WITNESSES: PANEL A: DICK DEGUERIN, ATTORNEY FOR DAVID KORESH
JACK ZIMMERMAN, ATTORNEY FOR KORESH'S LIEUTENANT, STEVE SCHNEIDER
AFTERNOON SESSION / 1:00 PM
TUESDAY, JULY 25, 1995
REP. ZELIFF: The oversight committees on Waco will come to order. The chair now recognizes Ms. Ros-Lehtinen from Florida. Five minutes.

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

REP. BUYER: Thank you, gentle lady, for yielding. One thing I wanted to make a comment on is the -- one of you, I think maybe it was you, Mr. Zimmermann, testified that we've had changes in policy, but no really changes in the leadership?

MR. ZIMMERMANN: Yes, sir, that was me.

REP. BUYER: Was that you?

MR. ZIMMERMANN: Yes, sir.

REP. BUYER: One thing that I have noticed as I -- the last few days -- as I sit and listen, whether it was Secretary Bentsen or Mr. Noble from yesterday is that it appears that the political appointees in the whole Waco so far, it's almost been see no evil, hear no evil, speak no evil; either wasn't in charge at the time, but I sure am in charge now. And either I didn't have the authority, or it was outside my jurisdiction or the briefers didn't tell me enough information, because if they had given me information, I probably would have made a different decision at the time. But it's good to know they're in charge now.

MR. ZIMMERMANN: Did you want me to answer a question?

REP. BUYER: No, I guess that was really political editorializing on my part, and the change of leadership perhaps will come later. Let me ask a question with regard to an arson expert. And I'm going to go down here for a moment. Did either of you have an opportunity to meet with Mr. Paul Gray, the so-called independent arson expert -- (inaudible) -- cause of the fire.

MR. DEGUERIN: Let me tell you how that happened. I got a telephone call within a couple of days of the fire from Paul Gray, who identified himself as an independent arson investigator with the Houston Fire Department.

REP. BUYER: Is this the same Paul Gray -- (inaudible, speaker is off mike) -- U. S. Department of Treasury, the Bureau of Alcohol Tobacco and Firearms? Paul (T. ? ) Gray?

MR. DEGUERIN: Yes, he told me that --

REP. BUYER: (Inaudible) -- independent?

MR. DEGUERIN: He told me that he was a Houston Fire Department Arson investigator. He'd been appointed to an independent panel to examine the fire and whether it was set deliberately or accidentally. I said I'll cooperate in any way you want; I'll come back up to Waco; I'll tell you what I saw on the inside and how the place was a tinder box and so forth, and agreed to do so. And I called Jack Zimmermann to tell him that I'd been contacted and maybe Jack ought to come up with me,
because he was there also to be interviewed. Jack said, wait a minute, this guy, Paul Gray was with the ATF. I think I've got his card.

REP. BUYER: Is it true that his wife is employed also by ATF?

MR. DEGUERIN: I understand his wife is employed in Houston in the office of the ATF. I called the Texas Rangers and told them, wait a minute, I've been contacted by this Paul Gray, should I talk to him? They said, we don't know anything about him.

REP. BUYER: (I'm ? ) not familiar with Texas.

MR. DEGUERIN: Rangers.

REP. BUYER: Is the word independent any different in Texas, I know you like to --

MR. DEGUERIN: No, no, I think it was clearly misleading.

MR. ZIMMERMANN: Mr. Buyer, I have that card here if you want to see the original of that card. Mr. Gray investigated a case that I had been involved in during the eighties, and the name struck a bell. And his card, which you really can't see on the blow up there, that shield says Special Agent, U. S. Department of the Treasury. And that's why I informed Mr. Deguerin that not only -- his office had been at the -- that address up there and phone number is the ATF office. He officed there from 1982 to 1990. His wife was then, at the time of the raid and is currently -- when he did the arson investigation of this fire on the 19th -- was still employed, and he had been in attendance at the funeral of one of the slain ATF agents.

REP. BUYER: Did either of you let him know that you were on to him, there really wasn't --

MR. DEGUERIN: Yes, I did. I called him back and told him that I'd talked with Ranger Captain Cook, and Captain Cook had advised me not to talk to him without a Ranger being present, and that I wouldn't do so, and that I knew that he had been assigned to the ATF for many years, and I didn't feel like he could be impartial and an independent investigator, and that I wouldn't meet with him. He told me originally that his report was due out the following Wednesday, and as I understand it, he then sped that up and got the report out on Monday before we were able to reveal that it was really not an independent arson review.

REP. BUYER: Mr. Zimmermann, your testimony describes some misinformation coming out of the Department of Justice after the fire. Can you summarize -- I heard you say that, would you please tell me what you were referring to?

MR. ZIMMERMANN: There were a number of things that bothered me, because I knew that they weren't true, and yet the public statements continued to say them. For example, it started with a 10:30 in the morning briefing, and it was a combination at the beginning of both the ATF and the FBI. They said that the ATF did not alert the press before the February 28th attack. Well, you know now, you've heard testimony that there was, in fact, contact by a spokeswoman for the ATF. They said they publicly announced that the ATF did not lose the element of surprise. I think that that's been
well established in these hearings, and by their own report. They said that two cultists confessed to starting the fire on April the 19th, and of course that made everybody feel better, because as the nation watched all the children and women and old men burn up there, if they knew that the cultists had started the fire themselves, they'd feel better about that. So they announced that they confessed when there was never any confession to that.

REP. BUYER: You're bringing out a lot of interesting statements. I want you to conclude, but were either of you guys interviewed by Treasury or Justice on these reports?

MR. DEGUERIN: No.

MR. ZIMMERMANN: I was not interviewed by either of those independent organizations.

REP. BUYER: Alright, well, I didn't mean to interrupt your answer. Would you please continue, Mr. Zimmermann.

MR. ZIMMERMANN: They kept putting out the word that the April 19th operation was a non-aggressive action. And after the public saw that tank knocking into someone's door, I think that even they began to call it an assault. They said that the Justice Department couldn't wait even another day, because the children were being beaten during the siege. Of course, Dick Deguerin and I had been in there two weeks before, and we just could not believe that somebody would say that, because we'd seen those children. We'd talked to them, we saw how they looked. And, of course, the FBI quickly corrected that. That came out of the Justice, main Justice and the FBI said, look, we just gave them the 1992 reports. There had been investigations by Child Protective Services and found insufficient evidence to go forward.

They said it was a planned mass suicide. They kept putting that word out; it was a planned mass suicide. And, of course, Dick and I had talked to those people about a planned mass suicide, and every time we talked to them, we were assured there wasn't. I'm telling you what, I was supposed to be the last guy out on the surrender plan, if there had been even the slightest inkling in our minds that they were going to burn up the building or blow it up, I wouldn't have agreed to be the last guy out. And also, nine people did survive that fire, and they escaped that fire. If there was a mass suicide plan, why did those nine leave? They're still very devoted to David Koresh. And they escaped. You know why they escaped? Because they were near an opening; they were near a window, and they got out. The other people were trapped and couldn't get out.

And when the bodies were found, David Koresh and Steve Schneider and another person were found totally separated from everybody else, not exactly a mass suicide scenario. They were putting out the word that the people -- the Branch Davidians murdered people to keep them from escaping. Of course, there's no truth to that at all; there's no evidence to support that. And at the time that I wrote my written opening statement that you have in front of you, I wrote that in May 1993, when everything was really fresh, and my memory was really fresh. I wrote that back then, and at that time the autopsies had revealed maybe a dozen or so gunshot wounds. I think when they got through, it was up to 17 or 18. Well, there were 80-some odd people in there. And Dick and I had talked to them. We knew that six people had been killed by the ATF on February 28th. They'd better have bullets in them on autopsy. And then we knew some other people had been wounded
inside, that is Branch Davidians, so they ought to have had bullets in them.

So there may have been a couple of people that rather than go through the fiery death and the painful burning to death, may have, if there was a weapon there, decided to put their relative or their friend, or themselves out of misery, but it certainly wasn't a murder situation.

REP. ZELIFF: Are you finished with the thought?

MR. ZIMMERMANN: I have about one more, sir.

REP. ZELIFF: Okay, are you answering the question?

MR. ZIMMERMANN: I'm answering the question about the misinformation program that were --

REP. ZELIFF: Okay, as long as you're answering a question, you may proceed.

MR. ZIMMERMANN: The next one was, of course, that David Koresh was not working on his Seven Seals project; that it was a sham. They actually held a briefing on the day of the fire. And if you look at the tape it says, we know they were lying to their lawyers. Well we know now, Dick has gone into that, you will talk to the next witnesses and they will give you a copy of that seven seals -- the first seal transcribed. And lastly, they said that the government had gone in on February the 28th and April the 19th because of the child abuses occurring. And I think that we can probably let that go by saying that will probably never be proven to anybody's satisfaction that that was occurring before February 28th and before April the 19th, and neither one, even if it were, justifies federal law enforcement launching military attacks because they have no jurisdiction over that matter anyway.

REP. ZELIFF: Thank you very much. The Chair now recognizes the gentleman from Michigan, Mr. Conyers.

REP. CONYERS: Thank you, Mr. Chairman. Mr. Zimmermann, are you representing any of the Branch Davidians in law suits against your government?

MR. ZIMMERMANN: No, sir.

REP. CONYERS: Mr. DeGuerin?

MR. DEGUERIN: No, sir, I am not.

REP. CONYERS: One of you made the statement that if we had had 10 more days you felt that Mr. Koresh would come out. What do you base that on?

MR. : We were called -- we were allowed to call by the FBI on April the 14th, and they told us that that waiting period and the Book of Revelation had been answered and that David Koresh was to decode the seven seals in writing, that would be ending that waiting period, and we told them send it out to us. He put it in writing, he signed it, we gave it to the FBI. He told us it was taking one to two days for a seal. He had finished the first seal and was working on the second one. So that would be
about 10 days, sir.

REP. CONYERS: Well there had been so many disappointments with Mr. Koresh's agreements to cooperate that we had had a little bit of a problem there as far as I am concerned and as far as ATF was concerned.

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Now, Mr. Zimmermann, is it true that in 1987 David Koresh and his mighty men, including Steven Snyder (ph), who has been described by one of you as a peaceful man, engaged in a gun battle to settle a dispute with a George Roden (ph) over who would be the leader of the Branch Davidians?

MR. ZIMMERMANN: I don't believe that's an accurate rendition, sir. And can I back up --

REP. CONYERS: There was not a gun battle?

MR. ZIMMERMANN: No, the way you described it.

REP. CONYERS: Wait a minute, engaged in a gun battle to settle a dispute with George Roden (ph).

MR. ZIMMERMANN: You don't want to know --

REP. CONYERS: Did that happen? No, I don't need explanations, yes or no --

MR. ZIMMERMANN: No, I'm not aware that Steve Snyder (ph) was even -- he was in Hawaii at that time, sir.

REP. CONYERS: Okay, what about David Koresh, was he in Hawaii?

MR. ZIMMERMANN: No, sir.

REP. CONYERS: I see. Okay. Isn't it also true after that incident that Mr. Koresh did not peacefully surrender to the sheriff, but was in fact arrested at gun point?

MR. ZIMMERMANN: No, that's wrong too, sir.

REP. CONYERS: Oh, I see. Okay. Now we have some statements that indicated that there was -- about the fires that were begun. And I have presented to you at the table the electronic surveillance tapes, or some of the transcripts from them. The import is that it strongly supports the fact that some of the Davidians were themselves starting the fire. These are electronic surveillance tapes transcribed from April 19th and it sort of establishes the Davidians started the fire -- these are excerpts -- and shows that they were pouring fuel inside the compound during the tear gas operation.

The full transcripts reveal that the Davidians discussed getting fuel ready and pouring it, needing
more fuel, discussing whether it was poured in the hallway, spreading the fuel, where the fuel should be placed, discussing whether to light the fire and keep it going. I bring to your attention selected comments from unidentified males. "You want it poured? "Another unidentified male -- "Pablo, have you poured it yet? "Another voice -- "Things are poured, right? "Another comment -- "Need to get the fuel up. "Another comment -- "I need a gas mask" -- unidentified female. Unidentified male -- "I need a gas mask". Another unidentified male -- "Got any fuel? "Unidentified male -- "We need fuel. "Unidentified male -- "Fuel over here. "Unidentified male -- 6: 10 a. m. -- "Don't pour it all, we might need some later. "6: 12 a. m. -- unidentified male -- "You've got to get the fuel ready. "Another unidentified male -- "I already poured it. It's already poured."

On the page afterwards, unidentified male, from the transcript -- "They got some fuel around in here? "Unidentified male -- "Yeah, they even poured it already. "Unidentified male -- "Poured it already. " Unidentified male -- "He's got it poured already. "6: 19 -- side B -- side B there is no time indicated. "Shall we light the package now? " "Yeah. ""Okay, light it."

Now these are --

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

REP. CONYERS: These are transcriptions that don't indicate that anybody but the Davidians poured the oil, the gas that set the fire to this compound. You nod you head, Mr. DeGuerin.

MR. DEGUERIN: Yes, sir, I'm familiar with that and it concerned me when I was being told by the FBI that they thought that they had evidence that the Davidians started the fire. So I questioned the survivors that I talked to in the jail, the ones that got out. They explained to me that they were pouring fuel and that they were making molotov cocktails to throw at the tanks. If you'll notice that that pouring of the fuel takes place -- or the conversation about that takes place in the early morning hours -- six and seven o'clock in the morning.

The fire didn't start until right around noon. It's questionable about whether it started just before or just after noon. But those conversations about pouring the fuel I believe had to do with preparing molotov cocktails to throw at the tanks. Now they never did throw molotov cocktails at the tanks. Secondly, all of the survivors were unanimous in saying that they did not start the fire and knew of no plan to burn the place down.

REP. CONYERS: Well let's keep the fire going, that doesn't sound like pouring molotov cocktails. As I understand --

MR. DEGUERIN: In the time that --

REP. ZELIFF: The gentleman's time has expired. Thank you. Mr. Mica from Florida for five minutes.

MR. DEGUERIN: I can answer that.

REP. ZELIFF: We can get back to it. This thing can go on all afternoon if we let it.
REP. MICA: Thank you, Mr. Chairman. I just have to take 30 seconds here and say that ladies and gentlemen on the panel and the people that are watching this proceeding, I am absolutely personally outraged at some of the comments I've heard from the White House and the administration. I am so glad Mr. Coble spoke to this earlier, that Republican participation in these hearings are some effort to discredit law enforcement or attack law enforcement, or that I personally have some hidden agenda in this. And I'm just absolutely sick and tired of it and I really resent these people making those comments about me personally.

The other thing is we have a responsibility -- and Mr. Zimmermann you talked about it -- a responsibility to find out what happened here, how 80 people -- we don't count Koresh -- died in this and four ATF agents and many other wounded. Gentlemen, can you cite me any other instance in the history of this country wherein a federal action there were this many people killed by a federal action?

MR. : I don't think there is one and I don't think there's another one that ever had American tanks used against American citizens.

REP. MICA: Could you respond, sir. Have you ever heard of anything --

MR. : I've never heard of that and I've never heard of tanks being used against American citizens in their own country.

REP. MICA: And we've tried to look at each thing and we've had two of the fairest chairmen in the House of Representatives -- these individuals have bent over backwards to try to bring this evidence out. And if anything, the administration and other people have tried to obstruct these proceedings, even from the very beginning. And you've cited that, Mr. Zimmermann, have you not? You were never called to participate in any of these. I --

MR. DEGUERIN: That's correct.

MR. ZIMMERMANN: That's correct.

REP. MICA: -- these reports? You know, I wanted to get into personnel questions. I had about 12 minutes yesterday to discuss the personnel. Turn the chart over and show the personnel responsibility here. And Mr. Zimmermann, you pointed it out and we heard it for several days. Rodriguez blamed Sarabyn, (who? ) blamed Chojnacki, and Chojnacki talked about Hartnett, and Hartnett blamed Noble, and then we got up to Noble and he said he wasn't in charge, that maybe it was Simpson. And then we asked -- we heard from Altman, and Altman said that, well, it wasn't his watch; it was Bentsen. And Bentsen blamed Reno. What do the American people think when they see this? Is this the chain of responsibility? Nobody ended up being fired. Is that correct?

MR. ZIMMERMANN: That's my understanding. They were fired --

REP. MICA: A couple of people --
MR. ZIMMERMANN: -- and rehired.

REP. MICA: Yes, fired and rehired. But that's some of the questions here that need to be raised. What kind of a message do you think this sends to the American people?

MR. ZIMMERMANN: When I've given speeches on this subject around the thing that bothers the mainstream Kiwanis Club accountants' groups, breakfast groups I've spoken to, the thing that bothers them the most is they're worried that this will happen again because the same people are still there.

REP. MICA: You were on your way, and you told us, to resolving this issue, and you said you were well on your way to resolving this issue. And you were (writing? ) in north Texas; I read your statement last night. They had delayed these proceedings for, what, Passover, was it? They were celebrating Passover.

MR. DEGUERIN: Yes, sir.

REP. MICA: And that's when our federal officials made the decision to do this. Is that correct?

MR. DEGUERIN: I don't know exactly when the decision was made. I know there was a process going on. I know that from reading the Justice Department report.

REP. MICA: Did you see or hear of any reports of children being molested while you were in the compound?

MR. DEGUERIN: I saw all of the children. I saw the parents. I saw the rooms where they were living. I saw their living environment. And I didn't see any children that I thought were being abused.

REP. MICA: One of the things that concerns me is, again, the government's use -- and we have a bunch of scenarios of mistakes -- everything in here in all these reports, everyone says the government screwed up. Isn't that correct?

MR. DEGUERIN: Yes, sir.

MR. ZIMMERMANN: Well, not in the Justice Department.

REP. MICA: Okay.

MR. ZIMMERMANN: That's a whitewash.

REP. MICA: All right. Well, they pointed fingers but nobody took responsibility. In the report, the Department of Justice report, I read this report and it describes the condition of the children. There were 25. You can't tell exactly how many children there were because they were incinerated beyond recognition, but we'll give or take a few; somewhere in the neighborhood of 25 people
incinerated. "Audrey Martinez was buried alive inside the bunker. She died of suffocation. She was identified from dental records -- 13 years old. " These are mostly Doe because they couldn't -- "Doe 67, seven- to eight-year-old boy, buried alive, suffocated in bunker. ""Doe, a six- year-old girl, suffocated inside bunker."

They used CS gas. What do you think about the decision to use this and these children that were incinerated or suffocated by an action of the federal government?

MR. ZIMMERMAN: Can I tell you my experience with CS gas --

REP. MICA: Tell me your experience, sir.

MR. ZIMMERMAN: -- (before? ) answering the question? All Marine lieutenants go through the CS gas chamber to teach you how to use your gas mask and to gain confidence that that gas mask will work. So I've been through that. And the process is you go into an enclosed area, they pop the CS gas grenade, you have your mask on. You take it off and you count to 10 or state your name, enough so that you can inhale a small amount. Then you put your mask back on, put your hands over the filters, clear your mask by blowing out where it blows the gas out, and then you are able to breathe and you now have confidence.

REP. MICA: But in their report -- didn't their report say that gas masks don't fit on these babies?

MR. ZIMMERMAN: That's correct.

REP. MICA: And didn't they know that?

MR. ZIMMERMAN: They should have known that. Let me continue, if I can.

REP. MICA: Go ahead.

MR. ZIMMERMAN: When you come out of that gas chamber and only having been exposed for a matter of seconds, your eyes burn, your nose burns, and all mucus membranes are affected. Grown, healthy, cream of the crop of the United States youth, Marine lieutenants, are hurting when they come out of that gas chamber. In 1980, I was taking a battalion to Norway on a reserve/active duty joint NATO operation. We had to go through that chamber because the Norwegians were going to use gas as part of our training. I was going to, you know, lead from the front. I was going to be the first one through a temporary gas chamber we set up at Ellington Air Force Base in Houston, Texas.

To make a long story short, I take my mask off, they pop two grenades, doubling the concentration that it should have been, and I was choking to death. I couldn't see. I was disoriented. I didn't know where I was. And I was a major of the Marine Corps. I barely got out to the fresh air. And I was sitting there. My eyes are burning. I'm vomiting. I'm kneeling over. I'm in extreme pain. And all my troops are lined up there, and I know they were resisting the urge to laugh at the old man doing that and also simultaneously thinking, "I ain't going in there. "Well, we got it fixed.
The point I'm getting at is it's terribly debilitating. CS gas is terrible. And I know it's still that way because both my grown children, at the time Waco was going on, were lieutenants at Quantico. They had gone through the gas chamber. My daughter just went through again on her annual training last week. Now, you're going to have people that testify on gas. Please, if anybody comes in here and tells you that CS gas is not torturing children, ask them to do one thing. Tell them -- ask them this. "Ma'am or sir, will you get in a car with me and drive 35 miles down to Quantico, at the Marine base at Quantico? We'll put a video camera in the car with you, take you down to that Marine gas chamber, put on your gas mask. Let us pop a couple of gas grenades in that chamber. Then you take your mask off and let's videotape you for just five minutes in that chamber without a gas mask. "See if any of them will take that challenge. They won't, because you'll choke to death in that period of time with the wrong concentration. I believe that using CS gas against infants, against old people with respiratory problems -- there were 60-, 70-year-old men in there and there were young children. That's torture. And I can just see those kids barfing, vomiting, screaming, because you can't possibly have a gas mask that'll fit a little kid. At best, I think one of the reports said that -- a survivor said that they had taken -- to try to help them, they had taken a wash cloth and put water on it to try to put it over their face so it wouldn't burn as fast.

REP. ZELIFF: The gentleman's time has expired. And in fairness, just in case I might have shut you off from trying to finish up, Mr. Conyers, if you could just take 30 seconds and try to wrap up.

MR. ZIMMERMANN: I think that the point I was trying to get to Mr. Conyers is that when the discussion is of keep the fire going must have had to do with either the Coleman lanterns, which they were using for lighting, or for the butane they were using for heating, but not to starting a fire, because it doesn't coincide with the start of the fire.

REP. CONYERS: Were you there?

MR. ZIMMERMANN: No, sir.

REP. CONYERS: Thank you.

REP. ZELIFF: Okay, the chair now recognizes Mr. Schumer from New York for five minutes and then, immediately after his five minutes, we will break for a vote and come back here. I think it's one vote. Is that correct? Five-minute vote. Is there a five-minute vote after? Okay, we'll come back five minutes after the vote. Mr. Schumer.

REP. SCHUMER: Thank you, Mr. Chairman. And first I want to say to both Mr. Zimmermann and DeGuerin, I admire your abilities as defense lawyers. You are doing an excellent job doing what defense lawyers do, which is to defend the people they represent to the best of their ability. But I have real problems with some of these -- with many of the statements. Just one, Mr. Zimmermann -- we'll have experts later talking about gas. And there is no record of CS gas, which is simply the mildest form of tear gas -- Mr. DeGuerin said not tear gas but CS gas. But we're going to talk about gas later.

What I want to talk about is not your impressions of other things from talking to other people -- who shot first, what the gas is. That's really not what's material here. What's material here is your
involvement in the negotiations. That's something you were first-hand involved in. Your testimony on that is what would be admitted in a court of law, whereas the other stuff would not. And my point -- I know you stated, Mr. Zimmermann, that he was just about ready to come out and some -- I think you used the term "faceless Washington bureaucrat" blew the deal.

MR. ZIMMERMANN: Only because I don't know who made that terrible decision.

REP. SCHUMER: Yeah, you don't know if he's in Washington or Houston or on the field either, do you? What makes you say Washington?

MR. ZIMMERMANN: Could I explain that? Because I have the greatest --

REP. SCHUMER: Yes or no. What makes --

MR. ZIMMERMANN: Well, you asked me what makes me feel that way.

REP. SCHUMER: Okay. I'm just trying to use my time here.

REP. ZELIFF: (Off mike. )

REP. SCHUMER: Then you're going to give me extra time, Mr. Chairman?

REP. ZELIFF: Did you ask him a question?

REP. SCHUMER: Yeah, and I want him to answer it my way.

REP. ZELIFF: Why don't you answer it and we'll --

MR. ZIMMERMANN: I want to answer it the -- I'm not going to answer it your way or any other way except the truth.

REP. SCHUMER: Okay. Then tell me --

MR. ZIMMERMANN: Do you want the truth?

REP. SCHUMER: -- how you knew it was from Washington.

MR. ZIMMERMANN: I -- because -- let me tell you why.

REP. SCHUMER: Please.

MR. ZIMMERMANN: Because those special agents in charge in Waco are honorable men. Jeff Jamar went way out on a limb to let the two of us go in there. Bob Ricks was straight with us all the time.

REP. SCHUMER: Just reclaiming my time, sir, Jeff Jamar says he made the decision himself, that
no one in Washington made it. Do you doubt his word? He will tell us that when he comes.

MR. ZIMMERMANN: I think that --

REP. SCHUMER: Do you doubt his word? Yes or no.

MR. ZIMMERMAN: I would doubt that.

REP. SCHUMER: You would. Okay. Even though he was an honorable, courteous individual.

Let me just say you two gentlemen also, it is true, came in on the negotiations -- (bells ringing) -- you two gentlemen came in on the -- bells, bells, bells. I'm sorry. You two gentlemen came in on the negotiations approximately a month after they had begun.

MR. ZIMMERMAN: That's correct.

REP. SCHUMER: Isn't that correct? You, too, Mr. Deguerin?

MR. DEGUERIN: Yes, sir.

REP. SCHUMER: And in that 30 days, Koresh had lied repeatedly to the agents. On April 2, he states that it's fact he's coming out if a tape is played. The tape is played on local Waco TV on CBN and he doesn't come out. On March 7 (sic), he says he won't be that long. Then, on April 2, he says he's going to come out right after Passover. Doesn't come out. Finally, on April 15, Mr. Schneider says they're going to come out after the Seven Seals, but admits that Koresh lied about coming out on March 2. Those are his words on the tape -- that Mr. Koresh, his associate, his chief lieutenant -- or you don't like the term "chief lieutenant" -- Mr. Schneider, who was his -- one of his devoted followers and acolytes says that Mr. Koresh lied.

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So what we have here is lie after lie after lie by Mr. Koresh, a man who we know had violated federal laws, who had abused children, and all of a sudden on April 15, we know -- you somehow know that he is telling the truth.

Well, I have real problems with that. I think most people would have real problems with that, because his pattern was not to tell the truth. And, in fact, further he said, well, he will come out, not within five minutes, but after he finished doing his writing on the seven seals, and when asked, Mrs. Schneider -- I've forgotten her first name; begins with a J --

MR. ZIMMERMANN: Judy. Judy.

REP. SCHUMER: Judy Schneider, when Judy Schneider was asked on the tape how long it would take to transcribe his interpretation of the seven seals, she said about a year. Then she later said, to -- to -- a little bit later, she said, "Well, if I was given a laptop computer, it would be somewhat shorter than that," never said how much shorter.
So it is certainly clear, Mr. Zimmerman, that even if the FBI had said yes, that it would take some time for him to do his work on the seventh seal, is that -- you know, on the seven seals. Isn't that correct? He wasn't going to come out in five minutes or that day or the next day.

MR. ZIMMERMAN: No, he was going to come out -- we told them in two days per seal, and one was finished, so it would be about 12 days. Mr. Jamar said, "That's fine. That's good."

REP. SCHUMER: Twelve days.

MR. ZIMMERMAN: Yes. He agreed to that.

REP. SCHUMER: Now -- okay, well, we'll ask Mr. Jamar that, because I think Jamar's interpretation, whom you call an honorable person -- we won't see him; is he on the B panel or the C panel? -- we're not going to see him till later this evening, but Mr. Jamar's interpretations are quite at variance with yours as to what happened, and I would simply say to you that someone like Mr. Koresh, who lies and lies and lies and has three times promised to come out and not come out, and if you have to make the decision whether to say, "Okay, well, let's give him another 12 or 15 days so he can write his seven seals," and let us say that -- in hindsight we note what has happened -- but just let us say that they gave him those 12 or 15 days and the compound was burned internally by Mr. Koresh and many, many children were killed, we would be and you would be, as a good defense lawyer, excoriating -- excoriating! -- the FBI and everybody else for waiting so long. You would make the argument, and you'd make it much better than I ever could, Mr. Zimmerman. You'd say, "He lied on March 2, he lied on March 7, he lied on April 2, he lied on April 15," and all of a sudden, they want you to believe him on April 15 and give him two more weeks. That doesn't--

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

REP. SCHUMER: -- make any sense.

REP. ZELIFF: I'd just like Mr. Zimmerman to respond, because I feel that he's entitled to it, if that's okay with you.

REP. SCHUMER: That's fair, Mr. Chairman.

MR. ZIMMERMAN: Thank you, Mr. Congressman.

First of all, when the lawyers got involved approximately on -- at the very end of March, in my judgment there was never a promise of a specific date and there never was a broken promise by Mr. Koresh. That needs to be clarified. Once Dick Deguerin became his lawyer, Mr. Koresh never made a false promise to do anything that he didn't do.

Second --

REP. : Now, wait a minute -- wait a minute --
MR. ZIMMERMAN: Well, you asked me to tell you observations, sir. The dates you gave are wrong, okay? All the dates -- like he never said on April the second that he was coming out at any particular time, because Mr. Deguerin and I were involved by April the second, so I know that's wrong. Now, there were some other promises before then, but you have to put it in context. Until there was somebody he trusted, he didn't trust those people out there, but once Mr. Deguerin became involved, that's when it happened. Now, in response to your other situation, that's a hypothetical that I would have to have a -- a crystal ball that's more clear than mine is.

REP. ZELIFF: Time has expired. We now will take a recess until five minutes after this vote coming up.

(Recess.)
REP. ZELIFF: The Joint Oversight hearings on Waco will now come to order. The Chair recognizes Mr. Schiff from New Mexico for five minutes.

REP. STEVEN SCHIFF (R-NM): Can I wait a moment until the witnesses are back, Mr. Chairman?

REP. ZELIFF: Okay.

REP. SCHIFF: Okay. I think we have them back now.

REP. ZELIFF: Get them settled in.

REP. SCHIFF: Okay. Gentlemen, I've been very critical of the presentation earlier in this hearing of the victimization of Kiri Jewell, because as serious as child rape is, of course, the Bureau of Alcohol, Tobacco, and Firearms was conducting a firearms law investigation and search. And the issue of Mr. Koresh's depravity is not what they were investigating or going to serve a search warrant for. And I think that that testimony was put into this hearing to take newspaper headlines and other media attention away from a lot of the testimony about the law enforcement participation in the raid. But I don't mean to imply by that that Mr. Koresh had no involvement in this whole situation. Obviously, he did. And in all of this discussion of the negotiations, I have this question. After the raid failed -- let's pick it up from there -- and the siege began, and the negotiations are going, we know that we have four dead Bureau of Alcohol, Tobacco, and Firearms agents. And we believe we had six dead members of the Branch Davidians sect. Wasn't it time for the people inside to come out and, at that point, make their case in court. In other words, how would they have any justification for not coming out and allowing this matter to go to the courts, when a number of people have died in the raid situation. I'll go to whoever wants to respond first. Mr. DeGuerin?

MR. DEGUERIN: Legal justification for waiting, no. There was no justification for it. My plan -- what I wanted to do was to walk out with David Koresh, and have all of the rest of the people come out. My whole reason for going in there was to go get my client, take him to court, where I knew how to work. And what we tried to do -- Jack and I, together -- was to get those on the inside -- not just David Koresh, but all of them -- to reconcile their beliefs with the law. They believed that their beliefs, their religion was paramount and superior to the law. And as you know, it's not.

REP. SCHIFF: Let me interrupt, because my time is limited here. Very quickly, did the FBI impede anyone from leaving who wanted to leave?

MR. DEGUERIN: No.

REP. SCHIFF: No. Okay.

All right. Quickly gentlemen, because we're going to get to this in other testimony. Mr. Zimmerman, you talked about CS gas.

MR. ZIMMERMAN: Yes, sir.

REP. SCHIFF: You do know the FBI will say that in all the written reports on the use of CS gas,
there is not established lasting effects to anyone from the use of CS gas. That's what they are going to say.

MR. ZIMMERMAN: That's why I asked you, sir -- give somebody that says that -- say, "Look, will you drive down to Quantico with me and let me video you in a gas chamber for five minutes without a gas mask? "And he says he will, take him up. Do it.

REP. SCHIFF: All right. And finally, for my question, Mr. DeGuerin, you were asked about the fire and what started the fire. Do you have enough information, at this point, to have an estimation of what did cause the fire?

MR. DEGUERIN: I think it was probably started accidentally by the lanterns being crushed or turned over. They were using lanterns -- Coleman planters with liquid fuel for lighting, or it started from a spark, or it started in some accidental fashion. That's what I believe, because -- not because I want to believe that, or because I have anybody to represent. I don't have anybody to represent here. I'm telling you what I saw on the inside, and what the people told me. And the survivors told me that they did not start that fire on purpose.

REP. SCHIFF: Thank you. Again, let me interrupt you, because time is short. Thank you, gentleman. Mr. Chairman, I'd like to yield any time I have remaining to Mr. Chabot.

MR. STEVE CHABOT (R-OH): Thank you.

As I've said consistently during these hearings, I think the real purpose of these hearing -- what should be the purpose -- is to find out all the facts, let the chips fall where they may, and try to avoid future loss of life, whether it be law enforcement officials or whether it be civilians. And you two gentlemen have studied this case in-depth and were inside the compound when others were not, and really, I think, have some insight that everybody else really lacks.

I would like to ask both of you gentlemen -- you can both answer -- what are the lessons to be learned from Waco? What should the United States government learn so that we can avoid a tragedy like this from ever happening again?

MR. DEGUERIN: Provocative force, excessive force breeds excessive violence. The use of excessive force by law officers serving a warrant is doomed to tragedy. Now, what we saw on February the 28th was the use of far more force than was justified or necessary under the circumstance. What this committee needs to do is go back and examine the decision to use the excessive force then. That carries right through to April the 19th, because this atmosphere of macho, we've got to do something, we've got to bring this to an end, resulted in tanks and teargas being used against some -- if you want to put it this way -- religious nuts that were holed up in a compound. There had been no one injured, no one threatened, no one hurt for 51 days. And the FBI is to be congratulated for bringing that about. But the force that was used on April the 19th, again, was excessive. And so, the real lessons to be learned -- and how to prevent it, I don't know -- is stopping the use of excessive force. That's my brief.

MR. CHABOT: Thank you, Mr. Zimmerman?
MR. ZIMMERMAN: Sir, I hope that in addition to what Dick DeGuerin has just said, that what we can learn from this is that we need to re-establish faith in federal law enforcement. At one time, as a defense lawyer, I can tell you, the FBI was viewed as the elite federal law enforcement. It was the Texas Rangers of the federal law enforcement community, if you will. That is not the case today. And we've got to re-establish that. And the only way I think we can do it -- and I'm not sure whether this Oversight can or not, but I hope you can at least go down the road a bit. We have to establish leadership accountability. That's what the American public is concerned about. There's been no leadership accountability.

In my frame of reference, the commander in a military sense has responsibility and authority. He can delegate the authority, but he never delegates the responsibility. Something goes wrong on his watch, he's responsible. Let me give you an example that pales in comparison. There's no loss of life. But a terrible thing happened at Tailhook. All right. That was not any loss of life. There was some illegality, and that responsibility went all the way to the secretary of the Navy. And he resigned over that.

There has been no personal leadership accountability in the Department of Justice at all. And in the Treasury Department, the people who were found by their own investigators to have lied and committed crimes are still working for you and me.

MR. CHABOT: Thank you.

I see that I'm out of time, Mr. Chairman.

REP. : (Inaudible.)

REP. ZELIFF: Thank -- pardon?

REP. : Dick said something personal. And I know -- (inaudible). I'd like to know what crime those Treasury people have been convicted of, sir?

MR. ZIMMERMAN: Convicted of?

REP. : Yes, sir.

MR. ZIMMERMAN: Mr. Merletti testified yesterday, in answer to a question from somebody on the committee -- or subcommittee -- and I don't know who, whether or not federal law was violated. And he said, "Yes, there were federal felonies when those agents provided false statements as to their activities at Waco.

REP. : It may be --

MR. ZIMMERMAN: I think --

REP. : -- (inaudible). No, you're only a criminal until you get convicted.
MR. ZIMMERMANN: I think --

REP. ZELIFF: The time has expired, I'd like to recognize Mr. Lantos from California for five minutes.

REP. TOM LANTOS (D-CA): Thank you, Mr. Chairman.

We have had, a few minutes ago, an absolutely mind-boggling exchange between a member of this committee on the other side, and the two of you, which I would like to return to, because it reveals either a degree of unbelievable ignorance of recent American history, of sophistry of the worst type.

Let me tell you what I have in mind. We had not too many years ago, a criminally insane charismatic leader, by the name of Jim Jones, who caused the deaths of about 900 American citizens -- children and women -- with no FBI, ATF, Justice Department, tanks, or gas being involved.

Now you were asked, the two of you, by Mr. Mica ten minutes ago, whether there is any incident in American history where American citizens were so killed. And you both claimed not to know of any such episode. He didn't seem to know if any such episode. Well, let me give a new approach to the two theories that have been used so far. We have heard throughout these hearings that we are either dealing with a degree of bureaucratic incompetence and stupidity of incredible proportions, or worse yet, a conspiracy on the part of the federal government to kill American citizens. I reject both of these notions because I think what we have here is a pattern on the part of an insanely criminal, charismatic leader in charge of a sect, who has apocalyptic visions, who teaches children to commit suicide, who puts guns into the mouths of children, who is responsible for this nightmare which has unfolded on our television sets.

But for the two of you to sit there and claim either ignorance of or forgetfulness concerning the Jonestown tragedy where planned mass suicide of American citizens unfolded, involving many times the number of tragedies that we had in this unfortunate incident, and to have a member of this committee claim no knowledge of this, stretches credibility.

MR. ZIMMERMANN: Would you like an answer?

REP. LANTOS: No, not yet; when I'm finished. What I am suggesting to you, and I am resisting the temptation to comment on the cheap political shots about political appointees of an administration which had been in office just a few weeks when all these things unfolded, what I am telling you is that the most plausible single explanation for this nightmare, namely, the apocalyptic vision of a criminally insane charismatic cult leader, who was hell bent on bringing about this infernal nightmare in flames, and the extermination of the children, and the women and the other innocents is not an explanation that should be cast aside. No one knows what Koresh had in mind. You don't, and I don't. But if we have any intelligence, we go back to only other example in American history, not that far back in history, the Jonestown nightmare of 900 Americans killing themselves, finishing their lives, in many cases, promising lives, because of the evil and criminal approach of a charismatic cult leader.
Now you are saying, Mr. Deguerin, I saw in David Koresh not a person who was insane, a person who was deeply committed and sincere about his religious beliefs. Well, I am sorry for you if that's what you see in him. I see in him a criminally insane charismatic cult leader who caused the death of all these innocents. And I would like both of you to comment on my observation.

MR. ZIMMERMANN: Let me let Mr. Deguerin have the last word. Let me comment with regard to your two theories, gross incompetence or a conspiracy. Let me agree with you, Congressman Lantos, I have seen no credible evidence of a conspiracy on the part of either the ATF or the FBI or the Treasury Department of the Justice Department. I have seen no credible evidence of a conspiracy to harm Americans. I agree with you.

REP. LANTOS: I'm glad to hear that.

MR. ZIMMERMANN: I have never said that. Dick Deguerin has never said that.

REP. LANTOS: Many have implied it.

MR. ZIMMERMANN: Not us. Not these two people here.

REP. LANTOS: I'm not blaming you for the conspiracy theory.

MR. ZIMMERMANN: In fact, we requested to be on a panel separate so that our credibility would not be placed against some people who have conspiracy theories. I disagree though, I think that it is an example of gross incompetence, and we've already been through that. We may just agree to disagree. Now, with regard to the question about the Jonestown matter, maybe because I was up all night, you weren't here when the Chairman began by announcing that I had a granddaughter born this morning at 4:15 in the morning; I didn't get much sleep, it was our first grandchild, so maybe I wasn't so sharp --

REP. LANTOS: (Inaudible) -- congratulate you.

MR. ZIMMERMANN: Maybe I wasn't as sharp as I should be, but I thought the question said, are you aware of any American law enforcement action in the United States that had this great a loss of life. And if that was the question, which I think it was, I stand by my answer. Jonestown was not an American law enforcement, and it wasn't a law enforcement action at all, and it wasn't in America.

REP. ZELIFF: Okay, the gentleman's --

REP. LANTOS: Will you allow the other witness to answer, Mr. Chairman?

REP. ZELIFF: Sure.

MR. DEGUERIN: If it hadn't been David Koresh, it would have been somebody else. I think the reason I'm here is to try to offer some insight into how to prevent this from happening, not to defend David Koresh or his actions. And as I see it, this ended in tragedy because there was a failure to understand that not only David Koresh, but his followers had this apocalyptic vision, and the actions
of the FBI increasing the pressure and violence played right into that apocalyptic vision. That's what I'm saying about his beliefs. His belief systems, whether you believe he was crazy or a child molester or anything else, his belief systems were in place and very sincere.

He might have been crazy, but the point is the failure to understand that, and then to work within that belief system, to try to use that belief system as I was doing, as Arnold and Tabor and Jack were doing, to try to say, well the Bible does say you should come out. The Bible does say that the apocalypse is not now, it's later, and therefore come on out, go in jail. There's been a lot of good writing in jail, I said to David, and not just in jest. I said that some of the greatest writing in the world has been done by someone who was in jail and had all the time to write. And so what I'm saying, Mr. Lantos and members of the committee, is that we've got to understand, law enforcement has got to understand what they're working with and not just demonize and ridicule in order to justify their actions.

REP. LANTOS: Mr. Chairman, thank you.

REP. SCHUMER: I have a unanimous consent request, I'd just like to add into the record the tapes, the transcripts of the tapes each time that David Koresh promised he'd come out and didn't, including the date of April 2nd, which Mr. Zimmermann said didn't exist.

REP. ZELIFF: Without objection --

REP. : What? What will this be? Will this be identified as Mr. Schumer's impression of the promises that were made, because we have conflicting -- (inaudible) -- on it.

REP. SCHUMER: Sir, sir.

REP. : Let me state my reservation please, Mr. Schumer, and then you certainly are not shy about responding. If it's going into the record, Mr. Chairman, as fact, then I would object to it. If it's simply a document that Mr. Schumer wants to put in that is identified as his interpretation of promises were made, then I have no objection.

REP. ZELIFF: Okay.

REP. SCHUMER: I don't need that, Tom. I just want to respond, which is very simply, these are the transcripts transcribed of the tapes; they taped the negotiations where Koresh promised to come out. It has none of my personal imprint in any way on it, other than perhaps a fingerprint when I handed over the document.

REP. : I doubt that those would appear in the copies that were made anyway. If it's just documents that are not identified as reaching a conclusion, then I would have no objection.

REP. ZELIFF: Okay, without objection, so ordered. Chief Heineman from North Carolina has five minutes.

REP. HEINEMAN: Thank you, Mr. Chairman. Mr. Deguerin, I'd like to go over again (at ? ) April
the 14th, you said there was a document?

MR. DEGUERIN: It's attached to my statement. It's the last document in my statement. It's a letter, a handwritten letter signed by Koresh.

REP. HEINEMAN: Can you summarize that please?

MR. DEGUERIN: Well what it says is that he's been given the task, and I suppose this was the word from God that he said he was waiting on, and -- look, I am not trying to make a -- pass a judgment on that. Some people truly believe they get the word of God. Some people truly believe they speak to God. Billy Graham is one of them. So it's not so unusual.

REP. HEINEMAN: In 25 words or less.

MR. DEGUERIN: But he said that he had received now the message that what he had to do was to write his interpretation of the seven seals. It's not a long book and a long manuscript. But to dictate it and then he would come out and go into the criminal justice system. And the reason that that was such a revelation, such a change in what had happened before, was he was giving the religious arguments for doing that.

REP. HEINEMAN: Why was he doing this?

MR. DEGUERIN: Well --

REP. HEINEMAN: He gave that to you -- you say you passed that on to the FBI?

MR. DEGUERIN: Yes.

REP. HEINEMAN: And for what purpose?

MR. DEGUERIN: You mean what was his purpose in doing that?

REP. HEINEMAN: Yes.

MR. DEGUERIN: I think it was because he believed it and he said, and all the rest of the people in Mount Carmel at the time said, they were overjoyed that now this message had been received. Now it was fine with me -- I didn't really appreciate the religious significance of it, but Tabor and Arnold, please ask them about that, they did and can tell you how significant it was within the belief systems. He had written two letters a couple of days before that leading up to it. He -- that is Koresh -- used the religious arguments in this letter for why he had now seen that the scriptures told him to come out. They based their life on what the scriptures said.

REP. HEINEMAN: At some point in this transaction between him giving you the letter and you passing it on, did the Texas Rangers fit into this at all?
MR. DEGUERIN: Yes.

REP. HEINEMAN: Can you tell us about that? I know you mentioned it before, but I would like to be a little more clear on that.

MR. DEGUERIN: I wanted the Texas Rangers to be doing the investigation. I wish I could say I was responsible for that. And at one point there was some dispute over whether the ATF would be involved in the investigation once a surrender occurred. I talked to several people about that and I made it known that I thought that would be a stumbling block and I wanted the Rangers to be there. What eventually was agreed to was that the Rangers would conduct the investigation. There would be a Ranger present at the surrender --

REP. HEINEMAN: When was that surrender supposed to take place?

MR. DEGUERIN: We didn't have an exact date.

REP. HEINEMAN: Was it supposed to happen that day?

MR. DEGUERIN: No.

REP. HEINEMAN: You did mention at some point that you and Koresh were going to come out and Mr. Zimmermann was going to bring up the tail end of that.

MR. DEGUERIN: That's correct.

REP. HEINEMAN: Was that -- did that have anything to do with that letter coming forth and the people's jubilation?

MR. DEGUERIN: Well if I understand the question, no there was not a direct relationship with that. But the letter was the turning point in -- now Koresh said I am coming out, here's when I'm coming out -- it's not an exact date, but it's as soon as I complete this manuscript. He was working on the manuscript. We know that because we got it after the fire. And it was a real turning point in what he said. I thought it so important that I immediately gave a copy of it -- this is attorney-client privilege stuff -- immediately gave a copy of it to the FBI and told them what I thought about it and even talked to Tabor and Arnold in the following days and called Jamar (ph) and told him how significant I thought it was and that Tabor and Arnold were saying it was significant.

I thought once we received this letter I could quit worrying about when he was going to come out and start worrying about the trial and getting prepared for trial.

REP. HEINEMAN: Now let me just make reference to that photo you see on the wall there, relative to the ATF arriving at the scene. And you've made mention of that. They appear to me -- and I think there's no question that they are in a defensive position at this point --

MR. ZIMMERMANN: They appear to be in a position where there is fire exchanging, being
exchanged.

REP. HEINEMAN: Right, now that would -- there's nobody near the door, so apparently something happened from the time they left the tent, the canvas over the trucks, to the point where they took up a defensive position. Has that gone without an opinion during the trial?

MR. ZIMMERMANN: No, well I can give you the two conflicting ones. The government's position was is when the two agents came up to serve the warrant and Mr. Koresh closed the door, gunfire erupted from the inside through that right hand side of the door to the extent that it boded out backwards, and one man was hit in the hand or finger and something. And then they returned -- then the ATF returned fire.

REP. HEINEMAN: So then it came out in trial that the gunfire emanated from inside the building?

MR. ZIMMERMANN: That's the only testimony there was because the defendants in that trial didn't testify and of course I was not allowed to give any testimony about what someone else said because of the rule against hear say. So the information I have imported to you today, and that Dick has, is new.

REP. HEINEMAN: Well we do know that there was gunfire that came from inside the building through the walls --

MR. ZIMMERMANN: Through the door, not through the walls, through the door.

REP. HEINEMAN: Through the walls. Gunfire came from inside that building through the walls and I think we probably all of us and tens of millions of people across this country have seen that, have seen that probably on the 6: 30 news on February 28th when one of the ATF agents backed away from that window that -- I surmised a window on the upper left hand corner --

MR. ZIMMERMANN: Right.

REP. HEINEMAN: -- came around to the side of that window and we saw shots coming from the inside.

MR. ZIMMERMANN: Absolutely.

REP. HEINEMAN: -- been shot.

MR. ZIMMERMANN: Absolutely, because we were in that room and we saw both entry and exit holes in that wall up there. I am sorry, I thought you earlier were talking about the initial flurry.

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

MR. ZIMMERMANN: If I could finish that answer please.
REP. ZELIFF: Sure.

MR. ZIMMERMANN: When we interviewed people and walked through that area up there it was clear that what you see on the video where the break in -- he knocks the glass out, throws in a grenade, a concussion grenade, and then they come inside and then he started shooting by his testimony, he sprayed the area. And he hit somebody back behind one of those walls. We talked to that person, his name was Scott Senobe (ph). And he said I returned the fire. There was an exchange in there. And then other agents came in there and started shooting. And one fellow was wounded and in the back corner we could see the blood stains. And there was an exchange. Clearly rounds were coming from the inside out on that exchange and we don't know who hit the man still out on the roof. It could have been the agent who was shooting back, it could have been Mr. Senobe (ph). We just don't know, we'll probably never know.

REP. HEINEMAN: Thank you.

MR. DEGUERIN: A clarification if I might it was not that window. It's a different side of the building, not that window. That picture doesn't show it.

MR. ZIMMERMANN: I stand corrected. Thank you, sir.

REP. ZELIFF: Ms. Collins from Illinois for five minutes.

REP. COLLINS: Thank you, Mr. Chairman. I yield to Ms. -- (inaudible) -- of New York.

REP.: I thank the --

REP. COLLINS: All of my time.

REP.: Thank you very much, Ms. Collins, for yielding to me. Mr. DeGuerin, would you remind me for just a moment the date at which David Koresh told you that he was relieved and everybody was happy that they didn't have to go through Armageddon.

MR. DEGUERIN: April the 14th.

REP.: On April 13th, I think you mentioned here that the negotiator talked about reading by candle light and Mr. Zimmermann said that every room had a Coleman lantern. Is that about correct -- about the same time?

MR. DEGUERIN: Yes.

REP.: And it appears here in conversation that your client, Mr. Snyder, Mr. Zimmermann, believed that he could live in fire, walk through it and come out surviving.

MR. ZIMMERMANN: I think he was quoting very Biblical text, ma'am.
REP.: That he believed that.

MR. ZIMMERMANN: I can't get inside someone's head to say whether they really physically -- you know literally believe that like some people believe that the Red Sea parted literally or not.

REP.: Well his wife, Judy Snyder, said that the Book of Daniel reports that God saved Shadrach, Meshach and Abednego from the flames of the fiery furnace and that they were in no way, either of them, afraid of dying by that fire.

MR. ZIMMERMANN: I believe that's true that they were not afraid to die for their religious beliefs.

REP.: And this was on about April 13th. How does that coincide with the fact that they were so relieved that they didn't have to do it.

MR. ZIMMERMANN: The last day of Passover was the 13th. Mr. DeGuerin and I came up there and the FBI hooked us up with a telephone conversation and Steve Snyder said that we would have to call back after sundown because it was the last day of their high holy week. And when we called them that night Mr. Koresh did not come to the phone. Frankly it irritated both Mr. DeGuerin and me. That was when we found out -- the next day was when he was working on the first seal --

REP.: Well do you know James Tram (ph)? Are you familiar with that name?

MR. ZIMMERMANN: Who, ma'am?

REP. SLAUGHTER: James Tram (ph). The researcher from Dallas, Fort Worth who had the endorsement of theologian Philip Arnold, who I believe will testify here later today, that they had a plausible theory about the start of the fire. And this was after Passover. On the morning of April 19th, Mr. Tram (ph) postulates "Koresh ignited the fatal fire at Mount Carmel as a way of closing the fifth seal and ushering in the sixth. "So he believed that this fire was necessary in order to get into the sixth seal and that Koresh had talked to the FBI before about a wall of fire. Did you and your client discuss this?

MR. ZIMMERMANN: We did not discuss fire, ma'am.

REP. SLAUGHTER: Now, Mr. Zimmermann, I think that -- oh, let's see, they were talking about being taken up by the flames of fire, that this is what they were going to do. There's nothing in any of this, and I have -- you notice we don't have any props, and frankly I haven't seen either one of your testimony. I know one was -- (inaudible) -- this morning so I have no clue and I am sort of trying to go by this as we go along. But from everything that I have there's no indication from anybody else that's covered this, including FBI negotiators, that at any point Mr. Koresh said this is wonderful, I'm going to finish my work here today and we're not going to have to die.

MR. ZIMMERMANN: Well that's not correct. If you read the letter that's attached to --

REP. SLAUGHTER: I don't have it. So if you could -- maybe you could share that with me. That would be nice.
MR. ZIMMERMANN: Yes, ma'am. That's the last exhibit.

REP. SLAUGHTER: Are you familiar with the fact that Mr. Koresh had said to the FBI that they would again have this wall of fire which he and his believers thought that they would survive?

MR. ZIMMERMANN: No. And I don't think that that was meant the way you are implying, ma'am -- and I know you're just reading from somebody else's book -- because, see, the FBI knew about that. If those are tapes from the negotiations, we know that they didn't really think that that was a very realistic prospect because they made no preparations for the fire on April the 19th.

REP. SLAUGHTER: What was realistic, that they would live through the fire? You don't think that's realistic, that they would live through the fire.

MR. ZIMMERMANN: Do I personally? No, ma'am, I don't.

REP. SLAUGHTER: Well, let's talk about that a minute, because you had said a while ago that Koresh always told the truth. Isn't that correct?

MR. ZIMMERMANN: I didn't say Koresh always told the truth. What I was contesting was an allegation that once the lawyers were involved that Mr. Koresh had promised to come out and had broken that promise. My testimony is that once Dick DeGuerin started representing David Koresh and I started representing Steve Schneider, there was never a date certain given about them coming out. And the closest it came to a promise to actually come out is in that letter that's attached to his written statement, Mr. DeGuerin's opening statement.

REP. SLAUGHTER: I believe that Mr. Schumer at least is implying that the tapes that the FBI had (dispute? ) that.

MR. ZIMMERMANN: You know, I have not seen that April 2nd tape so I don't know what's on there, to be honest with you. I would like to see if it's an issue.

REP. SLAUGHTER: I think you'll agree with me that Mr. Koresh was a very charismatic man.

MR. ZIMMERMANN: Yes, he was.

REP. SLAUGHTER: Absolutely. In order to get 80 people to believe -- first that the men believed that they had to give their wives and their daughters to Koresh, that takes a great leap of faith, doesn't it? Wouldn't you say? Would either one of you want to do that?

MR. DEGUERIN: No, I wouldn't.

REP. SLAUGHTER: Neither one. Was Mr. Koresh --

MR. ZIMMERMANN: I have to go on record saying no, ma'am. (Laughter.)
MR. DEGUERIN: No, ma'am.

REP. SLAUGHTER: You want to say that on the record?

MR. ZIMMERMANN: I have to. You didn't give me a chance to.

REP. SLAUGHTER: Oh, you're going to have to go home.

MR. ZIMMERMANN: I've got to.

REP. SLAUGHTER: Uh-oh. Is that your wife behind you?

MR. ZIMMERMANN: That's my wife. That's my new grandmother.

REP. SLAUGHTER: Would you like me to develop this further? (Laughter.)

MR. ZIMMERMANN: If I were in court, I'd say, "Let the record reflect that I said no."

REP. SLAUGHTER: Yes. Well, I'm not a lawyer, so what do I know? But the thing that really astonishes me here is that both of you are so certain that this man was telling you the truth.

MR. DEGUERIN: I think he was.

REP. SLAUGHTER: I'm absolutely baffled by that as to why would you think that Koresh, who told people that they could walk through fire and survive --

MR. DEGUERIN: Well, I don't know that he said that.

REP. SLAUGHTER: -- and that they should give him all of their worldly goods and that they should hand over their wives and daughters and that he was going to take them somewhere -- frankly, I've never been able to understand this whole thing. After they burned up in the fire, what next? I mean, I don't know to what end they wanted to burn up. But never mind. Let me say, I am baffled, because I know you guys are great lawyers because Gene Green told me you are, and I know that's true.

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

REP. SLAUGHTER: But tell me --

REP.: She didn't finish her --

REP. ZELIFF: She never asked a question.

REP. SLAUGHTER: Yes, I did.

REP. ZELIFF: Please do it.
REP. SLAUGHTER: I want to know what makes you so certain, in the face of everything else you ever heard about this man, that he was telling the two of you the truth.

MR. DEGUERIN: Well, I can answer that. What he told me that I was able to confirm, that was capable of being confirmed, I confirmed, and it turned out to be true.

REP. SLAUGHTER: What was that?

MR. DEGUERIN: Well, there are several things, and I can give you several examples.

REP. SLAUGHTER: I'd love to hear them.

MR. DEGUERIN: When Robert Rodriguez --

REP. ZELIFF: Just one question, okay?

REP. SLAUGHTER: Okay.

MR. DEGUERIN: When Robert Rodriguez testified here, it was the first time I had heard Robert Rodriguez describe the conversation that he had with Koresh. Koresh described it --

REP. SLAUGHTER: And he said he would never be taken again.

MR. DEGUERIN: -- exactly the same way except for that.

REP. SLAUGHTER: Right.

MR. DEGUERIN: When I heard --

REP. SLAUGHTER: How does that jibe, though, if he said, "I will never be taken again"? This is a truthful man. "They had me once. They'll never take me again. "And the two of you believe you talked him into being taken?

MR. DEGUERIN (? ): What's the question?

REP. SLAUGHTER: That's really what I'm saying. Do you believe that after you negotiated with him, he was willing to give up this thing he that he had said to his followers and in the presence of Robert Rodriguez, "I will never be taken again," and you had talked him into being taken again?

MR. DEGUERIN: Well, first, I'm a little doubtful that he said it that way to Robert Rodriguez. Everything else that Robert said, everything jibed with exactly what Koresh said. And I talked to a number of people that were in the room -- Steve Schneider was one of them; Judy Schneider was another one of them that was in the room when that conversation with David -- between David Koresh and Robert Rodriguez took place. They all described it the same way as Robert Rodriguez except for that statement, "I'll never be taken again." There were other statements that he said to me
that I found to be true; the one about Henry McMahon. He told me exactly about the statement with Henry McMahon, who testified that he had given the phone or tried to give the phone to Davey Aguilera for Koresh to say, "Come on out and look at the guns if you want to." It was described the same way. There were many others. If you want me to go into them, I will.

REP. ZELIFF: Time has expired.

MR. ZIMMERMANN: Am I supposed to answer that, too, sir?

REP. SLAUGHTER: Thank you very much.

REP. ZELIFF: If you can do it in a fairly short period of time, that'd be great.

MR. ZIMMERMANN: I don't want to repeat anything because of the shortness of the time, but you asked why I believed him, given all these -- walk through fire and survive fire. Let me handle this very delicately but truthfully. It's the only way I know to do it. I'm of the Jewish faith. There are a lot of tenets of religion in other Christian s-e-c-t-s, sects, other than the Branch Davidians that frankly I find hard sometimes that other people believe, literally believe; I mean, believe to be literally true. Yet when those people who believe that tell me something, I still believe them because I find them to be truthful people in other words and I don't assess credibility on their religious beliefs. Everybody's religious belief is separately --

REP. SLAUGHTER: (Off mike.)

MR. ZIMMERMANN: Okay.

REP. SLAUGHTER: But nonetheless, it seems to me you'd have to say that he had not told your clients truthfully -- (inaudible) --

REP. ZELIFF: I think your time has well expired. Mr. Blute.

REP. SLAUGHTER: -- did not survive.

MR. ZIMMERMANN: To my knowledge.

REP. SLAUGHTER: All right.

REP. BLUTE: Thank you very much, Mr. Chairman. I thank the witnesses. I think your testimony is very important because of your first-hand interaction with Koresh and the Davidians during the siege period. I think one of the more tragic parts of this whole episode were the missed opportunities along the way to avoid this tragedy. We've already heard testimony, for example, that the ATF were offered a chance by Koresh himself on the phone to come out and inspect the weapons. They chose not to. They said it was too early in the investigation.

Earlier Mr. Thibbideaux, a Davidian, testified that he felt that Koresh had such a reasonable relationship with the local sheriff that perhaps if the local sheriff came out and brought the warrant,
we might have had a different type of situation. We also know that after the raid, when the siege started, the initial negotiator was getting through to Koresh and they had a kind of relationship intellectually that allowed numerous people to be released during that period and that, for some unknown reason, and I hope to find that out later with the FBI, that negotiator was taken off summarily and replaced with someone else who did not have that relationship, and no one else was ever released again. So I think there were a lot of missed opportunities. You have a unique perspective in that you had some negotiations with Koresh and with the Davidians at this time. I wonder if you could briefly discuss what you think were the important missed opportunities during that period.

MR. DEGUERIN: I think that you have to look at the tactics of the FBI as creating missed opportunities. In the first place, each time someone would come out -- and I dispute the term "release." I think the people came out when they wanted to come out. No one was being held against their will during the 51-day standoff. That's all I know about. Each time someone came out, the treatment that they got was calculated to discourage anyone else coming out. When the children were released or came out, they were put into custody of the child protective services, even when they came out with their parents. They were separated from their parents. Their religious and dietary wishes were not responded to.

When adults came out, every one of them went to jail and were not allowed to make bond. For instance, the first two ladies that came out, one of them was 77 years old and practically blind. She was charged, with a false affidavit, with having participated in the shooting that occurred on February the 28th. An agent actually testified that she held a gun and pointed it. She just couldn't have done it. When those on the inside, who were seeing the news reports, saw the treatment that people were getting when they went outside, well, it discouraged them from going outside. So there was this tension going on between the tactical men, who were trying to force a conclusion, and treating those who were released in ways not to encourage release, as opposed to the negotiators, who were trying to establish trust and rapport.

REP. BLUTE: Do you know anything about this initial negotiator on the phone that was replaced?

MR. DEGUERIN: Yes.

REP. BLUTE: Could you comment on that?

MR. DEGUERIN: Well, what I know is what partially I was told by David, and that is that initially there was a man named James Cavanaugh with the ATF who David said he had a relationship with. I don't know how you can establish a relationship over the phone, but he said that he trusted the man and that they were able to talk. And they talked kind of the same language. I've seen the tapes of that, and Cavanaugh uses some biblical terms and he uses some "I love you, brother," that sort of thing, which is -- you've got to question that, coming from an ATF agent who's just seen four of his friends killed and others wounded. But beyond that, there was a trust that was established there, and he was taken off. I think that was because the FBI came in and -- and they should have -- pushed the ATF out of the way. But I think there was also some trust established with the FBI negotiators. I talked to several of them, and they were good. They're behavioral scientists, and they're engaging men to talk to. They're nice. They're not the kind of beat on your chest Rambo types.
REP. BLUTE: Let me ask Mr. Zimmerman what you think were the greatest missed opportunities during this period?

MR. ZIMMERMAN: I think you're going to talk to Clint VanZant (ph). He was the negotiator that I had the most contact with, and I thought he had his head on straight. In other words, when the Branch Davidians that we wanted, all of us wanted them to do, like when somebody came out or something like that, instead of rewarding -- making things better so it would encourage that kind of contact, they would do things like play tapes of rabbits being slaughtered or Nancy Sinatra singing songs, and then they would bring out lights at night -- not that Nancy Sinatra always was that bad, but the ones that she had -- the point was this, they were trying to have sleep disturbance, and they were trying to take somebody that they viewed to be unstable to start with, and then they were trying to drive him crazy, and then they get made because he does something that they think is irrational. I mean, that, I think, was the mistake made there. They should have backed the lights away, stopped the noise when they gave Dick the letter, gave us the letter. They should have withdrawn all of that, say, "Okay, show them, hey, this is what we want to do."

REP. BLUTE: Thank you, Mr. Chairman.

REP. ZELIFF: The gentleman's time has expired. We're going to go two on our side by previous agreement on the other side. Mr. Bryant, you have five minutes.

REP. BRYANT: Thank you.

Gentlemen, if you could, I have a number of questions. If you could keep your answers relatively short, I'd appreciate it.

Did both of you go into the compound at various times?

MR. DEGUERIN and MR. ZIMMERMAN: Yes, sir.

REP. BRYANT: Were either of you searched, as you went in, by the Davidians?

MR. ZIMMERMAN: By the Davidians? No, sir. By the FBI. The Davidians treated us as guests.

REP. BRYANT: So they didn't -- they weren't suspicious of you enough to search you for weapons or anything like that?

MR. ZIMMERMAN: The Davidians?

REP. BRYANT: The Davidians.

MR. ZIMMERMAN: No, sir.

REP. BRYANT: And you were searched before you went in by the FBI -- MR. DEGUERIN: And as I came out.
REP. BRYANT: -- and as you came out, okay.

REP. BRYANT: Now, in reading some of the correspondence, Mr. DeGuerin, I noticed that you attempted to establish a relationship with the local United States attorney's office in terms of negotiation, and, having been involved in that type of experience myself, I know that oftentimes the defense attorney will be more likely to deal with the other attorney, the U. S. attorney in this case, or assistants, than you actually deal with the law enforcement.

Anytime, either one of you, did you have a relationship -- were you asked to deal with U. S. attorneys, or, even more, was a specific special U. S. attorney sent down from Washington?

MR. DEGUERIN: No. No, in fact, I couldn't get phone calls returned. The FBI was far more responsive to me than the U. S. attorney's office. I tried to serve -- just take a courtesy copy of the writ of habeas corpus up to the U. S. attorney's office, and they wouldn't even let me poke it through the glass window.

MR. ZIMMERMAN: Also, sir, we didn't know at the time initially whether this was going to be a federal prosecution or state prosecution, because Texas law accounts a murder case a death penalty, and at that time I don't believe the decision had been made whether or not to proceed with a state prosecution or a federal prosecution in the initial stages.

REP. BRYANT: Did you ever see, again, a U. S. attorney from DC, a DOJ attorney, down at Waco during this time?

MR. ZIMMERMAN: No, I did not.

REP. BRYANT: Let me move on to another question, if I could. Mr. Zimmerman, you testified earlier today that you felt that there were -- the details of a voluntary surrender had been worked out and, in fact, detailed specifically how that would occur.

Let me ask you to detail for the record, as best you can, who you made that deal with and when that deal was made. Give me names of people up the line that you negotiated this deal with, because I want to ask these people what they thought.

MR. ZIMMERMAN: I don't know if I would call it a deal. The parameters were given to us by the FBI, and I'm -- Dick, you can correct me -- I think it was Jeff Jamar --

MR. DEGUERIN: -- (inaudible) -- Jeff Jamar.

MR. ZIMMERMAN: Usually Jeff Jamar and Bob Ricks were together every time. They were always there, and one said something -- I think it was Jeff Jamar -- and, you know, it made a lot of sense. There wasn't a whole lot of fine tuning needed. Like I said, the only thing that we -- that I can remember asking them to change was to let the little children come out with their mothers, and they didn't have a problem with that.
REP. BRYANT: So the FBI gave you the details you talked about.

You, Mr. DeGuerin, would come out first with Mr. Koresh, they'd put on plastic handcuffs, you'd go through metal detectors, and, Mr. Zimmerman, you would come out last -- this is the detailed plan the FBI had given you?

MR. ZIMMERMAN: It was all oral. It was all oral. In fact, between the date of April 1, when we went in together for the first time, and April 4, I started to write that out so that we could get it typed up and get it in writing, which never did occur, because -- I don't know, I guess it sort of got put to the side. We were more concerned with getting them out because they had already agreed to those terms.

REP. BRYANT: Both sides had agreed to those terms, the FBI and the Branch Davidians?

I'll ask those people some more about that when the testify.

Mr. Zimmerman, you asked a question that piqued my interest and you really didn't get a chance to answer it -- or you didn't get a chance to ask the question (about it ? ). You were alluding to the fact that the FBI did not -- you felt like they did not anticipate that a fire would occur because they had made no preparations to fight fire, to have --

MR. ZIMMERMAN: Right. I was trying to answer Mrs. Slaughter's question, and I was saying that the way I interpreted that transaction was is that the references to fire that Steve and the others they were talking to on the telephone was quoting Biblical scriptures, and clearly not some threat to have a fire, and I think one indicia of that is or one evidentiary thing you can look at is that the FBI certainly didn't take it seriously. If they did, would they have -- well, in my judgment they didn't because if they thought that there was going to be a fire on April the 19th as a result of them smashing the building with tanks and inserting tear gas -- what they call tear gas, which I call CS gas, not tear gas -- they wouldn't have done it. Geez, we'd hope they wouldn't have done it! I mean, innocent kids are there would get burned up.

REP. BRYANT: Let me ask you another line of questions real quickly, and I have to hold this back where I can read. Peter Smerick -- are you familiar with him as the FBI, one of the psychological people? Did you have any -- either one of you have any dealings with Mr. Smerick? I understand he gave some opinions, three or four opinions, to basically counsel, like you were doing, to hold back and wait, but that the fifth opinion was that let's go in and have the confrontation?

MR. ZIMMERMAN: All I know is that I have read what he allegedly counseled and that he was pressured to change that, and then he left the area. I never met him.

MR. DEGUERIN: I never met him.

REP. BRYANT: Just real quickly -- well, I'll tell you what. I'll be generous and yield back the balance -- all of my time left.
REP. ZELIFF: Okay. Mr. Chabot, take the balance of your time.

REP. CHABOT: Very quickly, Mr. Zimmerman, in response to my question about what are the lessons of Waco that we should learn earlier, you mentioned leadership accountability. Would you please expound upon what you meant by that?

MR. ZIMMERMAN: I am -- you know, I was trained and raised on the theory that as a military commander, I'm responsible for everything that happens in my unit, and when I get assigned a mission, if I accomplish the mission, the credit goes to the troops, but if I fail in the mission, it's my responsibility, because I'm supposed to make sure everybody's trained and that we accomplish the mission.

I think that unless the oversight process that you're going through here results in some leadership changes, we're going to have people still in the position that they were in before this Waco fiasco making the same kind of bad judgment calls.

In other words, once we have a commander who has demonstrated that he cannot react under stress and respond appropriately, we relieve him of command and we put somebody else in there that can. We owe it to our troops.

And I have the same feeling for those young ATF agents. If you read my written opening statement -- I don't know that I would concur with calling them heroes in the sense that they were just carrying out orders. They probably don't think they're heroes. But I'll take Rodriguez in a minute as a troop. He'll do what he's supposed to do, and he is entitled to, and people like him are entitled to leaders that plan better and when those plans go awry like they did, they need to be relieved of their command and not just put somewhere else and kept on the payroll.

The Justice Department didn't even do as much as the Treasury Department did. There's been no accountability. I've tried to use an example from the military. Let me tell you one of the ironies of this case. On April the 19th, 1993, the day of this fire, the United States Court of Military Appeals, a civilian court that's the highest court in the military justice system, affirmed the conviction of a Marine officer for dereliction of duty because he left a training exercise and left one of his men in the desert and that man expired. He died. And that man was charged with dereliction of duty for the loss of one life through a pure mistake, but he was responsible, and on the same day, 80 people died in Waco, Texas, because improper decisions, bad judgment was made. No conspiracy, no intentional killing, but incompetence, and there has not been even a disciplinary -- administrative disciplinary action taken by anybody in the Justice Department, and that's wrong.

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

Mrs. Thurman for five minutes.

REP. KAREN THURMAN (D-FL): Mr. Zimmerman, let me ask you a question. Have you ever been involved with the federal employees negotiations at all, ever?

MR. ZIMMERMAN: Federal Employees negotiations?
REP. THURMAN: Because you're talking an awful lot about what happened with ATF, or what you have done -- (inaudible) -- or in getting some of those people. So, have you been involved in any of the personnel federal employee act at all?

MR. ZIMMERMAN: Do you mean as a civilian?

REP. THURMAN: Yes.

MR. ZIMMERMAN: No, Ma'am.

REP. THURMAN: Okay.

MR. ZIMMERMAN: I --

REP. THURMAN: Well, let me just --

MR. ZIMMERMAN: It's harder than what I --

REP. THURMAN: Let me -- and it is. And I think you ought to run for Congress, because you -- (laughter). But let me just suggest to you that Mr. Magaw did, in fact -- and one of the reasons that he was concerned -- basically, very similar to what you're saying. He felt they were not right either. But when they did put them back into office, that they put them back into a non-supervisory, couldn't wear their guns, couldn't do anything, because they were concerned that if, in fact, they were put back on through trial, that they would be able to be reinstated back at the level that they were.

Now, that's -- and I am not an attorney, nor am I a federal employee negotiator. So, I'm just giving you the example that they said. I don't disagree with you. But I will say, Mr. Hartnett is gone, has resigned. And Sarabyn and Chojnacki were the two that had sued, and filed suit. And we don't know what happened there. Okay.

MR. ZIMMERMAN: Before --

REP. THURMAN: So, I think we need to be very careful that they haven't tried to take disciplinary action. Okay.

MR. ZIMMERMAN: One of your fellow committee members, though, asked, is there any legislation action that you can take? Jeez, if that's the law, ladies and gentlemen, change the law.

REP. THURMAN: No question. Let me -- Mr. DeGuerin, you actually were Mr. Koresh's attorney, correct?

MR. DEGUERIN: Yes, Ma'am.

REP. THURMAN: How many total hours did you spend with him, do you think, in the period of
time that you represented him?

MR. DEGUERIN: About 32 hours.

REP. THURMAN: About 32 hours. Okay. Based on those hours, you've come to some conclusions that he would have come out after he completed the seven seals, is that correct?

MR. DEGUERIN: No, Ma'am. No, it was based on a lot more than that 32 hours. That's -- that's just the --

REP. THURMAN: Okay. Could you tell me briefly what it was based on then?

MR. DEGUERIN: Oh, sure it was based on the month -- approximately the month or so that I spent as his attorney, and trying to learn all the issues and the facts, consulting with the religious experts, talking to the FBI, going to the scene, seeing all the things they did. It's not just the 32 hours that I spent in some kind of direct contact.

REP. THURMAN: Okay. Did you also speak to any other members of the Davidians who had since left?

MR. DEGUERIN: Yes, I did.

REP. THURMAN: Could you tell me who they were?

MR. DEGUERIN: Rita Riddel (sp) for one. I spoke with her during the stand-off. Not directly to Catherine Schroeder (sp), but to her lawyer. To Brad Branch, who was -- who had gotten out early. To Livingston Fagan (sp), who was probably the most knowledgeable about the religious issues.

REP. THURMAN: How about Mark Breaux (sp) --

MR. DEGUERIN: No.

REP. THURMAN: -- or Miss Bunns (sp) --

MR. DEGUERIN: No.

REP. THURMAN: -- any of those that had been interviewed at all, who had suggested. Just one of the things that has concerned me in listening to some of this is that we've heard different testimony over the last several days, that the consensus among the psychiatrists on the scene, experts from the FBI who you talked with as well, that Koresh potentially was suicidal. Joyce Sparks, who spent more time, I think -- about two-and-a-half months, I mean, talking to him, back and forth on his religious beliefs, testified that it would have been contradictory to his teachings to surrender. You know, Ms. Jewell, who lived most of her life, testified and said, "The details would change," which you said earlier in your testimony, that he kept, you know, coming back with other excuses or reasons why. But she said in her testimony that the details would change as David received more messages from God. But there was never a time when he didn't expect to be killed by the feds. You
need to know that.

The same thing that Mrs. Bunns (sp) had said. She was not happy with, obviously, with Mr. Koresh. But she basically said, in the articles that we have -- the Sinful Messiah -- that he would use the law when it backs up something he wanted to say. But when it didn't, he'd just explain it away. But she went on to say, Mrs. Jewel or Ms. Jewell -- "We didn't expect to killed by the feds who David said were Babylon, or that we would be expected."

Based on this information, okay, and based on all of this testimony that we have had, a reasonable conclusion for the negotiators was that Koresh would never come out. I'm -- based on what you've said today, what I've heard in the past, I'm having a hard time reconciling your suggestions, and what I've heard over on the other side. I mean, could we agree maybe that there is possibility here that what you believe is one thing, what other beliefs are out there, too? I mean, that maybe Mr. Koresh did have, and had other ways of believing than what we're seeing here today?

MR. DEGUERIN: Sure.

REP. THURMAN: Okay. I mean, I think that's important. One of the other things I need to bring up here is that you all had mentioned Paul Gray (sp). And I guess we had the thing up here. It is my understanding -- just so you'll know, and maybe you all can clarify this, but this is what we've been told -- that he actually never worked for ATF, that he actually worked for the City of Houston as an arson investigator. And even during the time that he was the arson investigator, he worked for the Houston fire department. But he may have -- his phone number may have been there, but never was he paid by -- does that say special agent on there?

MR. DEGUERIN: Yes, it does.

MR. ZIMMERMAN: Ma'am?

REP. THURMAN: It does say that?

MR. ZIMMERMAN: You're right though, he was paid -- my understanding was, he still was on the Houston fire department payroll. He was assigned to an ATF task force.

REP. THURMAN: To a task force?

MR. ZIMMERMAN: Correct. But his office was in the ATF. He carried this card.

REP. THURMAN: But he was there for the purpose of the Houston fire department to carry out the arson investigation, because he had had 25 years in this area.

MR. ZIMMERMAN: Well --

REP. THURMAN: Is that correct?

MR. ZIMMERMAN: I don't know about that. I know, for eight years, he gave out this card saying
he was an ATF agent. And if we're trying to get somebody impartial, we could have gone to Miami or Philadelphia or Los Angeles. But if you -- but not that.

MR. DEGUERIN: Since that was my point --

REP. THURMAN: But -- Mr. DeGuerin?

MR. DEGUERIN: -- could I respond to that briefly.

REP. THURMAN: Certainly.

MR. DEGUERIN: I know a lot of people in the Houston fire department arson division. I've got some friends there. And I learned more about it as time went on, just through my friends. There's at least ten other very qualified arson experts at the Houston fire department that could have -- that did not have that connection to the ATF. And why Houston -- even then, there are arson investigators all around the country that don't have the ties. What I'm saying is, that doesn't pass the smell test. I don't know about Mr. Gray's (sp). But what I do is -- about the appearance.

REP. THURMAN: And we will be hearing from them, so that we can clarify this. Thank you.

REP. ZELIFF: Thank you. The Chair now wishes to recognize Mr. Barr for five minutes.

MR. BOB BARR (R-GA): Thank you, Mr. Chairman. I'd like to direct the attention of both Mr. Zimmerman and Mr. DeGuerin to three documents. I'm not sure whether you all have these. If not, Mr. Bush, if you could distribute there. These relate, gentlemen, to a discussion that has come up virtually every day, because it concerns -- at best -- spin control that began in the immediate aftermath of the February 28th raid, and continues even today, as reflected in some of the complaints by some of my colleagues here concerning statements by the White House, and our efforts to get the facts out in these hearings.

The first one, and I'm going to go down here and draw your attention to the charts, which have some blow ups of these documents, and the relevant language -- prepared by one of your colleagues, Mr. (Evans ?). He was here just the other day -- lest there be any impression on your part that these are props or whatnot. He had them blown up, because they were writing us to link him. And what I'd like to know is, in your opinion -- and I'd like you to look at all three of these very quickly, and then ask you -- in your opinion -- and both of you have, I think, a fairly common knowledge, very extensive experience in handling criminal matters in federal court.

This first document is the same. The first one he had there was dated March 1, 1993, and it indicates that immediately upon initiating the shooting review by ATF, the story did not (add up?) by the agents. And there were instructors from Mr. Johnston, the assistant United States attorney, who was in control -- at least initially -- of the investigation. The prosecution standpoint directed that the interviews stop, because they didn't want to create evidence -- (off mike) -- that might be exculpatory. We certainly don't want to do that. And then, when notified that there was an interview -- (off mike). Johnston authorized it. But no notes were to be created. No trail.
The second document, which is also blown up here, concerns the -- (off mike). The relevant language here, indicates very clearly that the Treasury Department was reflecting DOJ -- the Department of Justice's request that no interviews or discussion with any of the participants who may be defense witness be conducted. Here again, the theory of evidence -- (off mike) -- in my sense, that we might generate some information that -- (off mike) -- basically is vulnerable, therefore where a client concerns information that might be mitigating or exculpatory, and it would at some point in the prosecution have to be turned over to the defense, pursuant to constitutional edicts of due process and detection.

And the third document here -- this continues on the second one there. The third one is some handwritten notes that we have not yet been able to determine who these belong to, indicates that Mr. Ray Jahn -- who I think you're both familiar with, who was the assistant U. S. attorney that eventually took over the prosecution of the -- (off mike) -- case, does not want the individuals re-interviewed because they did not want to produce any more exculpatory statements.

It is my impression that the former United States attorney, some members of this panel, very learned members of this panel, have indicated that it's not their impression. Also being very familiar with criminal service procedure, that this is not standard Department of Defense operating procedure. Other members on the other side, in cases settled, this stuff -- this is standard operating procedure, that immediately upon initiating a shooting review, designed -- as we have elicited from Mr. Johnston himself -- designed to the search for the truth and uncover evidence to determine whether or not something went wrong. They feel that it is standard operating procedures for the Department of Justice to come in and shut that investigation down.

In your experiences, Mr. Zimmerman and Mr. DeGuerin, does this report either search for the truth, or with standard Department of Justice procedures?

MR. DEGUERIN: No, sir.

MR. ZIMMERMAN: No, sir.

MR. BARR: Would any -- would you care to expand on that one? And let me also tell you, by way of background on that particular question -- you colleague, Mr. Tim Evans (sp), who was here the other day, went over these at some length, because he had been sitting in the audience on Wednesday and Thursday, when we initially discussed these documents. And on his own, asked to be brought up, because he was so flabbergasted to hear testimony or efforts to put into the record that these reflect standard Department of Justice procedures to close down a search for the truth, that he stated -- and we went into some detail on Friday -- that this was certainly not his impression. Yet, then again, we came back yesterday, and Mr. Noble -- Ron Noble, who is a very forceful individual, some would say intimidating individual, said this is absolutely standard procedure. And he could state that from his background, being with not only the Department of Justice, but the Department of Treasury, and so on, and so forth.

But there certainly are times, are there not, when it's important for a prosecutor to step in and make sure, for example, that public statements are not made, that might impinge or infringe or prejudice an investigation or prosecution. Is that correct?
MR. DEGUERIN: I see a distinction between a prosecutor asking the investigators not to make public statements, and telling an investigator not to do something that might develop evidence that could be favorable to the defense. If -- the first thing is not wrong. That is, telling an investigator not to talk to the press. The second thing is clearly wrong. If an investigation is impeded by a prosecutor telling an investigator, "Don't go interview somebody, or don't take notes if you do --

MR. BARR: Please let me ask this, because the light just went on, so you can reflect this in your continuing after. Would this reflect, in your mind, these documents, an effort to impede an investigation or possible obstruction of justice?

MR. DEGUERIN: Well, it could be. And I'm qualifying my answer because it's shocking to see this, in the first place. As a defense lawyer, sometimes we suspect that there's stuff like that going on. But there is an absolute duty that a prosecutor has to turn over to the defense any evidence that is arguably favorable to the defendant. It's just a matter of fair play, because the investigators that investigate a case usually are on the prosecution side. And they develop most of the evidence. But when you tell -- when a prosecutor tells an investigator, "Don't develop evidence or don't take notes if you do, because it might be helpful to the defense," that ain't right.

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

MR. BARR: Mr. Zimmerman -- I had asked Mr. Zimmerman to respond also.

REP. ZELIFF: Okay.

MR. ZIMMERMAN: I'll be quick, Mr. Chairman.

REP. BARR: Two quick observations. One, I've never seen anything like this in writing. I'm shocked that they put it in writing and left a trail. Second, I note that this always seems to be the receiving end of somebody else's instructions. In other words, this seems to be -- each of these three documents seems to be recording what the Department of Justice wants the Treasury or the ATF to do as opposed to initiating itself. So I were the defense lawyer in this situation I would ask for a hearing and I would get people in under oath and find out who was it that said this, who gave you these directions, what did they tell you to do. Because these all look like they are recording what instructions somebody gave from Johnson, from Jahn and from the Department of Justice. These aren't Department of Justice documents, these are somebody else's documents is the point I am getting at. So we would want to make sure that that's what was really said. And it sure looks like what they said -- I mean I don't know why somebody would not record this accurately -- but it doesn't pass the smell test either.

REP. ZELIFF: Thank you. Mrs. Lofgren from California, you are recognized for five minutes.

REP. LOFGREN: Thank you, Mr. Chairman. I appreciate being here now. The Science Committee also had the markup of the NASA authorization this morning so as with some members I have been running back and forth. At this time I would like to yield four of my five minutes to Mr. Schumer, and the remaining minute to Ms. Jackson-Lee.
REP. ZELIFF: Okay, Mr. Schumer.

REP. SCHUMER: Thank you. I want to thank the gentle lady from California. I just found it a little ironic, Mr. Zimmermann, you complained that they had gotten someone who was partial because he was part of the ATF and here we have two very fine admittedly defense lawyers whose job is not to be partial taking our whole six hours here and I find that a little bit ironic. I would first like to ask you, Mr. Zimmermann, you mentioned that Mr. Snyder was a peaceful man. And the whole impression that both you and Mr. DeGuerin are giving is that David Koresh was a rational, reasonable person. Mr. DeGuerin said well let's assume he had kooky religious views. But I think from everything we've heard Mr. Koresh was not simply somebody with different religious views. Would you admit that Mr. Koresh was a criminal, Mr. Zimmermann? You can answer that yes or no.

MR. ZIMMERMANN: I don't think it's been proven, but I think there's evidence of that.

REP. SCHUMER: How about you -- that's a good defense lawyer, Mr. Zimmermann. How about you, Mr. DeGuerin.

MR. DEGUERIN: I would agree with that. I think that if true what's been said about him he was guilty of a lot of crimes.

REP. SCHUMER: And do you consider somebody who is part of a group that stockpiles 48 illegal weapons, hundreds of hand grenades, peaceful?

MR. DEGUERIN: I don't --

REP. SCHUMER: Mr. Zimmermann?

MR. ZIMMERMANN: No, I certainly don't, and I don't think Steve Snyder was involved in that.

REP. SCHUMER: I see. But you wouldn't consider Mr. Koresh peaceful?

MR. ZIMMERMANN: That's the first time I've heard that there's been stockpiles of hundreds of grenades or --

REP. SCHUMER: Well let's just say he had 48 illegal weapons and some illegal hand grenades, would you consider that peaceful?

MR. ZIMMERMANN: I think it's a violation of law -- it's criminal.

REP. SCHUMER: But you didn't answer my question. You made the comment -- you brought the word up peaceful that Mr. Snyder who is one of his chief people -- I don't want to use lieutenant because you didn't like that word -- what would you like me -- what word would you like me to use?
MR. ZIMMERMANN: He described Mr. Koresh as a teacher of teachers and he was a teacher.

REP. SCHUMER: Okay, one of his students, his pupils --

MR. ZIMMERMANN: Right.

REP. SCHUMER: -- one of his main pupils, as peaceful. I'm asking you about Mr. Koresh, on the -- and we won't even call it a compound -- on Mount Carmel where they had 48 illegal machine guns and at least a quantity of illegal hand grenades, would you consider Mr. Koresh peaceful? Yes or no?

MR. ZIMMERMANN: The way you say that probably no.

REP. SCHUMER: No, what do you mean the way I say it?

MR. ZIMMERMANN: Well because I would like to know what they were for.

REP. SCHUMER: Let me ask you this, Mr. Zimmermann, it's my time, do you dispute those facts? Do you say it's not been proven that there were 48 illegal machine guns and a bunch of illegal hand grenades on his compound?

MR. ZIMMERMANN: I believe there were 48 illegal automatic weapons on April the 19th. I don't know that that's the case on February 28th, sir.

REP. SCHUMER: Right, but we're talking about April 19th.

MR. ZIMMERMANN: Right, April 19th, no question.

REP. SCHUMER: Okay, and didn't you -- you know about the trial -- didn't many, or at least several, Branch Davidians testify that there were these weapons and that on the morning of February 28th there was preparation to give those weapons out and to shoot? Let's strike and to shoot -- there were those weapons there and there was all sorts of preparations. The names of the people who testified as I believe -- one was Schroeder (ph) -- I don't have my notes here in front of me. Isn't that correct?

MR. ZIMMERMANN: Sir, I believe there was testimony that weapons were there and that they were distributed. I don't recall any testimony about any thing about illegal weapons though.

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REP. SCHUMER: I see, but there were weapons -- how about hand grenades? Was there testimony about that?

MR. ZIMMERMANN: I don't know, I don't recall that.

REP. SCHUMER: Do you recall, Mr. DeGuerin?
MR. DEGUERIN: No, I don't know anything --

REP. SCHUMER: Even though you know every other detail about the trial?

MR. DEGUERIN: That's not fair, Mr. Schumer.

REP. SCHUMER: Well let me ask you, you don't recall that. Do you believe -- so in other words you have no -- do you doubt that there were 48 illegal weapons and hand grenades --

MR. DEGUERIN: I've never said I knew all the details of the trial. I've never said that he was --

REP. SCHUMER: Do you doubt that -- I am asking you that right now, sir.

MR. DEGUERIN: What is your question?

REP. SCHUMER: My question is do you doubt -- do you have doubts that Mr. Koresh had on his compound illegal weapons and illegal hand grenades. Do you have any doubts about that?

MR. DEGUERIN: No --

REP. SCHUMER: Thank you.

MR. DEGUERIN: -- he told me he had illegal weapons --

REP. SCHUMER: Okay, do you have doubts --

MR. DEGUERIN: He did not tell me that he had hand grenades there.

REP. SCHUMER: I see.

MR. DEGUERIN: And I saw no hand grenades. I did see some grenades that the ATF had thrown in and I brought one out --

REP. SCHUMER: What do you mean thrown in?

MR. DEGUERIN: The ATF threw in grenades in their dynamic entry --

REP. SCHUMER: No, they didn't throw any grenades in as I understand it.

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MR. DEGUERIN: Yes, they did.

REP. SCHUMER: They were flash packs.
MR. DEGUERIN: I brought one out.

REP. SCHUMER: They were flash packs, they did not explode.

MR. DEGUERIN: Have you ever seen what a flash bang can do to somebody? It can tear your arm off.

REP. SCHUMER: Sir, they were not grenades. Would you put it like that?

MR. DEGUERIN: Yes, they were.

REP. SCHUMER: You believe they were grenades.

MR. DEGUERIN: They were grenades, I brought one out to the FBI and turned it over to them.

REP. SCHUMER: Right, okay, Mr. DeGuerin. I think that would hamper your credibility because you are the first person who would say that those were grenades. Let me ask you this --

MR. DEGUERIN: May I answer that?

REP. SCHUMER: Do you have any -- I would like to ask the question simply because I have five minutes. Today I'm the lawyer and you are the witness, sir.

MR. DEGUERIN: Well you said something about my credibility, and I would like to talk about that, Mr. Schumer.

REP. SCHUMER: Today I'm the lawyer and you are the witness, sir. Okay, let me ask you this, do you have any doubts that David Koresh had illegal sexual relationships with some of the people at the compound?

MR. DEGUERIN: I don't know.

REP. SCHUMER: You don't know. You have no knowledge of that?

MR. DEGUERIN: I didn't say I had no knowledge. I haven't -- I don't know and I am not here to defend --

REP. SCHUMER: Do you doubt the testimony of Kiri Jewell who was here? Did you hear about that?

MR. DEGUERIN: Yes, I did.

REP. SCHUMER: You doubt that.

MR. DEGUERIN: Yes.
REP. SCHUMER: Do you doubt that, Mr. Zimmermann?

MR. ZIMMERMANN: Yes, sir.

REP. SCHUMER: Okay.

MR. ZIMMERMANN: Do you know why?

REP. SCHUMER: Yeah, you can tell me why.

MR. ZIMMERMANN: That -- we didn't learn of that the first time when she testified before this hearing. She's made -- that kind of claim has been made for some time. Her own mother didn't believe that, her own grandmother didn't believe that.

REP. SCHUMER: Right.

MR. ZIMMERMANN: There's been doubts about prior -- contradictory statements that she's made in the past. Now it may be 100 percent true, it may be 100 percent true --

REP. SCHUMER: Just reclaiming my time because my time is up. In my judgment, in many ways these witnesses are trying to simply deny things that just about everybody else accepts as facts about David Koresh.

MR. DEGUERIN: And I would like to respond to that.

REP. ZELIFF: Your time has expired.

MR. DEGUERIN: May I respond to that?

REP. ZELIFF: You can respond relative to the personal comment briefly.

MR. DEGUERIN: Regarding your comment about my credibility, Mr. Schumer, when I went into the compound I was searched and when I came back out I brought to the FBI agents and showed them a spent grenade that's what some times euphemistically called a flash bang. It's a grenade. It has an explosive charge in it. It's very dangerous. It can blow you hand off, it can blow you face off, it can kill. I would have brought out some of the unexpended grenades that the ATF threw in, but I was worried about bringing out a live grenade so I left them there. There were a number of grenades --

REP. SCHUMER: Wait a second, that is not fair.

MR. DEGUERIN: And so as to my credibility about, Mr. Schumer, ask Jeff Jamar (ph) or Byron Sage (ph) about the grenade -- they will say that they were flash packs, not grenades.

REP. ZELIFF: The Chair recognizes Mr. Shadegg for five minutes.
REP. LOFGREN: Mr. Chairman, I yielded a minute of my five to --

REP. ZELIFF: Your time was expired -- you had the full five minutes. There was one four minutes and one minute, Mr. Schumer took all of it plus a little bit extra. Mr. Shadegg.

REP. SHADEGG: Thank you, Mr. Chairman, I appreciate this opportunity to question the witnesses. Now let me say just as an introductory comment that much has been made here of the issue of whether or not these hearings are intended to criticize law enforcement or to attack law enforcement. Indeed the White House says we are trashing law enforcement, undermining the moral of law enforcement officers and is very, very critical of these hearings. Let me tell you, I spent eight years in law enforcement, as I've said before, my father was a deputy sheriff. I do not know a law enforcement officer who believes that when there is a legitimate inquiry into mistakes or into wrongdoing that that is trashing law enforcement. Having said that, let me say that while one of my colleagues on the opposite side might say that you are our witnesses, I beg to differ quite strongly with you on a couple of points.

I think the most telling point on the issue of who shot first, and I think that is an unfortunate issue that's come up in these hearings, was Mr. Zimmermann's remark that that question is irrelevant. As I heard Mr. DeGuerin remark, he said there were holes going down and holes coming in the door. Unless you have a time clock and a photograph every minute, which direction the holes come from cannot possibly tell you in my mind who shot first.

MR. DEGUERIN: No, you're right.

REP. SHADEGG: Beyond that, the notion that there are in fact holes coming down, shots from the helicopters -- I will tell you, if I had been in a helicopter -- and I don't know what went on -- but if I had been in a helicopter and a fire fight had started out on my ground and I was an ATF agent I would have started firing because my guys are under fire, by gosh, they are coming under fire.

Having said that, the third point I want to make, Mr. Zimmermann, you said there was no ambush because if they had wanted to kill them in the trailers they could have. Well I was shocked to see the trailers are just canvas covered, not metal, and it's clear to me that if Koresh had wanted to just blow them away and had known that they were the agents, he could have ambushed them. But you went on to say that it was your theory that it was an accidental discharge by an agent coming out of the trailer. I'll tell you the agents I've known in my life are trained not to have accidental discharges and it is just as plausible a theory in my mind that it was an accidental discharge by a nervous Davidian who was not as well trained to use that fire arm.

MR. ZIMMERMANN: The reason I say that, sir, is that that was information that was given to us by someone in the press who had a confidential source within the ATF who indicated that someone said that as he was coming out of the back of that he tripped, his weapon wasn't on safe, and it discharged. And if you look -- supposedly if you looked at trajectory, the round went into the front of the pick up trucks engine compartment and it was coming horizontal and there were Davidians horizontal, and the only people in the front was the other agents. I have no verification of that.
REP. SHADEGG: Well with that additional information that helps. Also, with regard to the shots down, Mr. DeGuerin, you indicated that the roof was the highest point in the area. There's been discussion of a tower. Was there not also a tower?

MR. DEGUERIN: That's the same thing. It was called the tower or the observation tower. It's the fourth floor, it's not shown in this picture. But in the diagrams that I brought it is shown. It was the fourth floor -- actually it was the bedroom of David Koresh and it had almost a flat roof.

REP. SHADEGG: Okay. I want to go into one other document. Mr. Barr went over two documents with you which were -- had been brought into these hearings, the essence of which is instructions from the Justice Department to ATF agents to stop their shooting review because it was creating Brady review material. The Department of Justice, upon hearing that evidence come into this hearing, issued a press release, and I have this press release here, we're putting it up there, and you have copies of it. That press release, issued within minutes of the testimony coming into this hearing, says that during the past few days of the Congressional hearings on the tragedy at Waco a long standing Justice Department practice has been badly mischaracterized. Is in fact it a long standing Justice Department practice to your knowledge, or have you ever heard of it, that any time Brady material is being created you instruct people to stop asking questions?

MR. DEGUERIN: No, sir, not at all.

REP. SHADEGG: Would that be an outrage?

MR. DEGUERIN: Well it is outrageous that there was an instruction to stop because you might create Brady material. Now this is a little bit different, this tries to say that it's such standard procedure that it's prosecution 101. Well I've never been in the Justice Department, I've only been a state prosecutor and I don't know of any such requirement. I can understand that there might be an effort to stop a Congressional investigation that's going on at the same time as a criminal investigation. But two different criminal agencies investigating at the same time, let them at it, let them have it, do it, develop the facts in any way you can.

REP. SHADEGG: One more quick point. In the second paragraph it says something about they often request the federal government to temporarily refrain from pursuing an investigation. There's nothing in these documents that suggest the request was done just to temporarily refrain, but rather to refrain because they were developing conflicting information. Isn't that right?

MR. DEGUERIN: That's the way I read those memos.

REP. SHADEGG: I'm running out of time. I would like you at the last moment -- I would like to ask each of you to summarize if you would your views of why you believe -- and Mr. Zimmermann, you touched on this already -- why you believe it was somebody in Washington or somebody other than the people you were dealing with day to day that made what appears to be the illogical decision to pull out the agent who was successfully -- or appeared to be successfully negotiating, and the decision to go in at the time they went in.

Those two seem to me to be inconsistent with an effort by the FBI to try to resolve this peacefully. I
would desperately like to believe that that was their goal. You had to have met a number of FBI agents. You had to have known what they were like. You knew the agents in the field, to some degree. Why did they pull out, in your view, the agent who was having success in negotiating? And then why did they make that final decision to go in? Gentlemen, if each of you would.

MR. ZIMMERMANN: I don't know why they pulled -- are you talking about Special Agent Cavanaugh?

REP. SHADEGG: Yes, I am.

MR. ZIMMERMANN: I don't know. That happened before we got there. I don't know the answer, sir, and I don't want to guess. With the other one, again, I guess I also have come to have some faith in my own ability to look at a man face to face, have him tell me something, have that happen over a period of time, and know whether I can believe him or not. And like I told Congressman Schumer -- I wish he were here to hear this, but I told him that I had a lot of respect for Jeff Jamar, Bob Ricks, Byron Sage (sp), Clint Van Zant (sp). Those were the people we dealt with. I thought they shot straight with us. They gave us -- they respected the attorney-client privilege. They didn't pump us for information. They tried to facilitate this joint goal. They told us that we had all the time in the world.

If Mr. Schumer is right, if Jamar's going to come in there and change his position and say, "I made that decision," and if all I've read is true that that decision had already been put into effect before April 14th, when he told us we had all the time in the world -- because as I understand it, the attorney general approved it on the 17th and it had already worked its way up, that meant it would have had to have left Waco, if Jamar was involved, before the 14th -- he just flat lied to us. I refuse to believe that Jeff Jamar just flat lied to us. I may be wrong.

REP. SHADEGG: Mr. DeGuerin?

MR. DEGUERIN: Well, on the two subjects, as far as the negotiator pulling Cavanaugh out, my read on that -- no one's told me and no one consulted me, but my read on that is because he was ATF and ATF had been so emotionally involved in losing agents, and rightly so, that his neutrality or his ability to negotiate may have been compromised by that, plus the fact that the FBI moved in and took over. And they should have. The ATF shouldn't have been involved. From the time of the tragedy until everything was secure, they should have been moved out, and rightly so. That's on the negotiator. As far as where the decision was made for the tear gas, I don't know.

REP. ZELIFF: We're going to have to break there. We've got four minutes for a vote. We're going to come back five minutes after the vote. Okay, the committee stands recessed.

(Recess.)
REP. ZELIFF: The joint oversight subcommittee hearings on Waco will now come to order. The chair yields to Mr. Condit from California for five minutes.

REP. CONDIT: Thank you, Mr. Chairman. First of all, let me apologize to you and the witnesses once again. I have a conflict in schedule and I have not been here and I have to leave at this moment to go back to another hearing, where we're having a hearing in the Agriculture Committee which is an extremely important one for me and my district. I do want to yield my time to my colleague from Mississippi. In doing that, I want to state that that should not bias me against any of the testimony of the witnesses. I understand they did a good job this morning. But I do want to give him my time and give him the opportunity to ask whatever questions he feels necessary to ask.

MR. ZIMMERMANN: Would you like me to answer that one? I didn't -- I thought you asked a good question and we ran out of time. I promised I would get back to you. Should I do it now or do you want me to wait?

REP. TAYLOR: Let me ask you something else, but you can talk as long as you want. I can't. Mr. Zimmermann, interestingly enough, you and your colleague are the first two to say that the deaths of the ATF agents was justifiable. Now, I'm going to turn the tables on you for a second. I'm going to guess that when you were arguing on behalf of the Davidians that you said, "Since you can't prove that my client individually pulled the trigger in the death of those agents, therefore it is not murder. "So I'm going to turn the tables on you and ask you to tell me which one -- was it Conway LaBlue (sp), Todd McKeon (sp), Robert Williams or Steven Willis -- that deserved to die that day?

MR. ZIMMERMANN: I didn't say -- at least I don't think I said that those deaths were justified. What I did was answer --

REP. TAYLOR: (Inaudible. )

MR. ZIMMERMANN: No, sir, I answered your question. Your question was, "Have you read or heard or seen anything that would cause you to believe that the murder of those four agents was justifiable? "All I did was answer your question as honestly as I could, and I said, "Yes, sir, I have. "One is the jury verdict. They were charged with the murder of those four agents. The jury acquitted them of that. That's the answer that I gave you, and I think that's a truthful answer, sir.

REP. TAYLOR: But, sir, having turned it around, I'm sure that the defense said that "Since you cannot prove which one of these Davidians fired, then you can't convict them individually. "

MR. ZIMMERMANN: No --

REP. TAYLOR: I'm just saying which of these guys deserved to die, using that same line of testimony that kept the Davidians probably from getting the electric chair.

MR. ZIMMERMANN: Number one, nobody said that murder occurred but you just can't show which of these did it. The whole defense --

REP. TAYLOR: There were four dead guys on the ground, Mr. Zimmerman.
MR. ZIMMERMANN: We're talking about the difference between murder, though, and self-defense, Congressman Taylor. And all I'm saying is the defense was that all of the -- any of the Davidians that fired were firing in self-defense, not just that somebody committed murder but it wasn't these 11. If that had been the defense, frankly, I think the jury would have convicted them all. But they didn't. Now, none of those people deserved to die.

REP. TAYLOR: Weren't some of those people --

MR. ZIMMERMANN: None of them.

REP. TAYLOR: Weren't some of the Davidians convicted of manslaughter?

MR. ZIMMERMANN: Yes, they were.

REP. TAYLOR: They were.

MR. ZIMMERMANN: Yes, sir, voluntary manslaughter, which is a lesser included offense of murder. It takes out the intent, the deliberate intent to kill, and it's a reaction. I don't want to get into a lengthy thing, but basically if you're provoked and you kill somebody, that's voluntary manslaughter.

REP. TAYLOR: Also, for clarification, you were asked by Mr. Schumer -- Mr. Schumer had asked you if there was reason to take young Ms. Jewel away from David Koresh. You said you didn't know of anything. You are an agent of the law. Let me tell you that the Michigan court ruled that there was plenty of reason to keep Ms. Jewel away from David Koresh and prohibited her mother from taking her anywhere near David Koresh, based on the testimony they received.

MR. ZIMMERMANN: I'm aware of that.

REP. TAYLOR: And now, in fairness, I would like you to answer the question that you have requested.

MR. ZIMMERMANN: You had -- at one earlier point, you had made a statement that -- or asked a question or pointed out that, in answer to another congressman's question, I stated that no administrative or criminal disciplinary action had been taken against anybody and that, based on Special Agent Merletti's testimony yesterday, that in his report, he reported, in answer to a question by somebody else, that in his opinion that a felony offense had been committed by the two special agents who had lied to a federal investigator that they had violated federal law. And all I said was that that hasn't -- there's been no administrative action based on that felony, nor no criminal proceeding. And you said, "Aren't they assumed innocent? "And I think you -- I agree with you.

REP. TAYLOR: Are you talking about the two agents who failed to get the message from Rodriguez and proceeded with the raid? Is that what you're making reference to?

MR. ZIMMERMANN: I don't know what Mr. Merletti was talking about precisely, but all I was
pointing out is that their own investigation indicated a felony offense had been committed. And then you correctly pointed out they have been convicted of nothing, and I wholeheartedly agree with that. They're entitled to the presumption of innocence, to a trial and so forth, just like the point I want to make about the way things are supposed to happen in this country is when someone suspected of a crime, even if it's child abuse, even if it's capital murder, we give them a trial. A jury finds them guilty beyond a reasonable doubt before they go to sentencing. Then a jury or a judge sentences them and an appeals court makes sure the trial was conducted with due process. And then, and only then, do we kill them. We don't kill them first, like happened in Waco on April the 19th.

REP. TAYLOR: It's a shame the Davidians didn't get that message, sir. I made a promise to Ms. Lee that I would yield to her one minute of Mr. Condit's time. I do so now.

REP. JACKSON LEE: You're very kind, Mr. Taylor. Thank you very much. Very quickly, let me-- as I was finishing my question, Mr. DeGuerin, we were asking what would make individuals follow an individual like Mr. Koresh. I was saying that to acknowledge that, you had the followers and people who deeply believed and then you had certainly Mr. Koresh. And I know you're a defense attorney. I'm not asking you to negatively assess what would have been your client and may still be of family members. But my question would be, in the time that you had with him, did he tell you how he came to power? I just need a yes or no on the answer. Did he tell you how he came to power?

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MR. DEGUERIN: Yes and no. Sorry. It bears an explanation.

REP. JACKSON LEE: Did he explain the 1987 incident?

MR. DEGUERIN: Yes.

REP. JACKSON LEE: And let me just repeat, and that will be the wind-up of my question, and that is that in 1987, despite the fact that (maybe in?) surrounding it, he came onto the compound in camouflage and there was a 45-minute gun battle. And I think that is distinguishable from Seventh Day Adventists, who are, in fact, pacifists. And so it may have been a spinoff of a denomination, but I think if we separate out Mr. Koresh and those passionate followers, his direction led in a more violent turn than one the Adventist Church, and as well possibly the followers who were there with him by way of his entry, as the leader into that compound.

MR. DEGUERIN: To respond to that, that was not the way that he came to be the spiritual leader of the Branch Davidians. That was a dispute between David Koresh and his followers and a man named George Rhoden (sp), who was -- well, who's been found by a jury to be criminally insane.

REP. JACKSON LEE: I do understand the facts. But there was a gun battle, was there not?

MR. DEGUERIN: There was a gun battle. And following that gun battle, David Koresh surrendered to the sheriff of McLennan County and surrendered all their guns, and he was tried on a charge of attempted murder. All the persons that were tried were found not guilty except for David Koresh,
who was -- there was a hung jury, and the district attorney then dismissed the case.

REP. ZELIFF: Time has expired.

REP. JACKSON LEE: And I understand that. He just engaged in the gun battle, even though the determination was different legally, but there was a gun battle that David Koresh participated in.

REP. ZELIFF: Time has expired.

REP. JACKSON LEE: I thank you, Mr. DeGuerin.

REP. ZELIFF: Thank you. And the chair now yields to Mr. McCollum of Florida for five minutes.

REP. MCCOLLUM: Thank you very much, Mr. Zeliff. Early in this testimony today, one of you, and I believe it was Mr. Zimmermann, indicated you thought that a bureaucrat in Washington was responsible for ending the negotiations; that indeed the field officers of the FBI wanted to continue what progress you were making or what you thought was being made. Did anyone with the FBI say anything to either of you -- and I'll start with you, Mr. Zimmermann -- at any time which indicated that there was pressure coming from Washington to go with this CS gas assault as opposed to the negotiations?

MR. ZIMMERMANN: Sir, my first knowledge of a CS and tank attack occurred at 6:15 in the morning on April the 19th, when my answering service called and said, "The phone's ringing off the hook with the press." And I turned on the television, and that's the first notice I had of that attack. They did not tell us in advance, of course.

REP. MCCOLLUM: But did they give you any indication they were getting pressure not to negotiate?

MR. ZIMMERMANN: No, sir. And as a matter of fact, I have a recollection -- and I understand now that there's some dispute about it by the FBI -- but I have a distinct recollection, as does Mr. DeGuerin, that after we gave them this information about the April 14th letter that they'd be out within two weeks. They said they had all the time in the world.

REP. MCCOLLUM: Why do you have the feeling that a bureaucrat in Washington was pressuring them or making this decision instead of somebody in the field to go with the assault, recommending it back up the other way?

MR. ZIMMERMANN: Based on, I guess, my earlier answer is that Jeff Jamar, as far as I know, had never been anything but straight with us. Bob Ricks had never been anything but straight with us. Byron Sage had been nothing but straight with us. Why would they tell us we have all the time in the world?

REP. MCCOLLUM: Same question to you, Mr. DeGuerin.

MR. DEGUERIN: Let me say that I had an early conversation with Jeff Jamar in which he
mentioned that some people had discussed or said something about dismantling the building and putting tear gas in but that they weren't seriously considering that. And it was an off-hand conversation. It was very early in my relationship with him. I never got the idea that he was under any pressure to do anything.

REP. MCCOLLUM: Other than --

MR. DEGUERIN: I disagree a little bit with Jack on that. I just never got that idea.

REP. MCCOLLUM: Well, for what it's worth, in the Treasury -- or in the Justice Department report on page 270, it says that Byron Sage, in an ensuing two-hour conversation on April 15th, apparently that he had, I guess, with the attorney general, said further negotiations with the subjects in the compound would be fruitless, further advised Webb Hubbell in this case that Koresh had been disingenuous in his discussions with Sage about the seven seals. The FBI had not succeeded in getting anyone released from the compound through negotiations. It was at a total impasse; nothing more he or the negotiators could do to persuade Koresh to release anyone else would do any good. And law enforcement personnel at Waco were getting tired and their tempers were fraying, and in essence this was all in support of what appears from this report to have been a decision that Sage, at least, was involved with making as early as the 12th of April. Now, we haven't heard from them yet, but I'm reading from the report.

MR. DEGUERIN: Did you say 12th or 15th?

REP. MCCOLLUM: Well, the 15th is when this phone call discussion was made, but the paper work here for pages that precede it show that the FBI apparently originated this plan and took it up with Potts and Clark, or that Potts and Clark took it up, I should say, from the field as early as the 12th with somebody in the attorney general's office. So it was around for quite a while, but it was being embraced as early as the 12th and this phone conversation took place on the 15th. So is any of that surprising to you?

MR. DEGUERIN: Well, it -- not -- I guess I can't say I'm surprised now, because I've read those reports and I see that that was going on at the time. What disturbs me, though, is that there was not -- there apparently was not any input about this -- this breakthrough that we had on April the 14th and advised --

REP. MCCOLLUM: And nobody apparently passed that on to the attorney general, and it doesn't look like they passed it on to the president, either, because there's a notation we have with this from the FBI files of interviews of Bruce Lindsey at the White House, indicating that at meeting on April 15 took place in which he was briefed and presumably briefed the president on this very same thing, that negotiations were absolutely at an impasse, they weren't going to go anywhere, and it was just over the hill.

Now, having said all that, I want to direct your attention somewhere else. The Treasury Department's been putting out more stuff here in the last hour or two. They say that, with regard to this videotape that supposedly is missing, in a press release today that the ATF originally planned to make a videotape of the warrant execution from the undercover house. The camera was set up in the
window and connected to the VCR recorder. However, in the period before arrival of the cattle trailer, the agents found that whenever they keyed the radio microphone, the tape entered from the VCR. For this reason -- or rejected from the VCR. For this reason, the VCR was never turned on. If a videotape of the operation had been made, it would have confirmed the evidence presented at the trial by the ATF, evidence in the media that the Davidians fired first.

Now, does that enlighten you in any way about what happened to this tape, or is there another tape we're looking for aside from the one you're referring to?

MR. DEGUERIN: That doesn't enlighten me, no. I just can't imagine, with the amount of money and preparation and planning that went into this massive raid that the videotape didn't make it.

Koresh told me that he saw a video camera. There's a tape that I have here of Koresh talking to the negotiators, in which he discusses what happened at the front door and how, "You guys have the tape. I saw the camera. "He -- this tape was made on April the 13th.

Jack and I both filed -- I think we both filed -- motions with the court to preserve this tape. I'd like to have the opportunity to complete my answer and play the tape, but I don't want to take away from the time.

REP. MCCOLLM: Well, I understand that. Maybe the chairman will give you that. I want to ask you one other question. You had indicated in earlier testimony that there were several times when Mr. Koresh had promised to go out or had said he was going to come out or whatever and he didn't, and Mr. Schumer, in asking you questions, seemed to imply that he'd got a bunch of data, he wanted to have paperwork introduced that would go over those cases on earlier occasions, presumably leading one to the conclusion that why should he now, on the 14th of April, live up to this commitment. Could you run over, Mr. DeGuerin, for us how you would analyze the reasons why Koresh did not come out on the earlier occasions and what was different about this one?

MR. DEGUERIN: I have difficulty understanding why he would not walk out with me and surrender to a Texas Ranger and get into the criminal justice system. He saw the logic of that and the advisability of that, and so I was having difficulty understanding why it was that he wouldn't say, "Yes, I'll go right now."

And I tried to understand that by understanding his religious doctrine, and I asked for advice from Arnold and Tabor, and what I learned was that more important to him, more overriding to him was this religious doctrine, and when he could interpret the religious doctrine to say that it was consistent with him coming out and going into the criminal justice system rather than dying on the spot, he would.

And so my -- my talks with him began to build more to that, to understanding that perhaps the doctrine didn't say, "You're going to die now, the apocalypse is coming much later," years or much later than that. And that's why I think there was a breakthrough.

REP. MCCOLLM: But why didn't he come out earlier? That was the question I had asked you.
MR. DEGUERIN: Yes, that's the answer -- because of this overriding religious concern. I didn't agree with it. I'm not trying to justify it and I don't think it was justified. I wanted him out. I mean, this was -- I wanted a live client in court. We had a defensible case, and I was trying to get him to come out and trying to make him understand that he needed to, but he wouldn't, and he wouldn't, he said, because it wasn't written for him to come out yet. He was waiting to get that word. When he did get the word, that's why I say it was such a great breakthrough on April the 13th and 14th.

REP. MCCOLLUM: Thank you very much. Mr. Chairman, could I ask unanimous consent that the piece of paper that has this press release on it about the videotape from the Treasury Department be admitted into the record?

REP. ZELIFF: Without objection, so ordered.

MR. DEGUERIN: And in order to complete my answer on that question, may I play that tape? It's about two minutes, and it's a tape that was made by the FBI. It's in the evidence here, as I understand it. It'll just take about two minutes. Maybe that --

REP. SCHUMER: -- (off mike) -- reserving the right to object.

REP. ZELIFF: State your objection.

REP. SCHUMER: We've had -- we've had a rule against these kinds of things. The first little people was admitted, the rest are not. If we want to change the rules, we can, but we ought to go over them.

REP. ZELIFF: Okay, could you tell us --

REP. SCHUMER: You said that was not going to happen again. You did yours, we did ours, et cetera.

REP. ZELIFF: How about -- would you be willing to submit your tape for evidence?

REP. SCHUMER: Okay, I would just say that if we do this tape, we have other tapes that we'd like inserted into the record, and as long as it will be allowed to -- we will be allowed to insert our tapes, I have no problem with Mr. DeGuerin's tape. It's not a question of the tape -- this tape or not, it's a question of basic fairness.

REP. ZELIFF: Thank you for your concerns. I think the chair will just say that if you'll submit the tape as evidence, we will all, those of us that are interested, will listen to the tape. Is that a fair -- (inaudible) --

REP. SCHUMER: But not here at the hearings.

REP. ZELIFF: Well, we don't want to get into a battle --

REP. -- (off mike) -- reserving the right to object until I ask the question. I'd just like to know what is that tape, really, Mr. DeGuerin?
MR. DEGUERIN: It's a tape that was made by the FBI during the negotiations on the 13th of April, the day before we got the letter in which he guaranteed that he was coming out, and it discusses what happened on March (sic) the 28th at the door, it discusses that he saw a video camera that was filming what happened at the original raid.

REP.: I would imagine that anybody that wants to get at the truth would be interested. Would you like to --

REP.: I think we ought to hear the tape.

REP. SCHUMER: No, I will simply say I will object unless I get the majority's consent -- we have a bunch of tapes both related to today and later that are dispositive, and as long as we can do our tapes, I have no objection to your doing yours.

REP.: -- (inaudible) -- based on (this ?) particular tape at the time.

REP. SCHUMER: Well, then I will object, because if you're --

REP.: Mr. Chairman -- Mr. Chairman, I'd like to have a parliamentary inquiry.

REP. ZELIFF: State your inquiry.

REP.: When we had our discussion at the beginning of these proceedings and we decided because of objections by Mr. Schumer's side to proceed under normal -- normal order, regular order, there was a discussion at that point, I think the chairman will recall this, about the rule under which tapes and other documentary evidence should be submitted, and my parliamentary inquiry, isn't it, in the normal course of business, regular order to allow that to be submitted or played or presented by a witness, and I'm wondering on what grounds that would be objectionable -- (inaudible) --

REP. SCHUMER: Continuing to reserve the right to object --

REP. ZELIFF: The parliamentary inquiry is to the chairman.

REP.: As far as -- the way I see it, we should submit the evidence and allow it to be played and as long as it's pertinent to what the discussion is at the time.

I think, at the same time, if Mr. Schumer has a tape later on in another panel --

REP.: -- (off mike) --

REP.: -- and a witness is presenting a piece of evidence and it's pertinent, then we ought to take --

REP. SCHUMER: Continuing my reservation, and that seems fair to me and I'll be willing to do that, it seems, but I just want the -- the audience and everybody else, everyone on the majority and minority -- today certain members of the FBI wanted to bring tapes to the later -- to the second or
third panel, I'm not sure which. We had discussions with the majority staff, and we were told that all tapes would be off limits and hence they didn't bring them.

Now, there are plenty, there are lots of other tapes, believe me, that we would like to play, and I just want to make sure before --

REP.: (Has the chair ruled?)

REP. ZELIFF: No, the chair --

REP. SCHUMER: Please -- (inaudible) --

REP. ZELIFF: The chair --

REP. SCHUMER: -- I'm trying --

REP. ZELIFF: Regular order.

REP. SCHUMER: -- (inaudible) -- I'm trying to get this done -- (inaudible) --

REP. ZELIFF: We're not --


REP. ZELIFF: We heard your reservation.

REP. SCHUMER: Well, I'd like to --

REP. ZELIFF: The chair is prepared to rule.

REP.: Mr. Chairman --

REP. SCHUMER (?): Okay, please.

REP. ZELIFF: And what --

REP.: Mr. Chairman, I'd like to respond to Mr. Schumer's reservation briefly, if I may.

REP. ZELIFF: You may proceed.

REP. SCHUMER (?): Well then, wait. Just -- if the gentleman would forbear, I was cut off by the gentleman from Georgia because he wanted a ruling --

REP. ZELIFF: Okay.

REP. SCHUMER: -- and he's not cutting you off, he's cutting me off. Let me just finish my --
REP. : I thought the chair had ruled!

REP. SCHUMER: No, the chair has not ruled.

REP. ZELIFF: The chair was about to finish the ruling, but --

REP. SCHUMER: Okay, let me just finish my point, and that is this, that the majority staff had said no tapes, and therefore those tapes -- none henceforth, and we went along with that. The rules keep changing. I don't mind, but we need --

REP. ZELIFF: Let me -- let me --

REP. SCHUMER: -- notice and fairness.

REP. ZELIFF: -- my understanding of what happened is yesterday, I believe it was yesterday, you wanted to introduce a tape. My side didn't want to do it. We had introduced a CNN tape in the beginning. I said it's only fair to allow yours. Now we have the third tape. I do not want to get into a tape war or a video war or any of the other kind, so I think at this point, the chair will rule that the tape can be submitted for evidence. Those of us that want to listen to it will listen to it, if that's a fair ruling.

REP. : Well, let me -- Mr. Chairman --

REP. ZELIFF: Yes.

REP. : So is the ruling of the chair that the playing of the tape is out of order, is that the chair's ruling?

REP. ZELIFF: The playing of the tape is out of order. We will accept it as evidence.

REP. : -- (off mike) -- to the ruling of the chair.

REP. ZELIFF: Okay. Well, it requires unanimous consent --

REP. : Unless the chair can enlighten me as to what the problem is --

REP. ZELIFF: -- to play it.

REP. : -- with playing the tape.

REP. : Mr. Chairman?

REP. ZELIFF: Okay. It requires unanimous consent to play the tape. An objection has been heard.
REP.: From who? I thought Mr. Schumer --

REP. ZELIFF: Mr. Schumer objected.

REP.: I thought -- and, again, I'm not trying to butt in, but I thought that Mr. Schumer said as long as we -- (off mike) -- that they wouldn't --

REP. ZELIFF: Well, yeah, but he qualified it by saying that he could also introduce -- and I got a feeling, just knowing on past actions around here, not (20-day zingers?), that we're going to have reams and reams of tapes and we're going to have video parades and everything else. We're going to be here long, long hours tonight, well after midnight at the rate we're going, and this is just another charade to slow things down. I just think at this point it just makes good common sense to just accept it as evidence and move on.

REP.: Mr. Chairman?

REP. COBLE: Mr. Chairman? Mr. Chairman? I know I'm going to feel your wrath for doing this, but I'll be --

REP. ZELIFF: Not you, Mr. Coble.

REP. COBLE: I'll be very brief about this. I would be uneasy about admitting this tape with an agreement that we would open the floodgates for everybody and his brother who had a tape from here on in. I do think, however, the chair might want to consider hearing this tape and then subsequent tapes that may surface consider each tape on its own (bottom?) rather than having a blanket endorsement that everybody who has a tape will come forward.

REP. ZELIFF: Well, we appreciate your comments. The chair has ruled.

Okay. Your time has expired.

Under -- I would just like to ask a couple questions that -- on accountability, Mr. Zimmerman, you talked about the Marine Corps. I have a son that's in the Marine Corps and I can understand what you're talking about. I've also been in small business and large corporate entities, and, you know, accountability is the name of the game. Somewhere along the line, somebody's got to be responsible. Who do you think is responsible for this tragedy that happened on April 19?

MR. ZIMMERMAN: On April the 19th? The general's responsible for everything that happens in his or her command.

REP. ZELIFF: The general is responsible. Anybody above the general?

MR. ZIMMERMAN: In my view, the general is about as high as you can go. I was talking in a military context --
REP. ZELIFF: You're referring -- okay, that's in the military.

MR. ZIMMERMAN: Yes.

REP. ZELIFF: Who is the general, then, at Waco?

MR. ZIMMERMAN: Whoever made that decision, the final decision to go in on April 19 with that military attack.

REP. ZELIFF: Who do you think did that?

MR. ZIMMERMAN: I really don't know, sir. I mean, there has been --

REP. ZELIFF: Mr. DeGuerin --

(Inaudible: microphone feedback. )

REP. ZELIFF: Go ahead. We can't -- (inaudible) --

MR. DEGUERIN: Someone jumped up and said, "I'm responsible. The buck stops here," and gained a lot of public admiration for that stance, but has never been held accountable, never been held accountable.

REP. ZELIFF: And Mr. Altman's letter to Mr. Bentsen, dated April 15, saying something tragic's going to occur on the 19th just kind of got discarded. Does it cause you a problem where we have people in government that, you know, they find out about these things and do nothing about them?

MR. DEGUERIN: It bothers me that something didn't get transmitted across, but it does not affect my earlier opinion that it was not the secretary of the Treasury that was responsible, it was the attorney general of the United States that was responsible.

REP. ZELIFF: On April 14, did Jeff Jamar tell you that you have all the time necessary to end this peacefully?

MR. DEGUERIN: Yes, sir.

REP. ZELIFF: And what happened? What happened to that? I mean, is it something that just got yanked out of his hands?

MR. DEGUERIN: The truthful answer to that is I don't know what happened. My assumption was is that that decision was overridden at higher headquarters.

And if I could answer that -- someone said something earlier about Byron Sage (ph) making a recommendation at an earlier point in time. Byron Sage (ph) was an assistant special agent in charge in Austin. He was junior to both Jeff Jamar, who was a special agent in charge out of San Antonio,
and Special Agent in Charge Bob Ricks out of the Oklahoma City office.

Both of them were senior to Byron Sage (sp). I find it incredible that a junior special agent like Sage would be able to make a decision of that significance.

REP. ZELIFF: Mr. DeGuerin?

MR. DEGUERIN: I've thought a lot about that because Byron Sage -- excuse me, Jeff Jamar said to me when I was frustrated a little bit and told him that "I wish I could say he's coming out today, but it's going to be a while till these seals get written," he said, "Don't worry, we've got all the time it takes." And then --

REP. ZELIFF: Do you feel the FBI would have allowed Koresh to surrender to anybody other than the FBI?

MR. DEGUERIN: Well --

REP. ZELIFF: Was that discussed? Texas Rangers?

MR. DEGUERIN: It was discussed. It was never rejected. I thought it would be a good idea and I wanted to see it happen, but I don't think that that's what caused there not to be a surrender.

REP. ZELIFF: Describe your feelings after you heard that the raid had moved forward. The gas was putting in -- both of you just describe how you felt. And were you helpless? Was there anything you could do?

MR. DEGUERIN: I was shocked.

REP. ZELIFF: Describe your emotions.

MR. DEGUERIN: I was shocked. I was in north Texas getting ready to start a trial. I was certain that we had some time. And when I got the phone call to look at the screen and see what's going on, I immediately called the FBI. I wasn't able to reach Jamar. The only message that I got -- and I can't remember the name of the agent I talked to -- was "We don't need you. "I said I'd come back down. "I'll go back in. Just hold off. Let me see if I can tell them that you're out of patience. "And I rushed from there to Waco. By the time I drove from Denton to Waco, everyone was dead. The fire was over.

REP. ZELIFF: How'd you feel about that? I mean, did you just pull over to the side of the road or what went through your --

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MR. DEGUERIN: Mr. Zeliff, I met most of the people in there. I met the children. I wanted to be part of helping to save their lives. And I --
REP. ZELIFF: It had to be a rough one.

MR. DEGUERIN: I feel that if I had been a little bit more persuasive, I could have gotten David Koresh out of there quicker. And so I feel that I failed. But I also feel like it was a great mistake to start the tanks and tear gas. Whether you accept that David Koresh started the fire and committed suicide with all those people or whether it was accidental or not, there's one thing certain. Those people would be alive today if those tanks and tear gas hadn't started rolling on April the 19th.

REP. ZELIFF: Mr. Zimmermann, same question.

MR. ZIMMERMANN: Mr. Chairman, I was in Houston, Texas at the time that the operation began. I waited for the -- I called, reached Henry Garcia of the negotiation team, who had been sort of friendly with us when we were there. He answered the phone. I said, "What's going on? "He said, "Have you seen the television? "I said, "Yes. Are we still going to be part of the surrender plan? "Because I thought at that time, like everybody else did, that people might come out after that. He said, "I'm not at liberty to discuss the tactical plan, but go ahead and come on up. "So I reached Dick and he started down from Denton and I started up from the other direction, both three-hour jobs. And the fire broke out when I was still about two hours from Waco.

REP. ZELIFF: Well, how did you feel? And maybe each of you then also tell me, how did you feel the FBI must have felt?

MR. ZIMMERMANN: Well --

REP. ZELIFF: How did you feel?

MR. ZIMMERMANN: How did I -- I felt betrayed. I was hopeful. I was clearing my schedule. I thought they'd be out within another 10 days. And I could not believe that the FBI or the Justice Department or whoever it was would undertake such a dangerous operation knowing that there were old men and pregnant women and children in there. I just couldn't believe that they would do that. And then there was a -- KTRH Radio, a talk show, had a live report from it. And so I was on the road actually driving while that building was burning. And I have to tell you, you won't hear this very often from defense lawyers, but I echo Mr. DeGuerin. I had a sense of failure unlike any I'd ever had before -- not that I've never failed before, but not where people who have put their lives in my hands died.

REP. ZELIFF: The question was asked before the red light, how do you think the FBI felt?

MR. ZIMMERMANN: My view was that, you know, I've had cynical remarks made to me after speeches because Bob Ricks was up and seemed to be almost with tears in his eyes, and people were saying, "All he was worried about is losing his job and his career. "I don't believe that. I think he really did feel bad. I think he's a good -- what I call a good cop. Good cops don't really care too much about what happens to bad people or guilty people, but they sure do care about things like children and innocent people and they don't like something like this to happen. My view was that was genuine remorse being displayed by Mr. Ricks.
I think Jeff Jamar had genuine remorse. After all, he was in charge. This was his operation. He was the scene commander. His career was over and 80 people were dead because of something that was technically under his control because he was the on-scene commander. I think the FBI felt terrible. I hope that when they come here they don't tell you that they didn't feel terrible.

MR. DEGUERIN: And my response, Mr. Zeliff, I saw Bob Ricks at the press conference that followed the fire and he did have a break in his voice; a frog in his throat, if you will. And I think he was sincere. And I called him after that. We had had a good relationship. I said, "Mr. Ricks" -- I think I called him Bob -- "my heart goes out to you. I know that you didn't intend for it to end this way. I'm going to be critical of you. I'm going to be critical of the decision. But it's not personal. And I'm sorry that it ended this way."

REP. ZELIFF: And it may not have been his decision. This concludes this panel. We thank you both very, very much. We will resume at five minutes after the next vote. And again, I think we're going to go a ways, but we will adjourn until five minutes after the next vote.

#### END OF PANEL