WITNESSES: LARRY POTTS, FORMER FBI ASSISTANT DIRECTOR FOR CRIMINAL INVESTIGATIONS,
ANTHONY BETZ, CS GAS EXPERT FOR THE FBI,
DICK ROGERS, FORMER HEAD OF A HOSTAGE RESCUE TEAM,
JEFFREY JAMAR, FORMER FBI SPECIAL AGENT IN CHARGE IN SAN ANTONIO,
BYRON SAGE, FBI SUPERVISOR IN AUSTIN, TEXAS
THURSDAY, JULY 27, 1995
REP. ZELIFF: The Joint Oversight Committees on Waco will now come to order. Today gets into our seventh day of oversight hearings on Executive Branch conduct at Waco. And this, probably to everyone's great disappointment, will be a fairly short day. In other words, we hope to be done by 1:00. If we are not done with the panel at 1:00, there is a mark-up that will go on we think between 1:00 and 3:00. We will then recess, subject to the call of the chair, for approximately two hours, reconvene hopefully around 3:00, and then finish up. In any ways analysis, I think that's a short day. We'll be having short openings by the chairs and the ranking members. And we will only have one panel today.

We have to question a central and much discussed group of a very important group of major people -- the FBI decision-makers. We'll hear from Mr. Larry Potts, the former assistant director of the FBI, Criminal Investigations Division. He was a key person at the events at Waco. We will hear from two individuals we heard from from yesterday -- Mr. Jeff Jamar, the special agent in charge and on-scene commander at Waco; and Mr. Byron Sage, the first FBI hostage negotiator on the scene at Waco. We heard from these two gentlemen yesterday, but today we'll hear from them on a different topic -- the FBI decision to insert CS gas in the Davidian compound.

Finally, we will hear from two other central decision-makers below the attorney general and the president, at the Department of Justice. They are Mr. Anthony Betz, the FBI's unit chief of Domestic Terrorism, and someone who researched CS gas for the attorney general. And Mr. Dick Rogers, an assistant special agent in-charge, and the leader of the FBI's hostage rescue team.

I want to say that this is a high ranking group. These individual are central to the Justice Department, and they were central to the events at Waco. They are here on their own volition and voluntarily, and that they've come to help us try and sort out the many unanswered questions and unsettled facts.

As a joint subcommittee performing our constitutional duty of oversight, we are glad that they have come before us. And we sincerely hope to get to the bottom of what happened, and why the decision was made to use CS gas on over 80 Americans.

In this process, we think we have come a long way. We've learned new and important facts, and again yesterday, and have put a string in of very late nights. We and the EPA -- and you had to be here to understand the significance of that comment -- but it's been quite a session.

Today, we will explore in public, for all America to see, the reasoning that went into the disastrous decision to insert CS gas into the Davidian compound, and to do so with tanks and hundreds of canisters ferret rounds. We will question again the timing and the substance of key pre-gassing conversations between FBI personnel at Waco and those in Washington. We will question who spoke to the attorney general, and who spoke with those close to her. We will ask who decided to use tanks, who gave the order to knock down walls, who sent in dangerous CS gas that ultimately killed infants and young children. We will begin to find out who coordinated those facts, who hastened them, and why those facts were chosen. Were there even vaguely viable alternatives to what was done? Were they rejected? At least we will ask those questions.

Thinking about it last night, it occurred to me that the American people have always appreciated
persistence, and persistence in the name of truth. Well, there's nothing more important. If no one ever asked these questions, a lot of significant national problems would never have been dug into and brought to light. In almost every case, the result of a sincere oversight effort has been constructive. Of course, difficult questions take extra courage -- especially when you ask them of an institution as large and respected as the Department of Justice. But people of good faith, conscience, conviction, patriotic, and interested Americans want their questions answered, and they need this additional information.

As we stay the course, I think you will find that today's fresh panel produces some new findings, as we get closer and closer to the whole picture of what happened and why.

Today will be a day where we fit in some new pieces into the puzzle. We owe this truth-seeking function to the American people. We serve them, and we do that every day. With them urging us on, we will get the whole picture assembled, or as close as our congressional oversight role will allow. And we thank you all. We have a great deal of respect for the institution you serve. Thank you for being here this morning.

The chair now recognizes and introduces the co-chairman of the joint subcommittees and chairman of the Judiciary Committee's crime subcommittee, my good friend Bill McCollum from Florida.

REP. BILL MCCOLLUM (R-FL): Well, thank you very much, Mr. Chairman. I want to welcome our panel this morning as we do begin our seventh day of these hearings and about a very important part of this, the formulation of this assault plan and the rationale behind why it was necessary. But before we do that, I want to at least put the last couple of days of hearings in somewhat of a perspective, at least as I see it.

We have walked through very carefully yesterday a long and lengthy hearing on the FBI's beginning role in the negotiations and the siege and what led up to the assault that occurred on April 19th. I think from that lengthy discussion yesterday, it has become apparent to anybody who is watching or listening to this that most of what, if not all of what the FBI was doing on the scene was perfectly up to the keeping of the standards that we would expect from our FBI. We've been very proud of what we've heard in regard to most of this, and I think that all of us up here on this panel, both sides of the aisle, want you and the FBI to know that.

I think what we're left with after yesterday, both on that panel and on the discussion of CS gas by those who testified in the second panel last night as to what its effects might be, leave us with a couple of lingering questions that are broad in nature, not necessarily the only questions, because some, of course, about how this assault developed and what happened as we went into it may well lead to other questions.

But the two questions that stand out more than anything else have to do with the advice and information that was provided to the attorney general, and perhaps questions that might go to the judgment of those who made the ultimate decisions, obviously the attorney general, and if anyone else was participating in it, their judgment as well.

The questions center on the issue of whether or not, in the negotiations process, the attorney general
fully understood the status of the final days of the negotiations; that is, did she have a sense that was accurate with respect to what Mr. DeGuerin, the attorney representing David Koresh, thought was the opportunity to bring Koresh and his crew out after the 14th of April, before the insertion of the gas on the 19th? Was there indeed information sufficient in her hands to make the judgment call she made that negotiations were truly at an impasse and that to go further would be futile? There are serious questions raised as to whether or not that was the case.

I don't doubt for one minute that the FBI figures involved that we have testifying before us believe that there was an impasse, believe that David Koresh would not, under any circumstances, come out; that indeed that he wanted to be a martyr. There are, however, others who presented rather compelling testimony that they did not believe that the FBI at that moment, having been there for many, many days and having seen David Koresh reject and not live up to his commitments to come out on other occasions, was really listening when they believe that Koresh had found a way through his own interpretations of the book of Revelations and the seven seals and his own religious views to not be a martyr but rather instead to be somebody who came out or who had an opportunity to be the messenger of God rather than to be the martyr. Whether or not those interpretations are accurate is beside the point at this juncture. The question is whether or not the full flavor of the status of this opportunity and this state of mind and the belief of those who were involved in that was presented to the attorney general for her decisionmaking.

The second question that's arisen has to do with the CS gas question, and that is whether or not the attorney general really had sufficient data and information to make the decision on the gas. Did she simply have one outlook on it? Did she fully understand the ramifications of what this would mean to children potentially, not necessarily that it was so? We had testimony yesterday that testing simply hadn't been done on children, that we don't have a lot of information or data, but that there certainly is scientific evidence to indicate that if a child takes in this gas, it can affect a child quite differently, especially small children, and the potential for vomiting, the potential for perhaps even dying from asphyxiation as a result of either vomiting or the gas itself was there. The degree to which that was taken into consideration or understood by the attorney general in her decisionmaking and those who were around her is not at all clear. And I certainly hope that that's clarified as we move through the next couple of days.

This was a crucial decision. Obviously the lives of a lot of people were at stake. And we would like very much on this panel to know the answer to those questions and to that judgment call about what the attorney general really knew and what she didn't. Obviously she'll be here with us on Monday to explain what she did and didn't know herself, but it's very important that we walk through the process to gather as much background on that, for her as well as for us at this point in time.

Today, as Chairman Zeliff has indicated, we're looking forward to hearing from those who planned the gas attack and the assault and better understand why it was done and what was anticipated, not just from the standpoint of the gas but from the standpoint of the tactics that were involved in this.

Thank you very much, Mr. Zeliff.

REP. ZELIFF: Thank you, Mr. McCollum. The chair now recognizes the ranking minority member of the crime subcommittee, our friend Chuck Schumer from New York.
REP. CHARLES SCHUMER (D-NY): Thank you, Mr. Chairman. And just two procedural points before we begin. One is, last night we were told there'd only be one opening statement. So I, being the shy person that I am, prepared mine, and I'll speak for both Ms. Thurman and myself. That's a joke; a wry attempt at humor, or a poor attempt at humor, I guess. But in any case, so I'll be giving the opening statement for both of us.

Second, we did have a snafu with the witnesses. We awoke this morning to find that one of the witnesses we had requested who was coming from Aberdeen Labs, the Army's expert on CS gas, was last night unilaterally told by a majority staffer that he was not on this morning's panel. He will be on tomorrow morning's panel, but we had wanted him on both panels. We talked it over with the majority and came to a decision that rather than hold up the hearings, we would contact that witness immediately. He's at the Aberdeen Testing Ground, which is about 100 miles from here, and he will join us part of the way through. We believe this was simply a mistake by the majority and no nefarious conspiratorial attempt to deprive us of our God-given rights.

REP. ZELIFF: Since the beginning and the end, the constructive cooperation on both sides will bring this thing together.

REP. SCHUMER: Okay. Well, I was going to say, that was the nice part of my opening statement. (Laughter.) Now let me get to the points that I would like to make. (Laughs.) I guess there are a couple of points that are beginning to emerge as these hearings unfold, and I'd like to stress a couple of them. One is, I am very concerned with something that many of the critiques on the right about modern American society that I've had some sympathy with seems to be happening here, too. There's something called moral relativism which says there's no right and wrong about anything, that there are just a couple of theories out there and let's weigh them all. Some -- Paul Johnson, who's a conservative writer and professor, says this began with Albert Einstein in the theory of relativity. But in any case, I see this exhibited in these hearings in a way that I find disconcerting.

Last night was a classic example. Now, by hypothesis, you know, we could have a panel on "Is the world round or is the world flat?" And we could probably find a couple of people who say the world is flat and then we'd have some expert geographers who say the world is round. And the way things work in modern America, everyone on television would just see some people saying the world is flat and some people saying the world is round, and the next day all the media would say, "Well, Joe Smith said it was flat, but John Doe rebutted and said it was round," and it would be left there because nobody draws any conclusions.

I found that to be the case a bit in last night's panel. We had two of the world's experts on CS gas. They testified -- tear gas, CS tear gas is what I am attempting to call it, because CS gas has sort of a nefarious ring to it, and this is the mildest form of tear gas available and is called CS gas or CS tear gas. Anyway, we had two of the world's experts who have spent their lives studying this issue. They come from Britain. And they said unequivocally that the gas was not harmful the way it was used for children.

And, in fact, if you look at the autopsy reports, those horrible reports of everyone who died, there's not a trace found of this gas on any of them. They died in many ways, all the people at Waco. Many of the adults were shot by bullets, many died by asphyxiation, which could have occurred by fire or
other kinds of things -- in any case, these experts testified to that extent.

Then we had two other people. One was a professor of chemistry at a two-year college in eastern Utah who has done no papers, has no expertise on this kind of gas. The other was an employee in the drinking water section of EPA who also had no expertise, and they, of course, painted more dramatic and dire pictures about what the gas is like.

Well, I don't put the four witnesses -- and then there was a fifth witness, who was a very credible witness, Dr. Stone. He's not an expert on CS gas, but he said some troubling things, which I think we're all going to have to weigh.

But the four witnesses who were experts on the gas were not comparable at all, and it seemed to me that that has happened time and time again. We've had two lawyers who were never on the site, who were lawyers, who were representing David Koresh, who said the bullets were fired first by the ATF by them examining a door that is now missing, although the other door has evidence to the contrary, and no one's given any evidence why one door would be different than the other door, and yet it gets reported there's a dispute about who fired first. We had all the agents who were there. There were three reporters, hardly employees of the government, usually looking for skepticism about the government, all on the scene, who said that it was clear that the people in the compound fired first.

We have the fact, which hasn't been brought out, that the second time there was an attempt to go to the compound by the FBI, it is clear -- everyone agrees the FBI didn't fire a single shot, and yet they were met with a fuselage -- fusillade of gunfire that came from within the compound. There are things in dispute here. There are mistakes that were made. I think that the panel that was the most devastating for the government was the one with Sarabyn and Chojnacki and all of those people, and it came clear -- and this panel has done -- this committee has done a service by showing -- that the element of surprise was lost and the raid went forward anyway with the ATF.

Now, we'd known that before, but, as I've said time and time again, to make it public in a televised hearing, fine. This hearing will make sure that doesn't happen again. I dare say that in any federal agency with a large raid like this, when surprise is lost, they won't do it.

But then, to get into extraneous -- to sort of equate the two lawyers with all the others on the scene and say, "This is in dispute," or the experts on CS gas with two people I don't know where they came from, but they have as little expertise or almost as little expertise on the issue of CS gas, tear gas, as I do, and say this is in dispute, we have to examine this, et cetera, to me something is wrong, and that is why we in minority have had trouble with how the panels were set up. That is why we in the minority have some dubiousness about the mission here -- not simply to bring out the truth, but for some to air theories that have been widely discredited, that are held by a few people who believe in conspiracies against the government, and it fans those flames, and that's not good.

So I would ask everybody -- my colleagues on both sides of the aisle, the people listening to this out in America, the media in particular -- this is serious stuff, and the idea of just saying that theories that are flimsy have the same weight as theories that are backed up by witness after witness after witness is a real problem. I would make two other points. That's my most fundamental point. A
second point I would make is related to that, and this one may get some people on -- some of my colleagues upset, but I'm going to say it. We hear everyone professing we're on the side of law enforcement. We want to help law enforcement. And, as I said, these hearings can, because anyone who's on the side of law enforcement doesn't give them a carte blanche. Just as I believe the SEC has been the best thing that happened to Wall Street by keeping them honest, having oversight of law enforcement agencies by outside groups, including panels like these, does the same.

But when you say you're for law enforcement in your openings and then you reach for the most implausible of theories and sort of try to blame law enforcement, I don't think you're really being for law enforcement, okay? If you really back up law enforcement, you don't say that two defense lawyers who were not on the scene are more credible than 20 law enforcement officers and several reporters who were on the scene. You don't say that a professor from eastern Utah in a two-year school who has no expertise on this and a rather controversial employee in the water division of the EPA is the same as the two world experts, what you're doing is giving the benefit of the doubt not to law enforcement, but against law enforcement when you do it.

If you want to do that, fine. Lots of people on my side of the aisle have done that for many years, but it's not fair to say you're for law enforcement and then take every wacky theory and use it as a club with which to beat law enforcement over the head.

So, Mr. Chairman, those are my points. I appreciate the time to give them and hope we'll have an interesting day.

REP. ZELIFF: Mr. Schumer, I'm sure we will, and I'd like the record to show that we've had about an equal amount of time on both sides here on the opening statements.

I'd now like to introduce the panel. To my left, your right, Mr. Larry Potts, a former assistant director of the FBI Criminal Investigations Division. Next to him is Mr. Anthony Betz, who is chief -- the unit chief for domestic terrorism at the Federal Bureau of Investigations and researched CS gas for the FBI. I'm sorry -- let me go back. Next to him was Mr. Jeffrey Jamar, who was the special agent in charge in San Antonio, Texas, and on-scene FBI commander at Waco. Mr. Dick Rogers, in the middle, assistant special agent in charge and the leader of the FBI hostage rescue team at Waco, Texas, and Mr. Byron Sage was the supervisory senior resident agent, Austin resident agency (sic), and the first FBI hostage negotiator on the scene at Waco. Welcome back again today.

And -- let's see. And I guess I already introduced Mr. Betz, unit chief for domestic terrorism at the Federal Bureau of Investigations and researched CS gas for the FBI.

Dr. Harry Salem, Ph. D., will be joining the panel when he can get here. He's the chief of Life Sciences Department of Research and Technology Directorate at the U. S. Army Edgewood (ph) Research, Development, and Engineering Center for the Department of Defense. Gentlemen, if you would, please stand and raise your right hand.

Do you solemnly swear that the testimony you're about to give this oversight subcommittee is the truth, the whole truth, and nothing but the truth?

PANEL: -- (off mike) --
REP. ZELIFF: Thank you. Please be seated. Let the record show that the answers are in the affirmative. The chair now recognizes Mr. Schiff from New Mexico for five minutes.

REP. STEVE SCHIFF (R-NM): Thank you, Mr. Chairman. Mr. Chairman, before asking questions of this panel, I'd like to talk about yesterday's panel with respect to CS gas. I have to say first that I think the credentials of some of the witnesses are understated. For example, Mr. Marcus of the Environmental Protection Agency testified that his Ph. D. was based on or based in part on a study of inhalation toxicology. Second of all, it is significant that when I ask the British experts, upon whom Mr. Schumer said we should place the most reliance, to their knowledge, has the British government ever come up with a plan to insert gas into a building for 48 hours, or has the British government ever come up with a plan to insert CS gas into a building where they knew were children and infants, they both said no. So I think it's extremely interesting that the experts that we're told are the superior experts on this subject can't cite an example of where their government did exactly what our government did in this particular situation.

Mr. Jamar, sir, I have a couple of follow-up questions from yesterday, if I may. I want you to know again that every member of both of these subcommittees, of both parties, wishes that there had been no loss of life at all in that situation. And we hope that these hearings will at least produce enough knowledge that it won't occur again. But I want to ask you a question based upon Dr. Stone's testimony, because he mentioned your name specifically; he said to ask you. Dr. Stone, who was on the attorney general's review panel, said that if the Branch Davidians, being armed as it said with automatic weapons including a 50 caliber machine gun, had wanted to kill ATF agents for the sake of killing ATF agents, that they could have done so, with automatic weapons, they could have literally wiped out the entire group as they were disembarking from the trucks and so forth, and said to ask you about that. Would you respond please?

MR. JAMAR: Well, I'd heard about that, and I'm wondering what the -- our discussion -- he called me, what, two years ago almost, I guess more than two years ago, to discuss his part of the study group he was on. I think the discussion was really, there's no question that the Branch Davidians intended to kill ATF agents when they fired automatic weapons on them when they approached and throwing hand grenades at them, that's not the question. I think that the context of the discussion was, I think by the grace of God, more ATF agents weren't killed. I think that maybe if -- please let me finish my thought here --

REP. SCHIFF: I'm sorry.

MR. JAMAR: I think one thing, probably part of our discussion was that thank goodness there was a cease fire. Thank goodness that, as Jim Cavanaugh described so graphically yesterday, they were able to get agents like -- wounded agents like Kenny King out of there before he died. But I think to infer that there is something redeeming about the fact that they didn't kill more ATF agents is ridiculous.

REP. SCHIFF: You don't agree then with Dr. Stone that they could have killed more if they wanted to?
MR. JAMAR: Well, I think they could have killed more without question. I think they killed as many as they could until the cease fire. I don't think there's any question about that.

REP. SCHIFF: Is it true that all the agents who died were on the roof, as Dr. Stone--

MR. JAMAR: Not true. One agent was shot out front and behind a van, and the other was shot behind the (safe ?), both shot right in the head.

REP. SCHIFF: Thank you for clearing that up.

MR. JAMAR: Yes, sir.

REP. SCHIFF: I'd like to ask about your testimony from yesterday. When the issue was whether the FBI was correct to move and try to end the siege or should have waited, I believe that you personally said I would have waited a year if I had anything to hang a hook on with that. Do you remember saying that?

MR. JAMAR: Yes, sir.

REP. SCHIFF: What would it have taken for you to wait further? What would you have expected--

MR. JAMAR: As far as -- let's use the preparation of the manuscript as an example; that we're preparing to finish, we're going to send the disk out in two hours. Steve Schneider said I just received it; I'm editing it, I may not get it to you until tomorrow, but I'm definitely editing something. We've got something.

REP. SCHIFF: If you had believed that -- time is running short -- if you had believed that when he finished the manuscripts, he would have come out, would you have waited and not recommended the attack?

MR. JAMAR: Absolutely.

REP. SCHIFF: Well, let me ask then, what about the abuse of the children, sexual abuse or other abuse that was going on inside the compound in your judgement? I've been told that that was a reason for advising a forceful end of the siege. If that was a reason for ending the siege, why would you have waited for Mr. Koresh to have finished his manuscripts if you believed he would really have come out?

MR. JAMAR: Well, I think if -- If I believed he was giving me something such as a manuscript, let's get that (met ?), but one of the fears I had was that he was never going to do that, and when he was through with the manuscript, then he would do something provocative. However, let's use the children. Let's say we asked for a tape of the children to force them to clean the children if they weren't already clean. Show us that they're nice and healthy. Show us that. If that would have been the case, if I said wait a year, if they would have given us some children; show us that these children are healthy; show us that the inside, that the sanitation and the threat of disease is not what we think it is. Demonstrate that to us by sending people out who were in good health.
REP. SCHIFF: But just to conclude, you're now saying that if Mr. Koresh really, in your judgement, was going to come out after writing his manuscript, you would have given that additional time, even though previously it's been said that because of abuse of children, not neglect, but of actual sexual assault and child rape, we had to move fast. So --

MR. JAMAR: Don't isolate the one reason. The threat of the children's health, the threat of disease and the fact that we could very easily infer that his previous abuse was continuing was one factor. There were many, many factors, that was just one.

REP. SCHIFF: Okay, I think my time has expired. Thank you, Mr. Chairman.

REP. ZELIFF: Yes, sir. The chair now recognizes Mr. Scott from Virginia.

REP. SCOTT: Thank you, Mr. Chairman. We went over some of this yesterday, and I just want to reiterate. Mr. Betz, what is your position with the FBI?

MR. BETZ: I'm currently the assistant special agent in charge of the Baltimore Division.

REP. SCOTT: And do you have any special expertise in CS gas?

MR. BETZ: I have operational expertise as a Marine officer, police officer and five years with the hostage rescue team.

REP. SCOTT: Is it used very often?

MR. BETZ: It's quite commonly used in law enforcement and has been -- it's been commercially available, I believe, since 1958.

REP. SCOTT: Do you know of any deaths that have occurred as a direct result?

MR. BETZ: No, sir, I don't. There is still no documented death that is unequivocally attributable to CS.

REP. SCOTT: Now, are there other gases, so called tear gases, are there alternative gases?

MR. BETZ: Yes, there are.

REP. SCOTT: CN and OC?

MR. BETZ: Yes, sir. Yes, sir, CN. The Bureau does not maintain CN in the inventory because there are deaths that can be documented scientifically attributable to CN.

REP. SCOTT: What about OC gas?

MR. BETZ: I'm sorry, sir?
REP. SCOTT: OC -- pepper spray?

MR. BETZ: Oh, Oliresidum Capsicum (ph)?

REP. SCOTT: Has the safety of that been documented?

MR. BETZ: Nothing's been nearly as extensively studied as CS.

REP. SCOTT: Is there any question amongst experts as to which tear gas is the safest?

MR. BETZ: There is no question among experts who I've contacted. CS is, by far, the safest and most extensively studied.

REP. SCOTT: So if gas were to be used, there would be no question amongst experts which gas it ought to be.

MR. BETZ: There's been no question among experts that I've contacted. Based on last night, I think there would be questions pending on your experts.

REP. SCOTT: Now the plan to insert the gas and the amount of gas inserted, is there any question whether or not a lethal amount of gas was inserted into the compound?

MR. BETZ: There is no question, based on calculations that I've observed over many hours performed by British scientists, given the knowns at Waco, that being the volume of the building, the ventilation. And in fact, the ventilation was very much understated when Dr. Rice, in testimony last night, said what really happened. What he's referring to was, we based all our calculations on low ventilation just to ensure an extra safety factor in the calculations. But anyone who knows the conditions over the 51 days, including that day, would know that in that area of Texas there is a steady wind commonly through the day, so low ventilation was unrealistic, but we still used that.

REP. SCOTT: Now, everybody knows what ended up happening at the end. Who was involved in the actual decision -- Mr. Jamar, you were involved in the decision to go forward.

MR. JAMAR: Yes.

REP. SCOTT: What did you-- did you expect what happened to have happened?

MR. JAMAR: No, we feared it. We didn't expect that. We were hopeful that the CS gas would drive them from the compound.

REP. SCOTT: So you know that there was a chance that Koresh, because of his beliefs, might use the opportunity to kill everybody.

MR. JAMAR: Yes, sir.
REP. SCOTT: You knew that was a possibility.

MR. JAMAR: We feared that, yes, sir.

REP. SCOTT: What weight was given to that possibility?

MR. JAMAR: Tremendous weight, and that was why it -- we took so long to come to that decision. But there was the other side, as we discussed yesterday, that do we let him determine when he was going to do it, and what measures could we take such as 2:00 in the morning, there's a break-out with a child (under each hand?) and everybody firing, or starting a fire or whatever it might be. What measures could we take at that time when we're not prepared. The idea was to try to do this in the safest manner, was to do it when we were best prepared and you know, with the medical care and everything we had available there.

And the theory on the gas is that we would do it incrementally and make the place uninhabitable. The thought that people would be breathing gas for 48 hours is not correct. They would move away from the areas that were gassed.

REP. SCOTT: Well what are the chances -- what chance did you give to the possibility that they might die as a result of what you did as they might be rescued as a result of what you did?

MR. JAMAR: Well I think we wouldn't have done it if we didn't think that the odds of their being rescued outweighed the fear of mass murder or suicide. What we were trying to do is preempt his, his being Koresh, deciding when it was going to happen. What he did -- he decided it was going to happen on April 19th. But I am firmly convinced that ultimately he was going -- that that end would be there. But we thought our opportunity to save lives was best if we dictated when an action was taken, not Koresh.

REP. SCOTT: Thank you, Mr. Chairman.

REP. ZELIFF: The Chair now recognizes Mr. Souder for five minutes.

REP. SOUDER: I wanted to say for the record that I am getting tired of Mr. Schumer questioning to the point of smearing us about our commitment to law enforcement. Mr. Heineman was Chief of Police in Raleigh, Mr. Bryant was the U. S. Attorney in Tennessee, Mr. Shadegg was an Assistant Attorney General -- (inaudible) -- U. S. Attorney in Georgia. I have never been a defense attorney in my life; in fact I bragged in my campaign that I am not an attorney. I've always been committed to law enforcement. We are trying to ask questions. I am sorry if in the process of asking questions, what happens in the Rodney King case and others, that in fact it sometimes sets back law enforcement because there is so much focus as you are trying to sort through the different process. But it isn't going to intimidate me from trying to get to that point and I hope you realize that it is not helpful to those of us who have been long committed to it, to our support for it, to be constantly accused because we are trying to do our job in oversight.

Mr. Betz, I wanted to ask you some questions. Understanding that you are predominantly a tactical CS expert and not a scientific, you can perhaps at least answer for me and explain if you didn't
directly, who would have directly, and what went to the people who made the
decision regarding the gases -- what did you take into consideration as the dangers of gassing
children? Was it that it's okay to gas them? That no evidence exists showing it's dangerous? Or that
in fact evidence exists that shows that it isn't dangerous? What was the discussion around the
gassing of children and how was that debated internally?

MR. BETZ: Yes, sir, the discussions I had were primarily with Dr. Harry Salem from the U. S.
Army Chemical Research Development and Education Center, Edgewood, Maryland, which is the
singular center, to the best of my knowledge in the United States, for expertise in that area. And
children were very heavily discussed. And I read -- attempted to read -- every paper Dr. Salem gave
me, and he certainly read -- I believe he queried almost 500 individual research reports.

In those reports, including the Hensworth (ph) Report that was mentioned last night, there were
references to children who had been exposed. In Great Britain those children who were exposed, in
enclosed areas, recovered upon exposure to air. In the instance that was mentioned last night, which
is the Park and Giomona (ph) Study in 1972 in California, I am also familiar with that report, and
that child was admitted to the hospital and recovered with antibiotics in 28 days. And that was in all
the research that's been cited, including by Dr. Stone, that was the only instance of a child being
admitted to the hospital that I am aware of.

REP. SOUDER: Is it standard operating procedure as you are inserting the gas gradually to do it
over several days?

MR. BETZ: That would actually add quite a safety factor to inserting gas in any situation.

REP. SOUDER: Had you discussed in your briefing that you might sharply accelerate that process
if the tank was fired upon?

MR. BETZ: What I'm familiar with is that there was also a back up plan that if the tanks were fired
upon there was an alternative plan to utilize ferret rounds in addition to the insertion points.

REP. SOUDER: And did the discussion, when you were talking about the impact of gas on the
children, calculate that if you accelerated the process that it would potentially have more impact and
also could you talk a little bit about -- did you discuss the disorienting impact on the parents and
their children as to whether they would be able to see and get nauseous, be able to find their way
out?

MR. BETZ: Yes, sir. That was discussed very much and I questioned Dr. Salem on that myself.
And I went over the most common effects of CS and there is an effect that causes you to blink
extensively. But the most common effects, and the effects that it is intended to have, are sensory
irritant effects, which is what we desired. There's no effect there that I am aware of that would cause
someone to not be able to escape the environment, which is actually the intention.

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REP. SOUDER: Mr. Jamar, I was really interested yesterday, I think you said seven of the nine people who did in fact come out either came out through one of the holes or were directly rescued. Did that suggest -- did anybody come out through the routes that they thought they were going to come out?

MR. JAMAR: No one came out that looked like to be compelled by the gas, tear gas. I didn't see that. But I don't know of the nine whether how much gas that they touched. I don't know that.

REP. SOUDER: What my question is is that because the walls were knocked down you said that's how many of them got out. Does that suggest that they couldn't find their way out otherwise?

MR. JAMAR: No, the only point there was that the front door -- I think the context of the question was why did you knock holes in the walls. That was the context, was it that the doors were blocked. The front door that they used all the time we discovered, by trying to open it, we were wondering why aren't any people coming out. So we had one of the CEVs push the door and we discovered it was blockaded, so we made another door. We couldn't see out the back. There were doors out the back. But we could never get in there by the pool there -- the pictures here. But you remember what I am talking about -- the swimming pool.

REP. SOUDER: Yes, I know what you are talking about.

MR. JAMAR: We were afraid to go in there because the concrete was so weak and the heavy weight of the tank would maybe fall down in there.

MR.: Gentlemen, we made a hole around the back.

REP. ZELIFF: The gentleman's time has expired. Mr. Conyers, five minutes.

REP. CONYERS: Thank you. Gentlemen, just one word, an observance of the nature of these hearings across the week. No one on either side of these two committees has been a more forceful critic of law enforcement than myself. I've been doing it more often and longer than anyone on the committee. I talked to Secretary Rubin and Undersecretary Noble about the old boys roundup and the environment in ATF, which is more important than the event itself, that leads to these things being summarily happening.

I've talked to three or more FBI directors in the course of my career about the discrimination in employment. I've been talking to Mrs. Meissner in Immigration and Naturalization Service about the longest outstanding and largest class action suit that African American agents have brought against any federal agency in history, and we are trying to take care of that. I go back in U.S. Attorneys to -- Attorney Generals -- to Levy and others. I am shocked that the Department of Justice would try to weaken the exclusionary rule. I've opposed U.S. Attorneys who try to run their trials by press release, intimidating defense witnesses and people brought before the criminal justice system.

But Waco has to stand in an examination on its own merit. That's the subject that brings us here
today. And I think that the whole event now has been made clear. Here was the most massive assault on law enforcement that's ever been unleashed, taken by surprise, pulling up all that weaponry and fire power did not intimidate Koresh and the Davidians one bit. And it's out of that tragedy and the strategies that bring us here today, and the question of gas.

And I would like to ask you, Mr. Sage, in the transcripts, where you were in fact helping -- they were recorded with your comments and other unidentified people inside -- there was some suggestion that all of the references to "Do you want it poured?", "It's poured already," "Should we light the package now?", "Yeah, okay, light it," "You've got to put the fuel in there too" -- this was casually dismissed total hearsay by lawyers that were admitting they were representing Koresh. But this was referring to pouring gas in Molotov cocktails. Can you help us clear that up?

MR. SAGE: Yes. I believe the clear indication of a reading of the transcript would indicate that it was not -- at least it's clear to me that they were preparing that compound for an apocalyptic end -- unfortunately. That certainly was not our intent.

REP. CONYERS: Were there any Molotov cocktails thrown?

MR. SAGE: Not that I'm aware of.

REP. CONYERS: Did you know about any inside the compound?

MR. SAGE: No, sir, not until after assessment of the record here.

REP. CONYERS: And, finally, in terms of the strategy on the gas -- I think it was Mr. Jamar -- maybe Dick Rogers. There was an initial plan to have the gradual insertion of gas, but at some point it was determined that it should be introduced in larger quantities. Can you help us get some understanding of that strategy there or the change of strategy that may have occurred?

MR. ROGERS: Yes, sir, that was not really a change of strategy. We had factored in a contingency that should our vehicle be met with gunfire when it went up to make initial insertion, and the only thing we could do was to respond with additional ferret rounds of tear gas in order to try to reduce the fire coming towards our vehicles. Everyone has made the assumption that because we had military armored vehicles that the agents inside were completely safe. And that's just not true. In order to fire those ferret rounds, there were openings in the sides of those Bradley fighting vehicles that we had actually enlarged from what their original design was for the military.

REP. CONYERS: What was the purpose for that?

MR. ROGERS: Well, the purpose was so that our agents could be able to aim their 40-millimeter gas guns through the openings, and be able to accurately put those ferret rounds into their targets. If you can shoot out you can also shoot in, and that was our concern with the safety of our people in there. If a round came into that Bradley, it's going to ricochet around inside that armored vehicle, and clearly we are going to have casualties among the FBI agents. So when they started opening fire with automatic weapons, we saw green tracers coming out of that building -- then we went to what we call a compromise plan, which is to go ahead and put ferrets into all of those openings.
REP. CONYERS: To insert more gas rather than less?

MR. ROGERS: To insert more gas. They forced us basically to back off of this very phased, very carefully thought-out plan to denied portions of that building over a period of 48 hours.

REP. CONYERS: And had they not opened fire, you would have had a gradual insertion of the gas?

MR. ROGERS: Yes, sir. And let me also clear up one thing: The plan was never to insert gas for 48 hours. The plan was to insert gas over a period of 48 hours -- which is a big difference.

REP. CONYERS: Talk about -- just in concluding, Mr. Chairman, what is the difference there?

MR. ROGERS: Well, the difference is we only -- we were only going to put so much gas into the building. All of the calculations the experts have used is based on putting gas into a place and measuring its effect within a one-minute period. We're talking about 48 hours that we were going to continue this operation -- a huge difference. If you take into account the wind that we had there, blowing across that plain in Texas -- my personal opinion is that gas had very little, if any, effect on anyone inside. I think it was quickly ventilated as soon as we put it in there.

REP. CONYERS: Thank you very much, and thank you, Mr. Chairman.

REP. ZELIFF: Thank you. Mr. Bryant? Five minutes.

REP. BRYANT: Thank you, Mr. Chairman. I have a number of questions, so if you could keep your answers as short as possible.

Mr. Jamar, did I -- I was kind of cut off on my time last night, but did I understand you testified yesterday that the President of the United States was aware of this siege, basically siege plan, but wanted to know if any change -- wanted to be made aware of any change in that strategy?

MR. JAMAR: Yes, sir.

REP. BRYANT: Was that in your notes?

MR. JAMAR: Yes, sir.

REP. BRYANT: Okay. And I assumed that you assumed by briefing Justice and the FBI that the President -- that it wasn't your job to call the President and tell him you were fixing to go in with tanks, but you assumed that the other folks, your superiors, would do that?

MR. JAMAR: The -- we're talking about two different times, Mr. Bryant. I think at the beginning I was told that the President said if -- that don't do anything beyond negotiation without going back in, unless there's an emergency.

REP. BRYANT: Okay, and there was never an emergency?
MR. JAMAR: Okay --

REP. BRYANT: There was never an emergency, was there?

MR. JAMAR: From during the period -- no, we didn't have one that would make us depart from that -- not at all, sir.

REP. BRYANT: Now, I would interpret that to mean that he wanted to know in the future. He didn't have -- you know, he didn't limit that to a week or whatever. He just said if -- unless there's a change?

MR. JAMAR: Well, I think one of the changes that occurred was by -- I think March 12th we had an attorney general now. It was -- remember the normal hierarchy of an administration didn't exist on February 28th, when --

REP. BRYANT: Well, you had an acting attorney general, Mr. Gerson, and you had the transition team, Mr. Hubbell leading that, who was Mr. Clinton's --

MR. JAMAR: Well, that's -- my point is, sir, that had everyone been in place, we wouldn't have been told the President -- we would have been told the attorney general said that -- there's a huge difference in my mind.

REP. BRYANT: But you're not saying the President was dealing directly with you at the time --

MR. JAMAR: No, sir, I'm sorry --

REP. BRYANT: There were people --

MR. JAMAR: My point is in the normal times, like today, if something like that occurred, and there were special instructions from the attorney general or from the President -- it would be to the attorney general, and it would be reported to me that the attorney general said do this.

REP. BRYANT: Okay. Let me move on, if I could. I've got another question for you, Mr. Jamar. Ms. Sparks, from the Texas Human Services Department, testified that she had been asked by the FBI to plan a contingency plan for showers and stuff to clean these children after they were gassed. And right before this occurred this was canceled. Do you know why she was -- this idea of having medical aid and showers for children?

MR. JAMAR: No, the decontamination of everyone coming out was there. It was -- it stayed in place.

REP. BRYANT: Okay.

MR. JAMAR: The survivors were decontaminated.

REP. BRYANT: By FBI or --
MR. JAMAR: No, by medical personnel.

REP. BRYANT: Okay, but the Texas people were not using it -- and that was my point. She left the impression with me that this contingency plan had just been canceled -- at least as far as her involvement.

MR. JAMAR: That's not correct.

REP. BRYANT: Okay, thank you. Mr. Potts, did you play a role in the formation of this plan that included the gas insertion?

MR. POTTS: Yes, sir, I did.

REP. BRYANT: Okay. And do you -- what information, and I guess how frequently did you pass on this information to the Department of Justice?

MR. POTTS: That's not an easy question to answer in short term. I mean, when -- in terms of formation of the gas plan, I think that Mr. Jamar first contacted me probably around March 27th, or somewhere near the very end of March, to indicate that such a plan was being submitted. There were extensive internal discussions that went on for a period of a couple of weeks.

REP. BRYANT: Okay, now let me move in internal to the FBI.

MR. POTTS: Yes?

REP. BRYANT: Was April the 12th the first time that Justice, main Justice, knew about this plan that included the gas insertion?

MR. POTTS: I'm not sure --

REP. BRYANT: Was that the first date? I'm sorry.

MR. POTTS: I'm not sure that April 12th was the first time they knew. It was the first time that we had briefed them. I believe that they knew, as a result of a visit that Floyd Clark, the deputy director, and I had made to Waco on the 7th and 8th -- that discussions were being held regarding possible insertion of gas --

REP. BRYANT: Who is "they" in Justice knew this?

MR. POTTS: Oh, I'm sorry. Well, I think that, first of all, I think there was Mark Richard (sp), there was Mr. Reynolds (sp), Jim Reynolds (sp), there was Mr. Hubbell, and eventually the attorney general -- probably knew as of the 9th that there were discussions going on within the FBI. And we had asked then the director -- Director Sessions at the time -- had asked on the 9th of April for a meeting with the attorney general on the 12th to brief her on what our plan was.
REP. BRYANT: Thank you very much. I believe my time is up.

REP. ZELIFF: Ms. Collins?

REP. COLLINS: Thank you, Mr. Chairman. I yield 30 seconds to the gentleman from Virginia, Mr. Scott.

REP. SCOTT: Thank you, Mr. Chairman. Mr. Jamar, in response to my last question you indicated that you knew that there was a real chance that loss of life might occur, but you believed that the catastrophic ending would eventually occur sometime. I trust --

MR. JAMAR: Based on his conduct --

REP. SCOTT: I would trust that you would have more than just speculation to justify your action, and have a solid foundation for your belief that the risk of loss was justified. And I'm going to just pose the question. I don't want to take any more of Ms. Collins time. But as you answer the answer the other questions, I would be very interested in what kind of foundation you had for that belief to justify the loss of life.

And I thank the lady from Illinois for yielding.

REP. COLLINS: Thank you.

Yesterday, we heard from yet another witness -- Dr. Alan Stone -- that representatives of the National Rifle Association contacted him, posing as a staff member of this committee. The chairman of the Government Reform Committee has declined my repeated request that we call individuals to testify as to their activities which may have interfered with these hearings.

As a member of Congress, I fully believe that we have an obligation to ensure that allegation of unethical or illegal activity are investigated -- particularly when they affect a congressional hearing. Because the chairman has not responded to my last request to pursue these allegations, I intend to forward this information to the United States attorney, for the District of Columbia for review for possible criminal violations, because I think it's extremely that we do so.

I -- let me say this, too. I'm concerned about the decision to use gas in the compound -- not because I believe that either Koresh or his followers were coming out on their own, but because there were children in the compound. And anytime children are exposed or to be exposed to a chemical such as teargas, I certainly want to know about it. The thing that concerns me the most about this, however, is that there has been conflicting issues here. So, the issue that needs to be addressed is the alternatives that were available to the FBI. First, would the children have been safer staying in the compound, while other options were pursued, or was exposure to gas the safest option? I'm going to ask whoever wants to answer that one. Mr. Jamar?

MR. JAMAR: Yes, Ma'am. As I've tried to describe earlier, the concern we had was that -- starting around the 24th, 25th of March there -- that we thought that negotiations were at an impasse, that there was no indication of anything, at that time or in the short-term, changing anything -- that he
would begin to let people come out, or he would change his attitude in any way. So, we said, "What are our options? What options do we have to prevent him from causing the deaths of those people inside?"

Law enforcement has very limited options that are non-lethal. We never contemplated assaulting the compound and making an entry absent indication that he was systematically killing people inside there. We would never contemplate it, except in those circumstances. The options left to law enforcement are limited to insertion of CS gas. That's just about it. So, we started discussing, "Well, if he decides on his terms that he wants to destroy those people inside, how would we stop him? We would stop him CS gas. "So, we said, "Well, to keep him from doing that on his terms, in his timetable, then maybe the best thing to do is to try to preempt that by driving the people from the compound by the use of CS gas."

REP. COLLINS: Attorney General Reno made the decision to allow the insertion of CS teargas only after meeting with a number of experts outside the Department of Justice. And one of those was Dr. Harry Salem, who is an expert on the use of teargas for the Department of Defense, and a witness who was scheduled for this panel. So, I'd like to ask Mr. Rogers about that meeting. And I want to know what the questions were that the attorney general asked about the use of the gas against the children, and what advice Dr. Salem and the other members of the meeting gave please.

MR. ROGERS: Yes, Ma'am. I was at that meeting. Attorney General Reno quizzed Dr. Salem very extensively. She was extremely concerned about the children. She asked a number of probing questions of the doctor. He responded that -- and I don't want to speak for him, but my memory of that meeting was that basically there had never been documented case of a child or anyone else dying from CS teargas, that the military had done extensive testing on it. And basically, he allayed her fears that the CS teargas was toxic or that it would kill anyone inside that compound -- particularly in the amounts that we anticipated putting in there.

So, my impression, in walking away from that meeting was that she was satisfied with the answer she got from the doctor, and that we had reached out to what we thought was the very best opinion and legal expert -- I mean, not legal expert -- scientific expert in this area in the United States, and he had provided those answers to her.

REP. COLLINS: Thank you. Thank you, Mr. Chairman.

REP. ZELIFF: Thank you. Chief Heineman, five minutes.

REP. FRED HEINEMAN (R-NC): Thank you, Mr. Chairman. Mr. Potts, on February the 28th, what was your position in the hierarchy?

MR. POTTS: I was the assistant director of the Criminal Investigative Division, FBI headquarters.

REP. HEINEMAN: Were you Mr. Jamar's direct connect with the hierarchy?

MR. POTTS: Yes, sir. I was.
REP. HEINEMAN: And who were you responsible to?

MR. POTTS: I reported to Doug Gow (sp), who was the associate deputy director.

REP. HEINEMAN: And as per yesterday's testimony, Mr. Jamar said he spoke to you frequently as to the situation in Waco.

MR. POTTS: Yes, sir.

REP. HEINEMAN: I just wanted to -- I was cut off by the red light yesterday at Mr. Jamar's level.

Mr. Jamar, I spoke to you yesterday and asked you about the siege situation, as to whether you considered that a hostage situation?

MR. JAMAR: Yes, sir.

REP. HEINEMAN: And your response to me was, no, you considered that a barricaded criminal situation.

MR. JAMAR: Yes.

REP. HEINEMAN: And certainly it was. There were barricaded criminals in there.

Mr. Rogers -- and I would ask Gary Noesner if he was here -- do you have a protocol for barricaded situations where there are children involved -- at that time?

MR. ROGERS: We do not have written protocols that you go to -- and I'm not trying to be flip -- but as a recipe book, where you pick a particular situation and you flip to it, and we've got written contingency plans specifically. Everything I've been involved in, in 25 years in the FBI, is almost unique in itself. Every hostage barricade situation is different that I've --

REP. HEINEMAN: A lot of variables.

MR. ROGERS: A lot of variables. A lot of different -- generally different people, different situations, and it's all variable.

REP. HEINEMAN: Well, I realize you have to -- as they say -- go by the seat of your pants at a lot of these situations, because of variables.

MR. ROGERS: Well --

REP. HEINEMAN: And certainly -- and certainly, we're looking to improve the process.

MR. ROGERS: Yes, sir. I wouldn't classify it as seat of our pants. I mean, we have very extensive training of our personnel. We have a very good intelligence staff. And when we make a decision, it's not a seat of the pants decision. And I don't know if you mean --
REP. HEINEMAN: But you have to make the decision based on the variables.

MR. ROGERS: And the facts at hand, sir.

REP. HEINEMAN: Right. And hopefully, hopefully, based on what we've learned here yesterday, and what we'll talk about the next couple of days -- the use of CS gas and any other type ordinance as it relates to children. I hope that your section of the FBI -- the training section -- has taken everything, or will take everything that's mentioned at these hearings into consideration, and develop some kind of a greater sensitivity to infants.

Now, certainly you don't know how CS gas affects children. I think there was testimony last night, amongst the Ph. Ds, that none of them knew how CS gas would affect a child under two. But I think that's something we need to seriously think about, in light of what's happened. I don't know how it affects children. So, I was in no better position the judge that than Mr. Jamar or Mr. Potts or his superiors. But I would like to think we could leave here with the lesson learned to give great consideration, even if it's experimentation -- not experimentation, but further study into the effect of ordinance on even small children.

And I'll yield the balance of my time to Mr. Souder.

REP. MARK SOUDER (R-IN): Mr. Jamar, you seem -- it seemed pretty predictable that they were going to fire on the tanks. And didn't it seem predictable also that they were going to barricade the door. Was that the primary place you thought they were going to come out?

MR. JAMAR: Well, the -- that they believed we were going to try to enter the compound, and the way the over-(hearers ? ) sounded -- like there was one comment that, "We're going to wait until they come in before we light this. " There was a comment on the -- I don't think they had the door barricaded because they wanted us to come in.

REP. SOUDER: Did you --

MR. JAMAR: I think the idea was to keep people from going out, not to keep us from coming in. It was to keep people from going out.

REP. SOUDER: That was fairly predictable, given some of the --

MR. JAMAR: Right.

REP. SOUDER: Didn't you --

MR. JAMAR: Well, I don't think it was necessarily predictable. I'm just saying it's easy to conclude that after the fact.

REP. SOUDER: Well, we have all kinds of things that said (there may be? ) mass suicide.
MR. JAMAR: Yeah, but I'm just saying -- but there were other doors, too. But I think, to get back to your first thing about them firing, I believe that it was 99 percent, when we approached with the tank, there was fire. I believe that. Not all people agree with me on that, but I believed that at the time, yes.

REP. ZELIFF: The gentleman's time has expired. Sheila Jackson Lee from Texas.

REP. SHEILA JACKSON LEE (D-TX): Mr. Chairman, thank you very much. And good morning to the gentlemen that are there with us this morning. Let me make a couple of remarks before I ask maybe two very abbreviated questions. I hope, as we continue to unfold the facts in these proceedings -- and we're now almost to an end -- we can keep before us two procedural prongs of the fork; that is, that we are fact-finders, bringing to the table, whether they're witnesses or whether we are Congress persons, our own biases and insight and review.

The second point is that we owe a responsibility to the American people to be problem-solvers and that the only way we can do so is to probe your minds and to try to understand what went on. We were not there. And we've heard a discourse of disparate voices about who's believing what or what side of the aisle is more pro-law enforcement or not. Interestingly, the irony of voices from the American public, maybe people who would have said completely different things if we were having a hearing on the NRA, now making strange accusations because they think people are biased.

But if we can keep before us those two prongs -- facts, as best we can, with human frailties, and then to resolve it -- I hope you will give me your true and honest answer -- you're obviously sworn in; you're obviously law enforcement officers -- so that we can keep that before us and as well make good of these proceedings, which I believe have started in the best interest of the American public.

But I would simply say to you that those of us who've been accused one way or the other can say certain points about law enforcement. Did I agree with -- (inaudible) -- that permeated the civil rights movement some years ago? No. Was I skeptical about the onslaught of law enforcement in the peace movement, student peace movement? I raised my voice of opposition. Was I satisfied that the Black Panthers were truly conspirators to undermine the government? No. And so I raised my voice in concern of that. Or the worst of all, evidence by local police in the filmed version of what happened to Rodney King, did we raise our voices against that? Yes, we did. And I'm certainly against in local communities young black men being arrested for walking on the right side of the street.

However, I think we need to be balanced. And so I think it's important that we acknowledge the efforts that have been made when young freedom riders rode into the Deep South that they had to rely upon federal law enforcement to protect their rights, carrying forth the Bill of Rights and the Constitution. I think we have to realize when bright African-American students tried to enter universities in the Deep South, federal law enforcement had to provide that safety net.

I think we also need to acknowledge when a very vital voice to our entire community, this nation, was silenced by a deadly force, Dr. Martin Luther King, and we didn't know whether this nation would be able to withstand that blow, along with the assassinations of President John F. Kennedy, the assassination of Bobby Kennedy, and yes, the attack on Ronald Reagan, federal law
enforcement had to take its role.

So I think when we begin to look at this issue, let us balance the good and the bad. And my question that I'd like all of you to answer, twofold again, on the CS gas, was the effort to provide an opportunity for those children and those women and those men to come out? Tell me the plan. And then two, why did you not wait? Taxpayers' dollars or not, why did you not wait? Mr. Potts? And I'd like all of the witnesses to answer those questions, please.

MR. POTTS: First of all, CS gas was chosen because we believed it to be the absolute least harmful of any gas, that it would not be harmful to the children, that it would not be harmful to people in there, but it would drive them out of the house. And you have to understand that when this plan was first formulated and we talked about the impact on the children, we went to experts to find out how will this impact on the kids. And even after finding out from the experts that they didn't believe the CS gas would be harmful to the children, we then put in certain aspects in the plan which would build in extra safety aspects for the kids.

For instance, there was very active discussion when Mr. Clark and I went to Waco to talk about how this plan was going to go about. Dick Rogers of HRT was very concerned, as you just heard, about the safety of his people being fired upon. If they started firing from inside the compound, his people were going to be very much exposed to that. If they would have had the perfect plan for them in order of safety for the HRT agents, it would not have included an advanced warning because that just gives people a chance to get their weapons, to aim, and to be ready. It certainly--

REP. JACKSON LEE: Then you might have to aim back and shoot and kill someone.

MR. POTTS: That's right. That's right. And so the advanced warning was something that we talked about an awful lot as to whether -- how much safety are we giving up for the agents. But we did that advanced warning because we wanted to make sure that they knew what we were doing and to give them a chance to get the children and bring them out of the compound. Now, if you say, "Well, why should they take them out of the compound at that point; what if they said, 'We're not going to leave this compound'? "

The other thing that we talked about and discussed was that during a several-hour firefight that you heard described so graphically the other day by Mr. Cavanaugh, during that entire firefight, not a single child was harmed; all those bullets that were going back and forth and not one child was harmed. Where were the children during the firefight? The children were probably in someplace that was safe. You give them an advanced warning; they can either bring them out of the compound or they can put the children somewhere that's safe. That was another safety aspect that we thought about that would give them a chance to save the children from any exposure.

The third aspect of that plan that I think was built around safety to the children and not safety to our agents -- safety to our agents, the best would have been to put all the gas in at one time. The military advised us that. HRT advised us of that. And several of the SACs on site absolutely demanded that it all be put in at one time for the safety of our agents. "You're going to get an agent killed if you try to do this thing incrementally. "But again, for the safety of those people inside, and particularly for the safety of the children, we decided that what we wanted to do was not try to bring this thing to an
end on April 19th. April 19th was not any kind of a D-day where we said, 'We've got to end this thing right now. "April 19th was to put some gas in one portion of that compound and then back away. They can go to another part of the compound. They can go to another place that doesn't have gas. But what it does is hopefully begins to limit the area of that compound that they have access to, and at the same time provide an opportunity for some of those people who are inside to come out, an excellent chance for that to occur.

The rules of engagement during the operation itself -- and I'm sorry I'm going on, but all of this, I think, is important for the children --

REP. JACKSON LEE: Go ahead.

MR. POTTS: The rules of engagement when we started to put the gas in, the attorney general talked to the director and to Floyd Clark and to everyone else and said, 'I want special rules of engagement to make sure that we go out of our way not to gas the children. So if you see a child in one particular area where you were going to put gas in, don't put gas in that area. You don't have to stop the gassing operation, but move to another area of the compound. If you see a child being threatened or if they say, 'If you put any more gas in this compound, the children are going to die or we're going to kill the children," -- any indication about danger or harm to those children, the rule was, 'Back off, get away, stop."

Our hopes were to gas part of that compound, move them to another part of that compound, and move negotiations along. If not a single person came out, if it made David Koresh begin to negotiate with us again in earnest and stop trying to manipulate everyone, we thought that it would be a success. Every one of those things was for the safety of the children and to limit what Mr. Jamar talks about -- you know, I wanted to make sure -- he said I thought that maybe they were going to fire. There was a good likelihood they were going to fire on our tanks. We did everything we could to limit that possibility. Because of the way that we had done this entire operation, every time we got ready to go up to the compound with the tanks, we told them we were going up to the compound with the tanks. If we were going to move cars, we told them we were going to move cars.

When we got to that last piece of fence in front of the compound, most of the people said, "They're going to fire on you if you try to move that fence. "Well, we moved that last piece of fence on the 18th and no one fired. In fact, there was very limited reaction on the inside, except when we moved David Koresh's Camaro. When we moved his car, he became very upset, but not the fence.

We bumped up against that compound with a CEV just days before the gassing operation, and there was no violent response, because everything we did, we told them what we were going to do in advance, and we were honest with them.

We were honest with them that morning. We gave them an advance warning. We then -- we moved up with only one tank to insert gas in one section. Regretfully, they fired on us immediately. Our response, rather than firing back, was to put gas to try to suppress the fire and protect our agents.

REP. JACKSON-LEE: All of the gentlemen --
REP. ZELIFF: Let me just interrupt for a second. Sheila Jackson-Lee, I appreciate your intent here. Before this gets out of hand, I just want to ask you, if you could, the idea is to ask a question, and if you're in the middle of a question and the red light goes on, we don't want 15 minutes to ensue, and if you can't try to keep the questions in such a way and the answers in such a way that we can keep within the integrity of the five minutes -- we can go over a little bit, but we don't want to go over 10, 15, 20 minutes.

REP. JACKSON-LEE: Mr. Chairman, I appreciate your kindness. I'd like the other gentlemen to be able to give an answer.

REP. ZELIFF: That's fair. I just want to make the point that we're trying to keep the intent to the five-minute rule.

REP. JACKSON-LEE: And, Mr. Chairman, in keeping with that, I'd like the other gentlemen to be reminded of my question, rather, of why you did not wait, and I did hear part of that, Mr. Potts. Thank you, Mr. Potts.

MR. JAMAR: Mr. Potts gave a very comprehensive answer. The only thing I want to add to it is that part of the plan, the discussion we had was -- the one thing we didn't want to do is to indicate to Koresh that we're there to fill part of his prophecy by entering the compound, so we kept -- we had the concertina wire around. We kept the Bradley vehicles outside the wire. They could clearly see -- (inaudible) -- they could clearly see the Bradleys were not going to come inside the wire. They could see that.

Only one vehicle approached the compound. That's not an indicator of a bunch of people coming in. That's all -- you know, a tank doesn't hold that many people. There wasn't anybody around the tank, just the one approaching, and we told them what was going to happen. This tank's going to come up, it's going to insert gas -- just come on out and we can discuss this, you know, communicate with us. So that was -- part of that was the safety concerns, but also to communicate to the compound, "We are not entering the compound. We are not fulfilling this prophecy. Don't presume that."

The reason we didn't wait was the thing I've tried to say several times -- I'm not saying it well enough -- is that if we want -- from his actions on the 19th, when he made -- when he had some of those people killed, when he -- by gunfire, others died in the fire from not being able to leave, which I think they were concerned, or most of them, with their salvation, that was his hold over them, is that he would dictate when that occurred. But his actions -- we were hopeful he would not kill all those people, but his actions on the 19th convinced me that that was his plan all along.

I always thought he'd try to survive himself, that everybody else would be there, and he'd come out. That's how much I think he cared about himself.

But his actions on the 19th -- we feared mass suicide, but we thought we could prevent it with the gas, so -- but I still thought there was a chance. I wouldn't have done it if I thought there'd be suicide. But the other thing is if we waited, he would do it on his timetable. That's why we didn't wait any further. If there'd been one thing, Ms. Jackson-Lee, that would indicate to us of a change in attitude, the smallest thing -- that's what he kept saying for another week, you know, he tell us,
"Why don't we try it again? "Which we, you know, we tried and tried and tried, so the reason we didn't wait any longer was if he would -- he would decide when it would happen. And I think the other point I want to make on the gas is we would not have gone with CS gas if there was any indication to us that it would permanently harm those children.

REP. ZELIFF: Ms. Jackson, I think that maybe I need to get a little better understanding of my feeling as to why we needed to initiate something as opposed to just continue the status quo. We looked at the options. What could we have done, other than continue with the waiting. Well, one thing, we could have built a wall or put wire around that compound, as some people have suggested, and I think that doesn't take much explanation to understand that's totally unacceptable and let's just pull back. We could have done a nighttime assault where we actually had to send agents in. We calculated that there would be loss of life to both our FBI agents and most likely to Davidians, perhaps some children, if we had to take that approach, which some people have suggested -- and I've been faulted, by the way, for not doing that -- and we could have inserted nonlethal CS tear gas, which in my experience has been more or less the standard by which law enforcement -- the standard tool which they use to end the barricaded situation.

The other reason is that by continuing with this waiting and having David Koresh initiate something, I only had between a third to a half of my resources physically around the compound at any one time. For example, I would normally keep one or two physicians there in the medical triage area. On the morning of the 19th, I had 12 physicians there. We had probably the largest law enforcement medical contingency set up near that compound that's ever existed. Over 13 paramedics. We had airlift capability with three Chinooks, where we could take out 35 people at one time to hospitals. We had the entire hospital network within that part of Texas alerted, the waiting rooms set up in case there was an explosion or there was some kind of suicide.

So massive preparations had gone into ensuring that if something were to happen that we would be able to handle it and try to reduce the loss of life.

If he were to come out at 2:00 in the morning, we wouldn't have had those things there, so that's the reason that, in my opinion, we needed to go forward and try to move on this.

Contrary to what you've heard, when I heard that David Koresh was coming out, quote unquote, after he translated the seven seals, in my opinion, he was never coming out. Instead of being hopeful, to me that was -- that was the final straw that he has no intentions of coming out, because we had lived with every promise he had broken for over seven weeks.

Your other question was about openings for people to get out of. When we inserted that gas around 6:02 in the morning, they didn't know the gas was coming. We do not believe that that front door was blocked at that time. I think that front door was blocked later in the morning. We saw the front door open several times during that morning, and we knew it wasn't blocked except later in the morning sometime after 10:30, when we went ahead and opened it up. But we had planned to make openings in that building for escape. If there were people in there who were being held against their will, we wanted them to have the physical ability to get out of that compound. So that was factored into our planning all along.
MR. SAGE: You mentioned a need for accountability. I think everybody that's here, has been here, welcomes this opportunity, frankly. I'll try to make my responses brief because of concerns for time. Two questions: effort and why we didn't wait. From a negotiations standpoint, I've never been involved in a situation where so much effort was brought to bare; so much effort was so thoroughly explored. Every viable option that was presented to us, and I stress the word viable, was pursued. We did not turn away anything that could have led to a peaceful surrender of those individuals and extraction of all of them, not just the kids, all of them, but certainly the kids as a top priority.

Why didn't we wait? We've heard several times here that we waited for 51 days. A key thing to remember in the mind set of all of us that last day was that we had not had a child, our top priority, we had not had a child exit that compound in 45 days -- 45 days. We had not had a Branch Davidian exit that compound in 32 days, which is probably --- I was going to -- well, it was probably 32 times longer than most sieges would have last. This was an extraordinary situation. I hope it doesn't become a precedent setting situation for the time spent. CS gas, the introduction of the CS gas from a negotiation standpoint did not herald the end of negotiations. I mentioned this yesterday. We intended to continue to negotiate with David or Steve, or anyone in there that was willing to talk to us and facilitate a safe and orderly exit.

The last thing I'd like to say is that it was never my understanding, and I don't think it was our understanding collectively, to expose these children or anyone else for an extended period of time. The intention of sending in the CS gas, which was embraced by the negotiation team on the 22nd of March, was to initiate or to prompt a rapid exit from that compound, not to prolong anybody's agony or exposure. And I've been in that situation, as I mentioned yesterday, I would have been out in a New York minute.

MR. BETZ (? ): I wasn't involved in any meetings or decisions concerning wait or don't wait, so I have to limit myself to what was provided to leadership as far as factors would be, and that would be concerning CS. And the expert advice that was provided and that I was shown clearly was that it would be virtually impossible, outside of an ideal laboratory situation, to insert enough CS to create risk. And that's the bottom line on the advice that was provided. And given the conditions at Waco, it would have been several times removed from, or maybe hundreds of times removed from that laboratory condition. So to even attain a risk factor by at least a couple of research studies was virtually unattainable outside that environment. And that's the kind of advice that was provided to our leaders.

REP. JACKSON LEE: I thank the gentleman, and Mr. Chairman, I yield back the balance of my time.

REP. ZELIFF: I'd just like to -- you don't have any time to yield back. But again, I think I would like to reestablish the rules that we both worked out on both sides. I think the questions you asked were great questions, and I think the answers were great answers. But if we're going to keep control of this process here, because I know our guys are just itching to get even, and I'm encouraging them not to do that, and we're asking everybody to use a little common sense, tighten up the answers and if we can, we'll keep this under control. I'd just like to announce that Dr. Harry Salem has joined the panel. He's the chief of Life Sciences Department, Research and Technology director at the U. S. Army (Edgewood ? ) Research Development and Engineering Center for the Department of
Defense. Thank you for being here; we apologize for the mix up. I guess you're going to be here tomorrow as well, so welcome.

DR. SALEM: Mr. Chairman?

REP. ZELIFF: If you would stand and raise your right hand. Do you solemnly swear that the testimony you're about to give these oversight subcommittees is the truth, the whole truth and nothing but the truth?

DR. SALEM: Yes, sir.

REP. ZELIFF: Thank you. Please be seated.

DR. SALEM: Mr. Chairman, I'd like to make a correction. My title is I'm the chief scientist for Life Sciences at the U. S. Army Chemical Biological Defense Commands.

REP. ZELIFF: I apologize. We had incorrect information here, and thank you for pointing that out. The chair now yields to the chairman of the full committee, Mr. Clinger.

REP. CLINGER: Thank you, Mr. Chairman. And I, in turn, would like to yield my time to the gentleman from Indiana, Mr. Souder.

REP. SOUDER: Thank you, Mr. Chairman. Mr. Jamar, did you know where the children were in the compound as you were inserting the gas?

MR. JAMAR: Our estimate was they were on the second floor. The area that, once it started, that Mr. Potts eluded to -- where were they during the fire fight. One of the reasons that once the -- very near when the gun fire stopped, one of the reasons that the HRT members rushed to the bus was the hope that the children were in that bus. That was a safe place. Mr. Rogers can describe that in more detail.

REP. SOUDER: But they weren't in fact where you thought they were.

MR. JAMAR: No, sir.

REP. SOUDER: And also, I think it's really important that we don't just kind of -- I mean politicians kind of slide and spin, but we can't have that out of the panel. You didn't say that you thought there was a good likelihood, like Mr. Potts, you said 99 percent certain that they were going to fire on the tank.

MR. JAMAR: That's my personal opinion. I'm trying to give you the best answers I can give you here.

REP. SOUDER: And you have.

MR. JAMAR: It's that my thought was that that's why we -- we thought their motivation was they
feared entry. So we changed the plan; we brought it out where we would take one tank up and firing on that one tank would be -- with just the one tank, we could try to convince them not to fire --

REP. SOUDER: Right, I understand your logic, and you were hoping that they wouldn't, and you used reasonable restraint -- I'm not questioning that. But you assumed you'd go to the next level.

MR. JAMAR: Well, no, I feared we would. I didn't --

REP. SOUDER: Ninety-nine percent's pretty certain.

MR. JAMAR: What I'm saying, it was -- let me get back to why I was saying that. It's because what I didn't want was all the stuff to go up at once -- excuse me, I'm not saying this very well. Forgive me for taking your time. What I didn't want was incremental where we come up with the Bradleys over and over, where they face automatic fire over and over again. That's the context of that.

REP. SOUDER: Right, so when you moved to the next step, and I understand that you had planned if you saw a blockade or didn't see anybody coming out to knock down the walls. Would you have considered to make escape routes? In other words, I'm not suggesting maliciousness in knocking down the walls, but would that not have been considered an entry, and did they not consider that an entry, which is why they lighted the fire at that point?

MR. JAMAR: No, I think they didn't light the fire until noon.

REP. SOUDER: But wasn't that when the walls started to come down, they --

MR. JAMAR: No, no, no, I think it was before that. But I think, remember we're telling them all the time, we're not coming in; come out; please come out; don't sit in there; don't settle it this way. Remember, this is six hours of discussion.

REP. SOUDER: Did you discuss the possibility with the attorney general that it might be perceived that if you're knocking down the compound walls, if they see the end, that they might light the fire at that point, was that discussed?

MR. JAMAR: Well, I don't think we -- specifically, the fire. The idea was that when we -- that they weren't coming out, and we had to make holes to provide escape. That's why we did it. If they had been coming out, we wouldn't have made the holes in the place if people had been coming out. So we presumed they couldn't get out.

REP. SOUDER: I understand it wasn't a malicious attempt to do that. What I'm wondering is, as I read the transcripts with Mr. Sage, he was trying to warn them saying, come out, we're not trying to harm you, and saying that as he's doing it. And then you can hear them say spread the fuel.

MR. JAMAR: Oh, you couldn't hear that then. We didn't know that was happening. If we'd have heard spread the fuel, we'd have stopped right then. We didn't hear that. We didn't know that until those tapes were enhanced. We weren't hearing that.
REP. SOUDER: Well, I wanted to ask Mr. Potts one other question. Did the attorney general know that just seven months earlier, during the standoff with Randy Weaver, the white separatists in Idaho, that the FBI was apparently warned against using the gas at that point, and the U. S. Marshall's log obtained states that the deployment of gas in a residence presents a high degree of risk to small children. There may be a one-year-old baby inside. Was she informed that there already was a warning inside the government?

MR. POTTS: That log is not correct. There was -- that's an absolutely incorrect statement by the U. S. Marshall Service log. The facts of that are that in Idaho, there were discussions about what happens -- as we do with any crisis situation, when you arrive there, you start trying to set up negotiations. But you also have to start planning for what happens if on an emergency basis we have to resolve this thing tactically. As a part of those discussions there was discussions about whether or not CS gas, or some other kind of gas, can be used there.

That never got any further than that. The discussions, when the first started, we asked the questions what would the impact be on the children. While there was some investigation that started into that, some research and some efforts to try to --

REP. SOUDER: Is part of the reason it didn't go further because they decided not to do it?

MR. POTTS: We decided not to do it -- that's right. We decided not to use it, but it had nothing to do with information that had been gathered that it would be -- have any kind of negative effect on the children.

REP. ZELIFF: Mr. Watt.

REP. WATT: Thank you, Mr. Chairman. Given all the testimony we've had about sinister devices and things, I was reluctant to sit down here because this instrument was on my desk. But now I see that the name Larry McIntosh is written on it. So if Larry McIntosh is missing some sinister device I want to make sure it gets returned to him, and I'm happy to see that it didn't explode when I contacted it. Is somebody named Larry McIntosh looking for some device that looks like this?

MR. : (Off mike)

REP. WATT: It's a mind control machine. Let me put it back. Mr. Chairman, I just have two questions. One is a completely worthless question, but that's probably unlike many of the questions that have been asked throughout the course of this hearing. One I think may serve some useful purpose in the context of this hearing and the future conduct of events. But I would submit to the panel that both questions I think in my mind are essentially the same question. And so I want to ask these two questions to you and ask you each to respond. And I won't wait until the end of my five minutes to do that.

REP. ZELIFF: We appreciate that.

REP. WATT: The first question, the one which I think is a worthless question, is if you had this to
do over again, knowing what you know now, what would you do differently? The second question
that I have to ask, which I don't think is a worthless question, but may be exactly the same
consequence, is informed by the experiences you had at Waco and what resulted following the
decisions and actions you took at Waco, what would you do differently in a future situation similar
to the situation at Waco? And if I can get each of you gentlemen, in whatever capacity you made
decisions or took actions at Waco, to answer those questions. If you perceive them to be the same
question, fine, I do. But I would like to get each of your response. Maybe I'll start at this end -- well
actually you were probably more directly involved, so let me start with you in case the Chairman
wants to abbreviate, we'll have the most directly involved people having gone first. Mr. Potts.

MR. POTTS: Those are pretty broad questions. I'll try not to do like I did last time and give quite as
long an answer. But it's -- knowing what we know now, knowing that they were going to light a fire,
what would we do differently? If we knew that they were going to light a fire, one of the problems
of trying to figure out how we would have done this differently is that we had this emergency plan
that if they were going to commit suicide, the plan was to put gas in there to try and get them out
and prevent the suicide and to knock holes in the walls so that they could come out, those who did
not want to participate.

Clearly we would do anything we could to have prevented this mass suicide from occurring. I think
that the negotiations, as Byron Sage earlier, one of the frustrations about this case is not knowing,
not being able to tell everyone who comes behind us -- I would love to have left a note on my desk
when I left as Assistant Director of CID that says if you ever have another Waco, here's how you
resolve it. We did everything we could from a negotiation standpoint. And then when it finally got
to a certain point where we believed, based on all of the information that's coming in, from all of the
experts -- you ask why didn't we wait longer.

One of the reasons is because of all the psychological and behavioral science information we had
that indicates that what Koresh really wants at the end of all of this, at the end of the day, whether
it's a time that you pick by doing something, or whether it's a time that he chooses because he
decides now is my time to do it, is that he wants a fight with the authorities. He wants to end this
thing, as he said, in 1985 I started planning for a battle with the authorities, and he wants to end it
that way.

When you are confronted with those kinds of situations, I think we would have to go into each one
of these different and deal with them and try to negotiate them out and find out what the key is
going to be. We never were able to find that key because I think the key to Koresh was his ultimate
goal was to have this type of apocalyptic end.

Are there little things we would have done differently, there clearly are. I mean we probably
wouldn't play the music. There's all kinds of little things like that that we've changed. We've
changed a lot of policy issues in the FBI to make things better in response to a crisis. We put the
negotiators and the hostage rescue team together under one command. We've done much more
advanced training, not only of field commanders, but of FBI headquarters executives, on how do
you respond to these kinds of crisis. We had an HRT team and the negotiators that trained all the
time and are the best in the world, but we had not given adequate training to the commanders.
Do I think that made any difference in the way this came out? I absolutely do not. I don't think you could have had a better on site commander than Jeff Jamar. So there are changes that we've made, but in the situation itself, I don't think there is any easy answer.

MR. JAMAR: I think one way to answer your question is let's say that we heard on one of our overhears that Koresh said if they come in -- if they approach us in any way I am going to set the compound on fire. Let's say we knew that. Our method would have been to work on the people inside and find a way of communicating with them, which we tried over the loudspeakers. That's why we put the loudspeakers in. I think the lesser items to that that Mr. Potts just described I agree with, the other changes we would have made.

But if we had to know that, that's the part that -- when we know he's going to do that -- of course that's when we sent the microphones in, with the hope of learning what was in his mind. The sad part is though that in these circumstances is when they hold all the cards, when all events are in his absolute control, each one has to stand on its own. I don't think you can presume anything about anyone in these circumstances. What you have to do is learn from experience.

I think the FBI and all of law enforcement has learned from what happened to us there. I think the whole country has learned. I think that's why I think these hearings are so worthwhile, that we should be held responsible for what we did, and we should answer for what we did. But I think that the changes beyond what we could do to him to change his mind or change those people's minds -- the people in there's mind -- limits us to that way. All you can do is take these and do the best you can with them as each one, and keep your mind open and keep reaching out for all you can -- all the information you can.

And I can tell you that everyone there put body and soul in just to save those people inside there. And that will be the same attitude wherever we go. We didn't run out of time, we didn't run out of money. We'll continue to work on it as hard as we can with each one of these.

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MR. : Congressman, I think it's real clear, at least it is to us, that had we -- had our crystal ball been working that day, there would not have been an insertion of tear gas into that compound knowing that a fire was going to ensue. That's the answer to your first question. We would not have done it.

The answer to the second question is a little bit tougher. What would we do in the future -- I assume if we had the same set of circumstances. You know the problem in law enforcement is that every decision has consequences. Every decision this committee will make concerning law enforcement will have consequences.

If we decide, for example, that we are not going to allow CS tear gas to be used any more into a compound, the consequences are going to be for law enforcement that you have just taken away a non-lethal tool that they've used in order to resolve hundreds, if not thousands, of barricaded situations. So I just offer that as an example of the consequences for every decision we make.

I don't have an answer really for the second part of the question, about what we would do in the
future, but we clearly will take all of the lessons learned here -- and many of the things that Mr. Jamar and Mr. Potts have alluded to changes have already been made, and we're trying to make it better.

MR. ROGERS: ( ? ) Congressman Watt, from a negotiation standpoint, this is not -- and it's been said before -- it is not an exact science, no one has all the answers, there's no guarantees. But you enter into it -- it's a very challenging course to attempt to pursue as a negotiator. This was by far the most challenging situation I had ever been faced with in my 25 years in law enforcement. I am extremely proud of the makeup of the team, of the efforts that went into it by every single negotiator, and those who supported the negotiating team from a clerical standpoint all the way up to the coordinators. I am also devastated by the loss of life. I think everybody that participated in this thing, and put such a one-on-one effort into contacting those people -- over 68 people contacted, some extensively -- will forever have an effect on all of us.

But we employed some of the most innovative techniques I've ever seen brought to bear against a situation. I almost said a situation like this: There has never been a situation like this, and God forbid there ever will be again.

But, by experience, the second question that you have, I would say a lot of steps have been made by the bureau internally to address that very issue. We need to learn from each and every situation we have. We've had critiques. We have explored every possible -- everything that worked, as well as everything that didn't work. Sometimes you don't get as much emphasis on those things that did work. We saved the lives of 35 people during the course of this thing -- nine additional people that came out on the last day, and then the two individuals that came in and out. That's a total of 46 people -- that's lost on the public sometimes. I'm proud of that from a negotiating standpoint.

The most significant thing I think in hindsight is probably the coordination between all elements. There is an aggressive effort undertaken now under the Critical Incident Response Group headed up at Quantico to ensure that that's done at the very highest level of exchange and professionalism -- and that will help. But all of these things hopefully will make us a little more prepared for the next one, because unfortunately there may very well be a next one.

MR. BETZ: ( ? ) Congressman, in my role of seeking expert advice on CS, I would still go to Edgewood, Maryland, and ask for the best person available on that. It is the center for that. The only difference would be that I would probably ask for Dr. Harry Salem now, which I could not do then, because I was not familiar with him, based on my experience of his dedication to research and finding facts based on hard scientific data.

MR. SALEM: Congressman Watt, I was asked to advise on the safety and toxicology of CS. The advice I gave was that if a chemical had to be used, the riot control agent CS would be the agent of choice. It is considered the safest and most potent riot control agent that we are aware of, based on the scientific literature.

As a practicing toxicologist, I spent the last 40 years working to save lives and to improve the quality of life for the human race. Personally I was deeply moved and devastated by the tragedy that
occurred at Waco, and for the regrettable loss of life that occurred there. My meeting with the leaders of the team who was involved with this, and the decision-makers, I was convinced that they were motivated by the same motivation that I had -- was to save life. And if I had to make that decision again, based on the scientific literature, the safest and most potent riot control agent that we know of is CS.

REP. WATT: Thank you, Mr. Chairman.

REP. ZELIFF: I would again like to just remind members the last two members took 35 minutes, and there is no discussion or criticism of the content of the questions -- they are good questions, and certainly good answers. I just want to try to appeal to everybody's common sense here. We do have a five-minute rule. And before our side gets carried away -- we're trying to get even on this thing -- and we lose control of this, I would just like to keep and ask for everybody's cooperation. Thank you very much.

REP. CONYERS: The chair is doing an excellent job.

REP. ZELIFF: Thank you, Mr. Conyers, I appreciate that. Mr. Barr?

REP. BARR: Thank you, Mr. Chairman. Mr. Potts, not to get us off on a tangent, but your answer to Congressman Souder's question intrigued me with regard to the -- I think you said the Ruby Ridge crisis center log was inaccurate when it states, quote, "The deployment of gas into the residence presents a high degree of risk to small children," close quote.

MR. POTTS: What I am saying is that I think there is more to that sentence, which says the reason that it wasn't done, that there was a decision not to use CS gas at Ruby Ridge, was because of the high risk that it poses to young children.

REP. BARR: But I quoted you the whole sentence.

MR. POTTS: Okay. And that's that we never reached that conclusion, because we never got to a final decision as to whether to use it or not. We asked the question during the course of it, What kind of effect will this have on the children? -- and that was being researched, but we never got to the point of where all of that information came in. We certainly never got enough information in from my standpoint, or probably from anyone else's associated with that standoff, to use the gas at that time.

REP. BARR: Okay, but so you're not stating that this sentence is somebody inserted it in there improperly or made it up or something?

MR. POTTS: No, sir. I'm just simply saying that it's not -- it doesn't accurately reflect the information that we had, and the information upon which we based the decision.

REP. BARR: You're not saying that the deployment of gas into a residence doesn't present a high degree of risk to small children?
MR. POTTS: What I -- I would defer to our expert on that. We did not believe, even in Waco, that it was a high risk to children.

REP. BARR: Well, okay, I guess you can't clarify that.

MR. POTTS: Sorry, I tried.

REP. BARR: Pardon?

MR. POTTS: I'm sorry, I was trying to clarify it. I apparently wasn't --

REP. BARR: You may have been, but you didn't.

MR. POTTS: Okay.

REP. BARR: Mr. Potts, you also said, I believe, that Mr. Jamar submitted the gas plan to you around the 22nd of March -- is that correct?

MR. POTTS: No, sir, the 27th.

REP. BARR: That's what I said, the 22nd --

MR. POTTS: Okay.

REP. BARR: Two-two.

MR. POTTS: Okay. Twenty-seventh -- two-seven.

REP. BARR: Oh, the 27th, okay, 27. Okay. And then there was discussion of the plan for the next couple of weeks?

MR. POTTS: Yes, sir.

REP. BARR: Okay. And then on the 8th and 9th you and Mr. Clark went to Waco and discussed it further in Waco, among other things that you did there?

MR. POTTS: Actually, we went the 7th and 8th. But there was a tremendous amount of discussion just at Waco and at headquarters about the plan itself. When I first heard about the plan I was very much opposed to it. Mr. Jamar and I had had several conversations on the phone. I believe that after one particular conference call that we had, where we discussed whether we were at the point where we should move to this next step or not, both of us were a little frustrated that the information that we had may not be meshing right. And so when I got home that night around 11:00, Mr. Jamar called me at home, and we had another lengthy discussion about whether or not this was the right thing to do at this time or not. When he did that, he suggested -- he said, "I think what really needs to occur here for you to have a full impact of what's going on in Waco, is that you and Floyd Clark, or someone, needs to come down and --"
REP. BARR: Well, okay, I'm not really -- I didn't ask you about why you went there, I just said then you did go there.

MR. POTTS: Right.

REP. BARR: And you discussed the CS plan further?

MR. POTTS: That's right.

REP. BARR: Now, was the first briefing of the attorney general on the 9th?

MR. POTTS: No, sir. It wasn't on the 9th. We briefed the director -- Director Sessions at that time, and Doug Gow (sp) on the 9th. And then, Director Sessions -- after considering it and asking question and being briefed himself, then set up an appointment with the attorney general for Monday the 12th.

REP. BARR: Okay. There was no briefing of the attorney general about it on the 9th?

MR. POTTS: Not by the FBI. No, sir.

REP. BARR: By somebody else?

MR. POTTS: I don't know. I believe that there were people in Waco on the 7th and 8th from the Department of Justice.

REP. BARR: Well, I'm just reading from --

MR. POTTS: They may have.

REP. BARR: -- from this report. Is this one inaccurate?

MR. POTTS: No, I don't believe it is. I believe that it says that on the 9th, that probably Mark Richard informed people at the Department of Justice that there was discussions within the FBI about a gas insertion plan. And then Director Sessions, having been briefed on the 9th, called the attorney general and asked for a briefing time on the 12th. And that's when that occurred.

REP. BARR: Okay. So, if the -- when it states in here that, quote, "On April 9th, Richard and Reynolds briefed the attorney general on the results of their trip to Waco," that didn't concern the CS gas?

MR. POTTS: It didn't necessarily concern the CS gas. They may have mentioned it to her. I don't know that we --

REP. BARR: Okay.

REP. ZELIFF: The gentleman's time is expired.
REP. BARR: This follows a footnote -- I quoted you from page 259. And this follows after a footnote on page 258, quote, "Potts pointed out that the plan was really just an extension of the emergency assault plan, which had been in effect since the beginning of the stand-off. Was that the context in which, initially, the CS plan was presented to the attorney general?

MR. POTTS: No, sir. Not at all. What I was talking about is the specifics of the plan itself, was certainly an extension of our original emergency response plan.

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

Mrs. Lofgren.

REP. BARR: Thank you.

REP. ZOE LOFGREN (D-CA): Thank you, Mr. Chairman.

Dr. Salem, if you could answer very promptly, because of the time constraints. Yesterday I asked really what some of my constituents have asked -- whether there is a gas available that is safe, but would render people unconscious, rather than a reaction. And if not, is there work underway to develop such a substance? And if it's not classified information, can you answer whether that's being pursued or whether there's anything available.

MR. SALEM: Well, the only type of things that are available to do that would be the anesthetic gases. And the anesthetic gases are used in hospital situations, so that if there is a respiratory depression or any cardiovascular effects, it can be treated.

REP. LOFGREN: So, it couldn't be used unless you had that kind of equipment around.

MR. SALEM: No, sir. Concentration has a tighter control.

REP. LOFGREN: Thank you. Thank you very much.

I have a letter. It's in the packet that all the members have. Dated March 28th from Kiri Jewell's father. And I was wondering if Mr. Potts, Mr. Jamar, or Mr. Rogers could answer some questions about it. It's to the president of the United States, and I'll read just a few phrases -- not the whole letter, because it's so long. He says, "One year to the day before the Bureau of Alcohol, Tobacco, and Firearms attempted to serve warrants, I won custody of my daughter Kiri from her mother Kiri Jewell, who was then a member of the cult and is now among those within the compound.

Females, including children as young as 12, were known to be taken by Howell Koresh's as his wives. He would impregnate them as soon as possible with his holy seed. Girls as young as 13 having given birth to his children. My own daughter told the authorities in Waco, on February 22nd of this year, of how he had sexually assaulted her when she was 10. Kiri's mother participated in the assault by delivering Kiri to him in a hotel room, having full knowledge of his intent.
Kiri recently described to me how she was taught by Koresh and other followers to commit suicide. When I asked her why this was taught, she said that Koresh preached that they had to be martyred to gain salvation. The plan was to instigate an assault by the authorities in which they would be killed. But if the feds could not be baited, Koresh and his followers would commit suicide.

Mr. President, I feel that Koresh has placed you and the agents under your command in what amounts to a no-win situation. He has planned this for years, and he knows full well that politically there is no right move for authorities to make against him. If they attack, people of both sides will die, and the authorities will be blamed. If authorities continue to stand back and wait, the public will grow weary and come to think of the federal forces as ineffectual. Stand back too long, and the Davidians will simply resort to plan B -- suicide. And then the authorities will be blamed for not stepping in.

Kiri and I have several long talks about how this crisis affects here, and we've discussed her concerns for mother. She understands that it is likely that another assault would result in the deaths of many of her friends in the compound, who responds, 'Daddy it's better that some of them die, than all of them.'

Koresh and his followers are using America's values to hold us all hostage. Those who are inside are there by choice. America did not create this situation. It was designed by a pedophile with a Bible in one hand and a gun in the other.

Please, Mr. President, end it now."

My question -- I'm sure the president didn't get this. I mean, he gets millions of letters a year. But my question to the three of you is whether you had received this letter had been booted down to you in any way, whether this information -- if you had it -- made a difference in your thinking, whether it matched your own, whether you saw the CS gas attack as sort of an in-between spot of where Kiri Jewell's dad was? And since we're looking for improvements for the future, whether information such as this from a former cult member, or someone who was in communication with people in the complex, would have been helpful? Is there something we need to do to establish a different information flow in the future? Thank you.

MR. POTTS: I don't remember seeing that letter. But I can tell you that I think that it was a fairly accurate assessment of where we felt we were, in terms of it being an exceptionally difficult situation to resolve, that he was not going to come out voluntarily. We were told by Park Dietz, a psychiatrist on March 5th, that this stand-off -- Koresh has everything he needs inside that compound. All his basic goals and needs are being met inside the compound. There was always a concern that he would do something to lure us inside. So, that's the kind of--

REP. LOFGREN: Do you think --

MR. POTTS: -- that information is --

REP. LOFGREN: If you could just answer whether it would make a difference -- and I don't want to abuse my, so Mr. Jamar and Rogers --
MR. POTTS: Well, we did do that. We went out and contacted everyone who had been inside that cult that we could, to try to locate them and see what their perception was going to be of what would occur inside.

REP. LOFGREN: Okay.

MR. POTTS: So, that information is certainly valuable. And we tried to collect it.

REP. ZELIFF: Your time is expired.

REP. LOFGREN: Could we just get real quick answers --

REP. ZELIFF: Okay. I'll tell you what.

REP. LOFGREN: I tried to --

REP. ZELIFF: Let me just answer this. You got one. And by agreement with the minority -- Mr. Schumer and I are going to limit this little game -- and I don't mean to call it a game, but to two people. In other words, pick any two and you get a response, once the red light hits. And we both agreed that that's a fair process to move it along.

Okay, so can pick one more person for another response.

REP. LOFGREN: Mr. Jamar?

MR. JAMAR: We did very in-depth research on the possibility of the suicide. I don't know when that letter was received at the White House, but if it was received in time, we would have received it. I'd be surprised if we did not. I don't remember it specifically, but I'd be very surprised if we did not -- it was not promptly sent to us. All that was part of the process, as Mr. Potts said. I think his perceptions were very, very accurate. But he would have been interviewed, probably -- or his daughter might have been interviewed as part of that suicide review. So, we would have that information. And we were in a position to review all the letters. We got some crazy letters, and we got some well intended, thoughtful letters, too. And they were all reviewed, from all sorts of sources. We had people looking at it as best we could. And I -- that about answers that, I think.

REP. LOFGREN: Thank you. Thank you, Mr. Chairman.

REP. ZELIFF: Thank you very much. Mr. Ehrlich?

REP. ROBERT EHRLICH (R-MD): Thank you, Mr. Chairman. I am going to yield to Mr. Barr. But before I do, I want to yet again revisit my sense of frustration with respect to the political environment surrounding these hearings. And this is really a good panel to do it with, because I want to congratulate the panel. And I just want you all to know -- Mr. Jamar, particularly your comments -- what you all have told us so far today really goes to the bottom line of the hearings. We want to know what you all think went wrong, new policies, new procedures that you have instituted to correct what went wrong at Waco. And I, for one -- and I think everyone -- I speak for
everyone on both sides of the aisle -- appreciate that. That's the purpose of these hearings.

Because the political environment is such that -- the other day, we had a member on the other side of the aisle characterize Republican depiction of Mr. Koresh as a child molester -- and I kept a list here -- child molester, pedophile, pervert, evil, con artist, liar, snake, arms trafficker, and real bad guy -- as an attempt to rehabilitation.

And I opened the paper today and I see a writer from the Post has now labeled this same depiction of Mr. Koresh as a Republican attempt at posthumous -- or a posthumous attempt to act as Mr. Koresh's protector. That's a frustration that we all feel with respect to the political environment surrounding these hearings. I know you all appreciate that. Most of us here want to get to the bottom line with respect to the real issues surrounding Waco. And with that comment, I'll yield to Mr. Barr.

REP. BARR: Thank you. I have a question for Mr. Sage. But while I'm doing that, Mr. Potts, if you would, please, take a look at page 101 of the report of the deputy attorney general, and that indicates even clearer than the previous citation that I made to you that there were discussions with the attorney general on April 9th concerning specifically the CS plan.

Mr. Sage, am I -- and again, I just want to clarify something. The page that we have here concerning the language that was given over the loudspeaker during the course of the time when the CS was being inserted --

MR. SAGE: Yes, sir.

REP. BARR: It says, among other things, "This is not an assault. "And I believe that that was being spoken over a loudspeaker so it could be heard inside. Was that occurring simultaneously with the armored vehicle going up to the building?

MR. SAGE: The initial broadcast was as the armored vehicle was -- the CEV was just turning onto the driveway, as I understand. It was far from the building. The building --

REP. BARR: Right, but am I -- I think that you stated that this was broadcast over and over again.

MR. SAGE: That is correct. That's why I said the initial broadcast was well before the vehicle was --

REP. BARR: No, I'm not asking about the initial broadcast. I was wondering if this language, including the words "This is not an assault," was being broadcast over the loudspeaker during the course of the time when the vehicle was going up to the building --

MR. SAGE: "This is not" --

REP. BARR: -- and the gas was being inserted.

MR. SAGE: "This is not an assault. We are not entering your building. "And it was repeated several
times.

REP. BARR: Okay, while the vehicle was going up to the building?

MR. SAGE: Yes, sir, and throughout the morning for six hours.

REP. BARR: Okay. Mr. Jamar, did you -- I think there was some discussion earlier about what the electronic surveillance could pick up during -- until the capability went blank. I believe --

MR. JAMAR: You're talking about on the 19th? On the 19th, sir?

REP. BARR: On the 19th. I'd say I recall that Mr. Ray Jahn, who was the lead prosecutor for the Department of Justice in this case, told the committee that he could hear the language we talked about earlier, about the fires and the fuel and so forth, the first time he heard it, without any sort of enhancement.

MR. JAMAR: The first time he heard the tape?

REP. BARR: Yes.

MR. JAMAR: I think the explanation that I received was that when we were listening -- there's a difference between listening to a tape and listening to a live broadcast. The tape may pick up something that the ear cannot. It can record it. I think that was the problem. What we were losing was from -- it was being transmitted by radio to a point on telephone lines back to the monitors.

REP. BARR: For safety reasons, the monitors were not forward. Am I clear on that?

MR. JAMAR: The radio transmission to telephone lines --

REP. BARR: Yeah, I understand how the transmission itself works.

MR. JAMAR: Okay.

REP. BARR: What I don't understand, because I've listened myself to a number of undercover operations, and while I certainly understand that there may be a lot going around outside the person who's listening, certainly sitting in a command post listening, in my experience you're generally able to pick up pretty much as much as you can off of the unenhanced tape.

MR. JAMAR: Well, I can tell you the monitors didn't hear it. The people monitoring did not hear it. I'm trying to find a plausible explanation. I've been searching this forever. I would love to have known that that was going on. And the only thing that I've been told -- I'm not a technician by any stretch of the imagination -- is that that could have been the problem. I'm not saying it was. But the monitors did not hear that. We didn't know that until we heard the tapes, and some of which have been enhanced.

REP. BARR: Okay, so that may be one problem area.
MR. JAMAR: Certainly a problem area.

MR. POTTS: Could I just clarify? I'm sorry. Could I just clarify the comment on page 101, Mr. Barr?

REP. BARR: Sure.

MR. POTTS: Mr. Barr, what that is is information that was coming from Waco. This would have been taken from logs and information at the site. And what the site is saying is that they were contacting us. Discussions began at FBI headquarters and with the attorney general to determine if the plan would be approved. I believe, from the FBI's standpoint, the only contacts that we had with the attorney general on the 9th would have been Director Sessions' phone call to her to say that "We want to brief you on the 12th regarding the plan." I think that's consistent (with that?).

REP. ZELIFF: Okay, thank you. Does the minority want to -- do you want to move?

REP. SLAUGHTER: Mr. Chairman?

REP. ZELIFF: Mrs. Slaughter from New York.

REP. SLAUGHTER: Thank you, Mr. Chairman. Dr. Salem, I don't know if you're the correct person to ask about this, but I don't know that we're going to have a correct person either. We heard last night from a psychologist on CS gas and some chemists. But my understanding, Dr. Salem, is that autopsies showed that every child that died died of asphyxiation from the fire. Is that your understanding?

MR. SALEM: I have not seen the autopsy reports.

REP. SLAUGHTER: Are you aware of any person -- have you ever seen or heard of any person who has died from CS gas exposure?

MR. SALEM: No, ma'am. Most of the -- all of the published literature that I have seen, they all say that there are no authenticated cases where anyone has died following CS exposure. I know there have been a lot of allegations and a lot of conjecture on that point. But the literature does not reveal any authenticated cases.

REP. SLAUGHTER: I'm hoping that the persons who call witnesses here -- and I don't have any idea who they're going to be -- will bring in someone who can tell us about the autopsies. Mr. Sage, do you have any information on this?

MR. SAGE: Yes, ma'am. After the 19th of April, being the supervisor in charge of the Austin and Waco offices, I also assisted in the coordination of the FBI resources, crime scene. And part of that was the accumulation of information to be reported to headquarters from the medical examiner's office in Tarrant County, Dr. Fawani (sp). I don't have a definitive bottom line -- I wish I did -- as far as exact numbers of identified victims and so forth. But we did have reports --
REP. SLAUGHTER: As I understand it from some things I've read, you identified almost every victim. Is that correct?

MR. SAGE: Yes, ma'am. Yes, ma'am. But there's -- we still -- numbers are still approximate. We're trying to give this panel and the American public absolutes, and we just don't have a bottom line yet from the medical examiner's office. But children perished from gunshot wounds, at least four of them, one from a stab wound and two from blunt trauma that may well have been part of that bunker-like building collapsing on them. But none, according to the reports that we received at the command post and forwarded that information to headquarters, died from any effect of the CS gas. I do not profess to be an expert in the field, but I'm telling you what the reports were that came to me at the command post in Waco.

REP. SLAUGHTER: It would seem those should be available for us. I certainly would like to see them. Mr. Rogers, I wanted to give you an opportunity to talk this morning, too. You were on the scene.

MR. ROGERS: Yes, ma'am, I was.

REP. SLAUGHTER: And as I see from brief notes that I have here, it says that you went to an underground tank. I'm not exactly clear on what that is. Is that what -- was that the buried bus --

MR. ROGERS: Yes, ma'am.

REP. SLAUGHTER: -- that's being referred to there?

MR. ROGERS: That was --

REP. SLAUGHTER: What did you find there?

MR. ROGERS: When we went into the buried bus, what we anticipated and hoped we would find would be the children where they had placed them for safety during this. But we went -- I don't believe we have a photo up there right now, but --

REP. SLAUGHTER: I'd like to see one. If we could --

MR. ROGERS: If we can have a --

REP. SLAUGHTER: Does it serve my time, Mr. Chairman, till we put the photo up?

MR. ROGERS: If we can have a photograph of the compound. They had placed a school bus underground and covered it with dirt. And in that particular photograph, it's in -- would you point out -- it's in the lower part of the photograph as you look at it. They had a partial building foundation being constructed and there was a tunnel that they also constructed from the partial foundation that went into the front door of the bus. Again, all this is underground. And then the bus went right up to -- a portion of it was actually underneath the edge of the compound building, and they had built a
trap door in the floor, in the hallway, at the end of the hallway, that went down into the rear of the bus. So it was a contiguous structure once they had completed their construction. And as soon as the fire department arrived, I directed them to start putting water into the area where the bus was in the hopes that we could cool it down. About 17 agents of the hostage rescue team then entered that about waist-deep water in that foundation --

REP. SLAUGHTER: This is water from the fire department?

MR. ROGERS: No, ma'am, this is water from rain in Waco and just settlement water that accumulated there.

REP. ZELIFF: Your time has expired.

REP. SLAUGHTER: Could I have just a second more because we took time to put the photo up?

REP. ZELIFF: A quick second.

REP. SLAUGHTER: Thank you, Mr. Chairman.

MR. ROGERS: Anyway, ma'am, they went in through that water filled with the human excrement that they had dumped in there. There were actually bodies in there that they had placed and there were rats. They went through this tunnel and then broke into the bus and found that there were not children, there was no one in there. But the air was cool, it was fresh, there was no gas, there was not smoke from the fire. But they had not chosen to place their children in there.

REP. SLAUGHTER: Thank you, Mr. Rogers.

REP. ZELIFF: Okay, thank you.

REP. : Mr. Potts, you were a key decision maker at Ruby Ridge as well as at Waco, is that correct?

MR. POTTS: Yes, sir.

REP. : And Mr. Jamar would call you for approvals? I mean were you basically acting as --

MR. POTTS: From Waco, yes, sir.

REP. : Right. And as -- on the issue of the CS gas, at Ruby Ridge was that considered at one point there and then abandoned? And if so, why?

MR. POTTS: It was one of many options that were being discussed should there have to be some kind of a tactical resolution. It was never necessary to make a yes or no decision. We did not necessarily decide against it, but we did not decide to go forward with any gas. And there would have had to have been a lot more discussion and review of facts before we would have made such a decision.
REP.: When the reference on this marshall's log was indicated, you discredited that.

MR. POTTS: I discredited it as being that's not correct that we made a decision not to use it because of harm to children. And I would also like to point out that at Ruby Ridge I have some information that there were other types of gases that were being discussed that the marshals had and that was not CS gas.

REP.: This study --

MR. POTTS: They may be referring to that.

REP.: -- was raised about the deployment of gas into the residence because of the high degree of risk to small children and the possibility that a one year old baby was inside. But you are saying that that's not correct.

MR. POTTS: What I am saying is that we never made a decision. We discussed whether or not it would be harmful or not to the children, and had started to research that. There was no conclusion and there was no final decision about --

REP.: Wouldn't that be just a -- I mean wouldn't that be kind of -- it may not have been a red light, but at least a yellow light, a major area of concern if something like that was discussed openly. Even though some may try to discredit it, but wouldn't that be a good reason to be very cautious in the use of CS gas at Waco, just from what you learned from --

MR. POTTS: Yes, sir, that's why we looked -- we didn't learn anything from Ruby Ridge in terms of gas, the effects of gas.

REP.: But just the information that you had out there as you were making decisions.

MR. POTTS: We didn't have any information out there that indicated that CS gas was harmful to children.

REP.: So how did they get this information?

MR. POTTS: I don't know, sir.

REP.: Okay. Did Mr. Hubbell ever tell you that either he or the President wanted to approve any shift away from the negotiation plan?

MR. POTTS: Not Mr. Hubbell, no, sir. Stewart Gerson (ph) told me very early in the operation, he actually told the Director -- Director Sessions -- who informed me and then I told Jeff Jamar, that the President had adopted that we were going forward the correct way with negotiation and he wanted to be advised if there was any change.

REP.: Any change -- and so he was in agreement with the philosophy of negotiating. If that was the
change, he wanted to know and be involved?

MR. POTTS: That's my understanding of what Mr. Gerson (ph) told Director Sessions.

REP.: So tell me about your relationship with Mr. Jamar. Like how many -- how much time every day would you be in contact?

MR. POTTS: We would talk several times a day, sometimes at length.

REP.: Were you ever involved in the information that we received relative to the coming out plan that the two attorneys talked about the other day?

MR. POTTS: There were discussions early in April about a coming out plan, just like there were in early March. That's separate from the discussions about preparing the manuscript on the seven seals which started on April 14th.

REP.: Right, but the one on the 14th -- the two attorneys that talked about that the other day and gave us testimony, Mr. Jamar indicated that he didn't think that they were serious. They felt that it was very serious. The next day I believe Mr. Sage talked to Mr. Hubbell for two hours. And I think you indicated -- I'll let you answer that directly -- that you did not -- did you talk to Mr. Hubbell about that plan?

MR. JAMAR: Yes, sir, I did.

REP.: You did. So between you and Mr. Hubbell and Mr. Potts, all three of you decided to move forward in spite of that plan?

MR. JAMAR: I think it's an overstatement that I decided to -- I wasn't in a position to make any command decisions in this and was not brought into that conversation for that purpose.

REP.: Who made that decision?

MR. JAMAR: Sir, all I know is I was asked to give a candid straightforward assessment of negotiations and that's what I did.

REP.: Did Mr. Potts -- did you make that decision?

MR. POTTS: Certainly the recommendation that we had from Waco, in my discussions with Jeff Jamar, were that this is not a serious effort on the part of Koresh, based on contacts with Judy Snyder and Steve Snyder, who verified that they hadn't even received the first page of any -- of the first seal to edit. So all of that was certainly considered. The one thing we did say, Mr. Chairman, Jeff Jamar said it, I said it, the Attorney General said it, Lloyd Clark, everyone else, if there's any change in the hope that this thing can be resolved differently up to the last minute, then we need to know.

REP.: The question that I had in all due respect, are you the one that made that decision or did you
pass it on to the Attorney General, the President, Mr. Hubbell or anybody else, or did you just decide no, we're not going to pass that on.

MR. POTTS: Oh, no, sir, Mr. Jamar made a decision on the scene, I made a decision based on his recommendation, I passed it along to my boss, who passed it along to Director Sessions, who I assume passed it on to the White House. I don't have any information that Director Sessions had any contact with the White House, no, sir.

REP. : But you did pass it on to the Attorney General's office?

MR. POTTS: Yes.

REP. : Okay, thank you very much.

REP. ZELIFF: We're going to on the left, to the right. Mr. Coble from North Carolina.

REP. COBLE: I thank the gentleman. The gentleman from Maryland earlier referred to this Washington Post article implying that someone is attempting to protect Koresh. Folks I think that is unfortunate indeed. No one, so far as I know on this panel, at any time is protecting or defending David Koresh. I'm getting tired of having to repeat that. Folks in my district who are viewing these hearings don't read it that way. People in America I don't think see anything in this hearing as coming down on the side of Koresh. So let me set that aside for the moment.

Let me revisit last night just a minute, Mr. Chairman, because I have a quirk with this sort of thing. This is my third hearing, so it may have been mentioned earlier. But we had two witnesses from Great Britain last night and the implication was that the Justice Department got them here and paid their way. Well folks, the Justice Department didn't pay their way, the taxpayers paid their way. In this town the implication is always oh, that's just Congressional money, or this is FBI money, or this is Justice money. It's taxpayer's money. Just a little quirk that I wanted to make clear for the record.

The other day when Mr. Zimmermann told us about the plan of surrender -- now folks I'll admit, this is subject to interpretation -- Mr. Zimmermann felt that plan of surrender was about to come to fruition. Others I am sure think that it was no where near fruition. But when he told that story, gentlemen, I had a pain in my stomach. Now I'm not a delicate, fragile sort. I'm not implying that I'm Mr. Macho, but my point is I'm not overly emotional and overly sensitive. I don't normally feel pain when I hear a story. But when I heard that story I could visualize all the deaths being avoided, all the suffering being avoided, come out and surrender and let's get on with it.

Now having said all that, Mr. Sage, I want us to revisit the April 15th telephone conversation you had with Mr. Hubbell. I think this is a crucial time and I think that conversation elapsed into about two hours, if I'm not mistaken. During that time, Mr. Sage, do you remember whether or not you ever used the word surrender. And I'm paraphrasing now, but Mr. Hubbell -- there's a plan in motion out here.

Mr. Zimmerman's talking about -- even the Texas Rangers the other day were familiar with the plan, so obviously folks knew about the plan. Was that ever communicated, Mr. Sage, to Mr. Hubbell?
MR. SAGE: Absolutely. The answer is absolutely. We discussed the concept of surrender in finite detail, including the same feelings that you've expressed here were felt by me, felt by all of us, when the promises to come out on the second of March did not come to pass. That same type of intent, desire, commitment, and prayer is, I'm sure, what the defense counsel was feeling and has expressed to this council in good faith. We did express that. We expressed also the consistency of the pattern of broken promises. No one was attempting to pain this in a particular fashion to facilitate a certain end, such as a tactical resolution.

What I portrayed to him was a -- during the course of that conversation and to the other parties that participated on the Washington, DC, end of the conversation was that it was a consensus -- and I need to stress this -- of the negotiation team. This was not the singular -- my singular idea, which was in contrast to the rest of the negotiators that had been there off and on the entire period of time, which at that time was in the -- close to 40-some-odd days.

The -- what I expressed to him was a factual chronology of exactly what efforts had gone forward, what successes we had received, including, at that time, 35 people that had come out, but I also have to stress, in all fairness to him and to you and to the American public, that at the time of that conversation, it had been 27 days since we'd received anyone out, and, maybe even more importantly, it had been 41 days since we'd received any children. That's as of the 15th of April.

But, yes, sir, the surrender plan was discussed in detail because it had not changed -- and that's a very important part. It had not changed substantially since the understanding that we had with Mr. Koresh allegedly on the second of March. The only change that had been inserted was to facilitate the ability to use defense counsel.

REP. COBLE: Mr. Sage, the chairman is going to come after you and me both if we don't terminate, because the red light illuminates. Thank you, Mr. Sage. Thank you, Mr. Chairman.

REP. ZELIFF: Thank you, Mr. Coble. Mr. Brewster?

REP. BREWSTER: I guess -- Mr. Potts, were you the one that devised the plan on the intermittent use of gas and execution of --

MR. POTTS: No, sir. I certainly --

REP. BREWSTER: Who did that?

MR. POTTS: I certainly participated in those discussions. It was actually a team of people who devised that. All of the SACs -- Dick Rogers, Floyd Clark -- it was everyone sitting down, trying to figure out how we could do it and cause the less likely violent response from inside.

REP. BREWSTER: Okay. Did the same team, then, decide that if the tanks received fire, that you would immediately put major quantities of canisters of gas in there?

MR. POTTS: There was a recommendation that in lieu of returning fire, that we would recommend
that the plan indicate that if we received fire, that we should put gas throughout the compound in order to suppress the fire we were receiving.

REP. BREWSTER: And you obviously had to expect fire, because the people had chosen to prevent the initial raid, so --

MR. POTTS: Actually, we -- we -- we thought that it was a possibility, but we believed by the incremental aspect of putting the gas into the compound and also coupled with the fact that we had made an announcement in advance that we may not, in fact, get fire.

REP. BREWSTER: And the only one I saw in the bios here that was present at the talk with the attorney general was Dr. Salem at the time the CS gas was discussed? Was anybody else on the panel involved in that? It was my understanding the attorney general had great concern for the children, as far as using the CS gas. Was she made aware that if you received fire in the intermediate -- intermittent use of the gas, that you would escalate it dramatically? Was she aware of that when she approved the deal?

MR. ROGERS: Certainly I can answer that. To my knowledge, we -- I briefed her on the entire and full plan that we had at Waco.

REP. BREWSTER: Did you specifically make her aware that if you received fire -- gunfire --

MR. ROGERS: Yes, sir.

MR.: It was understood.

MR. ROGERS: That answer is yes.

REP. BREWSTER: The answer is yes, that if you received gunfire, you would escalate the use of the CS gas? Okay.

And, Mr. Potts, I've noticed you've been in several positions of authority there, finally promoted to as high as deputy director, and then recently removed from that position. What has caused that?

MR. POTTS: Yes, sir. When I was appointed to the acting position in January of this year, I think the director understood and I understood that it could be a controversial situation because of Waco and Ruby Ridge, and I informed the director on that day and I informed him every week thereafter that if at any point this hurt the FBI or hurt him that I didn't want to be in such a position. I'm very proud of being a special agent in the FBI, and I'll serve in any position that I'm asked to serve.

I think it came to that point where it was not being helpful to the FBI for me to be in that slot, and the director and I discussed that, and that's what caused it.

REP. BREWSTER: What is your position now?

MR. POTTS: I'm assigned to the Quantico training academy.
REP. BREWSTER: Okay, but you do feel you've been fairly treated?

MR. POTTS: Yes, sir.

REP. BREWSTER: Okay. Can anyone tell me what changes have been made in FBI procedure or whatever that might prevent the culmination of an operation like Waco in the future? Has there been any change?

MR. POTTS: We've made a lot of changes, sir, in terms of policy and how we handle these things. The first thing we did was we combined the hostage rescue team and the negotiating element under one command. They train together, and we think that's going to have a significant impact on these in terms of their coordination and communication. The other thing we did is we selected FBI HQ executives and we selected field executives and we have given them extensive training on hostage and barricade situations.

REP. BREWSTER: If you could get something to us in writing on those changes, I would appreciate it. One quick question: Looking at it, it's obvious to me that, at least for adults, CS gas could not have been a problem as far as getting out of the building. When the fire started, in your opinion, why did the Davidians not come out? Was there barricades across the doors? Had the walls fallen in? What -- I know a human -- any of us can think about, yeah, we'll stay in a building burning up. I don't think many people would do it, and I don't understand why they didn't come out.

MR. JAMAR: Well, I think it's a combination. I think some were probably convinced if they left that compound that their salvation would be in the balance. They were convinced that's why they were there. That's why they stayed the whole time with him and didn't come out during the 51-day siege, that they would believe that their salvation rested with David Koresh.

I would -- I can't imagine a human being not fleeing gas or fire, but salvation? Maybe shot to prevent it, prevent them from leaving. The combination of those two I think probably was 90 percent of them.

Some people got out. Some people got out and didn't bring anybody else with them, which again tells me that there was control on who could come out and who couldn't, and that person was David Koresh. That's who controlled. And I believe that the highest percentage of those people, they stayed in there because they thought their eternal salvation rested on that decision.

REP. BREWSTER: Anyone else have a different idea? Thank you. Thank you.

REP. ZELIFF: Thank you. The chair now recognizes Mr. Henry Hyde, the chairman of the full committee on Judiciary. Mr. Hyde.

REP. HYDE: Thank you, Mr. Zeliff. I want to preface my remarks by trying to identify myself with Mr. Ehrlich, who has talked about not taking sides. We have been portrayed as anti-law enforcement, and I just want to say I've spent my legislative career supporting law enforcement. I think what you people had to do was one of the most difficult assignments imaginable. You're
underpaid, you're over worked and 51 days out in the plains of Texas, confronting a situation requiring you to be at the ready constantly, is a very debilitating adventure. And I have nothing but the highest praise for law enforcement generically. But that doesn't mean we can't learn from mistakes, errors in judgement, absences of prudent utility, and I think that's our duty.

Because frankly, I am bewildered in the wake of Jonestown why more time wasn't spent, and somebody, not out in the plains of Waco, but maybe in a nice comfortable office in Washington, didn't immerse themselves in the religious tenants of this Branch Davidian group. Because I think judgements were made that they were hostages, and I think that's wrong. Judgements were made that they would react to the gas and other things, the noise, as normal people would, and they weren't normal people in the sense that they had a belief system that was very abnormal and very different. But Mrs. Sparks tried to get through to somebody. She understood something about their theology. The two lawyers, DeGuerin and Zimmermann, understood something about the theology, and the negotiators for the FBI could have, I believe, and it's easy to say from hindsight because you tried and you tried, but could have known that gas wouldn't drive them out, and it didn't. The noise wouldn't drive them out, and it didn't. But they could have been, shall I say, manipulated out through the Bible or through some other way. But I don't think enough attention was given to that.

Now I asked the question. Mr. Sage said if I was in there, I would be out in a New York minute. Was it reasonable to assume that these parents, who have devoted themselves to this Koresh, evil person, who were taught that the outside world was Babylon, and that an FBI attack was the beginning of the apocalyptic end, would pick up their infants and run out into the embrace of the Babylonians? Or is more reasonable to assume they would pick up their suffering children, put wet rags over their mouths and try to find a remote corner where they could pray and wait? In other words, the question isn't what would you do or I do but, if the gas were coming in, but what would a Branch Davidian do? And I don't think much attention was given to that. And again, I'm very surprised in the wake of Jonestown that somebody didn't understand you're dealing with bizarre but fervent beliefs, and the true believer can be approached not through tape recordings of rabbits being slain, but theological approaches. And I just think that was a major, major flaw. Anybody wish to comment?

MR. JAMAR: May I respond?

REP. HYDE: Yes, sir.

MR. JAMAR: We did consider all of that. We did discuss religion. We did consider they were Branch Davidians. We also considered what he would do in the long run as was discussed earlier today. I think to -- the loud noises -- it was a trivial thing that I don't think had any impact whatsoever. It didn't start until March 22nd. That was all the negotiation, everything else we had done was at that point. I don't think that really made any difference. But I think for you to say that we did not consider religion is just not so, Mr. Chairman. And I think that--

REP. HYDE: Well, you rejected it obviously, because you thought you could drive them out with tear gas.

MR. JAMAR: We didn't reject it, sir. We sent the Tabor's tape in; we sent Phil Arnold's tape in for
him to consider. We didn't reject -- everybody says we rejected this surrender plan. We didn't reject the plan, sir. We went in -- let's look at -- are they responding? Is Koresh doing one thing he said he would do in writing the manuscripts as the lawyers hoped he would. He didn't do that, sir. The delay we got from them -- Steve Schneider tells us he's responsible for editing it. We said when are we going to see something? This is the 18th of April. Here's four days that Koresh could have prepared a manuscript that the lawyers hoped would be done in two or three days. Four days later, Steve Schneider tells us, I haven't seen the first page, and you're not going to get it until I edit it. So what does that tell me after 51 days?

REP. HYDE: But he was working on it, because they had the disk from the woman --

MR. JAMAR: If they had the disk, why didn't they give it to us?

REP. HYDE: Pardon?

MR. JAMAR: If they had that disk, why didn't they give it to us? If that was so, why didn't Steve Schneider tell us that? I can tell you why, because his instructions for 51 days was to stall us, give them the same old run-around every day, and he did that. Nothing changed, sir. Their attitude was the same. I'll tell you, I wanted it to work. I wanted that to work as much as anybody else did. But from the discussion, when our negotiators pressed them, where are you on the preparation of the Seven Seal manuscript, if you review those transcripts of the negotiations, during those -- that period from 14th, 15th, 16th, 17th -- you'll see how much the negotiators pressed for progress. It was a constant subject of discussion. Not one indication that we could expect anything in the near future, which tells me, sir, that it was just another angle by Koresh to stall.

And our great fear was, as long as he stalled, and he was waiting, from his actions on the 19th, he was waiting for an opportunity to fulfill his prophecy, that he would do it on his time and in his way, and it would be unsafe for everyone.

REP. HYDE: Well, I regret my time is up. Thank you.

REP. ZELIFF: Thank you, we're in the process of a vote. The committee stands recessed for 15 minutes.

(Recess.)
REP. ZELIFF: The joint subcommittees on Waco will now come to order. (Sounds gavel.) The chair yields to Mr. Mica for five minutes.

REP. MICA: Thank you, Mr. Chairman. Dr. Salem, you were called by the minority, and you also briefed the attorney general on CS gas. In fact, you have been described by the minority as the leading CS gas expert among all the various witnesses that we've heard. Let me ask you three very important questions. First, as you sit here today, can you tell me if the CS gas at the concentrations put into the compound, could not have killed the infants in the compound?

MR. SALEM: Sir, the concentrations that have been calculated are well below the lethal concentration for CS. And, as the committee is aware, CS is really not a gas, although it's been referred --

REP. MICA: So, you can tell me that the babies and the infants listed on this autopsy report were not killed by CS gas in the concentrations in the compound?

MR. SALEM: In my professional assessment of the riot control agent CS, I have reviewed the published information, and have evaluated it, and the concentrations required to get an effective riot control, or to get the involuntary slight response, is many thousands time less than what is required to kill.

REP. MICA: Secondly, did you tell the attorney general that the infants would not die or be harmed?

MR. SALEM: I told her there would be no permanent harm to children -- and this was based on what I had reviewed on the Park and Giomona (ph) paper, and what was reported by Hensworth (sp), and confirmed by Ballentine's (sp) work, and also in the National Research Council, which is a committee of the National Academy of Sciences, who reviewed the data. And in the best opinion of all of these people, there is no increased sensitivity of the effects of CS on infants, young adults and older people.

REP. MICA: Did those studies specifically deal with young infants and children, as in this situation?

MR. SALEM: The one case that has been referred to, where an infant had been exposed for up to two or three hours, in what appears to be a very high concentration, and was hospitalized with a chemical pneumonia, did recover, was cured, and only after 28 days -- or after 28 days of hospitalization it was released as cured. And this was --

REP. MICA: Well, have you ever written an article or published anything on CS gas, particularly with children or infants?

MR. SALEM: No, I have not. However --

REP. MICA: Let me ask you, if I may -- and I don't mean to cut you off -- you said CS gas was best for riot control. That was your opening statement. If we put 24 children and infants in this room and
blasted in periodically canisters of CS gas, and even if we bash a hole in the wall, and for four hours, what would be the condition of those children after four hours?

MR. SALEM: Well, I think you'd have to make the calculations of how much material is put in, the volume, the --

REP. MICA: You know, several canisters, if we tried it in here? And then, after 48 hours, as the plan was, to keep pumping this gas in there. Wouldn't they have suffered or be tormented?

MR. SALEM: Well, let me --

REP. MICA: Adults in military -- Marines suffer and are tormented -- for just a few minutes. Wouldn't they have been tormented? Then, irregardless of whether they died from the gas, they were suffocated by our actions, or incinerated.

MR. SALEM: Well, as I've said, I have not seen the autopsy reports. I don't know if they were suffocated --

REP. MICA: Well, this is what I have to go on.

I want to now turn to Mr. Potts. I chair the House Civil Service Subcommittee dealing with personnel issues and the conduct of federal employees. Were you ever disciplined for your actions or decisions relating to Waco?

MR. POTTS: No, sir.

REP. MICA: Were you ever disciplined for your actions or decisions relating to the incident of Ruby Ridge?

MR. POTTS: Yes, sir, I was.

REP. MICA: And after these actions were taken, were you elevated to another position? And if so, what?

MR. POTTS: Well, sir, I was --

REP. MICA: So, you were disciplined?

MR. POTTS: Yes, sir. I received --

REP. MICA: And then you were elevated to what position?

MR. POTTS: I received a letter censure based on Ruby Ridge.

REP. MICA: And then what position were you elevated to?
MR. POTTS: And then I was elevated to deputy director?

REP. MICA: I put a chart up here continuously that no one in the Department of Treasury ended up losing their job in the end -- accepting or receiving responsibility for actions of misconduct. Was anybody in the Department of Justice fired or disciplined as a result of the April actions in Waco?

MR. POTTS: No, sir.

REP. MICA: I have here a schedule of disciplinary offense and penalties for FBI employees. One of them is listed. Number six is unauthorized possession of use of or damage to a government owned or leased vehicle. And the penalty provides a minimum of 30 days suspension for an employee who willfully uses or authorizes the misuses the authorized use of a government owned or leased vehicle. Was anyone suspended for 30 days?

MR. POTTS: I just said, sir, there was no one who, in my information, was disciplined as a regard to Waco.

REP. MICA: Thank you.

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

Mr. Wise, from West Virginia, you have five minutes.

REP. BOB WISE (D-WV): Thank you, Mr. Chairman.

I want to open up -- would the panel just raise their hands, everyone who's paid by the federal government, please raise your hand.

Mr. Jamar, are you not?

MR. JAMAR: I'm retired.

REP. WISE: Oh, you're retired now. Do you receive a federal retirement check?

MR. JAMAR: Yes.

REP. WISE: Okay.

I make this point because the gentleman from North Carolina -- and we thank you for your service. The gentleman from North Carolina properly made the point that the only two -- that two of the witnesses last night -- who, incidentally, are the only two acknowledged experts in CS gas, who testified last night, were paid for by the taxpayer. And he's quite correct.

This whole panel, with the exception of one retired gentlemen, is paid for by the federal taxpayer. Some of you who've testified previously -- on previous panels -- were paid for by the federal
taxpayer. This whole bench up here of members of Congress is paid for by the federal taxpayer. This row of staff sitting behind us and in front of us is paid for by the federal taxpayer. This is a taxpayer paid hearing. And whether you think that it's a very fruitful hearing or, at the end of it, you conclude that it was not worth a dime -- it's all paid for by the federal taxpayer. So, I think we can get that behind us and acknowledged. To Mr. -- I believe, Mr. Rogers. But if I'm not asking this question properly, if you'd just let me know and I'll direct it to someone else. In terms of the usage of CS gas by domestic law enforcement -- U. S. law enforcement agencies, do you have any knowledge as to how many agencies still use CS gas in this country -- law enforcement agencies?

MR. ROGERS: No, sir. I don't have definitive knowledge. My impression is that the vast majority use it.

REP. WISE: And does the FBI still, in certain situations, use CS gas?

MR. ROGERS: Yes, sir. It's in our inventory.

REP. WISE: And indeed, before and after Waco, has not the FBI used CS gas on several occasions?

MR. ROGERS: I can't address after Waco. We still have it in our field offices.

(REP. WISE: And I noted in the record last night, information I had received from the FBI that -- of 867 state and local law enforcements surveyed, 688 maintained CS gas in their inventory. So, in terms of a law enforcement -- a tool for law enforcement, CS gas is still considered appropriate to use. Is that correct?

MR. ROGERS: That is correct.

REP. WISE: Mr. -- or I'm sorry, Dr. Salem. I'm going to turn to you. My first question is, I have been handed a curriculum vita for Dr. Harry Salem. Is this -- I don't know whether you can see from here. Is this an accurate -- is this your resume?

MR. SALEM: Yes, sir.

REP. WISE: And, Mr. Chairman, I don't know whether it's been handed out. I believe it has across both sides of the aisle. I would ask unanimous consent that this be made a part of the record.

REP. ZELIFF: Without objection, so ordered.

REP. WISE: And for the U. S. government, do you consider yourself to be a specialist in the area of gas -- and particularly CS gas?

MR. SALEM: Yes, I'm a inhalation toxicologist. I have spent 40 years in the field. I have edited a book on inhalation toxicologists. I have conducted original research in respiratory reflexes and respiratory irritants. I am the chairman of the inhalation specialty section for the Society of
Toxicology. I'm the editor in chief of the Journal of Applied Toxicology, and serve on the editorial board of the Journal of Inhalation Toxicology.

REP. WISE: Thank you, Doctor. Did you hear the testimony last night of Dr. Upshaw and Dr. Rice?

REP. WISE: No, sir.

REP. WISE: Okay. I have a lot of questions but I'm not going to get to them in this round, apparently. Let me ask you, what effect would CS gas have on children who were covered with wet towels?

MR. SALEM: Dampness increases the skin irritation of CS. But other than that, it would probably degrade the CS so that they were not inhaling the CS.

REP. WISE: What impact would the presence of whether there are 35-knot winds or 25-knot winds, as was suggested by one witness last night, and openings in windows and walls in the building have on the effectiveness of CS gas?

MR. SALEM: That would reduce the concentration so that the effect -- it would probably not reach the effective concentrations.

REP. WISE: And if we're not talking about a 10-by-9-by-8-foot room, but instead a compound the size of the Waco compound, would that further dilute the impact of CS gas?

MR. SALEM: Yes, sir.

REP. WISE: I have more questions at another time if I'm able to get back. Thank you.

REP. ZELIFF: Thank you very much. The chair yields to Mr. Blute.

MR. BLUTE: Thank you very much, Mr. Chairman. And I want to thank the witnesses for their testimony. I just want to ask one clarifying point and then yield to the chairman for some follow-up questions. Mr. Jamar, last night there was some discussion with Dr. Stone about something that you had said, and it was a side issue but I think an important one. You had said something about the fact that when the ATF cattle cars pulled up to the compound, the conditions existed for a more severe ambush and perhaps more loss of life of the ATF agents.

MR. JAMAR: We discussed that this morning with Mr. Schiff. I think the context of that was that it could have been a greater tragedy than it was. What I said earlier was that the fact that they didn't kill more ATF agents is hardly redeeming. That's not what this is about here.

REP. BLUTE: Oh, we certainly understand that.

MR. JAMAR: That's the context of that. I don't know why it's (a point of?) discussion.

REP. BLUTE: Well, I think the point being that if the Davidians' first impulse was ambush, then
they perhaps could have -- and again, this is speculation -- delivered a more fatal blow to more agents.

MR. JAMAR: Well, I think Jim Cavanaugh's testimony is extremely clear on that. The barrage of gunfire was an ambush, and they kept firing until there was a cease-fire. So I don't think there's any question of their intent --

MR. BLUTE: Well, I understand that. I'm not arguing --

MR. JAMAR: -- to kill as many ATF agents as they could.

MR. BLUTE: -- that the ambush later on was not an ambush. I'm not arguing that. I am saying that conditions existed where this could have been a worse ambush. Would you agree with that?

MR. JAMAR: Oh, you mean the --

MR. BLUTE: If the Davidians began firing while the ATF agents were still in the cattle cars --

MR. JAMAR: Could have. We didn't discuss that, though. That was not discussed.

MR. BLUTE: -- (inaudible) -- and that may have raised issues of whether it was wise of the ATF to pull the cattle cars up so close in this engagement. But I just wanted to clarify that you did think that conditions existed where it could have been worse.

MR. JAMAR: I'll tell you, it's the grace of God that more ATF agents weren't killed. I don't think there's any question about that.

MR. BLUTE: Okay, thank you very much. And I would yield the remainder of my time to Chairman Zeliff.

REP. ZELIFF: Thank you, Mr. Blute. Mr. Sage and Mr. Jamar, the problem that I have on this thing and what is in the pit of my stomach is watching that building, that scenario, that tragedy, the tanks going in, coming out, going in, the loudspeakers yelling or blaring out, saying, "This is not an assault," and it just doesn't -- if I tried to explain this in a town meeting in New Hampshire, I would have a great deal of difficulty in trying to justify how our government, why our government, with such use of force, what we did. I mean, a matter of who shoots first or who started the fire -- I mean, the thing that keeps going back, why was the military there? Why were the tanks there? And this is the thing that bothers me an awful lot. And I go back to the other day, which is still driving me crazy. Koresh's attorneys -- and I guess Zimmermann and DeGuerin, when they were led to believe by discussion with you that they had plenty of time -- I mean, I assume that that's correct. I mean, at least that's -- they said that they were told by you that they still had time, they had plenty of time, that they had a surrender offer -- this was on the April 14th -- from Koresh. And I guess from that point -- and you all, the three of you, indicated -- you and Mr. Potts and Mr. Sage had indicated that, as you reported this to your superiors, you didn't take it seriously. From that point on to the use of CS gas, did you ever say directly to Koresh, "We need to see proof that you are writing the seals or we will go in with the gas"?
MR. : No.

REP. ZELIFF: Not at the time you were puncturing the building, but --

MR. JAMAR: Starting April 14th, when Dick DeGuerin told me this is the -- remember the point I tried to make to Congressman Hyde a while ago -- we sent the tape in of Arnold and Tabor, which was the basis of the idea for Dick DeGuerin's discussion with Koresh. And he pitched Koresh on it and he sent that letter out. The discussion of me saying there was plenty of time, the context of that was he would begin writing the manuscripts, he would take two days, maybe three for each one, and he would diligent -- I mean implies he would be diligent in that, and we would wait like we had been doing.

However, I didn't say we would wait for 14 days. I just said we've got plenty of time. Okay. Now on April 15, 16, 17, 18, the negotiators pressed them, what's the progress, how are we doing here, are we doing anything on the transcripts -- on the manuscripts. And the two conversations that strike me from my memory most from that was that in a discussion with Judy Snyder she is asking for a word processor so she can proceed. We end up sending her -- because she was going to be the typist -- we ended up sending her some ribbons.

But the main conversation though, Mr. Chairman, that is embedded in my mind is Steve Snyder. Steve Snyder told us for days that he always edits -- you know because of Koresh's lack of education -- he helps him in preparation of written material. On April the 18th Steve Snyder says to us -- he says I have not seen the first page. I have not edited a thing. Okay, this is April 18th. The promise was -- and even I think there was implication that he had been writing on them already -- the promise was that there would be a manuscript every two days, it would take about two days. The first four days we got nothing. What's that tell me? Well 51 days we had nothing. And I think that's the conclusion.

I did not reject the attorneys plan, not at all. It was not rejected. What it does is it gave Koresh a chance to do something to look like he might fulfill, he did not.

REP. ZELIFF: But on the 15th it never came out that you said directly to Koresh that if you don't come out with this in three days or four days we will use the gas?

MR. JAMAR: Well you never give somebody like that an ultimatum, Mr. Chairman.

REP. ZELIFF: Okay.

MR. JAMAR: You never give ultimatums.

REP. ZELIFF: Let me if I can just introduce -- ask unanimous consent to introduce as evidence -- this is Ruth Riddle's decoded message of the seven seals of the Book of Revelations. This was pulled out of the fire, the tapes were, and then this then was written up as evidence that he was working on that message on the seven seals.
MR. JAMAR: All they had to do was say we've got a disk, we're going to sending it out, and that would have stopped --

REP. ZELIFF: And I guess the problem that's driving me crazy -- and I have great respect for all of you, I really do -- and I've been supported by law enforcement, I will continue to have respect for -- especially the FBI -- but the problem is were you guys listening. I don't know.

MR. JAMAR: We were listening. I've just recited to you what we went through. I was not -- I had not decided that. If I was that impulsive, why wouldn't I have done something in March? Why would I have let Dick DeGuerin go in on March 29th?

REP. ZELIFF: Thank you very much.

MR. SAGE: Do we have time at all for me to comment on that issue?

REP. ZELIFF: Yes, you do. Up to two people.

MR. SAGE: Thank you very much. I believe you made the statement -- and if you didn't I apologize -- but I want to make sure that it's not left on the record that we did not take that offer seriously. We took it very seriously. But it was -- the point that's been made hopefully was that it was yet another in a series of what we perceived to be possibly, and probably, delay tactics.

You introduced the transcript from the disk that did in fact come out with Ruth Riddle. I have some serious questions about that because during part of the process where we did press Judy Snyder as far as what type of equipment she had -- this is in response to her saying at this rate with manual, this could take me a year, because she was angling for a lap top, which we considered and passed that forward. We did pass in tapes --

REP. ZELIFF: You considered and passed forward -- you gave her tape?

MR. SAGE: We sent in tape to immediately -- so that they could use those lap tops and also considered the possibility of sending in lap tops -- I mean could use the manual -- and the possibility of sending in a lap top -- considered it, explored it, didn't dismiss anything at hand. During the course of that she indicated to us that there were no other facilities available. The power by this time had been turned off for approximately 37 days. How in the world, if he was working on this from the 14th, how did they generate that disk? If the power had been off for 30-something days, how did they generate that disk? I would -- without just accepting it at face value, I would suggest there's a possibility that may be have been previous work, what have you. It's also been reviewed. I wish I had a copy of a report -- I don't think there's been a formal report generated, but we'll pursue that. To the best of my knowledge when it was reviewed by the Baylor School of Law -- School of Religion -- Baylor University -- it was found "not to be a scholarly work."

REP. ZELIFF: Thank you, Mr. Sage. Who on your side? Okay, Mr. Schumer for five minutes.

REP. SCHUMER: Okay, thank you. And I would just like to go over two points here. First, again what this all means to law enforcement; and second, the question we're coming to, which I think is
In terms of law enforcement, I guess until last night, sitting through all these hearings, my view was probably not different than most Americans which is I'm getting sick and tired of all the attacks on the ATF and the FBI. Sure you guys may have fouled up and done a few things wrong, but you acted in good faith; you were trying to enforce the law, and we should give you the benefit of the doubt because of the person, David Koresh, you had to deal with.

And this morning, one after the next, my colleagues here have been saying, I'm a good friend of law enforcement, and I believe them to be sincere in that. But I would say that those who sort of take way-out and outlandish theories and use them sort of as a club to bang law enforcement over the head, their questioning and actions in the hearing don't follow those statements. Now, this morning I must say, I've noticed a milder tone towards law enforcement -- no talking about Darth Vader helmets and things like that, and I'm appreciative of that.

The second question I have is, could this have been done any differently? And we have to take that in the context of once ATF bungled its part of the operation, because already then you have a siege mentality, and we'll all admit that they bungled it, particularly losing the element of surprise. To me, that's the worst thing that happened. And then the FBI came in, and you guys were there. And you know, Janet Reno says she's searched her soul, and she couldn't have found a better way to do this; that all the alternatives were rotten given the monster, Koresh, we were dealing with. My questions don't relate to the use of gas. I think that is on the verge of these conspiratorial theories. I think CS gas has been proven to my complete satisfaction, Dr. Salem, was probably the right thing to use, better than any alternative, including the alternative of waiting. Because then you run into the problem that Koresh would do something on his own, no question about it.

My basic problem is not the use the gas, but the thing that I wonder about is the method with which the gas was administered. Because you're dealing with people under siege; you're dealing with Koresh, a madman. And you have these -- I've seen the pictures -- you have these huge vehicles, not the Bradley fighting vehicles, I'll leave those military conspiratorial theories to my friends who are worried about Posse Comitatus, but the CEV -- you know, these CEVs -- these combat engineering vehicles banging holes into this compound and going right up there to try and administer the gas. But the banging of the holes, which you state was necessary to allow the gas to blow through, is quite a frightening activity. And it seems to me it is not the type of activity designed to encourage people to come out. It seems it is not the kind of activity that is designed to create a view that we are not out to harm you.

And so I guess my question, and I'd aim this at both Mr. Jamar and Mr. Potts, is could you please explain why that method was chosen; what the alternative methods might have been, and why my view, which I'm willing to admit -- would like to admit -- is wrong in that these vehicles were the best way to go. And again, I am terribly mindful of the fact that we're -- you know, that we have a lot of Thursday morning quarter-backing going around; that everyone could say, oh, do it this way, do it that way, but you guys were under pressure. The attorney general was under pressure, and any day Koresh could have lit up that compound on his own, and then everyone would be yelling at you for waiting so long and not going in and rescuing those kids sooner. But that is my biggest concern about this, and I'd like to hear your answers, both Mr. Potts first maybe, and Mr. Jamar second.
MR. POTTS: Congressman Schumer, the reason that the tanks were there in the first place was because for safety of the agents.

REP. SCHUMER: Just a point occurred. When you say tanks, you mean these CEVs, right?

MR. POTTS: CEVs --

REP. SCHUMER: They look sort of like tanks on the film.

MR. POTTS: We first had Bradley vehicles there, and --

REP. SCHUMER: Right, but those were different; those weren't the ones that banged into the compound. But go ahead, I don't want to --

MR. POTTS: The Bradley vehicles were for transportation of the people, and Koresh indicated that he could blow those 40 to 50 feet in the air. We went out, and we got CEVs and also some Abrams tanks. We had the gun barrels intentionally removed from those tanks and told Koresh that these were not offensive weapons. We were not bringing in tanks to attack his compound. They were defensive just simply to protect our agents. Those same vehicles that delivered the gas, we'd also used Bradleys and those same protective vehicles to deliver milk and other things to the compound. Now I realize there's a significant difference there, but I'm just saying the only way we could travel around there was tanks.

REP. SCHUMER: Right. I'm not worried about the use of tanks. It's the banging into the compound at the time the gas was being administered, and there was a siege-like mentality.

MR. POTTS: There was quite a bit of discussion, sir, about whether or not we use those to try to get the gas in, or whether we sit back at a distance and fire ferret grenades into these -- into the compound. It was believe that by starting out with firing on them, they would believe that we were shooting at them, shooting bullets at them, ammunition at them, and that would be more provocative than trying to go up and put it in this other way.

REP. SCHUMER: But you haven't answered about the banging and the trying to create holes. You could still have administered it this way and not -- you know, the building was shaking in the pictures that I -- in the films that I saw.

MR. POTTS: The tactical people, I think, are better off to answer that in terms of why that had to occur.

REP. SCHUMER: Okay, who is that? Is that Mr. Rogers? Then may I have him as my second person as opposed to Mr. Jamar, if he's more suited to answer it? Thank you, Mr. Rogers.

MR. ROGERS: Yes, sir, two reasons. First of all, we brought in the CEVs because we were very concerned, and we haven't brought this out yet, that David Koresh had LAW rockets -- okay, light anti-tank weapons. That was a concern that I had based on comments that he had been making
about blowing our Bradleys 40, 50 feet in the air. Quite frankly, we had some concern that there was some stolen military LAWs that he might have possession of. Didn't know whether or not he did, but we were very concerned about it. And ultimately, we brought in the CEVs and the Abrams, because they're better equipped to withstand that kind of rocket.

The boom that the CEV had on it is the only vehicle that we know of that's armored that we could use to actually break the outer portion of that wall. Two purposes: One is to make an opening to put a non-flammable, non-burning type of CS into that building; and second of all, we wanted to use them to make escape openings for those people. I was very concerned about the fact that these people may not be able to get out of that compound, particularly if the mighty men are controlling the doors, and they have weapons that, in fact, they've got everyone trapped.

REP. SCHUMER: I see.

MR. ROGERS: So I think if you look at the photographs, and yes, I agree with you, it's an ominous sight to see "U. S. tanks" -- military tanks, as people have called them -- breaking into an American building. And I agree, that's the perception. Unfortunately, the perception is not always the truth. And what we're trying to do is explain why we did it.

REP. SCHUMER: You're saying there was no alternative to that? To doing it that way? No better alternative?

MR. ROGERS: Sir, I have no knowledge of any better alternative in trying not to provoke them, and to also protect the lives of the agents that had that responsibility.

REP. SCHUMER: Thank you, Mr. Rogers.

REP. ZELIFF: The time has expired. Mr. Chabot.

REP. CHABOT: I have a point of order.

REP. ZELIFF: Yes, sir. State your point of order.

REP. CHABOT: The point of order I would like to make is concerning our format here in asking questions under the five-minute rule. I'm a new member to the House, and I haven't learned, perhaps, how yet to gain that five-minutes and turn it into 10 or 15 minutes, but I think what I've seen develop here, and I'm not sure it's just limited to one side or another, but I'm seeing people use four and a half minutes of their five minutes editorialize, lecturing, whatever else, and then in the last 15 seconds ask a question or two to two or three members of the panel, which allows them to go another 10 or 15 minutes beyond in answering that question, and I think the chairman -- both chairmen -- have been extremely fair in allowing people to fully answer a question that goes beyond the red light.

But, again, what I'm seeing, again, as a new member over here is an abuse of this system. And I'm trying, in my questioning, to stick to my five minutes, but if we're going to persist in this pattern of talking and lecturing for four and a half minutes and then squeezing in a question at the end so that
the entire panel can answer it, then I feel like I'm not representing my constituents if I'm going to limit myself strictly to five minutes.

REP. ZELIFF: If the chair can respond, I think not only the very fine gentlemen from the FBI in front of us, but all of us individually up here have to lead by example, and so I think if we could all kind of try to know what the rule is and work within that rule and try not to abuse it, I think your point's well taken. The chair will try to see that it is adhered to. Thank you very much. Mr. Chabot.

REP. CHABOT: Thank you. I'd like to thank my colleague from Tennessee for bringing this to the chair's attention right before I start questioning. (Laughter.) In any event, Mr. Jamar, you testified yesterday that the gassing of the Davidian house was first considered very soon after the initial raid; in fact, within the very first week. Is that correct?

MR. JAMAR: In the emergency plan, yes, sir.

REP. CHABOT: Okay, and that emergency plan -- this was the emergency assault plan, that's what we're talking about, right?

MR. JAMAR: Yes, sir.

REP. CHABOT: Okay. And this was for use in the case of an emergency defined as a homicide or a homicide-suicide type event which might occur in the compound. Is that correct?

MR. JAMAR: It was the only nonlethal means we had to stop them from doing something like that, yes, sir.

REP. CHABOT: Okay.

And the report says that it was generally agreed that if an emergency response was warranted, the FBI would use armored vehicles to punch holes and insert gas into the building. That's correct, is that right?

MR. JAMAR: Yes, sir.

REP. CHABOT: So basically the emergency plan is, for all intents and purposes, the plan that ultimately occurred.

MR. JAMAR: With some modification, yes, sir.

REP. CHABOT: Okay.

MR. JAMAR: In fact, some pretty substantial modification.

REP. CHABOT: Okay.

Now, Mr. Potts, let me ask you this. When you first heard or discussed the emergency plan, it's my
understanding that you were very opposed to the idea of using gas in this concept of the emergency
plan. Is that right?

MR. POTTS: No, sir. The emergency plan came in very early on and Tony Betz began to examine
the gas --

REP. CHABOT: Okay, not to interrupt, but let me then rephrase my question. I thought I heard you
say before when this plan to use gas, the ultimate plan to use gas, was considered, it's my
understanding that you were opposed to that plan. Is that right?

MR. POTTS: I was not in favor of going forward at that point.

REP. CHABOT: Okay. So I think "not in favor of going forward" -- ahead with that plan means you
were opposed to it, right?

MR. POTTS: Yes, that's right.

REP. CHABOT: Okay. And you were opposed to it, I assume, because you felt there was too much
risk involved, is that right?

MR. POTTS: No, there was -- I think it was more the unknown, sir, than it was, you know, what we
did know. It was the unknown in terms of what their reaction might be and how we could -- how we
could measure that. It was the unknown as to whether or not maybe there were other things that we
might be able to do that we had not yet tried, it was all of those questions that I thought that we had
to answer, as well as what would the effect of CS gas be on those inside the compound?

REP. CHABOT: Okay, that was one of the things, as well.

MR. POTTS: Yes, sir, it was.

REP. CHABOT: You weren't sure about what the effect might be on the folks within the
compound, particularly the children.

MR. POTTS: Yes, sir.

REP. CHABOT: And I think that's what everyone here agrees that that was the particular concern
that we had.

Now, it was also -- I understand there was a danger of waiting -- Mr. Jamar, I think you were
concerned that there was a danger if we waited too long, one of the dangers being that Koresh and
his people might try to break out, is that right? Now, they never did try to do that, did they?

MR. JAMAR: No, they didn't. No.

REP. CHABOT: Okay. And, in addition to that, you felt that there was the risk of mass suicide, is
that right?
MR. JAMAR: That was the fear, yes, sir.

REP. CHABOT: Okay, and that obviously never happened -- at least, it didn't happen until the gas was pumped into the building, which, in essence, triggered that which we were trying to avoid, which was a mass suicide.

MR. JAMAR: Well, I think that what -- on April 19, he demonstrated without any -- removing any and all doubt that that was his ultimate goal, and that's why I think had we waited, he would have found a way to accomplish that.

REP. CHABOT: So that was your opinion, that that was his ultimate goal.

MR. JAMAR: Sir, based on his actions on the 19th, he demonstrated his goal very clearly. He could have had those people come out. All he had to do was walk out.

REP. CHABOT: Well, his attorneys testified that they thought that there was a deal and we all thought -- or some people thought he was writing this -- the seven seals, et cetera, and there's some dispute about that. I understand. Mr. Sage -- Mr. Sage, let me ask you a question. Did I understand the plan -- after the gassing began, any people who left the house and came out were to be steered toward the M-88 tank retrieval vehicle and the Bradley fighting vehicles, basically, is that right?

MR. SAGE: They were to come out the front of the compound -- initially, the instructions were to come out the front of the compound, walk down the driveway, just exactly as had been the plan since the second of March, to a large Red Cross flag, where they would receive medical attention -- (inaudible) --

REP. CHABOT: But they were going to be directed, to some degree, by these fighting vehicles, the Bradley fighting vehicle and the M-88 tank, is that right? Mr. Jamar is shaking his head.

MR. JAMAR: I believe that's correct, yes, sir.

REP. CHABOT: Yes, okay.

Now, after the initial assault and after all the flashbang grenades that were thrown whenever anyone came out of the building -- and that, I understand, happened a couple of times -- and after the gas attack, and after you learned that these people expected death, they expected Armageddon, they figured that you all were the Babylonians, did you really expect that mothers would lead their children towards the M-88 tank retrieval vehicle and towards the Bradley fighting vehicles? I mean, they thought you were the enemy, and all these things happened. Did you really expect them to lead their children willingly toward these very scary-looking vehicles?

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

REP. CHABOT: -- (inaudible) --
REP. ZELIFF: Well, that means two of you.

MR. SAGE (? ): Hopefully expected it. Prayed that it would happen. Also, we need to add in there that toward some latter stages of the negotiation, in part -- this, again, is a dynamic issue subject to change throughout the 51 days -- one of the other things we attempted to do was to drive a wedge between David Koresh and Steve Schneider or his followers to try to convince them or to shed light or at least plant the seed for their consideration that Koresh, in their eyes, instead of being a Messiah, may, in fact, have been a false prophet in the end times. If we had been successful in doing that, if Steve would have had the capability of carrying that forward, then, again, that goes to the possibility that he may have been able to lead or someone may have been able to exercise some independent thought on behalf of their children and get them out of there. Yes, sir, we did hope and we did pray that they would make their way out of there safely.

REP. CHABOT: Thank you.

REP. ZELIFF: Okay. Mr. Jamar, do you have something to say?

MR. JAMAR: Well, I would just --

REP. ZELIFF: You're the second part of that team here, the way this thing's working.

MR. JAMAR: Thank you. I would add that the gas is designed to make you want to leave that room. It removes all the fear of Babylonia or Babylonians, fear of Koresh, and the instinct we were hoping for is mothers to say, "I've got to get out of here and I've got to get my child out of here. I'm reclaiming my child from Koresh," okay? That's what we were after, was to grab those children and come out. We couldn't have a normal vehicle waiting, because people would shoot the agents. It would be nice to have something that would be less threatening to someone sitting out there with a Red Cross flag. By this time, I think, the -- after just a few weeks, the tanks and the Bradley vehicles didn't mean much to anybody in there. It was just one more vehicle. This was just a normal part of their day. It didn't bother them in any way. The discussion we had earlier today: Why didn't those people come out in that fire? What forced them to stay? And someone else offered to me, saying, "Maybe he locked them in that -- in that bunker." I don't know if that's the case. It could have been. I said it was probably either fear for their eternal salvation. It could be that he locked them in that bunker and didn't let them out. I don't know that. But I'll tell you, it wouldn't surprise me if he did.

REP. CHABOT: Mr. Chairman, I only took the five minutes, but I just -- they were such long responses, I'd just like to make one 10- second response, and that's that I think everyone here acted in good faith. I believe -- I don't believe what some of the people out there think, that the government was against these people. I think you all acted in good faith.

But, as Mr. Hyde said early on, the people -- the mindset within -- the people that were in that building, they weren't like you and me, you know? They had a different mindset, and I just think that our government assumed that they would take rational action on behalf of themself and their kids, and we see that they didn't do that because we didn't enter the mind of the people that were in that compound, and that's where I think the mistake was made.
REP. ZELIFF: Thank you, Mr. Chabot.

Mrs. Thurman.

REP. : Mr. Chairman, since he has revisited Mr. Hyde's comments that, frankly --

REP. : -- (off mike) --

REP. : May I have just a moment?

REP. ZELIFF: Do you have any objection?

REP. THURMAN: No objection.

REP. ZELIFF: By all means.

MR. : Thank you.

REP. ZELIFF: Just one of you.

MR. : I understand. One moment coming up. Mr. Hyde -- and I wish he was here, because I don't want him to waver under the misperception that we did not fully explore the possibilities exhibited by religious considerations and so forth. We explored them to the fullest extent we felt we could, with all the experts we could reach out, and several that we didn't have to reach out for. That was not a situation where we did not try to get into that posture of his, what he was all about. So what needs to be addressed succinctly is not one child, not one Branch Davidian, exited that compound based upon religious dialogue, with the only possible exception being early on when Agent Cavanaugh, with our assistance, facilitated the reading of a brief passage of scripture, and kids initially were let out two by two. We would have done that forever, if that would have facilitated the release of another child. But he did not explore that as a viable option, although we were prepared to do it as long as we had to. Thank you very much.

REP. ZELIFF: Thank you. Mrs. Thurman?

REP. THURMAN: I'm just going to take a few second, and then I'll yield my time to the gentleman from Virginia.

REP. WATT: (?) West Virginia.

REP. THURMAN: West Virginia.

REP. ZELIFF: (?) West by God Virginia, it's Virginia by God. (Laughs. )

REP. THURMAN: How many hours do you believe in this total time did you spend working with Mr. Koresh? Have you ever calculated how many hours you actually believe you spent with him, in talking and trying to figure him out?
MR. : I can give you exact numbers as to how long we talked to him on the phone, but that's -- for every hour spent talking to him on the phone, there was probably three to five hours spent in everything from Bible study -- I mean, seriously -- I don't say that in jest at all -- to talking with behavioral scientists and so forth -- exhaustive hours.

REP. THURMAN: To try to figure him out. I want to make this point, because I asked this very same question to Mr. Zimmermann and Mr. DeGuerin, and their total time was all of 32 hours. And I think that that point can not be forgotten, that we are trying to base testimony here that somebody says they knew they had him, and he was going to come out on 32 hours, versus the amount of hours and time and experts that you all brought into this.

So, secondly, Mr. Rogers, this issue of the bus, particularly since we've just heard this testimony just again about the children and the mothers -- was there -- it's my understanding that there was a trap door that led down to that? Is that what you found?

MR. ROGERS: Yes, ma'am. It was inside the hallway at the end of the compound.

REP. THURMAN: So they really could have -- I mean, if it had been their intention during that time, and once that gas had gone in there, that they could have gone through that trap door, got into that bus, which I assume was part of the plan, because you took firemen in there to water it down, to cool it off, to make sure that that was a safe haven for them?

MR. ROGERS: Well, that was my hope, is --

REP. THURMAN: Okay.

MR. ROGERS: -- once the fire started that they had put the children in the bus. We immediately put all the fire-fighting resources at that end of the compound to try to cool it down, and then we immediately went in with agents underground, as I've testified, to try to see if there were children in there.

REP. THURMAN: So you believe there was actually two ways they could have escaped? They could have come outside the compound, or they could have gone down here as a safe haven?

MR. ROGERS: Exactly.

REP. THURMAN: Okay, thank you. And at this time I'll yield --

REP. WISE: (? ) Very quickly, Mr. Rogers: And did you find any kind of impediment to their getting to that bus?

MR. ROGERS: No, sir, we didn't find anything that would have prevented them from going in that bus.

REP. WISE: (? ) Okay, Dr. Salem and Mr. Betz, concerning the -- have you -- did you all calculate
the amount of gas that was injected into the compound during the several hours of insertion?

MR. SALEM: Yes, these calculations were done.

REP. WISE: (?) And the statement was made that at the end there was an acceleration of the gas. But my question is whether even with that acceleration, anywhere near a lethal level was reached within that compound?

MR. SALEM: From the calculations that I have seen, sir, it was many times below the lethal concentration.

REP. WISE: (?) And, Mr. Betz, do you concur with that?

MR. BETZ: Absolutely. I was present during the calculations and all the considerations that were given to the calculations.

REP. WISE: (?) Dr. Salem, much has been said about your conversations with the attorney general -- she of course will be here Monday. You spoke somewhat about that. Is there anything you'd like to add to the brief -- that maybe you have not had a chance to in your briefing of the attorney general, and how you advised her about the impact of CS gas upon those within the compound, both adults and children?

MR. SALEM: Well, as I said at the outset, the advice I gave, that if a chemical was to be used, the safest and most potent riot control agent was CS. And based on the literature there are no validated reports where people have died following its use -- both infants, adults and elderly.

REP. WISE: (?) And in the briefing you were giving to the attorney general, were you calculating the amount of CS gas that would be introduced? And what you were -- maybe I should rephrase that. Did you, in your briefing, did you assume the same level that actually was inserted into the compound?

MR. SALEM: I was not involved in any of the operational or tactical discussions. I thought that they would have experts to decide on how much to put in. It was after the fact that I've seen the calculations. But the levels of effective concentrations and the lethal concentrations and safety factors I believe were discussed.

REP. WISE: (?) But, if I might, Mr. Chairman, but in -- a final question now: Given the amount that was actually inserted, would that -- if you had known that was to be the amount, would it have changed your advice to the attorney general in any way?

MR. SALEM: The concentrations that were actually achieved according to calculations? No, sir.

REP. WISE: (?) Thank you.

REP. ZELIFF: Okay, Mr. Taylor? Mr. Taylor?
REP. TAYLOR: Mr. Chairman, does this mean there are no other Republican witnesses?

REP. ZELIFF: No --

(Cross talk.)

REP. ZELIFF: Okay, we have -- all right, I guess --

REP. TAYLOR: I would like to proceed in the normal order.

REP. ZELIFF: I stand corrected --

REP. TAYLOR: -- and hold my time till then.

REP. ZELIFF: I stand corrected. Hold on. The chair recognizes Mr. Shadegg.

REP. SHADEGG: Thank you, Mr. Chairman, and in a moment I'll yield the balance of my time. I just wanted to ask one brief question, because I'm a little confused about it. Mr. Jamar, in your testimony today you have, as I've listened to it, suggested that the people at the Waco facility, inside the Davidian compound, committed suicide. You don't have any evidence that the children inside the compound committed suicide, do you?

MR. JAMAR: No, I was speculating on why they didn't come out.

REP. SHADEGG: Okay.

MR. JAMAR: Several of them were shot -- and then shot where it was not apparent -- not being suicide. So that's -- I think it was murder. I think a fair description of the event and the loss of those lives is a murder/slash/suicide.

REP. SHADEGG: So any -- well, there again, any statement by you that they committed suicide, or you think this was a suicide, or that it appears to have been a suicide, or that it was a suicide, or that they committed suicide, or that he fulfilled their prophecy to commit suicide, since we never got to talk to them is all a conclusion that you've drawn and, as you just said, speculation on your part?

MR. JAMAR: Well, a lot of survivors are saying there wasn't a suicide pact. So who do you -- I'm speculating -- I'm trying to resolve in my mind why someone would sit in there for six hours with gas and not come out, with a full opportunity to come out --

REP. SHADEGG: Well --

MR. JAMAR: Who was keeping them from doing it, or were they compelling themselves or what? I don't know. I'm just -- it has to be speculation.
REP. SHADEGG: I think that's -- the point is we don't know. For example, we know that broadcasts were intended to go in and were made saying you can come out. But we don't know, because we were never able to talk to those who died -- we don't know if any of the children heard those broadcasts, we don't know for a fact that any of the mothers heard those broadcasts. We don't know that they heard the full broadcast. We just don't know that they understood they could leave and would be fine, and therefore by staying were committing suicide.

MR. JAMAR: Well, those children were kept in there from March the 5th. I don't think those children had any idea that they had a choice about anything.

REP. SHADEGG: So they clearly did not commit suicide? We can just assume the children did not commit suicide?

MR. JAMAR: Well, again, we're talking -- that's what I said murder/suicide. The children were murdered. If he didn't let them come out, he murdered them.

REP. SHADEGG: They didn't commit suicide -- right?

MR. JAMAR: They did not. I said it's a murder/suicide. Some did. Some persons in that place committed suicide.

REP. SHADEGG: We were just talking about the children. We're focusing on the children --

MR. JAMAR: Okay, the children were murdered by Koresh.

REP. SHADEGG: The children did not commit suicide?

MR. JAMAR: They were murdered by Koresh.

REP. SHADEGG: That's your conclusion?

MR. JAMAR: Absolutely.

REP. SHADEGG: They did not commit suicide?

MR. JAMAR: They were murdered by Koresh.

REP. SHADEGG: Sir, did they commit suicide?

MR. JAMAR: No.

REP. SHADEGG: Thank you. I yield the balance of my time to Mr. Zeliff.

REP. ZELIFF: Thank you. Mr. Potts, I just have one quick question before I yield the balance of the time to Mr. McCollum. In your testimony, am I correct in understanding that at no time at Ruby Ridge you had in your operational plan any thought of using CS gas or other chemical agents?
MR. POTTS: No, sir. There -- I'm sorry; here it is. There was consideration being given to using CS gas. There was discussion about using CS gas. There was never a decision to go forward with CS gas or approve the use of CS gas there.

REP. ZELIFF: But was it in the plan to consider using it?

MR. POTTS: I don't know whether it was in the plan or not, but it was --

REP. ZELIFF: Let me just read a paragraph here. "On August 23rd, 1992, the above actions will be repeated. If no response from the compound is received, the APCs will be prepared to begin destruction of portions of the structures inside the compound. These destructions will not include the major living areas of the main residence. If no response is received at this time, ARCs will be prepared to deliver chemical agents into the residence in anticipation of conducting an entry into same."

MR. POTTS: There was no approval to go forward with putting CS gas into that location.

REP. ZELIFF: Okay. I guess what concerns me is the rules of engagement at both locations and the use of gas, but now I yield to Mr. McCollum.

REP. MCCOLLUM: Thank you for yielding. I want to get a quick question in, if I can here, about the questions of the breakout. And I'd like to ask this of Mr. Jamar and Mr. Rogers. It is my understanding, from looking at the report that the Justice Department did on the meeting of the 14th, it looks like the 14th of April, where, Mr. Rogers, you were present and some of the key military advisers who were advising the attorney general on the gas were meeting on the gas plan, that it was asserted by the military advisers that they did not believe that maintaining the hostage rescue team in a constant state of readiness was possible and that perhaps the HRT should be withdrawn and further training be done with them.

There's also the question that's been raised and a lot more that I'm not going to read here about maintaining the perimeter, that the FBI regarded the perimeter security as so significant that it urged the attorney general to relieve the HRT with SWAT teams only as a last resort. I'm a little confused about this. It seems to me, Mr. Jamar, that you have told us that you were worried quite a bit for some time preceding this final assault with the fact that the Davidians with Koresh might break out; they might try to use children as a shield and move out.

It also occurs to me that there was a concern, at least expressed by military advisers -- and I gather, though it's not in this text from other sources, that perhaps Mr. Rogers didn't fully agree that the HRT needed to retrain or regroup. But I assume over a period of time that that was a consideration; that had the siege gone on for another few weeks, certainly your men would have been very tired. I also gather that's one of the reasons why Mr. Potts had made the recommendation in his testimony, or made the changes that are in the testimony today, to put SWAT teams developed by the FBI for the future under the HRT command.

My question is this: Can you corroborate that? And what significance was the fact in your
decision-making of going forward with the gas assault, the concern of the breakout, the concern of the tiredness potentially and the need to retreat and regroup at some point of the HRT? And to what degree did you consider, and why would you have discarded it, if you did, the use of local officials of sheriffs' departments or SWAT teams from perhaps the state police, the Texas police, or whoever else was available, at least to guard the area at some distance away to make this area secure? Mr. Rogers and then Mr. Jamar.

MR. ROGERS: The reason that we felt the HRT was the proper unit to maintain that perimeter is -- we've already talked about the use of military vehicles. The team members were trained as drivers. They were familiar with the safety of those vehicles. We had certain electronic and other type equipment that is unique to our team. Quite frankly, the U. S. government has put a lot of money into that team in order to try to make it the best in the world. And those particular items that we use, when you get into night equipment, night vision equipment, et cetera, the other team is not trained for. Our team is a full-time team. The SWAT teams train maybe once or twice a month. So when you compare the level of equipment sophistication, the training, there's clearly no other option in my mind.

You asked the question about the meeting with the attorney general, I believe. I believe she asked me whether or not the team was tired. And I said, no, the team wasn't tired, but I agreed with what the military personnel had noticed, and that is that had they had the same kind of unit under the same kind of conditions, they would be looking to pull them out for retraining. And what we're talking about are the very perishable skills that the team has that had not been exercised in 50 days. We're also talking about cognitive skills, decision-making, judgment-type skills, which tend to degrade when you keep people on the line for as long as we did.

As an example, I had snipers that physically stayed in position for 11 days before they ever came out of the sniper position they were in -- looking and watching and reporting the intelligence. That takes a large toll on these kinds of people; not that they're physically tired, but it's those other skills I referred to.

REP. MCCOLLUM: And Mr. Jamar and you are now going to answer -- not only respond to that, but to what degree, as I asked, was this a factor in your concern with when you did the assault; in other words, the need to do it, whether it was on the 19th, or if you had to do it within a few -- how long you could actually do it, two or three weeks later? Or at some point, how urgent was your concern over the HRT team's skills and the ability to have them prepared and to maintain that perimeter till your final decision?

MR. JAMAR: Let me make sure I remember to answer this for you; you said the breakout. I wasn't worried about them escaping. I was worried about them (for being? ) shot down.

REP. MCCOLLUM: Understood.

MR. JAMAR: Let me make that clear. It was not a short-term concern for me. It was a long-term concern. It did not -- I did not say, "We need to do this the day after tomorrow because HRT is tired" -- not at all. That's weeks away, in my opinion.
REP. MCCOLLUM: That's what I wanted to know; weeks away, not --

MR. JAMAR: Of course, I had great concern about what Mr. Rogers just described. It was not a matter of days to me. It would have been weeks.

REP. MCCOLLUM: All right. Thank you very much.

MR. JAMAR: Yes, sir.

REP. ZELIFF: Mr. Taylor.

REP. TAYLOR: I want to just open this up to the panel, if you would. It's a fairly simple question. Yes or no; did the testimony of Mr. Koresh's attorneys -- the one who said he gathered his 15 children around him and only three of them were lawfully in his name -- did that pretty well convince you that he was having children out of wedlock by girls as young as 12 and 13? Have you followed the hearings? Because it convinced me.

MR. : Yes.

REP. TAYLOR: Did the post-operative search of the building convince you that there were illegally converted machine guns on the premises, at least 48 of them? Yes or no?

MR. : Testimony in the trial --

REP. TAYLOR: Sir?

MR. : I'm sorry. There was testimony in the trial that there were 48, at least 48, yes, sir.

REP. TAYLOR: Okay. So you're convinced of that.

MR. : Yes, sir.

REP. TAYLOR: Were there also hand grenades found?

MR. : Yes, sir.

REP. TAYLOR: And you made mention now of light anti-tank weapons.

MR. : Concern for that, yes, sir.

REP. TAYLOR: Oh, just concern. They weren't found. Okay.

MR. : We didn't recover any.

MR. : They did find some inert RPGs, rocket-propelled grenade projectiles.
REP. TAYLOR: I know what an RPG is, sir. Thank you. There was also a woman who claims Koresh kept her against her will for three months. Another says Koresh compiled a hit list of former members that he was going to have "eliminated" -- his words, not mine. Do you gentlemen believe in family values?

MR. : Absolutely.

MR. : Absolutely.

REP. TAYLOR: Do you think that's the kind of family values that this Congress pledged to bring to the American people?

MR. : Not my definition.

REP. TAYLOR: I don't. Do you people believe in personal responsibility? Because that leads to the next question. We've already said that several members of this panel and other panels have said if Koresh had just told those kids and those old people, "Get up and walk out of here," they would have done it. After all, children were sleeping with him. Old people were giving him everything they owned. Husbands were giving their wives to him. They would have done anything he said, including "Get up and walk out of here." But he was using them as human shields, wasn't he?

MR. : Mr. Taylor, can I bring something up to you that has really bothered me?

REP. TAYLOR: Well, yes, sir, but can you do that on your time?

MR. : Sure.

REP. TAYLOR: Okay.

MR. : The answer to your question is not only yes, but that specific statement was made to David and to Steve, that he knows full well that if he directs those people to come out, they will come out. And we asked him to do that.

REP. TAYLOR: Okay, that's why I'd like you to comment on something that appeared in one of the local rags. It's a statement and it says, "What the government's assault on the Davidians' compound succeeded in doing, whether out of compassion or vain glory or accommodation of both, was to kill them." Now, if you believe in family values and you believe in personal responsibility, how can anyone who believes in personal responsibility say that Koresh accepted his? That's not personal responsibility. That's hiding behind women and children.

I mean, I have seen witness after witness brought by these folks, first saying that Koresh was just a simple old country preacher who had a couple of weapons. And, yeah, he was having sex with 11- and 12-year-olds, but that's okay. And, yeah, he did have a hit list, but we don't want to hear from that witness. And yes, he kept people against their will. We don't want to hear from that witness. And, yeah, the reporters who wrote about him and demanded local law enforcement do something about it, they left town for fear for their lives, but we don't want to hear from them. They changed
the markings on their cars. They changed the locks on their newspaper. We don't want to hear from them.

How can anyone justify -- and then they bring a doctor who says that because only four ATF agents were murdered, there wasn't really an ambush. And they're trying to paint themselves as pro-law enforcement. Gentlemen, you are the thin blue line between the laws we write and anarchy, and I appreciate what you're doing. And I want to ask this panel, like I've asked every panel before you, is there anything that you've seen or heard or read to justify the murder of those four ATF agents or in any way washed David Koresh's hands for the deaths of those 80 old people, women and children? I'm going to make it a little bit longer than before. And, please, Mr. Rogers, I've still got a little time, so jump in.

MR. ROGERS: Thank you, sir. No, I've seen absolutely nothing. I also would like to go back to a point you made about the weapons inside. It's my belief that had he planned on coming out, he would have reconverted the automatic weapons into semiautomatic because that's the best evidence to put him in jail for those automatic weapons which we recovered.

REP. TAYLOR: Would anyone like to answer the question of whether anything you've seen or read or heard justifies the murders of the agents or washes David Koresh's hands for the deaths of those 80 people?

MR. : Nothing.

REP. ZELIFF: Okay, we're limited to two, Mr. Taylor. You got your two.

REP. TAYLOR: You can nod your head, guys. (Laughter.) That's fair.

REP. ZELIFF: Okay. Mr. Buyer has rejoined us. You're recognized for five minutes.

REP. BUYER: Thank you, Mr. Chairman. Gentlemen, we were on a track of some questions the other day. We didn't get to finish that. And I want to try to touch on some of that. I have a couple of specific questions. One, Mr. Jamar, about this letter from Koresh that -- Mr. DeGuerin calls it the surrender plan. What physically happened to the letter? Did you fax it to Washington? Now that we know you had called Washington beforehand?

MR. JAMAR: The command post faxed it to Washington. We also faxed it to behavioral scientists to review. In fact, it also -- it had been gotten around for everybody to look at, "What does this mean? What do you think it means? What's the meaning of this? Is this letter anything new?"

REP. BUYER: Okay. When you had your two-hour conversation with Mr. Hubbell, which we know now Mr. Hubbell was the direct link to communications with the White House, do -- did he have this surrender plan, this letter?

MR. JAMAR: Byron had the two-hour conversation.

REP. BUYER: Oh, I'm sorry, Mr. Sage. I apologize. You're right.
MR. SAGE: I'm not aware of what he had or did not have, sir. I'm sorry.

REP. BUYER: Okay. That's fair enough. But he did not refer to it in the conversation that he had, nor did you discuss it?

MR. SAGE: Not that I recall. And, again, this was one of many issues brought up. It was not an agreement or anything. It was a topic, but it was not the sole topic.

REP. BUYER: One thing I will comment that has been very helpful to me is that late last night, even though I got back to my apartment at 1:00 -- or, excuse me, at midnight, I was up till 1:00. I was listening to these key excerpts from your negotiations. It was very helpful to me. So I don't -- there was no date time on this, and so I was trying to put it into perspective, but it was very helpful to me, listening to these tapes, and I can't even tell voices, so I'm not sure which of you -- for whom -- Mr. Sage, if this was you or someone else on the tapes.

A lot of -- not only in the Justice report, but a lot of you have commented about these -- the listening device tapes. Let me espouse, having been a trial lawyer for years now, I understand that in courtroom and in advocacy, there are a lot of games that go on, when you -- your motions for discovery and when you hold things out until the judge forces you. I think it is very disappointing, though, that Justice would play games with -- with us over here. When requests went in for these listening tapes long ago and just now they're being sent over to us, that's really unfortunate, because I would have enjoyed an opportunity to listen to those, so I would have an opportunity to understand what you guys were going through. I think it would be very helpful for me, because when we talk about perishable skills, one of the most perishable skills in negotiation is patience. I know that from my negotiations in dealing with the other side as a practicing attorney. And I'm not sitting in judgment of you, Mr. Sage, okay?

MR. SAGE: No, that's an accurate representation. That's why we cycled -- the majority of our negotiators came on about a two-week -- (inaudible) --

REP. BUYER: That's why you have negotiating teams --

MR. SAGE: That's correct. That's correct.

REP. BUYER: -- right? To keep them going. Now, when you were going through these negotiations, were you being briefed by whomever is monitoring the listening devices? Are they saying, "Here's what they're talking about, here's what our senses are, here's what their emotions are, here's where -- "? Yes, no?

MR. SAGE: Periodically, we would have the daily briefings, which would bring up topics. If there was something that was absolutely significant, that would be brought to the attention through what we refer to as situation reports, sit reps, that would be channeled to any of -- any aspect of the command that needed to know that information immediately. It would obviously go into the on-scene commander, but often they would come in or route that in to us, and either Gary Noesner, who was here yesterday, who was one of the coordinators, or Clint VanZant (ph) or myself as the
day team leader, would go over and make sure the team was aware of it.

REP. BUYER: All right. Thank you. Mr. Potts, did Mr. Hubbell ever tell you that either he or the president wanted to approve any shift in the negotiation plan? That's one question. The other question is did Mr. Hubbell ever tell you that he had spoken to the president and the president wanted the siege to be ended and understood that CS was how it was to be done?

MR. POTTS: No, sir. I heard that -- from Stuart Gerson, who told Director Sessions, who told me that the president had indicated that he wanted to be advised if there was a change in the strategy from negotiation. That was early on in this. I'm sorry, the second one?

REP. BUYER: Second question, did Mr. Hubbell ever tell you that he had spoken with the president and the president wanted the siege to end and understood that CS was how it was to be done?

MR. POTTS: No, sir.

REP. BUYER: All right. So the first time the president really learned about CS was this meeting on the 18th that the attorney general then had with the president?

MR. POTTS: I don't know, sir.

REP. BUYER: I'll have to ask the attorney general on Monday?

MR. POTTS: I believe so.

REP. BUYER: All right. Thank you. Appreciate it, gentlemen. Thank you.

REP. ZELIFF: Thank you very much. Chair now recognizes Mr. Barr for five minutes.

REP. BARR: Thank you, Mr. Chairman. Mr. Potts, there has been some discussion today of Ruby Ridge and the consideration being given to the introduction of tear gas or CS gas there, and do you have with you a document dated 8/23/92, FBI-slash-USMS (ph) Op Plan, Bonner's (ph) Ferry, Idaho?

MR. POTTS: No, sir.

REP. BARR: Okay. Let me ask a clerk to deliver this to Mr. Potts, please, and I'd direct your attention to paragraph two, and while that's being brought over, I'd like to read an operative portion of it. "On August 23, 1992, the above actions will be repeated if no response from the compound is received. The APCs" -- armored personnel carriers -- "will be prepared to begin destruction of portions of the structure inside the compound. This destruction will not include the major living areas of the main residence. If no response is received at this time, ARCs will be prepared to deliver chemical agents into the residence in anticipation of conducting an entry into same. " Was that the ops plan?

MR. POTTS: Sir, I don't know. I don't have all the --
REP. BARR: Is that document or is that document not the ops plan? Very simple question.

MR. POTTS: No, sir, it's not a simple -- (inaudible) --

REP. BARR: Okay, where -- where is the ops plan, if this is not?

MR. POTTS: I don't know, sir. I don't have access to all that --

REP. BARR: Is this the ops plan? You can --

MR. POTTS: -- (inaudible; crosstalk) --

REP. BARR: -- is this or is this not the ops plan?

MR. POTTS: I don't know.

REP. BARR: You don't know?

MR. POTTS: I don't know.

REP. BARR: Were you there?

MR. POTTS: No, I was not there.

REP. BARR: Did you ever have an ops plan?

MR. POTTS: There were several --

REP. BARR: Have you ever seen an ops plan for it?

MR. POTTS: For that?

REP. BARR: Yes, for that.

MR. POTTS: Yes.

REP. BARR: Okay, is this the ops plan --

MR. POTTS: I don't know whether it's the same one or not.

REP. BARR: You don't have any recollection of whether it is or is not?

MR. POTTS: I do not know.

REP. BARR: I think that's a very disingenuous response.
MR. POTTS: No, sir, it's not.

REP. BARR: I think it is. Dr. Salem -- if I could, I understand that there's a great desire on the part of everybody connected with this to deny that anything that we did, our government did, caused the deaths of the children there, and I understand your testimony that CS gas would not directly, or would not likely directly cause the death of a child. I understand that.

We do have at least one autopsy photo here -- we talked about this last night; it's in the records -- medical examiner photo of Doe 57, a 6- to 8-year-old girl, cause of death asphyxia, inflammation in throat and lungs, and there was some testimony last night by a medical doctor that that would be consistent -- possibly consistent with gas. My question really is, one, is that possible -- and I'd like your objective opinion, because I don't think you really have any axe to grind here.

MR. SALEM: No, sir, I don't.

REP. BARR: Is it possible that the CS gas would cause inflammation in the throat and lungs of a 6- to 8-year-old child?

MR. SALEM: CS gas is an irritant. It does cause irritation of the mucous membranes.

REP. BARR: You might want to pull that a little bit closer.

MR. SALEM: CS is a respiratory irritant. It causes inflammation of the mucous membranes, which line the respiratory tract. To get to where the inflammation is that great, you're going to need a very high concentration, sir, to get to that. It may be a combination of the blankets that were put over the children, plus --

REP. BARR: No, I understand that --

MR. SALEM: -- and if you exclude all of the oxygen --

REP. BARR: -- (inaudible) -- facts, but is it possible that it could have caused inflammation in the throat and lungs of a 6- to 8-year-old girl?

MR. SALEM: Yes, it is possible that CS can do that.

REP. BARR: Okay. Also, with regard to the introduction of CS and methylene chloride, that was being injected into the building, right? And then there was a fire that started, and I don't want to get into what caused the fire to get started -- we all agree that there was a fire that started -- would the burning and the CS, the combination of the CS and the methylene chloride in the building and the burning have generated toxic substances such as hydrogen cyanide?

MR. SALEM: Methylene dichloride, I don't believe, causes -- or generates hydrogen cyanide.

REP. BARR: But during the burning process.
MR. SALEM: Yes, hydrogen cyanide is released from the burning of many materials, such as wood, plastic, fabrics.

REP. BARR: Okay, so the fire, with all of these chemicals, it could -- I'm not asking you --

MR. SALEM: Yes.

REP. BARR: -- to render an opinion that it did, but it could have generated hydrogen cyanide?

MR. SALEM: Yes, sir.

REP. BARR: That being the case, is it certainly not a reasonable presumption that that substance being in the compound, in the building where people are located, also, could that have inhibited in some way their ability to get out of the building.

REP. : -- (off mike) --

REP. ZELIFF (?): Yes.

REP. : The gentleman is entitled to his questions, and I hope you all will yield him some time to answer them, but you have gone well beyond the red, and I just want to make that point.

REP. ZELIFF: Okay. That's so noted. Please answer the question, just two of you, and then --

REP. BARR: Well, I only need one. I don't -- I don't want --

REP. ZELIFF: Okay.

REP. BARR: -- necessarily two. I mean, I'm just trying to limit it here just to Dr. Salem.

REP. ZELIFF: Thank you.

MR. SALEM: Experiments have shown that when you have, I believe, 550 milligrams per cubic meter in an enclosed chamber, the amount of cyanide that's generated -- I'm sorry, 10 milligrams per cubic meter, which is what a trained soldier can tolerate and the amount of cyanide generated is less than two 30-milliliter puffs of a cigarette. Cigarette smoking also generates hydrogen cyanide.

REP. BARR: Let's put that in perspective --

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

REP. BARR: No, I -- I just -- that doesn't answer the question. I'd just like to, if I could, remind the witness what the question was.

REP. ZELIFF: Okay. Well, on that basis --
REP. BARR: I'm not going into another area of inquiry.

REP. ZELIFF: Dr. Salem, could you try to answer the question.

REP. BARR: That is simply whether or not, given the fact that these substances could have been generated by the combination of these chemicals in there and the burning and, hydrogen cyanide possibly having been created, could that have interfered with somebody leaving, inhibited their leaving the building.

REP. : -- (off mike) -- sir, because he --

MR. SALEM: It depends on the concentration, sir. If it's high enough --

REP. BARR: But it is possible?

MR. SALEM: -- it's possible.

REP. BARR: Okay. Okay.

REP. ZELIFF: I think that's --

REP. BARR: That answers the question. Thank you.

REP. ZELIFF: -- just about done it on both sides here. Mr. McCollum --

REP. MCCOLLUM: Thank you very much --

REP. ZELIFF: -- the final five minutes.

REP. MCCOLLUM: Thank you very much, Mr. Chairman. I just want to make one comment, Dr. Salem, and it is no reflection. You're a fine toxicologist, got a great record, obviously know a lot about CS gas and were called upon for that reason, but there is an irony in the fact that it came out today that you've not been published on the CS gas question, and last night Mr. Schumer was making a huge noise over here on our side of the aisle that several of the people on the panel, the other toxicologists, had not been published. So I -- no reflection on you, just the observation. Now, I want to ask one or two quick questions. Mr. Rogers, I want to know if you agree with Mr. Jamar that your HRT unit could have stayed on the scene there without needing withdrawal for refresher training or whatever for weeks more than the April 19 assault.

MR. ROGERS: They could have physically stayed there. That would not have precluded the degradation of their skills, though, sir.

REP. MCCOLLUM: And if the degradation of their skills got great enough, you'd have had to have some kind of augmentation, whether that was as well trained people or not in order to maintain the perimeter, is that not true?
MR. ROGERS: We would have to have those comparable skills in order to maintain the perimeter.

REP. MCCOLLUM: Right. And -- all right. How long could they have stayed in there before you think that would have been a real problem, before you would have had to withdraw some in order to maintain the perimeter?

MR. ROGERS: I think within a matter of a couple weeks we'd be looking to have some kind of remedy to the problem.

REP. MCCOLLUM: All right. Mr. Potts, did you know that Mr. Jamar felt 99 percent certain that the Davidians would fire on the CEVs, thereby making the accelerated use of CS gas probable before the assault on the 19th?

MR. POTTS: I certainly didn't understand that he believed that there was a 99 percent chance. When I spoke to him in late March on the phone, we talked about what the response would be of the Davidians if we put gas in, and he said, "I believe they'll shoot. "And I said I don't -- "How can we go forward if we believe that there's that strong a chance that they will shoot? "

What I believed had been developed as a result of our trip to Waco, along with Mr. Clark, was a plan which everybody believed significantly decreased the chances of them firing on us when they inserted the gas.

REP. MCCOLLUM: But if you'd known Mr. Jamar felt that way, would you have had different advice for the attorney general?

MR. POTTS: I would have conveyed it up the line and I think that the decision makers would have had to significantly consider that. I believed that we had significantly reduced that risk.

REP. MCCOLLUM: I want to clarify something with Mr. Sage and Mr. Jamar in the last segment of questions. Earlier today, you said, Mr. Sage, that Mr. Hubbell had been told by you about the plan of the 14th of April. And we went over that last night, you've been over it almost ad nauseam. I think I understand what you're saying. I just want to clarify it.

MR. SAGE: Yes, sir.

REP. MCCOLLUM: I asked you at the end of the questioning last night about this, you and Mr. Jamar, and I specifically put the concerns I had in terms not of a surrender plan, which I understand you distinguish and so forth, not in terms of the fact that DeGuerin was working on trying to get these folks to write the seven seals interpretation, or get Koresh to do that, not in terms of those generic things, but in the specific terms that concerned me, which I think you answered for me, which may have had a different slant, if you will, or different viewpoint or perspective than the simple answer you gave earlier today to that question that was asked you -- did Mr. Hubbell know about the discussions and the goings on with DeGuerin?

I ask it in terms of things such as what Dr. Tabor had said at one point and the interpretation that DeGuerin was making, as I understood it, that if you moved against the compound with the
Bradleys, even if accompanied by declarations of an assault, the very acts of aggression would be interpreted by Koresh as a confirmation of God's mission to him as a martyr or to be a martyr, rather than to be a messenger, which is what DeGuerin explicitly discussed with us, and Tabor did, in their testimony -- the attorney for Koresh and the religious professor -- and in terms of the fact that it was their view, which had been expressed to you, as I understood it -- in how much detail, I'm not clear -- that at this stage, the 14th of April, that there had been a change of attitude by Koresh, that they felt very strongly that Koresh at that point was being persuaded -- actually, they felt he'd already been persuaded to be the messenger, that he was the messenger; that, indeed, it wasn't the fifth seal, it wasn't the martyr in the Book of Revelations that he was to be for -- God's martyr, in the sense, the Messiah that came in that apocalyptic sense, but rather that he was to have a chance to be the messenger, to release himself from the bondage of the building where he was housed and, ultimately, while in jail, he could still talk about this. And they felt that, in large measure because of what had gone on, as a joyous occasion in there. They said all the people were reacting, really believing they were coming out, and all that.

What I'm getting at is -- and I don't want to belabor this -- but what you said to me last night, if I'm not mistaken, and I don't think I am, is that you did not convey -- you did not believe you conveyed that type of detail, that type of sense of what DeGuerin and Tabor were talking about, to Hubbell, and I think Mr. Jamar was confirming that you two just didn't see it that way, that it was not -- you didn't see this as that -- in that detailed sense of the religious message as something to convey at the time of the two-hour telephone conversation or -- and, as I think I asked Mr. Jamar, did you ever convey that yourself to anybody up in Washington, and I think his answer was no, as I recall it.

Could you elaborate on that, explain that to me? I just want to be sure I'm right.

MR. SAGE: I'm a little confused as to the question, frankly.

REP. MCCOLLUM: The question is whether or not --

REP.: -- (off mike) -- quite a while --

MR. SAGE: Well, I'd like to respond to it.

REP.: He's finally gotten around to asking the question.

REP. MCCOLLUM: Well, I was -- (inaudible) -- the explanation --

REP.: Duly noted.

REP. MCCOLLUM: The question is very simple. The question is did you convey to Mr. Hubbell the DeGuerin perspective that Koresh had indeed had an attitude change -- in DeGuerin's opinion; I know that wasn't your opinion -- and that that attitude change was that he was now viewing himself as the messenger and that's why DeGuerin had such a strong hope, as confirmed by Tabor's views of the tapes and all that came out later, that there would be an opportunity for Koresh to pursue these pieces of paper, these writings, and, even more likely, come out? Did you convey that to Hubbell? That was the question I asked you last night, and you said you didn't convey that to him,
as I recall.

MR. SAGE: No. What I said last night, what I've said today, and what I will say again is that the issue regarding the transcripts was, in fact, discussed with Mr. Hubbell. I spent a great deal of time last night trying to refresh my memory, trying to get that back into context so that I could be just as clear and candid with you as possible, but in the proper context, because therein lies the problem. This has been blown way out of context or way out of perspective. As far as the importance placed the day after this thing was brought forward, was nowhere near as great as you've been led to believe by the defense counsel.

I wish that it would have had the merit that they attempted to convey to this committee of these subcommittees. I think we all wish that. But that was not the case. It wasn't the case then, it wasn't our perception one day after it had been brought forward, but we did not dismiss it. We continued to pursue it, and that's evidenced by the negotiation transcripts, which we'll be happy to make available to you.

REP. MCCOLLUM: The bottom line is that you didn't convey that strong an impression to Hubbell because you didn't feel it was ever given.

MR. SAGE: I conveyed to him the impression that was given to us, and I'm telling you that it was not that strong. Not that I didn't feel it was that strongly, it had never been conveyed that strongly to us, and this is one day after the whole concept had been brought forward. It was -- it was fully conveyed to him in the context with which it had been presented to us.

REP. ZELIFF: The gentleman's time has expired. Mr. Jamar, do you want to comment on it?

MR. JAMAR: I think that we did hope that there was something to that. Someone asked me what'd we do with the letter? This is an analysis by a psycholinguistics expert of the three letters, April 10, 11, and 14. His conclusion was, "In sum, I do not believe there is any writing is any better or at least certain hope" -- or, I'm sorry. In sum, I do not believe there is, in these writings, any better or at least certain hope for an early end -- for an early end to the siege. " And in his analysis, he says, the third letter, the letter of the 14th, is a content duplicate of the first letter that was sent on the 10th, okay? This is part of this series of letters from him.

My point to you is that it was not simply our opinion. We all -- it wasn't limited to my opinion and Mr. Sage's opinion. There were other people involved in the analysis of the probability of a change of heart or mind of Mr. Koresh, so --

REP. -- (off mike) --

MR. JAMAR: Mr. DeGuerin took that very seriously. I saw Mr. Arnold out in the hall here a while ago, and the thing we discussed yesterday about me looking for what was this change, what was it? I asked you, because I asked your staff, help me find that, because I'd like to understand where they got that idea, that there was this joy inside the compound.

I did not detect it in any way. I read the overhears last night, trying to find their discussion of the
new David. I didn't detect any. But that -- the microphone was very limited. I didn't detect any in the stuff I read in the transcripts. I didn't have time to read all of three days', four days' transcripts. That's why I asked the staff to help me find where in those transcripts would we find something of this new joy inside the compound?

I think it was Mr. DeGuerin's drive to -- like I said this morning, this is a man used to succeeding. He was driving, he was doing his best. This was our last hope for these people, because they knocked his legs out from under him in the previous -- April 4. He put it in there because he had his heart and soul in it. I believe Mr. Arnold had his heart and soul in it. We had our heart and soul in it --

REP. : I understand.

MR. JAMAR: -- I think, but we did not dismiss this out of hand. We gave this a chance.

Now, I explained to Mr. Arnold a while ago that he tried -- I said, "What about Steve saying to us, 'Hey, I'm the editor. You're not getting anything until I see it'" -- I'm paraphrasing, please -- "you're not getting anything until I edit it, and I haven't seen the first page." This was the fourth day. I just don't think they had their heart in it, sir.

REP. : I understand. Thank you. Thank you, Mr. Chairman.

REP. ZELIFF: Thank you, Mr. Chairman. One quick question. Mr. Potts, is there any chance that you could -- there's a lot of interest in having a second round of questions here, but we could resolve that. Is there any chance that you could join the FBI panel on Monday morning?

MR. POTTS: Yes, sir.

REP. ZELIFF: Okay, thank you very much, and that'll solve a big, big problem.

I just would like to say to all of you, you have our thanks on both sides of the aisle for being here. What you're going through is not easy, I'm sure, and what you went through on April 19 was not easy, as well, and we thank you for being here.

The joint oversight committees --

REP. : Mr. Chairman.

REP. BARR: -- (off mike) -- unanimous consent request over here.

REP. ZELIFF: Yes.

REP. BARR: If I could have unanimous consent that the document that I handed to Mr. Potts earlier, which he referred to and which I referred to, be included in the record.

REP. ZELIFF: Without objection, so ordered.
REP. BARR: Thank you.

MR. : Mr. Chairman.

REP. ZELIFF: Yes.

MR. : I'm up here.

REP. ZELIFF: Okay. (Laughter. )I'm sorry.

MR. : Yes, sir, we prepared -- the FBI prepared a statement, a written statement. Could I ask that that be entered into the record?

REP. ZELIFF: Without objection, so ordered.

MR. : Thank you.

REP. ZELIFF: Thank you. Anybody else? Okay, the joint oversight committees on Waco stand in recess until 8: 30 tomorrow morning in the other hearing room next door.

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