

JOINT HEARING OF THE CRIME SUBCOMMITTEE OF THE HOUSE JUDICIARY COMMITTEE AND THE NATIONAL SECURITY INTERNATIONAL AFFAIRS AND CRIMINAL JUSTICE SUBCOMMITTEE OF THE HOUSE GOVERNMENT REFORM AND OVERSIGHT COMMITTEE

SUBJECT: REVIEW OF SIEGE OF BRANCH DAVIDIANS' COMPOUND IN WACO, TEXAS  
CHAired BY: REPRESENTATIVE BILL MCCOLLUM (R-FL) AND REPRESENTATIVE BILL ZELIFF (R-NH)

WITNESSES: PANEL A: WILLIAM SESSIONS, FORMER FBI DIRECTOR FLOYD CLARK, FORMER FBI DIRECTOR WEBSTER HUBBELL, FORMER ASSOCIATE ATTORNEY GENERAL BERNARD NUSSBAUM, FORMER WHITE HOUSE COUNSEL HARRY SALEM, DEFENSE DEPARTMENT TOXICOLOGIST

8:49 A. M.

2141 RAYBURN HOUSE OFFICE BUILDING WASHINGTON, DC  
FRIDAY, JULY 28, 1995

REP. MCCOLLUM: This session of the Joint Committee hearings on the Waco Matter is now convened. Good morning, this morning. You may have your seats, for the witnesses. We have very brief opening statements this morning. We have little time to deal with for them today, and really should not, because we have some exigency in trying to conclude these matters. This is a very important panel this morning. We started earlier for convenience of our panelists, as well as because our schedule today would probably dictate. The House will discontinue business somewhere around 3: 00 or 4: 00 this afternoon.

First of all, I would just simply like to open the comments by saying that yesterday was a fruitful day in our discussions of what happened at Waco, in regard to the FBI's testimony and the evidence that came in, continuing to give us a stream of what happened in the planning of the use of the CS gas, and why that plan was done.

We also heard some disturbing concerns that continue to come forth with regard to whether or not the attorney general and Washington got the kind of information on the negotiations that many of us were hearing, indeed were going on at the end. No question about the sincerity of our Federal Bureau of Investigation, folks negotiation -- in my judgment at least -- and no question about their earnestness and their belief in what they were doing. But there continues to be some disturbing question as to what degree the information they had, and the quality of that information in dealing with the Koresh matter, at the end of all of this, was indeed passed on to Washington.

We also are left with questions about the gas itself, the insertion plan and so forth. Today, we're here for the approval part of that. And we want to hear from you for that reason.

I do want to comment that part of the testimony yesterday also concerned the situation with respect to the hostage rescue team. We did hear a clarification that that team probably had the ability to stay on the ground in Waco for about two more weeks before they would have needed to have been pulled back in order to get retrained, and in order to get some time for their proficiency skills to be rebuilt -- because they were stretched pretty far.

We also heard one comment that, I think, was of some significance. I do not know what it means overall, but we did hear yesterday that Mr. Jamar had a feeling -- a 99 percent certainty -- that the Davidians would fire on the vehicles as they approached to insert the gas. But apparently that feeling was not conveyed to Mr. Potts, and perhaps not up the line. Whether that would have made any difference of the attorney general or others, on this matter of use of the gas, is not at all clear. But nonetheless, that point was made yesterday.

Now, I am not going to go further in an opening statement today. Our objective is to be very brief. We want to announce the schedule. We are going to have two panels today. The panel before us, which is dealing with the question of the approval of the use of the CS gas, that particular plan. Later this afternoon -- hopefully, early this afternoon -- we will have a panel of experts to discuss the fire itself. What caused the fire, which I know has been one of those things debated and discussed, and been quite controversial.

We anticipate that Monday will be a session that will involve presentations of the military's role, to what degree were they involved in support, in what activities and advice they gave, as well as a very comprehensive panel on the day of the insertion of the gas itself -- that very fateful day where the lives were lost.

It is also anticipated now, because of the time that's been consumed in these panels, that it would be unfair to bring to bring the attorney general up here very late in the day on Monday -- and it would probably be very, very late. And so, we anticipate having the final concluding session of this hearing set on Tuesday with Attorney General Reno, rather than on Monday, as previously announced.

With that in mind, I would call on Mrs. Thurman for any opening comment she might have.

REP. KAREN THURMAN (D-FL): Mr. Chairman, I have opening remarks, but I realize we have a time problem here with one of our witnesses today. And so, therefore, I would like just to have unanimous consent to submit mine into the record, because I think it's more important that we hear from these --

REP. MCCOLLUM: Without objection.

Mr. Zeliff?

REP. BILL ZELIFF (R-NH): Thank you, Mr. Chairman.

Today marks the eighth day of fact-finding hearings and Executive Branch conduct into the Waco tragedy. Today, as with all other days, questioning will be vigorous. It will be pointed and motivated by our continuing twin aims to discover the truth, and then put things right. I'm convinced -- especially after reading my mail this week -- and I've read almost all of it -- that most Americans recognize the real importance of this constitutional oversight process. They also recognize that it sometimes takes courage to raise very probing and pointed questions.

Yesterday, again, a few of my colleagues across the aisle questioned our support of law enforcement. So, before turning to the issues we face today, I want to pause -- and just let me be simple and clear. First, because someone asks hard questions about Waco and what happened, that does not mean that they somehow are abandoning our law enforcement.

Second, no supporter of law enforcement enjoys scrutinizing the activities of the law enforcement community. People at the top and the bottom in law enforcement deserve our respect. And most of them know that they have it. Many have already said that what we are doing by having these hearings is good for America and good for them in the long run. I believe and I'm committed to that process. Constitutional oversight is the bedrock of this nation. And if it falls by the wayside, if it can be run off the road by distractions, then we really have a good deal to worry about -- more so than just Waco.

Third, it is not just words when people on this side of the aisle say that they know and believe in law enforcement, and the men and women who daily put their lives on the line. For the White House, it is damage control, a spin game, a Cabinet secretary calling a member and asking him to not ask embarrassing questions.

A Justice Department press release explaining away obstruction of justice, an EPA denunciation of a witness who comes to testify before us, a White House spokesman who claims that the Republicans on the panel are against law enforcement. Well, these are all the press stories, but let me tell you, I need only say it once, that that is the kind of thing that Americans are sick of, the kind of conduct that disserves the entire process.

Sitting on this side of the aisle today sits more than 100 years of collective law enforcement experience. Mr. Heineman of North Carolina has been in law enforcement for 38 years. He's been a chief of police for 15 years. Mr. Barr of Georgia was a United States attorney for four years. Mr. Bryant of Tennessee was a prosecutor for eight years; Mr. Buyer of Indiana and Mr. Shadegg of Arizona, whose father was a deputy sheriff, Mr. Schiff of New Mexico, all former prosecutors; and the rest, lifetime supporters, all of us, of law enforcement. So we need to stop the business of being against law enforcement. I think we're all for that and we're all for making sure that it's totally credible. We're going to do everything we can to see that it stays that way.

On the issues, I'll say just this. Our aims are to find the truth one day at a time, to educate ourselves and those who follow these hearings, and to prevent other tragedies by understanding the many flawed decisions that produced this one. We are almost at the end of a set of events that occurred 27 months ago and ended in a deadly blaze. We have all seen it on television. We'll see it again today. Reviewing everything we've learned will be impossible, but we've learned an awful lot; a lot of new information.

In these final three days, I think we'll find out still more information on three untraveled topics. First, how was the CS gas decision, the final go-ahead, really made? Did it develop over weeks, hours or days? Was it made by Attorney General Reno alone or not? What was the role of Mr. Hubbell, Mr. Foster, others close to the president, and the president himself? Who originated the idea? When and why was an 11th hour offer of surrender, an offer collaborated by the Texas Rangers and also confirmed by Koresh's attorney in detail, rejected?

We will then turn to the fire itself and hear from an array of arson investigators. We will hear from the Justice Department on their full theory of how the fire started and we will objectively try to answer lingering questions. We will also hear from one of the

Branch Davidians who escaped, Mr. Olive Doyle -- Mr. Clive Doyle. He will tell us what it was like to survive the fire and what he believes about those who did not.

Our day is a full one, but like all of the last seven days, this one promises to deliver as much light as heat, as much truth as we are willing to ask for, and as much goodness for the country's sake as we can squeeze into eight or 10 hours.

Mr. Chairman, thank you. I look forward to the testimony.

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

REP. CHARLES SCHUMER (D-NY): Thank you, Mr. Chairman. And I'd like to make three points this morning. The first is, just as my colleague, Bill Zeliff, went into a long litany of how the people on the panel are good friends of law enforcement, just as every day, and yesterday just about every member of the other side, before they asked questions, talked about what friends they are of law enforcement -- well, I would answer with one line from Shakespeare. "Me thinks the lady doth protesteth too much. "

Next, I would like to talk about the two issues that are really before us today. The first involves what I call real politicization of these hearings, and that is not an effort to find out what went wrong, but somehow an effort to link what happened to the White House. I found it very interesting that my friend Mr. Zeliff mentioned two people in the White House only -- Mr. Hubbell, who has troubles of his own, and Mr. Foster, who had even greater troubles -- as the two people who might be involved. Why didn't he mention all the other people in the White House? Well, we know why.

And why is it that there is not a shred of evidence -- I read the documents that many on the majority side said they had to have to see if White House was involved. The documents, by their own admission, don't have one scintilla of evidence that the White House influenced this policy. Yes, they were informed, as it would be in a good chain of command, but no influence. But the majority seeks to say over and over again, "Was the White House involved?"

That, my friends, is what is ruining these hearings, not a desire to find the truth and go over the mistakes, but an effort to politicize the hearings and bring in extraneous issues that have nothing, nothing to do with the avowed purpose of these hearings, but by smear, by innuendo, by exaggeration, to bring an untruth into credibility, the same problem of moral relativism. So again, just think, why, in the opening statement, was just Mr. Hubbell and Mr. Foster mentioned as in the White House, but none of the other people? I think that shows something.

The second question that we have to answer today is -- and this is a serious question; this is not like the other one -- this is, who set the fire that killed 80 people? And again, I would ask my

colleagues here to look at the evidence, not at wild theories. Let's remember a few things. Let's remember that the arson team chosen by the Texas Rangers, who both sides of the aisle have praised as unbiased, capable law enforcement investigators, they conducted an exhaustive investigation and concluded deliberately that the fire was set deliberately by one of the persons in the compound.

Let us remember that one of the majority's star witnesses, and one who has made some telling points, points I disagree with, but his points were telling and he was an expert, Dr. Stone, even though he had a lot of criticism as to how this thing came about and what the FBI did, said that the Davidians set the fire in the compound.

And finally, proof positive -- although I'm sure we'll hear innuendo and doubt from the other side -- tapes, tapes from the compound, with quotes on them that are like these. Quote: "They got some fuel around in here?" "Yeah, they even poured it already. " "Poured it already?" "Yeah, he got it poured. "More quotes: "You got to put the fuel in there, too; got to put the fuel in there. " "Fuel? Is there a way to spread the fuel in there?" "There. "Quote: "So we only light them as soon as they tell me 'last chance,' right?" "Well, that's the fuel. We should get more hay in here. "And finally, after all the fuel was poured, more quotes from these tapes, tapes that everyone agrees are true, have veracity: "What are you going to do? Now we're committed. ""I want a fire around the back. Keep that fire going. "

These are tapes from inside the compound. They talk about people spreading fuel. They talk about people lighting fires. This idea that the fire came some other way, this idea that CS gas had anything to do with some kind of explosion unrelated to the fire being set, is wrong. And I would ask my colleagues on the other side of the aisle -- this is the most serious charge, even more important than who shot first -- to examine in their hearts what the real truth is, to step up to the plate if they really want to give law enforcement an even shot, if not even the benefit of the doubt, and come to the conclusion at the end, after they hear the evidence, which I have looked at from top to bottom, that if they believe that the fire was set inside the compound by the Davidians, that they say so, because the worst part of the conspiracy theory that is running in parts of this country is that the fire was deliberately lit by government agents who wanted to burn these women and children.

Every reasonable person in America knows that's not the truth. Everyone who has studied this, objective people, knows that is not the truth. And we will be doing a horrible disservice to the government and the country we all believe in and love if, at the end of these hearings, when the evidence, which I believe it will, will show that is the case, that we still try to say, by innuendo, by implication, that we haven't answered that very serious and very important question, because we know from the evidence, from all objective observers, that the fire was lit by David Koresh. Thank you.

REP. MCCOLLUM: Thank you, Mr. Chairman. I now want to introduce our panel of witnesses for today. We will then have you sworn and then begin the questioning. I'm only going to read the introductions, not necessarily in the order in which you're seated.

Judge William Sessions is the former director of the Federal Bureau of Investigations. Floyd Clark was deputy director of the FBI. Webster Hubbell was associate attorney general. We have Mark Richard with us. He was deputy assistant attorney general for the criminal division. He had supervisory responsibility for terrorism and violent crime at the time of the Waco happening. Larry Potts, who's with us again today, as well as with us yesterday, was the assistant director for the criminal investigations at the FBI at the time of the Waco involvement. And Dr. Harry Salem, who's also back with us again today, is the chief of life sciences department, research and technology directorate, of the U. S. Army Edgewood research development engineering center for the Department of Defense.

He briefed the attorney general on the CS gas question.

If all of you would please stand, I'll swear you in. Would you raise your right hand?

Do you swear or affirm that the testimony you shall give today will be the truth, the whole truth, and nothing but the truth?

PANEL: (Off mike. )

REP. MCCOLLUM: Thank you. Please be seated. Let the record reflect that all of the witnesses answered in the affirmative.

We will begin our questioning today with Mr. Bryant. You are recognized for five minutes.

REP. ED BRYANT (R-TN): Thank you, Mr. Chairman.

One disturbing aspect of the fire, as already has been referenced to date, and has caused me great concern over the night was the statement made by the FBI -- I think Mr. Jamar -- yesterday concerning the monitoring device, the listening device that had been secretly planted in the Davidian compound and the fact of the morning of the raid, beginning about 6: 00, when the fire was -- when the gas began to be inserted into the compound, that the live monitoring, the folks who sit there with the earphones on to listen to what was going on in the compound -- and I assume they had done that for days and days and days before. At this particular crunch time, when the chips were on the table, when it had to be determined what was going on inside that compound, when your best intelligence was needed -- because Mr. Jamar had said, as I recall his testimony, that if I had known they were spreading gasoline, I would have called off that raid that morning -- yet at that critical time in this entire investigation, or this entire siege, he candidly said yesterday that, "I don't know why we didn't have that information. "

Because as the truth has come out at this hearing, what Mr. Schumer read from that tape was just that. They didn't know about it until they listened to the tape afterwards, and at that critical crunch time when they had to have this intelligence as to what was going on inside when the raid was

starting, they didn't have it. And I hope we get some answers as to why there wasn't somebody there monitoring at that time or why they weren't able to hear, which they obviously heard at other times. And that caused me great distress, because had they heard that, according to Mr. Jamar, they would not have continued the insertion of the gas that morning, and I think that's a critical question that the American public needed to have the answer to.

Mr. Salem, briefly, we talked to you yesterday and I think we sort of defined this issue of whether or not to insert CS gas into the compound on the children's level as to whether or not it would kill them, and we talked about studies, and there's no studies out there as to the effect of killing children or not, and I think we've kind of overlooked that in-between area as to what effect that gas would have on debilitating, disorienting, causing these children to be dysfunctional, again during this critical time when there was what appeared to them to be a frontal assault on their home, at a critical time when, very likely, fire could have broken out -- which I think the FBI admits that that was a possibility that fire could break out, because they were aware of the local fire departments and what their arrival time would be -- and I can just imagine -- I hope the agents imagined ahead of time that if fire did break out and we had inserted this gas and these kids in there had become debilitated and disoriented and certainly panic-stricken, they were physically incapable of moving or doing what they typically would do, wouldn't that have some kind of effect on them in terms of disability, disorientation, physical incapacitation in a panic situation?

(Off-mike comments. )

MR. SALEM: Sir, the effect of the CS as a sensory irritant, it causes tearing, blinking, and it gives you the feeling of trying to flee from that area, and unless there's an obstruction, most people can get away from that.

REP. BRYANT: We're talking children now -- 5, 6, 7 years old. It would cause them not to be debilitated, disoriented?

MR. SALEM: According to all of the evidence that is available, there's no difference in the sensitivity for children, adults, or the elderly.

REP. BRYANT: Okay. Thank you.

Now let me ask, if I might, a question concerning -- I might ask Judge Sessions or Mr. Hubbell, either one could answer this question. Back -- I understand Attorney General Reno declined initially to approve this gas plan, and that was on the 16th, which was a Friday.

Judge Sessions, I believe you asked for a hearing with Attorney General Reno about this, and I understand she then came to Mr. Hubbell's office. I would like to know maybe what went on there, but I also find it somewhat -- not disturbing, but just a little out of protocol that the attorney general of the United States would be summoned, if you will, to come to somebody else's office, and I see

Mr. Hubbell -- and maybe that relationship existed, but I didn't know the attorney general went to other people's offices to discuss -- because in effect she was both your bosses, was she not, at that time?

MR. SESSIONS (?): She was my boss.

REP. BRYANT: Okay. I just wondered why she was brought down to Mr. Hubbell's office and, in essence, what the conversation -- what convinced her to begin to consider the CS gas?

MR. SESSIONS: Mr. Bryant, the meeting that you're discussing took place at the request of Mr. Hubbell, and we came to his office, which is adjoining the attorney general's office, and after the discussion, he announced to us that she had decided not to, and he said, "Would you like to appeal?" And I said, yes, I would like to talk to the attorney general.

Some of the reasons for that I'm sure you're aware. I wanted to be sure that there was no political objective at all, because I knew that Mr. Hubbell was, of course, connected with the White House, and the only way I could be sure of that was by talking to the attorney general. And he asked it himself. He said, "Do you want to appeal?" And I said I'd like to talk to the attorney general, and she walked across the hall -- or down to the conference room and came directly into his office.

I don't think that was an affront to the attorney general, I think it was a practical way to deal with it, and when she came in, we began those discussions, which continued, of course, for a good while. But that was the way this happened, as I recall.

MR. HUBBELL: Exactly. My recollection was that we were meeting in my office, which is actually the former chief of staff's office, which is just on the other side of where the attorney general's conference room was. After they said they wanted to talk to the attorney general, I went down and said, "They're in my office. They would like to appeal," and she just said, "Well, let's go talk to them." And knowing the attorney general's style, that was -- it was no affront. We didn't summon her to my office, I can assure you of that.

REP. MCCOLLUM: Ms. Thurman, you're recognized for five minutes.

REP. KAREN THURMAN (D-FL): Dr. Salem, in yesterday's hearing, there was some comment made that you had not published any articles or books on CS gas. Would you like to comment on that? You never got an opportunity to respond to any of the allegations -- (inaudible) --

MR. SALEM: Thank you. As I mentioned yesterday, I have done original work, research work --

REP. : -- (off mike) -- microphone closer.

MR. SALEM: I have done original research and published on respiratory reflexes, respiratory irritants, and I have also -- as I mentioned, I'm on the editorial board of "Inhalation Toxicology." I am the chairman of the technical committee for the inhalation specialities section for the Society of Toxicology, so I have a lot of experience in reviewing data and published literature, as well as research reports, on various chemicals, both -- in many fields -- in the pharmaceutical field, the pesticide field, consumer products, and this type of--

REP. THURMAN: Dr. Salem, and going one step further, then did you feel there was any misinformation that was given yesterday that you would like to straighten out for this panel?

Would you like to think about it and let me come back to you?

MR. SALEM: Thank you very much.

REP. THURMAN: Okay. Judge Sessions, yesterday during the testimony, Mr. Potts was asked whether an April 14th letter from Koresh, which has been called a surrender offer, was passed on to you. He stated that he did pass that letter on to you. Mr. Potts was then asked whether he knew if you passed that so-called surrender offer to President Clinton --

MR. SESSIONS (?): I'm having trouble hearing you, Mrs. Thurman.

REP. THURMAN: I am very sorry.

MR. SESSIONS (?): Thank you.

REP. THURMAN: Well. During testimony yesterday, Mr. Potts was asked whether an April 14th letter from Koresh, which has been called a surrender offer, was passed on to you. He stated that he did pass that letter on to you. Mr. Potts was then asked whether he knew if you passed that so-called surrender offer to President Clinton or anyone in the White House.

Can you clear up the confusion surrounding this issue and tell this committee, a, whether the April 14th letter was, in fact, a surrender offer; whether you forwarded the April 14th letter to any linguist or psychologist for analysis; and whether you forwarded the April 14th letter to anyone in the White House?

MR. SESSIONS: Ms. Thurman, it may be that Mr. Potts recalls a surrender letter of April the 14th. I do not recall a surrender letter from Mr. Koresh of that date. Did Mr. Potts indicate that he passed it on to Mr. Clarke or Mr. Clarke to me?

REP. THURMAN: We'll ask Mr. Potts.

MR. POTTS: Actually, I don't remember saying I passed a letter on to Director Sessions either. If I did -- I recall that the information concerning the April 14th manuscript was passed along from Waco to us, to the command center -- not a surrender letter, but an indication that he was going to work on the manuscript now for the Seven Seals. That particular document was provided by our command center in Washington to Murray Miron, Dr. Murray Miron, for an analysis. And I think

Jeff Jamar testified yesterday as to the results of that, essentially that Dr. Miron said we don't -- I don't see anything in this letter that would indicate that he's coming out in the near future -- I'm obviously paraphrasing here. That information about the April 14th manuscript was passed along the line, but I don't know whether the letter itself was or not.

MR. SESSIONS: Ms. Thurman, that is correct. As it turns out some of the contents apparently of the manuscript. I was aware that manuscript was there, but I was not aware of what you term an offer of surrender.

REP. THURMAN: Okay. Mr. Clarke, it is my understanding that you accompanied Mr. Potts to Waco, and that was (on scene ?) Commander Jamar and other members of the crisis management team. Could you tell us about this meeting?

MR. CLARKE: The short answer or the long answer? There has been a series of conversations, with the Department of Justice and inside the FBI, about activities down in Waco. Representatives from the Department of Justice had made a prior trip down to Waco to look into a number of matters -- coordination issues, prosecution issues -- and they were going to be making a second trip. The FBI was invited to go along and participate in these meetings, and Larry Potts and I accompanied Mark Richard and others from the department down for that meeting. While we were there, we used that opportunity to also meet with our field commanders. We went and looked at all of the facilities, talked with the people who were doing the work in the trenches. We actually got into vehicles, went to the compound, went to the observation points, developed a personal sense of what the conditions were. It is one thing to sit in a command center, or in the environs of Washington, D. C. , and see pictures or have things related to you. It's an entirely different thing to be sitting in a facility where people have had to operate for 51 days. You can't begin to imagine the kinds of stress that has to be there for these professional people to endure day in and day out.

I think there was some testimony about these vehicles provided protection for the agents. That protection was very limited as we pulled up in front of that compound, and looked at that facility, and peered out that hole of that Bradley vehicles. I've been involved in law enforcement for 30 years, and I've done an awful lot of firearms training and shooting. At a distance 75 yards, with a telescopic rifle, left-handed with eye closed, you could put rounds through that opening in that Bradley vehicle. There is no leather upholstery; there is nothing to absorb a round coming into that vehicle. If a round came into that vehicle, it would ricochet around and everyone in that vehicle would be at jeopardy.

Those kinds of dimensions -- when you go out to these observation points -- 300 yards away, and you see this building with not only windows and recessed shooting positions, but areas where they had cut additional shooting ports, and you have people looking through telescopic sites for 24 hours a day, 51 days, trying to observe all of the movements. You would occasionally see the glare of sunlight reflecting off the telescope sights of rifles from that building. You begin to understand the threat and the danger to the agents that were there. Those are the kinds of things that we wanted to understand, as well as discuss with those people -- not only the SACs who were giving us this information on a daily basis, but the people that were there working, and try to understand what their thinking was. And we came back with a renewed understanding of the issues that were confronting the people. We spent two days there, came back and made our report to Mr. Sessions on

the 9th.

REP. THURMAN: The chairman just asked me to ask: What was the date of that?

MR. CLARKE: The 7th and 8th of April.

REP. THURMAN: Thank you.

REP. MCCOLLUM: Thank you very much, Mrs. Thurman. I would like to make everybody aware of the fact -- who are up here asking the questions -- that Director -- former Director Sessions has got to leave here about 11: 00 or a little bit before that this morning. So if you have questions -- particularly you've got it burning in your pocket that you want to direct to him -- either do it or let us know about it in some way so that we might reorganize the questioning in a fashion that would allow that to occur. Everybody else I think can be with us throughout whatever the duration of this panel is. With that in mind, Mr. Chabot, you are recognized for five minutes.

REP. CHABOT: Thank you, Mr. Chairman. Before I yield, I would just like to respond to the gentleman from New York's comment about the alleged politicalization of these hearings. Last week, Treasury Secretary Rubin called a Democrat member of this committee, and asked him to not ask any questions that might be embarrassing to the Clinton administration. Now, I think that is truly politicizing these particular hearings, and was uncalled for. I would like to at this time yield the balance of my time to the gentleman from Tennessee, Mr. Bryant.

REP. BRYANT: Thank you, Mr. Chairman. Mr. Hubbell, let me ask you a question if I could regarding some testimony that you have given in May of 1993, which would have been after the standoff and after the fire at Waco. In May of that year, you testified at your Senate confirmation hearing that you had spoken to the President, President Clinton, only about a Supreme Court nominee, and that was in regard to the question about DOJ activities that ruled out personal contacts with him. But the question I think was: Had you spoken to him about Department of Justice matters? And your testimony at that time was that "I had spoken to him only about a Supreme Court nomination. " However, an AP story of April 3, 1993, reported you as saying that you gave the President updates on the Waco situation in the early days of the crisis. And my question is, based on -- I know Senator Bumpers in your confirmation hearings said you were best friends with the President and First Lady -- based on that relationship, I'm wondering what was the accurate situation in terms of your communication with the President regarding Waco?

MR. HUBBELL: With regard to Waco, I did not communicate with the President until after April 19th in any regard. Stuart Gerson was the contact with the White House until Attorney General Reno was confirmed. And then the contact we had with the White House would be through White House counsel -- Bernie Nussbaum, Vince Foster, and occasionally Bruce Lindsey.

REP. BRYANT: So in essence what you're saying is that your testimony before the Senate committee was accurate, but that AP story which said that you had provided the President with updates in the early parts of the crisis, particularly in the early part of May -- in the early part of March -- that story and what is alleged in there is inaccurate?

MR. HUBBELL: It is inaccurate. Stuart Gerson -- I was not even in Washington the weekend the initial raid occurred. Stuart is the one who talked to the President, and continued to do so until Attorney General Reno was confirmed. I do believe that on the Sunday before the 19th the attorney general spoke to the President -- I know she did, because I was in the room. And that was the only contact with the President directly prior to the 19th.

REP. BRYANT: And obviously you had personal contact with the President, I assume, during that period of time due to your relationship -- personal relationship?

MR. HUBBELL: That's absolutely correct, congressman.

REP. BRYANT: And the issue of Waco did not come up in any of these formats or --

MR. HUBBELL: It did not.

REP. BRYANT: Let me ask another question, if I could, regarding the question that Attorney General Reno asked I think a couple of times in terms of the date of the 19th of April, as to why now -- and again, Director Sessions, Judge Sessions, it's good to see you again. You were the director when I was U. S. attorney, and many of you were in the FBI -- Mr. Richard, all of you. But why now? Mr. Sage testified yesterday from the FBI that their office -- their decisions, the FBI decisions, were not driven by fatigue or frustration. I think that was Wednesday he actually said that.

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But, yet in reading the Attorney General's statement that she gave to the FBI after this, she indicated Mr. Hubbell -- I'm quoting from the 302 statement -- Mr. Hubbell was convinced from his conversation with the negotiator -- and I assume that's Mr. Sage -- that David Koresh was not coming out. Koresh had not fulfilled any of his promises at that point to do anything he said he would. People were getting tired, negotiators were tired, and tempers were fraying.

At that point I am wondering if this is the justification, the reasoning why, the FBI -- and I've heard child abuse, but you know those allegations have been going on for years. And I've heard now health and sanitary conditions, which you know while that is significant, I can't imagine that being a real reason to go in with the type of force that they did. It sounds like something we thought of afterwards. And I've heard of the fact that maybe negotiations had broken down and those kind of things, but I'm like the Attorney General, why not wait -- and I have some concern about maybe it was, as you said, Mr. Clark, and I respect your opinion and your experience with the FBI, but things were stressful. And I understand that, I appreciate that fact. I'm not criticizing it.

But when you look at all the factors together, why was that factor -- the fatigue, the stress, the fraying nerves, the tempers -- even like you said, tempers were fraying. Was that the primary driving force for that decision being made?

MR. : Mr. Bryant, so far as I can tell you -- (inaudible) -- earlier reference to the quality of the hostage rescue team and its capabilities. There was discussion at that time about their coming to the edge and needing to go back, retrain and to do those things which kept them in the state of preparedness. The things they do require practice and require constant attention to it. And that was one of the factors. Obviously fatigue on all those people was very great. So there were a number of things that were discussed about what was the situation there at the time. And it was discussed on a continuing basis, certainly with the FBI, and so far as I know and believe with the Attorney General. She was aware of those things.

REP. BRYANT: I think I've got one other person --

MR. : Thank you, Congressman Bryant. As I recall, the question of why not rose subsequent to the initial briefing of the Attorney General on I believe April 12th during the meeting after the briefing by the FBI, which was held in the Attorney General's office.

And it was a question that we discussed -- what has changed that would suggest that we must move now. I think that was the question on the table for several days. And I can't speak for the Attorney General and her thought processes, but certainly I began to answer the question for myself after participating in the discussion with the FBI negotiator, Sage, and realized that negotiations, at least as viewed by the FBI, were now fruitless, there was an anticipation that they would not be productive. And this did suggest that our options were severely constricted. But those are my views and I can't speak for the Attorney General.

REP. MCCOLLUM: Thank you, Mr. Bryant. Mr. Scott, you are recognized for five minutes.

REP. SCOTT: Thank you, Mr. Chairman. Judge Sessions, over the weekend Senator Bradley on a morning news show related the story about an African American Harvard law student who was stopped and handcuffed for no apparent reason. He was released after he convinced the police officer that he was a Harvard law student and wasn't doing anything wrong. You are aware that the exclusionary rule protects innocent people from these kinds of indignities and I am sure you are aware of other examples because it removes all incentives that a law enforcement officer may have to break the law, because if he stops someone without probable cause, without a warrant, he knows that he can't use whatever evidence he may pick up.

Thus far in these hearings we have heard this exclusionary rule is the only effective tool to deal with police misconduct and virtually the only forum in which you can even discuss it. We've heard from law enforcement officers that they don't need relief from their duty to obey the law, they don't need to make illegal searches, and they don't need a watered down exclusionary rule in order to perform their duties. Mr. Sessions, do you see any reason that the exclusionary rule should be watered down further to excuse and encourage police misconduct?

MR. SESSIONS: Mr. Scott, I heard the statements that were made by the Senator and I course had very direct contact for many, many years with Fourth Amendment rights and the exclusionary rule and the impact on law enforcement. I can remember back in the 1960s when *Messiah* and *Escobedo* and *Miranda* -- those great cases which established Constitutional principles were hammered out. And what we found was that law enforcement reacted positively. Law enforcement reacted in a fashion to make it even more competent and make it more professional in every respect to be able to abide the law and to perform their activities under the Constitution.

This is critical. Law enforcement can meet that standard and should be required to meet that standard. And it should be part and parcel of everything they carry with them, and not have to have a good faith exception, to not have to have an exception in any way that would require them to lessen their standard of professionalism. So I believe very strongly that the Fourth Amendment is what it says and

that in fact we should not weaken it, and that we should bring up our law enforcement standards to meet the highest standards required by the Constitution and the law.

REP. SCOTT: Thank you. Mr. Hubbell, earlier in these hearings we heard from Mr. Noble and Mr. Magaw. It's clear from their testimony that the ATF ambush was the fault of David Koresh and some of his followers. But they also went to great length to point out that mistakes had been made and if they had to do it over again that they had pinpointed mistakes that they had made. And we have level of comfort that if they had to do it again the chances of four law enforcement officers would be killed in the process is greatly diminished.

We heard earlier that we knew that there was a chance when we went in that children would die as a result of the final invasion. You saw what happened. What did you think would happen and can we give the American public some level of comfort that children don't have to die when you are trying to execute an arrest warrant and a search warrant.

MR. SESSIONS: If you are talking about the 19th, I don't think there's a person on this panel that hasn't gone over what we would do again if we had to do it over again.

REP. SCOTT: The 19th is the final --

MR. SESSIONS: The 19th is the final -- we were not involved in the initial ATF service of the warrant. I'm not that familiar with what happened. I am aware that we had great concerns because there was a leak to the press and ultimately a leak to Vernon Howell or David Koresh. But certainly if we knew what we knew was going to happen we would try to find another way. And we think about it, I know I do, every day.

REP. SCOTT: Mr. Salem, it's my understanding that you -- if children are exposed to CS gas they will be very much traumatized. It is also my understanding that you have no citation of any medical implications it would last more than 30 days for someone -- for a child exposed to CS gas, even though the gas is used in a widespread basis over many years. Is that accurate?

MR. SALEM: I am sorry.

REP. SCOTT: Is that an accurate statement?

MR. SALEM: Yes, sir.

REP. SCOTT: Your expertise is in physical irritation. Do you have any expertise in the psychological reaction to the gas --

MR. SALEM: No, sir.

REP. SCOTT: -- so that you would be able to predict what someone would do? That is not your expertise

MR. SALEM: No, sir.

REP. SCOTT: Is there anything else you wanted to add in response to the question from the gentle lady from Florida in response to misstatements that were made yesterday?

MR. SALEM: Yes, I was hoping that she would be here. Can we wait until she gets back or --

REP. SCOTT: She will -- she's probably looking at it on the monitor, so --

MR. SALEM: Okay, some of the things that I would like to mention -- these hearings are in search of the truth and the facts. I can't recall from yesterday's meeting about the misinformation, but some of the information that I heard from the previous evening on the effects of CS which I would like to clarify.

First of all I would like to say that it is the safest and most effective alternative that we do know of. And I concur completely with what the British experts said on the CS.

The causes of the reports that deaths have occurred following the use of CS, on investigation, the facts show that other materials were used. For example, in one case that was mentioned, CN was used in combination with CS. And we know that deaths have occurred from the use of CN. In that same case, when that case came to trial, the conclusion was that they felt that the individual who died was actually suffocated.

In another case, where they talked about the deaths following CS in the West Bank, in Israel, the GAO did a report to Congressman Dellums, back in 1988 -- I believe it was. And Physicians For Human Rights went there to do the investigation. And they could not find any confirmed deaths following the use due to CS, not any miscarriages that were reported. The GAO said that perhaps there were four deaths, but that was due to teargas, and they didn't specify which one it was. And then there is another report from the director of the Palestine Human Rights campaign who concluded that Israel use two types of riot control agents -- CN and CS, but they generally used CN.

The other fact that I heard that occurred the other night was that suffocation was caused by the dust settling.

These are very small particulates. And if they settle, they settle because these particles agglomerate, become bigger, and then fall to the ground. They don't hover just above the surface. The more realistic happening is probably that these particles were blown out by the wind and the circulation.

We've heard that lungs blister following the use of CS. CS is an irritant. It causes irritation and inflammation and possibly pulmonary edema may result. However, in my experience, I have not seen where lungs actually blister internally.

The other fact I'd like to clarify is that children are more likely to have a greater capacity to breathe CS. Yes, their respiratory rate is higher than it is in adults. However, as you inhale, you also exhale. And if the particles don't impact on the respiratory tract, some of them are blown out. So, if you're breathing faster, you're probably breathing out more of it.

The other important factor is not the breathing rate, but it's the minute volume, which is the volume

times the rate of breathing. And children have a smaller minute volume than adults do. So that, they would probably breath in less.

REP. SCOTT: Thank you, Dr. Salem.

REP. MCCOLLUM: Thank you, Mr. Scott. Your time is expired.

Mr. Zeliff, you're recognized for five minutes.

REP. ZELIFF: Thank you, Mr. Chairman.

Dr. Salem, jut a quick yes or no answer. Is CS gas safer than waiting?Is CS gas safer than waiting?That's okay.

MR. SALEM: Well, it depends on the definition of waiting -- what would occur then.

REP. ZELIFF: Mr. Sessions, you were the head of the FBI for both events that took place on the 28th of February, as well as the 19th of April.

MR. SESSIONS: That's correct.

REP. ZELIFF: And tell me about your involvement with the gas plan. It was presented initially by the FBI, internally, from the bottom up, I guess --

MR. SESSIONS: That's correct.

REP. ZELIFF: -- dated March 27th. At what point did you connect, and at what point did you get involved, and at what point did you make your decision when you thought it was a good idea?

MR. SESSIONS: I don't recall the precise date that it came to me< Mr. Zeliff. But it came as an alternative possibility. You'll recall, you were mentioning back both at the first date and the last date. You'll remember that on February 16th, the World Trade Center went up. And on February the 18th, ATF went into the compound, with the resulting deaths. From that point on, there were constant discussions about things that could be done to bring it to a conclusion -- most particularly that related to negotiation, and trying to find ways that it could actually be negotiated down and out.

REP. ZELIFF: Right.

MR. SESSIONS: And some of those plans were labeled as ridiculous. Some of them were labeled as not practical. But we were discussing all these things --

REP. ZELIFF: Hold it. Who brought it --

MR. SESSIONS: -- including ultimately the use of gas.

REP. ZELIFF: Right. Who brought it to you?

MR. SESSIONS: I would presume that it came either through Mr. Potts or through Mr. Clark. I do not recall precisely.

REP. ZELIFF: Mr. Potts or Mr. Clark.

MR. SESSIONS: We met repeatedly in the command center --

REP. ZELIFF: Right.

MR. SESSIONS: -- and the FBI daily, so that, where precisely it came, where precisely it was first discussed, I don't recall.

REP. ZELIFF: Thank you. Mr. Sessions, FBI Agent Smerik testified here under oath that he changed his thinking. He changed his judgment in a fifth and final memo, and based on a sense that he needed to please you. I believe this last memo was April 9th. And he went from favoring negotiation to shifting away from negotiation to the gas plan. Just give me your comment on -- I mean, is this --

MR. SESSIONS: I would have to probably comment at length, Mr. Zeliff.

REP. ZELIFF: It kind of -- I had a real problem with that myself.

MR. SESSIONS: All right. Well, I do not know that that's what he said. If he said it was to please me, that is one thing. I don't know that he said that.

REP. ZELIFF: Okay.

MR. SESSIONS: If he said it was to please others within the bureau, that might well have been. My own belief stems from back, dealing with the riots at Oakdale and Atlanta and Talladega, and all of these things that we've dealt with, and patience, and waiting -- as you mentioned -- is a very important factor.

I can remember Mike Quinlan (sp), the director of the Bureau of Prisons saying that he will wait forever.

REP. ZELIFF: Right.

MR. SESSIONS: But negotiation is an important part of it.

REP. ZELIFF: And you pushed that.

MR. SESSIONS: I pushed it both personally, individually, in discussions, every time we turned around, and in terms of the actual operation on the ground. Yes, sir.

REP. ZELIFF: Just to be clear, in no way did you get Mr. Smerik to change his writing of his

memo, change his thinking so it would agree with yours.

MR. SESSIONS: That could -- that could not be -- well, if he said that he believed in continuing negotiation and work at negotiation, then he would reflect my views.

REP. ZELIFF: Okay.

MR. SESSIONS: He did not write that memo to please me. Now, there may have been others that he did.

REP. ZELIFF: Okay.

MR. SESSIONS: But certainly not me.

REP. ZELIFF: Mr. Sessions, did you know that the Texas Rangers and Koresh's lawyers had brought to Mr. Jamar's attention a surrender plan that they worked out with Koresh on April 14th? And don't you think you should have known about that plan? Did you know about that plan?

MR. SESSIONS: Are you referring to the plan that relates to his writing on the seven seals --

REP. ZELIFF: That's correct.

MR. SESSIONS: -- and the completion of that?

REP. ZELIFF: Completion of the writing.

MR. SESSIONS: I was aware of that, yes. I was not aware you -- somebody phrased it as surrender plan. He had talked many times about coming out. We had brought out many, many people from the beginning. Then those people stopped coming. And there was a great difficulty in relying on anything he said. But I was aware, of course --

REP. ZELIFF: So, they let you know --

MR. SESSIONS: -- of the Mr. --

REP. ZELIFF: -- as a result of -- and I'm sorry. I just got a little bit of time left.

MR. SESSIONS: But he was in the compound. That is that the lawyer was in the compound. This again was an effort to be sure that we left no stone unturned to bring those people out alive.

REP. ZELIFF: Okay. And the next day, he spoke to you, Mr. Hubbell, for two hours. What did he tell you about the surrender plan?

MR. HUBBELL: He who?

REP. ZELIFF: Or whatever kind of plan you want to call it?

MR. HUBBELL: I don't know who I learned from about the fact the Vernon Howell or David Koresh was saying that after he interpreted the seven seals and wrote about the seven seals, that he was willing to come out. I don't know who told me that -- whether it was -- first heard it from Mr. Clark or Mr. Potts or Mr. Sage or --

REP. ZELIFF: Okay.

MR. HUBBELL: There were constant discussions going on. I was aware that that was the latest discussion that was being had with the people inside of the compound.

REP. ZELIFF: Right.

MR. HUBBELL: I can't tell you precisely when I learned it.

REP. ZELIFF: Thank you.

MR. HUBBELL: But I was aware of it.

REP. ZELIFF: There's three or four things that are missing that you could be personally helpful for with us. We're missing some of your telephone logs -- particularly April 17th, 18th, and 19th. And our problem is, is that they've all been redacted. And is there any chance that we could get those? And then, this testimony in the Whitewater hearing that you kept certain files in your basement.

Additionally, the Department of Justice has told you that you kept separate Waco files. Did you ever, or did you know, if you have Waco files in your basement or in your possession anywhere, that could be helpful, and could we get some information on filling in these three vital days that -- I mean, what's happened to us in trying to bring this information out. This is important for us. The missing tape on February 28th is very important to us. That the ATF doesn't have it. They've got all the rest, but that one's missing. I mean, there's just some of this that would be vital in terms of letting us try to figure this all out. Can you be helpful on this?

MR. HUBBELL: I can be helpful. Nobody's ever asked me, but I have a copy of these same logs, and you're welcome to them as far as I'm concerned. Except, I have to tell you, the 17th and 18th were Saturday and Sunday, and so therefore there wouldn't be any -- these are basically logs of people who called and left a message for me to call them back, not necessarily everybody I talked to.

REP. ZELIFF: Primarily what we're looking for is any discussions you had prior to the 19th, obviously, in those three days, relative to anybody whether it be the president, whether it be FBI or anybody else.

MR. HUBBELL: I have no trouble giving you my logs for those days if you want them.

REP. MCCOLLUM: Mr. Schumer, your time is -- Mr. Zeliff, your time has expired. Mr. Schumer, I'm going to recognize you. I was thinking ahead a little bit there. Mr. Schumer, you're recognized.

REP. SCHUMER: Quit while you're ahead. Thank you, Mr. Chairman. And I would like to direct a few questions to you, Mr. Hubbell, aimed at what I consider the charitably fishing expedition part to the allegations out there, more like a witch hunt. I want to put to rest some things, because there are all sorts of, again, conspiracy theories, some politically motivated, to tie the president or the White House into pushing ahead the formula for going in prematurely for some nefarious reasons, some because the president saw it was Day 49, Day 50, Day 51, and he was anxious to get it over with. All of this in my -- I have not seen one scrap of evidence, one scrap, that indicates that. So I want to ask you clearly, Mr. Hubbell, did President Clinton convey to you in any way, shape or form that he wanted the siege at the Branch Davidian compound ended, and that you or Attorney General Reno should make that end happen? In other words, end it before she or the Justice Department officials thought it was appropriate. In other words, did the president impose pressure on the decision making process about Waco, yes or no?

MR. HUBBELL: No, he did not, either directly or indirectly.

REP. SCHUMER: Any at all, anything that might be even interpreted as that?

MR. HUBBELL: No, he did not.

REP. SCHUMER: No winks of an eye or shimmy of the hips or anything like that.

MR. HUBBELL: No, he did not, Congressman.

REP. SCHUMER: Okay, let me ask you this, did you -- now we've talked about the president -- did you convey on your own -- now you were at Justice, but you're a good friend of the president, so maybe that implicates him somehow -- so did you convey on your own any desire to get the siege at Waco over? In other words, did you pressure the attorney general to prematurely move up the decision?

MR. HUBBELL: No, I did not.

REP. SCHUMER: And are you aware of any official at the White House who would pressure the attorney general or the Justice Department to move up that decision before it was right, before it was ready to happen?

MR. HUBBELL: No, they did not. I am confident no one at the White House attempted in any way to influence the decision of the attorney general.

REP. SCHUMER: Okay. Now, we have four other gentlemen here who were at the top levels of the FBI, in the high command of the decision making process. I would like to ask each of the other gentlemen the same question. Did President Clinton or any other high official in the White House pressure you gentlemen to make a decision to move in before you thought it was appropriate? And you could please answer yes or no. Judge Sessions?

MR. SESSIONS: Mr. Schumer, I had no contact from the White House at all.

REP. SCHUMER: Mr. Potts?

MR. POTTS: No, sir.

REP. SCHUMER: Mr. Richard?

MR. RICHARD: I had no contact with the White House.

REP. SCHUMER: Mr. Clark.

MR. CLARK: No.

REP. SCHUMER: Okay. Now, I know what's going to happen here. You're going to get lots of nit-picking; they're going to say phone logs; they're going to say this or that or the other thing, and make little implications that sort of hang out there with no factual basis. But again, please search your memories, do any of you, the people at the highest levels of Justice, with the exception of the attorney general, and I'll ask her the same question, have any feeling at all, even a feeling that happened to pop into your head, that the White House, that President Clinton pushed you into making a decision you didn't want to make. Please just answer again.

MR. HUBBELL: No.

REP. SCHUMER: No, says Mr. Hubbell.

MR. SESSIONS: No.

REP. SCHUMER: No, says Judge Sessions. No, shakes his head, Mr. Potts.

MR. RICHARD: No, sir.

REP. SCHUMER: No, says Mr. Richard.

MR. CLARK: Absolutely not.

REP. SCHUMER: And absolutely not, says Mr. Clark. You guys are -- for one point of time, I'm out of questions here, gosh.

REP. : You want to yield back your time?

REP. SCHUMER: No, it's too precious. I think I will. In the interest of moving things ahead, I will yield back my time.

REP. MCCOLLUM: Well, I've already recognized Mr. Zeliff, who's next. Ileana Ros-Lehtinen -- Ms. Lehtinen.

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

REP. ZELIFF: Mr. Hubbell, I was in the process -- we talked about the phone logs, and we'd appreciate it if we could get those fairly quick that would be helpful.

MR. HUBBELL: If you would just have a member of your staff let me know who wants them.

REP. ZELIFF: Thank you. Actually, Bobby Charles (sp) would be good. And the other thing is that we talked about, relative to the Whitewater hearing, that you kept files in your basement and other places. Additionally, the Department of Justice has told us that you keep separate Waco files. Is there any chance that we could have access to some of them?

MR. HUBBELL: You can have access to any files that I have, Congressman. I do have my own set of Waco files, and you're welcome to them or copies of them. I think it --

REP. ZELIFF: Okay, that's great. Let me ask you, in terms of the gas plan yourself, when did you make your mind up that you felt that this was a good plan?

MR. HUBBELL: We were discussing up until the Saturday that the attorney general made the final decision. It was a very difficult, difficult decision to make. We went through every option imaginable, even some crazy ones that I had. But so I probably made up my mind about the same the attorney general did on Saturday, although I admit that on that Saturday -- I think it was Saturday or maybe Friday, the decision was no-go, even that late.

REP. ZELIFF: Well, what pushed you over? What made it happen in your mind?

MR. HUBBELL: I think it's a combination of factors. I think the evaluation done by the military of the plan.

REP. ZELIFF: What did the military say?

MR. HUBBELL: The military evaluated the plan at length, in front of the attorney general, myself and others, and as well as Floyd and others, and Judge Sessions. They only had one slight disagreement with the plan.

REP. ZELIFF: What was that?

MR. HUBBELL: That was that they would go in with the gas totally at first, as opposed to a partial insertion into one area. I believe they felt like you should go in totally all at once. They also said that their experience -- they weren't limited by the rules of engagement that the FBI had; that they might --

REP. ZELIFF: Were there rules of engagement by the FBI? What were they?

MR. HUBBELL: Yes, they were, that they would not shoot unless someone's life was in danger.

REP. ZELIFF: And the military would have done what else? They probably would have taken Koresh out.

MR. HUBBELL: They didn't say that directly, but you certainly had that impression. If they were on foreign soil, and these people were being held as hostages.

REP. ZELIFF: So on foreign soil, we would have taken them out.

MR. HUBBELL: I think you really need to ask the military, but I think that would be something that they would certainly --

REP. ZELIFF: They would have gone in and gotten rid of the place real quick. I mean, that's kind of a quick summation, isn't it?

MR. HUBBELL: I think you really -- that's a quick summation of a long day.

REP. ZELIFF: I guess the problem that I have is what pushed you over? When did you make the decision? Was it the military's recommendations that pushed you over?

MR. HUBBELL: I think it was a combination of what pushed us all over. It was not only the military saying that the plan was a good plan, and it would work. The military said they will come out of that building. I mean, I had a general and a colonel both look me in the eye and say, they can't stay in that building. They will come out immediately. That was part of it. Part of it was the factor that in the near future it was likely that we would have to change the deployment of the Hostage Rescue Team, not immediately, but in the near future. The factor that there were people still trying to get into the compound, and there was danger to the FBI agents, that was a factor.

REP. ZELIFF: Let me ask you one other question, and then I have one for Mr. Sessions. Do you know whether there's any document or conversation that would indicate to the White House and not the attorney general would be the final entity that approved any significant decision at Waco, including the CS gas decision?

MR. SESSIONS: I have no such document.

REP. ZELIFF: Mr. Hubbell?

MR. HUBBELL: I'm not aware of any document like that, no.

REP. ZELIFF: Nothing at all that said the president would have the final decision; nothing would be done without his approval. You know of no documents.

MR. HUBBELL: No document like that at all, no.

REP. ZELIFF: Okay. And Mr. Sessions, same kind of questions, if you would. When did you make up your mind that the gas plan was a good idea? And what put you over the edge -- that's probably not a good phrase to use. But what made you come to grips with "This is the right thing to

do"?

MR. SESSIONS: Well, the whole plan was to be able to extract those people and have them come out safely. Everybody's mind was the same on that point. The question was how to do it and how to work it. And you know and you can see that there was a constantly tightening ring around that group. And the insertion of the gas on the ends of the compound was perceived as a means by which you could get them constricted even further. And ultimately they would know that they were simply going to have to come out. It was not an environment where they could actually continue to live. You'll have to remember, people had long since ceased coming out and Mr. Koresh had no longer allowed people to come out. And we were trying to tighten the ring.

REP. ZELIFF: I can see the chairman's getting nervous with his flipper.

REP. MCCOLLUM: Your time has expired. I'm not getting that nervous. Mr. Watt, you're recognized for five minutes.

REP. WATT: Thank you, Mr. Chairman. And I thank these members of the panel for being here today. To the extent that I have felt that these hearings have served any useful or valuable purpose, I have tried to do it in the context of what kind of prospective guidance what has happened in the past might provide to us rather than making an effort to second-guess each and every aspect. And we've succeeded, particularly Mr. Scott and I, in getting some educational benefit and prospective value placed on personal and civil rights and the value of the exclusionary rule and the Fourth Amendment rights that are protected.

And I think some concessions have been made that ATF probably stepped across some lines or were very close to lines in those areas and that there are some things that we might be able to do in the future to better safeguard individual rights and liberties. And I spent some time asking Secretary Bentsen about the administrative supervisory chain of command guidelines and what knowledge that this incident might bring to bear on changes. And I understand that some administrative changes have been made to try to improve the supervisory lines.

I'm interested, particularly from Judge Sessions -- and I think I may have asked this question to Mr. Potts on a prior panel, so I won't ask him to address it again -- but I'm especially interested in what kind of lessons informed by what transpired at Waco, what kind of changes you think need to be made, whether they have or have not been made in the administrative functionings, the decision-making processes that lead to the decisions in these kind of settings such as Waco, and whether there are any personal rights, individual lessons -- individuals rights lessons that you bring to bear, and whether there are any other, other than individual and administrative lessons, that we might gain from Waco, my effort being to try to use this as something to inform us to be a better nation in the future rather than simply trying to second-guess on Monday morning the plays that took place on that fateful day.

MR. SESSIONS: Mr. Watt, in responding to Mr. Scott's question, I made it very clear about my strong feeling that's compatible with what you expressed; that is, the certainty that the Fourth Amendment of the Constitution of the United States remain intact and that, in fact, we do those things which are compatible with being sure that it does. That means training. That means

professionalism. That means taking those things which will assure that all law enforcement people understand the importance of those rights and that right.

Patience is probably the greatest virtue you could have in connection with this kind of circumstance. I mentioned the circumstances at Oakdale, Louisiana when that prison had the riots; in Atlanta, when it had the riots; at Talladega, when it had the riots. Everywhere we've been, it's important to have patience but also to negotiate and to not leave unturned any possible negotiating possibility. And there were negotiating possibilities from the beginning down in Waco. Everybody knows that I had contact direct from people associated with Mr. Koresh about the possibility of my going down and negotiating with them, coming in down there.

Now, some people played that as ridiculous and ridiculed it, or as grandstanding. But it's indicative of what I felt and continue to feel. You can't discard any possibility that you can resolve that kind of circumstance when you can take and apply that negotiating capability. So the negotiation is obviously very, very important. Pressure, which is what you've seen demonstrated so repeatedly in connection with Waco, is also important. So pressure, negotiating and patience are those three things.

Now, administratively, to translate those into an active and effective function, you have to have continual discussion. And, in fact, we had that day in and day out, and it went as high as the attorney general. Where it went from there, I do not know. But the point is that those elements were there. I do not believe that we were served well by discarding any of the negotiating possibilities. Acting Attorney General Gerson discarded those as being not appropriate for the director to become involved in. I can understand why not. You don't want any person who is barricaded to know that they can trigger the arrival of the director of the FBI to do that. And yet this was no normal circumstance. This had the same approximate number of people that were captive down in Atlanta. And there again, the point was patience and negotiate, endlessly keep after it and patiently keep after it. It is important.

REP. WATT: Before my time expires, Secretary Bentsen testified at the hearings here about some administrative chain-of-command changes that have been made to bring a closer level of supervision from the Department of Treasury over the ATF agents. Are you familiar with those and do you care to comment on whether the chain of command was clear enough in ATF to Treasury and the changes that took place in response?

MR. SESSIONS: Mr. Watt, I am not familiar with what Secretary Bentsen discussed nor the chain of command at the Bureau of Alcohol, Tobacco & Firearms. I am clear on the chain of command with the bureau and know that it functions, and functions well. You always have to have a clear line channel and a willingness to actually report those things that are happening. And it's very clear that you must have it. And so ATF would be well advised to do whatever is necessary to get it if they don't have it.

REP. WATT: Thank you, Mr. Chairman.

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

REP. SCHIFF: Thank you, Mr. Chairman. I would like to yield all of my time to Chairman Zeliff, please.

REP. ZELIFF: Thank you. I want to go back to you, Mr. Hubbell, if you could. We talked about written correspondence. Any conversations, written or verbal, any discussions, anything you can remember from February 28th to April 19th indicating that the president had an interest in being involved in what's going on? Any changes to the negotiation process? Anything that you can remember relative to all of the things that were happening from February 28th to April 19th.

MR. HUBBELL: I was aware, Chairman, that the president wanted to be advised if there was any change in the posture in Waco from the decision to negotiate, and therefore when the decision to insert the gas; although considered by some to be continued negotiations, we felt like we needed to advise the president of the insertion of the gas.

REP. ZELIFF: So if I understand you correctly, he wanted to be involved. He wanted to know if anything changed from the negotiation process. And whether it was you or Mr. Lindsey, Mr. Nussbaum, Mr. McCarty or others, however he got all that information, formally or informally, he wanted to be included in the loop. Am I correct?

MR. HUBBELL: I was told by Attorney General Gerson that he wanted -- the President wanted to be advised if there was going to be any change.

REP. ZELIFF: Right -- am I right in understanding then that he wanted to be involved in the decision making process?

MR. HUBBELL: I didn't consider that. I think he wanted to be advised if there was going to be a change, and we did so.

REP. ZELIFF: Sounds like Mr. Altman's letter to Mr. Bentsen, you know he wrote on April 15th that something tragic was going to happen on the 19th and we ought to -- you know in his judgment somebody ought to stop it. Mr. Bentsen said well, that was the FBI's problem. Now switching over to you, Mr. Sessions, are you the guy that really -- I mean you know bringing it on down, if Janet Reno wanted to she can just say well I was just following Mr. Sessions recommendation. I mean at what point do we assign responsibility for this thing?

MR. SESSIONS: Well you can assign it where you feel it's appropriate, Mr. Chairman. But the discussions with the Attorney General were very complete and she was very, very interested in every single phase and step of it, and questioned how the decisions were made. She was particularly concerned about children and we all know that. She was concerned that if -- I think I heard it discussed somewhere that if a child was held up in a window, that anything that was being done should immediately be stopped if there was any indication of a child being endangered.

REP. ZELIFF: Did anybody --

MR. SESSIONS: She was very interested all the way along. You can assign it where you want. My responsibility was to direct the FBI. The Attorney General of course is the director, overseer of the

Director of the FBI.

REP. ZELIFF: But you were the Director of the FBI --

MR. SESSIONS: That's correct.

REP. ZELIFF: Certainly as far as the FBI is concerned in the plan itself you had to be part of that responsibility.

MR. SESSIONS: That is correct.

REP. ZELIFF: And then she at her level had to be part of that responsibility.

MR. SESSIONS: That's correct.

REP. ZELIFF: And probably someone above her had to part of that responsibility.

MR. SESSIONS: I think the Attorney General has the full authority to do exactly what she did, that is to approve and order and direct me to proceed with the plan that had been presented to her.

REP. ZELIFF: Doctor Salem, you mentioned that the GAO report on CS gas, available long before Waco of course, and you showed it as one example that the CS gas was not harmful. Are you aware that the State Department disagreed with you? Let me just read and insert this in the record, Mr. Chairman. According -- this is GAO report -- and that's dated April of 1989 -- according to State's human rights report to Congress, figures compiled from press, Palestinian and Israeli government sources indicate that 366 Palestinians were killed in 1988 as a result of the uprising. While exact figures are unavailable and estimates vary, the State Department reported that at least four deaths resulted from tear gas used by the IDF -- the Israeli Defense Forces in enclosed areas. You are aware of this?

MR. SALEM: Yes, sir, I stated that I believe in my remarks that there were four deaths attributed to tear gas, but they didn't specify that that was CS. And the other report said that the Israelis were using both CN and CS.

REP. ZELIFF: Okay, so it was inconclusive. At least I can say that there is inconclusive evidence, but there is certainly some evidence, whether it was conclusive or not, that it could be harmful?

MR. SALEM: Yes, sir.

REP. ZELIFF: Okay. And also in the Ruby Ridge Marshall's log -- and again I would just like to bring this up -- maybe Mr. Potts would comment on this again -- they indicated and we inserted in the record yesterday that the use of CS gas would be harmful to children, particularly children. And I believe Mr. Potts indicated that they did not feel that this was credible. I guess my same question there, credible or not, it certainly indicates that there's a potential harm to children. Mr. Potts.

MR. POTTS: Yes, sir.

REP. ZELIFF: And also Dr. Salem, if you would afterward.

MR. SALEM: All chemicals are potentially harmful. It depends on the amount and the way it's used, sir.

REP. ZELIFF: Okay, Mr. Potts.

MR. POTTS: Yes, sir. A couple of things. One, I understand that the marshall out in Idaho at that time has indicated that he called that back and that --

REP. ZELIFF: That's good judgment I guess. Do you feel that was good judgment that he called it back?

MR. POTTS: Yes, sir, that's fine. But he indicated that he did not indicate that it was a high risk, that that's not an accurate --

REP. ZELIFF: He changed his mind?

MR. POTTS: No, sir, he just indicated that's not -- that he did not say it was a high risk. He did indicate that it was a risk to children. Sir, I think it's almost important to note in that log that it doesn't say CS gas, it just says gas. I understand -- I was not on the site there -- but I understand that there were other types of gases that were discussed out there. Now I can't tell you that this comment does or does not refer to CS, but there were other types of gas that were discussed at Ruby Ridge other than CS.

REP. MCCOLLUM: Mr. Zeliff, your time is up. Mr. Conyers, you are recognized for five minutes.

REP. CONYERS: Thank you, Mr. Chairman. Gentlemen, the question has been raised more than once across the years that Alcohol, Tobacco and Firearms ought to be folded into the Federal Bureau of Investigation. Can I get a -- first of all can I find out if there is anybody that's open to that suggestion on the panel. Mr. Clark, Mr. Richard, Mr. Potts, Mr. Hubbell, Judge Sessions? Okay, then who -- did two opens -- Mr. Clark you are open to that. Would you give me a brief comment please.

MR. CLARK: I think it can't be a simple answer whether you are open to it or not. I do think that there are issues of coordination within federal law enforcement and that is an option. But I think those areas are viable discussion topics. So I think those areas are open for discussion.

REP. CONYERS: Well what's your case for -- after we open the discussion and become viable -- then we say let's put the firearms responsibility of ATF into the FBI, where do you come down there?

MR. CLARK: Well I think my concerns are a little bit different than just where you place the responsibility. My concerns are things like Attorney General guidelines for undercover operations, Attorney General guidelines for the use of title threes. Those kinds of things vary from law

enforcement agency to law enforcement agency and I think that there is a need for continuity in the way that the federal government exercises its federal law enforcement responsibility. However that is done I am open to discussion. Consolidating functions and responsibilities certainly is one option.

REP. CONYERS: Well bringing them all together it seems to me would increase the likelihood of continuity.

MR. CLARK: Yes, it would.

REP. CONYERS: Deputy Assistant Attorney General Richard, could you give me a brief observation on this please?

MR. RICHARD: Yes, and I'll be only speaking on a personal basis because I don't necessarily reflect the views of the department. Frankly, Congressman, I believe it's imperative that the Attorney General be recognized, not just a name, but in function, as the chief law enforcement officer over all law enforcement agencies, and in that capacity have the ability to ensure uniformity of procedures and adequate coordination of all functions to avoid inefficiencies, duplication and problems with respect to processes of critical importance.

So I agree that there is much that can be done. But on the other hand, to bring the entire agency within the department in the context that you are suggesting I suspect may be inappropriate given their vast regulatory and administrative responsibilities that are also assigned to ATF.

REP. CONYERS: Judge Sessions.

MR. SESSIONS: Mr. Conyers, there are several aspects to that that could take us many days to discuss. But briefly, two things have to be considered, and that is the gathering of a great deal of law enforcement power into one agency. There was discussion almost immediately after the raid by ATF that they ought to be incorporated into the FBI.

REP. CONYERS: I remember -- I thought it almost accomplished because one time I was waiting for the press release.

MR. SESSIONS: It was all over this town. The gathering of that power however is very difficult if you look at what can happen. Right now their responsibility is over in an area that is highly political. The Bureau tries to maintain itself apolitically, and certainly I tried to the best of my ability to keep political considerations out of the Bureau's business.

If you actually incorporate that ATF function into the Department of Justice, with all of the political concerns that it has and you have a political attorney general who is a member of the cabinet, you have some problems that you might not be able to deal with effectively, and to boot, you've got the problem of gathering so much power into the FBI, and I think that needs to be looked at very, very carefully.

REP. CONYERS: Well, I'll be cautious as we continue to look at it, but, you know, examine with me the fact that the attorney general already has 95 percent of all law enforcement power in the

country anyway and is attacked politically on a very regular basis, so, you know, what's new? That's the way this business goes down.

What I want to do is stop having all of the fights that go on between law enforcement agencies -- the Drug Enforcement Agency, the FBI, the Secret Service sometimes, INS. All have legal capacities that unless they're really regulated by one central authority, I think we have a problem.

Now, let me go on to the question about the president's involvement, Mr. Hubbell. Was the president's decision to leave this to the experts and that he wanted to be consulted or was he involved in making the decisions? To what extent -- where does the line come down in that area?

MR. HUBBELL: It's my understanding that the president wanted to be advised if the strategy from pure negotiation changed, and the attorney general did that in a conversation on the 18th, and I kept the White House counsels advised in the week prior to that about the possibility of the plan. I am not aware that the president ever said, "I want to be involved in the decision" or that "I have some ideas about this."

REP. CONYERS: Finally --

MR. HUBBELL: He wanted to be advised.

REP. CONYERS: Finally, how come everybody here is for the Fourth Amendment as an exclusionary rule and the administration isn't? Can you explain that to me? I mean, I have all of these great protestations of support for a constitutional process, and then when we get to the administration and the attorney general, we have two sets of testimony here. You can only speak for yourself, but we're having some serious erosions of the exclusionary rule in the anti-terrorist legislation, and what does it mean? We have everybody here. There hasn't been one witness during these five or six days that wasn't for strengthening the exclusionary rule. The attorneys, the government, all witnesses -- so what does that leave us with? Mr. Richards?

MR. RICHARDS: Can I respond and take exception to at least a portion of your remarks, and that is this attorney general and this Department of Justice is very much committed to defense of Fourth Amendment liberties. Our position as reflected in the anti-terrorism bill in light -- in our judgment are consistent with Fourth Amendment obligations. We strongly endorse --

REP. CONYERS: You mean eroding the exclusionary rule is --

MR. RICHARDS: No, no --

REP. CONYERS: -- consistent with supporting the Fourth Amendment?

MR. RICHARDS: As you know, the administration and the Department of Justice has a variety of concerns in this area and have expressed it during the course of this legislation, but I'm just suggesting that, with respect to other aspects that are in the anti-terrorism bill and the like, we do believe that they are consistent and supportive of our concerns regarding --

REP. CONYERS: Well, I'd like to just show you some of the testimony that we've had here that --

I'm not putting words in anybody's mouth or making up anything. This is a very serious problem, a division of position within this administration, that the least we should do is acknowledge the position that are at opposition within the administration --

REP. : (Off mike. )

REP. CONYERS: -- and I'm putting nothing in anybody's mouth. That's what I'm trying to solve, as a matter of fact.

Thank you, Mr. Chairman.

REP. MCCOLLUM: Thank you. Thank you, Mr. Conyers.

Mr. Coble, you're recognized for five minutes.

REP. HOWARD COBLE (R-NC): I'm not going to use all my time. Gentlemen, good to have you all here with us. I'm going to just make a brief statement, Mr. Chairman.

Some folks have questioned whether or not these hearings have been useful and valuable. Well, use and value may be subject to interpretation, but I think there's no doubt, Mr. Chairman, that these hearings will have been determined to have served a good and useful purpose.

Now, having said that, Mr. Chairman, Mr. Chairman, I think you have questions you wanted to pursue, so having said that, I will yield the balance of my time to you.

REP. MCCOLLUM: Thank you very much, Mr. Coble.

Mr. Hubbell, a few minutes ago, you responded by saying that at a meeting with the military, which I believe took place on the 14th of April with the attorney general, that they indicated or said very strongly that they believed that if the tear gas, the CS gas was inserted, that the people would come out. You made that a very forceful statement. Is that correct?

MR. HUBBELL: That is correct.

REP. MCCOLLUM: Did you know at that time, were you aware at that time, that the Davidians in the compound had gas masks?

MR. HUBBELL: I believe we were aware they had gas masks, yes. We assumed they had gas masks.

REP. MCCOLLUM: And the military said they'd come out anyway?

MR. HUBBELL: Yes, they did.

REP. MCCOLLUM: All right.

Were you aware of something that came up yesterday -- Mr. Jamar told us in testimony yesterday that he was 99 percent certain in his own mind that if these CVs went up with the gas to insert it that they would be fired upon and that the plan called for the acceleration of the gas and not just over a lengthy period of time at that juncture.

And in response to my question to Mr. Potts about that, he indicated yesterday he was unaware of Mr. Jamar's feelings about this, unaware that this was a likelihood and, obviously, the clear implication of that is that probably you would accelerate, that the idea of a long, extended period of inserting this gas would not take place.

Were you aware, through any source -- obviously not Mr. Potts -- that Mr. Jamar felt that there would be 99 percent likelihood that these vehicles would be fired upon and that the insertion of that gas would have to come in an accelerated fashion?

MR. HUBBELL: I was not aware that Mr. Jamar felt like there was a 99 percent chance of that happening. I think certainly we -- at least I did, and I believe others did believe that that was a possibility, because they prepared for that contingency --

REP. MCCOLLUM: -- (inaudible; crosstalk) --

MR. HUBBELL: -- by saying that if it did happen, they were going to accelerate the -- (inaudible; crosstalk) --

REP. MCCOLLUM: I understand that, but if you knew that it was going to happen in all probability, as opposing just the possibility, would that have affected your recommendation, your thoughts, your discussions with the attorney general, or do you believe it would have affected anybody else's who met with her with regard to this in the final day or two?

MR. HUBBELL: I believe it was being considered during that entire time, that that was, I believed, a likelihood that the vehicles would be fired upon when they attempted to insert the gas, so I believed that that was not only a likelihood but was -- had to be taken into consideration as everybody made their individual decisions.

REP. MCCOLLUM: Let me ask you one other question. You talked to Mr. Sage on the telephone on a two-hour conference call on April 15, the day after this meeting with the military, according to the Justice Department report. Also, according to that report, you talked with him because the attorney general asked you to get more information, I presume. Is that not true?

MR. HUBBELL: That is correct. The attorney general wanted me to talk personally with the head negotiator, to go over everything that had happened, to get his opinion of whether Koresh was going to come out at any time soon, whether he could be negotiated out, and what had happened and what his prediction was going to --

REP. MCCOLLUM: And what did Mr. Sage, in general terms, in two hours say to you?

MR. HUBBELL: In general terms, that the negotiations had failed, that he could not negotiate

Vernon Howell/David Koresh out of the building or anyone else, that the only people who had left that building left because David Koresh wanted them to.

REP. MCCOLLUM: Did Mr. Sage, at any time during that conversation, mention the names to you of DeGuerin, Zimmerman, or Arnold?

MR. HUBBELL: We did discuss -- I can't tell you the first time I learned -- I think I knew before that about the attorneys, but we did discuss the attorneys, the seven seals with Mr. Sage, yes.

REP. MCCOLLUM: Well, what I want to know is did he at any time say that Mr. DeGuerin, with the help of religious experts, was working on a new approach with Koresh that might be fruitful and that that approach was one which involved the persuasion of Koresh to come out, because DeGuerin believed that Koresh had now become convinced he was a messenger of God, rather than to be a martyr under the seven seals, and that, indeed, if given about 10 days in time, DeGuerin was absolutely convinced that Koresh would, indeed, come out. Did that explicitly get conveyed to you by Mr. Sage?

MR. HUBBELL: He conveyed to me the conversations with Mr. DeGuerin. He did not convey to me that he thought the plan would work. In fact, he indicated to me that it wouldn't, that the attorneys were being manipulated by Mr. Koresh.

REP. MCCOLLUM: He indicated they were being manipulated by Koresh, and therefore he -- did he convey to you, though, the concept that the attorneys presented, the idea that Koresh was now viewing himself as the messenger rather than the martyr, and that that was a very important thing in the view of the attorneys as a big change in Koresh, and their rationale for why Koresh now, they believed, would come out because he had had a change of perspective under his interpretation of these seals? Did you get into that kind of detail?

MR. HUBBELL: I got into a lot of detail, but I certainly didn't understand what you just said to be the case. I understood, based on my conversation with Mr. Sage -- and I can't recall everything that was said -- that Mr. Koresh was manipulating the attorneys to buy more time, and that he wasn't going to come out. I don't -- I did not ever get the impression that there had been a shift in Mr. Koresh's view of himself at all.

REP. MCCOLLUM: Thank you very much. Who am I going to next on your side? Mr. Lantos, you are recognized for five minutes.

REP. LANTOS: Thank you, Mr. Chairman. Most of my colleagues quite properly have been dealing with the details and the particulars of this episode. I would like to deal with the broad picture. I'd like to address you, Judge Sessions. There are few people in American public life in recent decades who have had your experience and your integrity in dealing with American society. I would like to ask you to sit back a bit and look at this episode in a broad, historical and conceptual framework. It has seemed to me all along that three approaches have emerged concerning this tragedy. The first, to which the lunatic fringe still adheres with great tenacity, is that this whole Waco tragedy was the result of a conspiratorial government attempting to destroy the American people's rights to religious freedom and the American people's rights to bear arms. I'd like to ask

you to react to this approach.

MR. SESSIONS: Mr. Lantos, I think you're very perceptive. And going back to the very roots of our society, from the very beginning we were a different people. We had different drummers that we marched to. The people on the Mayflower were in grave disagreement with their church authorities and with their government. America became in the whole world the one place where people could disagree with their government. And finally with our Constitution we nailed that down, and said it was the most important of factors in society in America. So it is tremendously important that the government not be perceived as conspiring against its people. And it must not do that. And it must keep an openness, and it must keep the dialogue going in terms of how the government performs what it does. So I think you're very perceptive and very correct.

REP. LANTOS: The second broad approach, to which in varying degrees we all adhere, is obviously that some mistakes were made at various stages, and with the benefit of 20/20 hindsight, everybody would have been able to do a better job, and I don't think this panel is the right one for me to explore what specific mistakes were made by whom. But I think it's reasonably clear to assume that even the most glorious exercise in recent history, the landing at Normandy on D-Day, had mistakes. And I don't know how far we will get by dealing with the nuanced approach to mistake-hunting. And I don't want to deal with that at all, because my colleagues are doing, in varying degrees, a good job at it.

The third issue I want to get to is the analogy with Jonestown, because at Jonestown, Judge Sessions, there was no FBI, there was no Bureau of Alcohol, Tobacco and Firearms. As a matter of fact, Jonestown was basically removed from the sovereign domain of the United States government; it happened elsewhere -- it happened in Guyana. Yet in Jonestown we have parallels to Waco which are more than striking -- a criminally insane, charismatic religious cult leader, bringing about the death by murder or self-instruction of some 900 American citizens who for whatever reasons -- misguided religious beliefs, fear, timidity, personal relationships, what have you -- have followed Jim Jones as their god, did what he wanted them to do -- almost identical things -- and they all perished. Is it reasonable to assume that perhaps the Koresh tragedy is most analogous to the Jim Jones Guyana tragedy, and the death and the nightmare was preordained by Koresh and his determination that these people would die with him?

MR. SESSIONS: Well, there's a strong suggestions of that, and a similarity. There is one factor that existed at Waco for the Branch Davidians that did not exist in Jonestown, and that is that you had law enforcement officers carrying out what they perceived to be their sworn duty in connection with the gun law of the United States, and there were four officers killed and 20 wounded. It was that action that prompted the FBI -- prompted me to call the director and say, Can we be of help? -- and there were other connections almost immediately to the tragedy that was enacted by the original raid in connection with the ATF function. So there are similarities, and I can see that it is extremely important to the American people out of this understand that law enforcement is not allied against these people. Quite the contrary, there are many, many law-abiding sects, I am sure, in these United States. There are many, many people who think differently and march to a different drummer. But law enforcement must protect those people, and not be perceived, nor ever become the enemy of those people, but rather protect them.

REP. MCCOLLUM: Mr. Lantos, your time has expired.

REP. LANTOS: Could one more witness respond to the question --

REP. MCCOLLUM: One more may respond.

REP. LANTOS: May I call on Mr. Hubbell to respond to the Jonestown-Waco analogy that I developed?

MR. HUBBELL: Congressman, I think there are a lot of analogies that could be made. I think one of the unbelievable things to me is the hold that Vernon Howell had on these people. When the Army told me that they've seen grown men run through doors as soon as they had -- were hit with this CS gas, and then to see no one come out, you realize the strong hold. I'll never forget the scene of the woman who ran back into the fire, and the man who was on top of the building and wouldn't come off the roof -- that he had that kind of hold on human beings is frightening. And I do think there are analogies.

REP. LANTOS: Thank you very much.

REP. MCCOLLUM: Thank you, Mr. Lantos. Mr. Mica, you are recognized for five minutes.

REP. MICA: Thank you. Just an observation, Mr. Sessions. We had witnesses from Britain who were testifying on the use of CS gas, and you talked about the history of the United States and the perceptions. And if you -- I don't know if you saw that, but if you saw it you'd see why we broke off from England, because of the cold, calculated manner in which they had no compunction about using CS gas on children and women. And that's one of the reasons in fact we broke off -- is a difference of opinion.

Mr. Hubbell, do you recall a meeting on or about the 14th or 15th of April that you attended with Vince Foster, with Mr. Nussbaum, and I guess some others, in which was really a turning point, in which the discussions were that the FBI had changed their mind. And the change in the mind was based on two things. One, a change in the situation. They planned to insert gas, some people were saying. That's one. And two, that there was concern expressed that the FBI had only one hostage rescue team, and they were tiring. Do you recall that conversation and that meeting?

MR. HUBBELL: I recall. I believe I asked for that meeting, yes.

REP. MICA: But was that the context of that meeting?

MR. HUBBELL: I think the -- I'm not sure. I've wracked my brain, but I can't remember whether that meeting was after we met with the military. But I believe it was before. But I --

REP. MICA: The other thing is --

MR. HUBBELL: But I believe that meeting was before, where I advised them that the FBI was proposing to insert the CS gas, and they were asking me the same kind of questions the attorney

general was asking -- why now, and what had changed.

REP. MICA: So, basically, that kind of decision was made at that point, or that was the turning point. And we see all of this leading to the -- you know, the attorney generals office, and pointing sort of the responsibility up there, that she made a flawed decision based on flawed advice. So, this is sort of the turning point where some of this took place. Did you or others at that meeting recommend or was there any discussion about the use of military force or equipment?

MR. HUBBELL: There was not any discussion about the use of military force. There was discussion of having the military evaluate the FBI's plan.

REP. MICA: Dr. Salem, who asked you to brief the attorney general, specifically?

MR. SALEM: Two of my colleagues at the Edgewood Research Development and Engineering Center.

REP. MICA: Are you aware of any second opinion now? You know, this involves use of this gas, where women and children -- you were aware of that situation? And were you aware of any second opinion being sought by any other expert?

MR. SALEM: No. There were other people at the meeting when I was --

REP. MICA: But were there other experts? You're the expert on CS gas that was retained. There wasn't a second opinion, as I understand.

MR. SALEM: I'm not aware of that, sir.

REP. MICA: Mr. Potts, Mr. Bryant made the point earlier that your intelligence people had not told Jamar that on the morning of the 19th, the Davidians were overheard as they evidently spread fuel and allegedly started a fire. Jamar has said he would not have proceeded had he known. Whose responsibility was it to get this information to Jamar?

MR. POTTS: Yes, sir. We -- I think that's -- I think that's an excellent point that Mr. Bryant made this morning. That --

REP. MICA: Whose responsibility was it to get the information to Jamar?

MR. POTTS: We have a -- we had a set up where we had monitors listening to the conversations that were going on. And they did not hear those conversations. It's not on the log. So, you would expect --

REP. MICA: So, no --

MR. POTTS: -- if the monitors didn't hear the conversations, there's no way it can get then up the chain to Mr. Jamar.

REP. MICA: So, no one is taking responsibility.

Mr. Richard, I guess you're one of the folks that are there now. This week, approximately half of a panel that we had testified that some of the infants and children -- since they didn't have gas masks -- could in fact have died from inhalation or effects of CS gas. At the very least, the Department of Justice decision in fact resulted in the babies and children being tortured for at least three to four hours before -- according to autopsy reports that we have -- that most of the two dozen children were suffocated or burned to death. We can't go back and change what took place, but do you believe we should adopt a federal policy with respect to the use of CS gas where women and children -- or particularly children and infants are present?

MR. RICHARD: I believe that you're really, in the final analysis, going to have to take it case by case assessment.

REP. MICA: Should we have some policy?

MR. RICHARD: Well, we should certainly go very hesitantly and very thoughtfully in all such instances with using the gas. But I would not simply -- based on my understanding of the effects of the gas and its lethality -- I wouldn't want to suggest that we should ban its conceivable use on policy grounds without taking a case by case assessment.

REP. MICA: Mr. Chairman, do I still have time?

REP. MCCOLLUM: No, you've run out of time, Mr. Mica.

REP. MICA: Thank you.

REP. MCCOLLUM: And I recognize for five minutes Ms. Jackson Lee.

REP. SHEILA JACKSON LEE (D-TX): Mr. Chairman, I thank you very much. And gentlemen, good morning to you, and I thank you for your presence here.

Please bear with me as I just offered to you two amendments in the Bill of Rights. The Second Amendment talks about a well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Judge Sessions, you have mentioned the politicizing of the ATF. But might I get you to comment on whether or not the right of David Koresh might have been violated under the Second Amendment, as we read this language. Are Americans still protected under the Second Amendment in light of the need that was perceived to go in and investigate Mr. Koresh?

MR. SESSIONS: On the use of the word politicizing, I did not say that the ATF was politicized. I said that they are involved in an issue -- that is, guns -- which is very political in nature, by virtue of the Second Amendment discussion.

REP. JACKSON LEE: And will you then get to my question on the Second Amendment and Mr.

Koresh?

MR. SESSIONS: With Mr. Koresh, the ATF -- it's my understanding -- believed that he was in violation of the gun laws of the United States. And that because he was in violation, he was answerable to warrants for both arrest and for search. And therefore, they did that --

REP. JACKSON LEE: So, citizens lawfully keeping guns for hunting or sport, are in keeping with the Second Amendment. Is that -- am I understanding what you're saying?

MR. SESSIONS: Well, it's clear that there is no question that where you keep weapons that are in violation of the law, and are listed as being weapons that are prohibited, that you are in violation of the law, and subject to a warrant either for arrest or for a search.

REP. JACKSON LEE: And so, it would be -- based upon the facts that have come to you, it would be your assessment that most Americans are protected under the Second Amendment in the lawful manner of keeping weapons.

MR. SESSIONS: I think all Americans are protected by the Second Amendment. I think that the matter of keeping weapons -- as long as they are not in violation of the law is well described and well established.

REP. JACKSON LEE: Frankly, then, let me say what I think many Americans are thinking, as these hearings are unfolding. What they are perceiving, or what their apprehension is, is the fear of militaristic domination and law enforcement domination. And so, I'm -- I've got to pursue again this whole question of the Fourth Amendment.

I asked you about the Second Amendment because if we hold to a high standard the Second Amendment -- the right for people to bear arms, then it seems unlikely that a government should then attempt to remove from citizens the same right of unreasonable search and seizure, which might be thought to be the case under the weakening of the exclusionary rule. And you being a former federal court judge, and certainly your leadership of the FBI, I gain ask you -- do we do ourselves well in this nation -- and answer the question of the fear of militaristic domination and law enforcement domination by the weakening of the exclusionary rule.

MR. SESSIONS: Well, I have answered Mr. Scott's original question and Mr. Watts' original question, and now yours -- very clearly. I have no question in my mind that the Fourth Amendment means exactly what it says, and it should be maintained, and that we should -- on the other side of it -- insist that, and provide for the enhancement of the professionalism of law enforcement, so they know the standards and they follow the standards. And they are trained. And it's second nature to them, so that you do not have any infringement or impairment of the Fourth Amendment right

REP. JACKSON LEE: So, you think that it is certainly positive to have an independent intervener -- cooled heads, cooled minds -- to review whatever the representations that are being made by a law enforcement officer for a viable, verifiable search warrant.

MR. SESSIONS: Well, that's intended -- that a warrant be issued by the authority, having been

properly informed. So, the answer is yes.

REP. JACKSON LEE: And proper information is certainly a key element.

MR. SESSIONS: Proper information is critical, and it always has been critical, and it always will continue to be. That's the integrity of the warrant. If it's on improper information or deceptive information, then you weaken the warrant. And you should not do that.

REP. JACKSON LEE: I noticed that some who are on the panel this morning visited the sight and others did not. And Judge Sessions, I, too, hold you in high respect, but let me query you on this issue, for -- I think, again, apprehension is our government in control of itself. Would you respond to the allegation that the reason why we had a Waco is because the FBI was in disarray?

MR. SESSIONS: The reason why we had a Waco was because --

REP. JACKSON LEE: The ultimate results of the 51 day siege, and the ultimate going in is because the FBI itself, the organizational structure was in disarray.

MR. SESSIONS: Well, it was obvious --

REP. JACKSON LEE: How would you respond to that allegation?

MR. SESSIONS: Well, I would respond to it this way. It is obvious that from the time of the change in the administration, it was very clear that there was great discussion about the replacement of the director of the FBI. That discussion was well known by Mr. Hubbell, well known by the attorney general, well known by everybody. The decisions had been made probably earlier. But I do not believe that the discipline, nor the ability of the FBI was impacted at all. Now, there may be others that disagree.

I know this is a very political thing. And I agree that -- with your observation -- that it could be that the FBI was impaired with its ability. Certainly, I was impaired in my ability to be able to negotiate, to be able to actually go down -- as we discussed with Attorney General Gerson. The idea of the director ever becoming directly involved in negotiations, because those were hometown folk, was dismissed as ridiculous and grandstanding. It was also discussed that it was not appropriate -- it was not appropriate for an FBI director to respond to a hostage type or this type of circumstance.

So, there are elements of it -- and I continue, and continue to this day, my strong belief you must negotiate, you must be patient, and yet you must apply the appropriate pressure. And I think we did those three things -- which indicate that the government was not in disarray, nor the Bureau.

REP. MCCOLLUM: Ms. Jackson Lee, your time is expired. Judge Sessions is going to have to leave us when we go for these votes.

REP. MCCOLLUM: (Sounds gavel. )The hearings on the Waco matter will convene -- reconvene, I should say. We just had a break for votes. There were three votes on the floor of the House. The members have come back. When we took our break, Mr. Blute had consumed one and a half

minutes of five minutes of time which he had in order to ask Judge Sessions a question before Mr. Sessions had to leave, which he knew and we knew in advance he would have to do at around 11:00. Now I will recognize Mr. Blute for the remaining three and a half minutes of the time that he has. Mr. Blute?

REP. BLUTE: Thank you, Mr. Chairman. I would like to ask the FBI representatives about some of the questioning that I asked Judge Sessions about -- Mr. Smerick's recommendations, and whether there was pressure generated from above to change his recommendation to conform with some type of pre-ordained outcome, which I think is very troubling. And it indicates where the pressure built for the final confrontation -- perhaps not in Waco, Texas, but perhaps in Washington, D. C. Now, Judge Sessions said that he knew nothing about that. I tend to believe him. But I also believe Mr. Smerick is sincere in testifying that although he thought it was Judge Sessions, that there were some pressure on him -- that there was some pressure on him to change his recommendation. I wonder if Mr. Clarke would comment on that. Did you know of any, or did you engage in any pressure, sending signals down the line that this recommendation was not the proper recommendation?

MR. CLARKE: I'm unaware of any pressure, and I did not see or hear or read of all of Mr. Smerick's testimony. But one piece that I did catch indicated to me that he believed that the pressure was more self-imposed, as opposed to somebody overtly imposing upon him.

REP. BLUTE: Well, but he did say, when asked where that pressure was coming from -- he didn't refer to it as pressure, but I think we can assume it was a form of pressure. He mentioned Judge Sessions in particular.

MR. CLARKE: I'm not aware of discussions that Mr. Sessions ever had with Pete Smerick. I know I never had any, so I'm at a loss to explain that.

REP. BLUTE: Mr. Potts?

MR. POTTS: Yes, sir. When I first became aware that there was concern over one of Pete Smerick's memos -- and I think it was -- I'm not sure of the exact date -- I think it was around the 5th, or somewhere around there -- March 5th. Jeff Jamar expressed to me some concern that he believed that Pete thought that we were trying to go forward with something tactically at that time, and that because of the tone of the memo, that it would leave them with no flexibility at all down there. And I said, well, look, that's one opinion, and I think what you do is you -- what we have to do is listen to that, evaluate that opinion, and you also have to get other opinions, and see how they feel about that.

Someone in Washington at the command center contacted John Douglas (sp) just to say -- John Douglas was Pete Smerick's supervisor -- to say, We want you to sit down and evaluate this also, and we also want you to sit down with Pete and go through his assessment and see if you concur with his assessment. We actually, I believe, Pete's assessment early on, especially with regard to the pull everything back, and get away from him -- don't show the vehicles the way they are -- but I think that memo also said only do that if they'll bring the children out -- if they'll agree to bring some of the children out, and at the same time Koresh will agree to come out -- not at that time, but to say that he'll eventually surrender. And it was probably a day or so after that Jeff Jamar made that offer to Koresh that said we'll pull everything back -- we'll pull all the Bradleys back, we'll pull

everything back and away, if you'll just send -- and he didn't even limit it to children -- if you'll send four people out, we'll pull everything back.

REP. BLUTE: (Off mike.)

MR. CLARKE: And that was disregarded.

REP. BLUTE: Let me just quickly ask Mr. Hubbell: You said the military was to review the plan. Did the military pass judgment on the plan? What was their opinion of the final plan?

MR. HUBBELL: We wanted them to critique the plan, and give us any opinion they had of how it could be improved. Now, I didn't sit in on the meetings that maybe the FBI had with the military before the both jointly briefed the attorney general and myself and others -- so there may have been other suggestions made prior to that -- I just don't know. I know what we discussed. But they critiqued the plan, and said this is -- they believed it would work.

REP. MCCOLLUM: Mr. Blute, your time has expired. Ms. Lofgren, you're recognized for five minutes.

REP. LOFGREN: Thank you, Mr. Chairman. You know, one of the interesting aspects of this hearing is that it has gone on long enough that our constituents back home realize that there are hearings, and they're calling in with questions and advice. It's amazing to me how many people in America have been teargassed. (Laughter. )The -- I guess every soldier who went through basic training was teargassed -- I heard from a lot of them. Now-grownups who were undergraduates who had their dorms teargassed in the late '60s and '70s, and even people who were celebrating the Fourth of July in 1971 in the Nixon administration, when I guess there were some anti-war demonstrators, and tear gas was applied on not only the demonstrators, but all the families with kids who were picnicking on the Fourth of July.

One of the inputs I've had is from someone -- I never served in the military -- but someone who did, who suggested that if this were -- had been a military endeavor rather than a law enforcement endeavor, that possibly what would have occurred would be not a gradual insertion of gas, but massive gassing that would then have brought people out. I don't know if that's true or not. But I am wondering, Dr. Salem, had that happened would the risk to the people inside have been greater? Were there constraints in terms of their safety that would have prevented the FBI from taking a more military assault gas approach than was taken in this case?

MR. SALEM: According to the evidence, after you reach the irritating point, if you increase the concentration it doesn't really increase the symptoms. You get your profuse symptoms that occur. And the use of tear gas, any type of tear gas, and CS, it entails some degree of risk. But, in my opinion, CS does not cause permanent injury to adults or to children. And this is based on the best available information. And, based on that, CS is the best riot control agent.

Now, the attorney general was extremely sensitive to the risks, and obviously had to balance them. In the final analysis, the question of the use of CS comes down to balancing the risks against the consequences -- even the consequences of waiting. And that was a very tough decision that they had

to make.

REP. LOFGREN: Mr. Potts, was there a consideration of not gradual insertion, but a more voluminous insertion of gas? And why was that -- was it really just hesitation? Or why was the decision made?

MR. POTTS: There absolutely was a recommendation. The hostage rescue team, and most of the SACs, felt very strongly that it would be better to have full insertion, as well as the military said if they were doing a military operation that's how they'd do it.

Our concern about doing that is that we thought that we significantly reduced the risk to the children; we also significantly reduced the chance of them having a violent reaction if we did it in a measured way. We increased the risk to our agents, but we decreased the risk of a violent response, we believe, as well as to the children.

REP. LOFGREN: Let me ask you this: I had some constituents who were in here in the Capitol today really on a vacation, and they sort of -- well, they asked me, you know, Why are we doing this? I mean, didn't this happen two and a half years ago? And finally said, well,

I guess, the only real value on this, in their view -- I'm quoting them -- "was if we could learn something for the future that would make our country better prepared to deal with such an issue." And that has been very much a concern of mine. Now, I've read through the Treasury report, as well as the Justice Department reports -- not just what happened, but how could we do a better job in the future. And I'm particularly interested in how we are organized to understand groups of people that might be operating on a world view that is different than average. Now, I was frankly very impressed by what I heard the other day about the number of experts and the like. But the question is to Mr. Potts: Are you satisfied that we have done all we could? What if the next group -- and that may happen as the millennium approaches, is a group that is -- say, animism -- that the average officer really didn't know much about -- do we have experts set up, and do we have training for law enforcement people to really understand the information they're getting and incorporate it so that they can make prudent decisions? Are you satisfied with the recommendations that have been made so far?

MR. POTTS: I'm satisfied with the recommendations, and I think we've made good progress on those. I think we'll have better coordination. I think we have people who are better trained, and I think that the component of our crisis intervention response group now that puts our negotiators and our hostage rescue team together within one unit, I think that one component of that element is set up to really reach out to places like the University of Michigan and others that have behavioral science understandings and to develop a real core of people that we can call on in these kind of crises who could give us the best advice possible. I think we've made great strides in that regard.

REP. LOFGREN: And if you could just real quickly answer my question: Have we trained the people within the FBI to really understand the information that is being given to them by the experts?

MR. POTTS: Well, I think we're in the process of doing that. I think that that's under way.

REP. LOFGREN: Thank you, Mr. Chairman.

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

REP. FRED HEINEMAN (R-NC): Thank you, Mr. Chairman.

I have to say for the past eight days I've felt some degree of discomfort sitting here on the opposite side of the law enforcement officials as it relates to that table and that table only, and certainly you folks being in a high-ranking administrative position, but that discomfort is rather easy for me to take, because I know that what we're doing here is not really second-guessing but critiquing what happened on two issues that really need to be critiqued so that we can understand what happened, we can place responsibility -- and I don't want to say "blame," because I think the people at the operating levels really thought that they were doing the right thing, and certainly I wasn't there.

But as I see this information having filtered up the line of responsibility, it gets fuzzy. It gets hazy as to -- the attorney general, who did initially feel a great deal of discomfort with what happened, and I believe Mr. Langan in the Treasury Department or someone of his equal rank felt discomfort, too, with that February 28 raid, but those feelings of discomfort really didn't last long, and I would just like, if I can -- and I don't have enough time, five minutes, to find out really what changed people's minds, what changed the attorney general's mind from a feeling of discomfort and what changed Mr. Langan, if it was him, his mind. I know Mr. Higgins did prevail upon him to accept the plan, and, of course -- of course, we know what happened after that.

But I think, being a member of Congress, I have a -- as we all do -- a strong obligation to let the people in this country know that they're getting a fair deal, that there is no coverup, that there was no coverup, or, if that's the perception that's out there, then I think we need to -- I think we need to throw cold water on that fire, because as it grows, we can see militias grow, because of the strong feeling against government law enforcement.

And I'm not going to say that there's a direct relationship, but I believe that there's an indirect relationship to what happened in Oklahoma City by a mindset that's in this country that feels government is against them and needs to be retaliated against.

So what we're doing is extremely important, and Congress itself is on trial here, and I've said that before, so, I -- you know, I don't make any apologies for us asking hard questions, and certainly I'm not -- and I'm not looking to throw cold water on witnesses, as we have here, discrediting witnesses, even law enforcement, because we didn't agree with them. But, having said that, Mr. Potts, on April the 14th, Mr. Jamar related to you the conversation he had with the lawyers -- Mr. Livingston (ph) and Mr. -- Livingston (ph), is that right?

MR. POTTS: Mr. DeGuerin.

REP. HEINEMAN: DeGuerin and Zimmerman. I'm sorry. I'm sorry. And he told you that information, that he thought -- that they thought they had a deal with Koresh to come out, with that letter that he --

MR. POTTS: I think that's been -- I think the whole plan to come out was earlier in April, the whole plan. Just -- the net plan was the same as it was early in March, except it inserted the attorneys into it. The issue of the manuscript, that now that he'd decided that Passover was over --

REP. HEINEMAN: Well, well -- can I reclaim my time?

MR. POTTS: I'm sorry.

REP. HEINEMAN: I know about that. I may have my dates wrong. But the attorneys stated that Mr. Jamar had told them, "YOu have all the time you need," and I have a little problem with that being changed, if it was changed. Apparently the lawyers felt devastated when they found out that on the 19th there was an assault on the compound.

Did anybody ever feel that perhaps the chemistry has changed and this might be an open end to pursue, a reason not to go in? And I can certainly understand law enforcement's wanting to go in. I was part of that and I'm sympathetic with their feelings on that.

MR. POTTS: Sir, I -- I never got the impression from talking to anyone on site at Waco, from my position in Washington, that anyone believed that there had been any substantial change in David Koresh. In fact, it was clearly stated to me that they thought this was a continuing manipulation, a continuing delaying tactic, that he had no intention of coming out, and they believed -- they continued to monitor that from the 14th up through the morning of the 19th, and saw nothing to convince them any differently in between.

REP. HEINEMAN: Okay, could it not have been handled differently as it related to relieving your HRT teams -- and they certainly should have been relieved -- and replacing them with, perhaps, DPS, Department of Public Safety, or another agency, unless -- unless you can tell us here that there was some imperative for the FBI being able to handle that alone?

MR. POTTS: Well, I believe that the hostage rescue team, by its nature and by its training, is the finest law enforcement team of its type in the nation, so I do believe that they are different from the other teams. They -- they are a team that trains every day. They're a team that's full-time tactical, as opposed to our SWAT teams or most other SWAT teams around the country.

But more importantly than that to me in terms of waiting, we had a lot of behavioralists at that time who were looking at letters that Koresh was sending out and who had been evaluating him throughout, some of them throughout the course of this standoff, who said that they don't believe that Koresh is going to commit suicide. They don't believe that there's necessarily going to be a mass suicide, but they think that if there is a suicide effort, that it would be suicide -- as they call it, "suicide by cop," and that there might be some kind of a breakout plan, and that Koresh has his own time frame. The government has their time frame that they're working under, and David has his own separate one. And so he might decide at any time to come out.

Obviously --

REP. HEINEMAN: Thank you.

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

REP. CARLISS COLLINS (D-IL): Thank you, Mr. Chairman. During these hearings, we've listened to exhaustive academic discussion about CS tear gas. These issues will continue to be debated, as they should. But for the American public, the basic question is how carefully the FBI and the Department of Justice considered the effects of CS tear gas on children, pregnant women, and the elderly before it was inserted into the Davidians' compound. And the testimony we have heard has made it clear that the decision to use tear gas had to be (bowed ?) to the risks to these individuals against the risk of allowing the standoff to continue.

So, Mr. Clarke, I'm going to ask you, what was your involvement in the decision to use the tear gas in the compound, a; what meetings you personally participated in, b; and who you consulted with about the possible effects on the children, c.

MR. CLARKE: That's a very long question, and I have to tell you before I get started I would have a long answer to it, because there's a number of factors, and I know that you're trying to condense time. The issue of tear gas came up fairly early on, because if there were a problem inside that we had to respond to, how would we respond?

And so the issue of tear gas came up fairly early on, and the experts in the Criminal Investigative Division and on the hostage rescue team almost at the outset began to do research on a number of different other alternatives.

Somewhere in late March, the other options had been tried and failed and the recommendations were coming in from Waco that they wanted to develop a plan to use gas, and a plan was submitted. It was deemed by most of us at headquarters that it was not the time yet to do that, that there were other things that we were still exploring.

Those discussions were ongoing when Mr. Potts and I accompanied Mr. Richards to Waco, and that was on the seventh and eighth of April. I still at that point did not believe that the use of gas was appropriate at that time. After the discussions that we had down there, we had the opportunity to talk to our negotiators, the HRT people, the SACs, the -- all of the people, all of the components that were involved, that on the night of April the eighth, after consulting with the four SACs, the hostage rescue team leader, Mr. Potts, and myself, I became convinced that there was an option that could bring about a safe resolution to this problem.

We came back and briefed the director. That was done on the ninth. Concluding that briefing, the director also agreed and contacted the attorney general, so I would say that my decision in supporting it occurred on the evening of the eighth, and I discussed that on the ninth with the director.

REP. COLLINS: Did you specifically consult with anyone about the possible effects on children of this CS tear gas?

MR. CLARKE: Extensively.

REP. COLLINS: Extensively?

MR. CLARKE: Extensively.

REP. COLLINS: With the people that you've already talked about?

MR. CLARKE: And Tony Betz, who I understand has already been a witness here. I at that time had not had direct conversation with Dr. Salem, but I was aware that the people that were actually doing the research here had talked to a number of experts.

We had had an ongoing, for some time, under Director Webster, the Bureau had started a program looking at less-than-lethal weapons. We had held symposia at Quantico, looking for different ways -- there was extensive research that had been done, and a number of people within the Bureau and outside of the Bureau that were consulted.

REP. COLLINS: I don't want to cut you off, but I want to hear what Dr. Salem has to say about the use of CS -- the use of tear gas on children and whatever he thought about this.

MR. SALEM: When I was contacted, we reviewed all of the available literature on the effects, the toxicology and the safety of CS; in particular, its effect on children and pregnant women. And, based on all the available literature, there was a lot of experiments done on adults and older people. No experiments were done on children. However, there were several cases reported in the literature, one case of a young infant, a four-month-old infant who survived after 28 days of hospitalization following a massive dose that it was exposed to.

The other is the actual occurrence in Northern Ireland when CS was used in those -- at that time, and the reports showed that they investigated. There were children that were exposed. None of the children required hospitalization. They don't know what the dose was, but it was much less than the other one.

Those are the only published literature on the effects of CS on children, and based on that, as a scientist, we look at what the facts are, rather than anecdotal, and even though these were anecdotal, they were followed up by epidemiological studies. There were animal studies using young animals, and they did not find a difference.

And it was concluded by many researchers, very competent researchers, that there was no difference in sensitivity to the CS by young people, older people, and the infirm.

And tear gas is really a generic term. CS has been available -- it is not a military-unique chemical. It's been available to law enforcement officers and even to the public. As you know, you can buy CS in combination with other deterrents in the grocery stores --

REP. COLLINS: Well, let me ask you something before you go any further. If you had been in a

position of making a decision whether or not to put CS gas into the Davidian compound knowing that there were children there, would you have done that?

MR. SALEM: I was not asked to make that decision --

REP. COLLINS: No, I said "if. "It's a hypothetical.

MR. SALEM: If --

REP. COLLINS: Based on your scientific knowledge of the --

MR. SALEM: If chemicals had to be used, that would be the chemical of choice.

REP. COLLINS: Mmm-hmm. Why?

MR. SALEM: Pardon?

REP. COLLINS: Why?

MR. SALEM: Because it is the most extensively studied agent of that type, and it is the safest. There are no authenticated deaths following its use.

REP. MCCOLLUM: Thank you, Mrs. Collins. Mr. Souder, you're recognized for five minutes.

REP. SOUDER: I just want to make sure that the record shows that in fact, Mr. Betz said that he was only a tactical expert yesterday, and he referred to Dr. Salem that the extent of the research consists of, in Ireland, we don't know the dose; we don't know whether they were necessarily confined, and one child who recovered, and that based on this extensive research, a decision was made that Dr. Salem himself just said that if you had to use a chemical, apparently because at least there was no evidence of death, he would have used this chemical -- hardly a compelling argument, but not one that proves any deaths occurred or anything bad happened, but not exactly a compelling argument.

I earlier heard Director or Judge Sessions say that the attorney general was kept briefed in detail because of her concerns about the children, and yet we heard yesterday when I asked Mr. Jamar, he said 99 percent likelihood that they would be fired upon, which seemed pretty logical, actually, but that didn't get (up ?) the system, and I wanted to ask Mr. Hubbell whether he and attorney general -- did you know that the FBI didn't know where the children would be located in the compound when they gassed it?

MR. HUBBELL: They did not. We were advised, we asked where the children would be located, the likely place that they would be located, and we were told by the FBI where the likely place that they would be located based on interviews with people who had left the compound. So we did ask those questions and were given those answers.

REP. SOUDER: Okay, because Mr. Jamar said yesterday when I asked him, that he didn't know,

and in fact they had hoped that they would be in the bus, but they weren't there. And so I just wanted to make sure that they didn't -- they did express to you that they didn't exactly know, but they made their best guess.

MR. HUBBELL: They did not precisely know. I think they had hoped that if the children didn't come out, that they would be put in the bus. I don't think I was told that that's where they would sleep that night. I think they were supposed to, more than likely, be sleeping with their parents in the compound.

REP. SOUDER: One other question, and then I'm going to yield to Mr. Bryant. In a similar vein, when I asked Mr. Jamar about the -- where they were pouring the fuel and he said that they couldn't hear back that they were pouring the fuel, did the attorney general and you understand that there wouldn't be a way to hear what was going on in the compound, to be able to adjust, because he said if he had known that, he would have adjusted. Did you understand that there was an equipment problem or that there wasn't going to be that exchange?

MR. HUBBELL: We were aware that there were surveillance devices in the compound. We weren't totally -- my understand was, and then on the day that they were -- some of them were not working -- that there was some suspicion that the people within the compound knew there were surveillance devices, and were using that as part of the manipulation, and that they could terminate their usefulness or destroy them at will. So we knew that we had surveillance devices within the compound, but we weren't confident that they would be available during the insertion of gas -- the day before, and then certainly we were aware of some of the problems that occurred while the scene unfolded on the 19th.

REP. SOUDER: Thank you very much. I yield the rest of my time to Mr. Bryant.

REP. BRYANT: Thank you. Let me ask -- I've got time for just about one question here. Mr. Hubbell, what do you think -- (inaudible) -- context at the White House at this point, you were appointed by the president. Again, you're, some say the best friend, to head the transition team, the administration into the Department of Justice, and they had people in the other departments also. But you were the one to head the transition team into Justice, and we've just been through, in the context of that time frame, the failures of I guess Ms. Baird, Ms. Woods, I don't know if Ms. Guinier had come along at that point. But certainly there were some failures with the White House and the Department of Justice, and then you've got the Waco standoff, the siege certainly applying some pressure there.

And I'm still having some difficulty in accepting the segment that you were not dealing directly with the White House. And maybe I'm not -- maybe I didn't make my questions clear about the president, but certainly, you had lots of other friends over there, Mr. Lindsey, Mr. Foster, Mr. McLarty, all from Arkansas. And heading the transition team, you had Mr. Gerson, who was the acting attorney general, but he was a Bush holdover, so I can imagine your contact, especially with the president indicating that he wanted to be made aware of any change, any shift in strategy, I find it difficult -- I found a couple of phone calls where the president called you during that time frame, on the list here. The article that I quoted you from the paper said that -- and again, you denied making this statement -- that you had talked business with Clinton only when the president sought updates in the early

days of the cult crisis in Waco, and that's certainly consistent with telephone calls from the president to you during March, which is documented on the log.

Again, weren't you, in fact, communicating with the president, because he wanted to know what was going on and if there was a change in strategy, ultimately, he could have approved that or ultimately, he could have even disapproved that. I understand that he relied a lot on his new attorney general, Ms. Reno at that time, but in the end, he did have that ultimate authority as the president, as Ms. Reno's boss, as your boss, to say no, let's don't do that. Now, I understand he relied on her, but again, under the context of the situation, weren't you in fact dealing with the president some and other members, other friends over there in keeping them apprised as to what was going on at Waco?

MR. HUBBELL: I did. I think I did testify, Congressman. If I didn't, I want to make clear, the beginning, when the FBI advised me of their plan and the possibility of the insertion of gas, I did notify the White House counsel, and kept in contact through the White House counsel. I'm sure the White House counsel advised the president, but that's the way I kept the White House advised of the plan and what we were doing, the evaluation that was going on. So I don't mean to say I've never talked to the White House. I did not talk to the President of the United States about this issue prior to the 19th.

REP. MCCOLLUM: Mr. Bryant, your time has expired. Mrs. Slaughter, you're recognized for five minutes.

REP. SLAUGHTER: Thank you, Mr. Chairman, I'm sure you gentlemen are familiar enough with the way the government and Congress operates to know that you were damned if you did, and damned if you didn't. And if you followed some of advice you're getting here now and built a fence and stayed there for two years, everybody would be yelling every day, look how much it costs. These are supposed to be the best in the world, what in the world's going on down there. One of the things that I have learned is that before Waco, the Department -- ATF, and I guess Mr. Potts can verify this -- really didn't have very much connection to the top echelon of the Treasury Department. And then before Secretary Bentsen made some changes, it was not really a normal thing for the Secretary of the Treasury to know at all times what the ATF is doing. Is that correct, Mr. Potts?

MR. POTTS: I'm afraid I'm not your good expert on that. I'm not sure how ATF operated within Treasury in terms of who they reported to.

REP. SLAUGHTER: You came in with the Clinton administration, or were you already there?

MR. POTTS: I came in over 21 years ago as a civil servant, FBI agent. Just an FBI agent.

REP. SLAUGHTER: I see. Well, that has been testified to here before, and I think probably the one thing that I've learned is that there have been massive changes at Treasury to make sure that the kinds of breaches that happened won't happen again. For example, I'm absolutely persuaded from what I've heard that the reason four agents died and the Branch Davidians on February 28th is because there was no security. And that a postman, who heard it from a television man, who learned it from a woman who had rented ambulances to the ATF talked. And steps have been taken to make sure that that doesn't happen again. But one of the things that was (decided ?) to me, and I don't

know if you've heard the testimony -- I hope you've been busy since we all work for the same company here -- was from Ms. Sparks. It would seem to me that when she walked into that compound knowing that her visit had been compromised, so she was only allowed to see certain children in certain areas, and yet she said by her testimony that there was one running -- sink with running water, there was no sanitation facility. The children were obviously shell shocked to some degree; that the conditions were so bad there that I've often wondered why the state of Texas did not remove the children from that compound at that time. Has that occurred to any of you, that under child protective laws they would have done that normally, and what a change that might have made?

It hasn't, I see that. Alright, one of the things that I wanted to point out as well is that because of the deteriorating conditions, and as a former bacteriologist, I understand this very well, and I think that everybody on the scene has explained the deteriorating sanitary conditions taking place in that compound. There was no electricity, correct? There was no way to heat food; no way to heat anything up to kill bacteria; there was no way to dispose of sewage, is that not correct?

MR. HUBBELL: That's correct.

REP. SLAUGHTER: And I think that although you seem to have heard from every behavioral psychologist in America and all kinds of negotiators, I don't hear of anybody talking to any medical personnel. I assume they would have said to you those children have got to come out of there or they are going to seriously ill from the conditions under which they live. Is it not true that not a single soul could leave that compound without Koresh's permission?

MR. POTTS: We --

REP. SLAUGHTER: There seems to be an implication here from time to time that if you had waited people would have come out.

MR. POTTS: I think the general way that -- he told us from the beginning anybody who wants to come out can come out. However, the problem with that we found that the process was that in order to come out you have to first have I think, as one of the negotiators described it the other day, an exit interview with David. And it's that point which we believe they talked about their salvation and their soul. And so a lot who maybe wanted to come out had their minds changed as a result of those talks.

REP. SLAUGHTER: The people who did come out -- there were some 34 I believe that were saved that did leave the compound?

MR. POTTS: There were 35 total before the fire.

REP. SLAUGHTER: He started out first with children, correct?

MR. POTTS: That's true, in the first few days a lot of children came out.

REP. SLAUGHTER: Not his own biological children though, of which I think there were some 15,

is that correct?

MR. POTTS: I don't know the number of his biological children, except that on March 5th -- or rather I think March 5th was the last day that any child came out -- March 7th or in that area he told our negotiators when we were talking to him about more children, sending more children out, he said you are talking about my biological children now and pretty much indicated that there wouldn't be any more children coming out.

REP. SLAUGHTER: Did you have any reason to believe that there was a special category of persons coming out, perhaps somebody he was uncertain of, somebody who caused him trouble? Did he get rid of any people that he thought might want to cause an uprising among his other followers or something as things got more and more tense and conditions got worse?

MR. POTTS: I think our negotiators believed and they believed on site that you have just described very thoroughly those who came out.

REP. SLAUGHTER: As far as I'm concerned I think these hearings have shown what I said before, that I think changes have been made. Other than that it's taken an awful lot of man and woman hours of federal employees for us to go over this one more time. I can appreciate what it's been like for you. I'm sitting here watching people, grown men, burst into tears, and the pain that people have had of reliving this. Hindsight is so easy for us to talk about, but once again I think that the law enforcement people who were there facing death on a daily basis and who walked up to those doors really deserve not our approbation, but the fact that we are grateful that they will do that when the government asks them to.

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

REP. SHADEGG: Thank you, Mr. Chairman. Mr. Potts, I would like to begin with you. First of all I have no sympathy for the Davidians who participated in the murder of the agents. Clearly you were dealing with some cold blooded people. The problem is we had women in there and we had children in there as well. Your goal, and the FBI's goal, was to avoid further loss of life, was it not?

MR. POTTS: Yes, sir.

REP. SHADEGG: And while this was not a classic hostage situation, you had to presume the children were innocent and perhaps some of the women inside were innocent, did you not?

MR. POTTS: Well we certainly believed that there were people in there who -- we considered it a barricaded situation. But they were kind of a hostage of the circumstance I think.

REP. SHADEGG: And the children were certainly not guilty of any criminal conduct.

MR. POTTS: That's right.

REP. SHADEGG: Okay. The goal of the gas insertion plan was, as I understand it, to force the Davidians out, hopefully without harm to them and without harm particularly to the children,

correct?

MR. POTTS: Yes, sir.

REP. SHADEGG: Okay. Indeed not injuring the children was an extremely important goal for the Attorney General it appears from her discussions --

MR. POTTS: That's right.

REP. SHADEGG: -- and for the President. Is that what you understood?

MR. POTTS: I certainly understood that no one wanted any harm to come to anyone in there.

REP. SHADEGG: You would agree with that, would you not, Mr. Hubbell?

MR. HUBBELL: Yes, I would.

REP. SHADEGG: As a matter of fact, we've had extensive testimony about the selection of CS gas as non-lethal or non-toxic and we had great debates about whether it was or wasn't, but the whole idea here was not to hurt people, right?

MR. POTTS: That is correct.

REP. SHADEGG: Okay, I want to go into a series of pictures that I wish I had a video, because if I had a video, which I've watched, but I can't show here, it shows the sequence rather dramatically. You see these pictures over here, you'll see at the back of the building, right there where the gentleman is pointing, is a room that is called sometimes -- the FBI calls it a shooting range, sometimes it's called a gymnasium, sometimes it's called an auditorium. And I believe it is some 65 -- Shawn, how long is it -- 65 feet long, and how deep -- okay, I want to focus on that building right there and on that corner.

You see it's now structurally sound. This is where all the compound is going on -- you do have the next photo? In the next photo, and unfortunately we don't have these very well, but we are now looking kind of from the front corner. These are taken from the airplanes. You will see that where he is pointing, that section of the building is gone. Indeed a great portion of the building is gone. The diagram which shows the insertion shows -- when you watch the videotape -- shows that this tank -- can you show the tank because the tank is visible in that picture -- that tank right there goes into that portion of the building. And unfortunately we don't have these photos in a very good sequence. I've got to deal with what I am given. But it goes into the building so far that the back of the tank disappears, you can't see it. Indeed it goes so far into the building it appears -- it goes all the way to the opposite wall. And it goes in and out and in and out and in and out and in and out. I couldn't count the number of times.

But you will see in this particular picture -- you can show the left slope, the right slope of the roof is still there, is the left slope of the roof still there in that photograph? Both slopes of the roof are there. Now you go to the next picture, if you would Shawn. The next slope -- the next picture shows that

the tank goes in and back out and that portion of the building then is gone. Here's the tank going in. Go to the next picture, if you would, Shawn. Here it shows -- can you see the roof line -- show the roof line of that part of the gym, Shawn. Right there is the peak line. You'll see now both the left and the right sides of the back of that gym are gone, indeed the entire roof of that one half of the gym is crushed. Now we're talking about a space 50 feet by 50 feet is crushed. And the entire part has fallen. And the video shows the tank going in and out and in and out. If you would go to the next photo.

Now we have that from the back and see the tank from a different angle. This is a tank that's gone in and out repeatedly over and over and over again. And now we can see from that side that that part of the building is completely crushed. I guess I find that somewhat inconsistent. And I'm trying to find out -- I understand the theory of puncturing escape holes somewhere in the building, indeed on the front there are two or three escape holes that were punched. If you'll show, Shawn, on the left side of the back of that building there is an escape hole further to the left right there -- this is an escape hole.

I'm having some difficulty with that entire section of roof, some 50 feet by 50 feet or 45 feet by 45 feet being crushed by a tank going in and out. And while you can't see it in a still photo, there is a picture of the tank literally going up on top of the roof once the roof collapsed and hit the ground. And in the video you can see that very clearly, and it hits the ground. In a later sequence the tank -- at one point it falls on the tank, the tank comes out, it falls the rest of the way. The tank goes up on the roof and crushes the right side of it and then comes back out and goes back in and crushes the left side of it. To where as you can see in this final photograph that entire section of the building is gone.

I'm having great difficulty with understanding if the insertion of the gas is to be non-lethal, why we are crushing an entire section of the building, and if the Attorney General was told. And I'm running out of time so let me just pause with these questions. If the Attorney General was told that a part of the strategy this early was going to be to crush significant sections of the structure. Was the Attorney General warned that while we had been very cautious about selecting what your experts say, or experts say, was non-lethal gas we might still crush sections in the building. Did she understand that people might be killed if sections of the building were crushed? Was she or the President advised that if sections of the building were crushed that might itself cause a fire because there was a -- it was known that they had been using Coleman lanterns for days to light the building?

I find an inconsistency between the efforts of the gas insertion plan to save life and the actions of this tank repeatedly going in and out crushing that section of the building. And my specific question is was the Attorney General warned of this part of the plan and what was its purpose? A couple of you may respond. I don't know who is best -- Mr. Potts, Mr. Clarke, whoever has the best response to that.

MR. POTTS: Well I believe that there was a discussion that there may come a point in this where we would try to poke holes in the building. My understanding --

REP. SHADEGG: I understood that.

MR. POTTS: Yes, sir.

REP. SHADEGG: This I don't see as a hole.

MR. POTTS: No, I understand that. But I believe that the CEV, according to what the HRT driver said about that day, was trying to get around to get gas into the back of that compound which they could not get to any other way. And I do not believe that there were any bodies found in that area.

REP. SHADEGG: The closest bodies were found a little further. In each one of those five bodies it's reported had extensive, according to the autopsy report, extensive body mutilation. Now I don't know --

MR. CLARKE: MR. Shadegg, did --

REP. MCCOLLUM: Your time has expired. They can respond -- I think Mr. Clarke or -- you have the right to have two responses here under our kind of ground rules. Mr. Clarke, would you be the appropriate one to respond in addition to that? Was the Attorney -- I believe the question in part was was the Attorney General informed of the prospect of this type of damage? Did you anticipate having that type of question?

MR. CLARKE: Have you all been made available of the briefing book that we prepared for the Attorney General dated April the 12th?

REP. SHADEGG: Yes, we have.

MR. CLARKE: Did you read it?

REP. SHADEGG: Not this report?

MR. CLARKE: No, no, it was a briefing book. There's a briefing book for the Attorney General.

REP. SHADEGG: No, sir.

MR. CLARKE: Well I suggest you read it.

REP. MCCOLLUM: Thank you --

MR. CLARKE: Well, let me explain. What it said in there is that the part of the plan, as this thing extended on, was after 48 hours, if there were no people coming out, that there would be a systematic dismantling of the building that would take place. The authority delegated to the on-scene commander was that if, at any time, the Davidians responded and that the lives of the agents were placed in danger, the on-scene commander had full authority to escalate that plan. The decisions for that kind of thing were left to the decision of the person on the scene. That would have been Mr. Jamar. And the destruction of the building was part of that ultimate plan which was included in that book.

REP. SHADEGG: So the attorney general was aware you could begin to crush the building six hours in rather than 48 hours.

MR. CLARKE: I don't think I said that.

REP. SHADEGG: It was a question.

REP. MCCOLLUM: Mr. Shadegg, your time has expired. I cannot let you pursue that. Mr. Barr -- I believe we're reserving on the right side over here. We only have Mr. Taylor left. Mr. Barr, you're recognized for five minutes.

REP. BARR: Thank you.

REP. TAYLOR: Mr. Chairman?

REP. MCCOLLUM: Mr. Taylor does want to go?

REP. TAYLOR: Mr. Chairman, with the chair's approval, I would give 30 seconds of my time to Mr. Conyers and reserve the rest.

REP. MCCOLLUM: You may do that.

REP. TAYLOR: Okay.

REP. MCCOLLUM: Mr. Conyers, you're recognized for 30 seconds of Mr. Taylor's time. And I'll clock it here.

REP. CONYERS: Oh, I know you will, Mr. Chairman. Thank you very much. I wanted to return to Mr. Richard because we had a discussion about the administration's position on the exclusionary rule. And I wanted to agree with you that the administration joined us in opposing early on a contract item, H. R. 666, that provides that any evidence discovered as a result of a good-faith search is admissible in evidence, which in essence does away with the warrant requirement, because I doubt if anybody's going to come forward and say they weren't in good faith when they found illegal evidence. But in the anti-terrorism bill, they had -- there's a section there that deals with search through wiretap. The bill allows law enforcement agents to obtain a wiretap without a warrant under emergency circumstances if an act of terrorism is involved and it's gone on to be defined. Now, terrorism is --

REP. MCCOLLUM: Let me warn everybody here that I cannot say that you only have 30 seconds to ask a question like at the end. The clock is running for the whole five minutes. But go ahead.

REP. CONYERS: I'm not asking a question.

REP. TAYLOR: I'm also aware that Mr. Conyers -- (inaudible) -- 30 seconds.

REP. MCCOLLUM: We're over a minute now.

REP. CONYERS: Are you aware of the point that I'm making here on anti-terrorism, Mr. Richards?

MR. RICHARD: I am to this extent, Congressman, that our position with respect to the terrorism bill is, as I've tried to indicate before, we believe, consistent with the mandate of the Fourth Amendment. We do believe --

REP. CONYERS: It allows wiretaps where terrorism is involved without a warrant.

MR. RICHARD: Congressman, under the current Title 3, which is the wiretap, the general wiretap statute does have an exigent circumstance requirement in it already at this point which permits, when there are exigent circumstances, the utilization of wiretaps, followed by, within, I think, 24 or 48 hours' notice to the court and (submission?). And I think it is that approach which we believe is consistent with the Fourth Amendment that is embodied in the terrorism bill.

REP. CONYERS: So you've just said that you are supporting a weakening of the exclusionary rule by allowing terrorism now to be involved in wiretapping.

MR. RICHARD: No, on the contrary, the administration's position has been that --

REP. CONYERS: Well, look, stop, please. We'll do this on somebody else's time. You're available when we're not having hearings on Waco, and I'd like to pursue this discussion with you.

MR. RICHARD: I look forward to it.

REP. MCCOLLUM: The gentleman consumed three minutes of Mr. Taylor's time. He has two minutes remaining. I presume he wishes to reserve it. Or do you want it now?

REP. TAYLOR: Mr. Chairman --

REP. CONYERS: Mr. Chairman --

REP. TAYLOR: -- I'm going to hold on to that two minutes.

REP. MCCOLLUM: You're going to hold on to it. Very well.

REP. : (Inaudible. )(Laughter. )

REP. MCCOLLUM: I will yield now down here to Mr. Barr five minutes. You're recognized for five minutes, Mr. Barr.

REP. BARR: Okay, thank you, Mr. Chairman. Mr. Clarke, very briefly, you mentioned some briefing book. It is true, is it not, that the attorney general has admitted publicly that she didn't read that briefing book?

MR. CLARKE: I am not aware of that.

REP. BARR: I can't hear. You need to use the microphone.

MR. CLARKE: I'm not aware of that.

REP. BARR: Okay. Well, it is true. It's contained in the deputy attorney general's report, page 272. So, you know, my only point is, don't kind of, you know, lecture us about it. I mean, she didn't read it either.

MR. CLARKE: I think the question was whether or not --

REP. BARR: But that's all. There's not a question. I don't want to make a big deal out of it. Your implication, I don't think was appropriate. I'd like, if I could, please, to Mr. Bush, if you could take this photograph to probably Mr. Potts. I'd like to follow on some testimony of yesterday. This is a picture taken immediately after the fire, with the rubble still smoldering in the background, showing the entry to the bus, the underground bus. And Mr. Bush, if you could show me the photograph that was up there and point out the area -- right here. Mr. Potts, is the area that Mr. Bush is pointing to the area that goes into the bus?

MR. POTTS: I believe so, sir.

REP. BARR: Okay. I mean, you're welcome to also. I think that's the area there.

MR. POTTS: That's fine. I don't think it helps to (get?) closer.

REP. BARR: The area that Mr. Bush is pointing to is the entry into the bus and the picture that you have is immediately after the fire, showing, I believe, does it not, that all but a very small corner of the bus is covered up with dirt?

MR. POTTS: I think we may have dug that out.

REP. BARR: I'm sorry?

MR. POTTS: We may have dug that out.

REP. BARR: So it may have been completely covered up.

MR. POTTS: I think it may have been. I just don't know for sure.

REP. BARR: Okay. There is testimony that I'm going to refer to from the court case, the criminal action number W-93-CR-046, et cetera, which is the case out of the U. S. district court for the western district of Texas. And what I'm going to refer to is testimony by one of the government's witnesses, Mr. R. J. Craig (sp), who was driving one of the vehicles that day. And his testimony, for example, after -- this was during extensive cross-examination -- was that, quote, "We received instructions to knock the hole in the wall after about 10: 30. "And then he goes on.

The question to him is, "But the tunnel" -- this is the tunnel into the bus from the inside -- "the tunnel that you were trying to get the CS gas into was lower than the area where you were dispersing it." And then a further question. "Well, you went in to try to stop people from getting into the tunnel area or the bus area, to get into that area outside. You've already described that, have you not?" And then his answer is, "Yes, sir." And then there's further discussion. That one was at page 5599 and then page 5600.

And the question is, "So at the end of that building, this is where you expected there would be an entryway into the bus." And then he says, "Yes, sir." And then a further question: "And that's why you were directed to shoot the CS gas there, right?" And he says, "That's correct." And then a final question -- a final answer: "To put gas in the hallway of the building to prevent people from coming down the hall and getting into the bus."

The question is, that to me seems absolutely directly at odds with testimony yesterday -- and I don't think it was yours; correct me if I'm wrong -- but testimony directly from witnesses yesterday that one of the purposes to allow especially the kids to get out was knowing the bus was at least somewhat separated from the building. There was a trap door from the building into the bus, and that every effort was made to hopefully sort of herd the kids towards that location so they could go through the trap door into the bus. And then the agents said one of the first places they went to afterwards was going into the bus, which it appears from that is completely covered up with dirt so that you couldn't get into the bus.

So the question is really twofold. Can you explain the inconsistency? I mean, it just seems to me that this government witness in a court case who was driving one of the vehicles, inserting the gas, says very clearly several times that his instructions were to gas that part of the building first by the trap door to prevent people from going through the trap door to get into the bus. Was that -- is his testimony correct? And why is there this seeming direct inconsistency?

MR. POTTS: I'm not sure that there is a consistency. And I'll do my best to answer your question, Mr. Barr. I'm not sure I'm the best one to do it because the people on site would be a lot more effective at knowing where the tunnel was and how they could get into it. I think that it's true that that was one of the first places that was gassed, and it was --

REP. BARR: Excuse me. While you're answering that, Mr. Bush, if you could put up the schematic which shows the trap door itself right by the underground bus and point that out. I'm sorry, Mr. Potts.

MR. POTTS: I think it's true that it was one of the first places that was gassed. And part of that thinking was to prevent people -- to move people toward the center of the compound. We were going to do this on an incremental basis and just move them toward the center. We still held out a lot of hope, even because of the length of time. You're talking about six hours from the time that this operation began until the fire started. We still held out a lot of hope that even though that area had been gassed that they would go through that area, put the children through that area and down into the bus, which did have cool, clean air.

REP. BARR: But his testimony is that he was instructed to insert gas there by the trap door to prevent people from getting to the bus.

MR. POTTS: It would move them toward the middle, yes, sir. But it's not going to prevent them, on a long-term basis, six hours later, with that kind of ventilation, from going back --

REP. BARR: How would you get people to escape by herding them to the center of the compound?

MR. POTTS: As I said, we hoped that the immediate reaction might be that some people would come out. But this was not an operation where we expected to put some CS gas into a room right away and have a lot of people come out. We were trying to shrink the size of the compound. The other thing we were hoping to do was to force some serious negotiation, force David to get back on the phone and start talking to us seriously and working toward a final conclusion that would have all of them come out without any more gassing at all, if possible. That was the hope.

REP. MCCOLLUM: Mr. Barr, your time has expired.

REP. BARR: Thank you, Mr. Chairman.

REP. MCCOLLUM: Mr. Buyer, you're -- Mr. Ehrlich? Mr. Buyer. Mr. Buyer, you're recognized for five minutes.

REP. BUYER: Thank you, Mr. Chairman. Mr. Hubbell, at the end of April 15th, I mean, you are painting quite a picture here from a phone conversation that you had had with the men on the ground at Waco with regard to people getting tired; tempers are fraying. I mean, all this leads to the funneling effect towards, "Gee, some decision must be made here. "We've got the military advisers telling Janet Reno that, "You should pull the team off. "I also noted by some of the interviews, FBI really appears to be applying a lot of implicit pressures and explicit pressures into the equations by saying around April 12th, advising the attorney general that he, Koresh, is beating the babies.

I mean, there's a lot of things here being put into a decision-making equation that is placing a lot of stress on the attorney general, who's not necessarily too happy about the plan. As a matter of fact, on April 16th, in your conversations here, according to Richard and Hubbell, Hubbell advised him that the attorney general had disapproved the plan to end the FBI standoff. There have got to be some people that are really ticked off here that the attorney -- you're smiling; it must be true.

MR. HUBBELL: No, I wouldn't say that, Congressman. What I would say is that the FBI in every -- it was unanimous -- believed that this was the only way to get the children out safely.

REP. BUYER: Well --

MR. HUBBELL: And they believed in their plan, and they were certainly going to give us every reason they believed it would work. I believe that it was my job and other people's jobs to understand that in evaluating the decision.

REP. BUYER: But Mr. Hubbell, Richard's response to you is "The FBI would not be pleased. "So I

think we can read a lot into that. Let me make one other comment -- I'm going to yield then to Mr. Bryant of Tennessee -- and that is, we all understand, whether we're here in the political world -- it doesn't make any difference what world we're in here in the United States -- we understand about the aspects of responsibility and authority. And I will submit there's one thing that has become very bothersome to me, and that is I have great respect for those who are in the field. Someone referred to it, "There's a thin blue line" the other day. We have tremendous respect.

What bothers me tremendously are the politicians in this one, the political appointees, either saying, "Well, geez, either I didn't have the authority -- I was only an acting at the time -- or it was outside my jurisdiction, or geez, if someone had given me better data or information, I could have made a great intelligent decision. "So that briefing may not have been there.

MR. HUBBELL: Congressman --

REP. BUYER: So it's almost like, "Geez, I wasn't in control at the time, but I sure am now and it'll never happen again. "So that --

MR. HUBBELL: Congressman, I'm not aware of any political employee involved in this other than myself and the attorney general, and I believe we both take responsibility for what happened.

REP. BUYER: Right, I think that's important. The other thing that's important is when Janet Reno says, "I assume all full responsibility. The buck stops with me. "I think that's absolutely wrong, because she works for somebody, and we know who that is, and it is the chief executive officer of the land.

I yield the balance of my time to the gentleman from Tennessee.

REP. BRYANT: Very quickly I want to follow up, if I could. I think Mr. Clarke raises a very good point with regard to the question Mr. Shadegg raised, and I want to follow up on that. What I understand has happened -- General Reno had given approval for the gas plan on the 17th, after changing her mind. She said as a part of this plan that if the gas didn't work for 48 hours, then the vehicles, the tanks could begin a systematic opening up or disassembly of the building, and she did in fact give the on-site commander, Mr. Jamar, authority to make decisions on that if something happened. And I accept that. I think that's legitimate. And there's no question about it that six hours into this 48 hours -- in fact, around 10: 30 their time, 11: 30 this time -- the FBI did begin to move to disassemble the building, as Mr. Shadegg so clearly pointed out.

My question though is that this is a major shift. You jumped ahead 42 hours in your strategic plan. This is a major change -- you're tearing down the building at that point -- at least parts of it. And Ms. Reno I think had left the strategy session at that point -- she had a commitment to go to Maryland to give a speech. Now, she's en route up there or giving a speech. My question is: What efforts -- and she retained, by the way, throughout this the authority to stop at any point -- to stop this plan at any point, did she not?

MR. CLARKE: (?) She did.

REP. BRYANT: She did. Was she advised of this major change 42 hours in advance that you all were now going in to tear this building, or at least parts of it? Was she notified? Did she have a car phone? I'm sure she had -- there were ways to contact her. Did anyone contact her to let her know this?

MR. HUBBELL: I believe she -- I may be wrong timing wise -- somebody may help me. I believe that some of the destruction of the building had occurred before she left to go to give that speech. The decision was made -- she didn't want to go to make that speech, but the decision was made that they thought that if she didn't go give that speech that would be some indication. But I want to tell you --

REP. BRYANT: I believe that -- and I'm not being critical. I didn't mean to be critical that she was giving --

MR. HUBBELL: That was a tactical recommendation.

REP. BRYANT: I'm just saying that she had the authority to call off that raid at any point --

MR. HUBBELL: Yes, she did.

REP. BRYANT: I'm wondering was she aware that -- you know, that you all were advancing the plan very quickly.

MR. HUBBELL: I believe that there had been destruction of the building before she left. Floyd or Larry, you might know better than I.

REP. MCCOLLUM: Mr. Clarke, you may respond, but the time has expired of Mr. Bryant. Go ahead.

MR. CLARKE: Yeah, Mr. Bryant, I don't recall the exact sequence of events and the timing of them, but in terms of this being a major shift, I would probably characterize it a little differently, because it was part of the overall plan, with Mr. Jamar having the authority to move that up. And Mr. Hubbell points out that almost in the beginning, when the tanks came under fire that they were putting holes in the front of the building. Our monitoring of this was via television that was available to all of the public, and we could see that there was some destruction occurring throughout this process, so it to me was not a major shift from the natural progression of the plan.

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

REP. CONDIT: Yes, I have a quick question for Mr. Potts, and I appreciate the panel -- I know most things have been asked here already. But yesterday or a couple of days ago -- all of these hearings are kind of running into each other -- but I asked the FBI about the possibility of a fire plan, and I think in your bio you said that they would not sign off on the fire plan -- or sign off on the raid had there not been a fire plan. Was the fire plan followed?

MR. POTTS: The fire plan, as written up, was not -- they notified the fire departments, they had gotten the list of the fire departments, they had checked on their availability, they had checked on

the amount of time that it would take for them to get to the scene. So I think in that respect that it was. Of course the problem was even once the fire trucks arrived they couldn't be allowed to go to the scene to fight it.

REP. CONDIT: Well, was there any anticipation -- and forgive me if you said this in your bio -- any anticipation because of the prophecy of Mr. Koresh that there would be fire and blood and explosion, that, you know, maybe we ought to have had something that would anticipate that so that we could have stopped the fire?

MR. POTTS: You know, sir, we talked extensively about what was available. We even had our liaison officer with the Department of Defense check with them to see if there was some kind of armored vehicle that could be used as a fire fighting -- we talked about planes that could drop water, and we tried -- if there was a fire and there was water that was dropped, it would crash the roof. So, I mean, it was -- the best we could do with the fire departments that were available was done.

REP. CONDIT: So -- I'm going to yield to my good friend from Mississippi, but maybe I can get a yes or no on this. So the fire plan was not followed, or was it followed?

MR. POTTS: Yes, sir, it was followed.

REP. CONDIT: It was followed. Okay, I've come down here to yield to my good friend from Mississippi the rest of my time, and I do appreciate your response. Thank you.

REP. TAYLOR: Thank you. Thank you, Mr. Condit. And, Mr. Potts, I had the opportunity last night to read your testimony, and I was in another hearing yesterday, so please forgive me if I'm being redundant. But I would like to clarify on the day of the second raid, the day of the last raid -- did the FBI fire one shot -- even one shot at the Davidian compound?

MR. POTTS: No, sir, we did not -- not throughout the entire standoff.

REP. TAYLOR: Okay. The vehicles -- they have these armored vehicles that are shown -- were they armed with anything other than tear gas grenades?

MR. POTTS: No, sir. We -- as a matter of fact, when they first arrived we had the barrels taken off and told David that these were not offensive weapons that we were bringing in.

REP. TAYLOR: How about who was driving them? Were they military people driving them?

MR. POTTS: No, sir, we had no military people driving them. We had to put our hostage rescue people through a crash course on learning to drive those vehicles.

REP. TAYLOR: Okay. Mr. Chairman, I would like to submit for the record a DOD memo that outlines that the vehicles were going to be transferred -- maintenance would be paid for by the FBI, there would be FBI people driving them, and they would not be armed.

REP. MCCOLLUM: Without objection.

REP. TAYLOR: I am further interested in a statement that you made -- and it's a pretty strong statement, so I want you to repeat it, if you feel comfortable repeating it: "The autopsies reveal that no one was harmed by the tear gas or had toxic levels of any component of tear gas in their systems. "Who were you referring to, sir?"

MR. POTTS: Pardon me? I'm sorry.

REP. TAYLOR: This is from your statement.

MR. POTTS: Right.

REP. TAYLOR: Who were you referring to in that statement? It's on page 11 of your statement.

MR. POTTS: That no one inside the compound had --

REP. TAYLOR: So you're talking about the Davidians?

MR. POTTS: Yes, sir.

REP. TAYLOR: I'm perplexed by something you said a little bit earlier, because we keep hearing about 20 children, and but you said something to the effect that Koresh implied they were all -- at this point these were all his biological children?

MR. POTTS: On March 5th we got our last child out, even though we continued throughout to get more out. On March -- I believe it was the 7th or 8th, somewhere in there -- he indicated when we were talking to him about sending more children out, he said, "No, you're talking about my biological children now -- that's different. "

REP. TAYLOR: So, in addition to everything else he did, he used his own biological children as human shields to keep law enforcement from serving a legal warrant on him and arresting him for firearms violations, compiling a hit list of former members, possibility of illegal aliens there, child molestation that could go into statutory rape, holding people there against their will -- am I correct in saying that?

MR. POTTS: Yes, sir, you are.

REP. TAYLOR: I've asked -- I believe this is the same panel we've had before -- right, everyone's been at the table? Okay, then I'm going to ask you the same question I asked everybody else: Is there anything you've seen or heard or read to justify the murder of those four ATF agents at the hands of David Koresh and his followers, or in any way absolve David Koresh from direct responsibility for the death of those 80 people who died at his compound?

MR. CLARKE: No.

MR. RICHARD: No, sir.

REP. TAYLOR: Would you state your names for the record, and then --

MR. CLARKE: Floyd Clarke. The answer is no.

MR. RICHARD: Mark Richard. The answer is resoundingly no.

REP. TAYLOR: Thank you, sir. Mr. Chairman, I reserve still my two minutes.

REP. MCCOLLUM: So noted. Mr. Ehrlich, you're recognized for five minutes.

REP. EHRLICH: Thank you, Mr. Chairman. Mr. Hubbell, I have just one quick general question for you sir. You have been -- you have watched these hearings, or you're certainly familiar with what's been going on. You see the give and take with respect to the issue of the propriety of these hearings. And, sir, my question to you is: Is it your opinion that these proceedings, these hearings, constitute a legitimate exercise of this body's oversight authority?

MR. HUBBELL: I do believe it is a legitimate exercise. And if anything comes out of these hearings that will help prevent what happened, that's worthwhile. I mean, prevent it from happening again, is the way I would like to put it. The attorney general has always said we -- the only thing we can do -- we can't engage in recrimination, but we can engage in trying to determine what we can do to prevent this from happening again.

REP. EHRLICH: Sir, I appreciate your forthright answer, and with that I will yield to Mr. Chabot.

REP. CHABOT: I thank the gentleman. Mr. Clarke, before, when Mr. Shadegg was asking you some questions, you referred to the briefing book relative to the tank going in and tearing off the back of that building. Is this the briefing book that you were talking about here?

MR. CLARKE: No, it is not.

REP. CHABOT: April 19th briefing book? This is not it?

MR. CLARKE: That is not it.

REP. CHABOT: Okay. Mr. Hubbell, let me ask you some questions, sir. Mr. Hubbell, in the scraps of paper that are being referred to as Vincent Foster's suicide note, is this sentence: "FBI lied in their report to the AG. "I assume meaning attorney general. Now, there has been some speculation in the press that this sentence may have been related to the travelgate affairs, as originally thought -- but not to the travelgate affair but perhaps to Waco. You knew Mr. Foster well. Do you have any sense of what Mr. Foster was referring to there?

MR. HUBBELL: Yes, I do. Mr. Foster believed that the FBI had not been truthful in reporting to the attorney general about a conversation the FBI had with Mr. Kennedy relating to the travel office. It had nothing to do with Waco, congressman.

REP. CHABOT: Thank you, sir. Mr. Potts, as Mr. Condit referred to a little bit ago, you were aware that there was not going to be any fire-fighting equipment actually at the compound prior to the final assault -- is that right?

MR. POTTS: That would have been obviously the preference. A decision by the on-scene commander --

REP. CHABOT: Well, there wasn't any fire-fighting equipment?

MR. POTTS: There was not.

REP. CHABOT: Okay, now -- time is kind of short --

MR. POTTS: I'm sorry.

REP. CHABOT: -- so I've got to keep them relatively short. Now, this was basically because of concern - the FBI being concerned that the people driving fire-fighting equipment might be fired upon? Is that right?

MR. POTTS: You mean as to why they were not there before the operation started?

REP. CHABOT: Yeah, the FBI didn't have fire-fighting equipment prior to the attack because they were concerned that the Davidians might shoot at the people in the fire-fighting trucks -- correct?

MR. POTTS: That's correct, yes, sir.

REP. CHABOT: All right. Yesterday, it's my recollection that you said that you were not expecting any gunfire in that assault -- isn't that right?

MR. POTTS: I indicated that I thought that the plan we had come up with significantly reduced the likelihood of us being fired on immediately when we started the operation.

REP. CHABOT: So I think the answer is yes?

MR. POTTS: It is.

REP. CHABOT: Okay. Now, in planning very large actions of this sort, like going in at the building, you do a lot of planning like if this happens, then this -- we'll do this -- and if this happens, we'll do this -- correct?

MR. POTTS: Yes, sir.

REP. CHABOT: Now, didn't you consider -- or did you consider that fire might well occur in this instance, and if it does we do this?

MR. POTTS: Yes, sir, we did.

REP. CHABOT: But it obviously didn't work.

MR. POTTS: Sir, I think the information we have from the fire commanders is that they, even if they'd gotten in there much, much earlier there is nothing they could have done. First of all, we couldn't put them in there earlier, because shots were still coming out of the compound, and the safety of the firemen -- they would not have been safe. And, secondly, even if --

REP. CHABOT: Okay, my time is relatively short. Let me get to Mr. Hubbell. Thank you. Mr. Hubbell, relative -- I think you said before you expected the Davidians -- particularly mothers who had kids in there -- to come out when the CS gas was pumped in there -- correct?

MR. HUBBELL: That's correct.

REP. CHABOT: Now, had you -- were you familiar with Mrs. Sparks, who she was -- the lady -- the child protective service lady who had been in and talked to Koresh a number of times?

MR. HUBBELL: I believe I had read a report from her. But --

REP. CHABOT: Did you know before it happened?

MR. HUBBELL: No --

REP. CHABOT: Just before the assault?

MR. HUBBELL: Read the report?

REP. CHABOT: Did you know of her existence and what she had to say?

MR. HUBBELL: I knew of her existence in a report --

REP. CHABOT: Prior to the assault?

MR. HUBBELL: Yes.

REP. CHABOT: Okay, and were you aware, sir, Mr. Potts? Were you aware?

MR. POTTS: Which view, I'm sorry.

REP. CHABOT: Were you aware of Mrs. Sparks, the child protective -- and what her view was of Koresh and the folks in there?

MR. POTTS: (Off mike. )

REP. CHABOT: And were you both aware of the fact that she, in her opinion, the Davidians had this -- it was a very unusual religion, I think we all agree with that -- that they were basically, they

thought they had this apocalyptic view of things, and that we, meaning the United States government, I wasn't in Congress at the time, so I wasn't part of the government at that time, but the Babylonian United States government was going to come after them sometime, and they were all going to die and either go to Heaven or whatever. And you all were aware they basically had a different mind set than that. Yet we thought that when we pumped the CS gas in there, they'd just come walking out with their kids.

MR. HUBBELL: I didn't think they'd come walking out. I think if you had listened to, like I did and others, to the Defense Department talking about the effects that the gas would have on adult males, and what would happen, they were quite convincing to me that the women and the children and some of the males would come running out of that compound.

REP. CHABOT: Right, because the gas was so bad. And so on the one hand, it was so bad that it did these things to men, but on the other hand, we always are downplaying what it would have done to the kids. You can't have it both ways. Thank you.

MR. HUBBELL: I believe that the assumption was that it would have the same effect that the children and the women and the men would come out of the compound as a result of the insertion of gas. We wouldn't have inserted the gas if we didn't think it would work.

REP. MCCOLLUM: Mr. Chabot, your time has expired. Mr. Clinger, you're recognized for five minutes.

REP. CLINGER: Thank you very much, Mr. Chairman, and I would like to yield back my time to you.

REP. MCCOLLUM: Thank you very much. Mr. Clark, I have examined what appears to be your post-event interview by the normal investigative internal processes that were done over at the agency, the FBI in July of 93. And it appears to me that you had some early misgivings about the gas insertion plan; that you later became convinced of it. But in that process, I'm trying not to read the whole statement here, you seem to be willing to accept it based primarily on your concern or desire to see this as a ghost-low process, that is the extended 48-hour plan, rather than the let's go do it all at one time like the military may have suggested they would have done a military operation. And ultimately, that was obviously accepted. You also expressed some concern about the firing of projectiles at one point into the compound. Could you tell us why you were concerned about the do-it-fast plan; why you preferred this extended plan; why you eventually accepted the extended plan, but were hesitant on the other?

MR. CLARK: Mr. Chairman, I think that the FBI's position on this from Day 1 was to be very deliberate, very careful and not to do anything that would be provocative, that would cause some reaction. Anything that we might do might be misinterpreted by those inside. And I think you've probably heard testimony that before there would be movement of these CEVs, that the negotiators would call in and tell the people inside ahead of time before they were moved, so that we didn't do anything that would send a signal that could be interpreted or misinterpreted as any kind of aggressive action on our part that may cause them to react in a way that caused the situation to escalate.

So the plan, all along, was consistent with that thinking. And as we developed the plan for using the CS, we wanted it to follow that same kind of thinking. So an incremental, deliberate, giving advance notice, giving ample opportunity without any unnecessary provocation that we would bring about a peaceful solution.

REP. MCCOLLUM: You were afraid that with the provocation, if it occurred, if it were interpreted that way as aggressive, they might either try to break out and have some confrontation that would result in death or suicide or whatever, you didn't know. A fire might be started obviously, but it was that -- I mean, I'm just trying to get the reason why you didn't want to provoke them.

MR. CLARK: Well, we had already February 28th as an example. And it was very difficult to predict with any degree of accuracy what they might do.

REP. MCCOLLUM: Suicide was considered remote at the final point in time, according to all the reports, but that was a consideration, was it not?

MR. CLARK: I think we tried to consider every possible option or alternative that they --

REP. MCCOLLUM: Again, that's part of why you didn't want to act aggressively, why you wanted the delay, the implemented plan. Now, but at the end you accepted a plan which had an acceleration feature in it, and obviously we all know that it was accelerated, and these projectiles were fired, and it was condensed. And that is something I gather was done reluctantly, but what I guess I'm getting at is that the time that this whole thing occurred, and the projectiles were fired and all of this happened, were you aware that Mr. Jamar had expressed, at least he felt and he expressed to us here the other day, an opinion that it was a 99 percent likelihood that the vehicles that were going to insert this gas would, in fact, succumb to fire, and if they succumbed as part of the plan, there would have been an acceleration. And therefore, were you aware that Jamar thought that? Mr. Potts said yesterday he wasn't aware of that.

MR. CLARK: I haven't had a chance to talk to Mr. Jamar about that. And I'm not sure that that feeling or position is a retrospective or prospective assessment. I can tell you that in our conversations with Mr. Jamar on the 7th and 8th that he did not voice that, and I think that the caution and concern that I was outlining for you was shared by all of the people. And I think that we -- especially after the activity that had taken place on the 18th, that we believed that there was a great likelihood that they would not respond with gunfire.

REP. MCCOLLUM: Could you describe for us, before my time expires, your opinion about how long the Hostage Rescue Team could have remained deployed before it would need to undergo rest and re- training after the 19th of April? I mean, that was the day, obviously, this happened. But how much longer?

MR. CLARK: I think that we probably had a couple of weeks, maybe a little bit longer. In talking with both Dick Rogers as well as his people that worked for him when we were out there, I think that if you would have asked the HRT people themselves, I think they would have told you that they could have continued. I think that the judgement of the superiors was that it was getting to a point in

time where they didn't -- would need to be pulled out, and to refurbish their training. We were making plans to do that. If, in fact, this was not an accepted plan, we were looking at putting SWAT teams in to replace them.

But I have to also add that when you do that, you greatly reduce the ability to protect yourselves and place the replacement agents and personnel in a higher level of danger for a lot of reasons. And I won't go into those, but there are some tactical reasons in terms of the familiarity with how they were monitoring what was happening; their ability to use certain weapons that were in the inventory of the HRT that were not available, nor were the SWAT team people trained to use them to combat the similar kinds of weapons inside. So you were increasing the risk to the agents. But we were formulating plans to do that if we had to do that.

REP. MCCOLLUM: But how much time did you think they had before you'd have to do that?

MR. CLARK: Two or three weeks probably.

REP. MCCOLLUM: Thank you very much. I would now normally recognize Mr. Taylor. He's the only one remaining on your side, and we only have me over here. Do we know if Mr. Taylor is back here or coming back for his two minutes.

REP. ROS-LEHTINEN: I think he stepped out just briefly. Is it possible we will reserve his time? Is there anyone on the other side --

REP. MCCOLLUM: There's nobody else over here but me, and I'm going to -- alright, then I yield to Mr. Zeff for five minutes.

REP. ZELIFF: Thank you very much. Mr. Clark, thank you, I think you helped solve one of our problems. We've been trying to get these briefing books. You indicated this is not the briefing book in question, am I correct?

MR. CLARK: Correct, right.

REP. ZELIFF: And in the 302s indicated there were two books. We have not been able until just now, thanks to you, been able to get this from your department. We've asked for it. We haven't been able to get it. We now have it. Thank you. This is part of the problem here of trying to be able to get to the bottom of this thing. There's so much stuff out there. You know, like on February 28th, the ATF took films of every day except that day, the stuff's missing. And so this is very, very helpful. I guess the paragraph that I'd like to read on page 26, if all subjects fail to surrender after 48 hours of tear gas, then a CEV with a modified blade would commence a systematic opening up, disassembly of the building structure until all subjects are located. And I guess my question is did the AG read this book and that paragraph? This seems to be the rules of engagement, and since they were modified and we went in six hours, what --

MR. CLARK: I think there's more to that, Mr. Chairman. And I can't answer your question about whether the AG read it or not.

REP. ZELIFF: Okay, so we don't know whether she read the rules of engagement; we don't know whether she was told about the change in the rules of engagement, 48 hours to six?

MR. CLARK: I don't think there was any change.

REP. ZELIFF: But in fact that tank and the blade and the removal of that section of the building --

MR. CLARK: I think there's another section in there, if you look, and I don't recall--

REP. ZELIFF: We will read it. But could you --

MR. CLARK: I think you and I have a different interpretation of what that says.

REP. ZELIFF: Do you have a page number or reference? We could have staff take a quick look at it. While you're doing that --

MR. CLARK: I was just informed also, Mr. Chairman, that the book was provided to the committee sometime ago.

REP. ZELIFF: So it just got disappeared maybe in the 48,000 pieces of paper that we got, that was unorganized and --

MR. CLARK: You probably understand dilemma that we have to go through.

REP. ZELIFF: I'm sure. That's government at its worst, I guess. Mr. Hubbell, you're a close friend of the president, is that correct?

MR. HUBBELL: That's correct.

REP. ZELIFF: And a golfing buddy?

MR. HUBBELL: We play golf together, yes, Congressman.

REP. ZELIFF: And I'm not asking scores or anything like that, do you socialize with the president?

MR. HUBBELL: I used to.

(Laughter. )

REP. ZELIFF: I'm not sure I understand. Do you spend any time -- did you spend any time at all between the 15th, 16th and 17th and 18th with him? That's April. That's the month of April.

MR. HUBBELL: I cannot answer this question.

REP. ZELIFF: Well, let me try to go back. You had a two-hour conversation with Mr. Sage as far as Waco is concerned, and I guess what I'm wondering is if this close relationship of yours -- I mean, if

you were these kind of buddies, is there any way at all that -- and I look, the same thing with Mr. Altman's letter to Mr. Bentsen on April 15th. Here's to pieces -- two major players here that are both saying -- that are both involved in something that could blow up, literally. And the subject never came up in any discussions; you never picked up the phone; you never talked to him; you never told him?

MR. HUBBELL: On official business, I communicated with the president through the White House counsel.

REP. ZELIFF: That's interesting. Didn't you feel compelled to pick up the phone and let him know?

MR. HUBBELL: Well, I was confident that the White House counsel was telling the president what I was reporting to the White House counsel.

REP. ZELIFF: But how did you know?

MR. HUBBELL: I have great confidence in Mr. Nussbaum, Mr. Foster and Mr. Lindsey.

REP. ZELIFF: Well, I just think that here's a case where we're going ahead with a plan that's going to affect almost a hundred Americans, that we're going to gas -- a situation that ended up with disastrous results. And I just find a person who is as close as you are, you wouldn't pick up the phone and --

MR. HUBBELL: Well, if you remember, it wasn't until I believe Friday or Saturday that the decision was made to go ahead. And at that point, the attorney general did call the President of the United States, and I was in the room when she made that call.

REP. ZELIFF: Okay, but you spent two hours with Mr. Sage getting an up-to-date briefing, including the apparent surrender plan or whatever you would refer that to, and two hours on the phone on the 15th. And you didn't tell anything to the president until the 19th when you didn't -- I guess you let him know that --

MR. HUBBELL: I did not talk to the president about Waco prior to the 19th and -- on any basis -- I communicated through the White House counsel. But I did brief the White House counsel about my conversations with Mr. Sage.

REP. ZELIFF: Mmm-hmm. And did the president call you back?

MR. HUBBELL: No, I didn't call him.

REP. ZELIFF: Okay, but you briefed him through the counsel. You assumed that the counsel briefed him. He then did nothing?

MR. CLARKE: He talked to the Attorney General herself on the 18th.

REP. ZELIFF: Okay. I yield back to the Chairman for the last 30 seconds.

REP. MCCOLLUM: Well I just have one question that I want to follow with Mr. Clarke in that 30 seconds. Mr. Clarke, a minute ago you had indicated in the time that you had had an opportunity to think about this that you did not have any awareness of Mr. Jamar's conclusion that there was a 99 percent likelihood that the vehicles would be fired on when they put the gas in prior to it happening. And of course we both concur that what Mr. Jamar said -- he said it yesterday -- that the plan called for an acceleration of that gas being inserted if that eventuality occurred.

Had you been aware Jamar felt that way, had he informed you prior to the 19th, would you have informed the Attorney General of that, was that significant enough an opinion that you would have passed that on to her?

MR. CLARKE: I think all through this operation, Mr. Chairman, was that we tried to ensure to the fullest of our capabilities that the Department of Justice and the Attorney General was aware of every detail.

REP. MCCOLLUM: But my point is that would have been significant enough, you would have passed it on to her?

MR. CLARKE: Every detail.

REP. MCCOLLUM: Would it have caused you to have changed your opinion?

MR. CLARKE: I would have explored that with him to try to understand his rationale. The fact is that we had those discussions and it did not come up in those discussions.

REP. MCCOLLUM: I understand that. Very well. Two minutes yielded to Mr. Taylor. You have two minutes left, Mr. Taylor. Okay, I will time the two minutes.

REP. TAYLOR: Mr. Chairman, it was my understanding that Ms. Thurman was going to give me --

REP. MCCOLLUM: Ms. Thurman is going to give time, do you want the time first?

REP. THURMAN: Yield me seven, and I will yield back --

REP. MCCOLLUM: I'll give you seven and you determine how to run this. We'll run our clock, we'll just add two minute. Before we start the clock running we'll let two minutes go by.

REP. TAYLOR: Mr. Chairman, she is going to give me two, plus my two --

REP. THURMAN: I was getting ready to just yield you four minutes.

REP. TAYLOR: Oh, I thought it was two.

REP. THURMAN: I'll give you four.

REP. TAYLOR: Okay, thank you, Mr. Chairman.

REP. MCCOLLUM: I'll give you the first two minutes right now.

REP. TAYLOR: Thank you, Mr. Chairman. I would like to go back -- and again Mr. Potts, I apologize, but Armed Services was meeting yesterday. So I might be redundant, but I don't think I am. You say in your statement, and this is I think a sworn testimony that you've given to this committee, that at 12: 07 p. m. the Davidians set simultaneous fires at three or more locations within the compound. It was established by teams of independent arson experts and fire department analysis experts of electronic surveillances, overhears by video tape taken from aircraft, by observations from FBI agents, and by admissions of Davidian survivors. Do you stand by that statement?

MR. POTTS: Yes, sir.

REP. TAYLOR: There is no doubt in your mind that those fires were set by anyone other than the Davidians?

MR. POTTS: No, sir, absolutely no doubt.

REP. TAYLOR: And that three fires were set simultaneously by the Davidians?

MR. POTTS: Yes, sir.

REP. TAYLOR: By obviously a pre-arranged plan.

MR. POTTS: That's correct.

REP. TAYLOR: Mr. Hubbell, since we were cut off last time you could not answer the question I've asked every other panel, and I want to ask you as well because you've obviously studied this issue a lot. Is there anything that you've seen or read or heard to justify the murder of those four ATF agents, the wounding of 20 more -- and I'm even taking it a step further -- in any way negate the guilt of David Koresh in the death of David Koresh and the death of those 80 people, 80 people he could have said get up and leave and they would have left.

MR. POTTS: No, Congressman, not at all, nothing.

REP. TAYLOR: Okay. Ms. Thurman, thank you very much, I yield back the balance of my time to Ms. Thurman.

REP. THURMAN: And that I will yield to Mr. Scott two minutes.

REP. SCOTT: Thank you. Dr. Salem, I am going to be a little bit redundant just so we can nail this down on the safety of CS gas. Obviously anybody subjected to that will be very much traumatized while they are subjected to it. But you indicated that there are no documented cases of death as a result of exposure to CS gas. Is that right? Are there any citations of medical problems lasting more

than 30 days for adults or children from exposure to CS gas that you are aware of?

MR. SALEM: No, sir.

REP. SCOTT: Does CS gas cause skin to burn?

MR. SALEM: It causes skin irritation, which is exacerbated if it is wet.

REP. SCOTT: And how long does that last?

MR. SALEM: That depends on the severity of the burn.

REP. SCOTT: Will it cause blistering?

MR. SALEM: Not usually, in some rare cases it may. I believe there is one instance of that that's been recorded.

REP. SCOTT: Thank you, Mr. Chairman. I yield back the balance of the time to Ms. Thurman.

REP. THURMAN: At this time I would yield to Ms. Jackson-Lee.

REP. JACKSON-LEE: Ms. Thurman, I thank you very much and I had asked a question of Director Sessions, Mr. Hubbell and I had not got a chance to pursue with you. Let me welcome you and acknowledge that this is not a question of an indictment, this is a question for information.

I do recall, however tragically, under the leadership or under the time that President Ronald Reagan served this nation well, that 265 young men lost their lives in their sleep in Lebanon. I would imagine that there were officials that made decisions that might have augmented that tragedy, even though they were military personnel, they were at sleep. My question is that we have been confronted with a very serious question of cover up, cover up to the extent that you play golf with the President, you are a friend of the President, and I'll maintain that today, but that why didn't he know or why is the blame not being placed at the door of the White House? I do think we can fix some things in this system in terms of how many times we review a decision like that. But help me understand, if you can recount again, that process where you would not place the blame at the President and whether or not there was a cover up.

MR. HUBBELL: Well let me first say there is no cover up. I've never seen an issue examined like this Waco situation. There are reports after reports and that's fine. But first of all, I did not talk to the President about this, the Attorney General did. I don't place the blame of what happened at Waco on these good people who are here at this table. Who killed those people was David Koresh or Vernon Howell. We live with those decisions that we made. We wish we had some of them back. But we were -- I hope that -- David Koresh was a master of manipulation. And I hope if people try to place the blame on the deaths of those children and women in the compound on somebody other than David Koresh, I believe they are continuing being manipulated again by David Koresh. He is the one who murdered those people. It's sad, we live with it, we dream about it, but the blame lies at the feet of David Koresh, not the President of the United States, not the Attorney General, not the

people who are at this table.

But I will tell you, I take responsibility for some of those decisions that were made to go into that compound. I was responsible. Other people at this table were responsible. The Attorney General was responsible. And we wish we had tried something else, knowing what we know now. But the blame lies at the feet of David Koresh, not the President of the United States and not the Attorney General of the United States.

REP. JACKSON-LEE: -- my time -- thank you very much.

REP. THURMAN: Mr. Clarke, very quickly, if you can answer -- or did you get a chance to answer Mr. Zeff for what's the difference in the interpretation -- what is it he saw compared to what you saw?

MR. CLARKE: Yes, the clarification is that once the people in Waco came under fire, or that the lives of the people in this operation were placed in jeopardy because of actions by the people inside, the on scene commander had full authority and full discretion to do whatever in his judgment was necessary to provide for their protection in response to that.

REP. THURMAN: Mr. Chairman, at this time -- you all have talked to a great extent about the problems with the documents and 23,000 or 30,000 pieces -- I just need to make a very quick announcement of some interns that we would like to thank on our side that helped us go through those documents as well and this is their last day today. So if I could thank Dean Atkins (ph), Michael Deever (ph), Stephanie Fry (ph), Salvaria Garziolo (ph), Dan Macelheny (ph), Sammy Sanchez (ph) and John Stevens (ph). We just want to acknowledge the work that they did in trying to put this information together for us. (Applause. )

REP. MCCOLLUM: Thank you very much. I believe everybody else has asked all their questions and I have five minutes left to yield to myself. I want to make a couple of questions that relate to the Sage conversation with you, Mr. Hubbell, on the 15th of April. I think that was a fairly decisive two hour discussion.

Is my understanding correct that Mr. Potts, Mr. Richard and Mr. Clarke were all participants in that conversation? You all were listening in or was this a speaker phone? Can somebody tell me if you were --

MR. CLARKE: Yes.

REP. MCCOLLUM: Speaker phone. So you heard everything Mr. Hubbell heard, right?

MR. CLARKE: That's correct. There were additional people on that conversation.

REP. MCCOLLUM: Mr. Teeny (ph), I've got down -- according to the Justice Department report, is that correct?

MR. CLARKE: That's correct.

REP. MCCOLLUM: So there was a group of you around there. But four of you who were there are sitting out there today. Do any of the other three of you -- Potts, Richard or Clarke -- have any recollections of that conversation that would differ from the conclusion Mr. Hubbell gave us on the points we asked about, particularly pertaining to Mr. Sage's conclusions that the attorneys efforts at negotiating at the end were really no more than additional manipulation by David Koresh and that he didn't think there was any in hope the negotiations at this point?I mean that's the flavor we have. I'm trying to summarize it fairly.

MR. RICHARD: That is certainly the gist of my recollection of the conversation. In essence that we haven't been able to negotiate anything during this course. Our efforts on the standoff, to resolve the standoff, that we were in essence stymied by this, he's a manipulator and it's going no where.

REP. MCCOLLUM: Mr. Clarke, just of your recollection as well.

MR. CLARKE: Yes, and one additional piece. I think it also was brought up that this was not the first time that Mr. DeGuerin and Mr. Zimmermann had assurances from Mr. Koresh that he was going to give up. I believe there were some conversations in early April that Koresh indicated that some time between the second and the tenth, or something like that, that he was also going to give up. So this was just more of the same.

REP. MCCOLLUM: Mr. Potts, you've already testified to some extent yesterday about this. Was there anything else you would add to that?

MR. POTTS: No, sir, it's the same.

REP. MCCOLLUM: Question for you -- did any of the four of you -- Hubbell, Potts, Richard or Clarke -- recall at any time Mr. Sage saying to you specifically that DeGuerin had indicated to him that he believed -- that is DeGuerin believed that he could bring the -- that Koresh would come out, that he was within 10 to 15 days of the 14th, which was the day before when the whole discussion had taken place with Sage over the latest developments. Did any of you remember Sage saying that to you or not saying it to you?Or that material even?

MR. : It would have been material, as everything that was said was material. I have some recollection of him talking about the DeGuerin talk that he would ultimately come out. I do that, but I don't specifically remember any time table --

REP. MCCOLLUM: Mr. Potts, do you remember a time table?

MR. POTTS: I can't think of any with that much particularity.

REP. MCCOLLUM: Mr. Richard, do you remember?

MR. RICHARD: No, I can't.

REP. MCCOLLUM: Mr. Clarke, do you?

MR. CLARKE: I can't.

REP. MCCOLLUM: My point to you is had that been conveyed to you, that DeGuerin felt passionately that things had really changed, this time was really different and that Koresh would come out in 10 to 15 days because the attitude had totally changed since he was no longer thinking he was the martyr, but now the messenger, which is what we've been told by DeGuerin, would that have made any difference to you in your state of mind at that point in time? Would your advice to the Attorney General have been any different, any of you?

MR. : Chairman, you put a little different flavor on it when you said the attitude had changed --

REP. MCCOLLUM: If that had been conveyed to you -- I'm not uttering that it had, I'm asking you in your state of mind at that time, based on what you knew, if that had been conveyed to you, would your advice to the Attorney General been any different and would you have conveyed that fact to her?

MR. : I would have explored it with Mr. Sage.

REP. MCCOLLUM: All right, what about you, Mr. Potts.

MR. POTTS: I simply would look to Mr. Sage who was talking to him every day for his evaluation on whether there had been an attitudinal change as opposed to just --

REP. MCCOLLUM: But the fact alone would not have been sufficient? Mr. Richard.

MR. RICHARD: I would have looked like Mr. Potts to the assessment of the negotiators. Was this a serious change by Koresh or was it just --

REP. MCCOLLUM: So it really wouldn't have mattered if Mr. Sage had said it wasn't, it wouldn't have made any difference.

REP. MCCOLLUM: Mr. Clarke.

MR. CLARKE: I would have reacted the same way. I would have explored that possibility with others that -- I would have balanced their judgment with his, maybe not just limited to Mr. Sage, but others that would be in a position to give that information.

REP. MCCOLLUM: Well let me make a comment or two here in the final conclusions of your panel. I think that you all did a very thorough evaluation. You did it honestly, you did it in your best judgment and you gave obviously the Attorney General your best judgment on the assault with the CS gas. I must say that there are some things that still trouble me. One of them is the fact that Mr. Jamar's feelings about this, particularly his feelings that 99 percent certainty that this would result in firing on the vehicles.

And in turn we all knew and you all knew that would accelerate, and he knew that would accelerate the CS gas plan, the fact he never said it apparently to any of you and it never got back to the AG and it wasn't part of the deliberation proceedings, in light of the fact that most seem to know -- and Mr. Clarke you've expressed particular concern that the more aggressive assault, which did in fact take place as a result of the firing on these vehicles and the failure of the people to come out, would and did result in potentially what exactly happened, a reaction that was very negative. So I'm disturbed by that and I think we all should be, and I think you should be.

Secondly I believe that in summary here today my only other thought is that I do not know the value of what Mr. DeGuerin had to say in terms of his final thing. I can understand why you wouldn't give it weight, why Mr. Sage didn't, you all are giving what weight he did. But it seemed very impassioned and obviously he genuinely believed it. And it is disturbing that it was not given more weight by Mr. Sage, but maybe it's understandable.

What doesn't seem to me in all of this I've heard today -- we're going to have more testimony -- seem all that reasonable though, was the assumption that these parents, who devoted themselves to Koresh, 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 of the compound when the CS gas was fired. It seems to me that it would be more reasonable for you to have assumed that they would pick up their suffering children, put -- as Mr. Hyde said yesterday -- put wet rags over their mouths, hide in the most remote places they could find, and simply wait, which apparently is something like that's what they did.

I think of course that all goes and begs the question with respect to whether or not you got the best advice or whether you didn't. And that seems to me to summarize where we are today. We've concluded this panel and at this point I would thank you very much for your coming today, for participating, and we'll be ready now at this point to proceed with the next panel.

REP. MCCOLLUM: Mr. Bryant --

REP. BRYANT: -- to attach to the record those two pages which reflect the phone calls that I referred to.

REP. MCCOLLUM: Without objection.

REP. BRYANT: And the AC (ph) article --

REP. MCCOLLUM: Without objection. Mr. Barr.

REP. BARR: I would like to ask also unanimous consent -- there was a photograph -- I don't know whether Mr. Potts still has that -- we would like to insert that in the record as well by unanimous consent. This is the photograph of the entry area into the bus immediately after the fire. And also, Mr. Chairman, rather than introduce a lengthy transcript from the trial, I would like the following pages entered in by unanimous consent. These are the pages that I referred to earlier of the trial transcript -- pages 1425, 5562, 5563, 5565 to 5568, 5577, 5581 and 5582, 5600 to 5601, and 5616.

REP. MCCOLLUM: Without objection.

REP. : Mr. Chairman.

REP. MCCOLLUM: Would the gentleman like to object?Reserving the right to object?

REP. : Mr. Barr, could you remind us what those pages refer to.

REP. BARR: Okay, this is the trial transcript from the case in the Western district of Texas, the U. S. District Court, Waco Division -- the criminal case, and these were the pages that I specifically referred to in my questioning of Mr. Potts.

REP. : And what was the subject matter?

REP. BARR: The subject matter was the spraying of tear gas into the area by the bus and the trap door leading to the bus.

REP. MCCOLLUM: Without objection they are so admitted. I again want to thank this panel. You are excused, we are going to introduce the next panel. But we need obviously to clear you out and have them come in. I believe that our fire experts are here and we will commence the next panel immediately. We are not taking any lunch break other than when we have to vote because we need to be able to proceed today. I think everybody understood that.

#####END OF PANEL