PANEL A WITNESSES:
DICK DEGUERIN, ATTORNEY FOR DAVID KORESH
JACK ZIMMERMAN, ATTORNEY FOR KORESH'S LIEUTENANT, STEVE SCHNEIDER
TUESDAY, JULY 25, 1995
REP. ZELIFF: The Joint Oversight Committees on Waco will now come to order. Today will be a very interesting day -- a long day. We have panels that will take us, I believe, late into the evening. We're hopeful that we can move forward. And I'm -- we're -- I talked with my colleague, Bill McCollum. And rather than duplicate some of the material, he's going to talk in his opening statement about what we've learned so far. And I'll just quickly talk about where we're going.

From my point of view, as we reach this halfway point, we have been very committed to get to the truth, to bring out all the facts as to exactly what happened at Waco. We got off to a tough start in the beginning, but I think that we are really dealing with substance. And again, we learned some major things. And again, Bill will get into these in detail. But, in Mr. Rodriguez's testimony yesterday, I think our hearts went out to him as he explained, in great detail, how he tried to warn people that the Davidians had been tipped off. We'll more about that today. We also learned that David Koresh offered to have people come in and see the weapons. And again, these are the things that we really wanted to get to the bottom of. We now move into phase two. All the facts just mentioned, except -- and we'll get into basically what happened during the 51 days that followed. On March 1st, 1993, the FBI took control. ATF was relieved of command, and the FBI and the Texas Rangers began what has come to be known as the Waco Siege. The FBI-controlled siege ended with CS gas and a fire that burns in many hearts and minds. That fire, which followed insertion of CS gas into the compound, led to 22 children and more than 60 men and women burning alive. In just 15 minutes, the people who had been on the other end of the telephone were dead.

This week, we ask the Justice Department to answer tough questions about their role. What happened that caused this second tragedy? Who made the key decisions? Why were they made, and on what information? And how can we prevent anything like this ever from happening again. We will hear from scholars, lawyers, and eventually Janet Reno herself. Did the FBI's negotiators give up? Did internal tension at the FBI develop between the tactical people and the negotiators? Were offers of surrender made and rejected? Could the Texas Rangers have ended the siege, or assisted in that end, if given a chance? Was the crime scene evidence destroyed or tampered with in any way? Any Waco documents? What were the roles of Mr. Potts, Mr. Hubbell, the attorney general, and the president of the United States? Did the president approve the use of CS gas? Did the attorney general approve the use of CS gas? Who accelerated the use of CS gas? Why was it used in such great volume? And could that fire have been prevented?

Still, as ATF Director Magaw said yesterday -- and I just think that after sitting here all day and about six hours listening to he and Ron Noble, I can't help but feel good about his comments, as he said that, "Constitutional oversight hearings are good for law enforcement everywhere in this country. They are good for law enforcement on the local, state, and federal levels -- for one simple reason. They remind us all of the need for good plans, good procedures, and good responsible practices."Director Magaw, I believe that you hit the nail on the head with that statement.

I would like to say that every single one of us is committed to not only finding out what happened to those four brave ATF agents, but also the men and women and children that also perished. We have a great respect for law and order. And I think anybody that makes any comments, anywhere, any time, that goes against that is irresponsible. Our commitment is getting at the truth. We have an oversight responsible role, and that's exactly what we intend to do. I'd like to yield to Mrs. Thurman
from Florida for her opening statement.

REP. KAREN THURMAN (D-FL): Thank you, Mr. Chairman. Today, we begin the next phase of our hearings. During the past four days, we heard about the role of the ATF and the Department of Treasury in the planning of the faithful raid outside Waco on February 28th, 1993. Four ATF agents were killed, 20 were wounded, and up to five Branch Davidians were also killed on that day. Yesterday, we listened to heart-wrenching testimony from Robert Rodriguez as he described his experiences inside the compound in his efforts to warn his superiors that Koresh knew agents would be coming. Robert watched, helplessly from the perimeter, while his fellow officers were cut down by automatic weapons fire. We were all touched by Mr. Rodriguez's account.

Yesterday, we also heard from agents Ballesteros and Williams -- the men who attempted to serve the warrant to David Koresh. Mr. Williams and Mr. Belliseros, and every single other witness who was in Waco that day, agreed that the Davidians opened fire first. This is an important fact that is now established in the hearing record. It has also been firmly established that serious errors in judgment were made by ATF and other Treasury officials. As I stated yesterday in my opening statements, these mistakes are clearly outlined in the blue book. Once again, I have heard nothing up to this point that leads me to believe that there was any attempt to whitewash or cover up the fact in this case.

Mr. Chairman, yesterday we also took testimony from the secretary for law enforcement, Ron Noble, and the ATF Director John Magaw. I was encouraged to hear from both of these gentlemen of the sweeping changes that were made in both the agencies. Secretary Noble stated that he issued a directive in August of 1993 that requires the Treasury Office of enforcement to be notified of any significant operational manners that included the business -- the department's bureaus. In addition, Secretary Noble outlined the steps he had taken to improve general oversight within the department.

Director Magaw also talked about changes made at ATF. Among the changes are increased and accurate intelligence, crisis management training for all ATF staff, and finally, a new ATF order that outlines undercover outlines. I was encouraged by the statements of both Secretary Noble and Director Magaw, in response to my question about American's constitutional right. Both men said it was important for every one of their employees -- from management to field agents to be acutely aware of citizens rights under our constitution.

Today, we start our inquiry into the role of the FBI and the Department of Justice in the 51 day stand-off that followed the February 28th raid. We will specifically be looking into the negotiations and the role of the FBI. We will undoubtedly hear from some of today's witnesses that the FBI did not fully pursue negotiations. However, I believe that the testimony of Ms. Jewell, Joyce Sparks, and Robert Rodriguez, all establish clearly that Koresh was never going to leave the compound in order to fulfill his prophecy, Koresh needed to create his own Armageddon. By surrendering, he would have been proven a false prophet to his followers. This fact is also now firmly established in the hearing record, and I hope will be further examined during today's testimony.

Another important point is that, after the death and wounding of both ATF agents and Branch Davidians, a slow and careful process was employed the FBI to negotiate a peaceful end to the gun battle. Let us not forget that the FBI maintained its channel to Koresh for 51 days.
Some will say that Koresh constantly lied and kept looking for opportunities to spread his views. As we will hear, David Koresh always had another reason not to surrender, another condition, another demand, another chance to manipulate. After nearly two months of this posturing, it became apparent that Koresh was not leaving the compound under his own accord. There was no evidence that he would have relinquished the national spotlight, which he exploited for 51 long days. He would have continued to evade the real issue. He had answered a warrant with gunfire that killed four law enforcement officers. In closing, Mr. Chairman, let me state again, as we enter this phase of the hearing, that all I seek is the facts and we make sure an event like this never happens again. Thank you, Mr. Chairman, and I yield back the balance of my time.

REP. ZELIFF: Thank you, Mrs. Thurman. The chair recognizes and introduces the co-chairman of the joint subcommittees and chairman of the Judiciary Committee's crime subcommittee, my good friend, Bill McCollum from Florida.

REP. BILL MCCOLLUM (R-FL): Well, thank you, Mr. Zeliff. I appreciate that introduction in our fifth day, as we begin today to look for the first time at the Federal Bureau of Investigation's role in this process and what happened on the fatal last day after 51 days of siege. I think it's appropriate for us to very briefly look back on what we've just witnessed, and particularly what we heard yesterday, because yesterday was a very fruitful hearing as far as I was concerned -- in fact, both sets of them were -- in trying to put in perspective what happened on February 28th and why it happened.

First of all, I think there were two very significant points that were discovered yesterday which I certainly had not been aware of and I don't believe were in anybody's report or investigation in the kind of decisive manner we learned them yesterday. One of those is that the ATF did not have the capability to conduct a siege. They didn't have the experience or the negotiators to actually do that. In the discussions yesterday evening with Mr. Noble, we learned that. We had documentation of that, and we found out that for a fact. And that was a factor, a very serious and significant factor, leading to the decision ultimately to do the dynamic entry that led to the tragic deaths that we know about on the 28th of February.

The second thing that I think we learned yesterday that was very important, and we'd been building up to it with a lot of questions on days before but really hadn't quite gotten to the point of getting the admissions that came out yesterday, was that the ATF actually abandoned the idea of trying to arrest David Koresh outside the compound some 10 days or two weeks or maybe longer before the February 28th raid. In other words, they weren't looking to try to cut him off or cut the head of the snake off, as somebody said, and try then to do whatever they needed to do to go in and search the compound. They had completely abandoned that idea.

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Now, those two things are important for a few reasons, and I want to outline them. And in doing that, I'd like to make the observation, at least it's my observation, that this is a case where there's plenty of blame to go around. There's not one single thing that caused the problems that occurred on the day of this raid on February 28th. There was a lot of emotion out here yesterday, a lot of finger-pointing, understandably a lot of conscience being brought forward. But let's run through a few of
those things.

First of all, clearly if this element of surprise or the point of secrecy had not been lost, this raid might have been successful. The agents all expressed that. So the loss of secrecy, the loss of surprise, certainly contributed to the failure of the raid on the 28th. The "but for" concept is there. But for the loss of surprise, there might not have been the tragedy that there was. But in addition to that, we can say that but for the fact that the raid planners -- this came out yesterday -- not having heard about or listened to Joyce Sparks or anyone else with the expertise on the religious nature and the real true meaning of what David Koresh was trying to say, but for the failure to listen to their warnings about not going in directly as they did, and instead trying to arrest him outside the compound, maybe this would not have happened.

In addition, one can say but for the fact that David Koresh was not arrested and but for the fact that they, at the ATF, abandoned the idea of arresting him outside the compound and separating him from those inside, this tragedy might not have happened. Another "but for" comes with the question of the press involvement. I don't think there was any stronger words yesterday than Mr. Hartnett condemning the cameraman and the press for getting involved as aggressively as they did and blowing the cover. I don't know to what degree ATF's involvement with the newspaper and some of the other activities about the press led to this hype or led to the fact the cameraman was on the road, but obviously the press was overly aggressive and obviously the cameraman blew the cover of this raid to the postman who went in and was a member of the Davidians and told Koresh about the folks who were coming that morning. So one can say but for the cameraman and but for the overzealous press, this tragedy might not have occurred.

And then one has to ask himself, despite Mr. Noble's trying to find a way to excuse it last night, if Secretary Bentsen, when he first took over as secretary of the treasury, had done what one would normally expect a secretary to do in the first 30 days he's in office, and that's meet with the heads of his law enforcement agencies such as the ATF, if Secretary Bentsen had just met with Mr. Higgins and had an ordinary conversation in which he asked him, "What are the significant items on your plate right now? " which I suspect he would have asked, well, maybe, just maybe, then the facts would have come out earlier about the fact that this Waco raid was going to take place or something was going to happen down there and the Treasury Department would have investigated it in a much more thorough manner instead of learning about it 48 hours before, and maybe this entire tragedy would not have happened.

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Then we have the report, the Treasury report. I would suggest that we learned that it is a reasonably good report or it was a reasonably good report, but it was not the terrific, all-perfect report that some would like to have you believe. We learned a lot of new information and we did place some of the things in the record yesterday that clearly were not in that report.

What bothered me the most about all of that, though, was the fact that it appears that Mr. Noble and some others down at Treasury did attempt to distance themselves from the events of Waco, to try to quickly assess the blame and place it on the ATF agents on the line and make them the fall guys. And yes, there was some blame there to be placed, and there's nothing necessarily wrong with the
placing of the blame. But the manner in which it was done and the callousness with which it was done seems to me to be somewhat striking at times.

And one of the ways that I want to point that out is to just point out this element-of-surprise question. After I questioned Mr. Noble yesterday extensively, and listening to all the other witnesses leading up to this question about what was it all about, it was very clear, and he admitted it, that at no time did the Treasury Department direct anybody at the ATF to abandon the raid if the element of surprise was lost. Now, they did think they had assurances that this raid would not take place if everything didn't go right, and Mr. Higgins was confident that it wouldn't have occurred had the agents in the field done what normally you would expect them to do and not go forward if surprise was lost and they learned about it.

But nonetheless, Mr. Noble went ahead and did things that were not only in the report suggestive of the fact that Treasury directed this to happen and it didn't happen, and therefore this was the real problem in this raid, but also on 60 Minutes, on May 14th, 1995, he said, and I quote, "What was absolutely clear in Washington at Treasury and in Washington at ATF was that no raid should proceed once the element of surprise was lost. Then the raid planners would have said, 'Okay, we can't go forward with the raid. That's what should have happened. That's what the raid planners were trained to do. That's what they were directed to do, and they didn't do it."

Now, that simply wasn't so, and Mr. Noble stretched that point; I wouldn't say trying to tell a lie about it, but I would say it was all part of the mental attitude down at Treasury at that point to distance themselves and make sure they didn't take any of the blame for this. They were new in office. They attempted very hard to put distance between themselves and those who were at fault. That's what I got out of yesterday's hearings, Mr. Chairman. I think we now need to put that aside. We'll come back to it in our final report of the committee at the end, after we've finished all of this work. And we are today, as you've indicated, going to proceed to focus on the second half of this, the 51-day siege, and what happened that led up to the final tragedy at Waco in April. Thank you.

REP. ZELIFF: Thank you, Mr. McCollum. The chair now recognizes the ranking minority member of the crime subcommittee, Chuck Schumer from New York.

REP. CHARLES SCHUMER (D-NY): Thank you, Mr. Zeliff. And first let me say I thought yesterday's hearing represented both the best and the worst of what could be and what could come out of these types of hearings. The best was, I think, hearing Mr. Rodriguez tell what happened and hearing the rebuttal from the other witnesses. It came out clearly. There was a dispute as to what happened, but everyone could make their own judgment. And I think that that is very, very important because, as I said at yesterday morning's opening statement, losing the element of surprise and then going ahead with the raid was the greatest, greatest mistake that occurred in the whole Waco tragedy.

The worst is sort of idle throwing out of words with very little proof; the word "cover-up" yesterday. "Cover-up" is a serious word. It implies a crime. And Mr. Hartnett threw it out. A few members of this committee latched onto it. But there was not a single bit of proof of cover-up. And that is the kind of thing, in my judgment, that poisons these hearings. Getting at the truth?
Great. We should, even if the truth has already come out. But just throwing around words that really have no basis in fact and that are very serious words, that is a danger of this hearing. It's been a danger throughout. We in the minority have tried to limit that danger, and I hope that it will be continued.

In this regard, I do want to praise my colleague Mr. McCollum, who last night -- most of you were gone -- said that he agreed that there was no real proof of cover-up and, in fact, even today in "The Washington Times," hardly a fan of the government's position, they said that the hearings produced, quote, "no proof" that Chojnacki's and Sarabyn's reinstatement was inspired by a cover-up. So I think all of us have a responsibility to make sure that when we throw around these words that there be some backing, for the very reason that there are a few in the extreme of America who want to believe the worst, and saying things to them in a national audience that are not backed up play into what I would consider paranoid fears.

Finally, I would say that, again, yesterday's hearing was dramatic. It served a purpose. But let's not -- let's not forget and let's not get away from the fact all the major facts -- Mr. Rodriguez's testimony, Mr. Sarabyn and Mr. Chojnacki's response -- were already in the public record.

I stand by my statement that nothing very materially new came out, even the thing mentioned by Mr. McCollum that ATF gave up on the idea of serving Koresh. He's right, but it was criticized -- ATF was criticized in the very report for that, in the blue book, which I think is -- it's not a hundred percent accurate document, but it's a darned good job.

The next point I would like to make is about Tuesday morning quarterbacking, and this relates to the next phase of the hearing. It's going to be very easy for every one of us in hindsight to say, "This was done wrong. That was done wrong. "And today, for instance, we're going to hear from a lot of Tuesday morning quarterbacks. We're going to hear from critics, volunteers, amateurs who've had no experience in negotiating with a heavily armed cult. We're going to hear from those who bore no responsibility then or now for ever taking action, and even we're going to hear from some who have conflicts of interest -- lawyers and lawsuits -- who benefit from positions against the government.

And we ought to be careful. Just remember this, ladies and gentlemen. We were dealing with someone who had an apocalyptic vision. Take the hypothetical that Janet Reno waited more than the 51 days and on day 57, Koresh, through some maddening view of his own, set fire to the compound while the FBI agents had still surrounded it. Guess what would be happening? Everyone would be criticizing Janet Reno for being indecisive and for not taking action. Monday morning or Tuesday morning or any morning quarterbacking is easy, but we must remember that we had -- that it is difficult to do and, furthermore, that we had an armed group of people led by someone who was a child molester, led by someone who violated -- violated -- laws.

Another argument that will come up today is about limits to tolerance. Well, we're going to hear a lot of academic lectures on how we should be tolerant of new religious sects. I firmly believe in that. I believe in faith, I respect faith, I have faith myself. I was the author of the Religious Freedom Restoration Act, which expanded the bounds of what religion could permissibly do against -- in
America, no matter what the government said. In fact, myself and Chris Cox joined in that with Senator Kennedy and Orrin Hatch and passed the law last year. But, folks, there are limits to tolerance. Sexual perversion, the rape of small children, the hoarding of large amounts of weapons is not excused by any religion and by any Bible. Finally, let's keep up doing something. I detected a change in the tone of these hearings from my friends on the majority side. The first few days, there was much more bashing of law enforcement than there is today. I believe -- let the record show nervous and defensive laughter. (Laughter.)

REP. ZELIFF: Not in your wildest dreams. Not in your wildest dreams.

REP. SCHUMER: In any case -- in any case, let us keep remembering, let us keep remembering the brave men and women of law enforcement who were under significant, significant strain and stress. They are not our enemies. The ATF was not our enemy. The FBI is not our enemy. If they made mistakes, let's correct them, but let us not weaken them, let us not bash them, let us not pick apart every single little immaterial decision that they made in an effort to bring those proud and brave agencies down.

Thank you, Mr. Chairman.

REP. : Mr. Chairman, may I make a unanimous consent request?

REP. ZELIFF: Yes.

REP. : If I might, I'd like to ask unanimous consent that the interview transcript of Ron Noble's with CBS on "60 Minutes," May 14, 1995, be entered in the record.

REP. ZELIFF: Without objection, so ordered.

We have today a special opportunity to hear some new additional information, and I'd like to just introduce the biographies of the panel. Dick Deguerin is a widely recognized defense attorney in the state of Texas. He represented David Koresh and entered the compound during the siege.

I would like to also introduce Mr. Jack Zimmerman, also a well-known and respected attorney -- happens to be a new grandfather within the last few hours. We appreciate your being here. You represented Steve Schneider. He also gathered firsthand evidence from entering the compound during the siege. In addition to being a defense attorney, Mr. Zimmerman is a colonel in the United States Marine Corps Reserve. He practices as a military judge. Two very credible witnesses, welcome. If you would please stand and take the oath? Raise your right hand. Do you swear -- solemnly swear that the testimony you're about to give these subcommittees is the truth, the whole truth, and nothing but the truth?

MR. DEGUERIN and MR. ZIMMERMAN: I do.

REP. ZELIFF: Thank you. Please be seated.
REP. SHEILA JACKSON LEE (D-TX): -- (off mike) --

REP. ZELIFF: Let the record show that both answers were in the affirmative. Yes.

REP. LEE: -- (off mike) -- and I would simply like to greet these two very fine attorneys and fine constituents and appreciate their public service, as well. I know both gentlemen, Mr. Deguerin and Mr. Zimmerman, who have given of their time to the less fortunate, who have been stellar members of the Texas Bar Association and additional bar associations throughout the nation, and I'm just very proud to have them here and have them as Americans and have them as Texans and to have them as Houstonians, and I welcome -- (inaudible; crosstalk) --

REP. ZELIFF: Thank you very much, Ms. Jackson Lee. I appreciate that. I also note that their families are sitting behind them, and we welcome all of you.

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The first question -- the chair would like to recognize the chairman of the full committee on government oversight, Mr. Bill Clinger from Pennsylvania.

REP. BILL CLINGER (R-PA): Thank you, Mr. Chairman. Before I yield to the gentleman from Maryland, I would just note that the gentleman from New York indicated that he sensed a change of tone on this side of the aisle. May I say that I have recognized a similar change of tone on the other side of the aisle. I do recall at the beginning of these hearings, the gentleman from New York indicated that he thought that there was no purpose to these hearings, they were redundant, perhaps politically motivated. I was pleased to hear him say this morning he feels that a useful purpose is being served by these hearings, which I totally agree with.

At this point, I would then like to yield the rest of my time to the gentleman from Maryland, Mr. Ehrlich.

REP. ROBERT EHRLICH (R-MD): Thank you, Mr. Chairman. Welcome to Washington. Thank you. In more ways than one, right. Mr. Zimmerman, by way of introduction -- I have a question for you, but, by way of introduction, sitting here for the first four days, particularly with respect to yesterday's testimony, I am fairly satisfied that a lot of the procedures, a lot of the personnel, a lot of the mindset that ATF had prior to Waco is no longer in place and that that's been a very positive aspect of these hearings.

To me, one of the most disturbing findings or pieces of evidence that we've uncovered so far was a series of memos to Mr. Barr, brought forth, I believe, last Friday. Now, sir, you certainly are not an amateur when it comes to criminal law, are you?

MR. ZIMMERMAN: No, sir.

REP. EHRLICH: In fact, you are a professor of law?

MR. ZIMMERMAN: I am board certified in criminal law by the state and national boards.
REP. EHRLICH: Is there -- you are also, I believe, in the reserves, a Marine colonel?

MR. ZIMMERMAN: I just retired, yes, sir. I was a colonel in the Marine Corps Reserve.

REP. EHRLICH: And you have sat as a military judge, sir?

MR. ZIMMERMAN: That's correct. That was my last assignment.

REP. EHRLICH: Sir, are you familiar with the material that was produced last Friday with respect to a series of memos emanating from the Department of Justice to Treasury, the topic of which, generalizing, was the directive to Treasury to cease investigation into various aspects of the Waco incident, because Brady-type material had or could be produced. Are you familiar with this memo, sir?

MR. ZIMMERMAN: Generally, yes, sir.

REP. EHRLICH: Now, sir, I think Mr. Noble's testimony yesterday was quite illuminating, because we're not talking about the shooting investigation that ATF had conducted, we're talking about directives simply from Justice to Treasury, and, sir, my question to you is -- and this goes far beyond these hearings, in my view -- do you have a professional opinion, sir, with respect to the appropriateness of those memos and those directives?

MR. ZIMMERMAN: Yes, sir, I do.

REP. EHRLICH: Could you please provide this committee and the American public with your opinion?

MR. ZIMMERMAN: As I understood, the rationale --

REP. ZELIFF: Sir, could you move that mike up closer to you?

MR. ZIMMERMAN: Yes, sir, how's that?

REP. ZELIFF: Great.

MR. ZIMMERMAN: If there's a specific part of any particular memo, it might make more sense if I would have it in front of me, but in general, as I understood what happened was the rationale given for those directives was to work to prevent simultaneous investigations.

REP. EHRLICH: (Correct ? ), sir.

MR. ZIMMERMAN: I think that's what it was.

REP. EHRLICH: That's been the testimony.
MR. ZIMMERMAN: In general, if an investigation were going forward and being done correctly, it probably would not be necessary to do two, and one might get in the way of the other. But that's not what I understood the purpose stated in the memos was. As I understood, it said that the memos were revealing that the evidence was not hanging together, not fitting together, and that it was creating Brady material that would have to be turned over to the defense.

REP. EHRLICH: Now, sir, the phrase Brady material has been thrown around these hearings. Would you please give a definition that the American public can understand?

MR. : Yes, sir. The Supreme Court of the United States has established a constitutional rule that if there is evidence that would either go to exculpate or show the innocence of an accused person, or would lessen the punishment if convicted, and the prosecution has that evidence, that must be provided to the defense so that the fact finder, the jury or the judge, would be aware of it.

REP. EHRLICH: So, sir, in reality, it creates an affirmative duty on the part of the government to produce exculpatory material, is that correct?

MR. : That's correct, both in state and federal prosecutions. And my understanding was, from those memos, is that the concern was not that there not be two simultaneous investigations that might be stepping on each other and going in different directions, but instead, the purpose of stopping the second investigation, if you will, was because it was producing conflicting, exculpatory-type material that, under the rules, would have to be turned over to the defense.

REP. EHRLICH: Sir, is it your testimony that such memos directly contradict the law that Brady dictates?

MR. : If as a result of those memos, exculpatory evidence was not turned over to the defense, I think that whoever was on trial in that particular case, this or some other case, would probably, if that could be proven to have been material evidence that would have affected the outcome of the trial, it would probably result in new trials for the people who were wrongly convicted.

REP. EHRLICH: Thank you, sir. Mr. Zimmerman, also let me direct you to the events surrounding the incident. I know you certainly know -- you have a lot of information. Could you describe the 911 calls that took place, and do you have an opinion, sir, as to why it took so long to secure a cease fire?

MR. ZIMMERMAN: Let me tell you what I know about the 911 first, and then move to the second one, if that's alright. When Dick Deguerin and I were in on April the 1st and conducted a fact investigation so that we could give legal advice to our clients, Wayne Martin told us that he had called 911 as soon as the shooting started. And I remember distinctly interrupting him, because he was a civil lawyer, a Harvard Law School graduate, and I said, Wayne, don't lie to us, because 911 calls are recorded, and when we get out of here, we're going to go get those 911 calls, and if your voice isn't on them, then we're going to doubt whatever else you tell us. So we were aware on April the 1st that there was a 911 call, and they said it reflected what had been passed on by the postman,
that is that 75 armed men were going to be making an attack.

And you know there weren't 75 men as it turned out, but I think it's significant. When the 911 tapes were released, there's Wayne Martin using that exact figure. There's 75 armed men here; they're shooting; we have women and children. Call them, tell them to stop or to hold off. When we were in, we were also told that the firing started from the outside, and that they had been fired on by helicopters. If you listen to the 911 tapes that were eventually released, you hear my client, Steve Schneider, in the background in some other part of the room. Maybe he didn't even know that the telephone call was being made, and he's saying here come the helicopters, or here come the choppers with people on them. They're firing again.

So that's recorded, and so the significance of those tapes, I think I'm to your second part of your question, to me and to Dick was that we were being told the truth by the people on the inside, by independent evidence that has nothing to do with the credibility of our clients; that is a recorded telephone call.

REP. ZELIFF: The gentleman's time has expired. Mr. Wise from West Virginia, five minutes.

REP. WISE: Thank you, Mr. Chairman. For the purpose of this panel, I would yield my five minutes to the gentle woman from Illinois, Ms. Collins.

REP. COLLINS: I thank the gentleman for yielding. Before I begin my questions, let me make an observation. The 51-day standoff at the Davidian compound was, according to the Department of Justice, unprecedented in the annals of American law enforcement. Over the 51-day period, there were 25 trained FBI negotiators maintaining daily contact with people in the compound. They consulted with a vast range of religious, medical and scientific experts. Those critics who will argue that the FBI should have waited even longer have a big burden. Koresh was a known liar and a child sex molester. The physical conditions of the compound were deteriorating every day. No one left the compound before March 23rd, almost a month before the insertion of the CS gas. While we will never know for sure whether an appeal to Koresh on the basis on religious dogma would have resulted in his surrender, there are some things about his religion that we do know.

We do know that Koresh used his religion to justify sexually molesting young children. We do know that Koresh used his religion to terrify children. We do know that Koresh used his religion to separate children from their parents. We do know that Koresh used his religion to murder ATF agents. Finally, in the words of young Kiri Jewell continue to ring in my ears. Koresh, she said, was not coming out. He wanted to die. Under these circumstances, difficult to believe that any other outcome was possible. And so Mr. Deguerin, I'll ask you, did you hear the testimony of 14-year-old Kiri Jewell who testified that she was sexually molested by Koresh when she was only 10 years old?

MR. DEGUERIN: Yes, ma'am, but I didn't come here to defend David Koresh, and I don't intend to. What I did come here for is to give my knowledge to this panel about what I saw.

REP. COLLINS: And you did come here to answer my questions. And so my next question is was
Koresh concerned about the public's perception of him as a child molester?

MR. DEGUERIN: Yes, he was.

REP. COLLINS: Isn't it true that child molesters don't live long in prison, as a rule?

MR. DEGUERIN: If I see what you're leading to, yes, he was afraid of jail.

REP. COLLINS: No, I'm just asking you a question. I don't think you can read my mind. You can just answer my question.

MR. DEGUERIN: There are efforts made to segregate child molesters in jail from the rest of the population, and when they're not segregated, they're in danger of being killed.

REP. COLLINS: Well, did he ever talk about his chances of surviving in prison as a known child molester?

MR. DEGUERIN: Yes, he did. And I covered that subject with Sheriff Harwell (sp) and was assured that he would be segregated in the jail.

REP. COLLINS: So then he did have some major concerns. Once you became his attorney, did any of the children, women or any other Davidians come out of the compound?

MR. DEGUERIN: I'm sorry?

REP. COLLINS: After you became his attorney, did any of the children or the women, or any other Davidians come out of the compound?

MR. DEGUERIN: No, ma'am.

REP. COLLINS: Why would you say that was?

MR. DEGUERIN: Because it was their home. They didn't want to leave their home. They didn't know why they had to leave their home. They were a religious community that were very proud of their home. They built it by hand. They didn't want to leave.

REP. COLLINS: How long were you his attorney?

MR. DEGUERIN: Well, from March the 9th until April the 19th.

REP. COLLINS: So that's roughly four weeks?

MR. DEGUERIN: Well, it's a little longer than that, yes.

REP. COLLINS: A little longer than four weeks. Did you do it on a pro bono basis, or were you
going to charge some kind of fee?

MR. DEGUERIN: Well, it turned out to be pro bono. I was hoping to be paid and thought I probably would be, but it didn't turn out that way.

REP. COLLINS: In order to talk with Koresh, you went into federal court and filed a petition for a write of habeas corpus, is that correct?

MR. DEGUERIN: Yes, ma'am.

REP. COLLINS: And my understanding is that Federal District Judge Walter Smith, Jr. ruled that Koresh, having been involved in the killings of four ATF agents, ruled that cult members do not have legal rights to counsel while they remain hold up in a heavily armed compound, is that a fact?

MR. DEGUERIN: No, ma'am.

REP. COLLINS: Explain it to me.

MR. DEGUERIN: He ruled that habeas corpus was not the proper method for establishing contact with Koresh. I believe he was wrong and intended to appeal that ruling, but the FBI mooted by appeal by putting me in contact with him.

REP. COLLINS: So the FBI then allowed you not only to talk with him, but to meet with him after he and his followers had killed -- already killed four ATF agents, is that right?

MR. DEGUERIN: Yes, ma'am.

REP. COLLINS: Have you ever been allowed to interview a client prior to his arrest for the murder of law enforcement agents after being turned down by a court?

MR. DEGUERIN: I frequently have interviewed clients before they've been arrested and when they are either being sought by the law with a warrant or before a warrant has been issued. It's a frequent practice of criminal lawyers to do so.

REP. COLLINS: Well you spent a lot of hours with Koresh, is that right?

MR. DEGUERIN: Yes, ma'am, I did, about 32 hours in person and on the telephone.

REP. COLLINS: Now is it true to say that he felt that the ATF raid on the compound and the killing of four ATF agents was a fulfillment of his prophecy?

MR. DEGUERIN: No, not exactly. He thought that it had been prophesied that they would be attacked and it was a debate that we went into quite at length about what it all meant and what was next to happen. There was -- I was receiving advice from two religious experts about apocalyptic vision and the Bible. I wasn't very aware -- well versed in it myself, I'm just a Methodist. (Laughter.) But I did learn a lot, both from David and from Dr. Tabor and Dr. Arnold, who are the next
witnesses following me, about his view. His view was a flexible view; that is he was able to -- his view of what was prophecy was not set in concrete. They didn't have to die and he didn't see the end of this situation as necessarily being his death and the death of his followers.

REP. COLLINS: Well that's --

REP. ZELIFF: Ms. Collins, your time has expired.

REP. COLLINS: Oh, shoot.

REP. ZELIFF: I know, you are having a lot of fun. The Chair now recognizes Mr. Buyer from Indiana for five minutes.

REP. BUYER: Thank you, Mr. Chairman. I just have one quick comment. That is I have to agree with my good friend from New York about all of us exercising the responsibility of our words. And I think that's why -- my laughter is that's why you see the change in tone coming out of Mr. Schumer, is that he does also -- I believe exactly what he is saying is that we have to be better -- exercise better responsibility in our words. And that's why some of us are pretty upset with the President's press secretary being pretty loose with the tongue and saying things that I am sure he does not mean. And that's why you don't hear as much about the NRA, and I agree with Mr. Schumer's assessment a couple of days ago that the water has dried up in that river. And that's why you have seen the change in tone coming from the other side, and that's why I had to share my laughter when he accused us and the change of tone. So let me yield to my good friend, Mr. Ehrlich, the remaining balance of my time.

REP. EHRLICH: Mr. Zimmermann, just as a short follow up to your previous testimony, I have been able to locate the March 1, 1993 memorandum wherein it is noted -- Mr. Barr went into this last Friday as you know -- and I'm quoting from the memorandum -- "Johnson at this point advised Hartnett to stop the ATF shooting review because ATF was creating Brady material. "That's what you were referring to, correct sir?

MR. ZIMMERMANN: Yes, sir.

REP. EHRLICH: And, sir, your professional opinion as to the appropriateness on the one hand, and on the other the legality of such a policy, is what, sir?

MR. ZIMMERMANN: Well I think it's inappropriate any time a prosecutor in an ongoing case -- and I'm assuming the Johnson you are talking about is the Assistant United States Attorney that planned or approved the dynamic entry search warrant and insisted on a dynamic entry and was very much involved in the case, and then later prosecuted the survivors? The same person --

REP. EHRLICH: Yes, sir.

MR. ZIMMERMANN: I think any prosecutor would say it's inappropriate to try to discourage Brady material being turned over. Now I don't know from this whether Brady material ever existed
and so that's what probably Mr. Johnson would have an out on. If there were no Brady material, and none in fact was withheld, then there might not be cause for a new trial. But if Brady material existed and it was not turned over, then somebody needs to have a hearing and establish for a court that Brady material was in fact suppressed. I don't know whether it was or wasn't from here.

REP. EHLICH: Thank you, sir. A question for both of you, and quite frankly I had hoped not to get into this area because I have found the testimony with respect to the issue of who shot first quite compelling from the ATF agents who have testified in front of this joint panel. Now because you brought it up and because it is a legitimate issue in these hearings, let me ask an open ended question to the both of you. What is your opinion on the basis of the evidence that you see with respect to the issue of who shot first?

MR. DEGUERIN: Part of what a lawyer does is to try to gather facts about the crime. And so much of what I did when I was inside was interview witnesses and look at evidence. And what I saw and what I was told was very compelling that the ATF fired first, understanding that those on the inside had a big stake in this, and I might have been lied to. But what I saw confirmed that they fired -- that the ATF fired first. Everyone who was in a position to know from the inside told me that, that the firing came first from the outside. Some people said that it was the dogs that were being killed, and there were dogs killed. That is it was part of the ATF plan to kill the pet dogs when serving this civilian search warrant.

I was told that firing came from the helicopters. And Jack Zimmermann and I saw the bullet holes in the ceiling of the highest room in the compound. I saw the bullet holes in the front door. Now you -- this panel -- can get that evidence. What you need to find is the videotape that was made of the raid. It disappeared. What you need to get is the photographs of the front that are similar to the one that's being displayed right now. This is a photograph that was taken with a long range lens from the surveillance house. There's bound to be more photographs. This is early in the raid as you can see, and there are very few bullet holes in the front of the building. If you will move to the next photograph, you'll see this is taken later and there are many bullet holes that you can see in this photograph.

These bullet holes are -- and you can see from the news video tape how they are made -- they are made by officers that are firing blindly, just emptying their clips at the front of the building. Now if you'll notice the door, I sat by that door for several hours. I went in and out of that door 10 times and I saw the bullet holes on the door on the right side. Almost every bullet hole was an incoming round. And what I mean by that it's a metal door, you could easily tell that the bullets were incoming rounds. They were punched in. I'm not the marine expert that Jack Zimmermann is, but I've been hunting since I was 10 years old and I know a bullet hole when I see it. And those were bullet holes that were punched in. Now you have the power to get that evidence and you ought to get it.

REP. EHLICH: Mr. Chairman, I know my time is up but I also asked my question to Mr. Zimmermann. I think it might be appropriate for him to complete the answer.

REP. ZELIFF: You are correct.
MR. ZIMMERMANN: I agree with everything Dick said. We tried to corroborate just like with the 911 tape, corroborating that didn't have anything to do with our client's telling us. And I think some testimony you got yesterday from the ATF agent from New Orleans was very telling. He said that when they were getting out of the trucks they were already drawing fire and it was coming from almost every window on the second floor. Do you recall that? And he said it was AK-47s and 50 caliber machine guns were shooting at them. Well if you put that first one back up there, when you go back and look at the evidence, that just doesn't hang together, okay, to use a phrase that I've already seen in one of your memos. That does not hang together because there are no bullet holes up there in the second floor, there's nobody up there shooting in the second floor, there's no windows open up there on the second floor, there's no guns out of the second floor, there's no AK-47s or 50 caliber machine guns. Yet the ATF was already dismounted and out there and looks like they've already taken some casualties. Yet no one is in those upper windows, nobody is in the lower windows.

And let me tell you, if you think that the Branch Davidians had 48 automatic weapons and 50 caliber machine guns already arranged in a "ambush position", and they see -- you've to visualize this -- there's about a 500 yard driveway coming up to this place in a plain. I mean you can see it from a long way away. They had already been tipped off.

If the Branch Davidians intended to ambush those people with 48 machine guns and 50 caliber machine guns, and they came up in unprotected cattle cars with nothing but tarp on them. They would have blown them away. So, that convinced us that they did not -- that is, the Davidians did not fire first.

Now, you asked about our personal opinion. My personal opinion is that it was an accidental discharge by one of the ATF agents as he was dismounting, and that that was a signal to open fire -- which you haven't heard any testimony about. Nobody asked, what was the signal to open fire, if you did open fire? Who made that decision? What command was it? But I believe that what the evidence from the trial -- the criminal trial was -- was that somebody, off to the side, hear a firing -- heard somebody fire. And they testified that it came from behind them. So, that's why we believe -- for those reasons, that the Branch Davidians did not fire first. And I'll point out to you, from talking to the foreman of the criminal trial jury, who heard six weeks of testimony by the government, and two days of testimony from the defense, they could not decide, and told me -- the foreman of the jury told me they did not decide, because the evidence was in such conflict as to who fired first.

REP. : Thank you.

REP. ZELIFF: Thank you very much.

REP. CHARLES SCHUMER (D-NY): Point of order, Mr. Chairman.

REP. ZELIFF: Let's just --

REP. SCHUMER: My point of order today --
REP. ZELIFF: Point of order.

REP. SCHUMER: Yes, in terms of the structure of these hearings, yesterday we were focusing on what happened at the raid. If these witnesses had statements to make on who fired first, it's only fair to allow those who were in the line of fire -- agents like Buford and Rodriguez -- to have some rebuttal time. And yet, the way --

REP. ZELIFF: (Inaudible).

REP. SCHUMER: Except the way these hearings were structured, we -- they're gone. They made their point. Nobody controverted them. Nobody brought up anything. Now we have some lawyers, who were not on the scene, saying they interviewed nameless people -- I'm sure they can name them -- and saying, "Oh, no. It is not clear who fired first." That is not fair. That is not a proceeding that is right. If we want to go over the issue of who fired first, then we should--

REP. ZELIFF: Okay.

REP. SCHUMER: Wait a second.

REP. ZELIFF: That's not a point --

REP. SCHUMER: I'd like to finish my point.

REP. ZELIFF: That is not a point of order.

REP. SCHUMER: It is a point of order.

REP. ZELIFF: It is not a point of order. You are out of order.

REP. SCHUMER: We should have Mr. Zimmerman and Mr. DeGuerin--

REP. ZELIFF: You are out of order, Mr. Schumer.

REP. SCHUMER: -- at one end of the table, and Buford and Rodriguez on the other.

REP. ZELIFF: I will just make one comment to the witnesses relative to the videotape, and the front door. We have consistently asked, as a committee, to get a copy of the videotape, which they now say is blank. We have asked for the door, and the door is missing.

I'll now move, and the Chair recognizes Mr. Taylor from Mississippi for five minutes.

REP. GENE TAYLOR (D-MS): Thank you, Mr. Chairman.

Mr. Zimmerman, do you have any combat experience?

MR. ZIMMERMAN: Excuse me, sir?
REP. TAYLOR: Do you have any combat experience with --

MR. ZIMMERMAN: Twenty-six months, sir. I commanded two artillery batteries in Vietnam.

REP. TAYLOR: In Vietnam?

MR. ZIMMERMAN: Yes, sir.

REP. TAYLOR: Mr. Zimmerman, did you happen to hear the testimony of the fellow Vietnam veteran, Mr. Buford, who had served with the Green Berets, who said that even as a Green Beret, he had been ambushed, and he'd been on the losing side of ambushes.

MR. ZIMMERMAN: I recall.

REP. TAYLOR: He said he was never outgunned that -- in Vietnam, the way he was against the Branch Davidians. Do you have any reason to doubt that?

MR. ZIMMERMAN: No, sir. I don't doubt his testimony. I don't know what ambushes he were in Vietnam.

REP. TAYLOR: Okay.

MR. ZIMMERMAN: If he was Green Beret, it was a small unit.

REP. TAYLOR: Mr. Zimmerman, let me just ask you, and again -- and Mr. -- your colleague said, "Well, he's just a Methodist. I'm just a dumb Coast Guardsman. Okay. Thank goodness I've never been shot at. But I can look at what I have seen -- you know, ambushes. I would think, if you're ambushed, you don't have the time to pick your shots. I just have a gut feeling, if bullets are flying all over me, and there's one of me, that you don't really have the time to pick your shot, that basically -- that, yes, you're going to empty your clip and hope you hit something, and you don't get hit in the meantime.

MR. ZIMMERMAN: That could be true, sir. Yes, sir.

REP. TAYLOR: Yes, that could be true.

MR. ZIMMERMAN: Yes.

REP. TAYLOR: So, that could very well explain the very bad pattern of shots around those windows, couldn't it?

MR. ZIMMERMAN: It could. I'd like to come back to that in a minute, though. I want to answer your question. It could.

REP. TAYLOR: Okay. Now, let me take it a step further. And you talked about the 911 call, Mr.
MR. ZIMMERMAN: We came in a month later.

REP. TAYLOR: Whether to be -- yes?

MR. ZIMMERMAN: We came in a month later. But we thought about that, and if I may, we asked the Texas Rangers, because -- and I've testified under oath at the criminal trial to this -- I couldn't tell you whether those rounds were fired from a helicopter or not. All I can tell you is they came from the sky downward. If somebody were standing on top of the roof shooting down into the ceiling, it would look exactly the same way.

REP. TAYLOR: Thank you very much. You've made my point, Mr. Zimmerman. An another point I want to make. Do you have any -- I understand you were a Marine, and I thank you for your service to your country.

MR. ZIMMERMAN: Yes, sir.

REP. TAYLOR: Do you have any sons or daughters in the Service now?

MR. ZIMMERMAN: I certainly do. My daughter is a captain in the Marines. She's a prosecutor at El Torro (sp) Marine Corps Air Station. My son, who just had a baby last night at 5:15 -- actually his wife at 5:15 -- (laughter) -- is a first lieutenant in the Marines, and he's a Naval Flight Officer, and will flying in the FA-18 Delta Jet.

REP. TAYLOR: And congratulations to both of them.

MR. ZIMMERMAN: Thank you.

REP. TAYLOR: And thank both of them for their service.

My point is that many people say why did they come back with armored vehicles towards the end. I'm going to personalize this, Mr. Zimmerman. You're Commandant Mundy, and it's your two sons. And they've already been in one firefight, and the good guys got outgunned. They just flat got outgunned. They were the ones -- the good guys were the ones asking for a cease fire -- not the Davidians. This ATF agent asking for a cease fire to get their wounded out, because they're being so horribly outgunned. Do you send them in the second time, the exact same way? Do you send them in the second time walking across an open field -- a perfect ambush site? Or do you try to protect them.

Do you -- would you send your son or your daughter in the second time just walking across an open field with a warrant saying, "Gosh, David, you're just this horribly misunderstood nice guy who--
okay, so you like 11 year old girls, and maybe you've held a few people here against your will. And maybe you got a couple of illegal immigrants here. And maybe, oh, 50 to 100 illegal machines guns. But you're really a nice guy. And I'm going to send my son and my daughter out here, walking across this open field because I trust you. 

MR. ZIMMERMAN: Are you talking about when the FBI went in in armored vehicles? Is that you're question?

REP. TAYLOR: I'm talking about -- yes, sir, the second raid.

MR. ZIMMERMAN: I have no problem with that.

REP. TAYLOR: Is this a justification for trying to save the armed --

MR. ZIMMERMAN: I have no problem with that.

REP. TAYLOR: Okay.

MR. ZIMMERMAN: In fact, let me say something, because we're on national television. You said, General Mundy --

REP. TAYLOR: Yes, sir,

MR. ZIMMERMAN: -- the new Commandant is a classmate of mine from the Naval Academy named Chuck Creulack (sp). He would be real mad at me if I didn't point that out to you.

REP. TAYLOR: Yes, sir. And I only say that because I don't if General Creulack (sp) has some sons in the service.

MR. ZIMMERMAN: He does.

REP. TAYLOR: But I do know --

MR. ZIMMERMAN: And you're right. And there's nothing wrong with them as far as if that were what they were doing -- just using it to protect their people. When we get to how they were used later, on the 19th of April, I have a different opinion.

REP. TAYLOR: But would you send them in with no protection?

MR. ZIMMERMAN: No, sir.

REP. TAYLOR: Okay. And I want to make that perfectly clear. And I would not want your children treated that way who are serving our country.

I'm going to ask you -- since you are defense lawyers for a Davidian, and what has now become the Davidians -- the same question I've asked everybody else. Have you seen anything or heard
anything that would lead you to believe -- or read anything -- that justifies the murder of those four ATF agents and the 20 more who were wounded by the Branch Davidians by David Koresh and his followers on the morning of February 28th.

MR. DEGUERIN: Yes, sir.

MR. ZIMMERMAN: Yes, sir.

REP. TAYLOR: Tell me -- all right. Tell me what it is, sir.

MR. DEGUERIN: The jury in San Antonio --

MR. ZIMMERMAN: Because -- (inaudible) -- people to say that.

MR. DEGUERIN: The jury in San Antonio found that the killings of the four agents were in self-defense.

MR. ZIMMERMAN: They were acquitted of murder, sir. Did you know that? They were acquitted of murder and acquitted of conspiracy to commit murder -- every single defendant. All 11 were acquitted of murder. So, that's why we're answering that that way, because obviously there's evidence that didn't convince a jury.

REP. TAYLOR: Weren't the Menendez brothers acquitted?

MR. ZIMMERMAN: No, sir. I don't think so.

REP. TAYLOR: Is our judicial system perfect?

MR. ZIMMERMAN: No.

REP. TAYLOR: Are you going to tell me that every murderer in this country who's walked was really innocent?

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MR. ZIMMERMAN: Well, you asked me, did we know of anything that would say that they weren't guilty of murder. And the answer is yes. Everything we've just told you, plus a jury's verdict -- after a six week trial.

REP. TAYLOR: Well, let's bring it closer to home, Mr. Zimmerman. Those weren't ATF agents. Those were your two children who were sworn to protect this country in a different branch of the service.

MR. ZIMMERMAN: Yes, sir.

REP. TAYLOR: And they did what those ATF agents did.
MR. ZIMMERMAN: Yes, sir.

REP. TAYLOR: Was it justifiable for David Koresh to kill your kids?
MR. ZIMMERMAN: I wasn't there. But if the ATF accidentally or however opened fire on people in their home, and all they did was defend themselves in their home, then under the law, that's justifiable homicide. It's not murder. It's not murder.

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

Mr. Ehrlich is being -- is recognized for five minutes.

REP. ROBERT EHRLICH (R-MD): Sir, this is why I did not want to get into this. This is a very emotional issues. We have compelling testimony on both sides. It's a very difficult issue that each and every member of these panels has to struggle with. It just -- for the last minute here -- let me make the record clear. Sir, is your testimony as a result of interviews with the jury foreman or individual jurors that they came to a conclusion, with respect to who shot first? And my follow up is, was their jury interrogatory with respect to who shot first? And what were the instructions from the judge?

MR. ZIMMERMAN: To answer your second question, there was just a general verdict of not guilty on each of the separate charges. There wasn't a question about who shot first. And yes, Sarah Bane (sp), the foreman of that jury said they were not able to decide who shot first.

May I make a comment, though, because --

REP. EHRLICH: Yes, sir.

MR. ZIMMERMAN: -- I'd like to keep us all focused. I think we have -- the hearings are going right to what Congressman Schumer had said should be. Let's focus on law enforcement so that we can increase their statutes. We don't want -- none of us want the FBI or the ATF to be destroyed by this. We want them to be enhanced by it.

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Who fired first is really irrelevant, because you need to look at that ATF plan. I look at it, if -- just like Congressman Taylor said -- if those were my sons -- and by the way, one of those four who were killed was one of my Marines. He was a Reserve Marine. We ought to look at it and say, is that a faulty plan? Was there something wrong with the way the ATF conducted that. Even if they were ambushed, which I don't think they were -- but even if they were, how silly is that to have an operation in an open area like that, with no cover, when you suspect people to have 50-caliber machine guns and automatic weapons, and then just sacrifice those people like that? You know, if that kind of operation order were given by a Marine second lieutenant going through the basic school, they'd transfer the guy to the Air Force. (Laughter. )

REP. EHRLICH: Mr. Zimmerman, let me tell you, sir, I appreciate your comments, both of you,
because the purpose of these hearings are twofold, and it's certainly not to denigrate law enforcement. It's to find the facts as best we can arrive at our own individual opinions and to make sure, as I prefaced my remarks along the same lines, that changes have been made so that something like this could never happen again. And that's certainly the twin purposes of these hearings. My time is running out. I have a question for Mr. DeGuerin. Mr. DeGuerin, this is the classic Monday-Tuesday-Wednesday-Thursday-Friday morning quarterback question, but let me ask it anyway. Would you describe, sir, in your own mind, your opinion with respect to the issue of how -- what could have been done to get the Davidians out of that compound without bloodshed?

MR. DEGUERIN: We were on the way to doing that. On April the 14th, there was a major breakthrough, and that breakthrough was David Koresh's letter to me, which I promptly gave to the FBI, that said that he'd received his mission, that he was working on writing his interpretation of the seven seals, and that everyone inside was relieved that they didn't have to die now, that the prophecies were not being fulfilled now, and that this would be resolved.

And I talked with Steve Schneider on the telephone about that. I talked with the survivors later. And the mood on the inside had definitely changed on the night of the 13th and the morning of the 14th of April. I had those letters reviewed by Dr. Tabor, by Dr. Arnold. They agreed that this was a major change in what had gone on in this religious view that was so overpowering all of those people in there. They believed that they could not do anything except what their religion told them to do.

REP. EHRLICH: But, sir, let me ask you, have you responded to what in my view is a very legitimate observation, a rejoinder to your observation that you're dealing with a con artist, you're dealing with a guy who was desperate, you're dealing with a guy who knew he was looking at a very long prison sentence if he walked out of that compound, someone who was a real bad character, had sex with kids, the whole nine yards, who had lied on a consistent basis -- how did your opinion jibe with those facts?

MR. DEGUERIN: I'm not going to, again, try to defend David Koresh. But what he told me about factual matters and about religious matters all panned out. What he told me about what had happened, his ability to relate the facts to me and for me to check those facts, all panned out. We were not dealing simply with David Koresh, but we were also dealing with Steve Schneider, a former teacher of comparative religion, with Wayne Martin, a Harvard law graduate. They were rational, they were reasonable and they had this religious compulsion that was not understood by the negotiators and that was not appreciated as being serious. It was serious. They were sincere about that.

REP. EHRLICH: I see my time is about to run out. I just wanted to take this opportunity to thank the both of you for your appearance here today and for your factual opinions given to this panel and this country in an unemotional way, and I appreciate it very much.

MR. DEGUERIN: Thank you, sir.

REP. ZELIFF: The gentleman's time has expired. Mr. Scott from Virginia has five minutes.
REP. SCOTT: Thank you, Mr. Chairman. I'd ask both the attorneys if you were involved in the trial of the --

REP. ZIMMERMAN: No, sir.

REP. SCOTT: -- aftermath.

REP. ZIMMERMAN: Neither of us were lawyers. I was called as a witness, Mr. Congressman.

REP. SCOTT: You indicated that there were -- did you indicate that there was a finding of self-defense or a finding of not guilty?

MR. DEGUERIN: Finding of not guilty. In a criminal trial, usually there's just a general verdict. And it was -- the only defense to the murder and conspiracy to murder was self-defense.

REP. SCOTT: Well, you could have also had a finding that these Davidians weren't responsible for the killing of the officers; however, others, had they been on trial, would have been guilty. Is that accurate?

MR. DEGUERIN: That's possible, but they were also found -- or some of them were found guilty of voluntary manslaughter. The judge -- well, it was a mixed finding. But self-defense -- the judge only applied self-defense to conspiracy to murder and murder, and they were acquitted. Everyone was acquitted of those offenses.

REP. ZIMMERMAN: Mr. Scott or Congressman Scott, I don't know if this will help you understand the context of that, though, but from the opening statement --

REP. SCOTT: Well, the context -- let me tell you, the context is in response to Mr. Taylor's question where he said that they were justified -- that there was justification for killing law enforcement officers and you used the verdict as your rationale.

REP. ZIMMERMAN: No, sir, his question was, "Have you known anything, have you read anything, have you heard anything that would provide justification for murder? "And I said they were not convicted of murder. And what I was going to add for you, sir, was that the prosecution's theory from the opening statement on was that everybody in the place, all of these people, were all responsible. And they said, "We will put a weapon in every person's hand" in that trial.

REP. SCOTT: Well, let me get to some physical evidence. Have you seen -- did you indicate that you had seen the door that -- the front door?

REP. ZIMMERMAN: Yes, sir.

MR. DEGUERIN: Yes.

REP. SCOTT: And you saw bullet holes all going one way? Is that what I understood you to say?
MR. DEGUERIN: I said most of the bullet holes.

REP. SCOTT: So there were bullet holes going both ways.

MR. DEGUERIN: There were. There were no bullet holes that I noticed in the left-hand door. This was a double door, and it opened -- if you're facing the compound, as these photographs are, the door on the right of the double door is the only one that operated. It opened inward.

REP. SCOTT: But are you sure that there are bullet holes, most of them going in? Is that your testimony?

MR. DEGUERIN: Yes, sir.

REP. ZIMMERMAN: Yes, sir. In fact, I didn't see any coming the other way, to be honest with you, because there was a barricade by the time I got up there. I didn't see any coming the other direction. Mr. DeGuerin did.

REP. SCOTT: I think we may be able to get the door so we can --

REP. ZIMMERMAN: If you could get that door --

MR. DEGUERIN: Make sure that you get the correct door. The door that survived for the trial was the door on the left, and the door on the right disappeared. It has to be the door on the right. That's where I saw the bullet holes. The door on the left was stationary. And the way that it happened, as explained to me by Koresh -- we have a tape here in which he explains it -- was he stepped out and onto the porch and was met by gunfire from the agents and then went back inside and slammed the door. And he pointed out those bullet holes to me. Those are the -- that's the door on the right-hand side. It's the door that has the door handle. And the door that survived for the trial was the wrong door.

REP. SCOTT: I'll yield for a minute to the gentleman from New York.

REP. SCHUMER: (Off mike) -- this idea of bullet holes through the door. Let's just take this hypothetical, gentlemen, and that is that the ATF agents advanced on the compound. The Davidians shoot from the windows. They're not going to shoot through the door.

REP. ZIMMERMAN: Exactly, sir.

REP. SCHUMER: And then in response, the ATF agents shoot back. Of course the majority of bullet holes would be through -- would be going in that direction, because the Davidians are not going to keep the door closed and shoot through it.

REP. ZIMMERMAN: No, they wouldn't, would they?

REP. SCHUMER: So all the bullet holes, of course, should be going in one direction. That's not the
issue. The issue is who fired out of the windows first. And I appreciate the gentleman yielding.

REP. SCOTT: Reclaiming my time, let me change subjects a minute. Do either one of you question the validity of the search warrant or the arrest warrant?

MR. DEGUERIN: Yes.

REP. ZIMMERMAN: Yes.

REP. SCOTT: And what is your challenge of the validity?

MR. DEGUERIN: Vagueness, stale information. And let me make clear here that I think the panel has been somewhat misled by thinking that there was no challenge to the search warrant. What the judge held was that the challenge to the search warrant was moot; that is, it didn't make any difference because the ATF nor the FBI was not claiming to want to introduce any evidence gained as a result of the serving of that search warrant. So it didn't matter to the issues in the trial, and thus it wasn't litigated.

REP. SCOTT: If -- under the Leon rule, was there (much?) to litigate? Even if it was illegal, would it make any difference?

MR. DEGUERIN: If it was deliberately falsified under (Franks?) versus Delaware, then Leon would not apply.

REP. SCOTT: If it were just illegal but in good faith illegal, was there any point in litigating it?

MR. DEGUERIN: Well, you know, I've got a philosophical argument that you can't have a good faith illegal --

REP. SCOTT: But under -- the U. S. Supreme Court under the Leon rule, there's not much point in litigating it. I want to ask you, if you have a situation where you want to challenge police practices as being illegal, how do we protect innocent people if we can't have a viable exclusionary rule?

MR. DEGUERIN: We need a viable exclusionary rule, and Leon is an abomination in our criminal jurisprudence.

REP. ZELIFF: Gentleman's time has expired.

If you have access to that door, could you get it, and also the listening tape of the 28th?

MR. : I don't know anything about the tape, but --

REP. ZELIFF: You said you thought we could get the door.

MR. : I understand that it was -- it was -- the one that was not introduced in court?
REP. ZELIFF: We're looking for the door that's missing. You said you could get it. If you know where it is, please bring it. Thank you.

MR. : I'll do the best I can, Mr. Chairman.

REP. ZELIFF: The chair now recognizes Mr. Chabot of Ohio.

REP. : Would the gentleman yield?

If the reporters from the Waco "Tribune" and the lady who said she was held against her will show up with the door -- (laughter) -- will they all be admitted and allowed to testify about the same time?

REP. ZELIFF: The chair thanks the gentleman from Mississippi for those outstanding remarks. (Laughter. )Mr. Chabot, please. Five minutes.

REP. STEVE CHABOT (R-OH): Thank you. Thank you, Mr. Chairman.

Before I yield, I'd just like to comment that periodically during these hearings, we've heard it insinuated that one side or the other is more pro- or less pro-law enforcement than the other side, and I would just hope that everyone here shares the goal that we should learn as much as we can from the mistakes that were made at Waco so that we can protect the lives of both law enforcement personnel and civilians.

And with that, I'd like to yield the balance of my time to the gentleman from North Carolina, Mr. Howard Coble.

REP. HOWARD COBLE: I thank the gentleman from Ohio for yielding.

Gentlemen, good to have you all with us. Mr. Zimmerman, it may be because of my advancing age, but you don't look old enough to be a grandpa.

MR. ZIMMERMAN: Thank you, sir.

REP. COBLE: But it's good to have you here nonetheless.

Mr. Chairman, I'm going to extend, before I put my questions to these gentlemen, to what the gentleman from Ohio said. I'm trying my darndest to keep my composure during these hearings, but it is becoming increasingly difficult. Yesterday, an associate stopped me on my way from the floor, and he said, "I'm getting tired of you Republicans and one Democrat trying to bash law enforcement," Well, as my grandma used to say, that made my coffee taste real bad. (Laughter. )I said to him, I said, "Upon what do you base this? "I said, "How much of the hearings have you observed? " "Oh, I've seen none of it on television," he replied, "I only read the newspaper."

I said to him, I said, "Friend, for your information, as far as I can tell, no Republicans -- nor Democrats, for that matter -- are bashing law enforcement," and I'm about to lose my composure
now, but here's a man, a well-informed citizen, already rushed to conclusion, having not watched one second of the hearings -- oh, but he read it in the printed media. Well, he should start reading other newspapers, I told him, or find time in his schedule to watch these hearings.

Mr. Zimmerman, as you pointed out, the word is enhanced. I'm not bashing law enforcement, and neither are my colleagues. And last week, many of the questions were phrased in such a way to imply that those of us who endorsed these hearings in some way were sympathetic to Koresh, and I resented that, as well.

Mr. Deguerin, as you pointed out, we're not here to defend Koresh. But, having said that, I want to pick up where the gentleman from Maryland left off.

Well, strike that. Let me say one more thing while I got my kettle boiling. Someone earlier talked about Monday morning quarterback as though it were an indictable offense. Folks, that's what hearings are all about. Hearings provide us with the luxury of applying 20/20 hindsight. If no mistakes were ever committed, there would be no need for hearings. Sure, we're applying Monday morning quarterbacking. Sure, we're applying 20/20 hindsight, hoping, Mr. Zimmerman, as you pointed out, to enhance the reputation of these federal agents. I don't like the idea that the ATF and the FBI are blasted and bashed.

Now, having said all that, back to Koresh, Mr. Deguerin. If I were hosting a hamburger cookout in my neighborhood Saturday night, I don't believe Koresh would make the cut on my guest list. I don't think I'd want him there. Having said that, the -- you -- and you were talking to the gentleman from Maryland about this. Apparently you believe that he was sincere in his religious convictions based upon your conversations with him. Is that a valid conclusion?

MR. DEGUERIN: Yes, sir.

REP. COBLE: Something that has bothered me, and this is the third time I've mentioned it, is the non-arrest of this fellow. He was the nerve center of the compound. It was always my belief if they could have taken him under custody and control of the ATF or whoever, got him out of there, get the charismatic leader away from the compound, and then conduct your search. The Treasury reports that, on the one hand, oh, he never left the compound, so therefore we couldn't arrest him.

Well, at the criminal trial, it became apparent that he did, in fact, leave the compound. Then the Treasury's defense subsequently was, "Well, it wouldn't have been a good idea to have arrested him, because if we'd done that," Mr. Noble himself said, "evidence would likely have been destroyed," and other agents I think said that the Davidians would have resisted. Is it your belief, Mr. Deguerin, that he could have, in fact, been arrested beyond the confines of the compound?

MR. DEGUERIN: I do believe that he could have been, and I investigated that and talked to people who had seen him on the outside. The local service station that was just a few miles away had seen him very recently and frequently. He jogged out in the neighborhood almost on a daily basis. He went to a local bar and pub in Waco called the Chelsea Pub. People there remembered seeing him in the weeks immediately before the raid. He had been seen all over the place.
What the Treasury report accurately says is the undercover operation -- or, excuse me, the surveillance operation didn't accurately record whether he came or went. They abandoned the idea of arresting him outside I think because they wanted to arrest him with a big show.

REP. COBLE: Mr. Deguerin, my time for this segment has expired. We'll pick up on that subsequently.

REP. ZELIFF: Thank you, Mr. Coble.

The chair now recognizes Mrs. Slaughter from New York.

REP. LOUISE SLAUGHTER (D-NY): Thank you, Mr. Chairman. I'd like to divide my time this morning -- two minutes to Mr. Taylor, three minutes to Mr. Green if we can find him. He's with the door (Gene ?).

(Off mike comments. )

REP. GENE TAYLOR (D-MS): Thank you, Mrs. Slaughter. Mr. Zimmerman, in your capacity as a jag (ph) officer, are you normally on the prosecuting side or the defense side?

MR. ZIMMERMAN: I was a chief prosecutor of the second rank division for a period of time and the chief defense counsel at Fort Stritch (ph) Atlantic, sir.

REP. TAYLOR: So you've done both.

MR. ZIMMERMAN: Done both -- (inaudible) --

REP. TAYLOR: As a defense attorney -- you're obviously very good at it, and as is Mr. Deguerin -- would you be offended -- or let me take it a step further. Would you move for a mistrial or for the sentence to be thrown out if only the prosecution was allowed to call witnesses and you had evidence, compelling evidence, in defense of your person, but you weren't allowed to submit it in court?

MR. ZIMMERMAN: I would always ask permission to put on whatever evidence I had, sir.

REP. TAYLOR: Okay, so in the case of this raid -- and there is compelling evidence in the case of the reporters who wrote the story that appeared in the Waco paper were so afraid for their lives that they left town. The paper changed the locks, they issued new security measures, they taped the markings off their vehicles so the Davidians wouldn't able to identify their vehicles as being a part of that paper. There's a woman who claims to have been held against her will for three months by Koresh's followers. There is another who says Koresh was compiling a hit list of former members that he wants to have -- and I'm using his word -- eliminated. That's pretty compelling stuff.

Now, on behalf of those four dead ATF agents and the 20 who were wounded, don't you think in fairness, as a defense attorney, they ought to be allowed to submit that evidence to this body?
MR. ZIMMERMANN: That would be similar to the question a judge would have to make as to whether the witnesses were material, and I think that what we would have to do to answer your question is what's the focus of this investigation that you're doing now? And if it was material, then you should have those people. If it's not material, it would be just like in court, a judge might say, I'm going to deny your motion for a subpoena, because these witnesses aren't material. I would try to show they were material if you're asking me what I would do. But I don't always persuade the judges to do the right thing.

REP. TAYLOR: Mr. Zimmerman, let's get back -- I don't know, I didn't call these hearings. I'm here. I think some good things -- yes ma'am.

REP. : -- (Inaudible) --

REP. : I'd like to thank my colleague for yielding time. Mr. Deguerin, Mr. Zimmermann, your reputation obviously is well earned in Houston and the Texas courts, and as Mr. Taylor said, you all are very good defense attorneys, and having seen you in the halls once in a while when I used to practice law, your reputation is there. Let me ask a little bit about -- Mr. Zimmermann, about defending themselves, and I have some problems with somebody breaking into my home, you know, and I have the right to defend myself, and your response is, to Mr. Taylor's question on who fired the first shot, but anyway, if someone is charging up to my house, and they're wearing ATF vests or jackets or whatever else they have, do I have the right to respond to them and whether they're in police uniform, whether they're wearing an ATF jacket or something like that? And again, as a lawyer, tell me, because one of my concerns and for my constituents is if we have the right to defend ourselves and our home. And if somebody's breaking in, how do we know that they are police officers? Particularly in Texas, we have so many different kinds of police officer uniforms.

MR. ZIMMERMANN: That's right. And I can't give you an answer that would apply to everywhere, sir. But the answer is, what was the conduct of the police officers on the raid? My memory is, from the video tapes, that the ATF was on the back, not on the front. And there might be some question of whether they were ATF agents or not.

REP. : We were shown a vest here that day that had, I believe, ATF on the front of the vest. Now whether it was covered up or not, I don't know.

MR. ZIMMERMANN: Okay, the identity probably wouldn't be the issue. The issue is what they were doing, because this was in daylight. If somebody comes in in a military-type attack and fires first, and lays down automatic weapons fire, like we believe was done on that front door, then I believe the law in Texas would allow you to defend yourself. If they just come up and say, we're here to serve a search warrant, you have no right to resist that with force, none.

REP. : Okay. The best evidence that we have so far, the live witnesses who were here -- of course, the ATF agents said, at another table, but the same setting, that they did not fire first.
And it's your testimony that the Davidians, in your interview with them, and Mr. Deguerin, you said you talked to them ten times, and of course they're not here, and the best evidence we have is that it's from the ATF agents who were there. Let me get one more question in before my time actually runs out. On the bullet holes in the ceiling, again, there was no testimony even from one of the ATF agents in the helicopters that there were any shots fired from the choppers. When you said there were shots in the ceiling, it could have been from either someone on the roof, or did you look at them again, Mr. Deguerin, you said that you've hunted all your life, and you can tell whether a shot's incoming or outgoing if it's a wood roof.

MR. DEGUERIN: Well, let me correct that. It was a sheet rock ceiling. And you could tell from the way the sheet rock was punched down, that it was bullets that had come down, that had punched that out. Now, I asked the Davidians to take photographs of that, because I wanted to preserve that as evidence. And I asked the Rangers, when they did their search, to please note that ceiling, because I expected it to survive. Of course, it didn't. But it was clear to me and clear to Jack that those were incoming rounds. Now, there was no one on that roof, never was. It's a flat roof. You can't see it from that photograph, but --

REP. : Well, we've seen other photographs.

MR. DEGUERIN: -- it was the highest structure in the neighborhood. The only way that those bullets could have been made was from someone standing on the roof, shooting down or someone shooting from the helicopters.

REP. ZELIFF: The gentleman's time has expired. The chair now recognizes the gentleman from Indiana, Mr. Souder, five minutes.

REP. SOUDER: I yield -- (inaudible).

REP. : I thank the gentleman from Indiana. Gentlemen, as you all can tell, from the format here, we have to do this in segments. Mr. Deguerin, you were wrapping up about the lack of arrest of Koresh. If you will continue what you were saying there.

MR. DEGUERIN: I'm sorry, someone coughed, and I didn't hear you.

REP. : I say, you were wrapping up in response to my question concerning why Koresh was never taken into custody. If you'll conclude that.

MR. DEGUERIN: Well, frankly I think it was because some of the supervisors wanted to continue and make a big show that this went off. And I think that -- this is editorializing -- I think we need to focus on not why the raid went bad, necessarily. We know why it went bad; the surprise was lost, but why it was planned that way in the first place. Excessive force, provocative force provokes, as the word implies, a violent response. I might be able to get you to hit me if I came up and was provocative enough to you. But whose fault is that? Is that my fault or your fault for hitting me when I provoke you? My point is that this dynamic entry, which really means a military-style raid, was wrong from the beginning. Ask the FBI agents; ask Jeff Jamar who was the agent in charge.
If the ATF had asked him in advance, should we do a dynamic entry there, he would have said no. You just don't do a raid like this on a building that has over 50 rooms -- 130 residents, women and children, because you cannot get all those rooms and all those people secure quick enough. Not only is surprise important, but speed is important. And if you can't get them, you've got a hostage situation.

REP. : I think there's a big change we learned yesterday. Let me put this to you and Mr. Zimmermann both. Just prior to the big raid, to the firestorm, I believe you all were in negotiations with the FBI on a regular basis, were you not?

MR. DEGUERIN: Yes, sir.

MR. ZIMMERMANN: We were speaking with him. We were not negotiating on behalf of anybody. We were just serving as lawyers, trying to get them out and into the courthouse.

REP. : Okay, if you will, from either of you, tell us how that progressed; whether or not the FBI was cooperative with you; whether they were deceptive with you; did they mislead you; were they above board? Let us hear about that.

MR. DEGUERIN: Let me say that the FBI treated me cordially with respect throughout my discussions with them. And I think that it was a difficult decision for Jeff Jamar to make to allow a defense lawyer to go into -- you know, defense lawyers aren't real popular with FBI agents, and I'm sure there was some dissention in the ranks about allowing that to happen. But he saw it as a possible solution. We had parallel interests. I wanted a live client in court, and he wanted it to end without violence and to get everybody in custody, and we really worked hard at doing that. I thought we were really on the road to getting that done. The FBI was above board with me. They didn't let me in on any of their secrets, but why should they? They treated me with respect. When I came out and asked questions about what would happen and what would be the conditions, not as a way to negotiate, they were very forthcoming with me. And for instance on the first full day that I went in, I came back out, asked to see the Sheriff to find out about the jail conditions, and within ten minutes, I was put in a car on a Wal-Mart parking lot with the Sheriff so I could talk to him. So to answer your question, they were very forthcoming and straight up with me.

REP. : Mr. Zimmermann?

MR. ZIMMERMANN: I echo that. I was a few days behind Mr. Deguerin, because their theory was, we're going to try at the beginning to use our own negotiators. That last about three or four weeks. Then the next step was, we're going to let Mr. Koresh's lawyer come in and see if he can do it. And then Dick had requested my assistance because Steve Schneider was doing most of the talking, as you know, and he was my client. As an ethical lawyer, he didn't want to be talking to another lawyer's client. They were very professional to us. And I'll say this, I don't want to take up more of your time, but in my written statement, I make that statement. I have publicly stated I have great admiration for the FBI.
REP.: Gentlemen, how about the loud music, the playing of the loud music?

MR. DEGUERIN: That was the wrong tactic. It was the wrong tactic. When you're trying to create trust between the FBI and the Davidians, then you don't try to punish them or torture them at the same time.

REP.: Were you all ever asked about the advisability of that?

MR. DEGUERIN: It's not advisable under that circumstance. Under what we've had going on in Waco, that was the wrong tactic. Increasing that pressure, rather than drive them away from David Koresh, had the effect of bonding them closer together, sharing a terrible experience like basic training, for instance, you bond together. People from diverse backgrounds, no matter how different they are, will bond together with that kind of experience, and that's exactly what the FBI was doing. It was wrong.

And the second reason it was wrong is because it played right into this apocalyptic vision that they had, the end was coming. With chariots of fire, with giant beasts breathing fire. And here are these tanks going around there breathing fire. It just played right into this apocalyptic vision. That was the wrong tactic.

REP. COBLE: So I guess what they had hoped to do would be to separate Koresh from his followers, in effect resulted in a cohesive binding probably, is that what you are saying?

MR.: Yes, sir.

MR.: I agree.

REP. COBLE: The red light illuminates again, Mr. Chairman, I'll conclude for the moment.

REP. ZELIFF: Thank you, Mr. Coble. The Chair now recognizes Mr. Watt from North Carolina.

REP. WATT: Thank you, Mr. Chairman. And I want to express my thanks to the witnesses for being here and the candor with which they have presented their statements up to this point. I want to -- I think it was Mr. DeGuerin who has indicated that he thought the dynamic entry was just a bad mistake. And throughout the hearing I've been periodically when I have a chance to ask questions trying to identify a legislative nexus here, what it is we are trying to accomplish.

I take it that there is nothing we could do legislatively that would directly bear on whether a dynamic entry in a situation of this kind would be appropriate or not. I did hear Secretary Bentsen -- or former Secretary Bentsen -- when he was here say that as a result of what happened at Waco the Treasury implemented one or more rule changes having to do with the level of supervision and the level of reporting responsibility between ATF and folks further up in the supervisory chain. I suppose we could have as a Congress ordered a more direct level of supervision, but they have done that now before we got to these hearings.

Can you identify anything that you, either of you, thinks that we ought to be doing legislatively in
response to the Waco incident. And I would invite you specifically to talk about in terms of the level of supervision that was there. But also to give me your thoughts legislatively in terms of what we can do to assure individual rights against the searches and sieges that are unreasonable. And I would ask you also to comment if you are aware of the specifics of the bill that we previously passed out of the House in this session of Congress. I think it was House Bill 666. I invite you to give me your comments on whether that helps us in protecting individual rights or whether we have done a disservice to the rights of American citizens.

MR. DEGUERIN: Well one thing I can beg that you not do is do away with the exclusionary rule. I think that's the only thing that has been shown to be effective in enforcing the fourth amendment. I was very encouraged to hear Director Magaw say yesterday that he's already instituted within the Treasury Department the requirement -- or within ATF the requirement that they confer with other agencies. And secondly I was very happy to hear him say that in the future dynamic entry will be done only as a very last resort.

Legislatively what can you do? Gee, I don't know. If you can undo Leon (ph), that will be a giant step in the right direction.

REP. WATT: Explain that for me so that I'll make sure all of the -- particularly the members of the Judiciary Committee understand that, and maybe the members of the American public might understand it. Can you put that just in simple every day language that maybe the American people can understand.

MR. DEGUERIN: Basically what Leon (ph) says is if you've got a search warrant and you act on it, then you are acting in good faith and you can't challenge the illegality of the search warrant. As practicing lawyers we know that usually judges rubber stamp the applications for search warrants. And the only thing -- the way we made progress in the jurisprudence of this country was requiring search warrant applications to be accurate and to have enough probably cause in them to justify a supposedly neutral and detached magistrate into authorizing a search. But Leon (ph) wipes that out. If you've got some judge that doesn't carefully read the search warrants -- and cynically I say that happens all the time -- then he just rubber stamps it and that's the end of the inquiry. It should--

REP. WATT: And what impact would House Bill 666 have on Leon (ph)?

MR. DEGUERIN: I'm not familiar with --

REP. WATT: Do you know, Mr. Zimmermann?

MR. ZIMMERMANN: I believe in general I understand it deals something with lessening the requirements for federal law enforcement officers only as it relates to search and seizure. But that's about all the detail that I know. Am I thinking of the right bill? May I answer your other question though? Mr. DeGuerin has answered the second part.

I am answering the question about what can you legislate that might prevent ATF repeat. I don't think you legislate judgment. But I think that what you can do in your oversight responsibility are two things -- change the procedure that led to Waco and change the leadership that led to Waco.
Now they came in and told you yesterday that they've already changed the procedure. All right, we have to take their word on that, they are professional law enforcement officers. But I can tell you what. The American public does not buy that they've changed the leadership because nobody has been disciplined in a meaningful way. There's been no criminal prosecutions, and people have committed felony offenses. Mr. Merletti told you yesterday that two of those agents in charge of this raid committed federal felony offenses. There's been no prosecution and there's been no meaningful discipline. And those people are still ATF agents, they work for all of us, we pay their salary, and I'm still paying Sarabyn's salary and Chojnacki's salary and I don't like that. Those people should be removed from their positions.

Now on the FBI, we haven't had a chance to address the FBI and we're going to be gone pretty soon. So I hope we can get some questions about the FBI pretty soon. There has been no one disciplined because of Waco in the entire United States Department of Justice chain of command. That's horrible. Ten people died on February 28th, 80 people died on April the 19th. And no one's been disciplined, no policies have been changed. The only thing they've done is they've asked for more money to double the hostage rescue team size. That's ridiculous.

So what you can do -- change the policies, change the leadership. It has not happened.

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

REP. WATT: Thank you, Mr. Chairman.

REP. ZELIFF: The gentleman from North Carolina, Mr. Coble will resume questioning for five minutes.

REP. COBLE: Thank you, gentlemen. In the fall of 1993 Treasury and Justice issued their respective reports about Waco. And I'm paraphrasing now, but Treasury in effect said well ATF blew it, we were the bad guys. Justice on the other hand exonerates the FBI. Well folks when I read -- when I got those two reports -- I hate to admit it, but I guess four or five weeks in this town -- one, if you don't develop a severe case of paranoia, you are a rare bird indeed. I thought this is all too coincidental.

One group conveniently assuming blame, the other group waltzing away with no blame. I think, as I told the Attorney General, I said everybody who touched the ball at Waco fumbled it. Now having said that, gentlemen, one or both of you I believe -- and I don't think this is in either report to which I referred -- you all were involved in a surrender plan with the FBI.

MR. : We had one already arranged and agreed to.

REP. COBLE: Tell us -- I would like to hear about that.

MR. : About what the proposed plan was?

REP. COBLE: Yes.
MR. ZIMMERMAN: Most of that was proposed by the FBI. And Dick and I made only very minor suggested changes, which they incorporated. But the plan, in general, was this. The people on the inside were going to tell us -- tell the FBI the night before. Dick and I were going to be there. We were going to start during daylight. So, this is all done during the day. And Dick DeGuerin and David Koresh were going to exit first -- to show everybody that they weren't going to get executed the minute they stepped outside. And there would be a metal detector set up outside the front door in a bus, 100 or so yards away, approximately.

When Mr. DeGuerin and Mr. Koresh went through that metal detector, the Mr. Koresh would have plastic wrist restraints placed on him, be patted down by a male FBI or ATF agent. FBI was our request. And then he would -- he and Dick would go to the bus. And then, I was supposed to say in there and then see that the other adults came out -- keeping a distance so that law enforcement wouldn't get nervous about people bunching up. It was going to be tape recorded by the FBI. And there was going to be a press representative there taping it, so that there would be no claims of police brutality, and there would be no claims that -- the opposite. In other words, both sides would be protected.

And then, as that went through, Steve Schneider would be the last Branch Davidian out, and I would bring up the rear. When they saw me coming through there, that was the signal to send in the HRT teams. They'd come in, make sure nobody else was hiding anywhere. Once they cleared that, then that EOD -- explosive ordinance disposal team -- was going to come in and check for booby traps, makes sure wasn't any of that. And the feds were gone. The Texas Rangers were going to take over. And the people that were wounded or needed medical care, go to a hospital. Everybody else goes to the command post, where a United States magistrate judge was going to be there. And they'd be warned, taken into official custody, appointed a lawyer, or released, if they weren't charged with anything. And the only suggestion that I can remember -- and maybe Dick can add to this. But the only suggestion I remember us making was -- I said, "I'm uncomfortable about those little kids walking out by themselves. Can't we let the kids walk out with their mothers? "And they agreed to that. So, that was all worked out, in my judgment. We had a deal. We were going to do it. We told them on the 14th, they were coming out.  We told them it would take another 10, 12 days. We asked them, "Do you have that much time? They said, "We have all the time in the world to resolve this peacefully. "

REP. COBLE: Well, what frustrated the plan, gentleman?

MR. ZIMMERMAN: Some desk-bound bureaucrat in Washington overrode those people's judgment down there.

REP. COBLE: Mr. DeGuerin, do you want to add to that?

MR. DEGUERIN: I don't know exactly how the decision was made. But obviously, they decided. And someone pushed for it. And that's what you ought to find out. Someone pushed for a plan to send teargas -- and not just regular teargas, CS gas, which has been banned for use in international warfare. We can't use it against our worst enemies, but they used it against those kids. Somebody pushed for that plan. And it was too soon. It would have ended peacefully, in my opinion.
I don't know who made that decision. That's for you to find out. And I hope that you can find that out. I don't know whether it was done on full information. I don't think it was done on the information that we had. We tried to get the information to them about this religious aspect and the sincerity of that coming to pass, and them coming out. That's what frustrated it. Someone wanted to end it by forcing them in, rather than letting it in.

REP. COBLE: Mr. Zimmerman --

MR. ZIMMERMAN: Yes, sir.

REP. COBLE: -- I almost feel sick to my stomach when I hear you say how close that could have -- almost within your grasp. And if that could have been executed, as you just laid it out, this hearing probably would never have been called.

MR. ZIMMERMAN: We wouldn't be here if the FBI had waited ten more days. I shouldn't say the FBI. If the Department of Justice would have waited ten more days. And if they didn't come out, where -- what -- how much farther down the line would we have been? What would have been lost by waiting ten days? I don't know if this is an appropriate time to tell you, but I heard Mr. Noble talk about those funerals. And I believe he was sincere about it. But I got to tell you that this has not been a pleasant experience for Dick DeGuerin and me, because the Branch Davidians had families. They had people who loved them. One of the worst things that I can remember about this was a phone call from Israel, from Shulamet Cohen (sp), the mother of Pablo Cohen (sp), who had just been there -- came over from Israel, and as far as he was concerned, was there from one of those members -- somebody described the group as musicians, and so forth, and so on.

REP. COBLE: Yes.

MR. ZIMMERMAN: He was in that group.

When the press reported, after the fire, that I had represented Steve Schneider -- apparently, on CNN, everybody in Israel was watching this -- I got a call from Ms. Cohen, and between her sobs to ask me if I had seen Pablo -- and I had. Dick and I had talked to him on April the 4th. And there had been a tape from his mother. And one of the things that we asked the FBI to do, which they agreed to do, was bring that return tape out with the legal documents and the letter that was addressed to Dick. And I told her about that. And then she described for me, an Israeli Jew talking to an American Jewish lawyer, watching that gas be inserted into that building, watching an American tank knock down an American house, and then it burst into flames. Can you imagine the images in an Israeli's mind, with the Holocaust survivors in Israel. I couldn't answer. I think you can tell from today, it's not often that I am without words.

REP. ZELIFF: The gentleman --

MR. ZIMMERMAN: But I could not explain to her how that happened. And her question was, "I thought he would be safe in America."

REP. COBLE: The red light appears again.
REP. ZELIFF: The gentleman's time is expired.

REP. COBLE: I thank you. I want to -- Mr. Chairman, I just want to thank these gentleman for being here. Thank you, Mr. Chairman. I have no time to yield back.

REP. ZELIFF: You sure don't.

REP. COBLE: But thank you, Mr. Chairman.

REP. ZELIFF: You got pretty good for five minutes, though.

The Chair now yields to the gentlelady from Texas, Sheila Jackson Lee. And I understand you have a piece of audio-visual.

REP. SHEILA JACKSON LEE (D-TX): Mr. Chairman, I thank you very much, and I wish -- as the gentleman from North Carolina -- I might be so lucky as to have those minutes yielded to me. So, gentleman, I'm going to have to talk very quickly.

I would like number 32 to be brought over to me. But as I begin, let me say that the compelling statements are such -- from both of you having been inside -- is not in my purview to try and overcome both the emotion and as well the overwhelming feeling on the loss of life. I will simply acknowledge that we lost lives.

I'd like to join, however, my colleague, Chuck Schumer, to say that I wish you were here yesterday. And I think you're right, Mr. Zimmerman. You need to either continue with this -- and I know you're time is limited -- because much of what you have to say deals with the FBI and the Department of Justice. And we should get to that. Let me -- I'm not sure where it is as it comes -- be able to just see if we can concede on a point of confusion, because that's why we are at these hearings. And I hope that maybe at the end of these hearings, we won't have confusion. But when those ATF officers testified yesterday, they were moving toward the door to serve a search warrant. And as they moved toward the door to move that search warrant, they testified that shots came out. I know you have since indicated that there may have been the possibility of them shooting first -- meaning these ATF agents. But it could have just as well been the door closing, slamming the door, and shots coming out the door. Maybe you said something differently. So, I need to understand that, because I don't this picture gives us any evidence of who shot first.

MR. ZIMMERMAN: And what I'm going to tell you may not tell you who shot first. But I'm telling you, in my experience, it does.

The testimony at the trial was, was as the agent -- and he didn't say this yesterday, and out of fairness to him, he wasn't asked this. But the testimony was that as he walked up after David Koresh closed the door -- remember, he did say David came out, said something, the door closed. The testimony trial was that then fire erupted from inside, and it all came out that front door -- the right hand side of that front door. And that's what wounded people. The bullets came from the inside through the closed door, which was what I was trying to convey to Mr. Schumer, because he's
absolutely right. That makes little sense to me. And I don't think the jury bought it either, because -- as Dick said -- not one of those pictures -- that picture right up there, you see that person sitting there with his head about 18 inches --

REP. JACKSON LEE: I can't see that far. And I want to keep us on this one.

MR. ZIMMERMAN: Okay. Well, you see the --

REP. JACKSON LEE: Because this is the one that we referred to.

MR. ZIMMERMAN: Okay. You see the bullet holes in the right-hand side of the door as you face it.

REP. JACKSON LEE: Yes.

MR. ZIMMERMAN: The ATF agents theory was that the bullets came through that door from the inside. What Dick and I saw were bullet holes in that right side, right where David Koresh had been standing, as we were told by the Davidians. But they weren't coming from the inside. They were going from the outside in. That's why we believe that what the Branch Davidians were telling us were true.

REP. JACKSON LEE: So, we have a point of confusion, and you were there after the initial first day raid.

MR. ZIMMERMAN: Correct.

REP. JACKSON LEE: And I guess my point is, is that this still photo does not confirm for us where those shots came. And I appreciate you assumption --

MR. ZIMMERMAN: (Inaudible).

REP. JACKSON LEE: -- and your analysis having been inside. And I do believe that the point of us being here is to try and resolve it. But I wanted to make sure that this photo does not evidence the final word --

MR. ZIMMERMAN: Oh, no.

REP. JACKSON LEE: -- on who shot first.

MR. ZIMMERMAN: No.

MR. ZIMMERMAN: But if Mr. Taylor can get that right door, it'll solve all the problems.

REP. COLLINS: We're all working on the door and his witnesses. I hope we can get the EMT dispatcher and the cameraman. But let me go on to say there were not convictions on conspiracy and murder; my understanding.
MR. DEGUERIN: That's correct.

REP. COLLINS: But there were convictions on gun violations on some of the defendants.

MR. DEGUERIN: That's correct.

REP. COLLINS: Let me ask you, with respect to -- I hate using H. R. 666. Let me just call it this new legislation on the exclusionary rule. What would be your position -- and I think the American people need to understand, in layman's language, that we no longer have the necessity of a viable paper search warrant that we could act on good faith. How would that have further impacted this very tragic situation?

MR. ZIMMERMAN: My main concern with anything that deals with the exclusionary rule is not what happens to do with a paper. A piece of paper is not what I'm after. What I want is to involve a neutral, an impartial, non-law enforcement officer --

REP. COLLINS: So if you didn't have that anymore, if you didn't have that undercover agent, as I sat on the municipal court bench reviewing in other types of situations, some independent force bringing that undercover agent who'd been in the field sweating, tense, to review it, losing that intervening action, you think, would be detrimental.

MR. ZIMMERMAN: Yes.

MR. DEGUERIN: Absolutely.

MR. ZIMMERMAN: I can't believe a magistrate approved that search warrant, to be honest with you.

REP. COLLINS: But certainly if we removed that by law, that would be a problem.

MR. ZIMMERMAN: Yes.

MR. DEGUERIN: It would be terrible. It would put the entire discretion over whether your Fourth Amendment rights are observed in the hands of an officer who is often, as it goes, often engaged in the competitive enterprise of ferreting out crime -- someone with his ox in the ditch, so to speak; someone who wants that search warrant. And you've got to interpose a judge in that decision.

MR. ZIMMERMAN: And I point out --

REP. COLLINS: Innocent people then would be impacted negatively?

MR. DEGUERIN: Yes.

MR. ZIMMERMAN: Absolutely. And if we're talking about searching a person's home --
REP. COLLINS: And my time is almost -- if you'd do that, so I can ask -- finish your point so I can be able to ask my last question.

MR. ZIMMERMAN: I don't know what 666 says and I don't know if it's restricted to non-home situations. But a person's home is his or her castle. And to allow a search without a neutral and impartial judge saying there's probable cause to search a person's home, I think, lessens all of our civil (rights?).

REP. COLLINS: Let me go on to say -- and I thank you very much, and I'm not intending to cut you off -- let me say also in dispute is the helicopter shooting. We have testimony that says they retreated. And, of course, there's some question -- you indicated -- this is a question, Mr. Chairman, so I'd like to finish it and be able to have these gentlemen answer it. You indicated that it could have been -- when I say you, I think it was Mr. DeGuerin -- that shots could have been through the ceiling. But I'm trying to isolate the disputed issues.

This question follows for both of you all to answer. You were inside and you made the point about (besetting?) the atmosphere. We are querying and trying to understand so that we can ask intelligent questions of the FBI how the Schroeders, the Wayne Martins of the world, the engineers, the teachers or whoever were in there, were mesmerized and so seemingly lacking in power in decisions to come out and to save themselves, the children and the women; if you would answer that question for me, please.

MR. DEGUERIN: Let me address that. And I hope you ask that same question of the two religious experts that are coming next, because they can talk about it in terms that I cannot. But this was not a bunch of people who'd been hypnotized. These people that I saw -- and I met almost everybody in there that died in that fire -- these people believed. They believed in the Bible. They were there because of the Bible. Most of them -- well, I can't say that. Many of them were there not because of David Koresh. Some people had been there as long as 40 years. Some people had been born and raised there. They were there because they believed in a vision of the Bible that was unusual. I don't understand it, and these scholars have a difficult time understanding it. But it was real. You can't legislate away that. In fact, the First Amendment says that we can't do anything about that. They believed.

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

REP. COLLINS: Thank you very much.

REP. ZELIFF: The chair now recognizes the gentleman from Illinois, the chairman of the full Judiciary Committee, Mr. Henry Hyde.

REP. HYDE: Thank you, Mr. Chairman. I'd like to ask both of you if you agree with what I'm going to read to you from an article by Dean Kelly of the National Council of Churches that appeared in the May 1995 magazine called "First Things."

"Ironically, just as the federal government was abandoning hope for a peaceful solution, there opened up the possibility of just such an outcome. Early in the siege, Koresh had promised to come
out if his message could be aired on national media. He prepared an hour-long audiotape that was broadcast locally but not, he claimed, nationally. Two scholars of apocalyptic religion, Phil Arnold of the Reunion Institute in Houston and James Tabor of the University of North Carolina, studied the broadcast and believed Koresh could be reasoned with if approached within his own frame of reference.

"After several futile efforts to persuade the FBI to let them try, they arranged with Ron Engleman (sp), host of a radio talk show on KGBS, to which the Davidians listened, for a half hour's uninterrupted plea to Koresh to rethink his understanding of the fifth seal, Revelation 6: 9-11, which he believed to be unfolding at Mount Carmel. In the text, the souls of the faithful who have been slain for the word of God cry out to God, 'How long before thou wilt avenge our blood? 'They are given white robes and told to rest for a little season until the number of their fellow servants who have been killed, as they have been, should be complete. The sixth seal that follows brings about the destruction of humankind.

"Arnold and Tabor, in their radio colloquy, sought to persuade Koresh that the term 'translated a little season' meant in the original Greek a period of as much as a year, leaving time for Koresh to complete his work before the sixth seal supervened. Koresh apparently accepted this idea, for on the day after Passover he sent out a letter via his lawyer saying that God had permitted him to explain in structured form the decoded messages of the seven seals and that upon completion of that task he would surrender.

The FBI saw this as just another in a long series of delaying tactics and went ahead with their plans to use tear gas. They did send in writing materials, however, on Sunday, April 18th, and Koresh worked most of that night, dictating to Ruth Riddle (sp), who typed his words on a battery-powered word processor. He completed a five-page introduction to the seven seals, a poem of 13 quatrains, and a seven-page exposition of the first seal. At that rate, Arnold and Tabor estimated he should have completed the task in two or three weeks, but he did not get the chance. The next morning the FBI gas assault began and David Koresh must have concluded that his original scenario of imminent destruction was correct."

Do you agree with that, what I just read?

MR. DEGUERIN: I do. I can speak to that if you'd like. What we found, the FBI ridiculed the idea that he would be writing the seven seals and, in fact, after the fire, said they had evidence that he was not at work on that. We discovered, by talking to Ruth Riddle, that she had taken this computer disk out with her when she escaped the fire. And we found that he had been working on it and it was a real thing. And we also found that those on the inside, these believers, thought that this was a great revelation to them in that their death, the end of the world as prophesied by the Bible, was not coming immediately but was some distant time in the future.

That's what I was trying to, with the help of Tabor and Arnold, talk to Koresh and the others about, that their interpretation that the apocalypse was now was that, no, it's a little bit later. And that's the history of Seventh Day Adventism. There have been prophets time after time who have prophesied the end of the world at a certain date, and everybody gathers and they wait for the end of the world and it doesn't come. They dishonor that prophet and go on. And that's the history of those people.
REP. HYDE: The unfortunate thing is, in the context of Jonestown and the James Jones experience, there is such a cynical approach towards religious fanaticism. There is an unwillingness to understand or believe that there are people in the world who are persons of belief and they believe strange things by our standards. But had the understanding been these weren't hostages, and to get--to get in there and to dissipate them would take persuasion, argumentation from--in their frame of reference, not tear gas and not tanks, and that, it seems to me, was the judgment made somewhere along the line that ended up costing a lot of lives.

MR. DEGUERIN and MR. ZIMMERMAN: I agree.

MR. : And if you, in your next few days, will find out who made those ridiculously dangerous decisions, then I think that would be exercising your oversight responsibilities, and you're the only ones in the country who can do it.

REP. HYDE: Well, I thank you for saying that. I think that shows the utility of these hearings. We may not come up with any legislation. There doesn't always have to be legislation, but we ought to come up with information that will help guide us in the future, because I'm sure Jonestown and Waco are not the end of this sort of situation. Thank you.

REP. ZELIFF: The gentleman's time has expired. The chair now wishes to recognize Mr. Brewster from Oklahoma for five minutes.

REP. BILL BREWSTER (D-OK): -- (off mike) -- I'm sorry (for doing ? ) all kinds of problems here -- (inaudible) -- you gentlemen probably had more contact with Koresh than anyone that I know of. There's been a lot of discussion about what would have happened had he been arrested when he went to town on the weapons charges or whatever.

Was there anyone else in that compound, in your opinion, that could have pulled everybody together in a violent manner?

MR. DEGUERIN: No, sir.

MR. ZIMMERMAN: My client was Steve Schneider. My partner Jim LeBank (ph) was Judy Schneider's lawyer. The two Schneiders were married and had a 2-year-old child. Steve was labeled by the FBI as, quote, "first lieutenant," along with the other military terms that were applied, like the compound, which I notice from these hearings you have all accepted. It was Mount Carmel Center for 35 years, and then when the FBI came in, it became Mount Carmel compound; first lieutenant, cultist, et cetera.

Steve was an articulate, decent, peaceful guy who was a college graduate and had his degree in theology. If the FBI considered him the second in command, I can tell you without any reservation that Steve Schneider would not have organized any kind of violent resistance to a search warrant.

In fact, when I had my first meeting with him, I thought he was going to break into tears when we were -- Duke (ph) was asking the standard lawyer question about we've got to find out where the
five Davidians that were killed are, you know, where are there remains? We need to make sure they're preserved for autopsy so we can see the angles and so forth, some pretty tough stuff, and then Steve started talking about their loss of life, and he volunteered to me how sad they felt at the loss of the ATF agents' lives.

So in my judgment, there would not have been a violent resistance. Frankly, I don't think there'd have been a violent resistance if the search warrant had been served in a proper manner even if Koresh was there, but, to answer your question, one of the many times he was away, if he'd have been arrested, put into federal custody for three days -- which they can keep him for three days with no reason at all -- execute a search warrant the next day, I think this all could have been resolved and avoided.

REP. BREWSTER: Do you agree with that, Mr. Deguerin?

MR. DEGUERIN: I do agree with that, and I think that it could have been done in a number of other different ways. History shows they had a good relationship with the local sheriff. He surrendered peacefully before on much more serious charges. I understand that the charges that the ATF were bringing were relatively minor federal felonies.

Now, you know, going to prison, that's not real minor, but in the scheme of things, it's -- the maximum punishment for these crimes would have been about 10 years in the penitentiary. Under the federal guidelines, probably the time in the penitentiary would have been two or three years, so they're not really that serious, and he surrendered peacefully on charges that could have landed him in jail for life.

He had invited the ATF -- he told us that story about McMahon that McMahon told here. He told me that inside, and I found out that to be true. I telephoned McMahon, talked to the girlfriend. He had invited the ATF to come in and look at the guns back in July of 1992. I think one Texas Ranger could have walked up to the front door and knocked on it and be let in. That's my opinion.

REP. BREWSTER: That's my next question, is I've heard all kinds of stories that the Rangers wanted to be involved in the negotiations, that Koresh had wanted to negotiate with them. Is there any validity to that, or is that only rumors?

MR. DEGUERIN: It's not exactly that way. It's not rumor. What I wanted to do and what I proposed to David Koresh after talking to Captain Maurice Cook (ph) was that, "David, the world's watching. Let's have one Texas Ranger walk up to the front door and you and I will walk out and surrender to him. That'll be sending a message to the people of the world that you don't trust the ATF and the FBI, the feds that got you into this in the first place, but you do trust our legal system and the Texas Rangers," and being from Texas, there's that story about one riot, one Ranger, and I thought that that would be a real good thing to do.

He agreed with it. He thought it was a good idea, and he agreed to do it that way, but not immediately. I went back, assured -- got assurances from Captain Cook (ph) that that was okay with him, but he said, "You've got to go through the FBI. "It's just protocol. They're running the show, and we're not going to suggest it to them. You do it. I did suggest it. I can't say it was rejected, but it
wasn't greeted with a lot of enthusiasm.

REP. BREWSTER: Okay. If they had this letter April 14, what would you have expected the time frame to have occurred, had the raid on April 19th not occurred?

MR. DEGUERIN: It would have been at least a week, maybe a little bit longer.

REP. BREWSTER: Did this compound have toilet facilities in it or -- I notice, referring to the Treasury department deal here, they sent a guy to an outhouse, at one point. Did they even have toilet facilities in there?

MR. DEGUERIN: They did, but very few. They were building this place. This was new construction, although it was used lumber and they were doing it themselves, and they were very proud of it.

They didn't have a lack of toilet facilities out of design, just -- they hadn't built them yet. They were in the process of building it. I went into almost every room in that compound, and I saw the building that was going on. They were doing it themselves. There were shower stalls, there were toilets, there were -- they just weren't operating yet. They were in the process of construction -- future plans that they had inconsistent with "the world's going to end now."

And there were other things that showed future plans. For instance, I was to file a lawsuit to perfect title to the property. They were worried about that. I prepared an intervemos (ph) trust so that any money that came to them or to David as a result of book rights or anything like that over and above legal expenses would not go to him, but would go to a trust for all of his children, and I met 14 of his children. And there were other things that were inconsistent with a suicide plan.

REP. ZELIFF: The gentleman's time has expired. The chair would like to announce that there will be at least two votes, which should take us about a half an hour. We think it's in the best interests of everybody if we recess and convene at 12:45 p. m. It's going to be a long day, and I think we'll just recess until 12:45.

##### END OF MORNING SESSION