

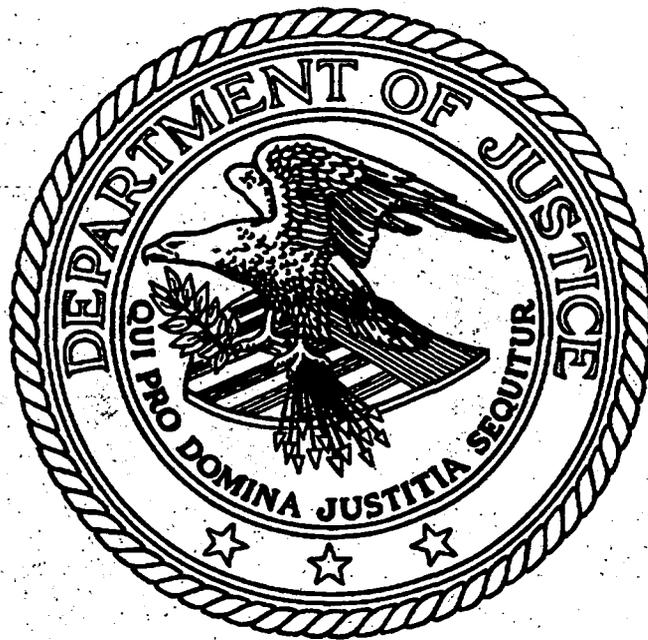
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Lessons of Waco: Proposed Changes in Federal Law Enforcement

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LESSONS OF WACO: PROPOSED CHANGES IN FEDERAL LAW ENFORCEMENT

by

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INTRODUCTION

The studies by the Department of Justice and the Department of the Treasury of the confrontation with the Branch Davidians at Waco have raised many questions about our capacity to handle similar situations. In order to identify potential improvements in federal law enforcement, Assistant Secretary of the Treasury for Enforcement Ronald K. Noble and I asked ten experts in law enforcement and the behavioral sciences to review our ability to handle hostage/barricade incidents and recommend improvements. We assembled a very distinguished and varied group of experts from three nations to help us learn from the experience at Waco, and we have learned a great deal.

The experts were given broad access to law enforcement officials and received briefings about the events in Waco, although our detailed factual findings were not yet completed. I am grateful to them for taking the time to assist us in this effort. I am also grateful to the many law enforcement professionals who cooperated with the experts during their review.

The experts' reports, which will be published as a supplement to this paper, provide a useful source of constructive suggestions as well as a further explanation of the reasons for my proposals. I have not adopted all of the experts' recommendations but I propose that a significant number of them

be put into effect.¹ Some of the others are consistent with practices already in place in federal law enforcement.

1. Complex Hostage/Barricade Incidents

The type of situation about which we are concerned occurs when an unusually large number of well-armed individuals, often accompanied by others whose relationship to the armed persons may range from hostage to willing supporter, have committed or are threatening to commit a serious crime and are likely to resist arrest violently. These crises in which suspects barricade themselves, often along with hostages, are referred to as "complex hostage/barricade" incidents or situations. Complex hostage/barricade situations may involve a broad range of underlying motivations. They could involve a radical religious group, a terrorist group, or a large-scale extortion or threat to life or property.

It is worth exploring the nature of these incidents. We focus on situations involving a significant number of well-armed individuals because a number of federal law enforcement agencies are especially trained and highly capable in dealing with the far more familiar situation of one or a few individuals -- perhaps

¹ The experts who provided recommendations are Dr. Nancy Ammerman, Mr. Colin Birt, Dr. Robert Cancro, Mr. Richard Davis, Mr. Robert Loudon, Mr. Ronald McCarthy, Dr. Ariel Merari, Dr. Lawrence Sullivan, and Mr. William Webster. One expert, Dr. Alan Stone, felt that his recommendations would benefit from a far fuller account of what happened at Waco. We have therefore agreed that his recommendations will follow, and thus can draw upon, the release of the other reports today.

bank robbers -- who have been trapped and are holding a small number of hostages. There are a well established set of procedures and very skillful and highly capable people prepared to deal with such situations when they involve Americans in foreign countries; our concern here is with domestic situations.

Hostage/barricade situations are sometimes resolved by negotiated surrenders, sometimes by the use of tear gas or other non-lethal force to incapacitate the suspects or force them to leave their stronghold, and sometimes by dynamic, high-risk entries by law enforcement officers. In dynamic entry operations, developed by counterterrorist teams, law enforcement officers enter the area in which the suspects are located through an overpowering assault and try to take them into custody; the officers must be prepared to shoot anyone who threatens them with a weapon.

The Branch Davidian confrontation is an example of the tremendous firepower that may be amassed by private citizens to engage in small-scale warfare with law enforcement personnel. Recent events such as the bombing of the World Trade Center teach us that terrorism may indeed strike within our borders. Now is the time for us to take stock of our resources and prepare for the broad range of threats that may confront us.

2. The Unique Aspects of Waco

The confrontation with the Branch Davidians was an unusually difficult form of hostage/barricade situation in several

respects. Most important, the number of inhabitants who were armed and prepared to shoot federal law enforcement officers was very large, making a dynamic entry extraordinarily dangerous.

Second, the rules of engagement were complicated by the fact that many of the inhabitants were not suspects but also were not traditional hostages because they had no desire to leave. This category includes the children and any of those adults who shared Koresh's beliefs but did not take up weapons. The rules of engagement for freeing hostages where innocent civilians are at imminent risk of harm are different from the rules of engagement in situations where there is no imminent threat to life. If an innocent person's life is in immediate danger at the hands of the suspects, then immediate action using deadly force against the suspects may be justified. This urgency characterizes many hostage situations, especially terrorist incidents. In other situations, like the one at Waco, the absence of an imminent threat means there is time to develop a plan and carefully review it. It also complicates decisions about the use of deadly force.

Finally, the Waco situation was shaped by the fact that the FBI became involved only after agents of the Bureau of Alcohol, Tobacco and Firearms ("ATF") had been killed. Responding to a crisis in which people have already died is substantially different from planning an operation in which bloodshed may be avoided. Certain peaceful negotiated outcomes, such as holding out the hope that some suspects might escape prosecution for serious offenses, were necessarily foreclosed. For David Koresh,

surrender meant giving up everything, and possibly facing a death sentence. There was little for negotiators to offer him. This was of great significance.

My recommendations should not be taken as an assessment of either fault or praise. Their purpose is different: to improve the likelihood that future complex hostage/barricade incidents will be resolved by arrests without loss of life.

RECOMMENDATIONS

1. An Overview

The crises about which we are concerned pose great dangers and require skills that are not routinely available to law enforcement agencies, including those that have teams with advanced training in Special Weapons and Tactics ("SWAT"). When faced with complex hostage/barricade incidents, law enforcement must respond with four critical elements and an organization that provides additional support functions. The critical elements are (1) a well-equipped and highly skilled tactical team to contain the suspects and bring the incident to a close, using, if necessary, appropriate force; (2) trained and experienced negotiators, supported by pertinent research on successful techniques in similar situations, who can attempt to achieve a peaceful resolution; (3) behavioral science experts who can advise the tacticians and the negotiators about the suspects and assist them in developing strategies; and (4) a command structure that integrates the other elements and develops a coherent

overall strategy.

The last two require further explanation. Because the reactions of the armed individuals depend upon their beliefs and personalities and are likely to vary in ways that are important to negotiators and rescuers, it is important to have and be able to use a behavioral science component that can advise the tactical and negotiation groups about what to anticipate. The behavioral science, negotiation, and tactical capacities must be integrated in a way that allows the components to work together, and they must be directed by individuals skilled in handling these situations in the field under policy guidance from the political levels of government. My recommendations follow the suggestions of our experts about ways to improve this core structure.

To support the critical elements, there must be a tactical team to maintain an "outer perimeter" to keep others away from the scene; the ability to call upon the military for any necessary support with tactical and transportation equipment; the capacity to gather intelligence from inside and outside the barricades; liaison with other law enforcement agencies and prosecutors; and the ability to handle demands for information for the public.

2. The Responsibility of the FBI

These capacities are expensive to create and maintain; the necessary skills are scarce. The United States government should

have one such structure available to serve wherever a major threat of the sort I have described calls for federal law enforcement. With its Hostage Rescue Team, Critical Incident Negotiation Team, Behavioral Science Unit, other relevant components and large number of personnel, the FBI, according to the experts, is the obvious choice.

Although this review has not focused on the capacity of other federal agencies to conduct high-risk dynamic entries, it is clear that only a very highly trained and extraordinarily well-equipped unit could conduct a dynamic entry operation against a target that contains the volume of firepower and number of persons present at the Mt. Carmel compound. We cannot ask part-time special operations personnel to conduct such dangerous law enforcement operations.

Just as we turn to the military for equipment that it is uniquely able to provide, so should we be able to turn to the FBI to perform the tactical operations that it is uniquely situated to conduct. The substantial investment that we make in it already, and the increased investment that I propose, will enable the FBI to deal with potential terrorist incidents and to conduct other high-risk operations.

While I have no perfect set of numbers or characteristics to define a complex hostage/barricade situation as described on page 2, I do think that we should promptly arrive at a definition and require any federal agency confronting such a situation to refer

the matter to the FBI. The FBI would then assume responsibility.²

3. The Size and Location of the Hostage Rescue Team

Our experts agree that the FBI Hostage Rescue Team is as good as any in the world, a remarkable compliment. But they also agree that it is, at fifty persons, too small to deal with the variety of situations that may arise. I will propose to the Director of the FBI and the Attorney General that the size of the team be doubled, a figure within the range of acceptability according to most of our experts.

Although some of our experts recommended splitting the team into two parts -- basing one on the west coast to complement the present headquarters at Quantico, Virginia -- on balance I believe that it is better to maintain a central location so that the entire team can train together on a daily basis. We intend

² The FBI has no authority to respond to complex hostage/barricade situations stemming from investigations which are purely local in nature. In the absence of a violation of federal law, the FBI is without legal authority to intervene in an operational capacity. This seems clear from the applicable statutes and has been the conclusion of the Department of Justice since at least 1978.

Many local incidents will, however, involve violations of federal law as well as state law. In these situations the FBI team could be invited to assist local authorities. Moreover, pursuant to 28 U.S.C. § 540, the FBI is specifically authorized, at the invitation of local authorities, to investigate any killing of a state or local official, including a law enforcement officer, where the killing took place in the course of the officer's official duties. This would permit the use of federal resources in any case in which local officers were killed while attempting to execute an arrest or search warrant and the event led to a major hostage/barricade situation.

that most FBI SWAT teams include one former HRT member who can bring to bear that unit's specialized experience and training. The FBI and SWAT teams from the various federal law enforcement agencies should be able to maintain the situation until the arrival of the rescue/negotiation force which can at any time be in the air within a very reasonable period.

Finally, while we increase the number of tactical personnel, we should also promote research to develop non-lethal technology to expand the number of options available to subdue suspects.

4. Negotiations Capacity

The field commander is going to need not only a remarkably able tactical rescue team but also very talented negotiators. Negotiation in this situation is a specialty. If the FBI is given the responsibility for dealing with these events, it must supplement its present, largely dispersed negotiating capacity with an increased central component at Quantico.

Because negotiations and rescue assaults are alternative courses in many of the situations we are discussing, the negotiators should be familiar with the capacities of the HRT operations, and the HRT should be familiar with the strategies of the negotiating team. What is necessary in many circumstances is a highly coordinated effort using both sets of capacities, sometimes simultaneously and sometimes in sequence. The special demands on each group to understand the other require joint training operations at Quantico.

5. Behavioral Science Capacity

There is a third set of capacities necessary for these operations. The prospects of negotiations and the prospects of an assault both depend upon how the individuals or groups resisting law enforcement perceive their situation and, particularly, how they perceive their relationship to the government and its law enforcement forces. The type of situation we are describing often involves a group with a view of the government and of the group's obligations to the law that are very different from those of the ordinary citizen and even the ordinary criminal. Several of our experts suggested that David Koresh and his Branch Davidian followers believed that the unfolding events were part of a script that had been foretold in the Bible as interpreted by David Koresh. These experts suggested that relating the combined negotiation/assault tactics to that script would have been helpful. The question is how to develop the institutional capacity to take advantage of the wealth of information that might be brought to bear.

Federal law enforcement cannot and should not collect and study the writings of groups characterized only by views very different from the mainstream in the United States. This would be an undertaking far more dangerous to civil liberties and far more unstructured in its reach than collecting information, under traditional carefully written Attorney General guidelines, about violent organizations. What the experts suggest is that our training of law enforcement agents include material designed to

alert agents to the potential importance of differences in views among Americans on such subjects as religion and political ideology. Those who provide this training should themselves become expert in the range and diversity of beliefs held by Americans -- including the more unconventional beliefs -- and should be available for advice when events like this occur.

As to particular groups, like the Branch Davidians, we should consult with academic scholars for detailed information that may be useful to negotiators or others. But this requires us to be able to identify, in advance of the event, reputable experts who are willing to help, so that we may quickly turn to them for advice. For this, federal law enforcement must, our experts urge, begin to make contact with a wide range of experts in the social sciences -- from religion to sociology to psychiatry -- so that we can very promptly enlist their assistance when needed.

6. Crisis Management

We must have a fourth capacity in place to deal with complex hostage/barricade situations. We need field managers with the training, experience, and leadership qualities to orchestrate rescue and negotiation efforts in light of social science knowledge. That means that the FBI, if it is to be in charge of this national responsibility, will have to depart from its strong tradition of placing responsibility in the hands of the Special Agent in Charge ("SAC") of the local division.

The FBI has plans underway to select fifteen of its most senior field commanders to receive special training with the Hostage Rescue Team and with negotiators and to learn to call upon the social science capacity that we will be building. On any major occasion three or four of these specially chosen SACs will be called into action so that fatigue is not a factor in their operations any more than it will be in the operations of the newly expanded Hostage Rescue Team.

The local SAC will continue to play a highly central role as deputy to the field commander, responsible for coordinating relations with the variety of local authorities, state and federal, who continue to have significant responsibilities. The SAC should also assume responsibility for whatever criminal investigation is behind the confrontation. As in the case at Waco, dealing with the human risks will necessarily take precedence over gathering and protecting evidence for trial. However, the latter responsibility should be integrated as a consideration.

To the extent that time allows, the major policy decisions recommended by the field commander should be reviewed by the Director of the FBI and the Attorney General or their immediate deputies. The structure for this phase of the operation is generally well in place. An Assistant Director of the FBI should have the full-time responsibility in Washington -- regardless of whether the event involves international terrorists or a domestic group. The Assistant Director should and does have a

representative of the Hostage Rescue Team and of the negotiating team in Washington to advise him. The Assistant Director should also have available a representative of the social science unit, one who has some experience and some academic knowledge about groups that are out of the political and religious mainstream.

The Attorney General and Deputy Attorney General will be well advised to have available to them a senior career official whose responsibilities, over an extended period of time, include assisting in these events and maintaining a familiarity with the resources available to the FBI. Officials of the Department of Justice should be included in crisis planning exercises so that the entire chain of command will be prepared for emergencies.

7. The Responsibility of Other Federal Law Enforcement Agencies

Finally, while it is important to define a category of tactical situations in which the FBI should take control, other agencies will and should continue to conduct operations that may on occasion develop into hostage/barricade situations. Some of these will be below the threshold for assignment to the FBI. Others may start below that level even though they later escalate into complex hostage/barricade crises. Other agencies may also have to deal with a complex hostage/barricade crisis until the FBI team arrives. For these reasons, other law enforcement agencies must also be prepared to deal with hostage/barricade situations.

The Department of the Treasury's Federal Law Enforcement

Training Center has a "First Response Training Program" that teaches law enforcement officers the basics of handling a hostage/barricade situation, including setting up a command post, establishing an inner and outer perimeter, engaging in preliminary negotiations, and dealing with the media. Basic training of this sort should be provided to all federal agencies. We will also continue to need the more specialized capacities of the SWAT teams of several federal agencies for handling more familiar but still dangerous confrontations.

An orderly transition from ATF responsibility to FBI responsibility took place at Waco. This important transition stage could be facilitated by efforts to have SWAT teams from other agencies participate in training exercises with the HRT and the FBI negotiators. Such joint exercises may also make it possible to use agents from outside the FBI in handling a complex hostage/barricade crisis without losing the advantage of carefully coordinated responses.³

* * * * *

I am confident that when this structure is fully implemented, we will have substantially improved our ability to deal successfully with complex hostage/barricade situations with a reduced risk of losing innocent lives.

³ The Departments of Justice and the Treasury should also consider whether agents of law enforcement agencies outside of the FBI might be included in the HRT complement, on detail from their original agencies. This would be consistent with the HRT's function as a national special response unit, and when these agents left the HRT, they would transfer their new skills back to their home agencies.

APPENDIX

I. JURISDICTION

- A. Make the FBI the lead federal agency in complex hostage/barricade situations and domestic terrorist operations, and offer the assistance of the Department of Justice in reviewing plans for high-risk and sensitive raids

II. OPERATIONS

- A. Select and train FBI "Crisis Managers" to serve as on-scene commanders during hostage/barricade situations
- B. Double the size of the FBI's Hostage Rescue Team
- C. Increase the number of negotiators based at the FBI Headquarters in Quantico, Virginia
- D. Integrate behavioral science experts as part of the training process and dispatch them as part of the Crisis Management Team
- E. Conduct training exercises that include Department of Justice decisionmakers
- F. Standardize training and equipment of SWAT teams.
- G. Do not invite the media to participate in law enforcement operations or give advance notice of such operations

III. RESEARCH

- A. Establish a pool of behavioral science experts who will be available to consult with federal law enforcement officials
- B. Establish a database of information about hostage/barricade situations worldwide
- C. Continue to promote research into non-lethal and less-than-lethal technologies

I. JURISDICTION

A. MAKE THE FBI THE LEAD FEDERAL AGENCY IN COMPLEX HOSTAGE/BARRICADE SITUATIONS AND DOMESTIC TERRORIST OPERATIONS, AND OFFER THE ASSISTANCE OF THE DEPARTMENT OF JUSTICE IN REVIEWING PLANS FOR HIGH-RISK AND SENSITIVE RAIDS

The FBI currently has jurisdiction over an event either if it has jurisdiction over crimes that have been committed or if the Attorney General directs the FBI to take control because the event has national significance. We should clarify the FBI's role as the primary law enforcement special response unit for major crises, and direct our resources towards reinforcing its capabilities rather than creating other units with similar responsibilities. When a hostage/barricade crisis develops during an operation conducted by another federal law enforcement agency, the FBI should be called in to take control of the situation with the assistance of the other agency.¹

The FBI already has dedicated substantial resources to the process of preparing for and resolving hostage/barricade incidents. In addition to the 50 member Hostage Rescue Team ("HRT") which played a large role at Waco, the FBI has approximately 1000 employees who are trained as members of Special Weapons and Tactics ("SWAT") teams. In terms of organization, each field office of the FBI has at least one team of 6 SWAT agents. In addition, the FBI has divided the nation

¹ When the FBI takes over an ongoing operation, the original agency should remain involved, with its local commander serving as a liaison to ensure that the FBI obtains intelligence and cooperation. The FBI also should be able to rely on trained units of the original agency to provide tactical or other assistance at the scene.

into 8 districts each of which has an "enhanced" SWAT team that receives additional training and specialized equipment.

Approximately 300 FBI agents are trained as negotiators, and each field office has at least 3 negotiators. Thirty five of these agents receive specialized training as members of the Critical Incident Negotiations Team ("CINT"). All of the CINT members have extensive hands-on experience and receive advanced training, including working with the HRT and SWAT.

The FBI Training Facility at Quantico is the home base for the HRT and for the Special Operations and Research Unit ("SOARU"). SOARU is responsible for all aspects of crisis management planning and training -- including command and control, negotiations and SWAT -- and provides operational support during crisis incidents. Two CINT members currently are attached to SOARU at Quantico, and the others are spread throughout the nation.

Two additional units based at Quantico contain agents with behavioral science expertise: the Behavioral Sciences Services Unit ("BSSU") and the Investigative Support Unit ("ISU"). During the Waco standoff, members of the these units prepared insightful analyses of David Koresh and the Branch Davidians, and members of the units were present with the negotiators in the rear command post. These substantial resources of the FBI leave it well situated to deal with hostage/barricade incidents.

Once a major crisis situation develops within federal jurisdiction, there should be no debate about calling in the FBI

as the lead agency to take operational control of the situation. Concentrating our efforts on further enhancing the FBI's crisis management skills and making the HRT the premier special response unit will constitute a more efficient use of law enforcement resources and is likely to yield better results than would the development of a number of units that lack similar equipment and training.²

This recommendation, which involves expanding the responsibilities of the FBI, has budgetary implications that must be addressed by the Office of Management and Budget. For example, the deployment of the HRT requires one and sometimes two C-141 military aircraft. A Memorandum of Understanding between the FBI and the U.S. Air Force Reserve at Andrews Air Force Base provides one C-141 for emergency transportation of the HRT on an unlimited basis at a maximum fixed rate per year. However, any additional planes -- the use of which becomes more likely with an increase in the size of the HRT -- are billed at the non-Department of Defense rate of \$6,000 per hour. The costs of aircraft and other military equipment such as that used at Waco

² The FBI is now the primary investigative agency in areas such as organized crime and terrorism. In matters such as the confrontation with the Branch Davidians, the FBI is called in only at the discretion of another agency. Among the recommendations of the Vice President's recent National Performance Review was that the Attorney General be recognized officially as the Director of Law Enforcement and that she chair an Executive Law Enforcement Council. This would enable the Attorney General to provide for the most effective and efficient federal response to different types of crises, without the need to rely upon jurisdictional guidelines that relate to underlying criminal conduct.

can have a significant impact on the FBI budget.

When other federal agencies face high-risk situations that do not fall into the category of hostage/barricade situations in which the FBI will have primary jurisdiction, the FBI should be available to provide any needed assistance. FBI assistance should be available to state and local law enforcement agencies as well, in the form of advance and on-the-scene training.³

Before any federal law enforcement agency undertakes a high-risk raid with a significant danger of loss of life of innocent parties or agents, raid plans should be carefully scrutinized by high-ranking officials who will be accountable for the results. All agencies should adopt guidelines that will ensure that raid plans are thoroughly reviewed before they are executed and that

³ The FBI has no authority to respond to hostage/barricade incidents stemming from investigations or operations which are purely local in nature. Absent a violation of federal law, the FBI is without legal authority to intervene in these matters in an operational capacity.

The jurisdiction of the FBI is established by statute, Title 18, United States Code (USC), §§ 3052 and 3107 and Title 28, USC, § 533, and its powers to investigate, arrest, and search and seize are limited to those circumstances which involve actual or suspected "violation of the laws of the United States." See Title 28, Code of Federal Regulations (CFR), § 0.85(a) ("Investigate violations of the laws ... of the United States and collect evidence in cases in which the United States is or may be a party in interest"). In addition, the FBI is authorized to "conduct law enforcement training programs ... for State and local law enforcement personnel." Title 28, CFR, § 0.85(e).

However, many local incidents will involve violations of federal law, even when the initial investigation was made by local law enforcement. Moreover, pursuant to Title 28, USC, § 540, the FBI is specifically authorized, at the invitation of state or local authorities, to investigate any killings of state or local officials (including law enforcement officers) in the course of their official duties.

standards are enforced to ensure the safety of law enforcement personnel, innocent persons and targets of law enforcement operations. To assure that this happens and to provide additional guidance where appropriate, we will ask any federal prosecutor who approves an application for a search or arrest warrant in a high-risk situation to consult with the Terrorism and Violent Crime Section of the Criminal Division of the Department of Justice.

II. OPERATIONS

A. SELECT AND TRAIN FBI "CRISIS MANAGERS" TO SERVE AS ON-SCENE COMMANDERS DURING HOSTAGE/BARRICADE SITUATIONS

It is essential that the FBI have well-trained, experienced crisis managers to serve as on-scene commanders and coordinate complex operations such as Waco. The crisis manager chosen for an incident should be a person who is well versed in the particular type of incident and familiar with the FBI's capabilities to handle the situation. Consistent with the observations of some of our experts, the FBI has proposed, and I recommend, that 15 Special Agents in Charge ("SACs") be selected and trained as a cadre of crisis managers who may be deployed to handle major crisis incidents such as Waco. These SACs will receive extensive advanced crisis management training, including participation in major exercises with other federal agencies and the military, both domestically and internationally, as on-scene commanders.

Training of the crisis managers must take account of the

need to integrate the assault unit, negotiation, and intelligence functions that are essential to the effective resolution of a crisis. The crisis managers will be familiar with available resources from tactical, behavioral, and scientific areas. Emphasis will be placed on training them with members of the HRT, SWAT, SOARU, CINT, and behavioral scientists, all of whom will be under their command during a crisis.

The training of crisis managers should include some familiarization with the range of beliefs of non-mainstream religious and political groups and emphasis on the importance of taking these into account when making tactical or negotiating decisions. In this context training should include the considerations involved in deciding whether to make use of a third-party intermediary.⁴

The crisis managers will be available for deployment to a specific crisis site at the direction of the FBI Director and then will take command over all federal law enforcement forces on the scene. The SAC for the jurisdiction in which a crisis occurs will work with the crisis manager and serve as the liaison with local law enforcement officials and the press.

B. DOUBLE THE SIZE OF THE FBI'S HOSTAGE RESCUE TEAM

In order more effectively to carry out its current mission

⁴ The crisis managers will also work with members of the FBI's Technical Services Division and the Rapid Start Team of the Information Management Division regarding technical capabilities and investigative information management. The Training Division will provide instruction on the use of less-than-lethal force.

and to fulfill the expanded role that we envisage for it in the future, the FBI's Hostage Rescue Team ("HRT") should be increased from 50 members to 100 members. Expanding the size of the HRT will enable it to handle larger incidents, to handle multiple contemporaneous incidents, and to handle protracted incidents while allowing adequate rest and training.

In the decade since it was created, the HRT has fulfilled an important role in federal law enforcement by resolving dangerous tactical situations. The constant training, advanced equipment, tactical expertise, and teamwork of the HRT are unprecedented in domestic law enforcement. The ability of groups such as the Branch Davidians to build substantial private arsenals and the possibility of terrorist incidents within the United States leave little doubt about the need for this specialization.

Given the current hiring freeze and budgetary constraints, transferring agents and resources to the HRT will detract from the FBI's primary mission of investigating violations of federal law. Nonetheless, the FBI is already considering expanding the HRT by 25 positions. I recommend that these 25 positions be added immediately, and an additional 25 positions be added without undue delay.

Several experts suggested basing the HRT in multiple locations in order to reduce its average response time. Although it would increase our preparedness, the costs counsel against adopting this suggestion at this time. The expense of dividing the HRT would be enormous, including the duplication of training

facilities, transportation vehicles, and support functions. Operationally, dividing the HRT would deprive it of its unique and important ability to function as an integrated unit, a critical element during a tactical situation.

Creating multiple bases for the HRT would not generate a sufficient improvement in response time to justify the expense and tactical drawbacks. Until the HRT arrives, we must rely upon local law enforcement personnel and area SWAT teams to establish an outer perimeter and control the scene. The HRT takes about 4 hours to assemble, and the maximum gain in response time within the continental United States would be about 5 hours, the flying time from the east coast to the west coast. Whether the cost of another HRT base is justified depends upon the likelihood that a critical tactical opportunity will pass within the few hours that could be gained after the HRT is called to an incident. If an HRT unit were based in Los Angeles, it could respond to an incident in that city in 4 hours rather than the current 9 hours. The further an incident was from the western base, such as Los Angeles, the smaller would be the lost window of opportunity. For example, the HRT can now respond to Seattle in about 9 hours; whereas an HRT unit based in Los Angeles could only reduce the response time to 6 hours. The incremental benefit in response time would not justify the tremendous costs that a separate HRT unit would entail.

C. INCREASE THE NUMBER OF NEGOTIATORS BASED AT THE FBI HEADQUARTERS IN QUANTICO, VIRGINIA

The FBI's Special Operations and Research Unit ("SOARU"), which is based at Quantico along with the HRT, is responsible for the training and deployment of FBI negotiators. The Critical Incident Negotiations Team ("CINT"), established by SOARU, is composed of 35 of the most experienced senior negotiators throughout the FBI, many of whom have language capabilities and experience in working with international situations. CINT members receive extensive advanced training, including work with the HRT, SWAT, and the military. They will also receive training with the 15 SACs who will be specially trained as crisis managers.

Only 2 of the 35 CINT personnel are based at Quantico and attached to the SOARU. Several times that number of negotiators should be based at Quantico to assist with training and operations and to concentrate on studying the types of suspects they may confront. These negotiators should train with and build rapport with the crisis managers, behavioral scientists, and HRT personnel with whom they will work during hostage/barricade incidents. The use of these Quantico-based negotiators during crises should facilitate the ability of the different aspects of the crisis management team to function as an integrated unit during siege incidents.

D. INTEGRATE BEHAVIORAL SCIENCE EXPERTS AS PART OF THE TRAINING PROCESS AND DISPATCH THEM AS PART OF THE CRISIS MANAGEMENT TEAM

Often in a hostage/barricade situation we will be dealing with people whose reactions will be difficult to predict. In considering both assault and negotiation options in a complex hostage/barricade situation, it is important to know the likely reaction of the suspects. For this, we must have the input of experts in the behavioral sciences.

Behavioral scientists should be included as part of the crisis management team, training with the components of the team, traveling to the scene with them, and helping to develop negotiating strategies. Coordinating with colleagues at Quantico, the behavioral science expert on the scene will be able to gather information about the suspects and talk to experts, including persons in the academic community, who have information about them.

We must also expect crisis managers to give full consideration to behavioral science input in developing an overall strategy and in evaluating the likely consequences of particular negotiation techniques or tactical decisions. Inevitably there will be disagreements about strategies -- indeed, disagreement is evidence of a healthy internal debate. But the crisis management structure must ensure that the on-site commander will be aware of the full range of strategic options and the likely consequences of each.

Our religious studies experts point out that law enforcement

can easily undervalue the strength and sincerity of the convictions of people whose beliefs are not familiar. Often religious and political motivations and their likely effect on behavior are crucial factors in law enforcement decisions. The FBI Academy gives new agents 17 hours of instruction in the behavioral sciences, as well as instruction about the first amendment rights of political and religious groups. It is neither necessary nor feasible to make every agent an expert in behavioral science. However, they must be alert to the different views of the people with whom they deal. I recommend a careful review of the adequacy of training in light of the recommendations of our religious studies experts.

E. CONDUCT TRAINING EXERCISES THAT INCLUDE DEPARTMENT OF JUSTICE DECISIONMAKERS

In order for a crisis response mechanism to improve and remain sharp, it must be tested regularly. The FBI conducts regular exercises to test its crisis management plan and train operators and decisionmakers. Future exercises should include officials of the Department of Justice, including the Attorney General, so that the entire decisionmaking structure will be prepared to deal with an actual crisis.

Within the Department of Justice, the first line of contact will be the Chief of the Terrorism and Violent Crime Section of the Criminal Division, who is responsible for handling domestic counter-terrorism and violent groups. The responsibilities of this official should include contingency planning and developing

cooperation among agencies, including state and local governments, that may be involved in a major hostage/barricade crisis.

F. STANDARDIZE TRAINING AND EQUIPMENT OF SWAT TEAMS

The FBI's SOARU is currently working to standardize training and equipment of area SWAT teams. SWAT teams often are among the first law enforcement agents to respond to a crisis site, and they must maintain the scene at hostage/barricade standoffs until the HRT arrives. SWAT teams also maintain an outer perimeter during crises and can assist the HRT with tactical operations. The standardization of SWAT teams should enable the FBI to use them in place of the HRT during protracted crises if no tactical operation is planned and the HRT therefore is not needed.

Current and former HRT members are working with SOARU to provide recommendations about how to standardize SWAT training and equipment. The FBI has instituted new selection procedures that are to be used in all field offices to ensure that all SWAT team members meet the same standards of selection and training, and the FBI routinely conducts regional SWAT team training sessions that are attended by HRT members. This interaction insures that the various SWAT teams and the HRT work closely and that experience and techniques acquired by the HRT are passed on to the SWAT teams. Furthermore, many former HRT members have been transferred from the team to field offices where they serve as SWAT team coordinators.

We should also promote uniformity and coordination with the SWAT teams of other agencies. This can be accomplished by developing a uniform curriculum at the Department of the Treasury's Federal Law Enforcement Training Center ("FLETC"), which trains most federal law enforcement agencies. FBI HRT and SWAT agents should do some training at FLETC.

Finally, the Departments of Justice and the Treasury should consider including agents of law enforcement agencies outside of the FBI in the newly expanded HRT. When these agents left the HRT, they would transfer their new skills back to their home agencies, where they could participate in SWAT operations and training.

G. DO NOT INVITE THE MEDIA TO ACCOMPANY AGENTS ON RAIDS OR GIVE ADVANCE NOTICE OF SUCH OPERATIONS

Current FBI policy, which should be the policy for all law enforcement agencies, is that the news media may not accompany agents during raids and will not be given advance notice of such operations. Operations which depend upon surprise should never be disclosed in advance to anyone without both a legitimate law enforcement need to know about the operation and a commensurate obligation not to disclose the information.

There may be rare circumstances in which a member of the media learns about a planned raid through independent sources, and the appropriate law enforcement official determines that it is necessary to give that person unusual access in return for his or her promise not to reveal any information to the targets of

the raid. However, for the safety of law enforcement personnel, innocent persons at the site, the targets, and members of the news media themselves, no member of the news media should accompany agents conducting a raid without approval at the highest levels, which should be given only in exceptional circumstances.

III. RESEARCH

A. ESTABLISH A POOL OF BEHAVIORAL SCIENCE EXPERTS WHO WILL BE AVAILABLE TO CONSULT WITH FEDERAL LAW ENFORCEMENT OFFICIALS

Law enforcement agents are often confronted with individuals and groups whose beliefs are unfamiliar to them. In training and during operations, law enforcement personnel should be able to call upon the services of specialists both inside and outside the government who have insight about behavioral issues. This requires that we consider in advance what sort of expertise may be required in a crisis, and that we build a network of contacts between law enforcement behavioral scientists and behavioral science experts in the private sector.

During the Waco siege, the FBI made substantial use of behavioral science information. In the future, the FBI should broaden its available pool of resources for outside consultation. It will maintain the names of behavioral scientists and academicians who may be consulted in the course of training and for information and advice about particular events. This inventory will be maintained by the FBI's Behavioral Sciences

Services Unit at Quantico, which is available for consultation by other law enforcement agencies.

B. ESTABLISH A DATABASE OF INFORMATION ABOUT HOSTAGE/BARRICADE SITUATIONS WORLDWIDE

In order to maximize our effectiveness in dealing with crises involving confrontations with armed groups, we must have a storehouse of information about how past incidents have been resolved and about the characteristics of the groups that we may confront in the future. Such a database would assist crisis managers in planning for and resolving hostage/barricade situations. It would include details pertaining to previous situations and the most current research available about techniques of hostage negotiation and crisis resolution. This database also should facilitate the analysis of past incidents and the use of the results in planning and operations. The database should include details of siege incidents in the United States and abroad. The characteristics of potential perpetrators of siege incidents, including particular terrorist groups, and their conduct during hostage incidents should be available for use by crisis managers.

C. CONTINUE TO PROMOTE RESEARCH INTO NON-LETHAL AND LESS-THAN-LETHAL TECHNOLOGIES

Research into "less-than-lethal" or "non-lethal" technology holds great promise for the future of law enforcement. The objective of such research is to identify technologies that will

permit the use of non-injurious means to resolve tactical situations without the use of deadly force. The National Institute of Justice ("NIJ") created a new Science and Technology office in September 1992 to address research and development into technologies to support law enforcement. In cooperation with the National Laboratories of the Department of Energy, this office has been conducting such research for domestic law enforcement purposes. Several new laboratory prototypes of non-lethal weapons have already been developed and are being refined into practical devices.

In response to a request from the Attorney General earlier this year for assistance in identifying and transferring promising technologies to law enforcement, both the Department of Defense and the Central Intelligence Agency have established liaisons with NIJ and are working to identify promising military and intelligence community technologies for law enforcement use.

At the same time, the FY 1994 budget authorization bill has directed the Secretary of Defense, through the Advanced Research Projects Agency ("ARPA"), to form an interagency health and justice working group consisting of the NIJ, FBI, Centers for Disease Control, National Institutes of Health, National Academy of Science, and National Governors Association. This working group is charged with developing an inventory of ARPA resources, conducting an analysis of issues with criminal justice and health implications, and recommending ARPA funding.

I recommend that the Department of Justice, through NIJ,

consider expanding these efforts with the Department of Defense, members of the intelligence community, the Department of Energy, including the National Laboratories, and private industry to develop non-lethal technology for use in law enforcement. By working together, these organizations can develop new methods of bringing armed confrontations to peaceful resolutions by neutralizing hostile suspects without using deadly force.

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THE WHITE HOUSE
WASHINGTON

CS7965

July 31, 1995

The Honorable William Zeliff, Jr.
Chairman, Subcommittee on National Security,
International Affairs, and Criminal Justice
U.S. House of Representatives
Washington, D.C. 20515

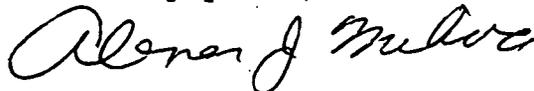
Dear Chairman Zeliff:

I am writing in response to your comments on "Meet the Press" regarding the President's involvement in events at Waco. Your comments were nothing short of irresponsible, intent on creating a story without any news and alleging a scandal without any basis.

The facts relating to the President's involvement in the decision to end the siege at Waco are a matter of public record. The President has never shied away from, indeed has repeatedly acknowledged, his knowledge and ultimate approval of that decision. Respecting and giving due deference to the judgment of the FBI and the Attorney General, the President accepted their recommendation in a discussion with the Attorney General on April 18. Prior to that time, the President learned of the proposal, expressed his confidence in the Attorney General, but also noted a desire to review any decision of this kind. All this is spelled out in the Justice Department's Report on Waco, specifically at pages 108 and 241-48.

I am distressed that you would go on national television, recite nothing other than these facts, but then suggest that you are exposing hidden misdeeds. That is a disservice to the American people. Statements such as these undermine your stated goal of holding open and honest hearings to review the facts and make credible policy recommendations as to how to avoid such tragedies in the future.

Sincerely yours,



Abner J. Mikva
Counsel to the President

THE WHITE HOUSE

WASHINGTON

July 31, 1995

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Chairman, Subcommittee on National Security,
International Affairs, and Criminal Justice
U.S. House of Representatives
Washington, D.C. 20515

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Sincerely yours,



Abner J. Mikva
Counsel to the President

COPY

NO REPORTS
ATTACHED TO FILE
May 31, 1995

MEMORANDUM TO THE PRESIDENT

FROM ABNER J. MIKVA 
WHITE HOUSE COUNSEL

RE: Report on the FBI activities at Waco, Texas,
February 28 to April 19, 1993

Various reports and recommendations were made about the FBI's role in the Waco raid. They include a report prepared in-house by Justice and FBI officials (the DOJ Report), an evaluation of the FBI's role prepared by an outside lawyer (the Dennis Report), recommendations for improvements prepared by a group of outside experts (Recommendations), a report on the lessons of Waco prepared by then Deputy Attorney General Philip Heymann, (the Heymann Report) and the statement and testimony of then FBI Director William S. Sessions (Sessions Testimony). You have copies of all of those reports. The DOJ Report and the Dennis Report both contain executive summaries which are digestible time-wise, especially the DOJ Report.

The Reports generally conclude that the FBI conducted itself properly during its involvement in the Waco events, that Attorney General Reno was fully advised of the events, and that the fire and resulting deaths were the work of Koresh and his followers. The Reports conclude that the tear gas attack was the only option that seemed reasonable at the time, and that none of the gunfire was from the FBI agents.

The main criticisms were that there were conflicts among officials during the preceding negotiations, and that there were not sufficient trained and coordinated personnel available at the appropriate times. No one faults the FBI for using excessive force under the circumstances or for failing to exhaust other alternatives to the tear gas attack. Attorney General Reno was quite new to her job during the Waco events, but all of the reports indicate that she was kept fully informed as were her deputies. The 7 page executive summary in the DOJ Report (the thick volume entitled "Report to the Deputy Attorney General") is the quickest summary of the facts.

M000061

June 1, 1995

MEMORANDUM TO THE PRESIDENT

FROM: ABNER MIKVA
CHRIS CERF

RE: Waco Questions

You have asked for some additional information in preparation for questions you may get concerning the Department of Treasury report on Waco.

I. Far from being a whitewash, the Treasury report was hard hitting and extremely critical. (In contrast to the DOJ report, it received near universal acclaim in the press, including the WSJ, the L.A. Times and the Washington, Post.) Although concluding that BATF did have probable cause to execute the warrants, the report found that the raid was bungled in several crucial respects: (1) "poor planning;" (2) inadequate training and supervision; (3) "significant deficiencies in tactical intelligence;" (4) a "flawed decision to go forward" after it became clear Koresh had been tipped; (5) and "a general failure of ATF management" to monitor and control events as they unfolded. (See pp. 12-15).

In addition, the report concluded that the two raid commanders in the field (Chojnacki and Sarabyn) "engaged in a concerted effort to conceal their errors in judgement" and "failed to be candid" during the course of the Treasury review (pp. 16, 193-209). Other senior officials including the Associate and Deputy Director for Law Enforcement (Daniel Hartnett and Daniel Conroy) and the Intelligence Division Chief (David Troy) were also found to have made "false and misleading" statements (p. 194). The report also concluded that Director Steven Higgins, although not aware of the falsity of these accounts, "must accept responsibility" for repeating them when available information showed "he was on shaky ground" (p. 205).

II. The personnel consequences of the report were severe. Director Higgins resigned "in protest." (Although it is not a matter of public record, he would have been separated.) Hartnett and Conroy were placed on "administrative leave pending investigation," a technical status necessitated, by the fact they were covered by the civil service provisions of federal personnel law. Both of them resigned within a few weeks rather than fight the inevitable. Troy was also placed on leave, but eventually was allowed to remain at a reduced grade.

Sarabyn and Chojnacki, having also been placed on administrative leave, hired lawyers and fought dismissal tooth and nail. The Department eventually agreed to a settlement pursuant to which they were allowed to remain in nonsupervisory positions.

The decision to settle with the two field commanders is regrettable. Nonetheless, you should be able to blunt any criticism with the response that much of the top brass at ATF either left or was dismissed as a direct consequence of the report.

M000021

Shot of Davidson

Presentation of Corbett

shot on day of fire
↑ sent aircraft

FLIR video - data for anal of fire / ~~prepared by FBI lab~~
concludes on point of origin, growth rates, nature of ignition
sources, etc of fire

12 noon - aerial view of c before fire

FLIR - Forward looking infrared

focus on temperature

total white - hot (2000+)

cause then smoke

1 1/2 mins after tank leaves

fire begins in 2nd floor of tower

Fire 2 - 1 min later - front window (invis)

~~Flashover - fire~~
Fire 3 - 1st fl, chapel

Fire 4? - rear of chapel

Flashover - fire 2

NATIONAL SECURITY COUNCIL

FAX COVER SHEET

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Washington, D.C.
20506

Did you get a complete,
clear transmission? If
not, please call:

(202) 456-9181

From: elisa harris

To: yvonne campos fax 616-5117

Agency: doj

Date/Time: 25 july

No. of pages to follow: 8

Message: attached RCA-related Questions for
Record and testimony from CWC ratification
hearings. Note Senate Intell Cmte Qs and As were
printed in Cmte report on the treaty; Ledogar
testimony printed in SFRC hearings. let me know if
you need anything else!

cc: Elena Kagan - Wt Counsel
fax 61647

①

CHEMICAL WEAPONS CONVENTION
(TREATY DOC. 103-21)

HEARINGS
BEFORE THE
COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE
ONE HUNDRED THIRD CONGRESS
SECOND SESSION

MARCH 22, APRIL 13, MAY 13 AND 17, JUNE 9 AND 23, 1994

Printed for the use of the Committee on Foreign Relations



*Statement on RCAs from the Prepared Statement
of Ambassador Stephen Ledogar.*

During the final months of negotiations, this issue was finally resolved by adding a paragraph in the preamble reiterating the already existing prohibition on the use of herbicides.

ARTICLE 1 (GENERAL OBLIGATIONS)

2

Article I contains the general obligations of States Parties, specifically prohibiting them from:

- developing, producing, otherwise acquiring, stockpiling or retaining chemical weapons or transferring chemical weapons, directly or indirectly, to anyone;
- the use of chemical weapons in any circumstances, (including retaliatory use, which many countries protected with reservations to the 1925 Geneva Protocol);
- engaging in any military preparations to use chemical weapons or assisting, encouraging, or inducing, anyone to engage in any activity prohibited to States Parties; and
- using riot control agents as a method of warfare.

Article I also obligates each State Party to:

- destroy its chemical weapons and chemical weapons production facilities as well as any chemical weapons it abandoned in other States Parties.

The issue of whether and how the possible wartime use of riot control agents (RCAs) should be dealt with in the Convention was also contentious, and it was only during the final months of negotiations that compromise text was achieved.

The U.S. had long maintained that RCAs were not chemical weapons and thus should not be included in the Convention; RCAs had legitimate civilian law enforcement and defensive military applications. The U.S. defended its need to protect its policy on military use of RCAs, stressing that its use was subject to Presidential approval and the U.S. policy was no first use except in defensive modes to save lives. Other countries, including many of our allies, acknowledged the need for use of RCAs in law enforcement situations. They were concerned, however, that RCAs would constitute an immediate risk and danger if they were allowed to develop into a new generation of non-lethal but effective chemical agents of warfare, causing insurmountable problems in trying to distinguish between "real" and "non-lethal" chemical weapons on the battlefield, as well as between "real" and "non-lethal" chemical warfare units.

The compromise reached on this issue was to simply ban the use of RCAs as a method of warfare. This prohibition applies only to their use as a method of warfare in international or internal armed conflict. Uses of RCAs for operations such as normal peacekeeping operations, humanitarian and disaster relief missions, counter-terrorism and hostage rescue are unaffected by the Convention.

The Convention allows the use of toxic chemicals for purposes not prohibited under the Convention, such as their use for law enforcement, including domestic riot control. Law enforcement uses could include the use of chemicals in executions. RCAs are defined in a section separate from chemical weapons to indicate that while the Convention prohibits their use as a method of warfare, they themselves are not considered chemical weapons. Declarations related to RCAs are limited to the names and formulae for chemicals held for riot-control purposes. Other than annual updates to these declarations, there is no requirement for other reporting or routine inspection. This approach takes into account the need for identification to preclude future accusations of chemical weapons use, while recognizing the impracticality of routine reporting and inspection of States Parties' holdings of RCAs.

ARTICLE II (DEFINITIONS)

Article II contains the definitions for the critical terms relevant to the general obligations contained in Article I and the responsibilities outlined in further Articles. Terms associated with verification are defined in the Verification Annex.

Ledogar testimony to SFRC

103D CONGRESS
2D SESSION

SENATE

REPORT
No. 103-390

U.S. CAPABILITY TO MONITOR COMPLIANCE
WITH THE CHEMICAL WEAPONS CONVENTION

REPORT

OF THE

SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE

together with

ADDITIONAL VIEWS



SEPTEMBER 30 (legislative day SEPTEMBER 12), 1994.--Ordered to be printed



UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY

Washington, D.C. 20451

July 11, 1994

Dear Mr. Chairman:

John D. Holum, Director, U.S. Arms Control and Disarmament Agency (ACDA) has asked me to convey his appreciation for the opportunity to testify before the Senate Select Committee on Intelligence on the Chemical Weapons Convention.

Following the hearing on May 17, 1994, ACDA received written questions for the Record from you and Senator Warner. Please find enclosed the unclassified answers to questions ACDA received. Classified responses are under separate cover.

If you have any further questions or need any additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ivo Spalatin".

Ivo Spalatin
Director of Congressional Affairs

Enclosure

The Honorable
Dennis DeConcini
Chairman
Select Committee on Intelligence
United States Senate

QUESTIONS AND ANSWERS ON THE
CHEMICAL WEAPONS CONVENTION FOR THE
SENATE SELECT COMMITTEE ON INTELLIGENCE

Q1. Professor Matthew Meselson of Harvard University, a co-author of the "Chemical Weapons Convention Verifiability Assessment" prepared by EAI Corporation for the U.S. Arms Control and Disarmament Agency (ACDA), has warned that the Chemical Weapons Convention (CWC) exemption for "law enforcement" purposes could be a major loophole. What problems and ambiguities do you see resulting from this provision? (U)

A1. Professor Meselson asserts that because the CWC permits the use of toxic chemicals for law-enforcement purposes without defining which chemicals may be used, "a State Party could produce chemical weapons but claim they are intended for law enforcement." The Administration believes that the CWC adequately addresses this issue. Pursuant to paragraph 1 of Article II, for toxic chemicals to be permitted for law-enforcement purposes, the type and quantity of the chemicals used must be consistent with such purposes. During the CWC negotiations, the only law enforcement use of lethal chemicals that was discussed was for capital punishment. See also answer A2. (U)

Q2. Does the CWC permit the use of chemical weapons for law enforcement purposes?

Q2(a). Would that include the use of lethal chemicals to combat a terrorist group that was holding hostages? Or the same group, if it were not holding hostages at the moment, but were engaged in or threatening some other action?

Q2(b). If so, how will the international community differentiate between terrorist groups and other groups (say, in a civil war) that engage in similar actions?

Q2(c). How, in the U.S. view, does the law enforcement exemption apply to peacekeeping operations? Would the United States, if engaged in a Somalia-like peacekeeping operation, be permitted to use lethal chemicals, or other toxic chemicals that did not fall under the "riot control agent" provisions? (U)

A2. The CWC does not permit the use of chemical weapons under any circumstances. Therefore, the CWC does not permit the use of chemical weapons for law enforcement purposes. It does, however, permit the use of toxic chemicals that are not chemical weapons for law enforcement purposes. Pursuant to paragraph 1 of CWC Article II, toxic chemicals used for law enforcement purposes are not "chemical weapons" for purposes of the Convention, provided they are of a type and quantity consistent with such a purpose. (U)

A2(a). During the CWC negotiations, the only law enforcement use of lethal chemicals that was discussed was for capital punishment. With respect to terrorist situations, the type and quantity of toxic chemical used must be consistent with the specific law enforcement purposes for which it is used. (U)

A2(b). As discussed in answer A2, toxic chemicals may only be used for law enforcement purposes if they are of a type and quantity consistent with such purposes. The use of lethal chemicals against humans in the conduct of an internal armed conflict such as a civil war would not constitute a law enforcement or other permitted purpose, and therefore would not be permissible under the CWC. (U)

A2(c). As discussed in answer A2, toxic chemicals may only be used for law enforcement purposes if they are of a type and quantity consistent with such purposes. The use of lethal chemicals or other toxic chemicals to conduct an armed conflict that might arise in the course of a peacekeeping operation would not constitute a law enforcement or other permitted purpose, and therefore would not be permissible under the CWC. (U)

Q3. How will we or the Organization for the Prohibition of Chemical Weapons determine whether toxic chemicals ostensibly kept for law enforcement purposes are in "types and quantities ... consistent with such purposes?" Was this issue left to the Preparatory Commission? Or will it be decided on a case-by-case basis?

Q3(a). How will the types and quantities of toxic chemicals for use against criminals and terrorists differ from those for use against some other foreign or domestic enemy? (U)

A3. Assessing whether the types and quantities of toxic chemicals are consistent with law enforcement purposes will be decided on a case-by-case-basis. The drafters of the CWC chose not to place a quantitative threshold on the amount of toxic chemicals retained for "law enforcement purposes, including domestic riot control." These quantities could vary given a state's size and domestic security needs. If the Convention prohibited the use of toxic chemicals for law enforcement, it would ban the use of chemicals for capital punishment, i.e., gas chambers and lethal injection. The U.S. chose not to permit such a provision in the Convention. (U)

A3(a). No toxic chemical of any type or quantity may be used against a foreign or domestic enemy unless for a permitted purpose, such as law enforcement. As noted in answer 1, toxic chemicals used for law-enforcement purposes, e.g., against criminals or terrorists or for any other permitted purpose, must be of a type and quantity consistent with such purposes. (U)

Q4. Three months ago, in response to a question for the record from Vice Chairman Warner, the Executive branch wrote: "The Administration is reviewing each of the uses of riot control agents specified in Executive Order 11850 to determine which, if any, may be inconsistent with the prohibition in the Chemical Weapons Convention (CWC) on the use of riot control agents as a method of warfare and, if so, what revisions may be necessary in the Executive Order." What findings and recommendations have resulted from that review? (U)

A4. On June 23, 1994, President Clinton informed the Senate of the results of the review, which are as follows:

Article I(5) of the CWC prohibits Parties from using RCAs as a "method of warfare." That phrase is not defined in the CWC. The U.S. interprets this provision to mean that:

-- The CWC applies only to the use of RCAs in international or internal armed conflict. Other peacetime uses of RCAs, such as normal peacekeeping operations, law enforcement operations, humanitarian and disaster relief operations, counter-terrorist and hostage rescue operations, and noncombatant rescue operations conducted outside such conflicts are unaffected by the Convention. (U)

-- The CWC does not apply to all uses of RCAs in time of armed conflict. Use of RCAs solely against noncombatants for law enforcement, riot control, or other noncombat purposes would not be considered as a "method of warfare" and therefore would not be prohibited. Accordingly, the CWC does not prohibit the use of RCAs in riot control situations in areas under direct U.S. military control, including against rioting prisoners of war, and to protect convoys from civil disturbances, terrorists and paramilitary organizations in rear areas outside the zone of immediate combat. (U)

-- The CWC does prohibit the use of RCAs solely against combatants. In addition, according to the current international understanding, the CWC's prohibition on the use of RCAs as a "method of warfare" also precludes the use of RCAs even for humanitarian purposes in situations where combatants and noncombatants are intermingled, such as the rescue of downed air crews, passengers and escaping prisoners and situations where civilians are being used to mask or screen attacks. However, were the international understanding of this issue to change, the U.S. would not consider itself bound by this position. (U)

Upon receiving the advice and consent of the Senate to ratification of the Chemical Weapons Convention, a new Executive order outlining U.S. policy on the use of RCAs under the Convention will be issued. The Office of the Secretary of Defense will also be directed to accelerate efforts to field non-chemical, non-lethal alternatives to RCAs for use in situations where combatants and noncombatants are intermingled. (U)

Z.

**DRAFT
PRIVILEGED AND CONFIDENTIAL
PREPARED FOR CONGRESSIONAL HEARINGS**

Questions for both:

re WEBB HUBBELL

What conversations did you have with Webb Hubbell?

Why was Webb Hubbell involved? Why not Gerson (he was just Acting -- a holdover -- and his time was not occupied with the normal policy decisions)?

Acting Attorney General Gerson worked directly with the White House until the imminent arrival of Attorney General Reno. Mr. Hubbell at that time of transition occupied the position in the hierarchy of the Department of Justice that made his participation appropriate.

Why not Jack Feeney, the career head of the Criminal Division, and/or FBI Director Sessions -- both of whom could better provide you with facts, precedent, and options?

It is normal and proper for there to be a coordinated channel of information to the White House.

Was not Hubbell's involvement in the decision-making process strictly political? How could Hubbell act as anything but an uninformed barrier or filter to the information the President needed to make his decision?

Hubbell relayed the information, opinions and expertise of the professionals in the FBI and the Justice Department. His role was not political. The situation was not political. Everyone wanted a peaceful resolution of the situation because everyone wanted as many people as possible to live. The question was how best to achieve that end. The people with the greatest expertise in the world -- the FBI and Justice Department -- were being consulted. There was nothing political about it.

Did not the reliance upon Webb Hubbell in this sensitive law enforcement operation fatally taint the decisionmaking with political considerations?

Not at all. See above.

Why was not the White House more concerned with the appearance of politics that Hubbell's role involved?

The implication that politics was involved is completely without foundation.

re NUSSBAUM

What was the reason for having Bernie Nussbaum involved in the decisionmaking process in Waco?

What did you (he) know about the Branch Davidians?

What did you (he) know about tear gas?

What experience had you (he) had with siege-style law enforcement operations?

What happened to all of your (his) notes and memoranda on all of the Waco meetings and conversations?

re VINCE FOSTER

Why was Vince Foster involved in Waco?

What did he know about the Branch Davidians?

What did he know about tear gas?

What experience had Vince Foster had with siege-style law enforcement operations?

What happened to all of Vince Foster's notes and memoranda on all of his Waco meetings and conversations?

re BRUCE LINDSEY

What was the reason for having Bruce Lindsey involved in the decisionmaking process in Waco?

What did you (he) know about the Branch Davidians?

What did you (he) know about tear gas?

What experience had you (he) had with siege-style law enforcement operations?

What happened to all of your (his) notes and memoranda on all of the Waco meetings and conversations?

re POTUS

What advice did you give to the President about the siege?

Why was the President so anxious to drag the military into this?

The President simply requested that the military be consulted so that all informed expertise would be available to the tactical planners at the FBI and Justice. The military had contributed productively in an earlier siege situation Arkansas when President Clinton was governor.

What advice did you give to the President about the tear gas insertion?

Were you aware of the danger of mass suicide?

I was aware that with a madman like Koresh, anything was possible -- a mass suicide, a mass outbreak and assault (with mothers carrying a baby under one arm and firing a rifle with the other), or any other terrible end which would fulfill his twisted prophecy.

Why was the White House so anxious to go ahead with a final solution to the siege, rather than wait a little longer for the Davidians' attorneys to close the deal on a peaceful resolution?

The White House did not determine the timing of any action in the siege. The President agreed with the FBI's initial "wait and negotiate" approach, and asked to be advised of any departure from that approach. He was kept informed and advised of the facts by the FBI and the Justice Department, who are the best advisors in the world on siege situations.

Were you aware of the danger of fire associated with tear gas? Should you not have been?

Should not the White House have consulted some independent experts before approving this plan? [Tear gas, religious sects, raid options]

The White House should never get involved in operational decisions by law enforcement personnel. First, the government is too big and the President literally does not have the time to micromanage the entire federal government. Second, the President must rely on the expertise of those in agencies like the FBI. They are the ones to consult experts, and they did -- they consulted numerous experts of all stripes.

The question also presupposes that Koresh could have been dissuaded from his apocalyptic path. There is no evidence to support that. He believed that he would bring about the end of the world, and any step short of physical restraint to stop him would have required Koresh voluntarily to trade his kingdom and his harem for a prison cell, to admit that he was not God's agent but a cheap, disgusting criminal.

Did Attorney General Reno tell the President that they would pump in tear gas continuously for all 48 hours?

I am not aware that the Attorney General went over every detail with the President. The President's role is not to micromanage. He must rely on top-notch people like Attorney General Reno to get the facts and come up with the best alternative in a bad situation -- someone to make difficult decisions. The President's role is to get the tough recommendation, ask some good, tough questions, and to make

the final call. That is what the President did here. He relied on good people and he stood behind them -- and he stands behind them today.

What questions did the President ask you?

What advice did you give to the President about

What advice did you give to the President abo

re THE ATF RAID

What notice did the White House have of the raid?

None.

Should not the White House have some notice before such a major raid occurs, or do you approve of low-level approval of military-style actions against American citizens?

During the Reagan and Bush administrations, and perhaps before, all decisions on such raids were made entirely within ATF. They did not rise to Department of Treasury Secretary or even undersecretary level. We had not changed that policy in the 3 or 4 weeks following the inauguration. Following the events in Waco, Treasury took a good, hard look at itself and made a number of changes. Raising the level for approval of such raids was one change that this administration has made.

Should not have Secretary Bentsen met with the head of ATF at some point in the month before the raid took place? Wasn't it a dereliction of him not even to have met the head of one of his major bureaus?

There is no reason to believe that a meeting would have changed anything. The past practice before Secretary Bentsen took office was for ATF to undertake raids without involving the Secretary in the decisionmaking process. There is no reason to believe that there would have been any change here.

re THE SIEGE

Why were there two lines of communication (Gerson-Nussbaum and Gerson-McLarty)?

Why was Lindsey involved? What skills did he bring that Nussbaum and McLarty lacked?

Why wasn't anyone involved who knew something about law enforcement?

The FBI was involved. They know more about law enforcement than anyone in the world. The role of the White House was not to have a bunch of lawyers second-guess the FBI. We

kept informed and monitored events, and the President was advised of major policy-type changes (the armored vehicles and the tear gas insertion).

re THE TEAR GAS INSERTION

Why did the President decide to end the siege in this manner?

The President had the advise of the FBI, the Justice Department, and the Attorney General. He took their advice, and stands by the decision.

What alternatives did the President consider?

The choice was either to move, as the best law enforcement people in the world had recommended, or to wait. The experts said that waiting was only going to lead to a deterioration, and more bad things. The Davidians were armed to the teeth with machine guns and hand grenades, and they were led by a man who molested children in the compound, and who was entirely capable of offensive action against the FBI agents and the community.

The President has said that he did not have a 4-5 hour briefing. Why didn't he?

The Attorney General, the FBI and the Justice Department experts had pored over this situation and agonized over this decision for far more than 4 or 5 hours. They had the expertise and knew all of the minute details. The President took this decision very, very seriously, but ultimately he knew that he, like every President, has to rely on the experts.

What experts did the White House consult in making the decision to go ahead and gas the Davidians?

The FBI and the Justice Department ar the top experts and they made the recommendation.

Would it not have helped if the White House had consulted someone who knew something about the theology of the Davidians?

The FBI knew about the Davidians, and more than anyone would like to know about David Koresh. He was a madman. He believed that he was destined to bring about the apocalypse, to bring the whole world to a fiery end.

What was the President thinking of when he approved gassing the infants and children?

He was probably thinking what a tough job he has. The plan was the best chance to save those children. HE asked about that specifically, and was given expert assurances that there

would be no permanent damage. We can't say the same thing about Koresh's abuse of the children, or Koresh's final murder of the children.

Do you think that the President was fully informed? [and, if not, what information was he missing?]

He was as fully informed as you can be about a madman like Koresh.

Roger Altman's instincts told him that a major tragedy was in the works -- what were your instincts about the tear gas?

Shouldn't Altman have told someone?

Undersecretary Altman testified that he recognized the very narrow limits of his own knowledge of the situation. Everyone in the FBI and Justice Department knew that a tragic end was possible -- indeed, the very thing that Koresh wanted and needed. There was no way around that.

Shouldn't Bentsen have passed along the Altman memorandum, or is each Department a little independent fiefdom in the Clinton administration?

Secretary Bentsen, like Altman himself, clearly recognized the nature of the situation and the limits of the value of kibitzing from non-experts who are not fully informed. The note was an appropriate FYI for The Secretary. It told the FBI and Justice that they did not already know.

How often are there cabinet meetings, and what do people talk about in them, anyway? Isn't this the sort of thing that should be openly discussed at the highest levels, or are you concerned that Clinton cabinet members are going to leak cabinet discussions to the press?

Cabinet meetings are opportunities for very busy people to have useful and productive discussions. The knowledge of the head of a cabinet agency about matters in other cabinets necessarily is extremely limited. The decisions have to be made where the expertise is.

re TREASURY REPORT

Who in the White House was involved in the decision by Webb Hubbell to interfere with or stop the Treasury investigation?

There was no interference and there was no involvement by anyone in the White House to delay the internal investigation until the siege was over. The danger that news reports of an investigation of ATF would have hardened Koresh in his position -- or aroused him to take some

offensive action -- should be obvious.

re JUSTICE REPORT

Who prepared the President's response to the questions in the Justice Report?

Who wrote it?

The response was physically drafted by a staff attorney who gradually gathered the necessary information.

How many drafts were written before you had an answer that met your purposes?

There were several drafts, each of which has been made available to the Committees, which reflected the gradual gathering of information (filling in dates, etc.) and other minor edits.

Who edited each of those drafts?

The line attorney did most of the editing. Eventually we came up decided that a single narrative response was most informative.

What information was omitted?

No significant information was omitted.

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NUSSBAUM

What was your role in advising the President concerning the Waco situation?

I acted essentially as a conduit for information to the President. I met on several occasions with officials of the Department of Justice and the Treasury Department to gather facts on the situation in Waco so that I could report those facts to the President and the senior staff.

What meetings did you have with ATF?

Bruce Lindsey and I met with Roger Altman of the Treasury Department on March 3, 1993. Mr. Altman had traveled to Waco immediately after the February 28 raid to learn as much as he could about the events that had taken place.

Mr. Altman advised us that

With whom did you meet from the Justice Department?

I had several conversations with Acting Attorney General Stuart Gersen. General Gersen was the official who reported events of the siege on behalf of the Department of Justice -- and the FBI, which is part of the Justice Department -- until shortly before he was replaced by Attorney General Reno. Mr. Gersen made regular reports of the evolving events in Waco [examples] either to me or to Mac McLarty, the Chief of Staff. I believe that he usually contacted Mr. McLarty. Bruce Lindsey and George Stephanopolous also were kept informed -- Mr. Lindsey as an advisor to the President and Mr. Stephanopolous so that he could respond factually to press inquiries.

What exactly was the role of Mr. Gersen, the Acting Attorney General during the early days of the siege?

Mr. Gersen, as Attorney General, reported information about the standoff directly to the White House. Normally the Attorney General would depute that reporting responsibility so that he or she could deal with the many policy decisions that face the Attorney General, and that is what happened later. Because of Mr. Gersen's Acting status in a transition period, he undertook that role, and did a fine job.

I would like to praise Mr. Gersen's performance. He was a holdover official of another political party, but he could not

have been more cordial or more professional. We were happy to work with him because of his professionalism and because this really was not a political matter. There was not a Democratic position or a Republican position. Everyone was committed to doing everything they could to save as many lives as possible. Everyone wanted to do everything they could for the children.

What was the role of Webb Hubbell?

As Attorney General Reno took over at Justice, the reporting role passed to Webb Hubbell, who was then her senior deputy or assistant, and the official who in the normal course of events would report to the White House, at least prior to the confirmation of a Deputy Attorney General.

There was one principal meeting with Mr. Hubbell, on April 13, 1993. He gave a 45 minute briefing to Bruce Lindsey, Vince Foster and me to let the White House know that the FBI had recommended a tactical resolution to the siege -- the tear gas insertion plan. He stressed that the Attorney General had not made a decision -- he was just informing us of the FBI's recommendation.

What was the substance of that meeting?

Mr. Hubbell outlined the proposal and, as I have said, indicated that it was only a proposal. The Attorney General was still studying it, so the meeting was preliminary in a sense.

We asked a number of questions. Mr. Lindsey asked why the FBI had changed its mind about negotiation. (Hubbell said that the negotiations had reached an impasse. They were making no progress and the situation appeared to be deteriorating. Also, the FBI only had one HRT team, and it needed to be pulled back for training exercises in order to be effective, and there was no quality substitute for the HRT -- no other force could do the job.)

Mr. Lindsey also suggested that the military be consulted. The President would want to know that they had been given an opportunity to review the plan. (Hubbell said that plans to consult the military were under way.)

I then reported the conversation to the President.

Why was Vince Foster there?

I honestly do not recall with great precision. We knew that it would be a significant meeting -- Mr. Hubbell had warned us of as much. It was better to have several people informed to widen the circle of questions and advice -- so that we could give better information and advice to the President. Mr. Foster was a very able lawyer, a very wise counselor. He was a very fine man. He also was a close friend of MR. Hubbell, and natural person to

have in such a meeting.

What did you advise the President?

Let me first state that the question is a highly unusual one. Presidents since George Washington have refused to provide information to Congress concerning the internal decisionmaking process within the Executive Branch. The rationale is not a desire to hide anything, but the need -- the real public interest -- in having frank and open debate within the Executive Branch so that the best possible decisions can be made. Every President, and at times most Members of Congress in both parties, have recognized that there is a core of the decisionmaking process that must be confidential, or the public interest in sound decisions will be badly damaged. The Supreme Court has recognized this. The Congress and Executive often battle about the size of this core, but there is no serious dispute that there has to be some core of privacy.

It is also abundantly clear that my conversations, as Counsel to the President, with the President, fall within that core. There can be no serious dispute about that. There is no court in the land that would even consider requiring me to answer that question.

At the same time, this President is determined to make every effort to get the truth out about Waco. And I must agree with him that the situation is unique. Many people died at the hands of a madman. Moreover, irresponsible people have spread lies and rumor and planted a thousand conspiracy theories that do nothing but inflame other highly armed and genuinely dangerous elements of our society. Many of these people unfortunately have been given a forum by these hearings. This situation is unique. The President has a responsibility as President to try to offset the lies of extremist elements. Moreover, I understand that the chairs of these Committees have given solemn assurance that this extraordinary situation will not be deemed a precedent for this or future Presidents in more normal circumstances.

Accordingly, in light of this President's commitment to be forthcoming, I will answer this very unusual question.

I informed the President that the FBI had made a recommendation, and that the Attorney General was considering it. I informed him of the details of the conversation. And I advised him that the handling of the standoff was a Department of Justice call, not a White House call.

Why did you give that advice? Were you trying to distance the White House from the decision?

Not at all. The ultimate decision was with the President. We all know where the buck stops, and there is no way to distance a President from a call like this. I meant that the experts were

in the Department of Justice. They were in the FBI. They knew all of the details. They had the background. They had the experience. They had talked directly with the experts on every phase of the operation. They were talking directly with Koresh. They had the people on the ground. When the final recommendation came, there would be questions for the President to ask and a tough decision for him to make, but as a non-expert a thousand miles away there was only so much he could contribute. He should rely on the judgment of his experts on the scene, and standby them.

Would you give the same advice today?

Obviously, with the advantage of hindsight, I would have looked for something different, but I honestly cannot think of anything that would have had a chance to work. Again, I defer to the experts in the FBI and Justice. That really is the only way to operate: rely on the people who know. I would defer to any suggestions that the FBI might have, but I honestly doubt that anything would have worked. Koresh was a madman. He was an abuser of children and a manipulator of people. He was a god in his compound; he would have been a target in prison. HE never would have changed. His religious beliefs called for him to start the apocalypse, and he did. He believed that all of his followers would die, and he killed them.

Did you or Mr. Lindsey or Mr. Foster advise against the use of tear gas?

I do not recall any specific questions about the tear gas, but there may have been some. This was a preliminary meeting. A decision had not been made by Justice. The FBI simply had put their proposal on the table. I think we all assumed that these questions had been closely studied by the FBI, and would have further close scrutiny by the expert in Justice. Frankly, I do not think that there is anything that I could have told the FBI about tear gas that they did not already know.

Did the President ever raise questions about the use of tear gas?

Yes. He discussed that with Attorney General Reno. He was assured that the tear gas would not cause permanent damage to anyone, including the children. It would be very uncomfortable, but then that was the whole point -- to make it uncomfortable enough to drive the Davidians out of the compound.

How about tear gas and the children?

That definitely was a concern of the President and the Attorney General. There would be no lasting effects from the tear gas. There is no question that the tear gas would cause discomfort, and there were no tear gas masks for the children. (Actually masks were not an issue because the plan involved using gas for a period beyond the effective operation of the masks. The masks do

not work forever, and the plan was to continue operations until those with masks surrendered.) A bunker was envisioned as a place of refuge from the gas for the children, but that was really a hope. Ultimately, the discomfort from the tear gas was less serious than the abuse and the unsafe and unsanitary conditions under which the children suffered.

Did the President or anyone in the White House pressure the FBI and Justice to hurry things up, to bring an end to the siege?

Not at all. If anything, we had a strong disposition to wait, to continue the negotiations. I know that there had been a siege operation against a group in Arkansas while President Clinton was governor there. Again, there was a heavily armed extremist group, a white supremacist group called the Covenant of the Sword and Arm of the Lord, and that had been resolved very successfully with a siege operation. The President early on established that the FBI would follow -- and the President agreed -- a policy of "wait and negotiate." The President wanted to be notified whenever there was a step away from a pure "wait and negotiate" posture toward a tactical resolution. Those were the only times he got involved at all -- when the FBI decided to use the armored vehicles to clear the area in front of the compound, and with the decision to use tear gas to end the standoff.

Did you think that there would be political costs from a protracted siege?

No. Certainly not at that point, although I am sure that if the siege were still going on today and we were spending the millions and millions of dollars necessary to maintain it, we would be having hearings on the siege at Waco today with quite a different tone.

At this stage, there was really no political angle to the standoff. Everyone had the same goal -- make it work. Save as many lives as you can. That was why the FBI recommended ending the standoff. They needed to pull back the HRT. There was no one who could take their place. Having any other group securing the perimeter would have sent the risk of loss of life through the roof. The situation inside the compound was deteriorating. The sanitary conditions were deteriorating. The situation for the children was terrible, and getting worse. Negotiations with Koresh were going nowhere. There had been no sign of progress. The man was convinced that he would initiate the apocalypse, that he would bring about the deaths of himself and all of his followers. He was determined to bring about their deaths. And

That was the information we relied on and I think every bit of it is correct. Ultimately, despite the best efforts of the finest law enforcement organization in the world, Koresh killed himself and his followers. We saved some, but not nearly as many as we hoped to save.

Did you envision any infringement on the posse comitatus restrictions on the use of the military?

Absolutely not. The President wanted the military to look at the gas insertion plan and give their advice on it. That is all. The Posse Comitatus Act prohibits the military from participating in arrests and the like. There is no prohibition against getting their advice and taking advantage of their expertise. And there should be none.

We have been told by Mr. Koresh's attorneys that a major breakthrough in the negotiations was likely -- as soon as Koresh finished writing his Seven Seals? Were you told of this?

No breakthrough was likely. Koresh's attorneys are vigorously supporting his interests as they are entitled to do but they are wrong. Koresh repeatedly had promised to come out and had repeatedly broken his promise. It was clear that he would not come out. He had no reason to come out.

- Koresh believed that he was supposed to die and to take his followers to death. That was the very core of his existence, that he would bring about the apocalypse.
- Koresh would never give up his complete control at Mount Carmel -- his status as a god and his harem -- for a prison cell.

For Koresh to have given up would have been to deny everything he valued, to deny the very worth of his existence.

The best that could be hoped for was to create a situation where his followers would be induced or allowed to leave. That is what the FBI tried to do.

Why did not you or the President call off the plan?

The President believed -- and I believed then as I believe today -- that the plan was the best chance to end the standoff and save lives, especially the lives of the children.

When you allow a madman to gather an arsenal of machine guns -- or automatic weapons which he easily can convert into machine guns, and "decorative" dummy hand grenades that easily can be filled with high explosives and made deadly -- you limit your options for a peaceful resolution drastically.

What steps has the Clinton administration taken to prevent another Waco?

President Clinton directed the Treasury and Justice Departments to conduct thorough investigations after the events at Waco, and they did so. Detailed Reports were published nearly two years ago, and have been available to these Committees. They also

published recommendations for internal reforms, and many reforms have been adopted.

To give an example, the Treasury Report -- and these Subcommittees -- have expressed concern that the initial raid could have been authorized within ATF itself without any oversight or approval by the higher-ups at Treasury. That, unfortunately, had been the policy of the Reagan and Bush administrations, and possibly even before then. We have changed that. There is now requirement for approval.

The Reports also criticized the policy at ATF and in the FBI that command in such situations fall on the ranking agent in that geographic area. We have changed that to have the most qualified available agent in the nation in charge.

There have been numerous changes. I am not the expert on them. The Treasury and Justice officials have and can provide you with a detailed description of all of the improvements they have made over the Reagan-Bush procedures which were in place in Treasury and Justice at the time.

What can we as Congress do to help prevent another Waco?

There is one way to prevent another Waco. Stop madmen like Koresh from arming. Keep automatic weapons and semiautomatic weapons out of their hands. Keep the conversion kits out of their hands. Keep hell-fire triggers out of their hands. Keep explosives out of their hands. That is the only way to stop another Waco. When suicidal madmen are armed to the teeth with weapons of mass destruction -- and their followers are armed to the teeth, decent society loses control. Keep the arsenals away from them: ban automatic and semiautomatic weapons.

There is before Congress now an Anti-Terrorism Bill. Congress needs to pass it -- to pass a strong version of it and pass it fast.

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LINDSEY

What was your role in advising the President concerning the Waco situation?

I acted essentially as an advisor and a conduit for information to the President. I met on several occasions with officials of the Department of Justice and the Treasury Department to gather facts on the situation in Waco so that I could report those facts to the President and the senior staff.

What meetings did you have with ATF?

Bernie Nussbaum and I met with Roger Altman of the Treasury Department on March 3, 1993. Mr. Altman had traveled to Waco immediately after the February 28 raid to learn as much as he could about the events that had taken place.

Mr. Altman advised us that

With whom did you meet from the Justice Department?

I had indirect contact with Acting Attorney General Stuart Gersen. General Gersen was the official who reported events of the siege on behalf of the Department of Justice -- and the FBI, which is part of the Justice Department -- until shortly before he was replaced by Attorney General Reno. Mr. Gersen made regular reports of the evolving events in Waco [examples] either to Bernie Nussbaum or to Mac McLarty, the Chief of Staff. I believe that he usually contacted Mr. McLarty. George Stephanopolous and I also were kept informed -- Mr. Stephanopolous was kept informed so that he could respond factually to press inquiries.

Did Mr. Stephanopolous give the President advise as to the political fallout from Waco during the standoff?

Not that I am aware. Whatever it is now, Waco was not a politicized situation at that point. Everyone wanted a successful resolution and no one had a strong political position until after it was over. Mr. Stephanopolous was kept informed primarily so that he could answer press inquiries. I also should add that, as you can imagine, we were relying very heavily on the FBI. They were the experts in this business and we really had nothing to add. We were observers. We never tried to exercise operational control over the situation, and I must say that it would have been very foolish for us to have made such an attempt.

What exactly was the role of Mr. Gersen, the Acting Attorney General during the early days of the siege?

Mr. Gersen, as Attorney General, reported information about the standoff directly to the White House. Normally the Attorney General would depute that reporting responsibility so that he or she could deal with the many policy decisions that face the Attorney General, and that is what happened later. Because of Mr. Gersen's Acting status in a transition period, he undertook that role, and I believe that he did a fine job.

I would like to praise Mr. Gersen's performance. He was a holdover official of another political party, but I understand that he could not have been more cordial or more professional. We were happy to work with him because of his professionalism and because this really was not a political matter. There was not a Democratic position or a Republican position. Everyone was committed to doing everything they could to save as many lives as possible. Everyone wanted to do everything they could for the children.

What was the role of Webb Hubbell?

As Attorney General Reno took over at Justice, the reporting role passed to Webb Hubbell, who was then her senior deputy or assistant, and the official who in the normal course of events would report to the White House, at least prior to the confirmation of a Deputy Attorney General. Of course, this was very early in the administration, and not everyone was in place.

There was one principal meeting with Mr. Hubbell, on April 13, 1993. He gave a 45 minute briefing to Bernie Nussbaum, Vince Foster and me to let the White House know that the FBI had recommended a tactical resolution to the siege -- the tear gas insertion plan. He stressed that the Attorney General had not made a decision -- he was just informing us of the FBI's recommendation.

What was the substance of that meeting?

Mr. Hubbell outlined the proposal and, as I have said, indicated that it was only a proposal. The Attorney General was still studying it, so the meeting was preliminary in a sense.

We asked a number of questions. I asked why the FBI had changed its mind about negotiation. (Hubbell said that the negotiations had reached an impasse. They were making no progress and the situation appeared to be deteriorating. Also, the FBI only had one HRT team, and it needed to be pulled back for training exercises in order to be effective, and there was no quality substitute for the HRT -- no other force could do the job.)

I also suggested that the military be consulted. The President

would want to know that they had been given an opportunity to review the plan. (Hubbell said that plans to consult the military were under way.)

Mr. Nussbaum then reported the conversation to the President.

Did you or Mr. Nussbaum or Mr. Foster advise against the use of tear gas?

I do not recall any specific questions about the tear gas, but there may have been some. This was a preliminary meeting. A decision had not been made by Justice. The FBI simply had put their proposal on the table. I think we all assumed that these questions had been closely studied by the FBI, and would have further close scrutiny by the expert in Justice. Frankly, I do not think that there is anything that I could have told the FBI about tear gas that they did not already know.

Why was Vince Foster there?

I honestly do not recall with great precision. It is not as if we sat down and ad detailed discussions about who should be in this meeting. We knew that it would be a significant meeting -- Mr. Hubbell had warned us of as much. I was better to have several people informed to widen the circle of questions and advice -- so that we could give better information and advice to the President. Mr. Foster was a very able lawyer, a very wise counselor. He was a very fine man. He also was a close friend of Mr. Hubbell, and natural person to have in such a meeting.

Did you have any other meetings with Mr. Hubbell?

I received a call from him on April 18, 1993. He informed me that Attorney General Reno had decided to approve the tear gas plan. I indicated that the Attorney General and President should speak directly about the decision.

Were you present for that conversation?

Yes. I had gone to alert the President and remained in the office during the conversation.

I remained in case there were any questions that I could answer or facts that I could provide as one of the advisors who had been keeping abreast of developments in Waco.

What was said?

The President has publicly described the conversation, so I am not going to tell you anything that you do not already know, or that has not been in the public record for over two years.

The Attorney General told the President that she had decided to approve the plan. She said that the gas had been tested and that

it would not cause any permanent damage to the children.

President Clinton asked if she had received all of the information that she needed to make the decision.

He asked about insuring the safety of the children in the compound.

And he asked why now? Why this change after seven weeks?

Attorney General Reno said that there were four reasons:

1. There was a limit on the time the FBI HRT team could maintain the quality and intensity of the coverage. The HRT agents are very highly trained, and very finely tuned. They needed to withdraw for retraining. They also were the only HRT team available and they might be needed elsewhere. They had to be ready to respond.

2. No progress had been made in the negotiations, and there was no hope of progress on the horizon. Basically, you could not negotiate with David Koresh.

3. The danger that the Davidians would harm themselves or other was increasing with time -- the situation was getting worse, not better.

4. There was reason to believe that the children were not safe - that they were being abused and that they were living in unsafe and unsanitary conditions.

The President asked if the military had been consulted. It had, and the military experts agreed except for a non-essential tactical point. (The military would have inserted all of the gas at once, which is what ended up happening because the Davidians opened fire on the FBI; the FBI's intended approach was more gradual.)

The President was advised that the FBI would use maximum restraint -- they would not fire ammunition, even to return hostile fire from the compound. And they did not. The FBI showed the sort of remarkable restraint and professionalism that we all expect from them.

The President said, "It is your decision." He told Attorney General to do what she thought was right and that he would support the decision and stand by her. And he did.

What did you advise the President?

Let me first state that the question is a highly unusual one. Presidents since George Washington have refused to provide information to Congress concerning the internal decisionmaking process within the Executive Branch. The rationale is not a

promise. It was clear that he would not come out. He had no reason to come out.

- Koresh believed that he was supposed to die and to take his followers to death. That was the very core of his existence, that he would bring about the apocalypse.
- Koresh would never give up his complete control at Mount Carmel -- his status as a god and his harem -- for a prison cell.

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Why did not you or the President call off the plan?

The President believed -- and I believed then as I believe today -- that the plan was the best chance to end the standoff and save lives, especially the lives of the children.

When you allow a madman to gather an arsenal of machine guns -- or automatic weapons which he easily can convert into machine guns, and "decorative" dummy hand grenades that easily can be filed with high explosives and made deadly -- you limit your options for a peaceful resolution drastically.

What steps has the Clinton administration taken to prevent another Waco?

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To give an example, the Treasury Report -- and these Subcommittees -- have expressed concern that the initial raid could have been authorized within ATF itself without any oversight or approval by the higher-ups at Treasury. That, unfortunately, had been the policy of the Reagan and Bush administrations, and possibly even before then. We have changed that. There is now requirement for approval. We have put that in.

The Reports also criticized the policy at ATF and in the FBI that command in such situations fall on the ranking agent in that geographic area. We have changed that to have the most qualified available agent in the nation in charge.

desire to hide anything, but the need -- the real public interest -- in having frank and open debate within the Executive Branch so that the best possible decisions can be made. Every President, and at times most Members of Congress in both parties, have recognized that there is a core of the decisionmaking process that must be confidential, or the public interest in sound decisions will be badly damaged. The Supreme Court has recognized this. The Congress and Executive often battle about the size of this core, but there is no serious dispute that there has to be some core of privacy.

It is also abundantly clear that my conversations, as Deputy Counsel and advisor to the President, with the President, fall within that core. There can be no serious dispute about that. There is no court in the land that would even consider requiring me to answer that question.

At the same time, this President is determined to make every effort to get the truth out about Waco. And I must agree with him that the situation is unique. Many people died at the hands of a madman. Moreover, irresponsible people have spread lies and rumor and planted a thousand conspiracy theories that do nothing but inflame other highly armed and genuinely dangerous elements of our society. Many of these people unfortunately have been given a forum by these hearings and have fed those suspicions. This situation is unique. The President has a responsibility as President to try to offset the lies of extremist elements. Moreover, I understand that the chairs of these Committees have given solemn assurance that this extraordinary situation will not be deemed a precedent for this or future Presidents in more normal circumstances.

Accordingly, in light of this President's commitment to be forthcoming, I will answer this very unusual question.

I advised the President that I agreed with him. He had asked the questions that he needed to ask. He had received the best advice available. He had appointed a good Attorney General. We all recognized that it was a very tough situation with risk in any choice we made. He had done what a President should do.

Was the President trying to distance himself from the decision?

Absolutely not. The ultimate decision was with the President. We all know where the buck stops, and there is no way on earth to distance a President from a call like this.

The experts were in the Department of Justice. They were in the FBI. They knew all of the details. They had the background. They had the experience. They had talked directly with the experts on every phase of the operation. They were talking directly with Koresh. They had the people on the ground. When the final recommendation came, there would be questions for the President to ask and a tough decision for him to make, but as a

non-expert a thousand miles away there was only so much he could contribute. He should rely on the judgment of his experts on the scene, and standby them.

Would you give the same advice today?

Obviously, with the advantage of hindsight, I would have looked for something different, but I honestly cannot think of anything that would have had a chance to work. Again, I defer to the experts in the FBI and Justice. That really is the only way to operate: rely on the people who know. I would defer to any suggestions that the FBI might have, but I honestly doubt that anything would have worked. Koresh was a madman. He was an abuser of children and a manipulator of people. He was a god in his compound; he would have been a target in prison. He never would have changed. His religious beliefs called for him to start the apocalypse, and he did. He believed that all of his followers would die, and he killed them.

Did the President ever raise questions about the use of tear gas?

Yes. He discussed that with Attorney General Reno. He was assured that the tear gas would not cause permanent damage to anyone, including the children. It would be very uncomfortable, but then that was the whole point -- to make it uncomfortable enough to drive the Davidians out of the compound.

How about tear gas and the children?

That definitely was a concern of the President and the Attorney General. There would be no lasting effects from the tear gas. There is no question that the tear gas would cause discomfort, and there were no tear gas masks for the children. (Actually masks were not an issue because the plan involved using gas for a period beyond the effective operation of the masks. The masks do not work forever, and the plan was to continue operations until those with masks surrendered.) A bunker was envisioned as a place of refuge from the gas for the children, but that was really a hope. Ultimately, the discomfort from the tear gas was less serious than the abuse and the unsafe and unsanitary conditions under which the children suffered. I do not need to tell you the damage that David Koresh did to those children.

Did the President or anyone in the White House pressure the FBI and Justice to hurry things up, to bring an end to the siege?

Not at all. If anything, we had a strong disposition to wait, to continue the negotiations. I know that there had been a siege operation against a group in Arkansas while President Clinton was governor there. Again, there was a heavily armed extremist group, a white supremacist group called the Covenant of the Sword and Arm of the Lord, and that had been resolved very successfully with a siege operation. The President early on established that the FBI would follow -- and the President agreed -- a policy of

"wait and negotiate." The President wanted to be notified whenever there was a step away from a pure "wait and negotiate" posture toward a tactical resolution. Those were the only times he got involved at all -- when the FBI decided to use the armored vehicles to clear the area in front of the compound, and with the decision to use tear gas to end the standoff.

Did you think that there would be political costs from a protracted siege?

No. Certainly not at that point, although I am sure that if the siege were still going on today and we were spending the millions and millions of dollars necessary to maintain it, we would be having hearings on the siege at Waco today with quite a different tone.

At this stage, there was really no political angle to the standoff. Everyone had the same goal -- make it work. Save as many lives as you can. That was why the FBI recommended ending the standoff. They needed to pull back the HRT. There was no one who could take their place. Having any other group securing the perimeter would have sent the risk of loss of life through the roof. The situation inside the compound was deteriorating. The sanitary conditions were deteriorating. The situation for the children was terrible, and getting worse. Negotiations with Koresh were going nowhere. There had been no sign of progress. The man was convinced that he would initiate the apocalypse, that he would bring about the deaths of himself and all of his followers. He was determined to bring about their deaths. And

That was the information we relied on and I think every bit of it is correct. Ultimately, despite the best efforts of the finest law enforcement organization in the world, Koresh killed himself and his followers. We saved some, but not nearly as many as we hoped to save.

Did you envision any infringement on the posse comitatus restrictions on the use of the military?

Absolutely not. The President wanted the military to look at the gas insertion plan and give their advice on it. That is all. The Posse Comitatus Act prohibits the military from participating in arrests and the like. There is no prohibition against getting their advice and taking advantage of their expertise. And there should be none.

We have been told by Mr. Koresh's attorneys that a major breakthrough in the negotiations was likely -- as soon as Koresh finished writing his Seven Seals. What is your view of this?

No breakthrough was likely. There is no doubt about that. Koresh's attorneys are vigorously supporting his interests as they certainly are entitled to do, but they are wrong. Koresh repeatedly had promised to come out and had repeatedly broken his

There have been numerous changes. I am not the expert on them. The Treasury and Justice officials have and can provide you with a detailed description of all of the improvements they have made over the Reagan-Bush procedures which were in place in treasury and Justice at the time.

What can we as Congress do to help prevent another Waco?

There is one way to prevent another Waco. Stop madmen like Koresh from arming. Stop them from amassing arsenals. Keep automatic weapons and semiautomatic weapons out of their hands. Keep the conversion kits out of their hands. Keep hell-fire triggers out of their hands. Keep explosives out of their hands. That is the only way to stop another Waco. When suicidal madmen are armed to the teeth with weapons of mass destruction -- and their followers are armed to the teeth, decent society loses control. Keep the arsenals away from them: ban automatic and semiautomatic weapons.

There is before Congress now an Anti-Terrorism Bill. Congress needs to pass it -- to pass a strong version of it and pass it fast.

TO:
JOHN TANNER

THE WHITE HOUSE
WASHINGTON

July 25, 1995

Hon. Bill McCollum
Chairman
Subcommittee on Crime
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The President has asked me to respond to your letter regarding the joint hearings you are chairing on the Waco incident.

As you know, the President last week expressed his view that these hearings are appropriate. Indeed, the White House and the Treasury and Justice Departments have been exceedingly cooperative in responding to your requests for documents, witnesses, and evidence.

In addition, I want to commend you for your announcement that you will follow up this inquiry with hearings on the militia movement. In the wake of the Oklahoma bombing, Americans are deeply concerned about the potential for violence against law enforcement and society among these groups.

At the same time, with respect to the current hearings, the President is troubled by the apparently significant involvement of the National Rifle Association in the preparation and conduct of these hearings. Given the NRA's opposition to the assault weapon ban and to the enforcement of the nation's firearms laws, it is wrong for this powerful special interest group to play any role in these hearings.

Yesterday's Washington Post quotes an NRA official as stating that they are "dancing in the hallways with glee" at NRA headquarters over these hearings. "This is their dream," the official adds. If the NRA is "dancing in the hallways," I suspect that law enforcement officials and most Americans have reason to question the impartiality of this inquiry.

In addition, the President does not want these hearings to become a vehicle for undermining law enforcement. The men and women of the BATF and the FBI are on the front lines every day battling those who traffic in illegal weapons and drugs, from gangs and organized crime to extremist groups.

To prevent that from happening, the hearings need to be balanced, so that they show fully not only the actions that were taken by law enforcement but the full extent of the violations

Hon. Bill McCollum
July 25, 1995
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of law inside David Koresh's Waco compound that led to those actions -- first by local law enforcement and then by the BATF. I am very concerned that the hearings have been without that kind of balance, and it is that lack of balance that could undermine law enforcement.

Indeed, given the degree of law-breaking that was going on inside the compound, from firearms violations to abuse of children, we need to ask not only what occurred at Waco but what would have occurred had law enforcement not acted.

Again, the President's concerns are not with the fact of the hearings but with a full and balanced presentation of all the facts. In the end, we should share one common goal -- to get the whole truth about Waco. I can assure you that we will continue to cooperate to ensure that the public understands everything that led to this terrible tragedy.

Sincerely,

A large, bold, handwritten signature in black ink, appearing to be 'Leon E. Panetta', written over the typed name and title.

Leon E. Panetta
Chief of Staff

Identical letter to Hon. Bill Zeff, Jr.

Congress of the United States
House of Representatives
Washington, DC 20515
July 24, 1995

The Honorable William J. Clinton
President of the United States
The White House
1600 Pennsylvania Ave.
Washington, DC 20500

Dear Mr. President:

As co-chairmen of the joint subcommittees investigating the Waco matter, we respectfully request your assistance in our efforts to seek the truth. It has become apparent after three days of hearings that a massive damage control plan has been put into action by members of the White House staff and senior officials at both the Departments of the Treasury and Justice. You are in the unique position of being able to stop this effort and thereby encourage the separation of politics from the fact-finding process.

A number of incidents last week revealed to us the nature and extent of the Administration's damage control strategy. Among the most alarming activities are the following:

- Secretary Rubin contacted at least one member of the joint subcommittees, Mr. Brewster from Oklahoma, and requested that he not ask any questions that might embarrass the Administration.
- According to The Washington Post, the White House staff has assembled a damage control team and retained the services of Mr. John Podesta, a public relations specialist and former White House official who has represented Handgun Control, Inc..
- At the expense of federal taxpayers, the Treasury Department flew to Washington the Texas Rangers who will be testifying before the subcommittees this week in order to help them prepare their testimony.
- The Justice Department is considering transporting from Austin, Texas to Washington all of the firearms retrieved at the Branch Davidian compound so that they may be used as props in our hearings, even though a few of these firearms were already brought to Washington (without the majority's knowledge) and displayed in one of our hearings last week, and despite the fact that the Department informed us earlier this month that bringing all of the guns to Washington would be very expensive for the citizens of Texas.

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July 24, 1995

Your own spokesman has sought to derail our efforts by stating last week, "The NRA bought and paid for the congressional investigation....Basically the Republican majority has ceded to this very extreme special interest group, the integrity of the United States Congress, and that's appalling." The White House is well aware that the joint subcommittees will hear sworn testimony from nearly 100 people over the course of the eight days of hearings. Approximately 90% of these witnesses were directly involved in the Waco tragedy and the rest are experts in various fields.

The Justice Department issued a press release in the middle of our hearing last Friday in order to refute a statement by one of the members of the joint subcommittees.

Even your own comments last week, Mr. President, which suggested that there is an anti-law enforcement purpose behind these hearings, have hindered our ability to get at the truth about Waco. As I am sure you know, many of the members of the two subcommittees conducting these hearings have spent large parts of their professional lives in law enforcement as federal and state prosecutors, and in one case as a police chief. A thorough examination of the rumors and suspicions arising out of the events near Waco will serve to build public confidence in law enforcement, not tear it down.

The subcommittees' ability to conduct its Waco inquiry in a full and fair manner is dependent, to a large extent, on your support. Many in the Administration have said that there is nothing to hide, and if this is so then a damage control strategy is not needed. The American people deserve the truth, not more politics.

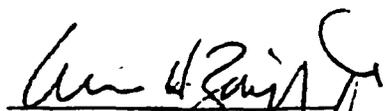
We respectfully request that you immediately instruct your staff, Secretary Rubin and Attorney General Reno to stop the damage control campaign. We pledge to you that we will continue to conduct these hearings in a fair and open manner.

We look forward to your cooperation.

Sincerely,



Bill McCollum
Chairman
Subcommittee on Crime



William H. Zeliff, Jr.
Chairman
Subcommittee on National
Security, International Affairs
and Criminal Justice

THE WHITE HOUSE

WASHINGTON

July 12, 1995

The Honorable William Zeliff, Jr., M.C.
The Honorable Bill McCollum, M.C.
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairmen Zeliff and McCollum:

This letter is in response to our meeting on July 11, 1995. On July 6, you requested that we provide to you, the Members of the two subcommittees, and staff members, internal White House documents relating to the Waco matter. As you know, the President is committed to cooperating with Congress as it fulfills its legitimate oversight responsibilities. At the same time, a few of the materials you have requested are at the heart of the institution of the Presidency. We are glad that we have been able to arrive at an accommodation of our respective obligations.

As you know, the White House has already provided approximately 1,000 pages of documents that are responsive to the document request from your two subcommittees. There are only 28 remaining documents, which reflect discussions between the President and his most senior advisors. Let me make it absolutely clear: none of the documents addresses the initial decision with respect to the BAFT raid on February 28, 1993 or the FBI's use of tear gas on April 19, 1993. Rather, these documents reflect periodic updates on the status of standoff, after-the-fact responses to the Justice Department review ordered by the President, names and telephone numbers of agents or relatives of persons wounded or killed in the BAFT raid, and summary memoranda drawn from the Treasury and Justice Departments public reports. These materials include drafts of the President's statements and memoranda to the President from his Counsel, the Chief of Staff, senior advisors and a Cabinet Secretary. While none of the documents is titillating, the principle of ensuring their confidentiality is important to the effective functioning of the Chief Executive.

We are not aware of any other President who has been asked in these circumstances for, nor has any other Congress felt it necessary to demand, the materials you seek. There are many examples of Congress observing the prerogatives of the President: In 1951, President Truman advisor General Omar Bradley refused to testify about his advice to the President; a refusal that was upheld by Senator Russell. In 1962, President Kennedy directed

Chairman Zeliff
Chairman McCollum
July 12, 1995
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the Secretary of Defense not to identify or make available employees who had made or recommended changes in specific speeches by the Secretary; Senator Stennis upheld the President's decision. In 1980, President Carter directed the Energy Department to withhold, in the wake of a congressional subpoena, intra-Executive Branch deliberations regarding the President's decision to impose a fee on imports of crude oil. And, in 1986, during the nomination of William Rehnquist to be Chief Justice, then Chairman Thurmond and current Chairman Hatch vigorously defended the right and duty of Executive Branch to withhold from the Senate Judiciary Committee internal Justice Department memoranda written by Mr. Rehnquist. In each instance, the Executive Branch and Congress undertook with grave seriousness their obligation to reach an accommodation.

No court would uphold your request for documents under these circumstances. We are mindful, however, of the Court's admonition that when the interest of Congress in obtaining information for legislative and related oversight purposes conflicts with the executive interest in candor, each branch must "make a principled effort to acknowledge, and if possible meet, the legitimate needs of the other branch." United States v. AT&T, 567 F.2d 121, 127 (D.C. Cir. 1977). We attempted to make such an accommodation on June 30, 1995.

In a further attempt to reach an accommodation, the President directed me to allow the Chairmen and Ranking Members to read the requested documents in the presence of representatives of the Counsel's Office. You have agreed to this accommodation as well as to the condition that it does not serve as a precedent for this President or subsequent Presidents.

A similar accommodation was reached with respect to documents requested by the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce in 1981. That Subcommittee sought pre-decisional legal and policy memoranda, as well as preliminary drafts of congressional testimony by the Secretary of Interior that were generated below the Cabinet and subcabinet level. Attorney General William French Smith told President Reagan that allowing Congress to review such materials could "deter the candor of future Executive Branch deliberations because officials at all levels would now that they could someday be called by Congress to account for the tentative policy judgements which they had earlier advanced in the councils of the Executive Branch." 5 Op. O.L.C. 27, 28-29 (1981). There,

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Congress and the Executive Branch worked together through several accommodations. First, the Department provided oral descriptions of the documents and permitted questions concerning the nature of the documents. Subsequently, disputed documents were made available for one day for review by the Members only in the presence of a member of the Counsel's Office. In this instance, the materials were agency documents, not Executive Office of the President documents.

President Clinton is willing to take this unprecedented step because he does not want this procedural dispute to obscure the fact that four Bureau of Alcohol, Tobacco and Firearms agents were killed in service to their country while attempting to serve a lawful search warrant upon David Koresh. Mistakes already have been acknowledged in two exhaustive Treasury and Justice Department reports ordered by the President. In addition, the President does not want to see political gamesmanship stand in the way of the very real need to pass the Anti-Terrorism legislation currently pending in Congress to prevent events like the Oklahoma bombing from occurring again.

We are pleased that we have reached a mutually agreeable accommodation.

Sincerely,



Abner J. Mikva
Counsel to the President

cc: Hon. William Clinger
Hon. Henry J. Hyde
Hon. Bill McCollum
Hon. Cardiss Collins
Hon. John Conyers
Hon. Karen Thurman
Hon. Charles R. Schumer

THE WHITE HOUSE

WASHINGTON

July 21, 1995

The Honorable William Zeliff, Jr., M.C.
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Zeliff:

This letter is in response to my meeting on July 20, 1995, with you and Representative Clinger. After again reviewing Presidential documents that we have made available to you as an accommodation of both of our legitimate interests, you have determined that there are three documents to which you would like access.

You have indicated that you would like access to document 17878, which is a March 1, 1993 memorandum from Secretary of Treasury Lloyd Bentsen to the President. You have stated that because this material provides a contemporaneous explanation of the Secretary's understanding of the events leading up to the shootout that had occurred at the Davidian compound, you would like to have access to this information. You made a similar argument about a paragraph that had been redacted in document 08321, which was created on February 28, 1993.

As you know, we have agreed to provide you with these materials. While these documents may not be placed or read into the official record, they may be referenced by the Chairmen and the Ranking Minority Members for the purposes of the hearing. At the conclusion of the hearings, these documents should be returned to me.

The third document you have requested is a March 1, 1993 memorandum from the Chief of Staff to the President. This three paragraph document reflects an update on the situation at Waco after the shootout at the Davidian compound. As you know, the salient information discussed in this document already is available in the public record -- specifically at pages 236-37 of the Department of Justice Report. Nevertheless, as a further accommodation, I have provided you with a summary of the document for use by the Chairmen and Ranking Minority in the same fashion as the two other documents. We are unable, however, to provide you with a copy of the document; it is, as you know, at the core of executive privilege.

Representative Zeliff
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Chairmen Hyde recently stressed the importance of preserving the ability of staff members to "gather[] information on a confidential basis, for the specific Members for whom they work." July 18, 1995 Letter to Congressmen John Conyers, Jr. from Chairmen Henry Hyde. I am sure you agree that this principle applies equally to the President of the United States with respect to the third document.

Sincerely,



Abner J. Mikva
Counsel to the President

cc: Hon. Bill McCollum
Hon. William Clinger
Hon. Henry J. Hyde
Hon. Bill McCollum
Hon. Cardiss Collins
Hon. John Conyers
Hon. Karen Thurman
Hon. Charles R. Schumer

Summary of Document M000502
Provided for Chairmen and Ranking Minority Members Use

The memorandum is to the President from the Chief of Staff dated March 1, 1993. The subject line provides "Follow-up to our morning visit."

Paragraph 1: Reflects a call to the Acting Attorney General, discussion of the President's understanding of the FBI's philosophy in such situations as negotiation until resolution, and reaffirmation of the fact that Gersen would advise the President if there was any change in approach.

Paragraph 2: Reflects a conversation with Secretary Bentsen, that the Secretary is on top of the situation, has submitted a memorandum outlining the events leading up to the shootout (document 17878), that the Secretary had spoken with Governor Richards, and that the Secretary had released a statement expressing condolences to the family members of the slain ATF agents.

Paragraph 3: Reflects that Treasury flags will be flown at half-mast and the Deputy Secretary Roger Altman will go to Waco that afternoon to visit with wounded ATF agents and the family members of the agents who were slain.

C D #6
4 2 #6

TRF-766-G

MEASURY INTEROFFICE MEMORANDUM

Date: 28-Feb-1993 01:30pm EST
From: Michael D. Langan
LANGAN
Dept: Asst Sec Enforcement
Tel No: [REDACTED]

TO: John P. Simpson (SIMPSONJP)
CC: Ron Noble (NOBLER)
Subject: ATF Special Operation

Sunday, 28 February 1993

John:

For the record, here's what I know about the Waco, TX, operation this date.

o I called Chris Cuyler at the ATF command center [REDACTED] at 10 AM. I told him to keep us up to date on what was taking place.

I called Cuyler again at 12:30 PM, having heard nothing. When I call Cuyler said "Things are going bad. The worst has happened." Said he couldn't say more at that point.

o I called JPS at 12:35 PM, but the operator could get no response.

o I called Higgins at 12:40 PM. I asked him if he had notified Ron Noble or JPS about the operation's progress. He said he had already spoken with JP. He also related that he was in touch with Dan Hartnett, who said that one of guys was hurt, two of our people were inside, condition unknown, and that one of the people inside the compound (not an ATF person), was dead and two others were injured. These casualties were known. The site is 70 acres.

Higgins said there was a lawyer for the religious cult inside, and that somehow, he didn't indicate how, the Davidian cult became aware that, just a moments before the incursive operation began, it was beginning.

o I called Ron Noble via his sky page at 12:50 PM. He returned my call home from the AMTRAK train. I informed him of what I knew. He said he hadn't received calls from anyone about the operation this date. He mentioned that he had called him on Saturday, telling him that the planning for the operation appeared to be in order.

o I came down to Main Treasury and notified the operator of my unavailability.

o I put calls in for McNamara, Mangels and Brisbin to seek their professional advice, at 1:25 PM, 1:26 PM, and 1:28 PM respectively. All were unavailable. Mangels & Brisbin returned the calls around 2PM, and Brisbin

Called about 2:30 PM. McNamara said he'd notify Dennis Foreman, Acting General Counsel, of the situation. Brisbin and Mangels were filled in. Brisbin made two points: first, the larger the assaulting force, the less likely injury will occur (unless those being assaulted were deranged); and second, that it appears we should have had more time to consider so large an operation than notification on Friday afternoon by ATF.

o I called Ron Noble at 1:45 PM. Left Sky Page number.

o Called Jack Killoran, head of public affairs at ATF, at 1:46. Killoran told me that a warrant was served on the Davidian Branch of Seventh Day Adventists at 10 AM Texas time by ATF and other law enforcement entities at the Waco, TX site for possession of illegally manufactured automatic weapons and explosive devices. In the course of serving the warrant, ATF came under heavy and sustained gunfire for an hour. Killoran said 7 agents were injured and one Davidian follower was killed and two others wounded.

Killoran indicated further that there was at present an agreement to give aid to the injured. He also stated that there was a local TV crew on the scene, and that CNN was monitoring the wires. I told him to make sure that DeVore was made aware of everything as soon as he responded to the call placed for him.

o At 1:50 PM JPS called, indicating that he had spoken twice to Josh Miner and that there were in fact 2 ATF agents dead and 1 seriously injured. I asked Simpson to call Noble and fill him in on this and any further reports.

o At 2PM Ron Noble called and I told him what Mr. Simpson had relayed to me. JPS was apparently still in the process of contacting Mr. Noble. Noble asked me to serve as the coordinator of information at Treasury on the ATF Te operation. I told him I would, but that with his agreement, I would make sure that Simpson knew of this and agreed as well.

o Talked to Tom Hill, ATF public affairs guy. at 3:10 PM. He told me they were working up a press release for 3:30 PM. I asked him to fax me a copy ASAP.

o Called JPS at home, 3:15 PM. JPS advised that Higgins now reports 2 dead, 8 wounded. Higgins also says that the Davidian group will send out momentarily any element of their group who wish not to kill or be killed. JPS mentioned that a local sheriff department negotiator who has established rapport is in contact with the cult leaders. ATF has one armored vehicle close by, and 3 more on the way. Cult members have a 50 caliber armor piercing weapon able to put rounds through the vehicle if it comes close to where they are.

I told JPS I'd call and read him the ATF press release when it was faxed to Treasury.

o Noble called at 3:40 PM, said he had talked with DepSEC, asked about deaths of ATF agents in past. (Interrupted until 4PM by a call to Noble from Higgins and then with Roger Altman.) Mr. Noble advised that Higgins now tells him that there are four ATF agents dead and two seriously injured. Mr. Noble is now on his way back to Washington. DepSEC has asked for an investigation of this operation.

008322

Talked with Jack Killoran of ATF public affairs at 4:10 PM. He confirmed four deaths and injuries. I asked him why there was a variance between what was reported - 1 ATF injury - and 4 dead. He said he could only think that the information was coming in via various sources and it was being updated as they were able to do it. Killoran also mentioned that cult leaders are poised to release their injured and continue fighting.

o Delivered write up of events of this date to Josh Steiner's office. 1 one there.

o CNN TV reports at 4:30 PM that 4 ATF agents have been killed and 11 injured in assault on cult facility outside Waco, Texas.

o 4:40 PM called Chris Cuyler at ATF command center. Referred me to St. Higgins, who related the ATF casualty toll: 4 dead, 14 injured. Higgins also related that Vernon Wayne Howell wants to make a 'prayerful' statement via the local radio, and is looking for ATF agreement not to harm those cult members who are injured that he is releasing from the main building.

Sundown in Waco is about 7PM our time. There are a number of kleig lights around the building so that cult members can see everything going on. Higgins says that Howell is smart enough not to let out everybody; otherwise, he'd be a sitting duck for the feds.

Mr. Noble called at 4:55 PM. Says Mr. Stephanopolous called for the President and asked DepSEC "who approved this?" I mentioned to Mr. Noble that when JPS spoke with Mr. Higgins on Friday, this very question was posed by Simpson and Higgins replied that ATF was informing Treasury, not asking for permission.

o Dan Maloney, photographer for WACO TV station, was interviewed by Tom Clark, CNN, who described the assault about 10 AM Texas time this morning. CNN TV 5:00 PM news.

o 5:30 PM: Mr. Noble advised that he's returning to Washington from NYC. He mentioned that DepSEC spoke with the President and gave him a run down on what happened. The President said he "understood" and asked if "waiting out" the cult was considered. DepSEC said the facility was more than 70 acres, the people involved were survivalists, and that there was a "window of opportunity" before more publicity developed whereby ATF thought it could be successful in making the move it did.

Mr. Noble also said he spoke with Mr. Higgins, expressing his sorrow at the death of the agents and asking Mr. Higgins to keep to his post and bring this operation to an end as successfully as he is able.

o Chris Cuyler called at 6:40 PM advising that he is faxing the names of the dead ATF agents to us. Not public information. Wives of two of the deceased have not yet been contacted. Fax received with ATF News Release titled "Four ATF Agents Dead, 14 Wounded In Shootout Today Near Waco, Texas"

o TV news at 6PM and 6:30 PM ran stories: ABC TV (Vicki Mabry, KWTX-TV) mentioned the group's move from CA to TX in the 30s and referenced them as "God's Marines"; Tom Hill, ATF agent was quoted in another report, saying that

F knew there was a lot of firepower at the cult's facility; Ch. 7 had Pam Harris of KXXV TV saying that there was significant automatic firing.

o Mr. Noble called at 6:50 PM and asked that JPS and I call Higgins at and get an update on the federal plan, and to ask if the Hostage Response Team (HRT) of the FBI and the Marshals Service had arrived.

Higgins said the plan is to avoid further loss of life. Neither the nor the Marshals in fact have arrived. (FBI expected in the morning; Marshals later this evening.) There continues to be a fire fight from the Mount Carmel facility toward some ATF agents who are pinned down in a barn at this time. Royster, the ATF SAIC is in charge. He'll be relieved by Dan Conroy and Dan Hartnett, arriving Texas ASAP.

IMPORTANT NOTE: Higgins thinks, but is not certain, that ATF will receive overall responsibility when FBI arrives. He acknowledges that the FBI does not always respond well to other bureaus' direction. Hopes it can be worked out. Imperative that it be worked out.

Hartnett says that Vernon Wayne Howell is supposed to send the wounded out for treatment, but claims he didn't hear the ATF announcement over local radio that Federal personnel would not fire when this happened. Higgins relayed that ATF made the radio announcement a second time. Still no response from inside the compound. In any case, Higgins says, ATF, state and local authorities will not fire with women and children in the vicinity.

Update on ATF personnel: two of the most critical ATF wounded present are undergoing surgery. ATF began the day with approximately 130 personnel. With wounded and those taking others to hospital, there are about 100 ATF personnel available at 7:00 PM.

o 7:55 PM Higgins called JPS. Said three people from the cult attempted to storm the barn, where the three ATF people were sheltered. Of the three who attempted to storm the barn, one was killed, the other is down, believed dead and the third one is captured. The ATF people in the barn have now been able to get out, because of the darkness.

Steve Higgins says his people have night vision equipment. They can keep track of what's happening in the dark.

At 7:20 PM, Secretary Bentsen called Higgins. Said he'd heard about this only a few minutes before. Bentsen wanted to know what sort of a group it was and if Steve had approved this operation and Higgins said "yes". Bentsen wanted to know who fired first. The Secretary said he would put out a statement of support for the families of the agents who had been killed.

At 8:20 PM, RKN spoke to DEPSEC. Mr. Altman wanted to know current status, who was in charge, and what the current plans were.

At 8:25 PM, RKN called Higgins. Asked who was in charge on the scene. I was told that the Associate Deputy Director was on his way to Texas. Higgins relayed the fire fight inside the barn.

At 8:30 PM, RKN spoke with Floyd Clark of the FBI and asked about the

situation. Clark said that the FBI first learned of this plan a couple of weeks ago. FBI offered assistance, but ATF didn't believe that any assistance would be required. Clark said that following the clash today, the San Antonio FBI got a call requesting assistance from the FBI "on the perimeter." Sent the regional SWAT team instead of the HRT (Hostage Rescue Team.) Clark advised that two airplanes were on their way; one containing the HRT core group, including the leader, Dick Rogers. Rogers will make an assessment of the situation and contact the main bureau. RKN advised Clark that if it was a hostage situation the HRT would have primary responsibility on the scene.

At 8:40 PM, RKN spoke to Higgins again. RKN told Higgins that RKN had talked to Clark and that, if the HRT had a hostage situation, the ATF would contact the FBI any support or assistance that was needed.

At 8:50 PM, RKN called DepSEC and relayed the same message as that which was relayed to Mr. Higgins at 8:40 PM. Mr. Altman was concerned the agents at the scene be directed that their safety be a principal concern and he wondered whether the situation had stabilized or whether it was still volatile. He also wanted to know who would be in charge when the FBI arrived.

At 8:55 PM, RKN called Mr. Higgins again and said the FBI would be arriving and that, if an assessment of an HRT was made, the FBI would have primary jurisdiction and ATF would fall back to the perimeter. Higgins also told RKN that there were four Bradleys on their way from Fort Hood and that they would be used for defensive purposes.

At 9:00 PM, RKN spoke to the Secretary and gave a chronology of events as he had it, detailing events of the day outside Waco, Texas.

At 9:05 PM, RKN spoke to Larry Potts (Ass't. Director of Criminal Division, FBI), and asked him for the operational plans concerning the HRT. Potts advised that approximately 10:30 PM, the team led by Dick Rogers would arrive. It would have a main tactical guide, assault team leader, logistics person, a main negotiator, as well as a surveillance coordinator. The team leader would report back to Main Bureau after making an assessment.

At 9:45 PM, RKN again spoke to the Secretary and advised him about the four Bradleys and the estimated arrival time of the HRT advance team.

At 10:10 PM, Langan called Chris Cuyler at ATF and asked that ATF work up a statement not to exceed two pages describing when the search warrant was issued; an explication of the reasons the operation was undertaken now; a listing of the operational procedures; and the events which transpired in the case.

At 10:00 Langan and Brisbin worked with ATF personnel to develop a statement for the Secretary and White House. Steiner, Simpson and Noble joined in the effort and it was concluded at 1:30 AM.

At 6:30 AM an update was developed for the statement and it was reviewed by Mr. Higgins, Mr. Noble and the DepSEC and transmitted to the Secretary via his driver for Mr. Bentsen's review.

More through this date, Monday, February 29, 1993.

TR 9-7 602 - G

MEMORANDUM FOR THE PRESIDENT

FROM: SECRETARY BENTSEN

SUBJECT: ATF OPERATION RE: BRANCH DAVIDIAN, WACO, TX

CURRENT STATUS

o Yesterday, February 28, 1993, agents of the Bureau of Alcohol, Tobacco and Firearms attempted to serve search and arrest warrants on Vernon Wayne Howell, a.k.a. David Koresh, at his compound outside Waco, Texas. Members of the religious cult, of which Mr. Howell is the leader, responded with gunfire resulting in the deaths of four ATF agents and injuries to 14 other agents. Two of the injured agents are still in critical condition at local hospitals.

o Currently Federal agents, including a hostage rescue team from the Federal Bureau of Investigation, are surrounding the compound. Late yesterday evening Howell agreed to release minor children in exchange for a promise that his message would be broadcast over a local radio station. He subsequently released six children.

o The advance unit of the FBI hostage rescue team arrived yesterday evening, February 28th. The FBI has determined that it is a situation requiring the expertise of the hostage rescue team. At 8:30 this morning, all law enforcement agencies are scheduled to meet and it is expected that the FBI will be given operational control of the situation and will work with the close cooperation of ATF and the U.S. Marshal special operations group. The military has sent eight Bradley vehicles from Fort Hood, Texas which are intended to provide defensive support, and will not be operated by military personnel.

o Officials on the scene report that Howell is believed to be injured and weakening. FBI negotiators are attempting to persuade Howell to surrender peacefully.

BACKGROUND ON CULT

o The Branch Davidian Seventh-Day Adventists is a religious cult that occupies a 70-acre compound near Waco, Texas. The leader of the apocalyptic group, Vernon Wayne Howell, a.k.a. David Koresh, has a history of violence and has been acquitted of attempted murder in the past. Howell believes that "...he was the "Messenger" from God, that the world was coming to an end, and that when he "reveals" himself the riots in Los Angeles would pale in comparison to what was going to happen in Waco, Texas." The cult is not associated with the Seventh-Day Adventist Church.

00017878

ALLEGED VIOLATIONS

o In recent months automatic weapons fire was heard inside the compound, and the Bureau of Alcohol, Tobacco and Firearms (ATF) determined that the United Parcel Service had delivered to the cult enough firearms parts to convert 200 semi-automatic rifles to fully automatic submachine guns. Among the deliveries were shipments from three persons who were subjects of ATF investigations for firearms violations. ATF also determined that there was a large quantity of explosives at the cult compound.

o Possession of fully automatic firearms and explosives without a specific federal license is a violation of law. In this case, ATF was additionally concerned with the potential of this group to use its firearms and explosives for violent purposes. According to ATF, Vernon Howell, the leader of the cult, was in the past involved in assault on members of a rival religious cult.

NECESSITY FOR ACTION

o ATF had evidence that the cult had violated federal firearms and explosives control laws. Because of Howell's history of violence and credible reports that he was preparing to use these firearms, ATF officials decided to execute search and arrest warrants at the compound.

o Given that an undercover agent had informed ATF that Howell had been tricked into leaving the compound once and would never willingly leave again, ATF concluded it was necessary to execute its search warrant.

PREPARATION FOR ACTION

o This investigation began June 4, 1992. The first briefing paper was received at ATF headquarters on June 19, 1992. The ATF decision to obtain and execute a search warrant was made after consultation with, and approval by, the office of the U.S. Attorney for the Western Judicial District of Texas, and with all senior management of ATF in Washington, including the personal approval of Director, Stephen E. Higgins.

o An initial plan for entering the compound was completed on December 23, 1992. After early January briefings of senior ATF officials, training for the operation was undertaken at Fort McClellan, Alabama, and other locations.

o ATF secured the support of state and local law enforcement authorities, but only in a support role. Additionally, ATF secured support of the Army National Guard to provide an armored vehicle and a medical evacuation helicopter.

00017879

o Warrants for the search of the property and arrest of Howell for Federal firearms violations were signed on Friday, February 26, 1993.

o On Friday, February 26, an ATF agent informed Treasury officials that a decision had been made to enter the compound on the morning of Sunday, February 28th.

WHY ACTION WAS TAKEN AT THIS TIME.

o An ATF undercover agent who was able to infiltrate the compound learned that at certain times, including Sunday mornings, male members of the cult were segregated from the women and children, and also from the storehouse of firearms. This situation appeared to offer the best opportunity for ATF to enter the compound with minimal risk and to gain control.

o Additionally, ATF learned that the local Waco, Texas newspaper, the Waco Tribune Herald, had been researching background on this group, and was preparing a series of articles about the cult and its violations of federal laws. ATF officials believed the series might begin Saturday morning, February 27th, and would cause the cult members to become more aware of a possible law enforcement action. In fact, ATF was advised that the news articles would name individuals who are cooperating with federal authorities. It was believed that the public disclosure of such information would pose a serious risk to those individuals unless the automatic weapons were seized and an arrest effectuated.

o The newspaper series began Saturday morning, February 27th. The undercover agent was able to learn that the only concern expressed by cult members was that the articles would make it harder for the cult to raise funds. At this point, the decision was made to proceed with the operation as scheduled on Sunday morning, between 9:00 - 10:00 a.m.

o The operational plan called for the ATF undercover agent to attend services in the compound on Saturday and on Sunday morning, and to alert agents outside the compound if the location of cult members within the compound did not follow past practice, that is, with male members of the cult congregating in a place separate from the women and children and from the firearms.

o ATF entry into the compound was to be called off if for any reason cult members appeared to be alerted or to deviate in a material way from their past practice for Sunday mornings. As of Sunday morning, ATF had reason to believe that cult members were following their normal practices.

o It subsequently appeared that Mr. Howell had been tipped off about the operation. This information did not become known until ATF was actually under fire by the cult.

00017880

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
One Hundred Fourth Congress

URGENT

FAX TRANSMISSION

TO:

CHARYL MILLS / WH / COUNSEL

FAX:

456-1647

FROM
TOM DIAZ
U.S HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
CRIME SUBCOMMITTEE

No. of Pages Following:

12

Phone (202) 225-7087
FAX (202) 225-1845

Charl,

witness list as of
last night

Tom

**Oversight Hearings on Federal Law Enforcement Actions
in Relation to the Branch Davidian Compound in Waco, Texas**

Tentative Witness List

FIRST DAY

Opening Panel: An Introduction to the Critical Issues

- Dick Reavis** Author of Ashes of Waco, published by Simon and Schuster
- Stuart Wright** Edited and contributed to Armageddon in Waco, published by
University of Chicago Press
- Ray Jahn** Assistant U.S. Attorney who prosecuted Branch Davidians

First General Inquiry: Investigation and Warrants

Panel A

- Gerald Goldstein** President of National Association of Criminal Defense Lawyers
- Legal Expert** To Be Determined by Minority
- Firearms Law Expert** To Be Determined by Majority
- Henry McMahon** Firearms Dealer
- David Tibbedeux** Resident at Mt. Carmel
- Lt. Gene Barber** Formerly with the McLennan County Sheriff's Office

Panel B

Davy Agullera	ATF Special Agent
Chuck Sarabyn	Former ATF ASAC in Houston
Earl Dunagan	Former ATF Acting SAC in Austin
Bill Johnston	Assistant United States Attorney
Dan Hartnett	Former ATF Deputy Director for Enforcement
Ed Owen	ATF Firearms Expert
James Cadigan	FBI Firearms Expert
H. Geoffrey Moulton, Jr.	Project Director of Treasury Department Review Team
Dr. Bruce Perry	Baylor Medical College

SECOND DAY

Second General Inquiry: Planning the Raid and Department of Defense Involvement

Panel A

Robert Sanders **Former ATF Deputy Director for Enforcement**

Wade Ishimoto **Sandia National Laboratories**

George Morrison **Los Angeles Police Department**

John Koonce **Drug Enforcement Administration**

Panel B - Department of Defense Assistance

Amb. _____ Holmes **Assistant Sec. of Defense for SOLIC**

BG Michael Huffner, U.S. Army **Army JAG Corps**

LTC Bruce Lindley, U.S. Army **Former Special Forces JAG**

MAJ _____ Petree, U.S. Army

SGT _____ Letts, U.S. Army

Panel C - Tactical Planning of "Dynamic Entry"

Phillip Chalnacki **Former ATF SAC in Houston**

Chuck Sarabyn

William Buford **ATF RAC in Little Rock**

Lewis Merletti **Deputy Director of Treasury Department Review Team**

Panel D - ATF and Treasury Approval of "Dynamic Entry"

Steve Higgins	Former Director of the ATF
John Simpson	Former Acting Assistant Secretary at Treasury
Christopher Cuyler	ATF Liaison for Assistant Secretary
Roger Altman	Former Deputy Secretary of the Treasury
Michael Langan	Former Acting Deputy Assistant Secretary
Lloyd M. Bentsen	Former Secretary of the Treasury

THIRD DAY

Third General Inquiry: Execution of the Raid

Panel A

Ira Glasser **Executive Director of the American Civil Liberties Union**

Joyce Sparks **Texas Department of Child Protective Services**

George Morrison

Tim Evans **Attorney**

John Kolman **Formerly with Los Angeles County Sheriff's Department**

Panel B

Robert Rodriguez **ATF Special Agent**

Chuck Sarabyn

Phillip Chohnacki

Sharon Wheeler **ATF Special Agent**

Dan Hartnett

Daniel Black **ATF Personnel Office**

Lewis C. Merletti

ATF Special Agents **To Be Determined**

FOURTH DAY

The Treasury Department Response

Ronald K. Noble Undersecretary for Law Enforcement

John Magaw Director of the Bureau of Alcohol, Tobacco and Firearms

FIFTH DAY**Fourth General Inquiry: Negotiations****Panel A****Dick DeGuerin Attorney****Jack Zimmerman Attorney****Panel B****Dr. Phillip Arnold Reunion Institute, Houston****Dr. James Tabor Associate Professor of Religious Studies, University of North Carolina at Charlotte, and author of Why Waco, published by the University of California Press****Captain Maurice Cook Senior Texas Ranger****Captain David Burns Texas Ranger****J. Brantly Foster Former Texas Ranger****Glen Hilburn Baylor University****Negotiations Expert To Be Determined by Minority****Panel C****Pete Smerick Former Criminal Investigative Analyst with the Investigative Support Unit of the National Center for the Analysis of Violent Crime at the FBI Academy****Jim Cavanaugh ATF Special Agent****Byron Sage FBI SSRA in Austin**

Gary Noesner

Jeffrey Jamar

Former FBI SAC in San Antonio

Dr. Park Dietz

SIXTH DAY**Fifth General Inquiry: The CS Gas Plan -- Planning and Approval****Panel A**

Dr. Alan Stone **Harvard University**

William Marcus **Toxicologist, Environmental Protection Agency**

Additional Witnesses To Be Determined

Panel B - Formation of the Gas Insertion Plan

Floyd Clark **Former FBI Deputy Director**

Larry Potts **Former FBI Assistant Director, Criminal Investigations**

Anthony Betz **FBI CS Gas Expert**

Dick Rogers **Former Head of Hostage Rescue Team**

Jeffrey Jamar

Byron Sage

Ronald McCarthy **Former Officer, Los Angeles Police Department**

Panel C - Approval of the Gas Insertion Plan

William Sessions Former Director of the FBI

Floyd Clark

Webb Hubbell Former Associate Attorney General

Bernard Nussbaum Former Counsel to the President

Dr. Harry Salem Defense Department Toxicologist

Mark Richard Deputy Assistant Attorney General, Criminal Division

Additional Witnesses To Be Determined

SEVENTH DAY

Sixth General Inquiry: Insertion of the CS Gas and the Fire

Panel A

Rick Sherrow Fire Expert

James Quintero Arson Expert, University of Maryland

Clive Doyle Former Davidian

Additional Witnesses To Be Determined

Panel B

Paul Gray Houston Fire Department, Leader of Fire Review Team

Jeffery Jamar

Floyd Clark

Dick Rogers

EIGHTH DAY

Justice Department Response

Janet Reno Attorney General of the United States

**U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
One Hundred Fourth Congress**

FAX TRANSMISSION

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FROM

TOM DIAZ

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
CRIME SUBCOMMITTEE

No. of Pages Following: 6

Phone (202) 225-7087

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Witness list incorporating
accepted minority witnesses
as of 1:30 p.m. Friday, 7/14/95

* = minority additions accepted (unless noted otherwise)

Tentative Witness List for Waco Hearings

FIRST DAY

Opening Panel: An Introduction to the Critical Issues

Dick Reavis An investigative journalist with excellent credentials who has written a book on Waco published by Simon and Schuster

Stuart Wright Editor/author of new book on Waco published by University of Chicago Press containing views of 18 scholars

* Ray and LeRoy Jahn Assistant U.S. Attorneys who prosecuted Branch Davidians.

First General Inquiry: Investigation and Warrants

Panel A

Gerald Goldstein President of National Association of Criminal Defense Lawyers

* Minority Legal Expert

DAVID KOPPEL
~~Jim Jeffries~~

An attorney familiar with firearms laws who can speak to the accuracy of the language in the search warrants

Henry McMahon Firearms dealer who did business with Koresh

David Tibbedeux Non-Davidian resident at Mt. Carmel during investigation, raid and fire. (Currently has a scheduling conflict)

Olympic Arms Manufacturer of firearms identified in ATF affidavit

Gene Barber McLennan County Sheriff's Office

* Minority private firearms expert

Panel B

Davy Agullera ATF Special Agent

Chuck Sarabyn Former ATF ASAC in Houston

Earl Dunagan Former ATF Acting SAC in Austin

Bill Johnson Assistant United States Attorney

Dan Hartnett Former ATF Deputy Director for Enforcement

Ed Owen ATF Firearms Expert

* James Cadigan FBI Firearms Expert
 * H. Geoffrey Moulton Treasury Reviewer
 * Dr. Bruce Perry Baylor } SECOND DAY

Second General Inquiry: Planning the Raid and the Military

Panel A

Robert Sanders Former ATF Deputy Director for Enforcement

Military Law Expert

DEA Official

Lt. Col Lindley JAG Officer (wrote memorandum questioning the legality of DOD activities)

* Wade Ishimoto Expert on tactical planning

Panel B - Tactical Planning of "Dynamic Entry"

Phillip Chohnacki Former ATF SAC in Houston

Chuck Sarabyn

[Major Petree Army officer in charge of SF soldiers who trained ATF agents
 For Capt. Clyde Moore - in play still]
 General Pickler Commander in charge of decision to do ATF training mission

William Buford ATF RAC in Little Rock

* Lewis Merletti - Treasury reviewer

Panel C - ATF and Treasury Approval of "Dynamic Entry"

Steve Higgins Former Director of the ATF

John Simpson Former Acting Assistant Secretary at Treasury
Cristopher Cuyler ATF Liasion for Ass't Secretary
Robert Altman Former Deputy Secretary of the Treasury
Michael Langan Former Acting Deputy Ass't Secretary

THIRD DAY

Third General Inquiry: The Raid

Panel A

Ira Glasser Executive Director of the ACLU
Joyce Sparks Texas Department of Child Protective Services
George Morrison LAPD special ops officer who reviewed the Treasury Report
Tim Evans Defense attorney who represented Davidians

Panel B

Robert Rodriguez ATF undercover agent
Chuck Sarabyn
Phillip Cholnacki
Sharon Wheeler ATF special agent who was in charge of media relations

Dan Hartnett

* Lewis Merletti - Treasury reviewer
* John Williams - ATF Agent

FOURTH DAY

The Treasury Department Response

Ronald K. Noble Undersecretary for Law Enforcement

John McGaw Director of ATF

FIFTH DAY

Fourth General Inquiry: Negotiations

Panel A-1

Dick DeGuerin and Jack Zimmerman Lawyers for Koresh and Schnider

* **Negotiations expert for minority (not govt.) to be named** ←

Panel A-2

Dr. Philip Arnold

Reunion Institute, Houston

Dr. James Tabor

Associate Professor of Religious Studies,
University of North Carolina at Charlotte and
author of the book Why Waco, published by
the University of California Press

* **Dr. Bill Austin**
Texas Rangers

Baylor University

Panel B

Pete Smerick

Former Criminal Investigative Analyst with the Investigative
Support Unit of the National Center for the Analysis of Violent
Crime at the FBI Academy in Quantico

Jim Cavanaugh

ATF Special Agent who served as the initial negotiator

Byron Sage

FBI ASAC in Austin

* **Park Dietz**

Gary Noesner Chief Negotiator
 Jeffrey Jamar FBI Tactical Coordinator

SIXTH DAY

Fifth General Inquiry: The CS Gas Plan -- Planning and Approval

Panel A

George Uhlig Scientist

* Dr. David Upshaw
and/or ←

~~John Maloney - Failure Analysis~~

Dr. Alan Stone Harvard University

* Dr. Paul Rize
(do they offer different
expertises?)

Aldrich Chemical Producer of CS gas

William Marcus Toxicologist

Note: majority may add a
critic of the soundness of the
Plan (as opposed to gas issues per se).
= if so, we get a
rebuttal expert

DOD Chemical Warfare Corps

Panel B - Formation of the Gas Insertion Plan

Floyd Clark Former FBI Deputy Director

Larry Potts FBI Deputy Director

Anthony Betz FBI CS Gas Expert

Dick Rogers Former head of HRT

Jeffrey Jamar

Byron Sage

? RONALD McCarthy, retired LAPD (still in play, not
decided)

Panel C - Approval of the Gas Insertion Plan

Floyd Clark

Webb Hubbell Former Associate Attorney General

Bernard Nussbaum Former Counsel to the President

Bruce Lindsay

Dr. Harry Salem Defense Department Toxicologist

* Mark Richard DOJ Criminal Division

SEVENTH DAY

Sixth General Inquiry: The Gas Insertion and the Fire

Panel A

Rick Sherrow Fire expert

Tape Transcriber ? (probably dropping off)

Clive Doyle Former Davidian

Panel B

Paul Gray Houston Fire Department, Leader of Fire Review Team

~~URT Member~~ Jim McGee - saved a Davidian in fire

Jeffery Jamar

Floyd Clark

* James Quintere U of Md. Arson expert

→ Dick Rogers - FBI EIGHTH DAY (lead foray into bunker)

(majority add)

Justice Department Response

Janet Reno - Attorney General of the United States