriguez. You -- I'm in doubt as to whether you understood that Mr. Koresh knew you were coming. Did you understand that at the time?

MR. SARABYN: I did not feel he knew that we were coming at that time. When I talked with Robert, like I testified before, I took notes while we were talking over the thing, and I have read all of Robert's statements. Robert did a great job, but I think everything that you heard as far as testimony was not passed on to me. In fact, Robert told the shooting review team commander he didn't go into detail or should have said more.

When I went through the questions I asked him, you know, he had said specifically, you know, Koresh says ATF and the Guard are coming, but when I asked, trying to determine what he was
doing, from those questions, he wasn't doing anything. He was shaking and reading the Bible. He was preaching. I determined that, you know, in my opinion, his actions spoke louder than his words, so I didn't feel that anything was happening then.

REP. SHADEGG: Okay, now, let me just ask you this. Having heard Mr. Rodriguez today, having heard the depth of his emotion about what I think he thinks led to the death of these agents, do you now regret the decision to go forward, given that Mr. Koresh apparently clearly did know you were coming?

MR. SARABYN: Yes, sir. I've got to live with that every day. But, you know, everything he's gone over, I didn't know at that time.

REP. SHADEGG: I just think it's important to get this sequence of events out. Mr. Chojnacki, do you similarly now understand that Mr. Koresh knew you were coming and was apparently preparing for you, laying -- I mean, you can't do an ambush if they don't know you're coming -- he was laying the ambush for you. I take it you also regret the decision to go forward at that point.

MR. CHOJNACKI: Oh, absolutely.

REP. SHADEGG: Okay, now that leads to this whole semantics war. As I understand it, what then happened after -- after it's all over is that the higher-ups at ATF say, "Well, we gave you a direct command not to go if the element of surprise was lost." You never got such a command, did you?

MR. CHOJNACKI: I not only never received that command, I don't know that anybody above me at ATF said that -- (inaudible) --

REP. SHADEGG: And, Mr. Sarabyn, you never got such a command?

MR. SARABYN: That is correct, sir.

REP. SHADEGG: And I take it it's pretty candid and fair to say that what you think is that claimed command, "We told them not to go if the element of surprise was lost," was an attempt by the higher-ups to cover up their negligent -- their failure to manage this raid.

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if the element of surprise was lost," was an attempt by the higher-ups to cover up their negligent -- their failure to manage this raid.

MR. SARABYN (? ): They're trying to explain this whole element of surprise issue, you know. First of all, we're telling you, you know, we were never given that order. Secondly, obviously we lost the element of surprise. We were ambushed. Our point is we felt that his actions at that time did not indicate to us that we had lost it, but, in fact, we had.

REP. SHADEGG: I'm running out of time. I have one last question. I will tell you, over and over again in these hearings, we've heard this line about nothing justifies the murder of these agents. Nothing justifies them shooting first.
I don't believe anything ever justifies a citizen in meeting a warrant, whether it's a lawful warrant or a fraudulent warrant, with gunfire, but we've heard this question over and over again, saying, "Do you think anything you've heard justifies the murder of these agents?"

I want to turn that question around and I want to ask it to you this way: Has anything you've heard about how evil David Koresh was, would any of those things justify this Congress in ignoring its oversight responsibility and refusing to look and see if mistakes were made or sloppy practices were used, which -- by the federal law enforcement agents in the lead-up to the Waco raid, which resulted in the death of four agents, the wounding of 20 other agents, and the death of 80 civilians, including men, women, and children? Anything you've heard would justify us ignoring our oversight responsibilities?

MR. SARABYN: No, I don't think it should be ignored. Obviously, there was mistakes made. We can't bring those agents back. We can't bring those other people back, but anything we can do to prevent it, I think we owe it the American people to do that.

REP. SHADEGG: Mr. Chojnacki?

MR. CHOJNACKI: I agree with Mr. Sarabyn. We've been waiting for these hearings for two and a half years.

REP. SHADEGG: Mrs. Wheeler -- or Ms. Wheeler?

MS. WHEELER: Well, I think that it's (time to ?) ask what truths came out from the agent's point of view.

REP. SHADEGG: Thank you.

Mr. Hartnett?

MR. HARTNETT: Yes, I'm very much in favor of the hearings.

REP. SHADEGG: I'm sorry. Mr. Black?

MR. BLACK: I'm not sure what the question is.

REP. SHADEGG: Okay, the question is -- let me try to make it clear. We've heard the question over and over again, "Would anything you've heard in the hearings justify the murder of the agents? "I see that as a rhetorical question. Nothing justifies the murder of the agents.

My question: If anything you've heard in the hearings or before, would those things you've heard justify the Congress in refusing to conduct oversight hearings to determine if mistakes were made by law enforcement officers?

MR. BLACK: No, sir.
REP. SHADEGG: Mr. Merletti?

MR. MERLETTI: Sir, I don't know that I'm really in a position to answer that. However, I will say that everything we've heard is in this book. It's here. (Applause.)

REP. SHADEGG: Mr. -- I'm sorry, I can't see.

MR. CADIGAN: Cadigan.

REP. SHADEGG: Cadigan.

MR. CADIGAN: No.

REP. SHADEGG: Sir?

MR. CADIGAN: No, I think it's perfectly appropriate for the Congress to hold hearings on this.

REP. SHADEGG: Mr. Buford?

MR. BUFORD: Yes, sir, it's appropriate.

REP. SHADEGG: Mr. Rodriguez?

MR. RODRIGUEZ: Sir, Phil and Chojnacki (sic) know exactly what happened. To this day I will stand by what I've said and what I've told them. I have never changed my story. They have changed theirs many times, and till this day, they can still sit there and lie for all the agents of ATF that what I said -- what I supposedly said was not said, and it really aggravates me, because for two years, I have -- I have waited and I've waited for some chance to tell all the agents what really happened.

Those two men know what I told them, and they knew exactly what I meant, and instead of coming up and admitting to the American people right after the raid that they had made a mistake, that the element of surprise had been lost, that the agent had advised them that they knew we were coming, instead of doing that, they lied to the public and, in doing so, it just about destroyed a very great agency.

REP. SHADEGG: Mr. Ballesteros (?)?

MR. BALLESTEROS: I'll have to concur with Mr. Merletti. There's a lot in the blue book that the truth of what is being brought out there today are questionable. I was in an auditorium along with a large party, I should say, and in that blue book, it brings out clearly that the element of surprise had been lost and Mr. Sarabyn rushed into the room and made it clear it was, that we needed to hurry up, because, in fact, Mr. Rodriguez had come out, identified the fact that Koresh had been tipped off and that they knew we were coming.

REP. SHADEGG: I'm sorry, sir, at the end -- I can't see your nameplate. It's one of these.
REP. SHADEGG: Mr. Williams.

MR. WILLIAMS: I agree that our Congress needs to investigate what happened due to the fact -- for all the agents who went on that compound, who went through the trauma of receiving the -- being shot at as they were, that the truth needed to come out, and for all purpose, (certain scenes ? ), as big a point as to who said this or said that, is irregardless to the families of the four agents -- of the four agents that I saw lost their life at that compound, and we know for a fact that the element of surprise was lost. But at the time, we didn't know what the time span was as how long the time had occurred that they knew it was coming, and to say that play on words that this is the element of surprise before or after is irregardless. What happened is what happened, and it's time to get the truth out and let it be heard.

REP. SHADEGG: Thank you very much.

REP. MCCOLLUM: Thank you, Mr. Shadegg.

Ms. Thurman, I understand you wish to pass at this time. Is that correct?

REP. CONYERS: Mr. Chairman, could I be allowed five seconds, please -- and Ms. Thurman has already agreed that if you want to take it out of our time on this side, could I just --

REP. MCCOLLUM: I would -- if Ms. Thurman's agreeable to that, is that correct?

REP. CONYERS: For the record, I've had a number of hearings in the course of my career. This is the first time in my career that I remember 12 people being hauled before a congressional committee to be asked individually if the hearings that they are required to appear at were appropriate, and I'd like the record to reflect that.

REP. MCCOLLUM: You certainly may, Mr. Conyers.

REP. CONYERS: Thank you.

REP. MCCOLLUM: But I must say that having that question asked was interesting in light of the fact some people have been saying we -- (inaudible) --

REP. CONYERS: Well, I'm sure they had an opportunity to tell you that these hearings were no good, inappropriate, and that would be a pretty risky proposition before the 104th Congress.

REP. MCCOLLUM: Well, at this time, I think everybody concurs for the most part they were appropriate, but that's beside the point. Mr. Barr, you're recognized for five minutes.

REP. BARR: Thank you. I would respectfully direct the gentleman from Michigan to his remarks in the 1993 hearings, which are 180 degrees at odds with his efforts today to make it appear as if we're
anti-law enforcement and they are pro-law enforcement. I mean, the disingenuousness of the gentleman's statements are astounding. The two agents on the end -- did I hear you earlier to say that you were stunned with the amount of firepower that came out of the compound when you went in?

MR. : Yes, we were.

REP. BARR: Okay. What did you expect David Koresh to do? Invite you in for tea and cookies? And I ask that very seriously. How -- how can you stand there, as trained law enforcement officers, knowing that a massive operation would be mounted against the person, with over a hundred men and women in there with, according to ATF's own documents, had hundreds of weapons, including, according to ATF, automatic weapons with thousands of rounds of ammunition, who knew you were coming, who had prepared for Armageddon, how could you have expected anything other than an armed confrontation?

MR. WILLIAMS (? ): Sir, I execute a lot of warrants. I don't think we're dressed for tea and cookies that day.

REP. BARR: I'm sorry I can't understand you.

Waco: I was there to execute a warrant. And when we went to the door to execute a warrant dressed appropriately in the outfits signifying that we're ATF police, if you decide to just open the door and let us in, we still have to go into the dynamic --

REP. BARR: Did you expect him to do that, to just open the door and let you in?

Waco: No, I didn't expect him to open the door --

REP. BARR: Well, then why were you -- I'm just missing something. Knowing everything that had gone one before, knowing how much firepower you believed was in there, knowing the predisposition that you believed would make this man violent, why you expected anything less?

Waco: Having the information -- what you have now, we didn't have all this information at that time.

REP. BARR: Yes, you did. It was in -- your superiors did. You may not have, but your superiors did. Let me ask your superiors here. You knew that there were -- or you believed that there were hundreds of weapons and thousands of rounds of ammunition in there, didn't you?

MR. SARABYN (? ): Yes, sir, we did --

REP. BARR: And did you believe that they were, in fact, controlled by a man predisposed, by your own information, to be very violent?

MR. SARABYN (? ): That's correct, sir.

REP. BARR: Okay. Did you tell these gentlemen down here all of that?
MR. SARABYN (? ): Yes, sir.

REP. BARR: Then why do you think that they were so stunned when they went in there?

MR. SARABYN (? ): I believe we were all stunned, because we expected that we still had the opportunity to execute that warrant safely.

REP. BARR: Oh, that is so -- okay, maybe you did, but that raises some serious questions about your judgment.

Ms. Wheeler, who is Bill Johnston?

MS. WHEELER: He is the -- one of the assistant United States attorneys in Waco.

REP. BARR: Okay, was he, in fact, the assistant United States attorney that was in charge of the investigation leading up to the raid?

MS. WHEELER: As far as I know.

REP. BARR: Okay. When was your consultation with him concerning your press contacts the evening before the raid?

MS. WHEELER: I never had a consultation with him.

REP. BARR: Okay. Are there no directives in ATF that when there's an ongoing investigation being monitored, if not controlled, by an assistant United States attorney because it involves violations of federal law, that there is to be consultation on any media statements?

MS. WHEELER: I'm not aware of the exact law that pertains to that. I think it would be policy.

REP. BARR: No, I'm not talking about law. I was talking about policy. You know -- there's no requirement for that? Exactly what did you tell the media the day or the evening before?

MS. WHEELER: I called and said that we might have something going on in Dallas and that I'd need a weekend contact number, and that's pretty much the extent of the conversation. I was asked by Channel 5 if it involved the World Trade Center bombing, and I said no.

REP. BARR: Is it your procedure that in every case before there's an ATF raid that the media is notified that there might be something going on?

MS. WHEELER: No, sir.

REP. BARR: Okay, why was this case an exception then?

MS. WHEELER: The reason I called was to get a contact number in case we needed --
REP. BARR: No, I'm asking why this case was an exception. If it wasn't standard procedure to notify the media a day before an undercover raid was to take place, but you did in this case, why was this case an exception?

MS. WHEELER: I don't understand what you're getting at, I'm sorry.

REP. BARR: I can't make it any clearer, Ms. Wheeler. I think you do.

MS. WHEELER: No, I don't.

REP. BARR: You have stated that it was not standard procedure for ATF to notify the media prior to a raid, is that correct, that it was not standard procedure?

MS. WHEELER: Correct.

REP. BARR: Okay. You have also stated that in this case you did notify the media that something was going to be going on, correct?

MS. WHEELER: Yes.

REP. BARR: Okay. Why did you do that? Why was this case made an exception? That's all I'm asking about.

MS. WHEELER: It's not that it was made an exception. Mr. Roister had told me that he wanted me to contact Jeff Crilley (sp) of Channel 4 when the raid was over. I told him that I could not just contact one channel when this raid was over and that I did not have the weekend contact numbers for the other channels. He said --

REP. BARR: Did you -- were you given information concerning the seriousness of this raid? Did you know the extent of it?

MS. WHEELER: Absolutely.

REP. BARR: And do you still feel that it was appropriate to notify the media that something was going on?

MS. WHEELER: I never said "Waco," I never said "raid."

REP. BARR: I know you've said that.

MS. WHEELER: Mm-hmm.

REP. BARR: You apparently think that it was appropriate to have done that, even in hindsight?

MS. WHEELER: Well, I don't believe that that compromised the raid, if I might say, sir.
REP. BARR: I didn't say it compromised the raid.

MS. WHEELER: Well, that's what you seemed to be insinuating to me.

REP. BARR: No, I'm just wondering why -- well, that's okay. Mr. --

MS. WHEELER: May I say, sir --

REP. BARR: No, not right now.

(Reaction from those in the room. )

REP. BARR: Mr. Altman, your memo of April 15th is -- that's the most cover-your-rear memo I think I've ever seen. In the one document, you say, on the one hand, that the FBI has concluded that the outlook for a negotiated end to the standoff is poor and that they don't believe it is worth waiting. And then at the end, you indicate that if the FBI waits indefinitely, Mr. Koresh eventually will concede, you know, covering both sides of the spectrum. And then you also say the risks of a tragedy are there.

Despite some efforts by a previous questioner to defy all semantics and logic, and even you didn't stand by for this, that reference to a tragedy doesn't refer to anything in the past. It refers to something in the future.

What was the point of this memo to the secretary if in fact you've already stated that there was no reason to notify the secretary of things outside of his area of responsibility, and you believe that this was outside of his area of responsibility?

MR. ALTMAN: That's not what I said, Mr. Barr. I said that it was my practice to inform Secretary Bentsen of matters of significance that were occurring either in the department or that I was otherwise involved with. He had made a comment, as the memorandum indicates, on "Meet the Press," public forum, important forum, so I thought it was appropriate to convey to him what Ron Noble had told me.

REP. MCCOLLUM: Thank you, Mr. Barr.

REP. THURMAN: Parliamentary inquiry, Mr. Chairman.

REP. MCCOLLUM: Please state your parliamentary inquiry.

REP. THURMAN: Mr. Chairman, I know that these are hearings, but my question is, are these inquisitions?

REP. MCCOLLUM: That is not a parliamentary inquiry.

REP. THURMAN: I would hope that all of us could be respectful of the witnesses who are before us because they are not under indictment in this Congress.
REP. MCCOLLUM: That is not a parliamentary inquiry. Mr. Bryant, you are recognized as soon as Thurman --

REP. THURMAN: Can I get an answer, Mr. Chairman?

REP. MCCOLLUM: I indicated to you, that is not a parliamentary inquiry.

REP. : Well, Mr. Chairman, I have a unanimous consent request.

REP. THURMAN: Well, I'm concerned about the attitude of questioners.

REP. : Regular order.

REP. MCCOLLUM: We are in regular order. Mr. Bryant is recognized.

REP. THURMAN: I'm very concerned about the way --

REP. MCCOLLUM: We'll take a unanimous consent request after Mr. Bryant's time.

REP. BRYANT: Thank you, Mr. Chairman. Mr. Williams and Mr. Ballesteros, were you the two people at the door with the warrant, serving it?

MR. : Yes.

MR. : We were, several of us, at the front of the compound.

REP. BRYANT: Okay, now, I talked to Mr. Sarabyn the other day and asked him where the warrants were. There was a search warrant and an arrest warrant, either of which could have been served separately. But are you saying today that one of the two of you had these pieces of paper, these warrants to execute?

MR. : I didn't say that today.

REP. BRYANT: Who had those?

MR. : I don't know. I would imagine the case agent would.

REP. BRYANT: Well, why were you all at the door if you didn't have the warrants to serve to whoever opened the door?

MR. : We'll run search warrants in the past. If there is a warrant signed, then we have legal access to the premises --

REP. BRYANT: Okay, and you --
MR. : -- regardless of who is carrying it physically.

REP. BRYANT: This was not a no-knock search? You had no authority to kick the door down? It was not a no-knock search, was it?

MR. : I don't know if there is such a thing as a no-knock search, sir. We knock and announce every time we run a search warrant.

REP. BRYANT: Okay, well, the magistrate can order a no-knock search, but this was not one of those, so you had to knock first.

Now, were you at the front door of the house?

MR. : Yes, sir.

REP. BRYANT: Okay. And ordinarily, if this were a -- just a regular X,Y,Z case and you, Mr. Williams, went out to a regular house to serve a warrant, you'd have the warrants with you, would you not?

MR. WILLIAMS: We always do, sir.

REP. BRYANT: Okay. When you went up and knocked on the door, the person comes to the door, you would serve them the warrant. Is that correct?

MR. WILLIAMS: That's correct, sir.

REP. BRYANT: Okay, so that day when you went up to Mr. Koresh's front door, who had the warrants to serve it on him when he answered the door?

MR. WILLIAMS: Someone behind us, sir.

REP. BRYANT: Well, what was your job? Why were you up there?

MR. WILLIAMS: To secure the premises.

REP. BRYANT: In what sense?

MR. WILLIAMS: Once we'd knocked and announced and made entry, to secure all the inhabitants inside for their own safety and for our safety.

REP. BRYANT: So if somebody opened -- was this the plan, that somebody opened the door, you were supposed to force your way in the door and secure the area inside, and then somebody would bring the warrant in later and serve it?

MR. WILLIAMS: As they open the door, sir, we identify ourselves, advise them we have a warrant, and we proceed inside.
REP. BRYANT: Okay. Do you know how far back the first -- the lead truck, the lead cattle truck stopped? How far away from that front door was it parked?

MR. WILLIAMS: I couldn't tell you, sir.

REP. BRYANT: Did you come up in it?

MR. WILLIAMS: I was in the second cattle trailer.

REP. BRYANT: And how far did you have to walk to the front door from the second cattle trailer?

MR. WILLIAMS: From the time I exited the trailer to the front door, possibly 50 to 60 feet.

REP. BRYANT: Okay. Now, Mr. Buford, you testified dramatically the other day, and I appreciate the service you've given to this country. But you testified a few minutes ago in relation to Vietnam and so forth that you never expected anything like this at Mt. Carmel, that you'd gotten to the door and -- but wouldn't you expect under the circumstances that -- I think you said that anyone -- you know, if anyone was going to shoot, he'd have shot at the cattle trailers. But if it was truly an ambush, which is what I think everybody has described from the beginning, that you guys were ambushed, that he would let you walk in and lure you in, much as they did in Vietnam. They let you walk right into the ambush, let you climb on the roost before they started shooting.

MR. BUFORD: Yes, sir. They definitely got us in their kill zone. The kill zone that they had set up at that time was the parking lot in front. They would have been at a tremendous disadvantage if they'd have let us get inside. They had it perfectly laid out so that we would be in front of the building right in the kill zone that they had determined.

REP. BRYANT: Okay, so it really is not a surprise to you now that they didn't shoot at you when you were coming up in the cattle trailers, but rather let you get out and come right on into their zone of fire?

MR. BUFORD: No, sir, it surprised me that they didn't because had they have opened up on us just as we got into the trailers, they were actually -- for a proper ambush, if it had been coordinated properly and they had known we were in those cattle trailers, they could have killed nearly everyone before we were able to get out of the trailers. And fortunately for us, the cattle trailers worked. We used them to surprise, in order to get up there without them knowing we were in them.

I feel sincerely -- I know this to be a fact -- had we have not been in those cattle trailers, we would have taken unbelievable casualties because he would have known it was us. They could have opened up with those .50 caliber weapons and the other weapons prior to our arrival, and our casualties would have been tremendous and our .9mm handguns would have done us no good.

REP. BRYANT: Well, again not to argue, but I find it difficult to believe a man of Koresh's mentality at that time would have been fooled by the fact that there were two cattle trailers pulling up into his driveway and down his driveway. I'm sure he was suspicious that something was going
MR. BUFORD: Yes, sir. In fact, I believe one of the Davidians that came out testified to the fact that he wasn't sure that it was us, and that's the reason he went outside to run these farmers off that had pulled into his driveway. And I believe that's testimony from someone inside the compound.

REP. BRYANT: Mr. Merletti, you're from the Secret Service. You were part of the non-biased folks from the outside that prepared this report. There's still a great deal of finger-pointing going on as I've seen in the time I've been here this morning as to whether or not this surprise, the secrecy had leaked out, and whether -- who knew what when.

You gave testimony earlier, though, that you had interviewed some 61 field agents, some of the people in the staging areas.

MR. MERLETTI: Yes, sir, and --

REP. BRYANT: Is there any doubt in your mind that the word was out that Mr. Rodriguez said that Mr. Koresh knew about this and these folks were going into a situation where these folks had -- where the Koresh people had 45 minutes to get ready for them?

MR. MERLETTI: Absolutely the element of surprise was lost, and ATF management knew that. As a matter of fact, I personally interviewed --

REP. BRYANT: Who is the management you're talking about? I'm sorry, who is the management?

MR. MERLETTI: I personally interviewed Mr. Sarabyn in I believe it was late June. And when we got to the point of discussing what he said at the staging area -- which what he said was repeated over and over, "Hurry up. Koresh knows we're coming" -- when I asked him about that point, he initially said to me, "I didn't say that."

And I pulled out the paper that I had showing, "We've interviewed 61 people that said they heard you say that. How can you deny saying that?"

He then gave a story, something about, "Well, I was trying to quote Robert Rodriguez. "The story was very evasive. I then told Mr. Sarabyn that we were going to break for lunch and that I would be back in about an hour and a half. There were two people conducting the interviews, myself and another agent named Fred Clair (sp).

We returned about an hour and a half later, and we walked into the room, and Mr. Sarabyn was sitting at the table. I'll never forget, as I was taking off my coat and hanging it up, he said to me, "What did you bet?" I said, "What do you mean? "I thought he meant, did I go out during lunch and buy a lotto ticket. And he said again, "What did you bet? "I said, "I don't know what you're talking about." And he said, "I'm sure you all made a bet on what I was going to tell you when you came back." I said, "We made no bet." As we were sitting down, Mr. Sarabyn spontaneously said, "I knew Koresh knew we were coming." Mr. Clair asked him, "On a scale, a percentage scale from 0 to 100, how sure were you that you knew Koresh knew you were coming? "He said, "I was 100
percent sure." We then went to main Treasury with Mr. Sarabyn, at which time he repeated this story in front of the project director, Mr. Moulton. He then told us, "I feel that I need to call Phil Chojnacki this evening to tell him that in fact that I have told you what I told you today. The next morning, we met again to continue the interview. At the beginning of the interview, Mr. Sarabyn said, "I want to make a few points. Number one, I want to change the statements I made yesterday as to my knowledge of Koresh knowing we're coming." We asked, "What are you doing? "And again, an evasive story. We asked, "Who did you talk to last night? "And he said, "Phil Chojnacki. "

REP. MCCOLLUM: Thank you, Mr. Bryant. Your time is expired. With Ms. Thurman still reserving her time, I yield to Mr. Blute.

REP. BLUTE: Thank you very much, Mr. Chairman. I'd like to thank all the witnesses for their testimony. These are difficult issues. I hope you'll bear with the committee as we ask some tough questions here.

I want to get back to the question of intelligence and the undercover operation because I think this is very important. I think that some of the problems associated with the undercover operation and the intelligence clearly led to this tragedy for the ATF, and those agents and their families.

And I wanted to ask some very basic questions, Mr. Rodriguez, if I could, about the undercover operation. Did you use a different name when you interacted with the Davidians?

MR. RODRIGUEZ: Yes, sir.

REP. BLUTE: What was that name?

MR. RODRIGUEZ: Robert Garcia, not Gonzalez.

REP. BLUTE: Not Gonzalez, as had initially been --

MR. RODRIGUEZ: No, sir.

REP. BLUTE: How did you first approach the Davidians and how did you manage to gain their confidence?

MR. RODRIGUEZ: Do you want a long story or a short story?

REP. BLUTE: Short. (Laughter. )

MR. RODRIGUEZ: We decided to -- we made a plan to walk in and ask them if they wanted to sell a horse walker they had in front of the yard. And since we had been pressured to go in and infiltrate, we worked out that scheme and an agent, Mr. Wade Brown, and I walked up to the compound, or drove up to the compound, and when we got there, we were immediately surrounded by numerous, numerous men. And we asked for -- we just asked if they wanted to sell the -- their horse walker. And that was the first time I met David Koresh.
REP. BLUTE: Well, we've heard a lot of testimony, some from the Davidians, Mr. Thibbideaux specifically, who seem to indicate that the cover was compromised from the very beginning. Did you sense that you were marked by Koresh as some type of police agent?

MR. RODRIGUEZ: I'm sure that he was trying real hard to find out who we were. We did have a lot of problems when we first started the undercover operation.

REP. BLUTE: Well, let me ask about that. Did you feel comfortable with the ruse, the cover that you were college students attending a local technical school?

MR. RODRIGUEZ: Well, first of all, you've got to understand that I came from McAllen (sp) to join this group. By the time I arrived, all preparations had already been made, and all rules and everything was already set. When we first got -- when I first got to Waco and first saw the compound, and we saw how the operation was running, all of us knew, or myself knew, that we were going to have problems. It was just too obvious --

REP. BLUTE: Too obvious. Did you report these to your superiors, these feelings that you had that the intelligence operation was not up to --

MR. RODRIGUEZ: I did advise Case Agent Davey Aguilera of the situation.

REP. BLUTE: Let me ask you a couple more questions that have been brought up, and I want to get your reaction to it, with regard to the undercover operation. There have been reports that women who were not ATF employees were brought into the undercover house on at least one occasion.

MR. RODRIGUEZ: Well, what we did -- we wanted to -- we were trying to look as much as students as we could. First of all, we were not students at Baylor University.

REP. BLUTE: Right, the local technical school.

MR. RODRIGUEZ: The average age there may be, may be 19 or 20. We were supposedly students at TSTC, which is all ages --

REP. BLUTE: Although Mr. Thibbideaux testified that he asked one of the agents the question of what his major was, and the response was philosophy.

MR. RODRIGUEZ: I believe he claimed that he asked me what it was, and I said philosophy, which was false. I had advised Koresh that my major was photography.

REP. BLUTE: Okay. And what about alcohol use at the undercover house? Was that part of the rules, or was there --

MR. RODRIGUEZ: No, sir. On that particular time, we wanted to look as normal as possible; look like agents -- I mean, not agents, excuse me, like students. And we invited some of our women agents, and pretend we'd throw a party, and just try to be as normal as possible. That's what that party was.
REP. BLUTE: I appreciate that. I'd like to ask Mr. Sarabyn and Mr. Chojnacki about what you were feeling about the undercover agents and their saying that they felt somewhat uncomfortable with the security of this undercover operation. Did you feel like you should have changed that or done something to protect the agents?

MR. SARABYN: Well, we had the agents in there rotating at a different time. And then we had a supervising agent that was supposed to take care of their needs or whatever, as far as anything that would come up.

REP. BLUTE: But did you fear that perhaps they were already marked by Koresh as agents?

MR. SARABYN: No, there was a next-door neighbor that was kind of like the (unwitting ? ) informant. He would go into the compound and come back, and he would talk to the neighbors, so we'd get information from him that we knew was, you know, reliable, because he didn't know who they were. So he'd come back and say -- and a couple times, he said Koresh was nervous and thought something was there, but then he felt more comfortable after that.

REP. BLUTE: Why was the 24-hour surveillance discontinued?

MR. SARABYN: I met with all the undercover agents in a meeting, and they said that, you know, it was hard to keep up with their going to college and running those shifts. And they said there was no activity basically going on during the night. They'd watched them for two weeks, so they asked if they could knock it down to basically 6:00 in the morning to midnight, and I okayed it.

REP. BLUTE: Let me ask you one question about the pit. The pit is where the Branch Davidian males were supposed to be working in large numbers, and logs kept there indicated that only about 14 of them were working there, leaving a large number of other men. And this was key in the planning of the raid, wasn't it?

MR. SARABYN: We estimated that there was ten or 15 people, but the pit significance was kind of changed as we went along. When we first started the investigation, the pit was actually a large hole. By the time we actually executed the warrant, it was a basement. The key significance was that after they had Bible study, in our opinion, like at 10:00, they would go work on something.

REP. BLUTE: And that's why you delayed the raid until 10:00 rather than early in the morning.

MR. SARABYN: Because they'd be working somewhere. At one time we could actually see them actually working in the pit and underground, but they always went and did something.

REP. BLUTE: But you didn't expect that they'd all be there or a large number of them would be there.

MR. SARABYN: I felt that a number of them would be somewhere at that time.

REP. MCCOLLUM: Mr. Blute, your time is up.
REP. BLUTE: Thank you, Mr. Chairman.

REP. MCCOLLUM: Mr. Schiff, with Ms. Thurman still reserving, you're recognized for five minutes.

REP. SCHIFF: Thank you, Mr. Chairman. Mr. Altman, I'd just like to go back over please, the memorandum that you sent to Secretary of the Treasury Bentsen. You were at the time the number two person at the Treasury Department, is that right?

MR. ALTMAN: Yes, sir.

REP. SCHIFF: And your memo, which has already been discussed here, contains the words as you're describing on April 15th, the planned FBI plan to terminate the siege, which came about on April 19th. You said the risks of a tragedy are there, among other things. Am I reading correctly?

MR. ALTMAN: Yes, sir.

REP. SCHIFF: Did you receive any response from Secretary Bentsen about your memorandum from the point you sent this on April 15th to when the FBI actually acted on this plan?

MR. ALTMAN: I don't recall whether we discussed it. I spent a great deal of time each day with Secretary Bentsen, and I really don't remember whether we discussed this after the 15th or we didn't.

REP. SCHIFF: Now, excuse me for pressing a little bit here, but this is rather strong language. The risks of a tragedy are there. And you're saying you do not remember if you and Secretary Bentsen discussed it further?

MR. ALTMAN: No, I was reflecting an instinct. I know nothing of the technical issues, of the assault-related issues, the gas. My reaction was just an instinctive one.

REP. SCHIFF: But you felt it strongly enough to send a memorandum to your boss, the secretary of the Treasury.

MR. ALTMAN: Yes. But I sent such memoranda very regularly on all sorts of matters.

REP. SCHIFF: Did it occur to you -- Secretary Bentsen has already testified earlier, as I think you know, that he considered this matter no longer the Department of Treasury's responsibility, because it had been turned over to the Justice Department. And of course it had been turned over to the Justice Department. But for that reason, did you ever send this memorandum, with your concerns to the Justice Department?

MR. ALTMAN: No, sir, of course not.

REP. SCHIFF: Why of course not?
MR. ALTMAN: Because this was a -- the memorandum itself says, this is the attorney general's decision, and I can't remember any circumstances where I would send a memorandum to the Justice Department.

REP. SCHIFF: Well, I understand this was the attorney general's decision, because the Justice Department had taken over this situation. But it began with the Treasury Department, through the Bureau of Alcohol Tobacco and Firearms. Wouldn't, in your opinion then, the opinion and views of people in the Treasury Department be of value to the attorney general before she made the decision to go ahead with this move, this attack?

MR. ALTMAN: Well, not mine.

REP. SCHIFF: Not yours.

MR. ALTMAN: No, I had no background whatsoever in these issues.

REP. SCHIFF: And so you're saying your memorandum wasn't worth anything.

MR. ALTMAN: I said I wouldn't have proffered those views to the Justice Department, because I don't think I was qualified to make any judgements.

REP. SCHIFF: But you were qualified enough to send them to your boss, the secretary of the Treasury.

MR. ALTMAN: Yes, but that's the type of relationship we had.

REP. SCHIFF: Well, I'm just going to let it go at that, Mr. Altman. Mr. Chairman, I'm going to take a moment here and just address something I saw this morning. I want to say that I'm very grateful that these hearings are being carried in their entirety by several networks. Because I have to say with regret, I think a number of people getting their information from news stories, not in all cases, but in many cases, are not getting all of the information. In today's, in a national newspaper -- I won't mention its name, but it's first three initials are USA, they do a summary of the three days of testimony. And they start off with a the re-rendition of the sexual abuse; the despicable practices of David Koresh on Kiri Jewell. And it's complete with Ms. Jewell's picture. And in case you miss it, they put Ms. Jewell's picture in again in the letters to the editor section.

And after doing that they say, other witnesses testified about the now controversial use of the military in training agents for the raid. Well, with respect to that section, it's a little like saying, other than that, Mrs. Lincoln, how did you like the play? What was going on was that the military was being misrepresented to, to get them to provide training they would not have provided under military policy, because there was this mind set, there was this mind set that ATF was going to conduct a military raid, and nothing was going to dissuade them. And speaking of concern for children, I think it's terrible, terrible tragedy what happened to Kiri Jewell in that compound, that she testified to. But speaking of children, the child case worker from the state of Texas, Joyce Sparks, testified before us that in her opinion, the plan for a raid was a fatal mistake. And her words
were, when I saw those ladders going up on television, I knew children were going to die.

And my concern, Mr. Chairman, is that unless people have had the opportunity to see all of these hearings, they're not getting a lot of that information; that the tragic abuse which occurred to Kiri Jewell was inserted in this hearing to do to the headlines and to the media reporting exactly what it's done. I say that not because child sexual abuse isn't important; of course it is, I used to prosecute such perpetrators for many years. But the Bureau of Alcohol Tobacco and Firearms, it should again be emphasized, was making a raid to search for weapons violations and to conduct an arrest for weapons violations. If they were concerned for children, they would have listened to the case worker who was working with those children, who warned them that this was an error. With that, Mr. Chairman, I yield back to you, Mr. McCollum, any time that I may have remaining.

REP. MCCOLLUM: Well, I thank the gentleman for yielding. We're approaching the point in time where we want to take a lunch break. We're getting quite late into that. We, Ms. Thurman and I, are the only remaining panelists who are presently up here, who have not questioned this panel. We are not wanting to have a second round of questions completely through this because of the time involved if we can avoid it. But there are quite a substantial number of very significant, specific questions that only the ATF and some of you who are here today can answer that really should be brought out. I think the public needs to have us ask these questions, so you can respond to them. And they've not yet been asked today. So with that in mind, and having consulted with Ms. Thurman and Mr. Zeliff and Mr. Schumer, I'm going to, at this time, ask unanimous consent that the first panel after lunch, that the first round of questions I should say, be closed except as to the five minutes remaining of Ms. Thurman's and my time, and that each side, Democrat and Republican, get an additional 15 minutes allocated to question this particular panel after we return from lunch, to be controlled by the chairman and by Ms. Thurman. Is there any objection?

REP. CONYERS: Reserving the right to object, Mr. Chairman.

REP. MCCOLLUM: Yes, Mr. Conyers.

REP. CONYERS: I had understood that it was going to be ten minutes.

REP. MCCOLLUM: It was, but we just altered it to accommodate a particular problem of getting the questions in we need to get in, and you're getting the advantage of that.

REP. CONYERS: Well, that's so kind of you. I really wanted a lot more time than that, and you cut it down to 15 minutes. The problem is that, you know, each time we decide to go additional time, guess what that's doing to the length of these hearings each day and each week.

REP. MCCOLLUM: Well, if the gentleman will yield back to me, I would just comment that the other option is for us to take a complete second round of questions for this panel. This is such a large panel and so critical, and so many questions of the raid itself, and how it was planned and -- (inaudible) -- that I'm tempting to actually shorten the amount of time involved. Because we believe, having discussed it among ourselves, that we can accomplish that in the time --

REP. CONYERS: Well, that's what I was trying to do. I was trying to shorten it.
REP. MCCOLLUM: I understand.

REP. CONYERS: I'm in quite agreement with you. But I mean if we try to go another round --

REP. MCCOLLUM: We're not going to do that. We're going to do it with -- my unanimous consent request, (is it ? ) granted right now, then we will only have, except for Ms. Thurman's and my, an additional 15 minutes --

REP. CONYERS: Alright, I will withdraw my objection.

REP. MCCOLLUM: Thank you. Without objection, it is so ordered, and we are not going to take a lunch recess until five minutes after 2:00. That will be 45 minutes, and I hope that the panel down here can get lunch as well with us during that time. The subcommittees are in recess.

(Recess. )

##### END OF MORNING SESSION