WITNESSES: PANEL A:
AFTERNOON SESSION PETE SMERIK, FORMER CRIMINAL INVESTIGATIVE ANALYST
WITH THE NATIONAL CENTER FOR THE ANALYSIS OF VIOLENT CRIME AT THE FBI
ACADEMY IN QUANTICO, VIRGINIA
JIM CAVANAUGH, ATF SPECIAL AGENT
BYRON SAGE, FBI SUPERVISOR IN AUSTIN, TEXAS GARY NOESNER, FBI
SUPERVISOR AT QUANTICO
JEFFREY JAMAR, FORMER FBI SPECIAL AGENT IN CHARGE IN SAN ANTONIO
DR. PARK DIETZ, HARVARD UNIVERSITY
2141 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC WEDNESDAY, JULY 26, 1995.
REP. MCCOLLUM: The hearings on Waco will come to order. We're a little bit later than I hoped we would be coming back from the break after the joint session of Congress. But, nonetheless, we're here and gathered now. I don't believe there is a member on the minority side ready to ask questions at this juncture -- I have been advised. And so, I'm going to yield for his five minutes to Mr. Blute. Mr. Blute you may proceed.

REP. PETER BLUTE (R-MA): Thank you very much, Mr. Chairman. And I want to thank the witnesses for their testimony today. I'd like to direct a question to Mr. Jamar, if I could. Did you regularly get memorandum from Mr. Smerik concerning what was happening at Waco?

MR. JAMAR: The first week, I think, Mr. Smerik gave me a memo -- probably four memos.

REP. BLUTE: Did you find those memos helpful in the development of your strategy?

MR. JAMAR: Yes.

REP. BLUTE: In his March 7th memo to you, Mr. Smerik recommended that you bring in the local sheriff to become more involved in the negotiations. Did you act on those recommendations?

MR. JAMAR: Well, he was already involved before that. He was --

REP. BLUTE: Was he involved extensively, would you say?

MR. JAMAR: And he stayed with all day, every day -- from, I think, the duration of the siege.

REP. BLUTE: Was his input helpful to you?

MR. JAMAR: Tremendously helpful.

REP. BLUTE: We heard testimony earlier, from an earlier panel, from a Branch Davidian who had escaped who had first-hand knowledge there, who seemed to indicate that the relationship between the sheriff and Koresh was fairly cordial. Is that your understanding?

MR. JAMAR: Yes. The sheriff was the type of man who had been sheriff for over 25 years. A very engaging man. Extremely bright man. He knows how to communicate with people in that community. And he was extremely effective with Koresh.

REP. BLUTE: Was there any idea of using him up front with Koresh?

MR. JAMAR: We did. I think there's one instance where we put milk in, where we made it look like it was the sheriff accomplished in order to build him up. I think you might want to ask Mr. Sage about the -- there's a photograph up there -- the face to face -- is a good example of the sheriff's commitment and his involvement with us.

REP. BLUTE: In Mr. Smerik's March 8th memorandum, he recommended that the resort to tactical pressure, quote, "should be the absolutelast option we should consider." And that the FBI
might unintentionally make Koresh's vision of a fiery end come true. Seeming you did not listen to that recommendation.

MR. JAMAR: Well, I don't think that -- how do you want to define it and when. One of the points I tried to make earlier is establishing a perimeter, and using armor to do that. Is that tactical pressure? If we didn't do that, we wouldn't have stayed. We'd be gone. We'd have to leave. Remember, when we arrived, there's four dead ATF agents, at least 16 wounded, and at least five people we knew about dead inside. You don't show up and try to establish control of something, and put people in peril -- although they were in very much peril the whole time. So, that part, if you define tactical pressure as that, then no. As far as doing something to provoke them or anything like that -- the first thing we did, I think, would be close to provocative was on the 15th of March, where we removed some debris from the -- what we call the black side, the back, from -- as you recall from television, which is the view you saw from the back, because there was some building materials and stuff that they would go out and intend to fortify, and they kept leaving. So, we wanted to remove that from them.

REP. BLUTE: Let me just ask Mr. Smerik if he would consider operating Bradley fighting vehicles close to the compound as provocative act?

MR. SMERIK: It wouldn't necessarily be construed as a provocative act. What it would do is be perceived, perhaps in the compound, as additional stress being placed upon them. And so what I was concerned with, of course, is that our goal is to try to break the control that David Koresh had over the minds of his people. What we'd like to do is draw back slightly so that we're not increasing the pressure within the compound and strengthening the hold that Mr. Koresh had on his followers. But it was not a tactical move to provoke any type of a fight.

REP. BLUTE: What about the issue of your decision, Mr. Jamar, to cut off the power inside the compound? Did you believe that the HRT agents in the field were cold and wet and this is somehow why the Davidians should be the same at that time? Was that part of your decision-making?

MR. JAMAR: That was part of it. But I think the thing to remember, we cut the electricity off on the 9th. We cut the electricity off on the 10th. The idea was, here's something we can do maybe to get a reaction from them, which we did. Koresh never permitted classical quid pro quo negotiations. He would not involve himself in it and did not permit it. But that was what was going on. We had turned it back on. Well, that evening morale and the cold was a factor. But remember, the reason we did it in the first place was also to use up their fuel. If they had generators, the sooner we use their fuel up, the generators will stop and they can't use the fuel for Molotov cocktails. There's a lot of reasons for doing something. But that night, I'm the first to tell you that when I -- thereason I did it that night primarily was for morale in one respect -- not just the tactical people; everybody who was out and cold and away from home, and everybody else -- but also that we're not as predictable as they may think. Now, do the negotiators like that? Not at all, because it was a departure for them. But it got us out of a box.

REP. BLUTE: Well, what about the further decision to play loud music, the Tibetan chants and the rabbits being slaughtered? Was this an escalation and was this consistent with the advice that Mr. Smerick had given you?
MR. JAMAR: Well, I think Mr. Smerick was gone when we did that. We didn't do that until March 22nd. Mr. Smerick had the memorandum, one memorandum of his, where that was an option to consider. He didn't specifically recommend that necessarily. But it was done at that time. I wouldn't consider it relevant to any of his memoranda.

REP. BLUTE: Well, let me just say that it seems that there was a two-pronged approach here where you were raising the temperature while your negotiators were trying to lower the temperature. And is that -- and let me ask Mr. Sage his opinion. While these things were going on, did you think that these were helpful things in your negotiations or hurtful?

MR. SAGE: They were -- they presented difficulties for sure. But that's not unusual. These were not matters that we were not prepared to attempt to negotiate through. It's not uncommon, as part of the negotiation process, to actually try to ingratiate yourself a little bit more with Koresh and his followers by saying, "Look, this is out of our hands, but that's why you need to give us something to work with. I need to be able to go in to the on-scene commander and demonstrate some good faith progress here." That held true throughout this. It was not an overwhelming stumbling block and it was not something that was undertaken without us having prior knowledge of it.

REP. BLUTE: Let me just quickly ask one last thing. Did you negotiate with each other or discuss your negotiations on a daily basis?

MR. SAGE: Constantly, all day.

REP. BLUTE: Constantly, all day?

MR. SAGE: All shifts.

REP. BLUTE: Thank you, Mr. Chairman.

REP. MCCOLLUM: Thank you very much. Mr. Schiff, you're recognized for five minutes.

REP. SCHIFF: Thank you, Mr. Chairman. Mr. Cavanaugh, you're with the Bureau of Alcohol, Tobacco & Firearms, or were at that time.

MR. CAVANAUGH: Yes, sir.

REP. SCHIFF: After the initial raid, which you have already described, did you become the initial negotiator with David Koresh and the Branch Davidians?

MR. CAVANAUGH: Yes, Congressman, I did.

REP. SCHIFF: And for how long did that last?

MR. CAVANAUGH: On February the 28th, I was the negotiator from 10:00 a.m. until I got the cease-fire and the wounded out at 1:00. At 1:00, I told David Koresh and Steve Schneider, I said,
"You're completely surrounded. "This was not true, but I was stretching that a little bit. I was stretching it a lot, really.

REP. SCHIFF: Just because time is short, if I can redirect you to the question --

MR. CAVANAUGH: I'm sorry.

REP. SCHIFF: -- for how long were you essentially the chief negotiator in this?

MR. CAVANAUGH: I was the primary negotiator up through Wednesday or Thursday.

REP. SCHIFF: All right. And who replaced you as negotiator?

MR. CAVANAUGH: At night, the first person was Gary Noesner, at the table here. He replaced me Sunday night at 2:30 or Monday morning at 2:30 a.m.

REP. SCHIFF: Now, Mr. Noesner is with the FBI. Is that right?

MR. CAVANAUGH: Yes, sir. Yes, sir.

REP. SCHIFF: So that's at the point several days later where the FBI then took over the negotiations with David Koresh.

MR. CAVANAUGH: Yes, sir. They officially really took over, I'd say, Monday, the next day, directing operations, taking over the negotiations. Mr. Hartnett had come to me and told me that the White House had directed that the FBI would take over the whole situation.

REP. SCHIFF: All right. When the White House directed that the FBI take over from ATF, did you continue to participate in the negotiations even though the FBI was now in charge of it?

MR. CAVANAUGH: Yes, Congressman, I did.

REP. SCHIFF: You continued to participate all the way through?

MR. CAVANAUGH: Well, I stayed on the phone up to Thursday. I stayed on the negotiating team up until Saturday. I had been transferred to Washington. Once again, I had to move my personal goods. I was not on the phone speaking at that time. And so I left. I came back for another stint of about seven to 10 days in late March, early April.

REP. SCHIFF: So you were always a participant in the negotiations?

MR. CAVANAUGH: No, sir. A week, and then a break of a couple or three weeks, and then a week, and then I wasn't there for the last two or three weeks.

REP. SCHIFF: Were you ever removed as a negotiator? Did the FBI ever tell ATF, "We don't want you involved anymore"?
MR. CAVANAUGH: No, sir.

REP. SCHIFF: Okay. So always fully involved.

MR. CAVANAUGH: Yes, sir.

REP. SCHIFF: Did you believe that the -- were you aware that there were surrender plans being discussed with Koresh and the other people inside the compound by the lawyers that testified here yesterday.

MR. CAVANAUGH: Yes, sir, I did. I was aware.

REP. SCHIFF: You knew about that.

MR. CAVANAUGH: Mmm-hmm. (Affirmative response. )

REP. SCHIFF: In your opinion, were those serious plans for surrender?

MR. CAVANAUGH: Well, Mr. Schiff, like I testified earlier, I felt the best chance we had to get them out was on March the 2nd. And I agree with Mr. Jamar, he tricked us. He fooled us. He played with us. I thought if he was coming out, that was the best time we were going to get him out -- fatigue; he was wounded; his blood pressure was down. I think he was playing more sick than he really was, but I thought we might have a chance at that point of getting him out. Itold Mr. Jamar not to let those attorneys in there. I disagreed with that strongly.

REP. SCHIFF: Well, let me turn now to Mr. Jamar, if I may. Mr. Jamar, were you aware of the surrender discussions between Koresh and the lawyers?

MR. JAMAR: Well, the surrender discussion was as I described earlier. That was the week in there of late March, early April -- not the 14th. We're talking about two very distinct periods of time here.

REP. SCHIFF: Well, specifically in April, around April 14th, the lawyers testified that they had reached an agreement for surrender. Were you aware of that?

MR. JAMAR: Well, no. And I think that was the implication of what they were saying, but that wasn't exactly it. What they agreed -- what it was was he was going to come out after he writes them manuscripts, an open-ended time which they believed, if he was telling them the truth, would take a couple of days each, so they thought 10 or 12 days he would be coming out.

REP. SCHIFF: All right, and did you convey to Mr. Sage, as chief negotiator, or was Mr. Sage already aware, if you know, that there was at least a discussion of a surrender in 10 to 12 days as an estimate?

MR. JAMAR: I don't think you're saying it quite right, Mr. Schiff. I think the --
REP. SCHIFF: Well, I'll let you say it, then, the way it oughtto be said.

MR. JAMAR: To make it clear, earlier, all the surrenderdiscussion, all the surrender plan discussion, was done long beforeApril 13th and 14th with them. It was when the lawyers were inside. And they came out and then they were on a high. He took it right away from them, and then they left. We thanked them for a wonderful effort taking their time, and that was it. Then Mr. DeGuerin came up with the idea, after discussing with some scholars, some religious scholars, that "Let's try this new angle with the seals with him. "Well, he gets on the phone with Koresh and presents that to him. Koresh goes for it and sends the letter out.

REP. SCHIFF: Excuse my interruption; it's only because time is short.

MR. JAMAR: I understand.

REP. SCHIFF: Was there ever a point that you felt that there was a serious surrender discussion or offer being made? Did you ever --

MR. JAMAR: Are you talking about in April, with the lawyers?

REP. SCHIFF: That's what I'm talking about.

MR. JAMAR: No. It was serious on their mind. I think they were earnest and really hopeful. But in Koresh's mind, never a chance, I'm sorry.

REP. SCHIFF: Mr. Chairman, I see my time is about up. I just want to say that once again we've heard some very powerful testimony at this hearing about the initial events and the shoot-out between the Bureau of Alcohol, Tobacco & Firearms members and the people inside the compound. I just want to again say that on my part, and I think everybody else's here in both parties in the subcommittees, that all of us support law enforcement and all of us want to see that if there are and there will be dangerous situations in the future that federal agents are not sent forward in inherently dangerous situations without proper planning and management and backup. Thank you, Mr. Chairman. I yield back.

REP. MCCOLLUM: Thank you very much, Mr. Schiff. At this point, I'll recognize Ms. Lofgren for five minutes.

REP. LOFGREN: Thank you, Mr. Chairman. I'd like to first apologize for not being here this morning. The Science Committee had a hearing at the exact same time on the Internet, which is of huge importance to my district and, I would say, the future of the country. I was -- I've read through the various FBI reports and the like, and I was interested in the report on July 13, Mr. Jamar -- I assume it's accurate -- where you indicate on, I guess, page 2 that there had to be some method devised to remove individuals from the compound if, for example, it became apparent the children were being brutalized or had their lives endangered. I was wondering how much you knew or believed at that time before the April 19 event as to the abuse of the children, the child molestations, ongoing, and how much that was a factor, even though it might not have been your direct jurisdiction, in factoring how to deal with this whole situation.
MR. JAMAR: Well, I think as Mr. Dietz and Mr. Cavanaugh indicated, the children were utmost in everyone's mind all the time. The information received when we arrived was that there were several instances of complaints by Koresh of severely disciplining infants to include paddling them to where they bled, and the other would be taking 10- and 12-year-old girls for his wife. In fact, in one of the texts he sent out, he had a group of his wives or potential wives sitting on a couch with star of David necklaces on. What we took from -- advice from behavioralists and others is that because he had that kind of conduct in the past, there's no reason for him to discontinue it during the siege. There was some evidence, we thought, of him being involved with a child, from what we could hear on the microphone. We've been told that that was not the case, it was preaching, but Kathy Schroeder tells us -- Kathy Schroeder's one of the people that came out and was a witness in the trial, and Kathy Schroeder tells us as she stuck her head in the door to say good-bye to Koresh when he forced her to come out of the compound, because she did not want to come, he was in bed with a child, with a 10- or 12-year-old girl, so it was -- but we didn't know that then. My point is we know it now.

REP. LOFGREN: I'm wondering what you knew at the time.

MR. JAMAR: What that does to me is confirms the belief that if he had that kind of conduct in the past, it would continue during the siege, and it did, apparently.

REP. LOFGREN: But what I'm trying to pose -- I'll tell you, trying to think back to just what my neighbors -- I'm a freshperson. I've only been in the Congress now seven months, I guess, and like a lot of other Americans in 1993, my neighbors were, you know, opining what should happen, and one of the questions that I recall people in the neighborhood and in the town I lived in asking was why -- why not just wall them up and leave them alone? And how much -- how much was it costing a day for the taxpayers to keep this siege ongoing? I'd like to know how much was it costing per day and were there good reasons for not simply withdrawing and letting him sit there fora year or more?

MR. JAMAR: Well, there's lots of reasons not to withdraw here. We've got four dead ATF agents and people who are armed. The other is that if we leave those people in, particularly the children, to him todo what he pleases with the conditions in there -- forget the danger level, forget the possibility of gunfire inside there -- but the sanitary conditions -- because the place was not made for normal living. --REP. LOFGREN: So that that was a factor --MR. JAMAR: -- all that. We just (wouldn't ?) leave it to him.

REP. LOFGREN: -- in terms of not just --MR. JAMAR: I didn't think that was --REP. LOFGREN: -- withdrawing -- (inaudible) --MR. JAMAR: -- that was feasible.

REP. LOFGREN: Let me ask you this: You have mentioned that you had a lot of input from experts in behavioral sciences, and I was wondering -- you had conflicting information. We had a gentleman testify yesterday about the need to understand the Biblical context --MR. JAMAR: Mm-hmm (acknowledgement).

REP. LOFGREN: -- in which they were operating, which I agree with. He analogized it to if somebody spoke a different language, you would have somebody who could negotiate with them in their language, and I think that's sensible. But I'm wondering, what kind of -- how did you assimilate
the various diversities of the information you were getting to make the soundest judgment you could as to strategy?

MR. JAMAR: Well, I -- your observation about being able to relate and stuff like that. Maybe you don't always want to do that. I mean, ask Mr. Noesner to give you the philosophy of negotiation when you have someone who has a deep belief system. You might ask him to describe that to you. But the -- each component, each shift of the negotiators would report interesting or significant events --

REP. LOFGREN: I only have a very short time. I don't want to be rude, but I'm not suggesting that we necessarily should negotiate with someone who is psychotic in their terms, but to the extent possible, we should try and understand what that person thinks is going on. Is that not correct?

MR. JAMAR: I think one of the great misunderstandings of this is there's implications that the FBI totally discounted Mr. Koresh's religious perspectives, and I think nothing could be further from the truth. If you listen to the hours upon hours of tape, we listened to David Koresh's theology and his points of view. We never tried to tell him that -- that we understood that to the level that he did, but there's two consistent themes that you'll hear from every mental health expert that knows anything about crisis intervention, crisis negotiation, and that is that you neither embrace someone's belief system, nor do you discount it.

REP. LOFGREN: No, see, I guess I'm not making myself clear. I am not suggesting -- because I'm not a negotiator --

MR. JAMAR: Mm-hmm (acknowledgement).

REP. LOFGREN: -- how the negotiation should have been conveyed. I'm more interested in the internal process of how the negotiating experts came to understand the behavior and the likely future behavior of this individual, whose own belief -- and I personally am not a physician -- but appears to have been psychotic, in addition to being engaged in a rather strange religious cult and how you assimilated this information so that you could make the best tactical decisions based on your understanding of his outlook on life.

MR. JAMAR: What I think I was trying to get to is we learned from listening to David Koresh and for many hours, to try to understand the individual we were dealing with, and we did not believe that he was psychotic or out of touch with reality. He manifested primarily those attributes of an anti-social personality -- that's a con man, an egotistical, self-centered individual who manipulated people and events for his own personal gain and who callously disregarded his naive and gullible followers. That's how we read David Koresh. Now, we didn't confront him with that, but we tried to employ techniques that would help us better understand him and to provide him with the alternatives that he felt would be in his best interest, and we gave him numerous options throughout the negotiation process to take advantage of all sorts of opportunities. Whatever concerns he had, we met. They were concerned about being able to return to the compound, because the inhabitants had given up their worldly goods. We went out over the press conference and we went in on paper saying that the compound would not be confiscated. He was concerned about being able to continue his ministry in prison. We provided documentation from the United States attorney's office, from the sheriff, and from the SAC saying, "You will be allowed to meet with your followers in prison." We sent them in videotapes of the children who had been released. We made -- transmitted messages to and from relatives. Whatever the needs or desires that they had, we undertook extraordinary methods to try to comply with those so that David Koresh would understand that he'll be treated fairly, with
dignity, he'll have his opportunity to speak his piece and present his perspective on events in a public forum, as well as in a court of law, and yet despite those efforts, he chose not to do it out of his own self-interest. I think that's the important point.

REP. LOFGREN: My time is up, but very quickly, I did ask how much per day this siege was costing. I wonder if you have a figure.

REP. MCCOLLUM: Anybody who can answer that, you may do so.

MR. : I'm sorry, I don't -- REP. MCCOLLUM: How much per day did the siege cost?

MR. : I'm sorry, Mr. Chairman, I don't know.

REP. MCCOLLUM: Well, we probably can get that somewhere else, Ms. Lofgren. Thank you very much. Mr. Chabot, you're recognized for five minutes.

REP. CHABOT: Thank you, Mr. Chairman. Mr. Jamar, following up with Mr. Schiff's line of questioning, did you tell Mr. Sage about the DeGuerin-Arnold agreement, so to speak, with Koresh? Did you pass that on to him?

MR. JAMAR: He was with us when we were -- all the time we spent with Mr. DeGuerin in transporting him back and forth, Byron was there. Also when we had him on the phone, Byron was there when -- (inaudible; crosstalk) --

REP. CHABOT: -- (inaudible; crosstalk) -- MR. JAMAR: -- (inaudible; crosstalk) -- REP. CHABOT: Mr. Sage, did you pass that information on to anyone?

MR. SAGE: Absolutely. At the end of each shift, we would have a summary of the events that -- which we refer to as significant events, which would be documented for briefing the next shift that came on. I didn't wait that long. As soon as we came back from that meeting, because of the potential value of this -- of this situation, we discussed it thoroughly amongst the negotiation team, the team leaders, the team coordinator, who at that time had shifted from Mr. Noesner to Clint VanZant (ph).

REP. CHABOT: So everyone knew, basically, that this agreement or whatever you want to call it between Koresh and yourselves had been made?

MR. SAGE: The concept was thoroughly discussed. What needs to be kept in context is that this really was not a major departure. In fact, we had -- the concept as I recall was addressed, at least the very early stages of it as I was transporting Mr. DeGuerin and Mr. Zimmermann to a meeting, and we tried to press them for a -- I tried to press them for a basic time frame. And it was at that time when they mentioned that they were talking about -- and I recall two to three days per seal. Well at that rate, two to three days, would be 14 to 21 days at the outside. So we embraced that aspect of it as well in the negotiations to try to keep an update as to progress.

REP. CHABOT: Okay, thank you. Mr. Smerik, let me ask you a couple of questions. Did the FBI
turn to you for professional psychological and strategic advise during the course of the siege, is that correct?

MR. SMERIK: That is correct, sir.

REP. CHABOT: Okay, and you provided the FBI with guidance through a series of reports or memoranda?

MR. SMERIK: Yes, sir, during the first week of my stay in Waco, Texas.

REP. CHABOT: Okay. And in the memoranda you stress the need to try to ensure the safety of children, correct?

MR. SMERIK: Yes, sir.

REP. CHABOT: And as I understand it, in your first series of memoranda -- I believe the first four -- you essentially suggested awaiting strategy and you urged the FBI in fact to back away from the house. Is that right?

MR. SMERIK: That is correct.

REP. CHABOT: So that the strategy that you were emphasizing was wait at that point.

MR. SMERIK: Wait and be patient.

REP. CHABOT: Okay, wait and be patient. Now you believed -- and here I think I'm quoting you -- that increased pressure on Koresh could eventually be counter productive and could result in loss of life. Correct?

MR. SMERIK: Yes, sir.

REP. CHABOT: And you believed that I assume.

MR. SMERIK: Yes.

REP. CHABOT: Okay. Now however in the last memo you suddenly recommended new measures, including cutting off negotiations. And that seemed to be a fairly dramatic change in the tone of the memoranda at that time. Is that correct?

MR. SMERIK: Yes, sir.

REP. CHABOT: Okay, I'd like to quote to you something from the Washington Times. This says that the memos urged -- referring to your memos -- urged the FBI supervisors to wait Koresh out, saying increased pressure could eventually be counter productive and could result in loss of life, which we've just discussed. Then it goes onto say Mr. Smerik, now retired, said FBI officials pressured him to change his advice on how to resolve the situation. And in a fifth memo he made
changes that amounted to an endorsement of the FBI raid. Could you explain that. Did you feel pressure from the FBI?

MR. SMERIK: Not overt pressure, it was more of a self-imposed pressure. I had received information from FBI headquarters that FBIOfficials were not happy with the tone of my memos from the standpoint that they felt it was tying their hands, meaning they were not going to be able to increase any type of pressure within that compound, and instead were going to have to rely on strictly negotiations. No one at FBI headquarters at any time told me or directed me that hey, write different memos. But the analogy I like to give is one of perhaps a youngster who has been admonished by a parent or has just a finger waved at him. We all have a tendency of wanting to please our supervisors, and I believe what I did subconsciously is tone down my memo -- memo number five -- to more or less fall in line with what they would want to hear. So it was not any pressure from the FBI, it was pressure from myself to become more of a team player.

REP. CHABOT: To become more of a team player?

MR. SMERIK: Right.

REP. CHABOT: Okay. Was there anyone in particular that wasn't pleased with the tone of the memoranda?

MR. SMERIK: No name was mentioned to me other than the Director of the FBI was not happy, but it was made in passing.

REP. CHABOT: Who told you that?

MR. SMERIK: John Douglas, who was my unit chief down at Quantico.

REP. CHABOT: John Douglas.

MR. SMERIK: While that may appear in memo number five to be a dramatic change in philosophy on my part, you might also notice in the earlier memos which I had prepared, meaning the one on the seventh of March, I had made similar recommendations at that particular time for consideration. So in reality, what I said in the very last memo was not in reality a dramatic departure from what I had said earlier. The bottom line is for 51 days the FBI did not ignore my memos, and in fact followed many of the suggestions and recommendations which I had provided.

REP. CHABOT: But you clearly felt, particularly early on, that it was important, particularly for the safety of the children, that the strategy should be wait and not move at that time.

MR. SMERIK: Oh, absolutely. And the FBI in fact did not move at that particular time, and for the longest period of time went over and beyond what normal negotiators might consider doing in a situation like this in my experience in the past of working with negotiators in similar crises. For instance the idea of bringing in attorneys to deal with the offender is unheard of. The idea of bringing in religious experts to discuss the matter with the offender is unheard of. And yet the FBI considered all of these particular options. And so the newspaper article that you are referring to is
not exactly accurate in its portrayal of my sentiments. The FBI did not ignore my memos, and in fact that did in fact follow many of the suggestions I had made.

REP. MCCOLLUM: Mr. Chabot, your time has expired. Mr. Watt, you are recognized for five minutes.

REP. WATT: Thank you, Mr. Chairman, and I yield my five minutes to Mr. Conyers.

REP. CONYERS: I want to thank my colleague for yielding to me. Mr. Chairman, our distinguished member of Judiciary, Ms. Lofgren, came in and apologized for being away from the hearings, and it really touched me. I come and apologize for being at the hearing. This thing has taken up days and days of my life. She wanted to know how much money we spent on the siege. I'll find out how much money -- and I'm going to find out how much money we spent on these hearings. We've got all kinds of problems in America, this thing could have been done in about half the time at least. And although there have been good things that have come out of it, I can tell you -- and I know you can tell by the tone of my voice -- I'm really getting tired of this stuff. But this is my job and I'm here and I'll do it. Mr. Cavanaugh, you stated earlier that you felt that the ATF sounded like pop guns compared to the Davidians cannons. Is that right?

MR. CAVANAUGH: Yes, sir.

REP. CONYERS: Is there any need for me to ask you to elaborate on that or what's behind that.

MR. CAVANAUGH: I think the only point, Congressman, there is that you should know, and the members should know, that the nine millimeter guns that the ATF agents brought to that scene were done for a purpose. We knew there was a lot of children in there, we knew there was a lot of women and innocents in there. And that's been discussed by various members. We never alleged that every one in there was a criminal in our search warrant affidavit, that was not the case. And with all these innocents in there, our special teams, took mostly nine millimeters fire arms that they knew wouldn't penetrate those walls, they knew wouldn't go through and hit innocent children. And so in essence, the beating we took was because we were trying not to have fire arms that would go through the walls. That's the only point I would make.

REP. CONYERS: Very good, thank you. Nice meeting you, Mr. Jamar. You've taken a lot of knocks here in your absence over the days about this hearing, from not only witnesses, but members here in the committee. And I am glad to meet you and welcome you here.

MR. JAMAR: Thank you.

REP. CONYERS: I think you did a good job under the circumstances. How did the range and assortment of Davidians weaponry affect your options in ending the siege?

MR. JAMAR: The weapons we learned of when we first arrived were the dozens of automatic weapons. The fear of a 50 caliber machine gun that turned out to be 250 calibers with 10 shot magazines, it was nota machine gun, those 50 calibers produced a lot of concern for us, created a lot of concern for us. It made us be extremely careful to avoid provocation of any kind. If they would
have had mere 22s we would have had the same attitude about the provocation. But the peril that the agents were in was magnified by a great degree because of the automatic gun fire that that presents and the power of a 50 caliber. A 50 caliber is anti-aircraft, that's the power we are talking about. So that caused us great concern. One of the great --

REP. CONYERS: How far does a 50 caliber go?

MR. JAMAR: I think from our place up the street to here would be pretty good.

REP. CONYERS: What's that --

MR. JAMAR: Ten blocks.

REP. CONYERS: Almost half a mile?
MR. JAMAR: I think it might be -- some people would say 3000 yards, but I think it could be shot 10 blocks --

REP. CONYERS: Okay, so it's because the arsenal of machine guns or whatever they were and hand grenades that the FBI was forced to use armored personnel carriers around the compound.

MR. JAMAR: Yes, sir. We wouldn't have been there without them.

REP. CONYERS: Mmm-hmm. Mr. McCarthy, you were a tactical leader of the Los Angeles County Police Department SWAT Team, and my staff prepared the question, the premier SWAT Team in the country, and believe me, if Maxine Waters was here, she wouldn't let me say that and I don't, I'm reading the staff-prepared question. For 13 years and as the leader of that team, did you ever have the occasion to order the use of CS gas, and did your department ever use CS gas on an occasion where people, not known criminals, were present?

MR. MCCARTHY: Yes, sir, we used CS gas on numerous occasions; I, personally, over 200. Always with a positive resolution where the CS gas, even when used in extremely heavy concentrations, probably heavier than existed at Waco in a few circumstances, and in those incidents, nobody was injured from the tear gas. And as far as I know, no one has ever died of a concentration of CS gas.

REP. CONYERS: Now, that's one of the things that I've learned since the last time the Judiciary Committee held hearings on this subject. Because when General Reno was here, we were talking about poison gas and you know, the whole idea, it was not understood what this was, and so I want to tell you, I've learned a lot about CS gas and tear gas and all of its variations on the theme. You've used this kind of gas in enclosed spaces as apartments, and are you aware of any severe injuries, and do you have an opinion of the safety of CS gas, and what about the AB (ph) error about the manual that states when CS gas is supposed to be used?

MR. MCCARTHY: First of all, I am not aware of anybody who has been either killed or severely injured and overcome. I happen to be personally an asthmatic, and I've been in CS gas hundreds of times personally.
REP. CONYERS: What about that lawyer that was here yesterday that kept telling everybody to take a trip out to Quantico and take a whiff if you think it's not -- I mean, I shouldn't be reminding people of that testimony, because yesterday was not a good day for me in these hearings, but where do people get this -- for the American people (either ?)?

MR. MCCARTHY: The fact is that tear gas is extremely uncomfortable. It will cause tremendous mucus flow, saliva flow, and your eyes will water severely, and you will want to keep them shut. It's very uncomfortable; there's no question of that. But it does not kill people. The study that was done regarding cubic feet and the amount of gas per cubic feet has been disclaimed twice, once in 1991 and once in 1993 by the organization that authored it. It was authored in 1969, and the International Association of Chiefs of Police disclaimed that study and advised tear gas company in their periodicals to refrain from using it, because it was outdated.

REP. MCCOLLUM: Mr. Conyers, you time has expired, -- (inaudible) -- time for Mr. Watt.

REP. CONYERS: Thank you, Mr. Chairman.

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

REP. SOUDER: A quick question, Mr. McCarthy, has the LAPD ever gassed children under ten in a confined area?

MR. MCCARTHY: We have not gassed children as far as I know; however, in a similar circumstance, in a 51-day circumstance, I would not be into disagreement --

REP. SOUDER: I just wanted to establish that in the 200 incidents, there were not children in a confined area, is that correct?

MR. MCCARTHY: No, sir, we didn't have that kind of an incident.

REP. SOUDER: Yes, I understand that. I wanted to ask Mr. Jamar, I'm actually confused, and I don't have a firm opinion; I want to get a clarification. In the tapes on March 4th, it's been alleged that David Koresh was the person who initially called about the milk, or did the FBI suggest the milk? Did David Koresh ask for milk? Thereport here says the FBI offered milk in return, did Koresh initiate the milk request?

MR. JAMAR: I think so, yes.

REP. SOUDER: And was this on the tapes -- Let's get her, that's Heather Jones -- out, and then we'll send you the milk?

MR. JAMAR: I'm sorry, would you repeat it, there was noise behind me, I couldn't hear you.

REP. SOUDER: Let's get her out, and then let me send you the milk. In other words, the core question here is that the FBI offered milk in return for the release of some children.
MR. JAMAR: Right.

REP. SOUDER: Yesterday we heard that Koresh believed that the promise was violated, because and that the tapes suggest that there is the phrase, now there may be other phrases in it too, let's get her out, and then let me send you the milk.

MR. JAMAR: Well, that was an effort to -- this was, remember, March 4th, this was an effort to establish a quid pro quo in exchange here.

REP. SOUDER: And the next day she came out, Heather Jones.

MR. JAMAR: But it was an effort to get that done. She did come out, but that exchange was an effort by the negotiator to establish that type of relationship and communicate with Koresh.

REP. SOUDER: So do you believe that them not sending the milk after she came out the next day gave Koresh some reason to doubt whether or not you were going to follow through on the negotiated deal? You don't believe that was a negotiated deal, send her out, and we'll send you milk?

MR. JAMAR: I don't think it was at all. He chose to let her go for his reasons. He never did involve himself in the quid pro quo.

MR. : I think that's out of context. I don't believe we ever made a deal with Mr. Koresh that we didn't follow through on. And Mr. Jamar is right. In a classic hostage situation in which this was not, and we've never characterized it as such, although others have, in a classic situation like that, the individual holding the hostages is doing so to compel the authorities to fulfill a demand. We didn't have that situation here whatsoever. So it was very difficult for us to make these quid pro quo agreements with David Koresh. But what we would do is we would -- we would do some act of a positive nature -- send in milk or send in a tape or whatever it might be, and occasionally he would do something positive in return. But you couldn't pin him down on making a firm promise for a firm act of good faith on our part.

REP. SOUDER: I'm still a little confused, and I may ask some written questions afterwards but it helps some. I want to yield the balance of my time to Chairman McCollum.

REP. MCCOLLUM: Thank you, Mr. Souder for yielding. Mr. Sage, you said earlier that in a discussion with Mr. DeGuerin about the agreement on the written seals, the interpretation of the seals that he indicated to you that it would take 20 days approximately -- two or three days per seal to do this. When did he have this conversation with you? Was this on the 14th of April or was it before that, about the writing of the interpretation of the seals, and that it would take two or three days per interpretive letter?

MR. SAGE: My recollection is that it was approximately the 14th. I don't know specifically, but that's a general time frame.

REP. MCCOLLUM: Mr. Jamar, what I want to know from you on this very same type of point is
that you had given us an indication that you were aware of all of this going on; you really didn't have any confidence that Koresh would ever come out, but that this seal interpretation writing was to take place. You've also told us that there was no evidence over the weekend or the last two days before this last assault occurred that any progress was being made on the writing of these. At any time, did you ever indicate to Mr. DeGuerin that between the 14th when this whole arrangement was being discussed, and the writing were to occur, that there wasn't going to be 20 days or that if he didn't show some progress, if he didn't bring one of them out within a couple of days, that was going to be the end of it? In other words, did you give him any indication, Mr. DeGuerin, that his client didn't have any real time to do this in or had to show some good faith by producing something immediately?

MR. JAMAR: Well, I think the idea of producing was (clear to both ? ). I mean, we expected something -- they use two to three days for each one. We expected some progress in the next two or three days.

REP. MCCOLLUM: But you never told Mr. DeGuerin that if it didn't happen, it was all over or something else was going to happen.

MR. JAMAR: Well, I didn't know something else was going to happen.

REP. MCCOLLUM: Well, you did at some point.

MR. JAMAR: Well, I did the 17th. I'm not going to call Mr. DeGuerin and tell him we have an operational plan we're going to execute on Monday.

REP. MCCOLLUM: No, I wouldn't expect you to tell him the operational plan, but I would have expected you, knowing you didn't have any faith in this to begin with, didn't believe in it to begin with, that you would have at least given him some indication that his client, you know, better hurry up and produce something now, because we're not sitting around here for 20 days on this. He ought to know it's highly improbable we're going to spend 20 days sitting around here waiting for him to produce one of these things. Did you ever make that clear to him-- (inaudible).

MR. JAMAR: I don't think I had to be that emphatic. I think he knew that.

REP. MCCOLLUM: Well, he didn't indicate that to us yesterday by any stretch of the imagination. In fact, he indicated to us quite the contrary yesterday. He indicated that he was deeply disappointed, and that he would consider himself greatly deceived by you had he learned what apparently he is now learning today, that all along, you didn't really expect this to happen, and he didn't have it. He thought this was a commitment. I mean, that's what he said. I don't know the merit of this, I'm not trying to --MR. JAMAR: I saw the testimony. I know what he said. And he's been quoted as saying that in the past in the media, where he said that I said there's plenty of time. And there would have been plenty of time if there'd been some production. We would have stayed. We wouldn't have done what we did on the 19th had there been some production.

REP. MCCOLLUM: Well, but again, my point is you didn't really hammer that home then. You said you didn't need to know that. Even if that was a given, obviously there was a miscommunication
here insome form or fashion, or at least it seemed to me. Let me ask onelast question while we're involved in this area all together. Withregard to releasing people, there has been some question about thatthat was made by Mr. DeGuerin and Mr. Zimmermann yesterday, and acouple of the others, I think maybe Mr. Tabor, that I believe, Mr. Jamar, you indicated that when one of the witnesses or one of theDavidians, I think Kathy Schroeder was let out early, you played ataape back in, maybe Mr. Sage indicated that, with her relating how --that things were going alright for her and so on. That was prettyyearly on in this. That was in March, correct?

MR. JAMAR: Mid-March.

REP. MCCOLLUM: And what I'm getting at in my question is thatMr. DeGuerin or Mr. Zimmermann, I've forgotten which -- Mr. Tabor Ithink corroborated -- indicated that along the way, end of March, April, whatever, that there was some witnesses, I mean some peoplewho'd been in that compound who came out, not witnesses but Davidians, who were put in jail, who were not given the kind of freedom that one would have expected maybe them to be. I think they said everybody that came out was put in jail; that they were separated from theirchildren; that the child protective services got the children, and that this was a bad message going back in there. Now, would you careto respond to that, Mr. Jamar?

MR. JAMAR: Please, the first two people who were released wereelderly ladies -- the first two adults, excuse me -- were elderlyladies. They were charged with capital murder. I complained to theU. S. attorney, and they changed it to material witness warrants. It was a horrible message sent back.

REP. MCCOLLUM: But they still kept them in jail.

MR. JAMAR: I don't know how long they stayed in jail. I don't think they stayed in jail for very long, those two ladies. I could bemistaken, but I think it's worth checking into. I don't think theywere in jail that long. I think they got out. Now the other adults who came out were held on material witness warrants thereafter, andwere held in jail. Now, there was never parents and children outtogether, never. So never were parents and children separated byauthorities. There was never an instance where parent and child cameout together.

REP. MCCOLLUM: Thank you very much. Let's see, Ms. Jackson Lee, you're recognized for five minutes.

REP. JACKSON LEE: Mr. Chairman, thank you very much. And I want to thank the witnesses for being here today and -- some very importantissues. I think we've already heard testimony isolating the actionsof Mr. Koresh as being plainly anti-social behavior and anti-socialpersonality. But I imagine as these hearings are unfolding, particularly for you gentlemen, the American people might wonder again, and we've heard this question queried to you and asked, why didn't you wait? They might be asking that question. I think they also should know that about 34 persons went out on your clock up until about March 23rd; that people were coming out, they were abandoningthe circumstances, and Mr. Jamar, I'm going to ask this question of you, you might want to say that how many came out. But I do want you to again for us give me why we moved from the negotiating posture of trust and calmness, and we want to work with you to the position of stress, heightening the
stress, creating adversity. And I want to ask my other question as well, afterwards. You've been in the FBI, you'll tell me for how many years? I know you're a senior member of the FBI.

MR. JAMAR: I retired. When I retired, it was twenty-five and a half years.

REP. JACKSON LEE: Twenty-five and a half years. This is a very large nation. Would you imagine in your service that there are a variety of groups living in different waves -- whether they happen to be pacifists, or whether they happen to be people who are environmentalists living in very rugged conditions across this nation? And I would ask you as to whether or not, to your understanding is that they still live in peace across this nation, although they may be different, and we may not even know of their existence or the fact that they're there. You may know it, and I'd like to ask that question; I'd have those two questions answered before I move to Mr. Noesner.

MR. JAMAR: Let me answer the second one first if it's okay. I think there's plenty of groups of people who are living together in peace and doing just fine. The difficulty is when you have --

REP. JACKSON-LEE: And they are different.

MR. JAMAR: And they are different.

REP. JACKSON-LEE: They are far different from --

MR. JAMAR: They could be, you know, growing different food and doing whatever -- totally odd behavior or totally foreign to most people. The difference between this group and all others is, this was a group of people who were absolutely devoted to a person who had abused everything about them, who had abused religion to his end to suit any purpose he wanted. He abused any of their assets, any of their family members, any of them to serve him. And what he had, absolute devotion, and when that devotion faltered or if you didn't follow discipline, out the door you went. And that's the way he controlled things, and that was it. That's the difference between this group and 99.9 percent of the others, I pray. I hope there -- this is so -- this is absolutely extraordinary control here. I think that these type of groups are extremely rare, and we won't run into people like this again.

REP. JACKSON-LEE: We've already established the enormous number of weapons that were in the compound. I wish you were here yesterday with the lawyers. The balance would have added to our understanding because the question becomes, why did the other individuals, who were with their faculties, they were trained and educated people, did not separate or distinguish themselves from this gentleman, Mr. David Koresh, who the documents reinforce over and over, this bizarre personality and bizarre attitude and actions. Why couldn't they get separated, and how come you couldn't reach through to that component of the compound?

MR. JAMAR: Steven Snyder is a perfect example of your -- of the person that you describe. He was a highly educated person, with a master's degree in religion. He was -- I think he was a successful person in his ability to support himself. Married to Judy Snyder. Comes to -- he is recruited by Koresh in Hawaii. He leaves Hawaii to come to live in these conditions. In fact, he talked about it during the negotiations. He said, "You think you gave up something. I came here from Hawaii. "So he was very conscious of all that. But he gave up not only his life to come there. He gave up his wife to
Koresh. They were unable to have children together.

REP. JACKSON-LEE: He admitted that?

MR. : Yes. He and Judy were unable to have children together. She had a child by Koresh. I mean that -- the degree of devotion by this man, who is highly educated, a successful person by anybody's measure -- he gave himself totally. And we worked on him and worked on him. There was an instance where I had an occasion afterwards to talk to his sisters on a television program. And they asked me, why didn't we let them talk to him? And I said, "When's the last time you saw him? Did he come home? Were you able to convince him to stay? " And they said no.

REP. JACKSON-LEE: I want the American people to know that you made those individual, separate inquiries, because it is a question why we move from stress to then -- from -- rather from trust to stress, but you did make an effort to get to individuals to separate them out. And I do want to move quickly to my next question. I think you've made that point, and Mr. Noesner, and I am going to try to ask you a question on that matter. As we move toward the CS gas determination, I think Mr. McCarthy has indicated that the gas does not kill. Is that what you just said, Mr. McCarthy, the gas does not kill?

MR. MCCARTHY: That's correct.

REP. JACKSON-LEE: It is frightening, however. Gas people attribute explosions and, tragically, fire. Mr. Jamar, simple question. Did you want those people to come out alive?

MR. JAMAR: Absolutely.

REP. JACKSON-LEE: In terms of the CS gas and its -- the decision to use it and utilize it, did you have an architectural understanding of the location or the structure of that building, and were you all prepared to isolate out -- isolate out people, excuse me, and get them out? Did we have the routes out for them to come so that you could be effectively be looking for these people to be pouring out at the time of the gas being inserted? And how would that track with the bulldozers going in?

MR. JAMAR: Okay, the premise of the delivery of the gas first was to the corner of the compound. There's not a picture up there now, but I think everybody has this image in their head on the -- whatever call --

REP. JACKSON-LEE: If someone can put the picture up, I'd appreciate it.

MR. JAMAR: The red-green corner is where we started. The premise of the plan was to deliver that gas there. And the idea was, gas is in your compound; we are going to make your compound uninhabitable and then we're going to back away. But when they fired upon -- the first thing, only one tank approached. The -- we had put--

REP. JACKSON-LEE: Give me the sound it makes. Fired upon -- can you make the sound?

MR. JAMAR: I'm sorry. The automatic gunfire was piercing at the tank as it rolled up --
REP. JACKSON-LEE: As it came up.

MR. JAMAR: As it drove up. What that did was cause us to deliver gas in the whole compound, particularly the tower, to try to take that part away. But the plan was to make the building uninhabitable. And with the -- this is the type of stuff, if it gets on, say, a loaf of bread or a milk bottle or a glass or anything, it just stirs up all the time. It just never goes away. The plan -- we expected to do that for 48 hours. We didn't expect -- we expected some to come out immediately. We expected it would take us 48 hours to contaminate the whole place if they didn't respond to us. Of course, if they would have said, "Stop, we want to come out," that would have been the end of the gassing right there. That would have been the end of it right there.

REP. MCCOLLUM: Thank you, Ms. Jackson-Lee.

REP. JACKSON-LEE: Thank you.

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

REP. MICA: Thank you, Mr. Chairman. Mr. Chairman, just one thing, I want to keep the record always clear. I heard somebody on the other side of the aisle, and when you get involved with a bunch of attorneys, you have to make sure you keep the record straight. I'm not an attorney. I passed this out yesterday, and it deals with the law. And I read the law as it is in Texas relating to a use of force in arrests in Texas. I did not comment on it. I asked the Texas Rangers whether in fact -- if that was the law. And they replied in the affirmative. Then I quoted from the report of the Treasury Department, their conclusion, "Certainly an armed assault by a hundred agents had to be seen as an attack independent of who fired the first shot." Not my commentary. I have never said that there is any justification for the killing of four ATF agents and wounding of others. And I want to make that perfectly clear. And I'll see anybody outside who disputes me on those facts. Mr. Cavanaugh.

MR. CAVANAUGH: Yes, sir.

REP. MICA: Let's go through. You were this morning very emotionally describing your participation. I want to get to some of the points leading up to your participation. And I have this memo relating to your comments at a Waco administrative review that was done in November after all this occurred. First meeting you attended in December of '92, you had said to Sarabyn, "You'll have to negotiate this one." Is that correct?

MR. CAVANAUGH: Yes, sir.

REP. MICA: Pretty much. Second meeting, you stressed two main points. "You need to negotiate with Koresh if at all possible," and two, remove Koresh and his top five lieutenants from the compound, if at all possible. "Those were your recommendations, correct?"

MR. CAVANAUGH: Yes, sir.

REP. MICA: And then you said a ruse could be used to get Koresh and his followers outside the
compound, correct?

MR. CAVANAUGH: Yes, sir.

REP. MICA: Then you were taken away from this. This was the second meeting, and you came back and you -- well, when you left, you left with the impression that the Houston division had decided to siege the compound, is that correct?

MR. CAVANAUGH: When I left the --

REP. MICA: You were left with that impression?

MR. CAVANAUGH: Yes, Congressman.

REP. MICA: Then in January, you were very surprised to learn a new turn of events, that they changed their plan and that Sarabyn had said he had new information and they were going to use a different approach, is that correct?

MR. CAVANAUGH: Yes, sir.

REP. MICA: Then you said that you read the plans, and it said there was no provision for a negotiator, as you had originally stressed. And two, there was only one public information officer assigned to the plan. Were those your objections?

MR. CAVANAUGH: Yes, sir.

REP. MICA: All right. Then, Cavanaugh, you later raised questions. You said you were concerned because only different bits of information were given at different meetings. It was conceivable that one would have received more information on the types and numbers of guns at one briefing. That was one of your concerns, wasn't it?

MR. CAVANAUGH: I'm sorry, Congressman, as I recall, it was the types and -- of bits of information at meetings, not --

REP. MICA: But you didn't know exactly the quantity, this vast quantity of weapons that were available and to be used against you. It was one of your concerns, or you said it might have been at different meetings and not everybody had the full picture.

MR. CAVANAUGH: Okay. I don't recall it exactly, I'm sorry.

REP. MICA: And then you asked also -- I think you urged Sarabyn to call the thing off, and Sarabyn wanted to proceed on Saturday. But he said the helicopters weren't ready and that the training was not complete, that Saturday night before the raid. Is that correct?

MR. CAVANAUGH: Yes, sir. I always only felt this should be negotiated.
REP. MICA: But --

MR. CAVANAUGH: I'm sorry. )

REP. MICA: I'm sorry. That's okay. And the morning of the raid, it's not like this -- "The Waco Times" had already done the story, right?
MR. CAVANAUGH: Yes, sir.

REP. MICA: And you were concerned about this, right?

MR. CAVANAUGH: Yes, sir. I --

REP. MICA: And the morning of the raid, wasn't the -- you were in this observation thing. Didn't you see newspaper -- more newspaper and media activity? In fact, I think you identified a "Waco Times" vehicle right near the front door of the compound, is that correct?

MR. CAVANAUGH: Yes, sir.

REP. MICA: And then you said that the decisions were -- I'm going -- wait. You said the go versus no-go go within the hands of Chojnacki and headquarters. Furthermore, Sarabyn told you the discussions were ongoing between ATF headquarters and the Treasury, and said that he felt as if his -- that your input did not matter since the decision-making was proceeding at a much higher level than your level. Is that correct?

MR. CAVANAUGH: Yes, sir. That would have been not Sunday morning. That would have been probably more Friday and Saturday.

REP. MICA: Well, all right. We'll go on from that. You were also concerned that there was bad information from Rodriguez, is that correct?

MR. CAVANAUGH: Concerned it was bad information?

REP. MICA: Yes, that Rodriguez wasn't giving good information. At every -- what I'm trying to say is that at every point, you expressed concerns about this.

MR. CAVANAUGH: Yes, sir. I can elaborate if you'd like. I did.

REP. MICA: Then when you found out that this had been, you know, sort of a media event, too, that got out of hand, that -- in fact that the press, Miss Wheeler and some of the others, there were media out in front of the place, you said -- and this is you, you said that, "Everyone at the undercover house was wondering whether the raid would be called off. "Was that your comments that morning?

MR. CAVANAUGH: Yes, sir. I think there's varying degrees of apprehension that we felt in the undercover house.

REP. MICA: The other thing, sir, you know, I'm only sent heretemporarily to find out what went on
with government resources, personnel, agents. We're not here to get anybody. We just want to find out what -- we never even made a statement that these reports were, you know, were false or anything. Mr. Hartnett, though, who was overseeing a lot of this operation, talked about this report, this inside Treasury report. And it said that that report was filled with distortions, omissions and, in some cases, things that were simply untrue. I believe it was done for political reasons. The politics of the situation became more important than the people involved. And then he resigned. He said that, I didn't say that. These people on this side of the panel didn't say it. This is the Treasury agent in charge of the whole situation. What do you think? Who's responsible?

MR. CAVANAUGH: Mr. Congressman, I can only speak to the Treasury report as it addresses my role, and I feel like they were candid and fair with me. I can tell you that they were extremely grueling in talking to them. I mean it was very rough. They left no stone unturned in my situation. And I felt like they portrayed my role fairly, and that's all I can say.

REP. MICA: I thank you.

REP. MCCOLLUM: Thank you, Mr. Mica. Mr. Taylor, do you want to be recognized for five minutes?

REP. TAYLOR: Thank you, Mr. Chairman. And I want to thank Mr. Condit for working with me on this. Gentlemen, a lot has been made by some people in this room about the use of CS gas, especially when there were older people and children present. But as one of the earlier witnesses said today, David Koresh got rational people to do totally irrational things. They would give their wives to him. They would give their wives to Koresh, they would give everything they owned to Koresh, they would let him have sex with their very young children. Then it would follow that Koresh could have told these people, "Get up and walk out," and they would have listened, wouldn't they? Isn't there becoming -- at least I seem to be noticing more and more a case where people who do despicable things have increasingly started surrounding themselves with innocents as human shields, and isn't it accurate to say that Koresh kept little kids and old women and old men around him as human shields?

MR. : Well, I'll answer that. I don't -- he kept people to be used -- for his personal use. If shields -- if it was an inappropriate time to use them as a shield, he used them as a shield. If it was something else, he'd use them for that.

REP. TAYLOR: But I, like everyone else, regret the death of those young people and those old people. But the bottom line is, if that man had had a shred of courage or a shred of decency, he could have told them to walk out MR. JAMAR: At any time.

REP. TAYLOR: At any time. For 51 days, let the record show, that that coward could have turned to those children and say, "Leave. You're in danger here. " He could have told the old people and said, "Leave. You're in danger here. "

MR. SMERIK: Sir?

REP. TAYLOR: He chose not to do so.
MR. SMERIK: Koresh could not have done that, because -- not only were the children shields for him, he recognized the fact that he was the father of those children. The mothers of those children were underage when they gave birth, which means -- with DNA testing -- it can be proven that he had carnal knowledge of women who were underage. He knew that if he came out of that particular compound, he was not going to prison as a religious martyr who defended his religious faith, he was going to prison as an individual who was a child molester. That is one reason why, I believe, under no circumstances, was David Koresh going to surrender and come out of that compound alive.

REP. TAYLOR: Thank you for adding that.

MR. NOESNER: Mr. Taylor, could I add something to that, please.

REP. TAYLOR: Absolutely.

MR. NOESNER: And that is, I think there's a misunderstanding that's occurred today about there only being a few occasions where specific surrender discussions took place. And I think the record should show, if anyone really listens to those negotiation tapes -- the hundreds of hours of tapes -- Koresh represented -- day in, day out -- that in fact he was coming out. It was a rare occasion where he would say, "I'm not coming out. "Almost every day he said he was coming out. He just simply didn't do it. So, for him to represent to the attorney, or to represent to us throughout, this was hardly brand new information. He'd been saying this to us every single day.

REP. TAYLOR: I want to -- since I know my time running out, and it a rather large panel, I'm going to ask you the same question I've asked every other panel. It is that, you've had -- we've all had now two years of hindsight. And many of you were there on scene. Has anything that you've seen, anything you've read, anything that you've heard, justify the murder of those four ATF agents -- Conway LeBlue (sp), Todd McKehan (sp), Robert Williams, Stephen Willis (sp) -- and the wounding of 20 more by David Koresh and his followers? Has anything that you've seen justify that, because even the twodefense -- criminal defense attorneys yesterday, who first said, "Yes, it was justified," when I asked him which one of these agents should have died, they backed pedaled real fast. So, is there anything that you gentlemen have seen that justifies their murder?

MR. SMERIK: Excuse me. Nothing would have justified them murders. And, in fact, what I saw as a behavioral scientist was a calculated plan by David Koresh to put his plan of action into action-- meaning, he wasn't a peaceful religious order, minding their own business, perhaps collecting some weapons. He went out of his way to attract the attention of law enforcement so that there would have to be some sort of a response in the future. And so, we learned -- through the investigation by ATF agents, for instance -- that he had his followers get credit cards and run up the limits, so that he knew somebody was going to be investigating that. There were allegations of child abuse. So, he knew someone was going to be coming out to the compound to investigate that. He collected so much arms and ammunition beyond what is necessary for your own self-defense, that he knew -- sooner or later -- either ATF, the sheriff's department, somebody was going to have to investigate that particular matter. When ATF showed up at that particular day, he had several choices in front of him. He could have surrendered. He could have fired warning shots in the air to stay off of my property. He chose none of those particular events. Instead, he waited for the ATF agents to come up
to the compound, and then he ambushed them in order to put his plan into effect. David Koresh, in my mind -- as a behavioral scientist -- is not a religious martyr. He is a psychopathic criminal, a killer who used religion in order to exploit people for his own benefit.

REP. TAYLOR: Thank you, sir. Mr. Cavanaugh?

MR. CAVANAUGH: Mr. Taylor, there's no reason in America that anyone should shoot on a law enforcement officer serving a warrant.

REP. TAYLOR: Mr. Sage?

MR. SAGE: I would agree whole-heartedly with what you've heard. I'd also state that I'm very concerned, frankly, of the precedent set by anyone embracing the concept that criminals have a right to exercise justifiable force -- what they feel justifiable force against officers that are exercising a lawful warrant. That puts all of our society in harm's way.

REP. TAYLOR: Mr. Jamar?

MR. JAMAR: I think that observation adds to the others that, during a period of time when the defense, in many cases, is -- that defendant becomes the victim, and everyone else is forgotten. I think this is a perfect instance of that.

MR. NOESNER: I certainly agree with those comments. As we've heard, Mr. Koresh told Robert Rodriguez that he knew ATF was coming, so he was fully aware of who was coming to his front door that day -- the way they were equipped, the way they were attired. And to take that kind of action against them is just simply murder. And there's no way you can justify that.

MR. MCCARTHY: If you're going to take away from law enforcement the opportunity to survive serving a search warrant issued by a judge, which is absolutely valid on its face, then you're going to condemn law enforcement to being totally incapable of supporting a democracy.

REP. MCCOLLUM: Thank you, Mr. Taylor.

REP. TAYLOR: Thank you, Mr. Chairman. Thank you, Mr. Condit.

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

REP. ED BRYANT (R-TN): Thank you, Mr. Chairman, at this time I would yield my time to my distinguished colleague from Arizona, Mr. Shadegg.

REP. JOHN SHADEGG (R-AZ): Thank you, Mr. Bryant. The topic of this panel really is negotiations. And I want to go into that issue in a little more depth. We established earlier that your goal was to get people out without any more deaths. That, obviously, should have been an important goal. At some point in time, however, a decision was reached that negotiations were not
making progress, and that you had to do something further, and indeed that led to the gas insertion plan. Mr. Sage, the Department of Justice's own report pretty much lays all that at your feet. I says, "There was a meeting in Washington on April 14th. "The attorney general, it appears, was resisting the gas insertion plan. She was frustrated. She asked the question of why now. And it says -- both it and an interview I have say that people were directed to talk with you, and that they did talk with you. And this report says that there was a two hour telephone conversation with Web Hubbell and you, in which you said, "Further negotiations with the subjects in the compound would be fruitless," that, "The only people Koresh had released were older people or people who had given him problems during the time they were in the compound, or children whom he had not fathered. "It says further, that you advised Hubbell that Koresh had been disingenuous with his discussions with you about these seven seals. Is all of that accurate?

MR. SAGE: Yes, sir. It is.

REP. SHADEGG: Okay. And it goes on to say you were convinced that the FBI had not succeeded in getting anyone released from the compound through negotiations. There were 35 people released, were there not?

MR. SAGE: Ultimately, there was a total of 46 -- if you subscribe to my definition. Thirty-five people that actually came out prior to the 19th,

REP. SHADEGG: Why would you tell Web Hubbell that you had not succeeded in getting anybody out through negotiation?

MR. SAGE: Because my definition was the quid pro quo. And that's exactly the context in which it was expressed to him. We were discussing --

MR. SAGE: So, only if they came out as a result of a quid pro quo was that a successful --

MR. SAGE: If I can finish my response to you, Congressman, I'll be happy to. What I told Mr. Hubbell was that, from a definition of an negotiated effort -- normally a hostage negotiation; in this instance, it was not -- that we had very limited success in a true definition of a negotiated release of individuals. I am -- I was convinced at that time. I am absolutely convinced now that the only people that Mr. Koresh let out or directed out, in hindsight -- which we didn't have the privilege of then -- were the elderly, the infirm, those children which were not of his direct line lineage, and troublemakers.

REP. SHADEGG: I read that. I know you have a right to answer your question. I just have a very limited amount of time.

MR. SAGE: I understand.

REP. SHADEGG: I heard that answer.

MR. SAGE: My apology.
REP. SHADEGG: Can I move on? It goes on to say, "Hubbell recalls Sage saying he believed there was nothing more here the negotiators could do to persuade Koresh to release anyone else, or to come out himself."

MR. SAGE: That's overstated. My comment to him was that we -- something to the effect that we had not abandoned negotiations. As I mentioned earlier, I personally did not give up hope in negotiations until practically 12:30 on the afternoon of the 19th of April.

REP. SHADEGG: Well, here it says, in a memo from the Justice Department, an interview of Webster Hubbell, it says, "The attorney general was told negotiations would --" and this is based on the conversation that you had. She was told that "negotiations would not get anyone else out of the compound, and that negotiations were at an impasse." Now, all of this is happening on April 14 and April 15. In point of fact, the defense attorneys who were here, whom you can disbelieve if you want, clearly believed, themselves, that negotiations weren't at an impasse, that in fact the seven seal strategy was a new one, and that it might work. My question is, did you advise Webster Hubbell of those new negotiations based on the seven seals, of what the attorneys -- the defense attorneys believed about them, and give him a chance to pass that information on to the attorney general.

MR. SAGE: First of all, the seven seal issue was anything but new. We were hit with the concept of explaining the seven seals, and they would all come out -- literally -- right from the first day. In fact, I believe the evening of the 28th of February. My conversation with Mr. Hubbell was that the negotiations were at an impasse, as far as the possibility of a substantial number or substantial flow of people out of that compound in the near future -- foreseeable future. I did not then, nor do I now, feel that we were at a process where we should abandon negotiations.

REP. SHADEGG: So, you did not think that their new renewed sense of enthusiasm on the 14th, as expressed to Mr. Jamar, was valid at all. And you thought they were just mistaken about that?

MR. SAGE: I think -- my recollection of this is that the emphasis placed on this new timetable, which was relayed once again by the attorneys -- not by Koresh ever -- came after this discussion with Mr. Hubbell, in my recollection. It did not change anything ultimately because we continued to press for any indication that this was a true, genuine effort, and that there was progress being made. There never was. And let me explore that a little further. This was brought forth as a viable -- allegedly viable option on the 14th, and has been stressed significantly here. On the -- we continued to press as to whether or not this was valid, through the course of negotiations. On the 16th, Judy Schneider -- who, during the course of conversation, negotiations -- expressed that she was the primary typist here, indicated to us that, due to the equipment they had inside, that this could take up to a year to complete. She was --

REP. SHADEGG: And you gave her more equipment -- different equipment, didn't you?

MR. SAGE: Well, we sent in, first of all, tapes for the manual typewriters they had. We stressed that if -- the concept is fine. We can provide you with all the equipment you want, if you'll just come out. We will facilitate. And in fact, the sheriff endorsed that concept. On the -- we continued that probe as recently as the evening of the 18th of April.
REP. SHADEGG: We're going to run out --

MR. SAGE: The evening before the raid, Steve Schneider admitted to the negotiators that he had not seen the -- and I'm paraphrasing here, but the quotes are available to you.

REP. SHADEGG: I'm going to run out of time. So, I first -- can't let you finish up.

MR. SAGE: The first page of the first seal they had not seen yet.

REP. SHADEGG: I have to ask one more question. Let me switch topics. I have to ask you one more question.

MR. SAGE: Yes, sir.

REP. SHADEGG: This is in fact not a routine hostage situation.

MR. SAGE: Never was.

REP. SHADEGG: That's been testified to. The point is, you had some people on the inside who, to your knowledge, were not involved in criminal conduct. The children could not have been involved in criminal conduct. They are incapable of forming criminal intent. So, you had people on the inside who were there, but to the best of your knowledge, they were not being held at gunpoint. And indeed, Mrs. Schneider, who you just mentioned -- one of the purposes of the microphones was to be able to -- or the speakers, was for you to be able to broadcast a message back in, so that if Koresh wasn't telling them everything in the negotiations, they could hear that.

MR. SAGE: Correct.

REP. SHADEGG: My concern in, and my question of you is, there came a point in time, some time over that weekend -- and I'd like both you, Mr. Sage and you, Mr. Jamar to answer this. There came a point in time where not only had you decided that further negotiations were hopeless, and told FBI -- Washington, and they told the attorney general -- Washington, and the decision was made to go with the gas plan. My question is, given that this isn't a normal hostage situation, there are not guns being held at the heads of all of the mothers or all of their children, forcing them to stay in the compound, wasn't there a duty -- before you inserted the gas -- to warn the mothers and the children, middle aged children or children that were cognizant, if they could, that the negotiations had failed, on the chance that Koresh hadn't told them, and to give them some last chance. You're not dealing with normal hostages who have a gun at their head and who can't jump off the airplane. You're dealing with women and children who -- if Koresh doesn't tell them that the negotiations have broken down, and you don't tell them that the negotiations have broken down, they have no reason to leave the compound. And yet, a point in time comes when you start inserting gas. Was not there an obligation, before you pushed the gas in, to allow them --

REP. MCCOLLUM: The regular order. He has the right to finish his question. He started it when the
yellow light was on.

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REP. : I hope these -- (inaudible) -- the same courtesiesthen, because I have been cut off, and was not able to answer -- get my question answered when the red light went on.

REP. MCCOLLUM: Regular order.

REP. SHADEGG: Wasn't there an obligation as to those innocentchildren and the women that weren't involved in criminal conduct to at least warn them that negotiations had broken down and maybe not tell them that tear gas was coming in but tell them that some confrontation was going to occur, and if they wanted to run out the back door, they'd better do it soon?

MR. SAGE: Do I have time to answer that?

REP. SHADEGG: All the time you need.

REP. MCCOLLUM: (Inaudible) -- Mr. Sage, and Mr. Jamar, too, if you want. Please go ahead.

MR. SAGE: It's kind of a three-question question; first, whether or not there was any expression that we were at a total impasse and that further negotiation was hopeless, I believe was the term that you used. And I've seen that referred to in the report.

REP. SHADEGG: It's in the document here.

MR. SAGE: That's correct. As I mentioned before, I think that's an overstatement. It may well have been the recollection of Mr. Hubbell. I can't speak for him, but I can speak for myself. I never abandoned the concept or the hope that negotiations could successfully and peacefully resolve this matter. My statement to him at the time -- and there were several people privy to this conversation, both in Washington DC and in Waco -- was that I felt that we were at a impasse, that we had not gotten a single child out, which, again, was our first priority, since the 5th of March, the 5th of March -- this is the 15th of April -- not that it was completely over, but a realistic assessment of it was that we had obviously reached a very significant point that we needed to factor in to further consideration. And this was the consensus of the negotiation team, not just me. Mr. Hubbell wanted to talk to a member of the negotiation team and I was selected to participate in that conversation and was more than willing to do so. Number two, as far as the release of those children, we specifically, from the first day -- and it's been elaborated upon quite efficiently by Mr. Cavanaugh, and I think by the rest of the panel -- that was our primary focus. The last child came out the 5th of March. We continued to press. There was one point in time when David Koresh said to the negotiator that "The rest of these kids are different." And we said, "Wait a minute, David. You said that all those kids were your kids and they were precious and so forth. "And this again is paraphrasing, but we can get you the exact quote, or it's already available to you. He later said, very specifically and candidly, because I remember it, because I will never forget it -- it raised the hackles on the back of my neck -- he said basically, "These are my biological children." And he said it in such a fashion that it was very clear, if not articulated, that they were not coming out. That was the
7th of March. We continued to pursue every viable option to try to get not only just those children, but everyone out of the compound. The last aspect of it was the notification. That's a very valid question. There was continuing notification, continuing opportunity for them to come out for 51 days. We talked during the course of this matter a total of 949 conversations during the course of the negotiations -- 949; a total of 214 hours, almost 215. And we talked to a total of 68 people, including mothers and children. Every single person that we talked to, we asked them at least two core questions: "Are you there voluntarily and can you please make arrangements to come out? "Every single one of them said they did not want to exit the compound. That has to be a part of this record. We tried to get them out constantly. For 51 days, 24 hours a day, seven days a week, we were available to facilitate that. As far as formal notice, when ultimately the decision was made to go in the morning of the 19th of April to exercise what we felt was the lowest potential threshold of threat to those people, and that's the introduction of a non-lethal tear gas, I was the one that put the telephone call into the compound at 5: 59 in the morning. That was one of the toughest calls I ever made. At the same time that I was on the phone, I had a microphone clipped to my vest informing everybody over that PA system that we were in the process of delivering a non-lethal tear gas into the compound. We were not entering the compound. That's why we referred to it as not being an assault. We've taken a lot of lumps on that comment. The reason I said that is we had no intention, nor did we ever enter that compound in an armed fashion. That was a formal notice to every mother, every child, every parent, anybody that had a common shred of decency. I'm telling you, I've been through CS gas a number of times and I would move heaven and earth to get my children out of that type of an environment. That's why it was introduced, Congressman, to initiate an environment which would cause those people to come out safely, not even orderly. At the end, before the fire, and certainly after the fire, we begged them, I begged them, to come out through any exit they could and to follow the instructions of the agents waiting to provide them with medical assistance and take them into custody.

REP. SHADEGG: Thank you. Mr. Jamar?

REP.: (Off mike.)

MR. JAMAR: Yes, sir. Thank you. I think the duty also includes that we don't sit still and let their children die of disease. We don't sit still and let their children continue to be abused. We don't sit still and let Koresh pick the time to leave the compound at 1: 00 in the morning with a horde of people, with a child under one arm and a machine gun under the other. I think that duty extends to ensuring that we do everything in our power to get those people out, but also, at the same time, make the area safe for them. So that's why we cleared the stuff out, to make it harder for Koresh to do a breakout. So one thing all of us were concerned the first day was breakout; "suicide by cop" is one way of putting it. It was something we feared absolutely. And when we learned of the suicide pact, which we didn't learn for several weeks -- it wasn't corroborated until well afterwards, but it was a fear. That duty extended to doing everything physically and emotionally and mentally and through any speech or anything else we could do. That duty extended in everything we brought to that place. And that duty, I think we exercised, I think, in the best way we could do it. And the failure was -- our failure, no question about that -- but that failure was made certain by David Koresh.

REP. MCCOLLUM: Thank you. Mr. Condit, you're recognized for five minutes.
REP. CONDIT: Thank you, Mr. Chairman. Mr. Jamar, Mr. Sage and the rest of the panel, I'd like to focus just a little bit during this whole episode, the news media, the news networks, reported prophecy by Mr. Koresh and terms like "all the saints will die through explosion, blood and fire." These were prophecies that he had been making. My question to you is, did you ever consider his prophecy as a possibility that there would be mass suicide by fire? I mean, it seems to me that you had to take that serious. And did you make preparations for that that there would be a fire? What was your planning process for that? I mean, my understanding is that you had to call the Waco fire department to help you put out the fire. And I'm wondering, did you anticipate there might be some substance, some truth to the prophecy? Did you take that serious and did you plan for it?

MR. SAGE: Let me answer the suicide portion first and then I'll turn it over to Mr. Jamar. One of the toughest things as a negotiator-- I've been a negotiator for 18 years in the FBI -- is the issue of addressing an individual, and you can well imagine it, that may be potentially suicidal with that very topic. But the mental health professionals will tell you that that is precisely the manner in which that should be done, and that's exactly what we did repeatedly. And that can be brought to your attention in the form of the negotiation tapes. We addressed both with Schneider, directly with Koresh, with Wayne Martin, with a number of the individuals, but particularly those in leadership roles, the possibility as bluntly as "Do you intend to commit suicide?" The responses were overwhelmingly that they did not. Koresh on occasion said he was too young to die in there. Schneider mentioned specifically that that was against their religion. It was as in an unpardonable sin, I believe he mentioned. But we continued to address it. We also framed questions, with the assistance of the behavioral science people, to try to determine or elicit from them answers that they might not realize would lend itself to a very probative analysis of what their true mindset was. Were their responses terminal, indicating the possibility of suicide, or were they long-term in nature, indicating the possibility of survival? In almost every single instance, their response to specific questions and subtle questions were survival-oriented. We felt very confident, probably too confident, that these people did not intend to exercise an option of a mass suicide, and we moved forward with efforts along those lines. I'll turn it over to Mr. Jamar.

MR. JAMAR: Mr. Condit, to answer your question on the planning for the possibility of fire, part of our operations plan, which was very comprehensive -- I think you have access to a copy of it -- part of it was local emergency medical service and to include local ambulances that we could bring in to help us. We brought in a lot of our helicopters and everything else. But part of the concern was fire suppression. The number one fire department was Bellmead, actually, not Waco. We had Bellmead fire department, the primary responder, which we had a response time of a minimum of one unit in eight minutes, two units in 12 minutes. Waco fire department -- this is a description of the several units here -- a response time of a minimum of two pumper trucks within 10 minutes. We had that access to us right there. We didn't have fire trucks at the site because we viewed fire as a possibility. The references you cited, theological and others, there were direct references, but not as many as portrayed by witnesses, I think, in the past here. I think it was a possibility, hardly a probability. There was a lot of reason not to bring the fire trucks. One is operational security. But the other is, what occurred is when the fire did start and the fire trucks did arrive, I didn't let them in. I held them at the checkpoint because I didn't want the firemen to drive into gunfire. I just wasn't going to permit it. It's a terrible thing and a very terrible decision to have to make, but it wasn't that -- it took me two seconds to make it. But we held the fire trucks. So that was our fire plan.
REP. CONDIT: Let me ask you --

MR. NOESNER: Mr. Condit, could I add to that?

REP. CONDIT: Yes, sir, absolutely.

MR. NOESNER: Day in, day out, David Koresh preached an apocalyptic theology. So fire and brimstone was a regular part of his dialogue. So it's hard to discern. Is this his general theological approach to the ending of the world or is he specifically talking about a fire? And while we never trusted it one way or the other, theremedy we chose to deal with it is as Mr. Sage suggested. We confronted them with that time and again, what their intentions were. And at no time did he specifically say, "We're going to start this place on fire."

REP. CONDIT: I understand that. Was there any concern or consideration given to using a suppressant like Halon or something, making that available? Do you know what I'm talking about? It's a fire suppressant.

MR. JAMAR: How do you deliver it?

REP. CONDIT: Well, they have a way of doing it in other places, on ships and things. But apparently you did not. That was not a consideration to use suppressant.

MR. JAMAR: The problem is the same with any delivery system is the same as the firemen.

REP. CONDIT: Right. You just couldn't bring it in because of the safety of the fire trucks.

MR. JAMAR: Right.

REP. CONDIT: Okay, well, thank you very much. Whatever little time I have left, I'd like to yield to my colleague from California, Ms. Lofgren.

REP. LOFGREN: Thank you, Mr. Condit. I think you were dealing with, by the time you got there, a well-armed, barricaded, manicd, messianic, well-armed child molester who was controlling a bunch of people within the compound and that what you faced was very difficult. And I think you did it your best, I am convinced, to save children and in a decent way. I'm interested -- and I don't know if you can answer this question or not, but I've asked a number of other people and noone seems to know the answer. I think key to dealing with a cult of this nature is to -- is early intervention, before things get so out of hand. And one of the incidents that I'm very interested in why nothing happened -- and maybe you can tell me, or did something fall through the cracks or why this would happen. In the summer of 1990, when the cult was in LaVerne, California, the La Verne police were killed when the son of a cult member, Robin Bundt (sp), was kidnapped by a Koresh follower to Texas. And the police -- and this is well-documented in our material -- the police gave Koresh 48 hours to return this little boy, who was then returned. However, at the same time, Ms. Bundt, who had left the cult, told the police -- and they were able to verify it -- that Koresh had been taking very young girls, below the age of consent, as his wives, one of whom was a 14-year-old girl from Australia. It did not appear from the record that she had an adequate visa. When they
returned, Koresh had taken this 14-year-old girl as his wife to Texas. And I've wondered throughout, how come -- I mean, that is transporting a child across state lines to have sex with her. I mean, that's a problem. Why wasn't -- why didn't something happen then, before this cult grew and things got out of hand? Why didn't the FBI go after him for child molesting? Why didn't the La Verne -- or maybe they did. Does anybody know the answer to that?

MR. JAMAR: Well, I think the events that you described, I'm not sure the FBI would have been made aware of it. I don't think the statute you cite is utilized except instances where there is a kidnapping or there was a complaint, family complaint, and I think this was the family agreed to let their daughter marry this person, to marry Koresh -- if you're talking about Rachel; I presume that's why you're talking about, his wife Rachel -- those type of incidents I think where young girls are taken into prostitution, even, among the priorities of investigation and prosecutions in federal courts, isolated cases of non-kidnapping, non-highly abused children being taken for prostitution don't really make it up to the top of the surface, sadly. When you go home tonight and you drive out and you drive in certain parts of this city or any major city of the United States, you're going to see children on the street, for various reasons. I think it's -- you're talking about intervention. Intervention's 10 years too late. It's bad. I think this is just one more instance of children and young people just falling through the cracks in society.

REP. LOFGREN: So maybe we'd be better off putting some more resources there earlier, rather than later, and a lot of them. Thank you.

REP. MCCOLLUM: Yes, Mr. Condit's time has expired. I now recognize for five minutes Mr. Ehrlich.

REP. EHRLICH: And I will be glad to yield my time to my friend and colleague Mr. Bryant.

REP. BRYANT: Thank you, Mr. Ehrlich. Gentlemen, thank you for appearing today. As a former United States attorney, I certainly want to recognize our federal law enforcement and make it clear that the entire panel does not mean these hearings as a blanket indictment against federal law enforcement officials, and we have a great deal of respect for all of you. However, it is our duty that the Congress should have oversight over the FBI and ATF, and certainly it is our job to Monday morning quarterback in certain instances, realizing we weren't out there having to make the decisions at that point. With that editorializing over, I want to ask Mr. Smerik, you had commented earlier that, in regards to your fifth report -- you had given four reports in essence cautioning a conservative approach to this. The fifth approach apparently was a change in policy in terms of the more kinds of confrontational approach. You said you did that maybe subliminally or whatever, but you felt pressured. Who was the gentleman that asked you or made this comment to you about this -- you said John Douglas (ph)?

MR. SMERIK: John Douglas --

REP. BRYANT: And he was a chief --

MR. SMERIK: -- of the investigative support unit of the National Center for the Analysis of Violent Crimes.

REP. BRYANT: He is the chief? He is your director's supervisor, your boss.
MR. SMERIK: He was at the time. He has since retired.

REP. BRYANT: Okay. And did he say that the attorney general was not happy with the flow, the tenor, tone of your report?

MR. SMERIK: No, sir, nothing like that at all. He just indicated that he felt that superiors at FBI HQ felt that by recommending as much caution as I was, we were tying the hands of the FBI from taking any type of action. I'm not talking in terms of using CS gas or attacking the compound or anything like that. As we've discussed earlier, there's a difference in philosophy regarding tactics that can be used in a situation like this, and so where I might be on the side in this particular situation of the negotiators and say talk, talk, talk, perhaps the tactical side or the commanders may feel we need a little bit more pressure, a little bit more stress on the situation, such as shutting off the electricity. And so there's a degree of difference here.

REP. BRYANT: I may have misunderstood you, but I thought in your first testimony you did mention specifically that the attorney general was unhappy --

MR. SMERIK: No, sir, not the attorney general --

REP. BRYANT: -- and I think the record will show that.

MR. SMERIK: -- it was Director Sessions, sir.

REP. BRYANT: Director Sessions was not happy with it.

MR. SMERIK: That's what John Douglas reported to me, yes.

REP. BRYANT: Okay. Now. Mr. Jamar, let me ask you again to name names for me, as I want to ask the question. In the context of you being the field supervisor at Waco --

MR. JAMAR: Mm-hmm (acknowledgement).

REP. BRYANT: -- in charge of what was going on --

MR. JAMAR: Yes, sir.

REP. BRYANT: -- and Washington, which way -- who made the decision to use CS gas? Was that came from Washington, or was it at your recommendation? And without a great deal of reasoning why, Mr. Jamar, what's the flow on that?

MR. JAMAR: Okay, the operations plan we submitted March 27 was the plan that, with some modifications, became the April 19. However, we did an emergency plan the first week we were there in case we detected something like, "Let's kill five children to show them we mean business" or "Let's start doing our vision," because there was a lot going on inside there. One of the few options we have, non-lethal, to try to stop some kind of conduct like that is gas, so -- but the gas that was recommended to us from the start -- a gas the FBI has used and the Los Angeles police
department has used and I think -- I don't know what law enforcement doesn't use CS gas, that that was just that. It wasn't --

REP. BRYANT: Okay, but the decision to use gas at Waco was a decision that --

MR. JAMAR: It was part of our operations plan that I recommended.

REP. BRYANT: And that went up to Washington?

MR. JAMAR: Yes, sir.

REP. BRYANT: And then they approved it, as approval came down?

MR. JAMAR: Correct.

REP. BRYANT: Now, same question in terms of that particular day, because I'm still intrigued as to what reason caused -- compelled you, actually compelled you to go on April the 19th? What reason was there? Again, what was the flow up or down on that decision to go on that particular date?

MR. JAMAR: Okay. Let's -- let's go forward to where the operations plan by the FBI is -- we're all in agreement that that took several days and where it's presented to the attorney general. The attorney general is considering this plan. The conditions and circumstances which led to the recommendation, which would have been late March, had not changed. Nothing had changed during that period of time that made us recommend it. We didn't sit still. You've heard what we did during that period of time. It included all the negotiations with lawyers and everything else. But the circumstances remained the same, and the highly -- the motivating factor to me during that time was the danger that I tried to describe earlier.

REP. BRYANT: The danger to --

MR. JAMAR: The increasing danger overall to everyone in the place. As time passed, the possibility of a breakout increased everyday, and there were plenty of other dangers, too, but the -- those circumstances were the same, okay? When I was notified on the evening of the 17th that the plan had been approved by the attorney general, the first thing I did was check the weather, because we had spent 51 days there in rain and Texas thunderstorms that were horrendous, and the weather was good, and the weather was probably the primary factor to me, was that the -- it was clear -- it was going to be clear and that -- but nothing had changed, not one thing had changed since that period -- during that period --

REP. BRYANT: Let me interrupt you real quick, sir. Maybe Mr. -- I don't have your name.

MR. SAGE: Sage.

REP. BRYANT: Mr. Sage, you could answer this. Was there any obligation -- and maybe you did this -- on your part to give the compound warning right before this raid occurred that there is going to be gas ejected and if the children are going to leave, you'd better leave for the next 15 minutes? Did
you do that or was there any obligation to do that?

MR. SAGE: It was my instruction -- on the evening before, we had prepared a specific list of issues that I was to present to the compound both over the phone, if we had that option, and simultaneously over the PA system. That, in fact, was done. It started -- I called in at 5:59. Steve Schneider was on the phone shortly thereafter. I just began to get into that particular issue, whereupon he hung up. The microphones indicate two things -- they immediately donned gas masks and they immediately began to spread fuel. I continued with the broadcast then for the rest of the morning, for six solid hours, advising them that we were in the process of delivering gas. My understanding is nearly 10 minutes passed. The first CEV was in the process of approaching the compound, they had plenty of time to have at least started. All they needed to do, and this was my understanding all along, all they needed to do was send us some sort of a signal, any kind of signal, that they were prepared to begin a safe and orderly evacuation. The whole thing would have come to all stop and we would have facilitated them coming out.

REP. MCCOLLUM: Mr. Bryant, your time is up. We are at a point now where we have four or five votes in a row, gentlemen, on the floor. They're five-minute votes, so we should be back here fairly shortly to complete your testimony. I will now have this committee in recess until the five minutes after the last of this series of votes. The committees are in recess. (Recess.)

REP. MCCOLLUM: The joint subcommittees on the Waco hearing matter will come to order. When we recessed a few minutes ago we were at the point where it was Mr. Brewster's opportunity to question and I will recognize you for five minutes, Mr. Brewster.

REP. BREWSTER: Thank you, Mr. Chairman. Mr. Jamar, I know that you didn't create the incident in Waco, that your group was called into try to bring some resolution to it at a later time. Several questions along with -- when was the plan set up and the date of April 19th set as termination point?

MR. JAMAR: The plan was submitted first in late March, given to the Attorney General after a discussion within the FBI. She approved the plan April 17th.

REP. BREWSTER: The plan of the 19th being the termination date.

MR. JAMAR: The plan that was -- I am sorry -- the plan was formed on the 19th, she approved the 17th.

REP. BREWSTER: Okay, the plan to execute it on the 19th was approved on the 17th.

MR. JAMAR: Yes.

REP. BREWSTER: So really the negotiations didn't plan a lot of part in the last couple of days then, is that correct?

MR. JAMAR: Oh, it played a great part. I think had Koresh had a different attitude, had we had any, any signal of a change, we wouldn't have gone on the 19th.
REP. BREWSTER: I read the transcript and he said several times in there that he wants to come out, wants to have a shower, wants to do those things. But once again I guess most of those things had been said before, is that correct?

MR. JAMAR: Almost every day.

REP. BREWSTER: So that was really nothing new.

MR. JAMAR: No, sir.

REP. BREWSTER: He also mentioned in here that he was getting awful tired of eating the MREs. I've heard that from the military before. How much more food did they have in there? Do you have any idea?

MR. JAMAR: I think the estimate was -- or observed -- was at least two more years.

REP. BREWSTER: They were eating about 6,000 meals a month, so that would be -- my goodness, then they had 200,000 or 300,000 of the MREs?

MR. JAMAR: Oh, they weren't all MREs. I think they had -- I think the figure I saw was 50,000 MREs they had purchased.

REP. BREWSTER: 50,000 MREs, over a ton of potatoes.

MR. JAMAR: A ton of potatoes, they had all kinds of cans of vegetables and fruit.

REP. BREWSTER: Along that same line, I know some of the people were suggesting -- Mr. Smerik I think at one point suggested that maybe pressure wasn't the right thing, that these people could be suicidal. I think back in early March, like the 8th, 9th 10th, somewhere along there, you had several of those. I know you had to make a decision on what you thought was the best outcome and didn't choose to go that way. But in looking at the way pressure was applied -- and I heard rumors that can't be true surely -- did you in fact play tapes of rabbits being slaughtered?

MR. JAMAR: I think among the sounds and everything that was played -- that began March 22nd, not back when -- the first week in March -- March 22nd -- I think among that was all sorts of sounds. I think rabbits was one of the things that the media reported, yes.

REP. BREWSTER: And they -- for what length of time?

MR. JAMAR: I think probably -- I don't know how -- there was such a mix -- it probably wasn't done very often. There was a person in Houston that provided us this library of tapes and sounds, designed for this sort of thing, and there were all sorts of sounds.

REP. BREWSTER: Well as one who is a varmint hunter, a predator call is about the eeriest thing
I've ever heard, and I was kind of curious if that was really true, if it was. Tell me what would have been lost by waiting another 10, 20 or 60 days to do the execution of final --

MR. JAMAR: Well I think the thing that I hope I can get across, that's the most important in that regard, is that in -- when once we decided that we would recommend that we do the plan that became the plan of April 19th, that the fear we had all along was a break out. And the thing is as time passed it was going to get to the point whereby his action on the 19th I think -- there wasn't any doubt in my mind about this -- that he would decide when it would happen. And how would we stop him? What would we do to stop him from doing either amass suicide inside by poison, whatever you want to do, shooting people, a fire, a break out with a child, whatever that might have been, he would dictate when that occurred, and how would we stop him. What could we do not only without gunning everybody down or entering the place and killing a bunch of people to stop him. Well it's gas, CS gas. So what we wanted to do was do it on our schedule as best we can. Now we wouldn't have done it at all with any inkling of any change. But we wanted to do it on our schedule. We didn't want him doing it at one o'clock in the morning when we're not prepared. So as time passed the possibility of that, with him making sure that his prophecy came true, it was going to be more and more possible to occur. And so the longer we waited, the more apt that was to occur.

REP. BREWSTER: So you waited 51 days, and had you waited another 20 or 60 days you think in your mind there's a good possibility he would have tried to break out so to speak?

MR. JAMAR: Well the possibility was there. My point to you is that the ending was going to be the same. He was going to have that ending no matter what. Now could we have gotten a few more people out if they became ill, or he wanted to expel them or to negotiate them out? That's a possibility, I don't think there's any question about that. But the end, he was going to have that end in one manner or another. I firmly believe that.

REP. BREWSTER: In yesterday's testimony we had a group that I personally think -- having lived in Texas a number of years -- is one of the more professional groups that I know -- the Texas Rangers. They were very unhappy with the treatment they received from the FBI down there.

MR. JAMAR: I think for me it sounded like more than just -- I think the Bureau is a -- it sounded like I'm the one they correctly had complaints about.

REP. BREWSTER: Did you realize that at the time?

MR. JAMAR: No, I did not. I think it's -- I heard that they were concerned about -- that they had to wait for me. I think it was during the first week.

REP. BREWSTER: And sometimes never got to meet with you at all.

MR. JAMAR: Well I think probably that first week we were sort of running around all over the place and everything that I think we got off on the wrong foot. When I learned that, when I discovered -- because I thought we had agents over there all the time -- I thought it was okay -- when I learned that I went to see Captain Burns and apologized and tried to rebuild it. But the problem was -- and this is an absolute legitimate complaint on their part -- here they were asked to come in to a federal matter, one of the biggest disasters in law enforcement history, and investigate the homicide. And they run into me and I'm constantly undermining their case.

REP. BREWSTER: Won't let them check the footprints, won't let them --
MR. JAMAR: Well no, that's not true. That's not so.

REP. BREWSTER: -- the footprints.

MR. JAMAR: No, I think it was circumstances that kept that -- rain and what was going on with the compound. I never did that. I never said they can't do that. I think they just misunderstood -- why we didn't get them out there when they wanted to go. But their complaint about me just taking the evidence away and letting the lawyers go in, absolutely legitimate complaint on their part. It's terribly frustrating for them, terribly frustrating for the prosecutors. They weren't real happy about it either.

REP. BREWSTER: One other question --

REP. MCCOLLUM: Mr. Brewster, your time unfortunately has expired. I would let you go a little while here, but I can't, I have to put you in check. I am sorry.

REP. BREWSTER: Thank you, Mr. Chairman.

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

REP. HYDE: I thank you, Mr. Chairman, and I'm pleased to yield my five minutes to you.

REP. MCCOLLUM: Well thank you very much, Mr. Hyde, for yielding. Mr. Jamar, I want to follow up on a couple of questions, one of them being the sanitation question inside the compound during the time of the siege and leading up to the April 19th date. You've indicated that it was less than what you would find on the outside. I assume you are referring to things such as the fact that I don't believe they had any toilets in there and that sort of thing. Could you tell me what these sanitary condition problems were as you perceive them, what the conditions were inside in general terms, and what might have been different about that from perhaps what was the case before the siege began.

MR. JAMAR: Before -- let's start with the conditions we understood before the siege. That women and children were allowed to use toss pots. Men were allowed to go out into what would be the equivalent of an outhouse. So that was -- whatever accumulated during the day would be tossed out at the end of the day. There was one spigot of water in the entire building. They had water tanks. They would be the lower right side behind that -- you can't see them there, but right behind -- see where the fence comes out and loops -- well they are inside the compound, white plastic large water tanks that were -- they had an electric well, 600 foot deep well, and there was one spigot from those water tanks, a drop spigot, into the place. That's it. That's all the plumbing they had operating. So when the siege began they couldn't get rid of all that as they used to. There was a huge sewage field out to the right, what we call the red side. That was about 30 yards out -- or maybe not that far -- maybe 60 feet out -- was sewage fields. I mean when the agents put the concertina wire they were knee deep in sewage. They were dumping it out there. And then behind the place was a sewage field.

REP. MCCOLLUM: So they couldn't go out there and dump it.

MR. JAMAR: That was filled with human waste on April 19th when the agents went in, which you'll hear about later.

REP. MCCOLLUM: So that is the difference in the conditions. They were not able to go out as far
away as they were to dump it. But the conditions as far as not having running water or plumbing were that way for a year or more before this happened?

MR. JAMAR: Yes, sir, and the other thing we did, we asked for a tape of the children so we had forced them to clean the children, because we knew they wouldn't send a tape with dirty children. It was a way of us finding about their water, but they had plenty of water. We thought they had a water shortage because when Blanch (ph) and Whitecliff (ph) came out they were dehydrated. But that was disciplinary action by Koresh.

REP. MCCOLLUM: So there really wasn't a water shortage. The point is that the only difference in the conditions, though they were certainly far from ideal, before the siege, during the siege and at the end of it was this question of where they dumped the sewage and how close it was in its ultimate accumulation. I presume you assume that would ultimately become a problem, though at any given time --

MR. JAMAR: Well it was -- there were dead bodies in there too. Excuse me, I'm sorry.

REP. MCCOLLUM: Yeah, but so far as we know, no disease had occurred as a result of that, no illnesses particularly that we were able to detect. Is that -- that you were able to detect?

MR. JAMAR: We were fighting outbreaks of TB and we had everybody who was there inoculated for TB. But there was no --

REP. MCCOLLUM: But you didn't have a manifestation of it at the time?

MR. JAMAR: No, sir, it was the fear of it.

REP. MCCOLLUM: Okay. Now I want to get back to this question, Mr. Sage, of your conversation with Mr. Hubbell that you were responding to Mr. Shadegg about, concerning the issue of what you may have told him on the -- I guess it was the 15th of April -- during that two hour telephone conversation regarding the DeGuerin breakthrough issue. Now let me claim it a minute, the question I want to ask you. And I would like maybe Mr. Jamar to respond to the generic too, so I'll ask you to listen up to this. From yesterday's testimony, both by DeGuerin, Zimmermann and as well Mr. Tabor and perhaps Dr. Arnold, it's my impression that they believe that by the 14th or the 15th of April -- I guess it was the 14th -- there was a difference in Koresh's attitude, that he had looked at things differently, that he wasn't now looking at becoming a martyr. They believed, and I think they were sincere in this belief, that at that point he had switched -- they had been able to convince him to switch his thinking to the fact that instead of God wanting him to be the martyr in the messiah idea of coming out, that he was going to be the messenger, under his interpretation of the seals in the Book of Revelation. And that by writing these instruments that he was interpreting the seals. By putting them down and writing them that he would be able to come out and publish them, even though he might be in jail. He would be able to produce these things in some way and he would be able to fulfill that particular mission as opposed to themartyrdom. Now they seemed very genuine in that conclusion. And that was -- I assume I'm correct -- the basis of what was "new" on the 14th of April about this. The seals themselves -- the fact that he wanted to interpret the seals wasn't new, but his change -- their perception of his change of attitude -- at least they were conveying that to you. Am I correct in that? Is that the way that you read it?

MR. SAGE: I think they absolutely believed that. I think they were as deceived on the 15th of April with -- yes the 15th of April -- by Koresh in this particular venture as we were, as I was, on the
second of March.

REP. MCCOLLUM: My point is -- just for the record -- that was your impression and I've got that down as well as theirs. If that's what DeGuerin was looking at, that's what he was thinking and that's what his impression was, and yours was. Now whether you thought they were deceived or not, that's another story. My question is this new idea of DeGuerin, deceived or otherwise, was that -- that new development, if you will, that DeGuerin thought the had obtained Koresh's state of mind being different and the seals being -- I mean the interpretations being written down and this change of the desire to be a martyr -- was this aspect of DeGuerin's interpretation -- and Tabor's interpretation of it was that conveyed by you in that telephone conversation with Mr. Hubbell. It seemed to me that you were saying that you thought perhaps that the discussions with DeGuerin took place after the Hubbell conversation. And if it was not conveyed during the Hubbell conversation on the 15th of April, did you ever convey that or did Mr. Jamar ever convey this to Mr. Hubbell or personally, as opposed to up the chain of command through written form or whatever, to anybody in Washington in the Justice Department or to Mr. Hubbell or to anybody in the White House?

MR. SAGE: Okay.

REP. MCCOLLUM: Before the 19th.

MR. SAGE: My recollection is that we -- I gave a very general overview as to the dynamics of negotiations since the first day, since I was the only one there that had been there the entire time. I gave them direct, candid insight as to what my observations were as to the success to date and/or failure of negotiated efforts, and as straightforward a consensus from the negotiation team as to what the possibility was of a successful resolution. I would like to mention this. I was surprised that I was to talk to Mr. Hubbell. I was -- when I responded to Waco from the very beginning, it was not in the form of being a -- in a supervisor role or anything else. It was to be a negotiator in the trench. And that's exactly where I was the entire time. I in hindsight consider it to have been very commendable for them to have sought out not only the opinion of the, let's say, on-scene commander or the command-level personnel, but also the specific frank insights of those individuals that were there in the trenches where it was going on, to ensure that they were getting an accurate representation of the dynamics of what was going on. That's exactly what I attempted to do.

REP. MCCOLLUM: But the question you haven't answered is -- and I just want the answer to my question -- is, did you convey this new thing from DeGuerin explicitly to Hubbell or, on another occasion, to anyone else in the Justice Department or in the White House, you personally, by telephone or in person, between the time you got that information on the 14th April, on or about that date, and the date of the ultimate assault?

MR. SAGE: The answer to that to the best of my recollection is that on the 15th of April, this, first of all, was not a new revelation to us as far as the Seven Seals. I've mentioned that previously. But --

REP. MCCOLLUM: I know, but the other aspect -- go ahead.

MR. JAMAR: Mr. Chairman, I think I can clarify it.

REP. MCCOLLUM: Well, you can, but let Mr. Sage finish first, please.
MR. SAGE: We were still in the process of trying to determinethrough negotiation process the veracity of the offer that had beenweighed forward. I do not -- to specifically answer your question, I do not remember addressing in any detail the dynamics of that becauseit hadn't unfolded yet. It had not unfolded yet. We didn't know theveracity of his offer, whether or not he had followed through. Ultimately, he did not.

REP. MCCOLLUM: So your answer is, you personally did not conveyit explicitly.

MR. SAGE: Not that I recall on the 15th or anytime thereafter.

REP. MCCOLLUM: Mr. Jamar.

MR. JAMAR: Mr. Chairman, previously I did not -- I was notcertain whether it had been conveyed to the attorney general. I havesince been told that she was made aware of it. And among otherthings, it's the reason that she asked Mr. Hubbell to call out andtalk to a negotiator is because, what does this mean to thenegotiations? And to satisfy her before she made a decision, sheasked Mr. Hubbell to call a negotiator. When they called out, they said that someone from the attorneygeneral's office wanted to talk to a negotiator. I selected Mr. Sagebecause he had been there from the very beginning. He had the bestfeel.

REP. MCCOLLUM: But, Mr. Jamar, the question was not whether youhad been told the attorney general knew about it. We'll find that outdown the road and confirm it or deny it. The question is, did youyourself or do you know of anybody on your team who personally talkedand told Mr. Hubbell of this new information explicitly, or anybodyelse in Washington in the attorney general's office -- the JusticeDepartment, in other words -- or the White House after thatinformation on the 14th came into being --

MR. JAMAR: Well, my --

REP. MCCOLLUM: before the assault?

MR. JAMAR: I'm sorry. My previous testimony was that I hadpresumed that it had been done. I could not cite how and who.

REP. MCCOLLUM: But you did not personally do it?

MR. JAMAR: No, sir. No, sir.

REP. MCCOLLUM: All right, that's all I wanted to know. And youdon't know how or who. Thank you very much.

MR. JAMAR: But it was accomplished.

REP. MCCOLLUM: Mr. Lantos.

REP. LANTOS: Thank you, Mr. Chairman. We have been inundated inthe last few days with countless detailed questions and detailedanswers. What I'd like to do with you, gentlemen, is to ask
you to sit back, take a deep breath and look at the broad picture. There have been basically three kinds of approaches to this tragedy. One approach -- this is the approach of what I call the lunatic fringe -- still clings to the notion that there was a gigantic governmental conspiracy that brought about this nightmare. It is difficult to see how any rational human being subscribes to such an notion, but obviously many do. The second broad area, where most are, relates to the kind and nature and level of mistakes made by various governmental authorities along the way. And I suspect we can debate ad nauseam and ad infinitum the specifics of the mistakes, and that is not my intention. But the third arena in approaching this tragedy is the one that I think has received the least attention so far, which to me is intriguing because in many ways I think the answer is to be found in the third arena. The only analogy we have to this episode in American history, certainly in recent American history, is the tragedy in Jonestown, Guyana, where you had a charismatic criminal who had apocalyptic vision and who brought about the death, under the most nightmarish circumstances, of about 900 American citizens. There was no FBI, there was no ATF, there was no Justice Department. None of the conspiracy theories could work. There was really no question about mistakes being made by law enforcement agencies because they were basically not there. Yet 900 American citizens, under the spell of a criminally insane, charismatic cult leader, lost their lives. They were either killed or they committed suicide or they were forced to commit suicide. What I would like to ask each of you, and each of you is an expert because you have been dealing with this issue, is not to worry about the details now. We have spent plenty of time on that, perhaps more than this committee should have, but I want you to look at the broad picture. And beginning with you, Mr. Jamar, I want you to tell me whether you see any analogy between the Jonestown nightmare, whether this, at any time during this process, crossed your mind consciously, subconsciously? As you think back at this whole horrible episode in your life, do you feel that you may have been influenced by what you remember happened at Jonestown?

MR. JAMAR: I was asked the question, was -- in a media briefing on April 20, 1993, was this another Jonestown? And my answer was, it is if you look at as a charismatic leader causing the death of all his followers. Our fear all along was that Koresh would find a way to make those people die in his name, in his glory, and he would survive. That was my greatest fear, not that it makes a difference whether he died or not. It's just that that was his -- he was so concerned about himself that -- one of the descriptions of him as a psychopathic personality is that he's not really interested in dying for any cause, including his own --

REP. LANTOS: So you reject --

MR. JAMAR: -- even to fulfill a prophecy.

REP. LANTOS: If I may interrupt you.

MR. JAMAR: Yes, sir.

REP. LANTOS: So you reject the notion that one of my colleagues introduced yesterday and had a dialogue with the defense attorneys, that if rational people had just waited 10 days, everything would have been all right?

MR. JAMAR: Well, I think that, as I said earlier, that he was going to find this end. Those people...
were going to die in his name and with him or without him.

REP. LANTOS: Right.

MR. JAMAR: One way or another, whether 10 days, a year later, whatever it was. I'm convinced of that ending. Still, I would have waited a year if we had something to work with, if there was just something there we could attach something to. We did it for -- from March 1st when -- or February 28th until the decision was made in late March that we thought we were going nowhere and we were afraid he was going to dictate when the people -- or when his -- when he was going to cause it and we couldn't prevent it as we could have otherwise. That's a long time. We did a lot. And we did more even after that. But I am convinced that he was going to end it his way. He controlled events from the -- February 28th, he controlled events with us March 2nd, and there's not -- I don't think there's an event that he didn't control other than the weather maybe.

REP. LANTOS: So you see an analogy with Jonestown?

MR. JAMAR: Yes, sir.

REP. LANTOS: Could I ask the rest of you gentleman to respond?

MR. : During the negotiation process, we mentioned Jonestown many times. It was on our minds and we were certainly aware this might be a precedent for Mr. Koresh. And I think it's important that this committee examines what we did in law enforcement and to determine how we can improve in the future. And I, for one, didn't agree with every decision out there, and we've learned from that, and we have taken corrective actions in the FBI. But there's one thing I have to tell you as having spent so much of my career in the field of negotiations: There are no guarantees. I could talk to 38 people wanting to commit suicide today, and we could probably convince 36, 37 of them not to do it, but the other handful of them will do it regardless of what we do, and that's because of what's going on in their mind and what is in their own sense, their own self-interest. And that was David Koresh. We can never say he might not have changed his mind later on, but if there's anything that we could have done that would have guaranteed that we would have had the outcome we liked, the answer is absolutely not. There is no guarantee in this business. And it's -- and we're all upset and terribly, terribly devastated by the outcome. This is not the outcome that any of us in the FBI wanted by any stretch of the imagination. But to suggest that we will always now have an opportunity to be a hundred percent successful with the David Koreshes of the world is simply not going to happen.

REP. LANTOS: Mr. McCarthy.

MR. MCCARTHY: I would comment that there is a parallel, certainly both cults, both suicidal, and we know that from what occurred. I would also add that a brave congressman flew there to confront Jim Jones in Guyana and was murdered on the air strip. And one might offer, then, that had he not confronted Jim Jones in an effort to resolve that incident in Jonestown, that 900 people wouldn't be dead. And I think that would be just as unfair as saying that the FBI is responsible for the death of the children. That's bizarre.

REP. LANTOS: I fully agree with you. Gentlemen, could you comment?
MR. : Congressman, Churchill said, "There's no risk-free battles. "And in law enforcement, there's no risk-free decisions. Prior to the ATF raid, I strongly recommended that we negotiate this situation. I believe that today, I believed it prior. And so from the ATF standpoint and if we were ever to confront a situation like this again, we would negotiate from the very beginning. And I believe that was an error. And so the director feels along with me very strongly that we have to strengthen our negotiation capabilities to be able to deal with these violent groups. It was a terrible tragedy. And I do agree that when Congressman Ryan was killed and those three aides -- I think three aides --

REP. LANTOS: Yes.

MR.: -- it was very similar. And in our planning prior to the ATF raid, it was discussed frequently. We used the words"Jonestown, Jonestown, that's what's going to happen. "And one of the things we faced, if we surround the place and they all commit suicide, then all the critics will be out saying, "Well, why'd you surround the place? Didn't you think of Jonestown? "


MR.: So that's --

MR. : In these types of situations, there are several dynamics. One, of course you have to have a charismatic leader. But number two, you have to have people who are willing to follow this individual. And normally, these types of individuals are looking for someone in life, that they can turn over all of their responsibilities to. And so, in this particular event, you have people not only giving up their homes, giving up their possessions, giving up their material wealth, but giving up their freedom for the belief in this one individual. It went so far as to giving up sexual relations with their spouses. And the ultimate act of power and control is turning over your own children to an individual like David Koresh.

REP. LANTOS: So, you see a parallel.

MR. SMERIK: I see a parallel, too. It really comes down from a behavioral perspective of being power and control. Every charismatic leader that I've encountered, that is the main issue.

REP. LANTOS: Mr. Sage?

MR. SAGE: I would basically adopt the comments of the rest of the panel, and just state that I was not in Jonestown. I was at Mount Carmel. I will never forget it. This individual was an absolute master of deception. And to embrace some of the concepts set forth yesterday will be to enable Koresh to continue this pattern of deception on these subcommittees.

REP. LANTOS: I want to thank all of you for your advice. Thank you very much.

REP. MCCOLLUM: Mr. Lantos, your time is up. The committee will be in recess until after the vote that's now pending. Thank you. (Recess. )
REP. MCCOLLUM: If we could have the witnesses back at the table, the subcommittee will come to order. When we were at recess it wasthe time for the Republican side of the aisle. But the Democrats have gotten back here sooner, and Mr. Conyers is sitting there with histime, and I'm going to give you your five minutes now. Mr. Conyers?

REP. JOHN CONYERS (D-MI): Well, thank you very much. I'd like to talk with Mr. Cavanaugh. He's on the way.

REP.: (Off mike.)

REP. CONYERS: Surely.

REP. MCCOLLUM: We aren't going to run your clock. We've turnedit off until you -- until Mr. Cavanaugh gets seated and everybody isready to go.

REP. CONYERS: Did you notice I didn't even make any requests for additional time, because I knew the Chairman's fairness would coverit.

REP. MCCOLLUM: I appreciate that, Mr. Conyers. All right. I think we have Mr. Cavanaugh in seat. And Mr. McCarthy still hasn't entered the room, but you don't need him rightnow for your questions. Is that right?

REP. CONYERS: I'd like to begin my discussion with Mr. Cavanaugh.


REP. CONYERS: Sir, you were in a unique role in this episodethat's being relived many, many times here in the hearing room. You were both a commander and a negotiator. And as such, you played a keyrole in each capacity. And I congratulate you for your very importantperformances in both areas. One thing that's been said in terms of negotiation is that, ofcourse, we were dealing with people, with a religion that was uniqueand not popularly understood. And it's been gone over time and timeagain. We have to understand from their point of view and so forth. Was that something difficult for you or the other negotiators tounderstand. In other words, it seems to me a little simplistic for usto say, "Well, you've got to take into consideration that these wereDavidians, and they believed in other things. "How could one not dothat? I mean, what else would you be thinking of. These are not hardshell Baptists. These are not Catholics. There are not any --they're who they are. And to what degree, Mr. Cavanaugh, was thatunderstood by yourself and others that participated in the negotiationprocess with you?

MR. CAVANAUGH: Congressman, I fully respected their religiousbeliefs -- whatever degree there was there of religious beliefs. And all -- I think all the other negotiators that also -- I don't mean to be sarcastic, but my feeling was, they can worship a golden chicken if they want to, but they can't have submachine guns and hand grenades and shoot federal agents. I was very -- I played the role as a policeman. That's what I am. I didn't try to fool the Davidians that I was something else. And I think that's one reason that Koresh certainly trusted me from the beginning. I didn't try to fool Koresh, or trick him. I simply said, "Look, I'm a policeman. We want to resolve this situation. Ourshared
problem is this conflict. Let's see if we can work it out. "And I think every negotiator that followed me took the same track. Normal strategy in a negotiation. And like I say, Congressman, I was really a -- this -- I'm a rookie at this, and the experts are on my left. But I think any policeman, any special agent, respects the sanctity of life. And I certainly respected the sanctity of Mr. Koresh's life. It was difficult for me, because I had watched him kill four agents and shoot 20 others. That made it difficult for me.

REP. CONYERS: Well, I want to tell you that our staff studies that I have gone over recognize that you treated your negotiating role with patience and good listening skills, and that your training as a negotiator held you in good stead. Now, let me turn to your other role as a law enforcement commander, in which you were trying -- you spent a considerable amount of time into the hours of trying to rescue Special Agent King, who was caught in a crossfire, and there was apparently some difficulty in getting to him. Would you recapitulate that for us, Mr. Cavanaugh?

MR. CAVANAUGH: Yes, Congressman. I think it's important to know, because some of the facts that have come out in the other areas may be cleared up here. If you look at that chart, the roof of the chapel is on the right side, the center line, up and down. And that's the window, just on the right, where everybody's watched on TV the three agents go in. Kenny King went over the peak of that roof --

REP. CONYERS: Could you --

MR. CAVANAUGH: -- to the window on the left.

REP. CONYERS: Could you show us where it is? I'm not sure if I'm following.

MR. CAVANAUGH: The New Orleans team put their -- (off mike) -- here.

REP. CONYERS: Yes.

MR. CAVANAUGH: This is the window that's always shown on television. Kenny King was to -- (off mike) -- and went to this window. Conway LeBlue (sp) was on this ladder. A lot of the rounds were fired through the roof of the Davidians own place, were fired from this tower down at Agent King and McKehan (sp), and Conway LeBlue (sp). Certainly there's rounds from the tower through this roof. And we've the attorney's discuss rounds found on this roof. And there was rounds up through the chapel roof, because they heard the agents up there. And Bill Buford can testify that he was wounded inside this room from rounds being shot up. Those rounds that missed him would have come out this roof. And the agents on the ground here would have been shooting up this way to this roof. So, I just wanted to mention that. When Kenny King fell off here.

REP. CONYERS: Okay.

MR. CAVANAUGH: He fell in this alcove. We had no men. This was just the first extent of our team, right here.

REP. CONYERS: Yes. Now, you were trying to reach King, who was indicating that he was seriously injured.
MR. CAVANAUGH: Yes, sir.

REP. CONYERS: And you -- were you trying to get the Davidians to hole their fire, or what were you doing during that time? And how was King ultimately rescued?

MR. CAVANAUGH: One thing, Congressman, was we couldn't reach a cease-fire agreement. And the only thing I would impart that's not shown on the videotapes, on the television shows, is that this wasn't a gun battle where a few men were on the roof and a few were shot. This was a gun battle where thousands and thousands and thousands and thousands of rounds were fired. That's the way it was. The shooting, I remember, didn't stop for 40 or 45 minutes. And then when it did stop, it continued sporadically. Small skirmishes would break out of a few hundred rounds. And during the negotiations to get a cease-fire, this same thing would frequently happen. The Davidians would fire on someone, and we'd respond. Or they'd accuse us of firing, and so forth. So, the cease fire initially broke down three times. When we finally reached it, I radioed to Pete Maston (sp) -- who was on the New Orleans side -- and I asked him -- I told the Davidians we were going to send four agents. They're going to get the wounded man in the back, you know, and they're going to stand up. You know, you can't shoot them.

REP. CONYERS: That was King.

MR. CAVANAUGH: That was King.

REP. CONYERS: And he was there caught between this gunfire for what period of time?

MR. CAVANAUGH: Well, he was shot probably about 10:00 a.m., and this -- he was there for at least two hours when this was going on. And he had been shot through the chest, through the bullet-proof vest, with a submachine gun, in fact, out the other side. And I'd like to mention, if you'd let me, that all the men who were wounded there, and also women -- we had six women there, too. And one got the medal of valor. But all the men who were wounded, we saved. The only agents who died were those who were killed immediately. And I -- we were much criticized for our medical plan. And that's atrocious. We had medics, ATF certified paramedics who treated our wounded on the ground, who gave Bill Buford plasma when he was shot laying there. That's the only reason he's alive. I don't know that there's a law enforcement agency that gives plasma. I mean, we went in there trying to be prepared the worst.

REP. CONYERS: Well, I --

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

REP. CONYERS: May I commend you for the really outstanding services that you performed for your agency and for the men and women that were with you that day. Thank you very much, Mr. Chairman.

REP. MCCOLLUM: Mr. Buyer, you're recognized for five minutes.
REP. STEVE BUYER (R-IN): Thank you, Mr. Chairman. A couple of real quick questions, then I've got a comment and a series of questions. One, Mr. Jamar, I was listening to Mr. Brewster's question to you about some tapes and what they were played and what they consisted of. Would you please produce for this committee those tapes -- either this afternoon or tomorrow? Could you do that for this committee, please?

MR. JAMAR: I'm uncertain which tapes you're talking about.

REP. BUYER: Weren't there some tapes about -- the kind of tapes that you were playing to the --

REP. MCCOLLUM: Would the gentleman clarify? Are we talking about the rabbit tapes?

REP. BUYER: The rabbit tapes and the --

MR. JAMAR: I'm sorry. I don't believe -- we'll produce them, yes.

REP. BUYER: Thank you very much. And the other question that I have is, who do you report to? Who do you report to anyone in Washington?

MR. JAMAR: Do you mean during this?

REP. BUYER: Yes.

MR. JAMAR: The crisis?

REP. BUYER: Yes.

MR. JAMAR: The person I reported to was Larry Potts, who's assistant director of Criminal Investigative Agency at that time.

REP. BUYER: Okay. Thank you. The other thing that's been going through my mind here is -- several things. First of all, I want to commend all of you to your service to country. A lot of time, you know, the military always get highlighted, and sometimes we forget about law enforcement that is on the line, day in and day out, for the preservation of our securities and economic opportunities here at home. So, let me thank you.

MR. JAMAR: Thank you.

REP. BUYER: Likewise, gentlemen, you know, there's been the analogy used quite often with the military style operations, and when we have out HRT -- our hostage rescue teams, and they're trained in sort of the paramilitary style tactics, and CQB -- close quarter combat training. And, you know, in our military, you know, they're retrained very well in the MOUT -- the military operations and urban terrain. That's basically, they're going to go in in indiscriminate fields of fire. Throw the grenade in and kill anything that moves. That only takes a couple of days of training. But CQB and laying down discriminate fields of fire are highly perishable skills. And that takes many, many months of training. Agreed? Yes, sir. I agree with that.
REP. BUYER: All right. So, when I think about the military aspects of this -- and I think some of the military advisers are very cautioned. But do you know what, I think about the military operations, and we have combat -- people die, people are wounded. You do, in fact, have casualties. And a lot of the battles in the histories of a military historian, also, that how awful it would be to bring in a company commander before a congressional hearing, when there was loss of life, because good men made bad decisions. In battle, good men make bad decisions quite often. And -- but I want you to know that, while the give the military analogy, part of the reasons and processes for this is that we are a lawful society. And in a lawful society -- as bad as we now know Mr. Koresh in fact to be, the ends does not justify the means. That would lead to a lawless society. And we do have the constitutional right that you're presumed innocent until proven guilty. And we all understand that. And you understand that, because you're on the line, day in and day out, to preserve the Constitution by your oath -- no different than our oath. Let me ask a question. The other thing that has concerned me -- this is Mr. Sage -- is some of your thought processes here. In your April 15th meeting, I guess a phone conversation with Mr. Hubbell, in reading the Justice report, it really indicates that you were really getting frustrated here. I mean, that's -- my reading of this is you were very challenged at the moment, because Hubbell recalls Sage saying he believe there was nothing more he or the negotiators could do to persuade Koresh to release anyone on or to come out himself.

MR. SAGE: I still state that that's slightly overstated. But we had reached an impasse.

REP. BUYER: Okay. Now, see, that could be part of the problem. I think, what I walked away from yesterday's hearing was, is that there was a tremendous disconnect perhaps between those of you who were the negotiators on the field and the political appointees in Washington. And if you're saying that's an overstatement -- are you saying that the Assistant Attorney General Hubbell may have overstated it and then provided not factual information to the attorney general, that she used as a basis to make a decision?

MR. SAGE: I'm not speaking for Mr. Hubbell. I'm speaking from my recollection of conversation with Mr. Hubbell. I admit we --

REP. BUYER: So, you disagree with Mr. Hubbell?

MR. SAGE: At no time did we abandon the negotiations.

REP. BUYER: So, then, you disagree with Mr. Hubbell's perceptions of the conversation that you had with him.

MR. SAGE: I have some concerns about the degree to which it's expressed in that report.

REP. BUYER: What about the fact that Hubbell -- you must have informed Mr. Hubbell that law enforcement personnel at Waco were getting tired, and that tempers were fraying?

MR. SAGE: I don't recall having said that. We don't -- our operations are not driven by fatigue or frustration. There's a level of professionalism here that is going to ensure that we get the best possible commitment to a particular set of circumstances.
REP. BUYER: I understand that, but you've also agreed that --

MR. SAGE: If we're not able to perform to that level, then we'll replace the person that's there.

REP. BUYER: I understand that, but you've also -- we're in disagreement there are highly perishable skills. And part of those skills also can, in fact, be negotiating skills. And when I say that is you, as a negotiator -- I'm not Monday-morning-quarterbacking you. I know you're utilizing your expertise, your intelligence data. But you're also dealing with stress and frustration.

MR. SAGE: Certainly.

REP. BUYER: And I kind of put myself in your shoes. I can sense-- I would have some sense of that. But part of my concern is here, if we have Mr. Hubbell here on the 15th saying, "These are my impressions of a two-hour conversation with you," and then he is having then a conversation with the attorney general -- because on April 16th, we have the attorney general basically disapproving the plan to end the standoff. So if, on the 16th, they were disapproving the plan, to me there's a real problem here. All of a sudden someone, in fact, must have tried to convince the attorney general that we have to go forward and that this April 14th meeting -- there are tremendous disconnects here. I know I've just run out of time and I'll explore this later, and I'm sure I'll be able to talk with the attorney general. I'll be more than happy to talk --

MR. : I believe I'll be on that other panel, as will other participants, or at least people that were in the room during the course of that conversation in Waco.

REP. BUYER: Good. Then we'll carry this on further.

MR. : Yes, sir. I look forward to it.

REP. BUYER: Thank you.

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

REP. THURMAN: There's been some conversation about this letter or something that was sent by -- I guess by maybe Mr. Muron (sp) or Miron?

MR. : Murray Miron?

REP. THURMAN: Yeah. And just to clear it up, there was one last -- who is he, first of all?

MR. : He's a professor of psycholinguistics, I believe, at Syracuse University.

REP. THURMAN: Was he involved with this?

MR. : Apparently so.
REP. THURMAN: Okay. Anyway, just, I think, Mr. McCollum and one of the others had mentioned -- I'm not sure who -- had talked about this letter, that there might be an ability to work this out or that things had changed on this April 15th. However, the letter that I have says in summary, "I do not believe there is in these writings any better, or at least certain hope for an early end to the siege. " So I just kind of wanted to clear that up and know who this gentleman was. Yesterday I asked a question, because we, like you, have taken in a lot of information over the last couple of days. And I have to tell you, how you came to conclusions, I'm not sure, and I want to find that out. I've been trying to reconcile in my own mind, based on the information -- I mean, I've heard from Jewel, Sparks, Rodriguez; then I heard last night from lawyers and theologists, each telling me different things, some telling me that they were going to go through the prophecy, some saying there was a possibility we could get out of this. In your training and through this operation, how did you reconcile all of these different people coming to you with all of these different concerns?

MR. : The analysis by negotiators who were talking to these people constantly, they had a good feel. They understood people. They were trained to do this, to get a feel for people. I think they were the most reliable among the people who were there, among our people, as to how reliable what the people were saying is, how much they could rely on what they were saying, how accurate the information was. We had a lot of people call us offering all sorts of information. We had people decide after each shift, "What was significant? What happened this last" -- whatever the shift was, whatever it happened to be. "What happened during this period compared to what we did before? " And then an analysis of maybe the previous 10 shifts or maybe the previous three days. "What happened? What happened to the recommendations we made or what happened to the conclusions we made? Are they still good, based on what's occurred? " So analysis was constant because they were in constant conversation. These were people who were trained to do this. And it was a huge team. Miron coordinated one shift. Gary was overseeing the whole thing for several weeks. And they had 10 and 12 people working each shift supporting each other. They had a primary person talking, but everyone else was absorbing what was going on and helping them and pushing them to ask questions or interpreting what was going on. At the same time, another person's writing down highlights of what was going on. So all these people, to include behavioralists and everybody else, was absorbing this. And it was constantly reassessed and reanalyzed over and over again.

MR. : I'd like to respond to that.

REP. THURMAN: Certainly.

MR. : I mean, there was a great many people that called in. And how do you choose which theologian is the right one to turn to? We had one occasion where a gentleman in a cowboy hat in a late-model Cadillac pulled up to the perimeter and he offered to negotiate Koresh out, was certain he could do it. The troops thanked him for his assistance but said we could handle it. And as he drove off, his personalized tag said "GOD." Now, perhaps we should have turned to him as well; I don't know. But I think in terms of some of the armchair theologists who have criticized us, I think a good question would be how many times have they talked to someone with a knife at someone's throat, a gun to someone's head, or someone up on a bridge about to jump, because the negotiators on our teams have done this hundreds and hundreds of times. And while we listened to their advice and
tried to take into account as many different suggestions as we could, ultimately we had to use the experience of some of the best negotiators in the United States who had been assembled for this effort. And I always judge it on what would I do if my children were inside that compound. And I'll tell you, the very last thing in the world I would do would have some untrained theologian try to talk to a religious fanatic to get my child out. I would hope that an FBI or a law enforcement negotiator with skill and training and experience, knowing how to talk to people in crisis, would be there to do it. And that's ultimately what we did, Congresswoman.

REP. THURMAN: How long have you been doing this?

MR. : Negotiating for 15 years; in the FBI for almost 23.

REP. THURMAN: Let me ask another question that I don't think has been brought out because we kept hearing about promises kept, promises broken, and those. There was one last gentleman that came out of the compound, a Mr. Fagen (sp), I understand. Would you like to give us the story surrounding that and how you believe what happened under that? Because I think that plays a significant role in this and we really have not talked about it.

MR. : I believe it does as well. I think Mr. Fagen came out with a mission. The last person to come out prior to him was on the 21st. In fact, seven people came out on the 21st. And it's at least my opinion, that maybe not everyone shares, that perhaps Koresh was beginning to have some concerns about some people having second doubts and wanting to come out. And I believe he sent out Livingston Fagen with a very clear mission, and that was to thwart the flow of people out of the compound. You may have heard our whole strategy was trickle-flow-gush, trying to get as many people out as we could. Every person that had been released from the compound, by agreement with Koresh, would call into the compound to indicate that they had been picked up, well-received and well cared for. And that was a standard procedure. In almost every instance, we -- in fact, in all instances we initiated the call to follow through on that agreement. When Livingston Fagen came out, as soon as the tactical people literally put hands on him, he said, "You're mistreating me. You're beating me. I refuse to call back in." Then, for the first and only time, no sooner had he been taken from the scene than David Koresh called in and say, "I demand to speak to Fagen." "And he had never done this before. And, of course, we had to report that Fagen, in fact, refused to talk to Koresh. We believe Koresh used that to convince other people inside that, "Look, the FBI's mistreating Fagen; they won't let us talk to him anymore," and attempted to use this as a rationale to stem the flow of people outside. And we feel the whole thing was a plant by Koresh.

REP. THURMAN: Well, I had more questions but my red light is on. But I want to tell you all, thank you very much for being here and sitting through this. And certainly, having to go through this all again, I can tell it's taken a toll. Thank you.

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

REP. BARR: Thank you, Mr. Chairman. We've been engaged over several days, as I think you all can tell, asking a series of what I think are very insightful questions and receiving a lot of information. Lest you leave from here with the impression that everybody on that side of the aisle just can't say enough nice things about you and we're all the bad guys -- specifically the
gentleman from Michigan previously praised you, and I'm sure he was sincere in that. But just two years ago in testimony, when these hearings were held, he called what you did a disgrace. So there's more than meets the ear in these things. What we're trying to do, certainly over here, is ask some questions to avoid these problems coming up in the future. And I would certainly hope that you all would share in that. Mr. Cavanaugh, I have in my hand here an amount of Play-Doh. Mr. Bush, if you could -- just standard Play-Doh. If that were a flash-bang grenade or a stun grenade, the same thing, which was live, which the pin had been pulled, would you feel comfortable just holding that in your hand?

MR. CAVANAUGH: Well, Mr. Barr, a flash-bang grenade ejects a cardboard tube out the bottom. So if you knew, you could probably hold it in a proper way to have it eject. A flash-bang grenade -- my answer is no, I would not want to hold it. But a flash-bang grenade has no fragmentation at all.

REP. BARR: No, I know that. And don't anticipate where I'm going with it.

MR. CAVANAUGH: I'm sorry.

REP. BARR: I don't mean for you to be defensive. There's no reason to. Earlier today there was testimony from Mr. Schumer that these are not devices that can harm somebody. And, in fact, they can, can't they?

MR. CAVANAUGH: Well, there is no fragmentation. There is concussion and a blast.

REP. BARR: Is a flash-bang the same as a stun grenade?

MR. CAVANAUGH: Stun grenade, yes, sir.

REP. BARR: Okay, those are classified as destructive devices under 26 USC Section 5845(f), aren't they?

MR. CAVANAUGH: Yes, sir, they are.

REP. BARR: And as a matter of fact, ATF in court takes a position, in convicting people that possess these devices, that they are destructive devices. Is that true?

MR. CAVANAUGH: Yes, sir, that's correct.

REP. BARR: That they can kill people. Is that true?

MR. CAVANAUGH: I think it would be -- you'd have to hold it close to your body or -- it's possible, certainly, yes, sir.

REP. BARR: Well, a gentleman by the name of Warnell (sp) Parker, an explosives enforcement officer, Bureau of ATF, on May 11, 1994, in court said under oath that they are designed to help kill the suspect while not endangering the law enforcement officer when they're used for those purposes. But anyway, again, I'm not being critical of you or anything. I think that there were some
mischaracterizations deliberately this morning that I wanted to clear up with regard to these. The question that I have relates to what appear to be some very serious miscalculations on the part of law enforcement officials trying to gauge the response of the people inside the facility there, both at the beginning of this -- we had agents testify that despite the fact that the folks on the inside knew what was coming, they had amassed large numbers of weapons, which is obvious from looking at the questions and hearing you all's testimony. The agents said they were stunned. They were surprised at what happened. And then on the other end, what we're talking about right now, going in with I guess what you all consider somewhat more benign activities such as the introduction of the tear gas, some surprise on the part of the firing that came out of there and so forth. And the question -- I have here an autopsy photo, and I'm not going to introduce it because it's rather gross and it's very sad. It's a photograph of a one-year-old child and it's been burned. And right in the middle of the remains is a ferret round; right smack in the middle of the remains of this one-year-old child is a ferret round with the CS gas. I find it hard to follow you all's thinking if the activities on April 19th were considered to be benign. They caused a lot of deaths. We may never know exactly who died. A lot of the autopsies reveal that people died from suffocation and debris falling on them, and we may never know how much of that was caused from the walls caving in when the tanks came in and so forth or how many others might have died from the ferret rounds coming in. Do you all feel -- and again, I don't mean to be critical, but I think there was some bad misgauging of responses on the other side. Do you all recognize that in hindsight, certainly, which is what we're all operating under here, that there were miscalculations with regard to how these folks in there would respond to what they, I think, correctly identified as aggressive moves? And I'm not saying the aggressive moves were necessarily unjustified. Is that of concern to you all as you kind of look back on this whole process? Mr. Jamar?

MR. JAMAR: I think the inability to get people to come out of there with some gas was a surprise to us. The fact that it made -- the way Koresh was able to control those people such that they didn't get out and the fact that they ended up all dying in what I consider murder-suicide -- I think there were 17 who were shot in there. When that was and how they were shot, I don't know. I think you're saying here's a ferret round lying in the remains of a one-year-old child and then concluding that that child died from that ferret round is, I think, contrary to the autopsy, I would think. But there's no question that we were concerned about a mass suicide. We were. But on the other hand, we were concerned that if there was a mass suicide, how could we stop it? And the only means we had was gas.

REP. BARR: Knowing -- and you all had accumulated a great deal of information on the Branch Davidians over the course of the 51 days--

MR. JAMAR: Correct.

REP. BARR: -- I mean, a great deal of information, both direct and conclusory information on them. Coming in as happened on the 19th, with military vehicles pushing cars out of the way and coming in and interjecting the CS gas directly into the building and then, as it progressed through -- I think the report says through every window in the building -- and my question is, what response did you expect? Did you really expect them just to come out?

MR. JAMAR: I expected the tear gas to drive the people out, but you overstated it. These military
vehicles had been around here for seven weeks. The view of the --

REP. BARR: No, I know they were in the area, but they didn't come up and start knocking down the walls.

MR. JAMAR: -- as close to the front door as you and I are. The cars and everything were removed the day before. There was no crashing through cars to get to the house. One tank approached the compound, just one. All the others were back. The Bradleys were behind the concertina wire. They were -- we were not -- the semantics he was talking about, the assault -- hitting the building and punching holes going in injecting gas is assault in any legal term. But the difference to us -- when Byron announced it was not an assault, he immediately followed that -- we are not entering the compound, therewas not an entry. We were never going to enter the compound, we wouldnever fulfill that aspect of the prophecy. But the fact we used military is they had 50 caliber --

REP. BARR: Weren't there walls knocked down?

MR. JAMAR: No, not when they first approached. They just punched a hole in and injected the gas.

REP. BARR: But thereafter --

MR. JAMAR: Holes were made in the compound. I am told by witnesses and everything else of the nine survivors. Seven were either directly rescued by an HRT or came out of holes created by those tanks. That's what I am told from the survivors.

REP. MCCOLLUM: Mr. Barr, your time has expired. Mr. Wise, you are recognized for five minutes.

REP. WISE: Thank you. I am going to yield some time, but I just want to note, gentlemen, I think you had an incredible task ahead of you. You are dealing with a child abuser, you are dealing with someone who is molesting children, who is knowingly stockpiling automatic weapons, who is not wrapped real tight by anyone's definition, and yet you are supposed to negotiate your way through that. And I think that's why I am greatly concerned about some of the Monday morning quarterbacking that's going on on the decisions that you had to make. I think you did the best you could in a terrible situation. At this point I would yield two minutes to Mr. Schumer and two minutes to Ms. Jackson-Lee.

REP. SCHUMER: I thank the gentleman for yielding. Mr. Sage, I want to take my chance -- my shot at clearing up this business of whether there was ever a real surrender agreement, as Mr. DeGuerin and Mr. Zimmermann claimed yesterday. So please answer the questions as concisely as possible. First, let me go through some of the major previous occasions on which Koresh built everybody up about coming out and then cut then down, and ultimately showed himself to be a liar. First, March 2nd, this was the big day when Koresh promised that everybody was coming out if a tape he made was broadcast on the radio. The tape was in fact broadcast, all sorts of preparations were made for people lined up to come out. But David Koresh changed his mind and broke his word, did he not?

MR. SAGE: That is correct.
REP. SCHUMER: And the reason he gave was that God had instructed him to wait, did he not?

MR. SAGE: That is right.

REP. SCHUMER: Second, March 19th, Koresh said he was coming out in the next few days, did he not?

MR. SAGE: Yes.

REP. SCHUMER: But in fact he never followed up on that promise, did he?

MR. SAGE: No, sir, he did not.

REP. SCHUMER: March 31st, this was the Passover promise. Both of the attorneys who were here yesterday, DeGuerin and Zimmermann, said that Koresh had agreed to come out after Passover, did they not?

MR. SAGE: They said that, yes.

REP. SCHUMER: And did Koresh himself not confirm in a conversation on April 2nd he was coming out after Passover?

MR. SAGE: That's correct.

REP. SCHUMER: Then there was some confusion about exactly which date David recognized as Passover, but after all those possible dates passed again he again broke his promise and did not come out, did he?

MR. SAGE: That's correct.

REP. SCHUMER: Okay, so there was just these three of the major highlights of times Koresh promised to come out and broke his promise. Now turning to the testimony you heard yesterday, and specifically the claim that there was an agreement, an agreement, a specific plan to surrender, not just some attorney's gratuitous proposal, but an agreement. Was there ever such an agreement known to you?

MR. SAGE: There was a hope embraced by the attorneys in good faith. There was never an agreement that I was aware of.

REP. SCHUMER: Thank you. So you never regarded it as viable, as a firm deal, as a real agreement, the proposal routed through Mr. DeGuerin, to wait until Koresh had issued his analysis of the seven seals. You never really thought that that was an agreement so that you should stop everything and wait, did you?

MR. SAGE: No, sir.
REP. WISE: I am going to have my claim my time so that I can yield to Ms. Lee.

REP. SCHUMER: Right, I just had one final thought, but that's good enough. Thank you, Mr. Wise. Thank you, Ms. Jackson-Lee. MS. JACKSON-LEE: Thank you very much, Mr. Schumer, and thank you very much, Mr. Wise. Mr. Noesner, I wanted to ask you if you failed to take into consideration David Koresh's religious beliefs, was that something that was very much a part of this ongoing negotiation? I just need maybe a yes or no since my time is limited as well.

MR. NOESNER: We did take it into consideration. MS. JACKSON-LEE: And were you working with him then on what he was attempting to get done in order to get his word out?

MR. NOESNER: Yes, indeed. MS. JACKSON-LEE: I am going to read -- there was some discussion about frustration. These are not transcripts that I believe are done by the Justice Department. I believe these are summaries of transcripts given to us by witnesses yesterday. It reads the transcript of the last recorded words of David Koresh, but it does provide an interesting point because I think the individuals, the theologians, certainly had concern about David Koresh. It has the FBI saying I am not frustrated, I went home and I am back, I'm no longer frustrated, I was never frustrated. Was that the sense of the negotiations? Were you continuing to do as much as you could, Mr. Sage, to ensure that these people came out?

MR. SAGE: Absolutely. Up to and including the 19th.

MS. JACKSON-LEE: Well I think that as we looked at my earlier questions I wanted to come back again to the point of whether or not we were going all the way to the end and trying to make sure that these people came out safely. Mr. Jamar, I had asked you about the architectural structure and whether you knew about it. I don't think you ever got to answer that question. And what was the preparation in order for them to be able to come out? What ways were you looking, as the CS gas was going in, what were the exits that were clearly there for them to be able to come out?

MR. JAMAR: Can I walk up there? MS. JACKSON-LEE: I would appreciate it, thank you.

MR. JAMAR: The initial gas was going to be here in this corner. MS. JACKSON-LEE: If you could speak louder I would appreciate it.

MR. JAMAR: I'm sorry. The initial gas was right here. The thought was we would contaminate this part of the building, the lower level, and it would be clear to the occupants what's coming next. But that was all it was going to be. And the thought would be that they would move here. The hope was that the realization that we're not going to stop the gas, it's going to ultimately make the whole place temporarily uninhabitable, that that was going to come. We thought it would be -- some people would still come out even with just one insertion. There was this door, there were doors in the back. MS. JACKSON-LEE: And they were not obstructed or they were not nailed shut as far as you know?

MR. JAMAR: As far as we knew at the time. Later on we discovered that this door was -- there were no people coming out after we put a lot of gas in there. The gas was not that effective, which I think
we are going to get into more detail later in the hearings. But we thought people should be coming out, so we said let's see how bad-- let's see if that door is blocked. So we discovered that it was, we pushed up. So we made -- MS. JACKSON-LEE: And your pushing with what, manual or by the --

MR. JAMAR: No, it was with a CED, a bladed vehicle. MS. JACKSON-LEE: I understand.

MR. JAMAR: Discovered that was not -- that was barricaded. So we put another hole right here. MS. JACKSON-LEE: And was the whole intention to cause an explosion or was it to see if people would come out?

MR. JAMAR: No, it was to make an exit for them. We discovered by -- we discovered this was blockaded so we had to -- there was no other door in front, they would come out the windows, which a couple of people did come out the window. But we made a hole here. MS. JACKSON-LEE: So the holes were specifically to be able to let anyone who was finding an obstruction, or could not find their way, here is a big hole for you to come out of.

MR. JAMAR: Yes, we did that later over here inside this little courtyard, and we did it over here -- right in here. MS. JACKSON-LEE: By the visuals on television would you say it was a coincidence that as some of that ramming was occurring the firesprung up which gave the impression that that might have caused the fire?

MR. JAMAR: Well I think that from television -- I think most people tell me they saw this smoke here first. And I think about seven or eight minutes previous there had been the approach from here and the tank had pulled away. Now from the observation I was able to make after from air, there was a huge fire behind this tower right here in the kitchen area. There was another fire here that was very easily discernable from the air. Okay, now, the wiretap, the microphone, fire prior to 12 o'clock, right at 12, right in that area, not 12:15 -- (inaudible) -- did not have a precise time, it was after 11:40. Let's not let the fire go out. The fire is already going prior I think to this. We just hadn't seen it yet. Makes me think it was -- I think the microphone was right in here somewhere. I think that's the fire we are talking about. We saw -- MS. JACKSON-LEE: Seeing it shoot up? Seeing it shoot up --

MR. JAMAR: No, I think this is what you saw on TV. I didn't see this one for a long time. But I believe from that over here -- between 11:40 -- because whenever that tank entered right here later, that's when the microphone went out.

REP. MCCOLLUM: Ms. Jackson-Lee, your time has expired. Mr. Jamar will be back for two more panels doing exactly this type of discussion. MS. JACKSON-LEE: I thank you very much, Mr. Chairman. I wanted to emphasize the escape route. I thank you very much for giving me the time. Thank you. Thank you, Mr. Wise.

REP. MCCOLLUM: You are welcome.

MR. SAGE: Mr. Chairman, can I make one comment in furtherance of the topic of today's panel negotiation.
REP. MCCOLLUM: Well you may, Mr. Sage, but Mr. Zeliff has time too.

MR. SAGE: Okay, my apologies.

REP. MCCOLLUM: Do you want to do it at the end or --

MR. SAGE: That's fine.

REP. MCCOLLUM: It has nothing to do with Ms. Jackson-Lee's question I assume.

MR. SAGE: It does somewhat because of the -- MS. JACKSON-LEE: May he answer that then, Mr. Chairman?

REP. MCCOLLUM: Yes, that's what I was getting around to, Ms. Jackson-Lee, to find out if there was a connection. MS. JACKSON-LEE: Thank you.

REP. MCCOLLUM: You would rather wait to the end. Go ahead.

MR. SAGE: Well there is a connection in that when we began to --with the insertion plan of the CS gas, one thing that this panel please needs to remember is that that did not mark the end of negotiations. It was our intent, and I was instructed to go out there prepared to negotiate, continue negotiations from forward to facilitate the safe and orderly exit of those people for up to 48 hours. It did not herald the end of negotiations. We were hoping that it would prompt the end of the standoff.

REP. MCCOLLUM: Thank you, Mr. Sage. Mr. Zeliff, you are recognized for five minutes.

REP. ZELIFF: Thank you, Mr. Chairman. You know we have a great deal of respect for all of you and the testimony you've given today. And we had equal amount of respect for Mr. Zimmermann and Mr. DeGuerin yesterday. They spent six hours in very credible testimony. And I'm really torn in trying to listen to them and then to you in terms of this negotiation offer. I just want to understand exactly you know --you apparently had a two hour conversation with Webster Hubbell on April 15th. And for the record, did you or did you not tell him, even in a general way, as part of that two hour conversation, was there an surrender offer on the table that had been discussed with Koresh, Koresh's lawyers, the Texas Rangers, which they in their testimony admitted to last night, and which Mr. Jamar was aware?

MR. : I will state again that there is much more importance placed on this evolution than was in fact there on the 15th of April.

REP. ZELIFF: So you didn't mention it at all?

MR. : Let me finish. It was not an agreement. I do not specifically remember highlighting it because there was no credibility to it at that time. We were hoping there would be, but it had not come to pass.

REP. ZELIFF: Well the Texas Rangers felt that there was an agreement of sorts. They were aware of that. I mean it's -- in my judgment it's very hard for us to listen to what we heard last night and then
with the seriousness of what we are going forward with on April 19th, on a plan -- and I guess what I am trying to figure out is did anybody have an open mind or was the gas plan going to be the deal.

MR. : The open mind is exhibited by the fact that we probed this issue extensively from the 14th until up to and including the evening of the 18th, specifically attempting to determine whether or not there had been any demonstrated progress in the area of this alleged manuscript. There had been none, not according to us, according to Steve Snyder. There had been none.

REP. ZELIFF: What was Mr. Hubbell's reaction?

MR. : To what, sir?

REP. ZELIFF: Did he ask you if there were any last minute plans discussed in terms of any surrender?

MR. : My recollection of the discussion with Mr. Hubbell was the overall dynamics from the perspective of a negotiator that had been there in the trenches for the entire period of time, nearly 50 days. Again I don't -- I'm not attempting to be evasive here at all. I'm trying to be as candid as I possibly can. The reason I can't definitively state it is because it was not the issue that you are portraying it to be.

REP. ZELIFF: Well I'm just trying to think. We're talking about a plan and also in the book here, on page 271, the Justice Department, April 16th, Mark Richards, Assistant AG met with Hubbell and Carl Stern, Director of the Office of Public Affairs. According to Richards, Hubbell advised them that the Attorney General had disapproved the plan to end the FBI standoff. Hubbell then asked Richards what he thought the FBI's reaction might be. Richards answered that the FBI would not be pleased. I mean I'm just trying to go through all these conflicts and try to come up with some reasonable base. And I guess we'll never -- probably won't know. MORE