WITNESSES: PANEL A: 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
WEDNESDAY, JULY 26, 1995.
REP. MCCOLLUM: These hearings of the Joint Subcommittees on the Waco matter will come to order. This morning, we're going to have the usual short opening statements from the four principal chairman and ranking members, and then we're going to go immediately to our first panel that was kicked over from yesterday. As you know, we now have begun the first of what will be five days of hearings. We had not intended to meet tomorrow, but because of the day and the delays yesterday, we are going to be forced to hear from a panel that was scheduled to be later this afternoon tomorrow. And will do that. We will, then again, meet on Friday and on Monday, and hopefully we will conclude these hearings at that time. Our attention now turns to the FBI, the Department of Justice. During an appearance on "60 Minutes" in May, Attorney General Reno said words to the effect that there had been, in her judgment, no mistakes that warranted taking action against any of the parties involved at the FBI in the raid and in the assault and in the siege. What we're here to learn and to corroborate or to deny that particular statement and assertion, essentially. What we want to do is try to review, as carefully as we can, what happened in that 51 days siege, and what happened in the assault. We need to know the background, and we need to know the conclusions and reasons for those conclusions in the decision-making process that led to the use of CS gas and led to the use of force in the final assault, instead of continuing the negotiations. I think that's really the heart of what this is all about at this juncture. Yesterday, we had some tough criticisms lodged, with respect to this, by the two attorneys who represented leading figures in the matter of those Davidians who were killed in the compound at Mount Carmel during that final assault. Mr. DeGuerin, in particular, who was the attorney for the late David Koresh, said to us yesterday that he believed, as did Mr. Zimmerman, who was with him, that had there been just about 10 more days of negotiations, they were absolutely convinced that there would have been a surrender, that Koresh would have come out, and there was a basis for it that made this particular negotiation, at this particular time, that was going on just preceding the assault, fruitful as opposed to those where Koresh had indicated he would surrender earlier and did not. They were very compelling in that testimony as to why they felt that was so. They spent a lot of time going over with us the details of their reasoning and how they got to that point. In fact, they asserted that a deal had been made, in essence, in their mind, and that they could not believe it when the assault actually took place. They were convinced that some of you at the table today in our first panel were equally abhorred with them in this final negotiation, and that there was a general consensus that movement had been made -- and very significant movement. And we're here today, in part, to explore why perhaps there is a difference of opinion on that, or maybe there is not. We don't know. There also was a concern expressed that because they couldn't believe that those who were involved in the negotiations and in the operation in the field had change -- or had lied to them, as they put it. They felt very strongly that it must have been a Washington bureaucrat, I think -- as Mr. Zimmerman put it -- who overrode the surrender plan, or surely this would not have occurred, because they felt very betrayed otherwise in this process. Then we heard, yesterday evening, from two experts in religion -- Drs. Tabor and Arnold -- who agreed with the challenge that had been presented earlier in the day. They believed that Koresh had not broken all of his promises during the negotiations, and walked through an explanation of his psyche -- if you will -- with respect to how he came to each step of his decision-making process. And why they believed very strongly that based upon analysis of his religious views and his convictions, that he was indeed prepared to come forward when this tragic event occurred on April the 19th. It was their conclusion, and a very elaborate discussion, that he had come to himself on this, through this process that was unique to his interpretation of the seven seals in the Book of Revelations, and that he had been permitted to fulfill the contract -- if you will -- that he thought he had made, with regard to surrender on this occasion, he would have done so. There was a lot of
discussion, late last night, when we kept the panel here until 11:00 or so, about the details of that, and particularly about the positive reinforcement that Dr. Tabor saw in the attitude of Koresh and the fact that he had some reason to come out at that point --- something he was really wanting to do at that juncture. They also pointed to the tapes that had been played, that we didn't get to hear openly in hearing, simply because we're not playing tapes --- but were given to us --- and some others have heard them --- of the last few days of discussions with David Koresh, in which they say that this was corroborated, that inside the compound, over the last couple of days, there was joy. There was clear indication by all the members of the Davidians that they were coming out, and they were happy about it, and they really believed that they were coming out once Koresh finished writing his interpretation of the seals. Well, at any rate, that's what we heard yesterday. We also heard, at the time, from --- about concerns over the pressure tactics that were used by the FBI, the fact that almost all the witnesses yesterday did not believe these were appropriate --- in fact, were negative, and that, in fact, the use of the CS gas in the end actually was fulfilling the doomsday prophecy that pushed --- would have pushed Koresh over the edge, that they had convinced him --- or he had been convinced that indeed his original assumption about the fifth seal was wrong, that it wasn't his time to have Armageddon if you will, or to die, but rather, that is was his time to prophesied. But that when the last assault was made, he became and would have become, under the normal course of understanding this, convinced that was all over, that he was indeed destined to be the one who met the day of judgment there, so to speak. Now, in addition we heard some words that we're not going to rehash today about the shots and who fired first. I think, frankly, when you get done with it, I'd like to tend to believe, as most would, I think, the ATF officers and those involved, that the shots first came from inside the compound. But we did hear the attorneys yesterday who were eyewitnesses to some of the actual bullet holes and say they were absolutely certain that shots came from without, that came through the roof of the building. There's been no logical explanation to corroborate that because no one has been able to tell us in any way at these hearings that the helicopters had fired or that they had the equipment on them to make those kind of bullet holes. On the other hand, there's no logical explanation for why the holes would have come through the roof, as these attorneys described them yesterday from their own visual inspection, if they did not come from the helicopters. On the other hand, we also had them saying that there were bullet marks in the front door, the missing door. We had some explanation about that. But it was, as they said themselves, unsatisfactory and inconclusive. And rather than criticize the issue of who shot first, they suggested that we be more pointed and concerned about the raid plan to begin with. We heard tough words from the Texas Rangers. They believe that the FBI should have used them in dealing with Koresh and that Koresh may have surrendered to them based on comments Koresh made. They also challenged the point, which we will talk about tomorrow at length, that no other specialized law enforcement unit could have replaced the FBI's highly trained hostage rescue team for a short duration had they needed to fall back to regroup and retrain in order to continue the siege that was on at the time the final assault was made. And last but not least, the Texas Rangers made it very clear that after their criminal investigation, they came to the conclusion that two ATF officers, Sarabyn and Chojnacki, should be prosecuted for false statements or lying. And apparently they have recommended that to the attorney general. I do not know where that stands. So today we come forward with the status that we're in with our witness panel that will be discussing the issue with respect to what actually happened from the FBI's perspective and how we got into this whole matter after they assumed the role of the lead agency for the 51-day siege. But before we do that, I want to yield to Ms. Thurman for any opening comments she may have and then to Mr. Zeliff and Mr. Schumer.
REP. KAREN THURMAN (D-FL): Thank you, Mr. Chairman. And let me welcome you all, and I certainly do appreciate the fact that you've stayed over an extra day and you probably will be better served than if you would have been here at 1:00 this morning. So we do appreciate the fact that you have come back again today. Clearly the decision to try, after waiting 51 days, to force David Koresh and his followers to surrender peacefully to authorities was a difficult one. Today we will begin to examine the process by which the introduction of tear gas into the compound was planned and approved. Yesterday we spent the morning and the afternoon listening to Mr. Zimmermann, lawyer for Steve Schneider, a resident of the Branch Davidian compound, and Dick DeGuerin, the attorney for David Koresh. I think the one thing we can all agree on is Mr. Zimmermann and Mr. DeGuerin are very good defense attorneys, as our colleague from Houston, Ms. Sheila Jackson Lee, pointed out in her introduction of her fellow Texans to the subcommittee yesterday. The fact of the matter is that both Mr. Zimmermann and Mr. DeGuerin said yesterday that they were clearing their calendars because they were preparing to go to court on behalf of their clients. Yesterday was perhaps their only chance to present their clients' case in a public forum. However, I would like to point out some facts that may have been blurred by Mr. Zimmermann's and Mr. DeGuerin's testimony. First, I believe it was well-documented that David Koresh was teaching his supporters to follow his final prophecy. We heard that from Kiri Jewell, Dr. Bruce Perry, Joyce Sparks and Robert Rodriguez. The notion that Koresh would have surrendered peacefully at any time is simply not supported in his actions. In addition, the evidence of child abuse, including sexual abuse by Koresh, has also been undisputed. If Kiri Jewel's testimony wasn't enough, then surely the testimony of Joyce Sparks, who spent hour upon hour talking to the children, should convince (anyway?) that Koresh was both capable and willing to commit crimes against children. Remember, even Koresh's defense attorney admitted Koresh was worried about facing child abuse charges. Last night we began our investigation into the negotiation process. We heard that the FBI consulted with a range of experts. Mr. McClure, a recognized negotiation expert from Atlanta, stated that it was necessary to use only trained negotiators in dangerous situations. That is what the FBI did. This is consistent with the effective negotiation strategy. On the issue of CS gas, I think we can characterize the decision to use CS gas as a way of peacefully ending the standoff as one of the many hard choices that faced the FBI during the 51-day standoff. There were no easy answers. Would additional time in the negotiation process have altered the ultimate outcome? I do not believe so. Once again we have taken very compelling testimony that clearly demonstrates Koresh desperately needed to fulfill his own fiery destiny. It is important to remember that negotiations with Koresh and the Davidians had broken down. No progress in negotiations had been made for two weeks prior to the decision to tear-gas the compound. The plan was for gradual insertion of the gas, and the FBI even informed the Davidians that they were going to use tear gas to bring them out of the compound. Even after being warned about the impending gas, the Davidians opened fire on the FBI and the FBI did not return the fire. We will examine the other options available to the FBI. I think it will be useful to examine these other options within the context of the entire standoff. However, the fact is that the tear gas is used routinely by law enforcement. I would implore all the members of the joint subcommittees to listen carefully to all of the testimony we will receive over the next few days regarding the use of CS gas to end the standoff at Waco. I, for one, am not ready to pass judgment until I hear all of the relevant facts and considerations and weigh them within the context of the situation at Waco. Once again I remind my colleagues of our mission: Proper oversight by way of all the facts. Thank you, Mr. Chairman, and I will yield back the balance of my time.
REP. BILL ZELIFF (R-NH): Every day we have received much new information as to what happened at Waco. Yesterday alone we learned of new surrender efforts that seem to have borne fruit, but got dismissed by the FBI CS gas plan. In this regard we heard from two well-respected lawyers for the Davidians, one a former military judge who had visited the compound just days before it burned. We also heard from the widely-respected Texas Rangers, who corroborated portions of the lawyers’ testimony and spoke of their respect for one of these lawyers in particular. We also learned that negotiators were making progress before their efforts came to a fiery end. On April 14th a corner seems to have been turned, a willingness on the part of David Koresh to come out. But on April 19th, there is the gas, the fire, and then the ultimate tragedy. New ground has been broken during the first five days of these marathon hearings. We have dug deeply into everything from the initial investigation and sufficiency of the warrant to botched planning, botched raid execution approvals, and the Treasury report. Today we'll hear from the negotiators themselves, the people on the scene. We'll also hear from other witnesses that many have waited for-- the experts on the CS gas; its toxicity, its risks and its uses. These experts are of all stripes. My guess is that today's testimony will be lively, to say the least. As we move into the tragic days and hours before the deadly fire, I think there will be a quickening of the tempo. These are the days and the hours when, if different decisions had been made, we would not all be talking about the loss of over 80 American lives, including 22 innocent children. Some key questions are, what was the FBI's master strategy? How was it conceived, and by whom? And when was the CS gas included in the plan? Was it in the plan before April 14th, when the FBI tells lawyers for the Davidians that they have lots of time to reach a negotiated closure? Or was it afterwards? Who accelerated the use of the CS on that fateful day, April 19th? Whose decision to inject it into the compound with the tanks and then to crash down the walls with the tanks, and then to insert CS gas by Coke-bottle size (ferret?) rounds or projectiles, 350 of them? Who approved all of this? And when the facts are out, who gave the final go-ahead, the top sign-off, and on what information? Constitutional oversight is not always enjoyable. We certainly have been in these hearings for stretches of 11, 12 and 13 hours straight over the past five days. But it is the people of this nation that we serve. We serve them and not the other way around. If the search for the truth is what it's all about, there's no place for shortcuts, politics or partisan exchanges. That has occurred, and that's regrettable. But we need to stay focused, and this is critical. As I drove into work listening to some tapes last night and this morning, the scary thing that I'm trying to deal with is the fact that over 80 Americans were killed. And I have a tremendous respect for the FBI, as do most Americans. I have a tremendous respect for our military, and the question that's eating away at me is all the evidence that we will be seeing and have seen, was the military-style operation justified? Could we have done a better job of listening, and could this tragedy have been avoided? Were there different alternatives, and why were they rejected? That's what these hearings are all about -- getting at the truth so that we can change further events. No one is above the law, and accountability and responsibility must be assigned in order to restore credibility. That's what we're trying to do here. We have total respect for what you do day in and day out, and we want to make sure that that credibility is maintained for many, many years to come. Thank you, Mr. Chairman.

REP. MCCOLLUM: Thank you, Mr. Zeliff. Mr. Schumer?
REP. CHARLES SCHUMER (D-NY): Thank you, Mr. Chairman. I want to thank also -- join in thanking the witnesses for waiting another day, and I think today will be -- well, let me start with yesterday. I've never really sat through a hearing the way -- the likes of yesterday. Six and a half hours of defense lawyers, no rebuttals, no one on the other side, et cetera. Yesterday was the most unbalanced day we've had in the Waco hearings so far, and I think it was unfortunate that it occurred. The domination by one-sided defense lawyers, their marathons, their ways of sliding over the truth, was very unfortunate.

They called a man who hoarded illegal guns and hand grenades peaceful. They smeared a brave young woman who testified to a rape by David Koresh; they said they didn't believe her. And they even implied that the Davidians were justified in killing ATF agents by launching theories of self-defense. You know, ladies and gentlemen, their basis for this was looking at bullet holes in doors. Well, let me tell you, I'd rather have the eyewitnesses to the bullets than eyewitnesses to bullet holes any day of the week. Again, fast and looseness with the truth will be revealed today. One of the key points yesterday was Mr. Zimmerman's testimony that some faceless Washington bureaucrat stopped Mr. Jamar from going along with the Zimmerman plan. Well, we'll learn frankly today that that person doesn't exist. I asked Mr. Zimmerman about it. I asked if he had a name. He said no. I asked him if he had any evidence that Mr. Jamar was overruled. No. But in the defense lawyer way, just throw it out there. Confuse things and see what happens. Well, we'll ask Mr. Jamar today. We'll find out his answer, whether Washington overruled him. Again, more sliding over the truth.

And, finally, this idea of the FBI having hand grenades -- not flashbangs, but hand grenades -- that Mr. DeGuerin seemed to support, no one I can speak to, and I spoke to a lot of members who were experts on military and on FBI and the other side, no one I can speak to would think it even closely credible that the FBI would use hand grenades in the attack. Furthermore, the pineapple style of grenades that Koresh hadn't look like flashbangs. And finally, coup de grace, Mr. DeGuerin said flashbangers can kill, injure, maim -- anyone who knows anything about these things knows they can't. In fact, their typical use is on an airliner when there's a terrorist to roll them down the aisle amid the passengers so they'll make a big noise, divert the terrorist, and be used. That can't be a harmful type of thing. So today we're going to hear convincing refutations of the line of baloney put out by Mr. Zimmerman and Mr. DeGuerin, and I want to say when my colleagues from the other side give credibility by saying, for instance, that Mr. Koresh seemed willing to come out, based on testimony of his defense lawyers, I think they're stretching credibility altogether. It clearly doesn't make the case.

Now, one other thing I'd like to say here. We're hearing a lot of talk in opening statements how everyone is defending law enforcement, and certain law enforcement should be criticized when they're wrong, but certain other things go over the line, as well. One member of the other side, while professing to defend law enforcement, passed out a flyer promoting the theory of justifiable homicide. Justifiable homicide -- saying that the Davidians had the right to shoot. To me that's disgraceful. You cannot say out of one side of your mouth you're defending law enforcement and out of the second side saying that -- that this was a case of justifiable homicide, so let's stop this kind of baloney, total baloney. As to who shot first, well, there's not one scintilla of credible evidence to support the theory that the ATF shot first. We heard that from the Texas Rangers. There were three reporters on the scene, each of whom testified at the trial that the
Davidians fired first. All of the agents testified that the Davidians shot first, and Kathy Schroeder testified at her trial that an ambush was laid that morning. (Clears throat.) Excuse me.

Once again, I want to compliment my colleague Bill McCollum, who said today that he was convinced that the ATF did not fire first, that Koresh did, but that is after the cow was out of the door barn (sic). In other words, it's floating out there, all this talk, all these theories. And, again, I have to repeat my fear that to the handful of Americans are paranoid and have views that the government is the incarnation of evil, that kind of irresponsible statement is very harmful to all Americans. At last today, we're going to hear the beginnings of what happened with the gas. The myth of the horrible CS gas will be deflated by experts today. Like so many other accusations puffed up before these hearings, the experts will show that although CS gas is hardly a pleasant experience, it was not an unreasonable choice in light of all the other factors. Thank you, Mr. Chairman.

REP. MCCOLLUM: You're quite welcome, Mr. Schumer. I do -- because you've used my name, I just want to clarify one thing about what I said regarding the shooting and who shot first. I just was implying, which is true, that if I were sitting on a jury listening to the witnesses, based on my assessment of credibility, I would undoubtedly come down after this stage, at this point, on the side of the ATF just on the weight of evidence. But I would say -- and I do want to make this clear -- that there are reasons which have been given before us for some who will continue to say, and I can understand why they would, that they have doubts about who shot first. I don't -- I think reasonable people could differ in coming to the conclusions they would come on that point. In other words, I don't think we'll ever have any absolutely definitive evidence of who shot first that will satisfy everybody involved, so that's really what I had in mind with that. And I'm going to -- at this point, for the opening round of -- well, I'm not going to go to anybody. I'm going to introduce the witnesses. Somebody punched me to introduce somebody. We've got a panel today -- I'm going to do so, then after I do so, we need to swear you in and then we'll commence the questioning. First of all, not necessarily -- although I guess we are in the order on this list today. Some days we don't have that order quite the same as the seating arrangement. Peter Smerick is a former FBI special agent who was a criminal investigative analyst for the investigative support unit of the National Center for the Analysis of Violent Crime. He's our first witness today. Jim Cavanaugh is a special agent with the Bureau of Alcohol, Tobacco, and Firearms. He was present at Waco on February 28 and began the negotiations with the Davidians following the failed raid. Byron Sage is a supervisory special resident agent in charge of the FBI's Austin office. He was one of the first FBI agents on the scene at Mount Carmel on February 28, and was the FBI's lead negotiator during the 51-day standoff. Gary Noesner is a supervisory special agent at the FBI Academy in Quantico, Virginia. He was one of two negotiators -- negotiations supervisors during the standoff in Waco. And Jeffrey Jamar was the special agent in charge of the FBI's San Antonio office. He was the overall commander of the FBI personnel during the siege at Mount Carmel.

Also with us on this panel, because he could not join us this afternoon and was scheduled to do so, is Mr. Ronald McCarthy, a former officer with the Los Angeles Police Department who is here with us as well. I would like to ask this panel to stand if you would and be sworn in. Raise your right hand. Do you swear or affirm that the testimony you are about to give to be the truth, the whole truth, and nothing but the truth. Please be seated. Let the record reflect that all of the witnesses answered in the affirmative. And I recognize for the first round of questioning, Mr. Clinger.
REP. CLINGER: Thank you, Mr. Chairman. Let me just say before I yield my time that the gentleman from New York was very hard on defense attorneys and suggested there was a lot of sliding over the truth. I would just suggest the gentleman from New York makes a pretty good defense attorney himself in that he has stressed certain elements of the testimony intended to downplay other elements of the testimony. If there were in fact perjury committed, the gentlemen who testified yesterday were under oath and I think we should have -- find out if in fact there were untruths stated in the testimony yesterday. At this point I would like to yield the balance of my time to the gentleman from North Carolina, Mr. Heineman.

REP. HEINEMAN: Thank you, Mr. Clinger. Let me say at the opening of today's hearings that where I will take part in questioning the panel, I have over the course of my law enforcement years had the pleasure of working with not only ATF, but with the FBI and on many occasions. I see Mr. Noesner here who 12 years ago, 13 years ago came to Raleigh, North Carolina to assist me in a highly emotional hostage situation which took place over a full weekend, 72 hours. And I would have to say that that was one of the highlights of my career as it relates to working in a joint effort with the FBI. And I say that now and I've said that for the past 13 years. And I don't generally pass out a lot of compliments, but Mr. Noesner, welcome, it's good to see you here today. What I would like to do with my opening is just lay a foundation from February the 28th up to April the 19th so that we can have a chronology and know where the pieces fit. And with that I would like to ask Mr. Cavanaugh, who is from ATF, was on the scene, in fact was in that observation house as the raid took place, if you can tell us today from that point where you knew you were in trouble, what happened to the point where you called for FBI, if you in fact were the one that did call for FBI.

MR. CAVANAUGH: Well, Chief, we were in an unbelievable situation. I hope you can understand that it's not a good memory for me. I had 75 agents stretched out in front of me. I had a box seat. And when we drove up the Davidians opened fire, and I am sickened by any other assertion. I sat there and I watched it. And the gunfire came through those double white doors. I watched it. It pushed the doors against their jams, out toward the agents, and in fact two agents were shot there. Jerry Patrilli (ph) was shot in the chest and his vest knocked down. I think the other witness, Mel Asteres (ph), was also here and he was shot in the finger. It's unbelievable, but that's what happened. And anybody else who says anything different, they shot first. And if I thought that an ATF agent would drive up in front of a structure and shoot I would throw my badge in the garbage. It didn't happen. But anyway we were taking an awful beating, Chief. They were throwing everything at us. Their guns sounded like cannons and our guns sounded like pop guns. We had nine millimeters, they were hitting us with 223 AK-47s, 50 calibers. It was more than you can imagine. Nobody was going to get us out. The McLennan County Sheriff's Office, who always did a good job in this case, could not get us out of this. We couldn't call 911. I mean we couldn't call anybody. We had to get out of this ourselves. So many men were hurt and wounded and were laying down there that I had to call -- I called into the compound. I am a trained negotiator, but this was my first negotiation. And I called into the compound and a fellow answered the phone. He said hello and I said in a calm voice this is Jim Cavanaugh from ATF, I want to speak to David. Well the fellow didn't even answer, he just dropped the phone and ran away. I could hear him running down the hallway. I could hear the machine guns inside echoing through the phone and I could hear them outside and watch them shooting our agents. In a few minutes the person came to the phone, it was Steven Snyder, and he started screaming through the phone for us to get off the property, that we had no right to be there, to get off the property immediately. I tried to stay calm, I used a calm voice. I said Steve we
have to talk, we have to work this out, you and I haveto work this out, people are dying, people are hurt, we need to stopthe shooting. He was very charged, as you can imagine, he was veryexcited. He didn't want to listen, he just wanted to say get off theproperty, get off the property. We talked -- I kept trying to reassure him. He wanted to knowwhat we were doing there. I told him we were federal officers, we had a search warrant. But I wanted him to work out with me a cease fire. And he agreed to talk about it once I got him a little bit calmeddown. He agreed to a cease fire after a few minutes more of coaxinghim and then he just said okay, you have the cease fire now. I said well there's a wounded agent. We had already tried to get our woundedagent who was trapped in an alcove back there, next to the tower,Agent Kenny King. We tried to move a team to get him, but they justopened up on us. We couldn't get him.

REP. HEINEMAN: Can you change that -- can you change that photo, that blow up photo there to the --

REP. MCCOLLUM: The mike needs to be on, Mr. Heineman. Themicrophone --

REP. HEINEMAN: Yes, I don't think -- is it on -- do you havethose pictures of the compound. Can you bring that and show us thefirst picture with the ATF agents behind vehicles. We looked at thisyesterday and I questioned the two lawyers that were here and theywere in agreement that the ATF was in a defensive position, that theyhad not rushed the door and they did agree that there were shotscoming from inside that compound through the door. And I think if we can focus on thatpicture we can see that ATF is still running to getbehind the vehicles, one officer grabbing for his gun which wasapparently holstered. And there's another picture right behind that, if you can show that, of ATF agents on the ground, some being carriedfrom their position, dragged over. That had to be the next frame orthe frame after. I'm sorry.

MR. CAVANAUGH: I'm sorry, Chief. I can clear that up for you. That is a much misrepresentation of the facts as you look at that. That first picture that was shown there is very early in the gunfight and that was taken by reporters who were in the bar ditch next to theundercover house. We didn't take that photograph. That was veryearly in the gun fight. You can see there's no bullet holes in thewalls. You can see the agents are just taking covering positions. You can see all the windows are slightly open, and that's where wewere taking fire. The next picture, as it was presented, is being -- oh, here's all the bullet holes. That's three hours later. We didn't achieve cease fire to retrieve those wounded just a few minutes before one o'clock. I achieved it, I remember. That's three hours later. Of course there's a lot of bullet holes in the wall, they were shootingus. And the Davidians were standing in those windows, back from thewindows, because our long rifleman were keeping them back and theywere shooting through the walls down at our people laying on theground. That's what all that gun fire is. I'm sure there's some return rounds from ATF because we were laying on the ground hidingbehind trucks and shooting at them.

REP. HEINEMAN: Well I see I have the red light and I would liketo pick up this line of questioning when I have my next five minutes. Thank you.

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

REP. SCHUMER: Thank you, and again, Mr. Cavanaugh, I want to thank you. I mean I can't have
the same emotion you do having sat through this, but I think I share your frustration as I did Mr. Buford and Mr. Ballesteros hearing this kind of either-or -- well some is right. How do you feel when you hear some people even on this panel sort of saying well it's unclear who fired first.

MR. CAVANAUGH: Congressman, I respect Congress and the right to ask those questions. But I know they get that information from people, and I'm just sickened by it. It wouldn't be allowed in a court of law; it's not the facts. We didn't shoot first, we didn't.

REP. SCHUMER: And is there any way that somebody could believe that justifiable homicide, as the lawyers sort of implied yesterday, and as a leaflet was passed out by one of my colleagues here today, late last night, could be used as a defense here?

MR. CAVANAUGH: No, Mr. Schumer. I think what needs not to be forgotten here is that this man was alerted to law enforcement's arrival 45 minutes -- that was our mistake that we went. He knew law enforcement was coming, and our paradigm, if you will, our mistake was that we thought that that compound would bristle with guns; that he would be defiant, that he would get his mighty men and be defiant not to let law enforcement come on that property. And he was so diabolical that he laid an ambush. And I've heard some of the members say yesterday, how could anyone shoot through a door? Watch the films. Every American's seen them a hundred times -- our agent on the roof; the bullets coming through the walls; the bullets coming through the ceilings. They shot through the doors, they shot through the ceilings. Assertions that we had helicopters or men from Marsh shooting at them is nonsense. Our agents were laying on the ground and shooting at a tower three stories high. Should we be surprised there's bullets in the roof?

REP. SCHUMER: Of course, I agree with you, Mr. Cavanaugh. Thank you. I just have a few questions for Mr. Jamar. Mr. Jamar, we heard Mr. Zimmermann's hail yesterday, and that's what I would call it, about a -- well, the tail part is the Washington bureaucrats. But so let me first ask you this question. In rejecting Mr. Zimmermann's plan and Mr. Koresh's plan, (please?), did you make that decision yourself, or were you overruled by a Washington -- a shameless I think was the adjective -- faceless Washington bureaucrat?

MR. JAMAR: I think to better understand it, let me describe how our relationship started and how it came to --

REP. SCHUMER: I'm going to ask you that. You see, I'm going to give you a chance a little later in the questioning, just if you could answer that question.

MR. JAMAR: The decision to recommend a gas plan was made in March. I made the decision.

REP. SCHUMER: Right, but I'm asking you, the decision not to wait for him to do his Seven Seals, the plan that -- I don't know if you saw the testimony --

MR. JAMAR: I saw it.

REP. SCHUMER: But Mr. Zimmermann said that on April, I believe it was 15th -- 14th, in the negotiations, he had a plan, and they were all going to march out with one lawyer at the front and one lawyer at the back after Koresh finished writing his Seven Seals. And then he said you were
sympathetic to that plan, but a shameless -- a faceless Washington bureaucrat overruled you. I don't know where he came up with that, and I want to know the truth here.

MR. JAMAR: Well, the plan, the surrender plan was discussed in late March, early April with them, not April 14th. The implication of that plan, that surrender plan was discussed that day, was not. This is a week before -- more than a week before. What happened, we went through that surrender plan because you want to do that, because you plan surrender in the person's mind. The only difference between that surrender plan and our March 2nd surrender plan is we inserted the lawyers. They left on April 4th dejected. They did their best; I give them all the credit in the world for the effort they made to resolve that. In the meantime, Mr. DeGuerin came up with the contacts with Phil Arnold about the idea of finding another interpretation of the seals in order to where Koresh will surrender.

REP. SCHUMER: Right.

MR. JAMAR: Okay. That was told to us on April 14th.

REP. SCHUMER: That's what we're talking about.

MR. JAMAR: Okay. Now, when I said there was plenty of time, there was no approval of our plan at that time. Had Koresh and anyone else given any indication that there was an earnest, sincere effort to prepare any manuscripts, then we would have delayed it. But it was continuous delay. There was nothing that happened that weekend that made me think that anything had changed. In fact, if you examine the negotiation tapes, it will be clear that they always have a way of not expecting anything soon. It may be a year. I haven't seen the first page to --

REP. SCHUMER: They said maybe a year? It would take them maybe a year?

MR. JAMAR: Well, no, no. Wait a minute, in that context, the -- sorry.

REP. SCHUMER: That's it (indicating end of vote call).

MR. JAMAR: Good. In that context, it was just in discussion with Judy Schneider about how long it would take her to type these on a manual typewriter.

REP. SCHUMER: Right. What was Koresh's and Schneider's reaction to the lawyers' suggestion that they surrender?

MR. JAMAR: Well, they were as manipulative of them as they were of us. They would build their spirits up. I can remember one instance when Dick DeGuerin came out and believe me, he put his best effort in, and I give him all the credit in the world for the effort he made. And he would build him up and then cut his legs out from under him.

REP. SCHUMER: Koresh?

MR. JAMAR: I can remember one instance -- Koresh -- I remember one instance where he said he
REP. SCHUMER: Did you hear in conversations when Koresh -- when the lawyers weren't around -- that they said or indicated that they were just sort of manipulating the lawyers and not really interested and sort of laughing at the lawyers?

MR. JAMAR: By implication, yes.

REP. SCHUMER: Explain that, please.

MR. JAMAR: Well, they would talk about the fees, the ridiculous fees. But it was -- I don't have a real clear statement for you. It's just their demeanor and their attitude we picked up from the conversations with them.

REP. SCHUMER: So it is your belief that even on April 15th, Koresh and his followers had no intention of coming out, is that correct, sir?

MR. JAMAR: No, I concluded that very much. And that didn't stop me from still trying. It didn't stop me from going against the wishes of every other person, except maybe Bob Ricks, to let the lawyers go in and possibly help (destroy?) the crime scene. I had not given up.

REP. SCHUMER: Thank you.

REP. MCCOLLUM: Thank you, Mr. Schumer. Mr. Heineman?

REP. HEINEMAN: Yes, thank you. Mr. Cavanaugh, at some point, you established a rapport with David Koresh?

MR. CAVANAUGH: Yes, he felt -- I'll try to go through it a little quicker, I'm sorry.

REP. HEINEMAN: Much quicker, if you will.

MR. CAVANAUGH: Yes. I established a cease fire. I established to get our wounded agent out, Kenny King. I established then to get an ambulance in, they thought it was an armored car, then established to move all the wounded agents, which is this photograph you see, back behind a giant bus that was parked in the driveway. So by this time, it was getting a little bit easier for me, because the cease fire broken down three times, so we negotiated through a cease fire; there would be some small gun battles. And then the agent out, the ambulance in, all the wounded out, and then the last thing was to get the bodies of the agents off the roof.

REP. HEINEMAN: Do you feel you had a rapport with David Koresh?

MR. CAVANAUGH: Yes, sir.

REP. HEINEMAN: Okay, at what point in time did a call be made to the FBI for their assistance in negotiating?
MR. CAVANAUGH: Mr. Sage was on another phone that afternoon, from another location. But I didn't -- and we had some contact -- but it wasn't until Sunday night, probably about 11:00, that Gary Noesner from the FBI showed up at the ATF command post to help us and to take over negotiations.

REP. HEINEMAN: Okay, so at that point, you relinquished your job as negotiator to either Gary or someone that he designated?

MR. CAVANAUGH: No, chief. I never relinquished it.

REP. HEINEMAN: Okay.

MR. CAVANAUGH: For about a week, I stayed on the phone from that morning at 10:00 until 2:30 the next morning.

REP. HEINEMAN: Well, at what point did the FBI negotiate it, other than Gary -- I mean, at one point did Mr. Jamar come in?

MR. CAVANAUGH: Well, they were all there. And I'd say, you know, they took over Monday officially as in charge of the negotiations. And they left me on the daytime as the primary negotiator, and there was an FBI agent at night as the primary negotiator.

REP. HEINEMAN: So you negotiated for perhaps a week after the FBI came and then took charge.

MR. CAVANAUGH: That's right.

REP. HEINEMAN: Is that correct?

MR. CAVANAUGH: Yes, sir.

REP. HEINEMAN: Mr. Jamar, at that point -- at the point where you folks came in, you were designated in charge of the FBI operations at the scene?

MR. JAMAR: Yes, sir.

REP. HEINEMAN: And you established a command post?

MR. JAMAR: Yes, very near the ATF command post on the TSDI campus.

REP. HEINEMAN: Okay, so you only had one command post.

MR. JAMAR: Yes, sir.

REP. HEINEMAN: How did you set up that command post relative to the negotiating team and the tactical team?
MR. JAMAR: There was a hangar on the TSDI campus which had been an air force base. People will always be indebted to -- ChryslerTechnologies just handed over office space to us. We had an upstairs floor where we had a corner office for myself and other SACs. We had a larger room for (like a ?) squad, for a squad of agents and thenerve center of the command post. Right out across the hall from my office was the negotiation room. Next to that room, we had a smalleroffice where they could talk, and then there was another office we ultimately used for us to monitor the microphones. Next to that was a larger conference-type room, where we kept the aviation peopleprimarily. And the next to that room was the HRT -- the HostageRescue Team's intelligence.

REP. HEINEMAN: Well, could you tell us whether the hostagenegotiators and the tactical team shared the same office?

MR. JAMAR: We had a member of the hostage rescue team in thenegotiation room all the time.

REP. HEINEMAN: Okay, now, in that command post, was that insight of the compound?

MR. JAMAR: No, sir.

REP. HEINEMAN: Or was that close to where the staging area was?

MR. JAMAR: No, sir. It was about five miles as the crow flies. Forward, near the compound, we had trailers under a hill about, I would guess, 1,000 meters from the compound. And there were several -- all the agencies had some there. And that was our forward command post.

REP. HEINEMAN: Mr. Jamar, did you have any training in hostagenegotiation?

MR. JAMAR: No. I never even entered into any either. I left that to the experts.

REP. HEINEMAN: Did you view the people inside the compound ashostages?

MR. JAMAR: No. I viewed the situation as a barricaded subject.

REP. HEINEMAN: Can you explain that?

MR. JAMAR: I think I said, on one press briefing that I considered -- and somebody asked if the children were hostages? And I said they were hostages to the circumstance.

REP. HEINEMAN: Okay.

REP. BOB BARR (R-GA): I'm sorry. I didn't understand.

MR. JAMAR: They were hostages to the circumstances, Mr. Barr.

REP. HEINEMAN: Did you have, in that ensuing week, when -- after the shoot out -- was Mr. Cavanaugh in your command post at that time?
MR. JAMAR: Yes, sir. We moved the phone lines to a central place in our command post. And Mr. Cavanaugh came with them. Yes, sir.

REP. HEINEMAN: Also negotiating?

MR. JAMAR: Yes, sir. We moved the phone lines to a central place in our command post. And Mr. Cavanaugh came with them. Yes, sir.

REP. HEINEMAN: Did you give special directives, directions to the negotiators, and also special directions to the tactical teams?

MR. JAMAR: We each -- we all had goals. We all -- it was -- you know, the ultimate goals we had, we all agreed with. I left the day to day operations or the negotiations and conduct of the negotiations to include who did negotiations, how many, everything else, to Mr. Noesner, and the others, and Mr. Sage. I left it to them to run that. And I just gave them the support they needed.

REP. HEINEMAN: You may have said this. Did you have an intelligence component in that --

MR. JAMAR: Yes, sir. We had, in the nerve center, I would call it, the main room. We had brought everything together there. In addition to that, the hostage rescue team had an intelligence operation right there in the command post very nearby.

REP. HEINEMAN: And did you have meetings -- joint meetings --

MR. JAMAR: We would --

REP. HEINEMAN: -- during this time?

MR. JAMAR: We would have meetings with briefings, after a while -- once we got established. I'd like to have the opportunity sometime to describe what it was like when we arrived. I think it would be very helpful.

REP. HEINEMAN: Well, I'm sure someone will pick up on that.

MR. JAMAR: Yes. The -- but we would have meetings after we got established. It took days to get established, where the supervisors of each component would get together and report and discuss matters. And then we would have various meetings -- would be meetings primarily for the first two or three weeks. We were always among the negotiators. We didn't have --

REP. HEINEMAN: Excuse me. I think I have one more question.

MR. JAMAR: Yes, sir.

REP. HEINEMAN: I have to beat the red light.

MR. JAMAR: Okay.
REP. HEINEMAN: Who did you report to directly?

MR. JAMAR: When I reported to headquarters, most of the time the person I spoke with was Assistant Director of the Criminal Investigative Division at the time, Larry Potts. At night, his deputy would be -- Danny Coleson (sp) was there.

REP. HEINEMAN: So, you were in constant contact with Washington.

MR. JAMAR: Numerous times a day, sir. MS. MCCARTHY: Your time is expired, Mr. Heineman. Mrs. Collins?

REP. CARDISS COLLINS (D-IL): Thank you, Mr. Chairman. Mr. Cavanaugh, around the second of March, Koresh told you that he was going to come out if you played a tape that he made. Can you tell us about that conversation?

MR. CAVANAUGH: Yes, Congresswoman. We have worked on him pretty heavy for about three days, trying to get him to surrender en masse. We were having a very successful release of children. We had six on Sunday, six on Monday. I think we had four on Tuesday. So, we were very feeling very good about that -- the fact that he was letting all these children out. And then we had arrange a negotiation to release the children, based on the fact that we would play his biblical message over the AM radio. And every time we played it, two children would come out.

REP. COLLINS: Now, this biblical message, is this what was on the tape? And was this to be his analysis of his religious philosophy or something?

MR. CAVANAUGH: Yes. Now, this one you're talking about, Congresswoman, was a much longer message.

REP. COLLINS: I see.

MR. CAVANAUGH: An hour or so message.

REP. COLLINS: Did you listen to the tape?

MR. CAVANAUGH: It's been two years ago since I listened.

REP. COLLINS: But you did listen to the tape?

MR. CAVANAUGH: Yes.

REP. COLLINS: Okay. Would you remember anything, so that you could summarize for us your impressions of what he said on that tape?

MR. CAVANAUGH: Well, I'm not a theologian. And all during this process with Koresh, I made that clear to him that I was just a policeman. I tried to understand his religious beliefs. It was
very difficult. It was very difficult to understand what he would tell you. Basically, I think he gave us the unsolvable riddle. I'm God. You prove I'm not. That was basically what we faced. And most of that message had to do with the fact that he believed he was the lamb of God. People have said he believed he was Christ. He didn't believe he was Christ. He believed he was the lamb of God, the person to open the seventh seal. And he would go on and talk about that. And I'm sure theologians could be more in-depth with you on this.

REP. COLLINS: Well, for a while, did it seem to you that Koresh was really going to come out?

MR. CAVANAUGH: Yes. I believe so.

REP. COLLINS: Well, were the Davidians lined up to come out, to your knowledge?

MR. CAVANAUGH: On that day, Congresswoman, they were lined up to come out. They had their jackets on. Koresh was -- I believe that was our last, best chance to get him to ever come out. I don't believe that he -- once he didn't come out on that Tuesday. The reason I say that, he was fatigued. He had been in a gun battle on Sunday. I shared the feelings. I was in the same gun battle. He was fatigued. He was wounded. He was hurt. We'd been working on him for three days. This was our chance, I thought, to get him out. And if you go back over those tapes, you know, you can see how the processed worked. But at the very last moment, he couldn't do it. And Mr. Smerik, who was there with us, gave us an analysis. And I believe that his analysis was the right analysis. And he said, when he lined up with all the children and the women in the hallway, and they all came by to kiss his ring -- and that's details in that transcript ad nauseam -- that he couldn't leave this place, where he was God, with unlimited sexual favors, unlimited being the Messiah, and walk out to a cold jail cell. He couldn't do it at the last minute. And I believe that was the case. I think one Davidian later said they thought that was a suicide pact. But I've never been convinced myself that it was.

REP. COLLINS: On the day of the raid -- and you have a picture for us how devastating it actually was, that there were agents lying around probably calling for help and all that kind of stuff. At that time, you had to begin negotiations with Koresh. How did -- this had to very difficult for you, was it not?

MR. CAVANAUGH: It was very difficult. And I'm sorry to get a little sad about it. But I had a radio mike in one ear, with an agent pleading for his life. And I had this guy on the phone who thought he was God. And if you can picture yourself in that situation, you know, just think it was unbelievable. And if I couldn't negotiate it, how was I going to get this guy out? And how many agents was I going to send to get him? How many people would die? I mean, I felt like a ship's captain. How many people are going to get in the boat. So, I put all my energy into negotiating it, because if I didn't, this guy in my ear, my friend, was going to die.

REP. COLLINS: Did you feel that you were in any physical danger of being shot by Koresh, or by and of the Davidians at that time?

MR. CAVANAUGH: The rounds were coming through the walls on my position while I was there.
REP. COLLINS: Last week, we heard a young 14 year old, KirriJewell, who was sexually molested by him when she was 10 -- by Koresh, by him -- so that, based on her personal experience of Koresh, she was not coming out. Would you agree with her statement?

MR. CAVANAUGH: Yes, Congresswoman. I agree. I don't think the archangel Gabriel could have talked that guy out of it.

REP. COLLINS: Mr. Sage, there's a very controversial picture of you coming out of the negotiations facility, and with the burning compound in the background. It's been called a trophy picture. I want to give you an opportunity to explain to us why you had that picture taken, Mr. Sage?

MR. SAGE: I appreciate the opportunity. I've seen it as well, and it's very bothersome. First of all, if I can back up a little bit. I was there for the entire 51 days. I arrived at approximately 11:00 in the morning on the 28th of February. In very brief summary, I will say without hesitation that myself, along with approximately 50 negotiators from the FBI, and a number of local, county, and state agencies gave 110 percent of our effort. And that, believe it or not, is an understatement -- for one purpose only, and that was the saferesolution of this situation. Paramount in that focus in my mind constantly was the safety of those children. When that picture was taken, it was taken at approximately 12:30, 12:35 on the 19th of April. I had just finished nearly six continuous hours of broadcasting, starting off with instructions, and then requests, and ultimately please -- literally begging David, and if he was not capable of doing it, then Steve Schneider, not to end it this way. This was not the way to end it. It was no one intention to end it in that fashion. When that picture was taken, I had just completed what Jim Cavanaugh had started the morning of the 28th of February, and that was an absolute heartfelt commitment to try to resolve this matter. It had just failed miserably. I was crushed. I think emotionally everyone was spent -- physically, emotionally. I could never express the full range of emotions that were going through me. As I exited from what we referred to as Sierra One Alpha, which was the forward position immediately adjacent to the former ATF undercover house, a fellow negotiator, I believe, hollered out to me. I turned briefly and that photograph was taken.

REP. COLLINS: So it was not a posed photograph by any means.

MR. SAGE: Congresswoman, I can tell you without hesitation that that is the furthest thing from a trophy photograph. I hope to have an opportunity to show you a photograph of a face-to-face meeting that I had with Steve Schneider and Wayne Martin and the sheriff of McLennan County. If there's a trophy photograph, which I find the term to be very offensive, that would be it --

REP. COLLINS: I would, too.

MR. SAGE: -- because that photograph represents the commitment, without hesitation, of all the negotiators involved. I just happened to be fortunate enough to do it. I will say one thing, please. I would have given my life to save those kids. That photograph is anything but a trophy photograph.

REP. COLLINS: Thank you, Mr. Chairman.

REP. MCCOLLUM: Thank you, Ms. Collins. Mr. Shadegg?
REP. SHADEGG: Thank you, Mr. Chairman. I'm going to try to movethrough some questions here quickly. Mr. Sage, one of my colleagues described the testimony of Mr. Zimmermann and Mr. DeGuerin yesterday as "lying baloney." I don't believe that testimony was lying baloney any more than I believe that your testimony today or that of any of your colleagues is going to be lying baloney. I believe you wanted to save those children. As a matter of fact, your report, the Justice Department report, says the negotiators' goal was to prevent the further loss of life. Was that your goal?

MR. SAGE: Absolutely.

REP. SHADEGG: Mr. Jamar, was that your goal?

MR. JAMAR: Yes, sir.

REP. SHADEGG: Okay. Mr. Smerick, you were kind of the lead consultant on negotiating. Was saving life your goal?

MR. SMERICK: Absolutely, sir.

REP. SHADEGG: Okay. Mr. Jamar, according to the report that the Justice Department prepared, Director Sessions and President Clinton met on March 1 and discussed the bureau's strategy for handling this crisis. Sessions described it as a waiting strategy whereby the FBI would negotiate, watch and contain. Were you aware of those discussions?

MR. JAMAR: The communication to me was that the White House -- in that (term?), the White House communicated to the FBI that we would do nothing beyond negotiate without first discussing it.

REP. SHADEGG: Okay. The report goes on to say that the acting Attorney General Gerson advised Sessions that the president approved this proposed waiting strategy involving negotiating, watching and containing, and then asked to be advised if that ever changed. Were you aware of that as well?

MR. JAMAR: The information I got was if you depart negotiation, notify. We also have the authority to react in emergency situations without consulting.

REP. SHADEGG: There's a footnote to that effect, as a matter offact.

MR. JAMAR: Yes.

REP. SHADEGG: Okay. Again, the characterization of "lying baloney" -- do you believe the testimony that came in yesterday was "lying baloney"?

MR. JAMAR: I wouldn't characterize anyone's testimony as "lying baloney" that I heard yesterday. I think there's a tendency to get rolling once you start talking. I think one of the witnesses spent alot of his time doing that yesterday. I think, like I said a while ago, the implication that there was a plan
and it was April 14th simply not the case. That was all done before.

REP. SHADEGG: Well, let me get into that.

MR. JAMAR: Yes.

REP. SHADEGG: One of the things that was said yesterday by Mr. Zimmermann was that he had the highest regard for your integrity, Mr. Jamar, and did not believe that you ever intentionally deceived him. I presume you don't think that was lying baloney.

MR. JAMAR: It's certainly not because I did not deceive him.

REP. SHADEGG: Okay. Now, there was specific testimony, and the term is not "a faceless bureaucrat." There was, in fact, a statement that some "deskbound bureaucrat in Washington" changed the plan. I'd like to get into that and figure out why at least this Mr. Zimmermann believes that. Mr. DeGuerin testified yesterday very directly and very specifically that you indicated to him, when they came out with this new strategy, to allow Mr. Koresh to write out what he had to write out and that that would lead to his surrender; that when he described all that to you, that occurred on the 14th of April.

MR. JAMAR: Correct.

REP. SHADEGG: And at that point in time, there had already been, as I understand it, a meeting in Washington on the 12th of April where the gas plan was described to the attorney general. Is that also correct?

MR. JAMAR: Yes. We submitted the plan that became the plan ultimately April 19th with several modifications. But the original submission by us in Waco headquarters, that was sent in on March 27th.

REP. SHADEGG: Okay, sent in March 27th for approval higher up.

MR. JAMAR: Yes, sir.

REP. SHADEGG: Okay. And to your knowledge it was taken to the attorney general on Monday, April 12th. Is that right?

MR. JAMAR: I don't know the precise date, but there were numerous discussions and I think that's probably correct.

REP. SHADEGG: Well, the attorney general will be here. We can ask her that.

MR. JAMAR: Yes, sir.

REP. SHADEGG: Okay, we move forward Monday, April 12th. We move forward to Wednesday, April 14th. DeGuerin and Zimmermann go in. They come out with this whole new plan. They
describe it to you. You say to them, "You have all the time in the world. "Was that amissrepresentation on your part? Why did you make that statement to them?

MR. JAMAR: I think the -- it was not a misrepresentation because what I said was, "If there is writing of a manuscript, if there is progress, we'll take the time. "On April 14th I didn't know the plan was going to be approved, number one.

REP. SHADEGG: Precisely. So at that point in time, when you had that conversation, you were not aware that the plan that had been (launched? ) in Washington quite some time earlier for a more confrontational result had, in fact, been approved.

MR. JAMAR: Yes.

REP. SHADEGG: As a matter of fact, it hadn't been approved as of the 14th, had it?

MR. JAMAR: It was not approved till the 17th.

REP. SHADEGG: And executed on the 19th.

MR. JAMAR: Correct.

REP. SHADEGG: Okay. So it was your hope on -- you still had some hope on the 14th that we might make progress; we might get to an negotiated settlement. Is that right?

MR. JAMAR: I had hoped -- I submitted the plan on the 27th and I had Dick DeGuerin go in the crime scene on the 28th -- 29th.

REP. SHADEGG: Okay. And they came out with this whole new plan on the 14th that said, "We may be able to make this. This is a real breakthrough. This follows with what's in Koresh's mind. "Now, my question is, following that conversation on the 14th, what steps did you take -- later you got advised that the Justice Department had approved the gas plan.

MR. JAMAR: Yes.

REP. SHADEGG: What steps did you take to advise Justice of the new plan; that is, of this new proposal by Koresh and by Zimmermann and DeGuerin which they later felt betrayed about?

MR. JAMAR: I'm not sure that, when you say "notify the department," that proposal by them would have been routinely sent through our channels on the normal discussion. I don't know how it was done specifically. I don't know that.

REP. SHADEGG: So do you know if Attorney General Reno was ever advised that there was this new development before she made her decision?

MR. JAMAR: I don't know because -- I doubt it, because it was not from our understanding of it and the judgment was, looking at what they were doing, maybe that she was not. I don't know, but
there wasn't any reason to because it was not a serious plan. It was just another delaying tactic.

REP. SHADEGG: Well, clearly Mr. DeGuerin and Mr. Zimmermann, by the emotion and the passion they brought here, had the feeling that you had betrayed them. They said you never lied to them before and now they felt you lied to them, and they want to know why you would say to them on the 14th you had all the time in the world. I now understand that. They felt it was serious. You can't tell me that Attorney General Reno was ever advised of that.

MR. JAMAR: I can't tell you that, no. But had there been serious preparation of the manuscripts, we would have waited. Therewas none.

REP. SHADEGG: I think they'd contend there was serious, because one came out. Thank you very much. My time has expired.

REP. MCCOLLUM: Ms. Collins --

REP. COLLINS: (Off mike.)

REP. MCCOLLUM: Yes, you may ask unanimous consent.

REP. COLLINS: Mr. Chairman, I ask unanimous consent to have my opening statement made just prior to my questioning, please.

REP. MCCOLLUM: Without objection.

REP. COLLINS: Thank you.

REP. MCCOLLUM: Mr. Scott.

REP. SCOTT: Thank you, Mr. Chairman. Let me get -- Mr. Jamar, I'm a little confused right now. Do I understand that Mr. Koresh made an offer to come out in due course voluntarily? As I understand from the questioning that that kind of offer -- that offer was made.

MR. JAMAR: What happened, he sent a letter out saying it was time to write the seals and he was ready to do that. It was open-ended as to when that might occur.

REP. SCOTT: But that he might at some time come out voluntarily?

MR. JAMAR: I think that was about the fourth time he had promised that, yes.

REP. SCOTT: And did you have any reason not to believe that he would actually do that?

MR. JAMAR: From his conduct from February 28th until April 19th, I had every reason to believe he would not do that, yes.

REP. SCOTT: What do you mean -- could you elaborate on that?
MR. JAMAR: He constantly would make promises he did not keep. I think the efforts of the negotiators, who spent seven weeks indiscussion -- I think an analysis of those tapes will indicate how manipulative and how devious he was in his ability to control events. He would put us on one end and jerks us down to the other constantly. That was his stock in trade.

REP. SCOTT: Did you have any reason to believe this last offer was any more credible than any of the others he had made?

MR. JAMAR: I remained as hopeful as I always was. I didn't bite as hard as I did on March the second, but we listened -- we pushed and pushed and pushed. What's the progress on the manuscripts? Tell us, tell us, tell us, and all we got was stalled.

REP. SCOTT: Now, were you receiving any expert advice, any advice from experts on how to handle this situation?

MR. JAMAR: Yes, sir.

REP. SCOTT: How many different experts were giving you advice?

MR. JAMAR: I would say indirectly dozens.

REP. SCOTT: And can you explain the consensus of that advice?

MR. JAMAR: Well, it was changed as time passed --

REP. SCOTT: Was there a consensus with everybody telling you pretty much the same things?

MR. JAMAR: At certain times there was a consensus, and other times no.

REP. SCOTT: And what kind of different advice were you getting?

MR. JAMAR: Well, the -- a good example is -- a good consensus would be let's don't do anything to provoke them, from the start, which we did not do. We were extremely careful but for the beginning, and I'd like to take that opportunity now to describe what we discovered there. When we arrived, the FBI arrived, Byron was the first and he started with the negotiating at 11:00 a.m. We arrived in the evening of the Sunday -- there were several of us -- to examine what we -- what the situation was. What we had was four ATF agents who had been killed in hours of gun battle, and what we had was a site -- it was -- where they had a four-story view of a very wide area and they had people with automatic weapons. They had already demonstrated they were fully prepared and capable of using them. We tried to find out what it took to get control of the perimeter. We did not want to do anything to interfere with what was going on, the flow of children coming out that Jim Cavanaugh had established, so we went -- the HRT commander was en route. I went forward to try to find out what we had and discovered that the perimeter was very loose, and thank goodness for some local and state agencies, which maintained SWAT teams, maintained the perimeters. But we determined that we could not get within hundreds of yards of that place without being exposed to automatic weapons gunfire, possibly 50 calibers. So the decision was made that we must have
somesort of protection for our agents if we were going to establish anytype of perimeter. That perimeter was not established until after March the second. We were not in view. The only way that Koresh was aware of the FBI was through the negotiators. We were very careful. But the danger level of that situation, if you look at -- when it was taken down, there's a photograph -- some of it -- on the right, please, the easel on the right. If you would take that. No, I'm sorry, the one behind that one. That's the one I'm after. Thank you. The lower road there across, that's Double E Ranch Road. The -- where Jim Cavanaugh was describing a while ago was that house right in the middle there. You go up the driveway and around, up at the top you see that's where we put what we call Sierra-2. That was a dairy barn. We wanted to get people in there. We did not -- and that's -- up -- that picture, the upper level of that picture would be the Branch Davidian property. We did not go on that property until we made the effort to go in the back on the evening of March the second. The danger level was so high, their ability to see the entire area was so strong and their weapons were so powerful, that we had to have armor to protect our agents. We could not have established perimeter around it and controlled those circumstances without some armor.

REP. SCOTT: Well, I guess what -- the point we're trying to focus on is in the negotiation process, and that's what I think this inquiry's about today, or at least this panel -- what made this? You had to believe that Mr. Koresh would actually come out as he said he would. Mr. Sage, did you have negotiations -- were you involved in the negotiations?

MR. SAGE: Yes, sir, I was.

REP. SCOTT: Did you believe Mr. Koresh when he said this timethat he would be coming out?

MR. SAGE: This time being the 14th of April?

REP. SCOTT: Right. Right before the -- MR. SAGE: The only consistent aspect of Koresh's actions as of the 14th of April was the consistency of breaking every promise that he had made. That may be slightly overstated, but only slightly, so that the short answer to that question is no. I was hopeful, but I was doubtful.

REP. SCOTT: Thank you. In relation to CS gas, a lot has been made about that, were other gases considered and can you discuss briefly the merits of one or another of the gases?

MR. SAGE (?): We relied on the expertise of our headquarters and the experts they consulted. I think -- I don't have that expertise. I think that's going to be in a later panel discussed in very much detail, Mr. Scott. I don't think that I'd be -- I can't describe all the possible gases. That's--(inaudible) --

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

REP. HOWARD COBLE (R-NC): I thank the chairman. Mr. Chairman, I yield five minutes to the gentleman from Arizona.

REP.: I thank my colleague and appreciate him doing so. Mr. Cavanaugh, you said a minute ago you would have given your life to take those children, is that right?
MR. CAVANAUGH: I think Mr. Sage said that, sir.

REP. : Mr. Sage, you said that. All right, sir. I think, Mr. Cavanaugh, you share that sentiment, though, don't you?

MR. CAVANAUGH: Well, certainly -- (inaudible) -- REP. : Indeed, there were a number of children in the compound and a number of women in the compound, and regardless of what you believed about Mr. Koresh, you had to take a different attitude toward those women and children, didn't you, Mr. Cavanaugh?

MR. CAVANAUGH: Yes, sir.

REP. : Mr. Sage.

MR. SAGE: The answer's yes, but can I make a distinction?

REP. : Certainly.

MR. SAGE: When I arrived there as the first FBI negotiator at 11:00, this was already in motion. The problem that the FBI was faced with was that prior to the 28th, we would have, at the most ATF, FBI would have been faced with the possibility of attempting to negotiate a group of individuals, willing participants, out to face the potential of maybe multiple five-year terms -- REP. : Let me interrupt you right there. I need to just use my time as quickly as I can. The point is you had -- MR. SAGE: There's an important point, Congressman, that I really need to make.

REP. : -- (inaudible) -- okay.

MR. SAGE: When we rolled up, we were then faced with the possibility or the problem of attempting to negotiate a group of people out to face multiple first-degree murder charges -- REP. : Right.

MR. SAGE: -- in a state that may well lead the nation in capital punishment.

REP. : But -- MR. SAGE: Overwhelming difference, overwhelming problem. Same priority focus, the safe resolution of the situation.

REP. : Right. The children were never going to be charged with murder, were they?

MR. SAGE: No, sir.

REP. : Okay. So in many senses, they were victims of this circumstance, weren't they?

MR. SAGE: I think we've all agreed on that.

REP. : So if they were victims, they had to be considered in your negotiations differently than those
that were responsible -- Koresh himself and those others who pulled the trigger?

MR. SAGE: That's why they were the top priority to try to get out, yes, sir.

REP.: So, in many senses, they were hostages, were they not?

MR. SAGE: Well, they were hostages to their fate, yes, sir. They were -- they were -- in fact, Koresh even referred to the children as hostages and the fact that they were more important because of their value as a hostage.

REP.: Which drove your obligation to get them out safely if you could.

MR. SAGE: Without question.

REP.: Okay. I want to go into the tension that seems to have developed between the negotiators and the tactical people, because some things occurred that I don't understand. The report states rather specifically that the negotiators -- Mr. Sage, you were a negotiator, Mr. Smerik, you were an adviser on that, and, I believe, Mr. Newsner (pronounces phonetically), you were --

MR. NOESNER: Noesner (corrects pronunciation).

REP.: -- a negotiator. Now, it says that you remained hopeful, while you were doubtful at times, hopeful to the end of a peaceful resolution. Did you feel that, Mr. Smerik?

MR. SMERIK: I agree with the premise that David Koresh was never coming out of that particular compound. As an analyst for the FBI from the investigative support unit, I believed the best that the negotiators were going to be able to attain in this situation was getting additional people out of that particular compound.

REP.: And you had some success in getting people out. Mr. Cavanaugh, I believe you got 34 people out in 23 days, is that right?

MR. CAVANAUGH: No, Congressman, I --

REP.: Not you personally, but the FBI.

MR. CAVANAUGH: Right. That's right.

REP.: The FBI got 34 people out in 23 days.

MR. CAVANAUGH: I believe that's right.

REP.: So you would agree with the statement in the report that you remained hopeful to the end for a peaceful resolution of this?

MR. CAVANAUGH (?): Is that a question for me, Congressman?

REP.: Yes.
MR. CAVANAUGH (? ): Yes, we always try to work towards bringing about a peaceful resolution. Even if we come to a decision or a conclusion that the ending may not be to our liking, we continue to work and strive towards a peaceful resolution. And it was 35 people that came out.

REP. : Thirty-five?

MR. CAVANAUGH (? ): Thirty-five.

REP. : Good. I wish it had been more.

MR. CAVANAUGH (? ): So do we.

REP. : Some of the things that happened trouble me. Thereport itself acknowledges that there was -- it says, "The negotiators felt that the negotiating and tactical components of the FBI's strategy were more often contradictory than complimentary." Tell me why the report says they were contradictory.

MR. CAVANAUGH (? ): Well, I think in any dynamic situation, the way our system is set up in the FBI, and most police departments follow this, in our structure, the negotiation components and the tactical components are separated, and the purpose being that the on-scene commanders have an independent assessment of the situation and independent recommendations. One is not tainted by the other. So there is a dynamic process that takes place there. Yes, the negotiation strategy as I recommended it when I got there, I felt we should take a low keyed approach, stay back and appeal --

REP. SHADEGG: The President was told that and apparently believed it.

MR. SMERIK: Is that a question for me?

REP. SHADEGG: Let me put a question. Did you feel betrayed by some of the tactics that were ultimately used? For example, there's a report -- a direct quote from the transcript where it is said by a negotiator to Mr. Koresh -- "We had a very good dialogue last night. The electricity will not go off tonight because we've had a good dialogue this evening." That's a negotiator to Mr. Koresh. A half an hour later -- no I'm sorry it's the negotiator to Mr. Steve Snyder -- a half an hour later the lights are turned off and left off permanently, the electricity is shut off. Why?

MR. SMERIK: I can't answer the why, but I can tell you that the negotiation team was disappointed in that decision. What my job is as the negotiation coordinator during the time I was there from the 28th through March -- excuse me, February 28th through March 25th -- was to provide my assessment and input to the on-scene commander. He has to take that information and couple that with the information he receives from other intelligence sources, from the tactical team, and he has to weigh all those things, weigh them with his own experiences and his own perceptions, then he has to come to a decision. We have a saying that negotiators negotiate, commanders command. And even though I may not have agreed with some of those decisions, I know that they were made by Mr. Jamar with the best of intentions in resolving this peacefully.

REP. SHADEGG: Did you feel -- well --
MR. SMERIK: No, I did not feel betrayed. I was disappointed in the decision, betrayed is far too strong a word.

REP. SHADEGG: Okay. Mr. Sage, that was not the only incident of that type. There were a number of incidents where it seemed to me from reading your report -- like you were trying and Mr. Cavanaugh was trying to gain the trust of Mr. Koresh, to be able to talk him into a reasonable resolution, and yet things happened that were inconsistent with that. For example, the crushing of the cars or this whole issue of tension that arose between the negotiators and the tactical people over a machine gun that was sticking out a window. The negotiators say to Koresh move it, that's threatening people, making things bad and the tactical people get angry with you about that. Talk to me about the tension that existed. We are told that there were at points almost fist fights between the negotiators and the tactical people.

MR. SMERIK: That's been greatly overstated. There is normally going to be a dynamic, as Mr. Noesner has pointed out. There's two options that need to be presented. If those options absolutely were mirrored images of one another, we would be doing a disservice to the on scene commander as far as giving him or her a realistic assessment of the options available. Was there tension between the negotiation effort and the tactical effort? Yes, there was. Did it affect ultimately the outcome of this incident? No, sir, it did not.

REP. SHADEGG: Did there ever come a point in time to your knowledge when the President was told that the negotiated strategy, the wait and see, we've got all the time in the world, had been abandoned?

MR. SMERIK: Sir, I was so far down the chain of command that I don't know what the President was told or not.

REP. SHADEGG: Mr. -- (inaudible.)

MR. : Well that was never abandoned. I think that's the misunderstanding here.

REP. SHADEGG: Well it appears to have been abandoned on the morning of the 19th.

MR. : Well I think when you say abandoned, I think when the action to go when we did was in agreement with everyone. There wasn't anyone who did not agree with that.

REP. SHADEGG: My question was --

MR. : Including all the negotiators.

REP. SHADEGG: Thank you very much.

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

REP. SLAUGHTER: Thank you. I've been impressed by the witnesses at this hearing who seem to feel that they had a real understanding of David Koresh and that they were going to be able to talk
him into doing something, that he had spent a good part of his adult life saying that he was not going to do. A man who was able to persuade intelligent people to do the things that he got them to do would not likely be swayed by two or three visits from a social worker or from defense lawyers. But Mr. Jamar, I would like to know why you let those defense lawyers go in.

MR. JAMAR: I was hopeful that they could appeal -- that Mr. DeGuerin could appeal to Mr. Koresh's self interests. Everything Mr. Koresh did was to his self interest. So the idea was -- I'll give you the quick history -- I accepted one call from the lawyers the whole time I was there and that was from Dick DeGuerin just because --

REP. SLAUGHTER: Did you make the comment though just a minute ago that somebody destroyed evidence and --

MR. JAMAR: Yes, ma'am.

REP. SLAUGHTER: -- those lawyers? Would you elaborate on that please.

MR. JAMAR: Yes, ma'am. The decision to get Mr. DeGuerin in touch with Mr. Koresh was easy. To let him be on the telephone was easy. The hard part was letting him go in to the crime scene, let a defense attorney go into an --

REP. SLAUGHTER: That's unusual isn't it?

MR. JAMAR: It's extraordinary, and I was told that by everybody.

REP. SLAUGHTER: Right.

MR. JAMAR: Everybody opposed it and I thought it was worth doing. It was extremely upsetting to the prosecutors, extremely upsetting to the Texas Rangers, extremely upsetting to ATF. My fellow SAC's, with the exception of Bob Ricks, were extremely upset at me for doing that. I think I heard yesterday some descriptions of they did the very things that the prosecutors and the investigators feared. It inhibited the investigation very much, but I felt so strongly that if we were ever going to reach Koresh, the way to reach him is his self interest, nothing else.

REP. SLAUGHTER: Koresh really didn't care if his followers died in fire. He had explained to them, had he not, that this was the redemption, that this was the way to salvation, that they were all going in this fiery burst?

MR. JAMAR: There's no question about that. Several of the survivors are concerned about their salvation right now.

REP. SLAUGHTER: And there was also in the case of some members, particularly Mr. Snyder, believed that he could walk through that fire, that he would survive it.

MR. JAMAR: Well I don't know if they bought all of that. I think Steve Snyder was really wondering about what he was doing there at the end.
REP. SLAUGHTER: I'm curious too about the negotiation because this is very important. You had professional negotiators with you all around.

MR. JAMAR: The best in the world.

REP. SLAUGHTER: And yet apparently ministers who called up and felt they could do it too, they were allowed to have a go at it?

MR. JAMAR: We had a lot of them call, we had all sorts of people call. I think the philosophy and the process in making that decision would be better described by either Mr. Noesner or Mr. Sage. Why you don't let somebody buy into somebody else's mind --

REP. SLAUGHTER: I find this very distressing because the one thing that you knew was that you were dealing with a man who had an extraordinary ability to control people's minds.

MR. JAMAR: He demonstrated that very effectively.

REP. SLAUGHTER: Without question, without question. As a matter of fact, I wouldn't be surprised if some of the people who talked here and thought they had a great hold on him, if it wasn't maybe the other way around. And I've been somewhat disturbed about that. Now talking about the letter that Mr. DeGuerin talked about yesterday, that was not in Mr. Koresh's handwriting.

MR. JAMAR: I don't -- no, I wouldn't --

REP. SLAUGHTER: It looked like -- I have no idea who wrote it, but my assumption -- and I would have to an expert tell me -- but it was a very feminine handwriting.

MR. JAMAR: It was probably Judy Snyder. I think she wrote the other letters he sent out.

REP. SLAUGHTER: Do you have any evidence that she did that?

MR. JAMAR: I would just infer it based on that she -- I was told she wrote the more threatening letters we had gotten in the previous days.

REP. SLAUGHTER: Were there any indications there that George Snyder was getting worried and she was sort of free agenting to try to help you people get them out?

MR. JAMAR: We really hoped that. We really thought --

REP. SLAUGHTER: Could she have written the letter is really what I am saying, on her own --

MR. JAMAR: I'm sorry.

REP. SLAUGHTER: -- could she have done that letter by herself?
MR. JAMAR: No way that anything would leave that compound without Koresh's approval.

REP. SLAUGHTER: You believe that is his genuine signature on that letter?

MR. JAMAR: I hadn't thought about it before, but I presume so, yes.

REP. SLAUGHTER: I would really like to have somebody think about that a little bit because it did occur to me that perhaps she wanted out. Another thing about this -- there's a lot of questions I guess about the Attorney General and whether she knew this. How many times during this 51 day standoff had he promised to come out if you play a tape, or if you would sing a song, or he could do something or other, and you complied and he never did come out?

MR. JAMAR: I think there are four very, very clear ones. But I think the game was constant.

REP. SLAUGHTER: Right. Were all -- do you have any knowledge that each time you negotiated that this went all the way to the Attorney General of the United States?

MR. JAMAR: She was kept briefed I am certain. But I think there's a sameness to it all after a while.

REP. SLAUGHTER: After you had gotten these other demands that you had complied with, that if you do this I'll do that, did you have any reason to believe that the letter that Mr. DeGuerin brought out was any different?

MR. JAMAR: No, but I remained hopeful and I examined their conduct very closely thereafter, and I saw nothing new that would make me change that.

REP. SLAUGHTER: And you sent the letter up the chain of your command at the FBI?

MR. JAMAR: I presume that they were informed of it. I doubt they sent the letter to --

REP. SLAUGHTER: You don't know?

MR. JAMAR: -- Washington itself. I doubt that. But I would presume that they were informed of the contents of that letter, yes.

REP. SLAUGHTER: There's no evidence of any sort that you know of that the Attorney General had any reason to believe this last letter even existed?

MR. JAMAR: That and there wouldn't be any reason for her to change her opinion if she did.

REP. SLAUGHTER: All right, that's very important. Mr. Sage, you did quite a bit of negotiating and I think we've heard some of it on CNN, some of the work that you had done. Do you have any feeling that Mr. Koresh was going to change his mind, surrender, send everybody out and come out peacefully?

MR. SAGE: We remained hopeful up until the very end of this thing, the tragic end of this thing.
REP. SLAUGHTER: When you talked to him did he give you indications that he was considering doing that?

MR. SAGE: No, he gave us every indication in the world regarding a number of topics, including the safe and orderly exit, I mean to a point of minutiae when we prepared the original exit plan on the 2nd of March.

REP. SLAUGHTER: Wasn't there one point where everybody was lined up to leave and he had lied about leaving, is that correct?

MR. SAGE: Yes.

REP. SLAUGHTER: Can you elaborate on that a bit.

MR. SAGE: We were led to believe on the 2nd of March that literally had -- and in fact, there is a very clear -- this person was every bit -- well, maybe I won't say every bit -- as skilled at using the same techniques that we tried to use on him.

REP. SLAUGHTER: I think you can say it.

MR. SAGE: But we had a -- at one point in time, a very vivid picture painted for all of us. And I will say matter-of-factly that I bit off on this hook, line and sinker, probably in very closenessimilarity to the defense counsel addressing or adopting therepresentations made to them subsequently in the siege. But I'm referring to the activities of the 2nd of March. We had a very vivid picture of the children lined up with their little coats on, and it was very cold outside and rainy, everybody concerned to that. The very smallest aspect of that, I can recall vividly working very closely with Jim Cavanaugh on this, up to and including concerns about, well, they -- some of the kids wanted to bring their puppies out with them. We were ready from the 28th of February, when I got there, until the ultimate conclusion on the 19th of April to accommodate any reasonable request. He would get us in a position where we thought it was -- there was a major break at hand, and then pull the rug out from under us. But that's our job, not to lose faith, to continue to try to reach a safe and reasonable conclusion, and we never ceased in that effort.

REP. SLAUGHTER: He was not only playing with you, he was playing with his followers.

MR. SAGE: Absolutely.

REP. MCCOLLUM: Ms. Slaughter, your time has expired. Ms. Ros-Lehtinen.

REP. ROS-LEHTINEN: Thank you, Mr. Chairman, and thank all the witnesses for being here today. I'd like to follow up to Mr. Shadegg's line of questioning. As all of us know from reading the report, according to the Justice Department report on the events at Waco, and I quote: "The guiding principle in negotiation and tactical employment is to minimize the risks to all persons involved, hostages, bystanders, subjects, and law enforcement officers." Yet despite this clear objective, the DOJ report states that the components, the tactical and the negotiating components of the
FBI's strategies were, quote, "more often contradictory than complementary. " And I'd like to ask Mr. Cavanaugh and any others who'd like to comment, what accounts for the lack of a coherent game plan for ending the siege in accordance with the stated principles about minimizing the risks?

MR. CAVANAUGH: Congresswoman, I think that in a negotiation, what you want is these two contradicting voices. If you're the commander, you want a negotiator coming to you and saying, "I can talk these people out," and you want a tactical commander coming to you telling you that, "I can resolve any other issue that might be tactical." That is the way that is appropriately handled. The voice of the negotiator has to be equal to the voice of the tactical leader. And my recommendations to the Justice review, and I don't if --

REP. ROS-LEHTINEN: So you're saying this is what you wanted to happen? You wanted to have this contradictory -- MR. CAVANAUGH: Yes. I think --

REP. ROS-LEHTINEN: That's supposed to happen that way?

MR. CAVANAUGH: That's supposed to happen, and I told the Justice review -- and I'm not sure the FBI will necessarily agree with my assessment of the FBI, but I made it certainly in all good intentions-- and that would be that their negotiator, their chief negotiator would be the same pay grade and rank as the chief of their hostage rescue team so that they would come at the SAC, Mr. Jamar, with an equal voice. And I'm sure Mr. Jamar gave them an equal voice, and he was very, very understanding and fair. But what I'm saying is --

REP. ROS-LEHTINEN: Well, I think that perhaps there might be a difference between playing the good cop/bad cop routine and having a situation where you're giving contradictory tactics and you end up with a system that's all fouled up. So I think that you might be saying that that's a good maneuver to try, but when you get into a real-life situation and when you're negotiating that way, and the other folks say, do it the other way, I think that we could see what can happen. I think that's a little different than playing off each other and bouncing those kinds of ideas.

MR. : Could I comment on that?

REP. ROS-LEHTINEN: Yes, sir.

MR. : Mr. Cavanaugh, I would just disagree with one point he made. The system is not built that the two components be in controversy all the time. The system is built so that each of the components has an independent input to the on-scene commander. For example, in the Talidega (ph) Prison riot, both the negotiation component and the tactical component there were incomplete agreement that the most risk-effective method to resolve the situation would be the utilization of tactical resources. And that was a very successful operation. There is often times where both components are in agreement; they're not necessarily in conflict. We weren't purposely trying to be in conflict. At Waco, there was a strategy -- there was a fundamental strategy disagreement on what was the best way to proceed. In Waco, the negotiation team wanted to have a lower-keyed approach. The tactical team's approach was more to apply pressure. Part of that, I believe, was driven by the fact that the tactical team, as Mr. Jamar indicated, was exposed to open fire, we were dealing with the most complex situation we've ever had in the United States, where there had already been a demonstrated
willingness to use force. We had in fact four dead federal agents, an unknown number of dead people inside, certainly .50 caliber weapons that could reach for over a mile and affect our tactical personnel. So the need to provide them with adequate cover to contain the situation had an impact on conveying perhaps a message that Mr. Koresh didn't want to hear. So I think that's important to make note of.

REP. ROS-LEHTINEN: Thank you.

MR. : May I add to that, madame?

REP. ROS-LEHTINEN: Yes, just a short statement. I'd like to move on to another one.

MR. : I think that there should be no misunderstanding that the last thing the tactical people wanted to do was to approach the compound. They don't want to do a tactical action at all. You don't do that except as a last resort. I think that report is where there were incidents where they were in conflict, but there was not that much. It just didn't happen that often.

REP. ROS-LEHTINEN: The DOJ report further states that this standoff left the Davidians with a sense of hopelessness and isolation, and it further states that -- and I'll quote: "The problem was the pace of the surrender." Was there an explicit or implied directive from higher-ups to get this thing over with? And I'd like to ask Mr. Sage to comment on that and any others who would like as well.

MR. SAGE: I was there the entire 51 days, as I've mentioned. I can say that, matter-of-factly, I never felt pressure from anyone that there was a specific time frame, time table, where we needed to have this resolved by date certain. Every effort was undertaken to try to identify and fully explore every option available to us, obviously pursuing those that were considered the most potentially fruitful. And we did that. We had constant input to the on-scene commander and his assistants. We had one of the SACs, Bob Ricks, was very closely involved with the negotiation cell throughout most of it. There wasn't a breakdown in relaying back and forth the dynamics of negotiation, the identified potential avenues that we intended to pursue, and the efforts gained from those.

REP. ROS-LEHTINEN: And speaking of those avenues that you might have pursued, according to the DOJ report, it says, "Some of the negotiating personnel did believe that more Branch Davidians might have departed the compound had the pressure tactics been withheld." And these tactics, as we've read, included the playing of chants, which it said Mr. Sage objected to, to deprive the Davidians of sleep. Who made the decisions to overrule these negotiators about this -- these pressure tactics? Mr. Smerik or anyone else who'd like to comment.

MR. : I think I would be the one to answer that since I'm the one that did that. The decision to start playing the loud noises and that sort of thing was made March 22nd. That's when that started. The -- that tactic had been recommended to us by the behavioral scientists from the start. I didn't like it. My memory was of Noriega -- you remember that in Panama and all that? -- and I didn't like that. It just -- but finally, we got the point where not much we were doing -- you know, from mid-March on -- was not being very effective. So we -- in discussions -- what more can we do? And the thought was to see if we can keep them awake, maybe that'll help. Again, that was recommended from the start.
The negotiators felt like that wouldn't work, wouldn't be helpful. Did it affect how many more people came out? I don't think it did. I think we'd have -- we started on March 22nd. Livingston Fagan (sp) came out March 23rd, but that was purely coincidental. I don't think it made any difference at all.

MR. : Can I add to that just a moment? We had set up, intentionally set up, a bank of loud speakers, intentionally set them up in the form of high fidelity speakers, so that there would be inflection to the voice. The main reason for that was not to play Achy-Breaky Heart or These Boots are Made for Walking or any of the rest of the misrepresentations that are out before the American public. The sole purpose of the PA system, initially, was to make announcements of which I was designated to make the majority of them. But more importantly, it was to play actual tape recordings from released Branch Davidians back in. For example, on the -- I believe this was the 12th of March -- Kathy Schroeder came out. Kathy Schroeder had a position of leadership in the eyes of her peers. When she came out, it was much more effective to put an audio tape of Kathy Schroeder calling back into the compound saying, hey, I've been released, I've been treated well, I've been reunited with my little three-year-old boy, Brian, I have access to an attorney, I have access to the media and so forth. We played, beginning approximately the 12th or 13th, a series of tapes, four tapes in particular, and then a fifth one was added that was Kathy Schroeder making just exactly those representations voluntarily in her own voice, instead of them hearing it from me or another negotiator. Oliver Guyarfus (sp), the same thing saying, hey, here I am, everything's fine, they've treated me well, they're not the animals that we've been led to believe, and I've got an interview tomorrow morning on Good Morning America. Two tapes from Jack Harwell, who was the, and is, the Sheriff of McLennan County there, which Mt. Carmel is included in, and the fifth tape was a conversation had between myself and David Koresh on the 17th of March, after he refused to allow a second face-to-face. The reason for playing those was to give all of the people inside, and I stress this, all of the people inside an equal opportunity to understand exactly the dynamics that had been going on trying to resolve this, instead of just a core group that we may be talking to, of course, may have limited full communications to. That was the intention of the PA system, not all the rest of this stuff that seems to have taken a higher focus in this matter.

REP. ROS-LEHTINEN: Thank you, gentlemen.

REP. MCCOLLUM: Ms. Ros-Lehtinen, your time has expired. We are at a point now where any moment, the House will convene in a special joint session to receive the President of Korea. We're going to have to, under the House rules, take a recess until that joint session is concluded. We intend to return to this panel, and I understand the difficulty of this break, we're just going to have an early long lunch hour, I think, we intend to return to this panel within 30 minutes after the time that joint session is concluded, or 1:00 p.m., whichever is earlier. And with that in mind, this joint committee is in recess. (Recess.)####END OF MORNING SESSION