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104th Congress }
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COMMITTEE PRINT

{ Serial No. 12

MATERIALS RELATING TO THE INVESTIGATION INTO THE ACTIVITIES OF FEDERAL LAW ENFORCEMENT AGENCIES TOWARD THE BRANCH DAVIDIANS

BY THE

COMMITTEE ON THE JUDICIARY

PREPARED IN CONJUNCTION

WITH THE

COMMITTEE ON GOVERNMENT
REFORM AND OVERSIGHT
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH FOURTH CONGRESS

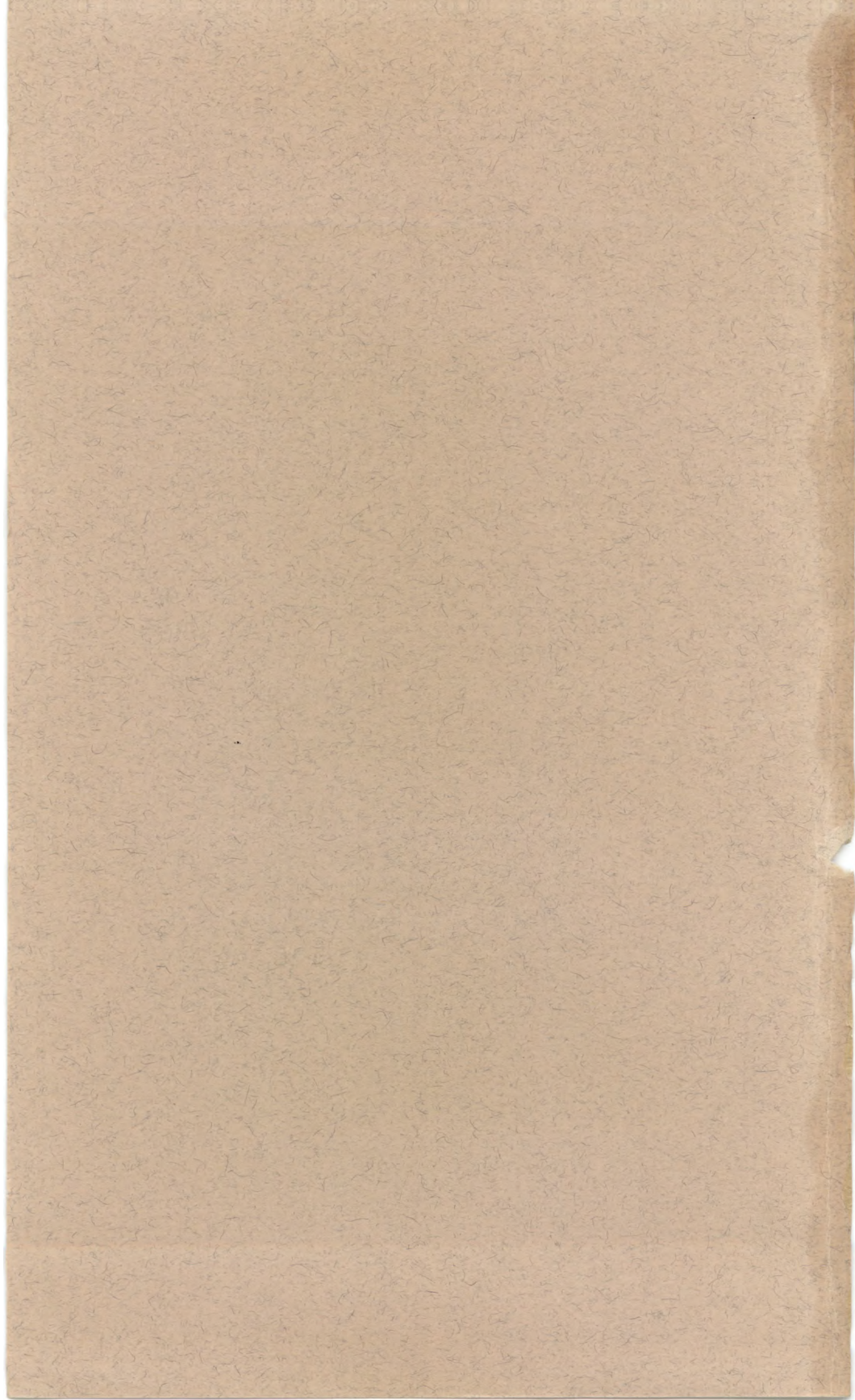
SECOND SESSION



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AUGUST 1996

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EDITOR'S NOTE

This Committee Print contains a number of materials relating to the Investigation into the Activities of Federal Law Enforcement Agencies Toward the Branch Davidians conducted jointly by the Subcommittee on Crime of the Committee on the Judiciary and the Subcommittee on National Security, International Affairs, and Criminal Justice of the Committee on Government Reform and Oversight.

From July 19 through August 1, 1995, the two Subcommittees held ten days of joint hearings into this matter. The text of those hearings, and the documents introduced for the record during these hearings, have been separately published by the Committee on the Judiciary in a three part set as Serial No. 72. The hearings were one aspect of an extensive investigation into this matter conducted by the two Subcommittees. The Subcommittees' findings, conclusions, and recommendations were published in House Report 104-749, filed by the Committee on Government Reform and Oversight on August 2, 1996.

This Committee Print, published by the Committee on the Judiciary, contains a number of documents related to the Subcommittees' investigation. Part 1 contains the complete text of House Report 104-749 reproduced in its entirety, however, the Report has been modified in two ways. First, the type face and layout of the report has been modified to fit the paper size of this Committee Print. Second, typographical errors and incorrect footnote references in the Report to page numbers of the published hearings have been corrected.

In the Report, the Subcommittees make reference to a number of documents submitted to them by the Departments of Justice, Defense, and the Treasury and note that these documents were to be separately published in an Appendix containing these and other materials. Part 2 of this Committee Print contains the Appendix to the Report.

Additional materials relating to the investigation are also contained in this Committee Print. The views of the minority Members of the Subcommittee on Crime, which were not published as part of House Report 104-749, are set forth in Part 3. Also in Part 3 are documents supplied to the Subcommittees by the Departments of Justice, Defense, and the Treasury which relate to these minority views but which were not part of the Appendix as referenced in the Report. Part 4 contains statements inadvertently omitted from the published hearings. Finally, Part 5 contains selected letters and other pertinent information received by the Subcommittees after the hearings from the agencies involved in the investigation.

GRS

ERRATA SHEET TO HOUSE REPORT 104-749

Footnote	Original Citation	Footnote	Amended Citation
21	Hearings Part 1 at 796.	21	Hearings Part 1 at 788.
25	Hearings Part 1 at 807.	25	Hearings Part 1 at 799.
30	See Hearings Part 1 at 818.	30	See Hearings Part 1 at 810.
53	Hearings Part 1 at 757, 805.	53	Hearings Part 1 at 749, 797.
71	Hearings Part 1 at 757.	71	Hearings Part 1 at 749.
72	<i>Id.</i> at 776.	72	<i>Id.</i> at 768.
74	<i>Id.</i> at 777.	74	<i>Id.</i> at 769.
75	<i>Id.</i> at 777-778.	75	<i>Id.</i> at 769-770.
77	Hearings Part 1 at 786.	77	Hearings Part 1 at 778.
80	<i>Id.</i> at 788.	80	<i>Id.</i> at 780.
84	Hearings Part 1 at 934-935.	84	Hearings Part 1 at 926-927.
86	Hearings Part 1 at 763.	86	Hearings Part 1 at 755.
87	<i>Id.</i> at 758.	87	<i>Id.</i> at 750.
88	<i>Id.</i> at 763.	88	<i>Id.</i> at 755.
89	<i>Id.</i> at 766.	89	<i>Id.</i> at 758.
90	<i>Id.</i> at 773.	90	<i>Id.</i> at 765.
91	Hearings Part 1 at 759-760.	91	Hearings Part 1 at 751-752.
98	Hearings Part 1 at 821.	98	Hearings Part 1 at 813.
116	Hearings Part 1 at 725.	116	Hearings Part 1 at 717.
117	<i>Id.</i> at 756.	117	<i>Id.</i> at 748.
120	Hearings Part 2 at 821-822.	120	Hearings Part 1 at 813-814.
420	<i>Id.</i> at 146.	420	<i>Id.</i> at 145.
468	Hearings Part 2 at 238.	468	Hearings Part 2 at 328.
483	<i>Id.</i>	483	<i>Id.</i> at 173.
565	Hearings Part 2 at 315, 318.	565	Hearings Part 1 at 315, 318.

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CIES TOWARD THE BRANCH DAVIDIANS

Union Calendar No. 395

104TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 104-749

INVESTIGATION INTO THE ACTIVITIES OF FEDERAL LAW
ENFORCEMENT AGENCIES TOWARD THE BRANCH
DAVIDIANS

AUGUST 2, 1996.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. CLINGER, from the Committee on Government Reform and
Oversight, submitted the following

THIRTEENTH REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

BASED ON A JOINT INVESTIGATION BY THE SUBCOMMITTEE ON
NATIONAL SECURITY, INTERNATIONAL AFFAIRS, AND CRIMINAL
JUSTICE OF THE COMMITTEE ON GOVERNMENT REFORM AND OVER-
SIGHT, AND THE SUBCOMMITTEE ON CRIME OF THE COMMITTEE ON
THE JUDICIARY

On July 25, 1996, the Committee on Government Reform and
Oversight approved and adopted a report entitled "Investigation
Into the Activities of Federal Law Enforcement Agencies Toward
the Branch Davidians." The report was prepared jointly with the
Committee on the Judiciary. The chairman was directed to trans-
mit a copy to the Speaker of the House.

EXECUTIVE SUMMARY

From April 1995 to May 1996, the Subcommittee on Crime of the House Committee on the Judiciary and the Subcommittee on National Security, International Affairs, and Criminal Justice of the House Committee on Government Reform and Oversight jointly conducted an investigation into the actions of the Federal agencies involved in law enforcement activities near Waco, TX, in late 1992 and early 1993 toward a group known as the Branch Davidians. As part of that investigation, the subcommittees held 10 days of public hearings. During the course of those hearings, more than 100 witnesses appeared and gave testimony concerning all aspects of the Government's actions. The subcommittees also reviewed thousands of documents requested from and provided by the agencies involved in these actions. Additionally, the subcommittees met with others who were involved in these actions or who offered additional information or opinions concerning them.

This report is the final product of that investigation. It summarizes the most important facts about the key issues of these activities considered by the subcommittees. The report also sets forth the subcommittees' findings with respect to many disputed issues and to new facts uncovered during the investigation. Finally, the report makes recommendations in order to prevent the mistakes that occurred at Waco from reoccurring in future law enforcement operations.

A. A BRIEF SUMMARY OF THE GOVERNMENT'S ACTIONS TOWARD THE BRANCH DAVIDIANS

In June 1992, the Austin, TX, Office of the Bureau of Alcohol, Tobacco and Firearms (ATF) opened a formal investigation into allegations that members of a Waco, TX, religious group, known as the Branch Davidians, and in particular their leader, Vernon Howell, also known as David Koresh, were in possession of illegal firearms and explosive devices. In January 1993, ATF agents commenced an undercover operation in a small house directly across from the property on which the Branch Davidians lived. The ATF agents posed as students attending classes at a local technical college to monitor the activities of the Davidians. Part of the undercover operation involved one of the agents meeting with Koresh and other Davidians several times by expressing an interest in their religious beliefs. As a result of the evidence gathered by the ATF, and in particular during the undercover operation, the ATF sought and received from a Federal judge an arrest warrant for Koresh and a warrant to search the Branch Davidian residence.

Shortly before the ATF planned to serve the search and arrest warrants, it contacted Operation Alliance, a Government office which coordinated military counterdrug operations along the southwest border. Through that office, the ATF requested that military

personnel provide training to the ATF agents who would be involved in the raid to serve the warrants. The ATF's request for military assistance also would have involved the military personnel as participants in the raid itself. After military legal advisors cautioned that such activity might violate Federal law, the ATF's request was modified so that military personnel only provided training to the ATF agents and did not participate in the raid. Because the ATF alleged that the Davidians were also involved in illegal drug manufacturing, the assistance provided by these counterdrug military forces was provided to the ATF without reimbursement.

On February 28, 1993, a force of 76 ATF agents stormed the Davidian residence to serve the arrest and search warrants. Prior to the commencement of the raid, however, the Davidians had learned of the ATF's plans. As the agents arrived at the Davidians' residence, the Davidians engaged the ATF agents in a gun battle which continued for almost 90 minutes. Four ATF agents were killed in the battle and more than 20 agents wounded. At least two Davidians were killed by ATF agents and several others, including Koresh, were wounded.

After a cease-fire was arranged, the Federal Bureau of Investigation (FBI) dispatched members of its Hostage Rescue Team (HRT) to Waco to take control of the situation at the request of the ATF. At 6 a.m. the next morning, the FBI formally took control of the situation and commenced a 51-day standoff with the Davidians. During this time, FBI officials engaged in daily negotiations with the Davidians in an effort to end the standoff peaceably. Between February 18 and March 23, 35 persons, including 21 children, left the residence and surrendered to the FBI. From March 23 to April 18, however, none of the remaining Branch Davidians left the residence.

In addition to the continual negotiations with the Davidians, FBI officials took other steps to induce the Davidians to surrender. These tactics included tightening the perimeter around the Davidian residence, cutting off electricity to the residence, and at one point, shining bright lights at the residence and playing loud music and irritating sounds over loudspeakers. During the course of the standoff, FBI negotiators consulted with several experts routinely retained by the FBI. In some cases, the advice of these experts was followed while in other cases it was not. Many other persons offered advice to the FBI. While a few of these individuals offered credible assistance, the FBI chose to ignore the offers of assistance from all of these persons.

During the week of April 12, senior Justice Department officials began considering a plan developed by the FBI to end the standoff. Attorney General Janet Reno, other senior Justice Department officials, and FBI officials held several meetings concerning the plan. The FBI also requested the input of Department of Defense employees and military personnel concerning the plan to end the standoff. During these deliberations Associate Attorney General Webster Hubbell personally discussed the status of the negotiations with the FBI's chief day-to-day negotiator in Waco. The proposed plan centered around the use of a chemical riot control agent which would be injected through the walls of the Davidian residence in order to induce the residents to leave the structure. It provided for

the methodical insertion of the riot control agent into different parts of the building over a 48-hour period. The plan also contained a contingency provision to be used if the Davidians fired on the FBI agents who were implementing the plan. In that event, the FBI proposed to insert the riot control agent into all portions of the residence simultaneously. As a result of these deliberations, the Attorney General approved the implementation of the plan for April 19, 1993.

At approximately 6 a.m. on April 19, the FBI's chief negotiator, Byron Sage, telephoned the Davidians and informed them that the FBI was inserting the riot control agent into the residence. Sage also began broadcasting a prepared statement over loudspeakers that the FBI was "placing tear gas in the building" and that all residents should leave. As the announcement was being made, FBI agents using unarmed military vehicles with booms mounted on them began to insert the riot control agent into the compound by ramming holes into the sides of the structure and then using devices mounted on the booms to spray the riot control agent into the holes in the walls. Almost immediately the Davidians began to fire on the vehicles being used by the FBI. At 6:07 a.m., the commander of the Hostage Rescue Team ordered that the contingency provision of the operations plan be implemented and that the riot control agent be inserted in all portions of the residence at once. During 6 hours of insertion of the riot control agent no residents exited the compound.

At approximately 12:07 p.m., a fire was observed in one portion of the residence. Within 2 minutes, two other fires developed. Within a period of 8 minutes, the three fires had engulfed the entire structure, ultimately destroying it completely.

During the fire, sounds of gunfire from within the structure were heard. Some of these sounds were live rounds exploding in the flames inside the compound. However, other sounds were methodical and evenly-spaced, indicating the deliberate firing of weapons. Nine persons escaped from the structure during the course of the fire but more than 70 other residents remained inside. All of these persons died. Of this number, autopsies indicated that 19 died from gunshots at close range. Most of the other residents who remained inside the structure died as a result of smoke inhalation from the fire or from burns from the fire.

B. FINDINGS OF THE SUBCOMMITTEES

As a result of its investigation, the subcommittees make the following findings:

THE BRANCH DAVIDIANS

1. But for the criminal conduct and aberrational behavior of David Koresh and other Branch Davidians, the tragedies that occurred in Waco would not have occurred. The ultimate responsibility for the deaths of the Davidians and the four Federal law enforcement agents lies with Koresh.

2. While not dispositive, the evidence presented to the subcommittees indicates that some of the Davidians intentionally set the fires inside the Davidian residence.

3. The Davidians could have escaped the residence for a significant period of time after the start of the fire. Most of the Davidians either did not attempt to escape from the residence or were prevented from escaping by other Davidians.

4. The gunshot wounds which were the cause of death of 19 of the Davidians on April 19 were either self-inflicted, inflicted by other Davidians, or the result of the remote possibility of accidental discharge from rounds exploding in the fire.

THE DEPARTMENT OF THE TREASURY

1. Treasury Secretary Lloyd Bentsen and Deputy Secretary Roger Altman acted highly irresponsibly and were derelict in their duties in failing to even meet with the Director of the ATF in the month or so they were in office prior to the February 28 raid on the Davidians residence, in failing to request any briefing on ATF operations during this time, and in wholly failing to involve themselves with the activities of the ATF.

2. Senior Treasury Department officials routinely failed in their duty to monitor the actions of ATF officials, and as a result were uninvolved in the planning of the February 28 raid. This failure eliminated a layer of scrutiny of the plan during which flaws in it might have been uncovered and corrected.

3. After the raid failed, Assistant Treasury Secretary Ronald Noble attempted to lay the blame entirely on the ATF despite the fact that Treasury Department officials, including Noble, failed to properly supervise ATF activities leading to the raid. Moreover, Treasury Department officials, having approved the raid, failed to clearly and concisely communicate the conditions under which it was to be aborted.

THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

1. The ATF's investigation of the Branch Davidians was grossly incompetent. It lacked the minimum professionalism expected of a major Federal law enforcement agency.

2. While the ATF had probable cause to obtain the arrest warrant for David Koresh and the search warrant for the Branch Davidian residence, the affidavit filed in support of the warrants contained an incredible number of false statements. The ATF agents responsible for preparing the affidavits knew or should have known that many of the statements were false.

3. David Koresh could have been arrested outside the Davidian compound. The ATF chose not to arrest Koresh outside the Davidian residence and instead were determined to use a dynamic entry approach. In making this decision ATF agents exercised extremely poor judgment, made erroneous assumptions, and ignored the foreseeable perils of their course of action.

4. ATF agents misrepresented to Defense Department officials that the Branch Davidians were involved in illegal drug manufacturing. As a result of this deception, the ATF was able to obtain some training from forces which would not have otherwise provided it, and likely obtained other training within a shorter period of time than might otherwise have been available. Because of its deception, the ATF was able to obtain the training without having to

reimburse the Defense Department, as otherwise would have been required had no drug nexus been alleged.

5. The decision to pursue a military style raid was made more than 2 months before surveillance, undercover, and infiltration efforts were begun. The ATF undercover and surveillance operation lacked the minimum professionalism expected of a Federal law enforcement agency. Supervisors failed to properly monitor this operation.

6. The ATF's raid plan for February 28 was significantly flawed. The plan was poorly conceived, utilized a high risk tactical approach when other tactics could have been successfully used, was drafted and commanded by ATF agents who were less qualified than other available agents, and used agents who were not sufficiently trained for the operation. Additionally, ATF commanders did not take precautions to ensure that the plan would not be discovered.

7. The senior ATF raid commanders, Phillip Chojnacki and Chuck Sarabyn, either knew or should have known that the Davidians had become aware of the impending raid and were likely to resist with deadly force. Nevertheless, they recklessly proceeded with the raid, thereby endangering the lives of the ATF agents under their command and the lives of those residing in the compound. This, more than any other factor, led to the deaths of the four ATF agents killed on February 28.

8. Former ATF Director Stephen Higgins and former ATF Deputy Director Daniel Hartnett bear a portion of the responsibility for the failure of the raid. They failed to become significantly involved in the planning for the raid and also failed to instill in the senior raid commanders an understanding of the need to ensure that secrecy was maintained in an operation of this type.

9. There was no justification for the rehiring of the two senior ATF raid commanders after they were fired. The fact that senior Clinton administration officials approved their rehiring indicates a lack of sound judgment on their part.

THE DEPARTMENT OF JUSTICE

1. The decision by Attorney General Janet Reno to approve the FBI's plan to end the standoff on April 19 was premature, wrong, and highly irresponsible. In authorizing the assault to proceed Attorney General Reno was seriously negligent. The Attorney General knew or should have known that the plan to end the standoff would endanger the lives of the Davidians inside the residence, including the children. The Attorney General knew or should have known that there was little risk to the FBI agents, society as a whole, or to the Davidians from continuing this standoff and that the possibility of a peaceful resolution continued to exist.

2. The Attorney General knew or should have known that the reasons cited for ending the standoff on April 19 lacked merit. The negotiations had not reached an impasse. There was no threat of a Davidian breakout. The FBI Hostage Rescue Team did not need to stand down for rest and retraining for at least 2 more weeks after April 19, and if and when it did stand down FBI and local law enforcement SWAT teams could have been brought in to maintain the perimeter. Sanitary and other living conditions inside the

Davidian residence had not deteriorated during the standoff and there was no evidence that they were likely to deteriorate in the near future. And while physical and sexual abuse of minors had occurred, there was no basis to conclude that minors were being subjected to any greater risk of physical or sexual abuse during the standoff than prior to February 28. The final assault put the children at the greatest risk.

3. The CS riot control agent insertion and assault plan was fatally flawed. The Attorney General believed that it was highly likely that the Davidians would open fire, and she knew or should have known that the rapid insertion contingency would be activated, that the Davidians would not react in the manner suggested by the FBI, and that there was a possibility that a violent and perhaps suicidal reaction would occur within the residence. The planning to end the standoff was further flawed in that no provision had been made for alternative action to be taken in the event the plan was not successful.

4. Following the FBI's April 19 assault on the Branch Davidian compound, Attorney General Reno offered her resignation. In light of her ultimate responsibility for the disastrous assault and its resulting deaths the President should have accepted it.

THE FEDERAL BUREAU OF INVESTIGATION

1. The CS riot control agent assault of April 19 should not have taken place. The possibility of a negotiated end to the standoff presented by Koresh should have been pursued even if it had taken several more weeks.

2. After Koresh and the Davidians broke a promise to come out on March 2 FBI tactical commander Jeffrey Jamar viewed all statements of Koresh with extreme skepticism and thought the chances of a negotiated surrender remote. While chief negotiator Byron Sage may have held out hope longer, FBI officials on the ground had effectively ruled out a negotiated end long before April 19 and had closed minds when presented with evidence of a possible negotiated end following completion of Koresh's work on interpreting the Seven Seals of the Bible.

3. The FBI should have sought and accepted more expert advice on the Branch Davidians and their religious views and been more open-minded to the advice of the FBI's own experts.

4. FBI tactical commander Jeffrey Jamar and senior FBI and Justice Department officials advising the Attorney General knew or should have known that none of the reasons given to end negotiations and go forward with the plan to end the standoff on April 19 had merit. To urge these as an excuse to act was wrong and highly irresponsible.

5. CS riot control agent is capable of causing immediate, acute and severe physical distress to exposed individuals, especially young children, pregnant women, the elderly, and those with respiratory conditions. In some cases, severe or extended exposure can lead to incapacitation. Evidence presented to the subcommittees show that use of CS riot control agent in enclosed spaces, such as the bunker, significantly increases the possibility that lethal levels will be reached, and the possibility of harm significantly increases. In view of the risks posed by insertion of CS into enclosed spaces,

particularly the bunker, the FBI failed to demonstrate sufficient concern for the presence of young children, pregnant women, the elderly, and those with respiratory conditions. While it cannot be concluded with certainty, it is unlikely that the CS riot control agent, in the quantities used by the FBI, reached lethal toxic levels. However, the presented evidence does indicate that CS insertion into the enclosed bunker, at a time when women and children were assembled inside that enclosed space, could have been a proximate cause of or directly resulted in some or all of the deaths attributed to asphyxiation in the autopsy reports.

6. There is no evidence that the FBI discharged firearms on April 19.

7. There is no evidence that the FBI intentionally or inadvertently set the fires on April 19.

8. The FBI's refusal to ask for or accept the assistance of other law enforcement agencies during the standoff demonstrated an institutional bias at the FBI against accepting and utilizing such assistance.

THE DEPARTMENT OF DEFENSE

1. The activities of active duty military personnel in training the ATF and in supporting the FBI's activities during the standoff did not violate the Posse Comitatus Act because their actions did not constitute direct participation in the Government's law enforcement activities.

2. The activities of National Guard personnel in training the ATF, in participating in the ATF raid on the Davidian residence, and in supporting the FBI's activities during the standoff did not violate the Posse Comitatus Act because the personnel were not subject to the prohibitions in the act.

3. No foreign military personnel or other foreign persons took part in any of the Government's actions toward the Branch Davidians. Some foreign military personnel were present near the Davidian residence as observers at the invitation of the FBI.

C. RECOMMENDATIONS

In order to prevent the errors in judgment and consequent tragic results that occurred at Waco from occurring in the future, the subcommittees' make the following recommendations:

1. *Congress should conduct further oversight of the Bureau of Alcohol, Tobacco and Firearms, the oversight of the agency provided by the Treasury Department, and whether jurisdiction over the agency should be transferred to the Department of Justice.* Congress should consider whether the lack of Treasury Department oversight of ATF activities in connection with the investigation of the Davidians, and the failures by ATF leadership during that investigation, indicate that jurisdiction over the ATF should be transferred to the Department of Justice.

2. *If the false statement in the affidavits filed in support of the search and arrest warrants were made with knowledge of their falsity, criminal charges should be brought against the persons making the statements.*

3. *Federal law enforcement agencies should verify the credibility and the timeliness of the information on which it relies in obtaining warrants to arrest or search the property of an American citizen.* The affidavits on which the arrest and search warrants of Koresh were ordered contained information provided to the ATF by informants with obvious bias toward Koresh and the Davidians and information that was stale in that it was based on experiences years before the investigation. The ATF should obtain fresh and unbiased information when relying on that information to arrest or search the premises of the subjects of investigations.

4. *The ATF should revise its National Response Plan to ensure that its best qualified agents are placed in command and control positions in all operations.* Doing so will help to avoid situations like that which occurred at Waco where lesser qualified agents were placed in positions for which they were, at best, only partially qualified while other, more experienced agents were available whose involvement might have prevented the failure of the raid.

5. *Senior officials at ATF headquarters should assert greater command and control over significant operations.* The ATF's most senior officials should be directly involved in the planning and oversight of every significant operation.

6. *The ATF should be constrained from independently investigating drug-related crimes.* Given that the ATF based part of its investigation of the Branch Davidians on unfounded allegations that the Davidians were manufacturing illegal drugs, and as a result improperly obtained military support at no cost, the subcommittees recommend that Congress restrict the jurisdiction of the ATF to investigate cases involving illegal drugs unless such investigations are conducted jointly with the Drug Enforcement Administration as the lead agency.

7. *Congress should consider applying the Posse Comitatus Act to the National Guard with respect to situations where a Federal law enforcement entity serves as the lead agency.* The fact that National Guard troops were legally allowed to be involved directly in Federal law enforcement actions against the Davidians, while active duty forces were not, is inconsistent with the spirit of the Posse Comitatus Act.

8. *The Department of Defense should streamline the approval process for military support so that Posse Comitatus Act conflicts and drug nexus controversies are avoided in the future.* The process should make clear to law enforcement agencies requesting Defense Department support the grounds upon which support will be given. Such requests should be assigned to a single office to ensure that support will be provided only in legitimate circumstances and in a manner consistent with the Posse Comitatus Act.

9. *The General Accounting Office should audit the military assistance provided to the ATF and to the FBI in connection with their law enforcement activities toward the Branch Davidians.* Given that the subcommittees have been unable to obtain detailed information concerning the value of the military support provided to the ATF and the FBI, the subcommittees recommend that the General Accounting Office conduct an audit of these agencies to ascertain the value of the military support provided to them and to ensure that complete reimbursement has been made by both agencies.

10. *The General Accounting Office should investigate the activities of Operation Alliance in light of the Waco incident.* The subcommittees conclude that Operation Alliance personnel knew or should have known that ATF did not have a sufficient drug nexus to warrant the military support provided on a nonreimbursable basis. Furthermore, given that the provision of assistance under such dubious circumstances appears to not have been an anomaly and the expansion of Operation Alliance's jurisdiction since Waco, the subcommittees recommend that the General Accounting Office conduct an investigation of Operation Alliance.

11. *Federal law enforcement agencies should redesign their negotiation policies and training to avoid the influence of physical and emotional fatigue on the course of future negotiations.* In anticipation of future negotiations involving unusually emotional subjects or those which may involve prolonged periods of time during which negotiators may become physically or emotionally fatigued, Federal law enforcement agencies should implement procedures to ensure that these factors do not influence the recommendations of negotiators to senior commanders.

12. *Federal law enforcement agencies should take steps to foster greater understanding of the target under investigation.* The subcommittees believe that had the Government officials involved at Waco taken steps to understand better the philosophy of the Davidians, they might have been able to negotiate more effectively with them, perhaps accomplishing a peaceful end to the standoff. The subcommittees believe that had the ATF and FBI been better informed about the religious philosophy of the Davidians and the Davidians' likely response to the Government's actions against them, these agencies could have made better choices in planning to deal with the Branch Davidians.

13. *Federal law enforcement agencies should implement changes in operational procedures and training to provide better leadership in future negotiations.* The subcommittees believe that placing greater emphasis on leadership in critical situations will not only protect the targets of Government action, but also will help to protect the safety of the law enforcement officers.

14. *Federal law enforcement agencies should revise policies and training to increase the willingness of their agents to consider the advice of outside experts.* The subcommittees note that the expertise of recognized negotiation experts, particularly those experienced with religiously-motivated groups, might have proved invaluable in assisting FBI negotiations with the Branch Davidians. Accordingly, the subcommittees recommend that Federal law enforcement agencies revise their policies and training so that their agents are open to the advice such experts might provide.

15. *Federal law enforcement agencies should revise policies and training to encourage the acceptance of outside law enforcement assistance, where possible.* The unwillingness of the FBI to accept support from State, local, or other Federal law enforcement agencies in connection with the standoff increased the pressure on the Attorney General to end the standoff precipitously. To avoid this type of pressure in the future, Federal law enforcement agencies should be open to the assistance that State and local law enforcement agencies may be able to provide.

16. *The FBI should expand the size of the Hostage Rescue Team.* The FBI should increase the size of the Hostage Rescue Team so that there are sufficient numbers of team members to participate in an operation and to relieve those involved when necessary. The FBI should also develop plans to utilize FBI and local law enforcement SWAT teams when extenuating circumstances exist.

17. *The Government should further study and analyze the effects of CS riot control agent on children, persons with respiratory problems, pregnant women, and the elderly.* The subcommittees note that only limited scientific literature exists concerning the effects of CS riot control agent, especially with regard to the effects of long-term exposure in a closed area. Until such time as more is known about the actual effects of exposure to this agent, the subcommittees recommend that CS not be used when children, persons with respiratory problems, pregnant women, and the elderly are present. Federal law enforcement agencies should develop guidelines for the use of riot control agents in light of this further study and analysis.

I. INTRODUCTION

A. THE NEED FOR THE WACO INQUIRY

On February 28, 1993, four special agents of the Bureau of Alcohol, Tobacco and Firearms (ATF) were tragically killed near Waco, TX, in a shootout with a religious sect known as the Branch Davidians. The group's leader, Vernon Howell, also known as David Koresh, was wounded in the violent confrontation, and several of its members were killed. Then on April 19, 1993, after a 51-day standoff with the Federal Bureau of Investigation (FBI), the episode came to a fiery conclusion when more than 70 Davidians, including 22 children, died inside the group's residence.

From any perspective, Waco ranks among the most significant events in U.S. law enforcement history. For ATF, it was the largest and most deadly raid ever conducted. For the FBI, it was an unprecedented failure to achieve a critical objective—the rescue of dozens of innocent women and children.

The television coverage and news accounts generated by the media at the scene near Waco presented a troubling picture to Americans. On the one hand, it seemed clear enough that a Jonestown-like religious cult led by an irrational leader had brought disaster on itself. On the other hand, images of the tanks and other military vehicles gave the impression that the FBI was using excessive force together with military weapons and tactics against U.S. citizens, contrary to our civilian law enforcement tradition. In the aftermath of the April 19th fire, Government officials, Members of Congress, and assorted observers called for a thorough review of the matter. Outside the corridors of power, a mixture of fact, rumor, and suspicion produced a wide variety of lasting impressions and conspiracy theories.

Both the Justice and Treasury Departments issued detailed written reports many months later. The Treasury Department Report criticized ATF personnel, but it exonerated all Department officials. The Justice Department Report found no fault with any actions of the FBI or any Justice Department official.

Several congressional committees conducted hearings in the weeks following the disaster. Unfortunately, little information was available from administration officials at the time. Representative Jack Brooks, chairman of the House Judiciary Committee, promised additional hearings to resolve remaining questions, but none were held.

Several developments in 1994 contributed to the pervasive view that serious questions about Waco remained unanswered. The criminal trial of the surviving Branch Davidians resulted in acquittals on murder charges. The self-defense arguments raised at trial and their obvious effect on the jury encouraged the public's outcry and desire for accountability. Journalists, investigators, and attor-

neys involved in the case decried the absence of candor and independence in the administration's reports and demanded a more comprehensive and detailed inquiry. In addition, widely distributed videotapes entitled "Waco: The Big Lie" and "Waco: The Big Lie Continues" had a significant impact on public opinion. Also, many policymakers read an article published in *First Things*, written by Dean Kelly of the National Council of Churches,¹ which stirred up considerable speculation about the ATF's conduct and the FBI's use of CS chemical agent. In short, by the start of the 104th Congress, the need for a sufficient and thorough congressional examination of the Waco tragedy was indisputable.

At the outset of the 104th Congress, both the Committee on the Judiciary and the Committee on Government Reform and Oversight indicated in their formal oversight plans, filed in February 1995, the intention to conduct hearings on the Waco matter. Representative Bill McCollum, chairman of the Subcommittee on Crime of the Committee on the Judiciary and Representative Bill Zeliff, chairman of the Subcommittee on National Security, International Affairs, and Criminal Justice of the Committee on Government Reform and Oversight stated on several occasions that such hearings were a necessary response to the widespread dissatisfaction with the Federal Government's followup to what happened at the Branch Davidian residence. The deplorable bombing in Oklahoma City 2 months later revealed the extent to which Waco continued to served as a source of controversy for some Americans. With the concurrence of the Speaker of the House and the chairmen of the Committees on the Judiciary and Government Reform and Oversight, the subcommittee chairmen began to organize comprehensive joint hearings on the Waco matter. As the July timetable was set for the hearings, both chairmen hoped a comprehensive investigation, primarily involving testimony from a wide variety of witnesses presented in public hearings, would lay to rest questions which persisted, assess responsibility for any misconduct, and ultimately restore full confidence in Federal law enforcement.

B. OPPOSITION TO THE INQUIRY

Opposition to the Waco hearings was to be expected. The Departments of Justice and Treasury believed that their respective reports were forthright and complete and that additional scrutiny would only result in more negative publicity. Clinton administration officials were concerned that the hearings would cause further political damage.

What was not expected was the extent to which the administration tried to control potential damage from the hearings. The White House staff assembled a damage control team and retained the services of John Podesta, a public relations specialist and former White House official who had worked for Handgun Control, Inc.² Treasury Secretary Rubin contacted at least one member of the joint subcommittees, Representative Bill Brewster of Oklahoma, and requested that he not ask any questions that might embarrass

¹Dean M. Kelley, *Waco: A Massacre and Its Aftermath*, *First Things*, May 1995, at 22.

²Ann Devroy, *Clinton Team Focuses Damage Control on Waco*, *Wash. Post*, July 19, 1995, at A12.

the administration.³ Also, the Treasury Department flew to Washington two Texas Rangers who were scheduled to testify before the subcommittees in order to help them prepare their testimony. The Justice Department, in concert with the subcommittees' Democrats, brought firearms recovered from the charred Davidian compound to Washington to be used as props.

Perhaps the most disturbing countermeasure was the charge, made by the President himself, that the hearings were an attack on law enforcement. Quite the opposite was the case. All involved in the planning and carrying out of the hearings and the investigation were strong supporters of Federal law enforcement. All believed that through airing and analysis of the Waco events by congressional oversight committees were necessary to the long-term credibility and viability of the Federal law enforcement agencies. The assertion that the hearings were antilaw enforcement was contrary to the unambiguous views of Federal law enforcement leaders. Finally, and perhaps the strongest response to the subcommittees' critics, is that the Waco hearings did in fact serve to strengthen public confidence in Federal law enforcement. The public was clearly reminded that we live in a Nation of laws and no power sits above those laws. Americans are far more likely to support law enforcement authorities when they know that such authorities will be held accountable for their actions.

A final issue that arose at the start of the hearings was the extent to which the subcommittees would consider the character of David Koresh. In the minds of some, evidence of Koresh's despicable behavior would provide sufficient justification for not scrutinizing the conduct of Federal law enforcement officials. The subcommittees were prepared to stipulate then and now that Koresh was, on one level, responsible for the death and destruction that occurred at Waco. His actions inside the Davidian's religious community were of the vilest sort. Nevertheless, Koresh was not accountable to the people's elected Representatives in Congress as are Federal law enforcement authorities. Hence the subcommittees' inquiry concerned executive branch conduct, and not that of David Koresh.

C. THE NATURE OF THE INQUIRY

Given the extensive and expanding public concern about the Federal Government's actions against the Branch Davidians, and the effect such concerns were having on the credibility of Federal law enforcement, the subcommittees determined, in early 1995, that it would be advisable to hold hearings as soon as practicable. As a result, rather than using the hearings as a forum for presenting the results of a lengthy and completed investigation, it was decided that the hearings would consist of an exhaustive public airing of the issues associated with Waco. These "discovery hearings," rather than "presentation hearings," would afford members of the joint subcommittees, interested attendees, the media, and C-SPAN audiences an opportunity to hear from the people who were directly involved in the Waco matter.

³Sue Ann Pressley, *Witnesses Say Waco Warnings Went Unheeded*, Wash. Post, July 22, 1995, at A11.

The structure of the inquiry consisted of requests for and review of documents before and during the hearings; a pre-hearing investigation phase, including numerous interviews with many of the persons involved; the hearings themselves; and a post-hearing investigation.

1. DOCUMENT REQUESTS AND REVIEW

On June 8, 1995, subcommittee Chairmen McCollum and Zeliff delivered document production requests to the Federal agencies involved at Waco. The agencies contacted were the Departments of Defense, Justice, and the Treasury. The White House also received a document request. The subcommittees took the position that virtually every Federal agency document associated with the Waco incident required some level of review. To review the matter any less thoroughly would leave lingering doubt as to whether a complete and comprehensive job had been done.

Despite public commitments and private assurances of cooperation by the relevant departments, the subcommittees experienced a lack of cooperation which clearly frustrated hearing preparations. Throughout the month of June and early July, representatives of the White House, and Departments of Treasury and Justice attempted to narrow the scope of the subcommittees' requests and restrict access to a wide array of information. The first significant documents were delivered only 3 weeks prior to the hearings, some just days before, and tens of thousands of others were received after the hearings had already begun. This "wait-and-dump" strategy rendered meaningful staff review of many key documents virtually impossible prior to commencement of the hearings.

Moreover, the task of reviewing these documents was made more difficult by the manner in which they were presented. The Treasury Department's documents were in no apparent order, making the retrieval of a particular document nearly impossible. In what became symbolic of the administration's uncooperative attitude experienced by the subcommittees, it was discovered that the minority, but not the majority, had been provided an index for locating Treasury documents.

It should be noted that cooperation, particularly from the Department of Justice, improved considerably shortly before the hearings began and continued throughout the course of the public inquiry.

2. INVESTIGATION AND INTERVIEWS

The subcommittees engaged in investigative interviews, an examination of physical evidence, and an onsite inspection of the former Branch Davidian residence as a part of the preliminary inquiries. Both majority and minority staff traveled to Austin and Waco, TX, for a factfinding trip. Interviews were conducted with several Branch Davidians both at the former residence and at the home of Sheila Martin, widow of Wayne Martin, who died in the April 19 fire. Former Davidian Clive Doyle provided a tour of the ruins of the Davidian residence. Staff also met with members of the local county sheriff's office and with FBI personnel who, among other things, also took them on a visit to the Davidian residence site.

The staff also had an opportunity to inspect the physical evidence taken from the ruins of the residence after the fire, much of which had been used in the criminal trial of surviving Davidians. By prior agreement with the Justice Department, a potential witness at the hearings, Failure Analysis Associates, Inc., was to inspect some of the physical evidence in order to respond to tampering allegations. It was believed that the views of scientists from Failure Analysis, who had often performed scientific evaluations for the Federal Government, including the Justice Department and NASA after the *Challenger* explosion, would be beneficial given public suspicions about the firearms recovered from the site of the Davidian residence. The inspection would not have damaged the weapons and was to have been conducted in the presence of all parties. It was hoped that the inspection would determine whether the Davidians had attempted to alter legal, semiautomatic weapons by converting them into illegal, automatic weapons as the ATF had alleged, and whether any of this evidence had been altered after it was gathered from the destroyed Davidian residence. When the scientists arrived in Austin, the Department declined to make the firearms available to them. The Department agreed instead to conduct the tests itself and present its findings to the subcommittees. A short time later, the Department urged, for cost considerations, that the tests not be performed. As a result, no tests were performed on the firearms.

Pre-hearing interviews were held with senior officers of the Texas Rangers, authors of books about the Waco disaster, personnel in the McLennan County Sheriff's Office, and officials from the Departments of the Treasury, Justice, and Defense, ATF, Drug Enforcement Administration, and the FBI. Also, thousands of pages of materials submitted by outside groups and individuals interested in Waco were reviewed. Regrettably, the Treasury Department balked at making ATF agents available for interviews. The Department steadfastly refused to allow the subcommittee staff to meet with ATF agents who participated in the raid. Only the threat of subpoenas secured the appearance of ATF agents at the hearings. The inability to interview these individuals before public hearings was a significant investigative roadblock.

Finally, the subcommittees' staff traveled to Fort Bragg, NC, to interview the Army personnel involved with the training of ATF agents in preparation for the raid. Several of the military personnel involved with the training were not available prior to the hearings due to duty assignments, however, other military personnel whom the staff sought to interview, and who were stationed at Fort Bragg, were not made available to the subcommittees' staff for interviews. Disturbingly, all of the military personnel interviewed by the subcommittees' staff were counseled about the interviews prior to them by senior commanders, despite requests to the contrary.

3. HEARINGS

The plan for the Waco hearings was to receive testimony under oath from as many persons material to the matter as possible. Thus, nearly 100 witnesses appeared before the joint subcommittees over a period of 10 days. The hearings included individuals

from ATF and the Treasury Department who played critical roles in the investigation of David Koresh, and the planning, approval and execution of the February 28 raid. They also included the key participants from the FBI and the Justice Department with regard to the 51-day standoff and the planning, approval, and execution on April 19 of the plan to end the standoff. More than a dozen experts on issues associated with Waco, such as fire, riot control agents, and tactical operations testified. The attorneys who represented Koresh, Davidian Steve Schneider, and several Davidian survivors of Waco also were among the witnesses.

The minority was afforded an opportunity to add witnesses to the panels. Every effort was made to accommodate the requests received; more than 90 percent of the names submitted by the minority were added to the witness lists. The administration also requested witnesses to be included. On a few occasions, these requests conflicted with the minority's requests. Again, these desires were accommodated to the greatest extent practicable.

The transcripts of these hearings will serve as a valuable tool for years to come. Many of the most significant documents were incorporated into the record. Many others are gathered in the appendix to this report. Additionally, the appendix contains a complete listing of hearing witnesses.

4. POST-HEARING INVESTIGATION

Additional document requests were made after the hearings to the Departments of the Treasury, Justice, and Defense. Unfortunately, the lack of cooperation from the Treasury and Defense Departments which existed prior to the hearings continued, delaying release of the subcommittees' report.

Other investigative activities which occurred after the hearings included inspection of photographs at the FBI laboratories and interviews with munitions experts, experts on riot control agents, and National Guard officials. Numerous written questions were posed to the Justice, Treasury, and Defense Departments. For the most part, they were answered. Legal experts on the Posse Comitatus Act were consulted. Subcommittee staff also met with the FBI agent who drove one of the armored vehicles involved in the destruction of the backside of the Davidian residence and other FBI officials involved at Waco. Finally, several investigative reporters shared information they have gathered regarding the Waco matter.

D. THE STRUCTURE AND SCOPE OF THE REPORT

The report does not attempt to restate a chronological summary of what happened at Waco. The administration's reports, supplemented by several commercial publications, tell the story fairly well. Instead, to avoid duplication the report consists of review, analysis, and, where appropriate, recommendations concerning the major issues raised. It is structured in the same chronological pattern as the hearings.

E. ADDITIONAL COMMENTS

If Federal law enforcement actions since the Waco hearings are a fair indication, then the inquiry has already had a considerably

positive effect. The apparently increasing presence of separatist religious or antigovernment groups had created a significant new challenge for Federal law enforcement agencies. Finding the proper balance between the need to enforce Federal law with the responsibility to avoid violent confrontations will continue to be difficult. It is complicated by the fact that innocent people, especially children, are so often in harm's way. Yet, over the past several months, Federal law enforcement, and the FBI in particular, has demonstrated an increased level of tactical patience. This change in policy, combined with other important reforms instituted by Director Louis Freeh at the FBI and Director John Magaw at ATF, is to be commended.

II. THE ATF INVESTIGATION

In May 1992, the Austin, TX, Office of the Bureau of Alcohol, Tobacco and Firearms was called by Chief Deputy Daniel Weyenberg of the McLennan County Sheriff's Department. Weyenberg notified the ATF that his office had been contacted by the local United Parcel Service regarding a package it was to deliver to the Branch Davidian residence. The package had broken open and contained firearms, inert grenade casings, and black powder.⁴

On June 9, 1992, Special Agent Davey Aguilera of the Austin ATF office opened a formal investigation. Within a week, Phillip Chojnacki, the Special Agent in Charge of the Houston ATF Office classified the case "sensitive," thereby calling for a high degree of oversight from both Houston and headquarters in Washington, DC.⁵ Notwithstanding the priority given to the case, numerous and serious missteps occurred throughout the investigation that followed. The most troubling aspects of the case were the ATF's overall lack of thoroughness in its investigation, the ineffectiveness of the undercover operation, and an affidavit in support of the search and arrest warrants that was replete with deficiencies.

A. THE McMAHON COMPLIANCE VISIT

On July 30, Aguilera joined ATF compliance officer Jimmy Ray Skinner to conduct a compliance inspection of the premises of Henry McMahon, proprietor of Hewitt Hand Guns. The inspection revealed that certain AR-15 lower receivers supposedly in McMahon's inventory were neither on the premises nor listed in his records as sold.⁶ McMahon indicated that they were in the possession of David Koresh. McMahon then called Koresh, who offered to allow the agents to inspect for possible firearms violations. The agents declined the invitation.⁷ Shortly thereafter, McMahon told Koresh that he was suspicious that an investigation of Koresh and his followers was underway.⁸

It is unclear why the ATF did not accept the offer to do a compliance inspection of Koresh's firearms. Importantly, the Treasury Report fails to mention that Aguilera had an opportunity at the time of the compliance inspection to inspect Koresh's firearms. Wade Ishimoto, a reviewer of the Treasury Department Report, indicated to the subcommittees that he had not been made aware of the

⁴U.S. Department of the Treasury, Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco and Firearms Investigation of Vernon Wayne Howell also known as David Koresh 17 (1993) [hereinafter Treasury Department Report].

⁵Treasury Department Report at 24.

⁶*Id.* at 26.

⁷*Investigation Into the Activities of Federal Law Enforcement Agencies Toward the Branch Davidians (Part 1): Hearings Before the Subcommittee on Crime of the House Committee on the Judiciary and the Subcommittee on National Security, International Affairs, and Criminal Justice of the House Committee on Government Reform and Oversight, 104th Cong., 1st Sess. 163 (1995) [hereinafter Hearings, Part 1].*

⁸*Id.*

McMahon compliance visit by the Department of Treasury during his review.⁹ Mr. Ishimoto maintained that Koresh's offer should have been accepted, presenting an invaluable opportunity to gather critical intelligence.¹⁰ The agents' decline of the Koresh offer was a serious mistake.

B. THE INVESTIGATION CONTINUED

Tracing UPS invoices, Aguilera learned that more than \$43,000 worth of firearms (including AR-15 semiautomatics), firearms parts (including AR-15 lower receivers), grenade hulls, and black powder had been shipped to the Davidians' storage facility.¹¹ One of Koresh's neighbors, who had served in an Army artillery unit, told Aguilera that he had frequently heard the sound of automatic weapons fire—including .50-caliber fire—coming from the Davidian residence.¹² Aguilera also learned that in November, a deputy sheriff had heard a loud explosion at the Davidian residence which produced a cloud of grey smoke.¹³ Through interviews with former cult members, Aguilera learned of numerous allegations that Koresh had had sexual relations with girls younger than 16 years of age.¹⁴ These allegations would later feature prominently in Aguilera's affidavit in support of the search and arrest warrants.

In December 1992, after reviewing all of the available evidence associated with the Koresh investigation in ATF headquarters in Washington, ATF decided they did not yet have probable cause to support a warrant. Director Higgins stated: "[W]e went out and got more information and came back in February. . . . We didn't have it [probable cause] until mid-February."¹⁵ As part of its effort to develop probable cause and to gather additional intelligence, on January 10, 1993, the ATF set up surveillance cameras in an undercover house across from the Davidian residence. The surveillance produced no additional evidence of criminal activity. Former Davidians were interviewed in December 1992 and January 1993. Among those interviewed were three members of the Bunds family, all of whom had left the compound before 1992. The events that were described by the Bunds occurred prior to 1992,¹⁶ and the information they provided was so stale as to be of little or no value.

Importantly, the only activity mentioned in the affidavit involving the Branch Davidians that occurred between December 1992 and February 1993 was Agent Rodriguez' undercover visits to the Davidian residence. The visits consisted of Koresh speaking to Rodriguez about second amendment rights, Koresh showing a tape of alleged ATF abuses, and the two men shooting legal firearms at the compound's range. It appears that Rodriguez discovered no evidence during his visits that would have contributed to a finding of probable cause, or that would have provided valuable information to guide subsequent ATF action. Nevertheless, in a case of such po-

⁹ Hearings, Part 1 at 332.

¹⁰ *Id.*

¹¹ Treasury Department Report at 21, B-182.

¹² *Id.* at 26.

¹³ *Id.* at 27.

¹⁴ *Id.* at 27-29.

¹⁵ *Events Surrounding the Branch Davidians Cult Standoff in Waco, Texas: Hearings Before the House Committee on the Judiciary*, 103d Cong., 1st sess. (1993).

¹⁶ Treasury Department Report at 27-28.

tential danger that it was designated “sensitive” and “significant,” the ATF proceeded with its February raid.

Throughout the ATF’s investigation decisions were made and actions were taken which demonstrated a reckless disregard for the value of well-developed intelligence. Furthermore, the haphazard manner in which the investigation was pursued repeatedly exposed the lack of adequate command, control and communications processes to support such an operation.

C. UNDERCOVER OPERATION

On January 11, 1993, eight ATF agents moved into a small house directly across from the front drive of the Davidian residence, posing as college students attending the nearby Texas State Technical College. Through a series of mistakes, the ATF appeared to lose the security of its undercover operation. At least some of the breaches of security were so serious, and obvious, that they should have been recognized as such by ATF, and become the basis for modifying the nature and timing of any subsequent action against Koresh.

There is substantial evidence to suggest that Koresh and the Davidians knew that the undercover house established by the ATF across the street from the compound was occupied by law enforcement officials. Koresh told his next door neighbor that he believed that the self-identified “college students” were too old to be actual college students, with cars too new and expensive to be owned by college students. He commented that they were probably Federal agents.¹⁷ The agents were also informed by one of Koresh’s neighbors shortly after they began surveillance that Koresh suspected they were not what they claimed to be.¹⁸ On one occasion, the Davidians visited their new neighbors in the undercover house to deliver a six pack of beer, but the occupants of the house would not let them in.¹⁹ Finally, Koresh complained to the local sheriff that the UPS delivery man was an undercover police officer.²⁰ Koresh commented that he did not appreciate being investigated. At the hearing, Agent Rodriguez testified that “all of [the undercover ATF agents], or myself knew we were going to have problems. It was just too—too obvious.”²¹

The undercover operation was also undermined by its limited nature: The 24-hour-a-day surveillance was only sustained from January 11 through January 19, at which time Agent Chuck Sarabyn, the ATF tactical commander, ended the constant surveillance and redirected the mission toward infiltration of the compound.²² It was later determined at trial that during the period of constant surveillance the agents within the house did not know what Koresh looked like. Rodriguez testified at trial that the only picture identification that the agents possessed was “a driver’s license picture of him, which was not that good. That was one reason we [later] needed to make contact with the people inside the compound, so we

¹⁷ *Id.* at 187.

¹⁸ *Id.*

¹⁹ Dick J. Reavis, *The Ashes of Waco* 67 (1995).

²⁰ *Id.* at 69.

²¹ Hearings, Part 1 at 788.

²² Treasury Department Report at 52.

could identify him. I myself did not know what he looked like [at the time of surveillance].”²³ Significantly, the surveillance log cites two occasions when a white male jogged up and down the road on which the undercover house was located.²⁴ If this jogger had been Koresh, according to Rodriguez’ trial testimony, the agents would not have known it. The lack of an effective surveillance operation was further demonstrated through the ATF’s failure to develop nearly 900 photographs taken from the undercover house or to review videotapes of the movements of the Davidians.²⁵ This evidence represented an opportunity to develop critical intelligence regarding the habits and movements of compound residents, including Koresh.

The lack of such basic and critical intelligence clearly undermined the ability of the undercover operation to fulfill its mission. The operation’s failure to develop useful intelligence after 8 days of continuous surveillance should not have led to the termination of the surveillance, but rather to its modification and prolongation. Given the potential for danger to agents and those within the compound and the dearth of intelligence, the decision to end around-the-clock surveillance was seriously flawed. Significantly, all of the ATF supervisory agents involved in the planning of the operation believed the continuous surveillance continued beyond the date it was actually ended. This mistaken belief both confirms that the termination of the surveillance was ill-advised, and highlights the wholly inadequate command, control and communications processes utilized by ATF throughout the operation. The eyes and ears were poorly utilized, and what intelligence they did supply was poorly used.

D. FAILURE TO COMPLY WITH “SENSITIVE-SIGNIFICANT” PROCEDURES

As noted in the Treasury Report, the Koresh investigation was classified as “sensitive” and “significant” within a week of its formal initiation on June 9, 1992. Such a classification is intended to ensure a higher degree of involvement and oversight from both the ATF Special Agent in Charge and ATF headquarters. Yet, in spite of this designation, the agents in charge of the investigation received minimal oversight in developing the investigation and raid, with important elements of the plan, such as whether or not to abort the raid if the element of surprise was lost, apparently not being understood by the agents in charge. In view of this designation, the lack of knowledge on the part of the Special Agent in Charge, and headquarters, throughout the investigation—including the undercover operation—is striking. The “sensitive/significant” designation makes ATF’s failure to have implemented a process for continually reviewing intelligence and modifying plans accordingly a glaring omission.

²³ *United States v. Branch, et al.*, Case No. W-93-CR-046 (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) & (12) (W.D. Tex. 1994).

²⁴ ATF Surveillance Log.

²⁵ Hearings, Part 1 at 799.

E. THE AFFIDAVIT IN SUPPORT OF THE WARRANTS

The subcommittees examined the constitutionality of the search and arrest warrants, carefully reviewing the information contained in the supporting affidavit.

The fourth amendment to the Constitution provides: "No warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."²⁶ The Supreme Court has ruled that, in order for this protection to be enforced, a warrant may issue only upon the determination of a neutral and detached magistrate that probable cause exists to believe that the search will yield evidence of criminality.²⁷ The standard articulated in *Illinois v. Gates*, which guides a magistrate's probable cause determinations, is whether "there is a fair probability that contraband or evidence of a crime will be found in a particular place."²⁸ Such a determination is, in the Supreme Court's words, a "practical, common-sense decision whether, given all the circumstances set forth in the affidavit before the magistrate . . . there is a fair probability that the contraband or evidence of a crime will be found in a particular place."²⁹

When applying this common sense standard to the circumstances of the ATF investigation, the affidavit appears to have contained sufficient evidence of violations of Federal firearms law to support the magistrate's decision to issue the warrants.³⁰ There were substantial purchases of AR-15 semiautomatics and AR-15 lower receivers, grenade hulls, and black powder. A neighbor, who had served in an Army artillery unit, testified that he had frequently heard the sound of automatic weapons fire. A deputy sheriff testified that he had heard a loud explosion at the Davidian residence which produced a cloud of grey smoke. Taken together, this information provided a sufficient basis for finding probable cause to issue the warrants.

While the warrants may have met the minimal standard of constitutional sufficiency, the affidavit supporting the warrants contained numerous misstatements of the facts, misstatements of the law, and misapplication of the law to the facts, and serves as a de facto record of a poorly developed and mismanaged investigation. The affidavit included misleading and factually inaccurate statements, contained substantial irrelevant and confusing information, and failed to properly qualify witnesses' testimony when obviously called for based on their backgrounds. Consequently, the affidavit gave the appearance that the ATF was not going to let questionable facts or evidence stand in the way of moving forward on their timetable.

The affidavit provided and sworn to by Aguilera contained numerous errors and misrepresentations, which, taken together, create a seriously flawed affidavit. The affidavit misstated that

²⁶ U.S. Const. amend IV.

²⁷ *United States v. Leon*, 468 U.S. 897 (1984).

²⁸ *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

²⁹ *Id.*

³⁰ All of the constitutional scholars contacted by the subcommittees agreed with the conclusion that there was probable cause in support of the warrants. See Hearings, Part 1 at 810 (Letter from Albert W. Altschuler, Wilson-Dickinson Professor of Law, University of Chicago to Rep. John Conyers, Jr. (July 13, 1995)).

Koresh possessed a British Boys antitank .52 caliber rifle, when in fact Koresh owned a Barret light .50 firearm.³¹ Possession of the British Boys would have been a felony³² while possession of the Barret was completely legal. The affidavit misstated that the M-16 parts kits from Nesard company were two CAR and two EZ kits which contained all the parts of an M-16 machinegun except for the lower receiver unit, when, in fact, the Nesard parts kits do not contain the auto sear and pin which are absolutely necessary to convert semiautomatic weapons to machineguns.³³ The affidavit failed to mention that grenade hulls like those cited in the affidavit to help establish probable cause had been sold by the Davidians in the past at gun shows as paper weights and mounted on plaques. Finally, the affidavit was misleading by reporting that Deputy Sheriff Terry Fuller was in the vicinity of the compound when he heard a loud explosion, but then failed to report that Fuller investigated and learned that the Davidians were using dynamite for construction.

Former Davidian Marc Breault provided much of the information contained in the ATF's affidavit. Yet, nowhere in the affidavit is it mentioned that Breault left the compound as an opponent of Koresh, a fact certain to call into question Breault's motives. Nor does the affidavit mention that he is blind. On the contrary, the affidavit implies that he was a compound bodyguard. It states that Breault "participated in physical training and firearm shooting exercises conducted by Howell. He stood guard armed with a loaded weapon."³⁴

The affidavit also contained misapplications of firearms law. The affidavit alleged the violation of one statute: 26 U.S.C. § 5845(f). This statute, however, merely defines "destructive device." It does not establish any crime. It is 26 U.S.C. § 5861 which establishes crimes related to destructive devices. The affidavit also confused the term "explosive" with the term "explosive device," a term which does not appear in Federal law.

In the affidavit, Aguilera misstated that a "machinegun conversion kit" was a combination of parts "either designed or intended" to convert a semiautomatic into an automatic firearm. In fact, Federal law defines a conversion kit to be a combination of parts "designed *and* intended" to convert a semiautomatic into an automatic.³⁵

In the affidavit, Aguilera also misstated that Koresh had ordered M-16 "EZ kits." The kits to which Aguilera was referring are called "E-2" kits. Furthermore, the E-2 kit is a spare parts kit, not a conversion kit. It contains spare parts which fit either a semiautomatic Colt AR-15 Sporter or an automatic Colt M-16 automatic. Because it is not a conversion kit, the E-2 kit is not regulated by Federal law. Yet the affidavit implies that the kit's purpose is for converting semiautomatics into automatics. On this point, the

³¹ Affidavit of Davey Aguilera in support of arrest warrant, at 14 [hereinafter Aguilera Affidavit]. [See documents produced to the subcommittees by the Department of the Treasury T004700-T004714 at Appendix [hereinafter Treasury Documents]. The Appendix is published separately.]

³² 26 U.S.C., Ch. 53.

³³ Aguilera Affidavit at 5.

³⁴ Aguilera Affidavit at 12.

³⁵ See 26 U.S.C. § 5845.

Treasury Department Report is mistaken as well. While it correctly named the E-2 kit, it wrongly asserted that "the parts in the kit can be used with an AR-15 rifle or lower receiver to assemble a machinegun. . . . The parts in the E-2 kit also can be used to convert an AR-15 into a machinegun."³⁶ These assertions are false. The Treasury Department regulates genuine conversion kits as if they were themselves machineguns. It does not regulate E-2 kits.

Intimating that Koresh was converting AR-15 Sporters and semiautomatic copies of AK-47's into automatics, Aguilera included evidence of purchases made by Koresh from a South Carolina Company which was known to sell parts needed to convert semiautomatics of the type that Koresh possessed into automatics. Aguilera failed even to allege that Koresh purchased parts from this company which would have allowed the conversion of semiautomatics into automatics. Nowhere in the affidavit is there evidence that Davidians were manufacturing their own automatic sears, or modifying the lower receivers of semiautomatics, both of which would have been violations of firearms laws.

The affidavit was misleading in that it falsely referred to "clandestine" publications. The affidavit reported that in June 1992, a witness had "observed at the compound published magazines such as, the *Shotgun News* and other related clandestine magazines."³⁷ Far from clandestine, *Shotgun News* has a circulation of about 165,000. Subscriptions are available by mail or telephone. The Austin, TX, ATF office—Aguilera's home office—was a subscriber.

F. FINDINGS CONCERNING THE ATF INVESTIGATION

1. *The ATF's investigation of the Branch Davidians was grossly incompetent.* It lacked the minimum professionalism expected of a Federal law enforcement agency. Among the failures of the investigation were:

The failure to accept Koresh's offer to inspect the firearms held at the Branch Davidian residence. It is unclear why the ATF did not accept the offer to conduct a compliance inspection of Koresh's firearms. What is clear is that the agents' refusal of Koresh's invitation was the first of a series of instances in which the ATF rejected opportunities to proceed in a nonconfrontational manner. The agents' decision to decline Koresh's offer was a serious mistake.

The failure to recognize obvious breaches of surveillance security. Some of these breaches were so serious and obvious that they should have been recognized by the ATF agents and commanders involved, and should have become the basis for modifying the nature of the surveillance.

The failure to analyze intelligence gathered during the undercover operation, including more than 900 photographs of activities around the Branch Davidian residence. These photographs could have led to the development of critical intelligence regarding the habits and movements of the Davidians, and Koresh in particular.

³⁶ Treasury Department Report at 23-24.

³⁷ Aguilera Affidavit at 14.

The premature termination of the undercover operation. The operation's failure to develop useful intelligence after 8 days of continuous surveillance should not have led to the termination of the surveillance, but rather to its prolongation. Given the potential for danger to agents and those within the residence, and the dearth of intelligence, the decision to end around-the-clock surveillance was seriously flawed.

2. *While the ATF had probable cause to obtain the arrest warrant for David Koresh and the search warrant for the Branch Davidian residence, the affidavit filed in support of the warrants contained numerous false statements.* The ATF agents responsible for preparing the affidavits knew or should have known that many of the statements were false.

3. *David Koresh could have been arrested outside the Davidian compound.* The ATF deliberately chose not to arrest Koresh outside the Davidian residence and instead determined to use a dynamic entry approach. In making this decision ATF agents exercised extremely poor judgment, made erroneous assumptions, and ignored the perils of this course of action which they should have foreseen.

G. RECOMMENDATIONS

1. *Whenever it is feasible to achieve its objectives, the ATF should use less confrontational tactics.* The ATF had an opportunity to search the Davidian residence at the invitation of Koresh. Koresh was off the property and subject to the capture of law enforcement on numerous occasions before the raid. The ATF should have taken advantage of these less confrontational opportunities. The ATF should pursue such alternatives in the future.

2. *Federal law enforcement agencies should verify the credibility and the timeliness of the information on which they rely in obtaining warrants to arrest or search the property of an American citizen.* The affidavits on which the arrest and search warrants of Koresh were ordered contained information provided to the ATF by informants with obvious bias toward Koresh and the Davidians. In addition, much of the information was stale, based on experiences years before the investigation. The ATF should obtain fresh and unbiased information when relying on that information to arrest or search the premises of the subjects of investigations.

3. *The ATF should make every effort to obtain continuous and substantial intelligence and should ensure that the efforts to obtain such intelligence are not hindered by breaches of security.* The ATF had a broken and insecure intelligence operation. Gaps in the surveillance and breaches of the security of undercover operations jeopardized the investigation and the raid. The ATF should take precautions to ensure that these breaches do not occur in the future.

4. *If the false statement in the affidavits filed in support of the search and arrest warrants were made with knowledge of their falsity, criminal charges should be brought against the persons making the statements.*

III. PLANNING AND APPROVAL OF THE RAID

The ATF had a variety of options in the manner in which it could have served the arrest and search warrants on Koresh. These options included luring Koresh off the Davidian residence, arresting Koresh while he was off the Davidian property, surrounding the Davidian residence and waiting for Koresh to surrender himself and consent to the search, and executing a "dynamic entry" style raid into the residence. The ATF chose the dynamic entry raid, the most hazardous of the options, despite its recognition that a violent confrontation was predictable. The decisions regarding the raid were made without the participation of either Secretary of the Treasury Lloyd Bentsen or the Deputy Secretary of the Treasury Roger Altman.

A. WAS "SHOW TIME" EVEN NECESSARY?

The subcommittees received evidence of numerous opportunities to arrest Koresh away from the residence, thereby reducing the likelihood of violence. The failure to make use of these opportunities raises the question of the dynamic entry's necessity. ATF officials offered at least three different reasons for this critical decision.

ATF Special Agent Phillip Chojnacki, the overall commander of the raid, testified that Koresh could not be arrested outside the residence because the intelligence from the undercover house was that he rarely left the residence.³⁸ ATF did not want the tactical problem of having agents on standby indefinitely while they waited for the rare occurrence of Koresh going into town.

Yet the testimony before the subcommittees revealed that Koresh left the Davidian residence at least once a week during January and February.³⁹ David Thibodeau, who lived at the Branch Davidian residence but did not consider himself to be a member of the Branch Davidian religious community, testified that Koresh was a regular jogger.⁴⁰ It was also revealed during the trial that Koresh had left the residence on January 29, 1993, to conduct business at a machine shop.⁴¹ Finally, the manager at the Chelsea Bar and Grill in Waco stated that they served Koresh about once a week through February.⁴²

ATF agents next explained that it did not make practical sense to arrest Koresh outside because he would immediately be released and would be back at the residence. The window was simply too narrow.⁴³ This answer also lacked credibility since Federal law pro-

³⁸ Hearings, Part 1 at 416.

³⁹ *Id.* at 123.

⁴⁰ *Id.*

⁴¹ *Id.* at 124.

⁴² *Id.*

⁴³ *Id.* at 309-312.

vides that the arrestee can be held for 3 days upon motion of the Government.⁴⁴

Finally, ATF officials testified at the hearings that they abandoned the idea of trying to arrest Koresh outside the residence because their primary goal was to get inside to conduct a search. These officials maintained that it was preferable to attack the residence by surprise and get Koresh and the guns at the same time.⁴⁵ However, the ATF had developed its own scheme to lure Koresh off the complex. The ruse was proposed to Joyce Sparks, the social worker who had conducted an earlier child protection investigation at the Branch Davidian residence. Sparks was to contact Koresh, who she had come to know relatively well, and make an appointment with him to be held in her office. While Sparks agreed to cooperate with the ATF, Sparks' supervisor refused to approve the ruse tactic.⁴⁶

B. WAS THE VIOLENT OUTBURST PREDICTABLE?

The record of the subcommittees' investigation shows that persons who through contact and experience became familiar with the belief system and the authoritarian structure of the Branch Davidians could have predicted a violent resistance by the Davidians to a mass law enforcement action. The Branch Davidians predicted a violent apocalypse, a vision that followers believed be necessary to go to heaven.⁴⁷

The ATF investigative agents interviewed Sparks, who had kept lines of communication open between Koresh and herself even after the end of her Child Protective Services investigation. During their conversations, Koresh would often provide lengthy presentations of his religious beliefs. Sparks developed an understanding of how Koresh thought and how he was viewed within the Branch Davidian group at the residence. When ATF sought her opinion about the raid, she stated that the Branch Davidians believed that Koresh was the Lamb of God and that they would protect him to the death. "They will get their guns and kill you," Sparks recalls saying.⁴⁸

The ATF also received information from Marc Breault, a former Branch Davidian and resident at Mount Carmel, the Davidians' home.⁴⁹ Contact between ATF and Breault was made during December 1992. During that time and up to the time of the raid, the former Branch Davidian provided information about the Davidians and Koresh in particular, including his past correspondence. In a paper prepared by Breault and provided to the ATF, a recent history of the Branch Davidians recounts the group's views that the world will end in a final violent battle.

⁴⁴ 18 U.S.C. § 3142(f).

⁴⁵ Hearings, Part 1 at 221-222.

⁴⁶ *Id.* at 595.

⁴⁷ James D. Tabor & Eugene V. Gallagher, *Why Waco?* 7-10 (1995).

⁴⁸ Hearings, Part 1.

⁴⁹ U.S. Department of the Treasury, Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco and Firearms Investigation of Vernon Wayne Howell also known as David Koresh 29 (1993) [hereinafter Treasury Department Report].

C. THE PREDISPOSITION TO DYNAMIC ENTRY

An examination of ATF's timeline in the Waco investigation and raid planning activities reveals that planning for a military style raid began more than 2 months before undercover and infiltration efforts even began.

1. THE SOURCE OF THE PREDISPOSITION

a. *The culture within the ATF*

Management initiatives, promotional criteria, training, and a broad range of other cultural factors point to ATF's propensity to engage in aggressive law enforcement. Senior officials from other law enforcement agencies have commented on the ATF raid. Several have informed the subcommittees that their organizations would not have handled the execution of the Branch Davidian search warrants in the aggressive way chosen by ATF.⁵⁰ For example, Jeffrey Jamar, the FBI Special Agent in Charge of the Waco standoff, was asked about the FBI's approach to such a circumstance. He stated that he "would not have gone near the place with 100 assault weapons."⁵¹

b. *The Waco Tribune-Herald's "Sinful Messiah"*

One factor affecting ATF's decision to employ a dynamic entry was the impending release of a newspaper story about Koresh and the Davidians which revealed the Federal law enforcement investigation then underway. The Waco Tribune-Herald had planned to release a series of articles on David Koresh in early 1993.⁵² Fearing publication of the article, ATF hastened its plans to serve the arrest and search warrant. It was unclear, however, how Koresh would react to the story. In fact, ATF Special Agent Robert Rodriguez suggested that the newspaper article did not upset Koresh.⁵³

2. RAID APPROVAL AND LACK OF TREASURY DEPARTMENT OVERSIGHT OF ATF

Testimony received during the hearings established that there was no process through which Treasury Department officials were able to review pending ATF matters prior to their reaching a crisis stage. In the investigation of Koresh, there was no oversight by Treasury over the ATF's planning and execution of the raid until approximately 48 hours before the raid occurred.⁵⁴ Testimony revealed that, even though Bentsen had been Treasury Secretary for approximately 1 month at the time of the ATF raid, and Altman had been serving as Deputy Secretary for the same time period, ATF Director Steven Higgins had never met either of them, let alone briefed them regarding the investigation and planned raid.

⁵⁰ *Investigation Into the Activities of Federal Law Enforcement Agencies Toward the Branch Davidians (Part 3): Hearings Before the Subcommittee on Crime of the House Committee on the Judiciary and the Subcommittee on National Security, International Affairs, and Criminal Justice of the House Committee on Government Reform and Oversight, 104th Cong., 1st Sess. 300 (1995)* [hereinafter *Hearings, Part 3*].

⁵¹ *Id.*

⁵² Treasury Department Report at 67-68.

⁵³ *Hearings, Part 1* at 749, 797.

⁵⁴ *Id.* at 519-520.

This point was established at the hearings during the questioning of Higgins by Representative Ed Bryant.

Mr. BRYANT of Tennessee. When did you first meet with the Secretary to discuss anything about your agency, the ATF?

Mr. HIGGINS. I don't remember any briefings with the Secretary. I haven't gone back to look at my documents. Probably in that first month, month and a half, I don't remember any meetings with him. The only interaction we really had during the transition would have been with Mr. Simpson.

Mr. BRYANT of Tennessee. Are you saying that you never had met with Secretary Bentsen prior to this point?

Mr. HIGGINS. I can't remember having gone to a staff meeting while he was there . . . I don't remember specifically today having been at one with him.

Mr. BRYANT of Tennessee. Had you ever met with his deputy, Mr. Altman, before this raid?

Mr. HIGGINS. I don't believe I knew Mr. Altman until then. I knew who he was, obviously.

Mr. BRYANT of Tennessee. Well, I am a little confused here. You are saying that you were the Director of the ATF, which we all know is very significant, powerful element of the Department of Treasury, and you had not met with your ultimate boss, the Secretary, for 30 days or so?

Mr. HIGGINS. I don't believe so, other than maybe to shake hands, and I don't even remember doing that. It is interesting that those who think there is some giant conspiracy in the Government don't realize how little we knew each other.⁵⁵

Under Congressman Bryant's further questioning, Higgins testified that there was no procedure in place for the Director of the ATF to apprise the Secretary or Deputy Secretary of the ATF's plans.

Mr. BRYANT of Tennessee. Was there any process or procedure available to you as the Director of the ATF to brief either the Deputy or the Secretary?

Mr. HIGGINS. I could have called them and said, yes, I would like to brief you on something. I think they were accessible, yes.

Mr. BRYANT of Tennessee. But there was no routine process? This was not regularly done at that point?

Mr. HIGGINS. No routine process, although most secretaries at some point set up a system where there is a regular, either every week or every 2 weeks, meeting with Bureau heads.⁵⁶

The testimony before the subcommittees consistently depicted a Treasury Department that treated ATF as its lowest priority. Department officials repeatedly demonstrated a lack of interest in even major ATF actions, such as that of February 28, 1993. The Department maintained a culture that perceived law enforcement

⁵⁵ *Id.* at 566.

⁵⁶ *Id.* at 566-567.

as, at best, a peripheral part of its mission, according the ATF correspondingly little attention. This point was brought out during the hearings through questioning by Representative Bill McCollum, co-chairman of the subcommittees, of former Treasury Secretary Bentsen about his knowledge of the raid prior to February 28, 1993.

Mr. MCCOLLUM. When did you first learn of the raid or any plan for that raid?

Mr. BENTSEN. I was in London at my first meeting with G-7 with the Ministers of Finance and was very much involved in that one. I came back, to the best I can recall, some time early Sunday morning on a night flight from London, and in turn I did not find out about the raid, to the best of my memory, until early Sunday evening and that is the first knowledge I had of it at all.

Mr. MCCOLLUM. In other words, there was no discussion with you, no information passed to you prior to the time of the raid that it was anticipated or that it might exist or any nature—

Mr. BENTSEN. That is correct.

Mr. MCCOLLUM. Isn't it a little surprising one of the largest or one of the largest raids in the BATF's history was taking place, and the Secretary of the Treasury, the chief of all of the law enforcement of the ATF was not notified?

Mr. BENTSEN. I can well understand when I was abroad attending an international meeting involving questions of monetary exchange rates and some very serious subjects at that point, that others within the Department were handling the situation.

Mr. MCCOLLUM. But didn't you keep in contact with your office during the time you were over there? Weren't there telephone calls?

Mr. BENTSEN. Of course.

Mr. MCCOLLUM. Nobody in the law enforcement division thought you ought to be disturbed about this incident and asked about it. I understand.⁵⁷

Bentsen's responses reveal that throughout the planning of the raid, including the critical days just prior to its initiation, the Treasury Secretary knew nothing about it. Neither he nor his deputy knew anything about an imminent law enforcement raid—one of the largest ever conducted in U.S. history—being managed by his Department, which would endanger the lives of dozens of law enforcement agents, women, and children.

Other testimony from the hearings further demonstrated insufficient oversight by Treasury Department officials of ATF planning. At the hearings before the subcommittees, Representative McCollum questioned Christopher Cuyler, who in February 1993 was the ATF's liaison to the Treasury Department. Cuyler testified that no Treasury officials had knowledge about the potential for the raid until February 26—2 days before the raid was initiated.⁵⁸

⁵⁷*Id.* at 515–516.

⁵⁸*Id.* at 516.

The inadequate oversight of the ATF by Treasury Department officials was further evidenced in the final communications between Treasury and ATF in the day before the raid. The Department maintains that it conditioned the raid on ensuring the element of surprise was preserved. As stated in the Treasury Department Report, Department officials assured that those directing the raid were under express orders "to cancel the operation if they learned that its secrecy had been compromised. . . ." ⁵⁹ Yet, ATF officials, including Higgins, Cuyler, and the agents in charge of the raid testified that it was not at all clear to them that Treasury wanted the raid canceled if the element of surprise was lost. ⁶⁰

D. FAILURE TO COMPLY WITH "SENSITIVE-SIGNIFICANT" PROCEDURES

As noted in the Treasury Department Report, the Koresh investigation was classified as "sensitive" and "significant" within a week of its formal initiation on June 9, 1992. ⁶¹ Such a classification is designed to ensure a higher degree of involvement and oversight from both the ATF Special Agent in Charge and ATF headquarters, yet this designation was ignored in practice. In view of this designation, the lack of knowledge on the part of the Special Agent in Charge and ATF headquarters throughout the investigation, including the undercover operation, is striking. The "sensitive/significant" designation makes ATF's failure to have implemented a process for continually reviewing intelligence and modifying plans accordingly a glaring omission.

E. FINDINGS CONCERNING THE PLANNING AND APPROVAL OF THE RAID

1. *The subcommittees conclude that the ATF was predisposed to using aggressive, military tactics in an attempt to serve the arrest and search warrant. The ATF deliberately choose not to arrest Koresh outside the Davidian residence and instead determined to use a dynamic entry approach. The bias toward the use of force may in large part be explained by a culture within ATF.*

2. *The ATF did not attempt to fully understand the subjects of the raid. The experience of Joyce Sparks, Marc Breault, and ATF undercover agent Robert Rodriguez demonstrate that persons who spent a reasonable amount of time with Koresh, even without professional training specific to persons such as Koresh, understood with some predictability the range of behaviors that might result from a military style assault on the Branch Davidians.*

3. *Treasury Secretary Lloyd Bentsen and Deputy Secretary Roger Altman acted highly irresponsibly and were derelict in their duties in failing to even meet with the Director of the ATF in the month or so they were in office prior to the February 28 raid on the Davidians residence, in failing to request any briefing on ATF operations during this time, and in wholly failing to involve themselves with the activities of the ATF.*

⁵⁹Treasury Department Report at 179.

⁶⁰Hearings, Part 1 at 562, 563.

⁶¹Treasury Department Report at 24.

4. *Senior Treasury Department officials routinely failed in their duty to monitor the actions of ATF officials, and as a result were uninvolved in the planning of the February 28 raid. This failure eliminated a layer of scrutiny of the plan during which flaws might have been uncovered and corrected.*

IV. RAID EXECUTION

There is no question that the ATF raid executed on February 28, 1993, went fatally wrong. While many factors played a role in this, one stands apart as the principal reason why four ATF agents were killed and many others wounded. Simply put, the Davidians knew that the ATF agents were coming. And while the ATF expected to serve a search warrant for Koresh and search the residence, the Davidians apparently feared the worst that law enforcement agents or military troops were coming to arrest all of them or, perhaps kill them. In any event, some of the Davidians armed themselves and lay in ambush, waiting for the arrival of the ATF agents.

A. RODRIGUEZ AND THE "ELEMENT OF SURPRISE"

1. HOW THE DAVIDIANS KNEW THE ATF WAS COMING

The Davidians learned of the ATF plan to raid their residence when a local television cameraman happened to get lost on his way to the Branch Davidian residence.⁶² The cameraman had been dispatched to the residence by the local television station because the news director of the station expected the ATF raid would occur on that day. He suspected this because an employee of the local ambulance service had informed him that a Fort Worth-based trauma flight company had been put on standby along with the local ambulance company.⁶³

While the cameraman was sitting by the side of the road attempting to locate the Davidian residence, David Jones, a Branch Davidian and a letter carrier with the U.S. Postal Service, pulled up behind the cameraman and asked whether he was lost. The cameraman introduced himself and asked for directions to "Rodenville," the name by which many local residents referred to the Branch Davidian residence. After Jones pointed to the residence, which was in sight of where the two men were stopped, Jones stated that he had read about the group in the paper and "thought that they were weird." The cameraman, believing that Jones was not affiliated with the Davidians, warned him that some type of law enforcement action was going to take place at the residence, that it was likely to be a raid of some type, and that there may be shooting.⁶⁴ After the cameraman departed, Jones drove directly to the residence and informed the Davidians.

⁶²U.S. Department of the Treasury, Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco and Firearms Investigation of Vernon Wayne Howell also known as David Koresh 85 (1993) [hereinafter Treasury Department Report].

⁶³Lewis Gene Barber, a retired lieutenant with the Waco Sheriff's Department, informed the subcommittees during its pre-hearing investigation into these events that local police suspected that there was an "informant" at the ambulance company who had been tipping off the local television station. He stated that on several prior occasions, when police had placed the ambulance company on standby, the station sent a camera crew to the site of the police activity, even though the police had not disclosed it to the station.

⁶⁴Treasury Department Report at 85.

2. THE UNDERCOVER AGENT

On the morning of February 28, 1993, at approximately 8 a.m., Robert Rodriguez, the ATF agent who had gone undercover into the Branch Davidian residence on several prior occasions, went to meet with David Koresh one final time. While Koresh and Rodriguez were engaged in a Bible study session, David Jones arrived at the residence and told his father, Perry Jones, what had happened. The elder Jones then informed Koresh that he had a telephone call. Koresh, at first, ignored the statement but, when Perry Jones mentioned that it was long distance from England, Koresh left the room to speak with Jones.⁶⁵ At this point, David Jones relayed to Koresh his discussion with the television station cameraman.

a. The Treasury Department Report version of events

The Treasury Department Report summarizes the subsequent events as follows:

Upon Koresh's return, Rodriguez could see that he was extremely agitated, and though he tried to resume the Bible session, he could not talk and had trouble holding his Bible. Rodriguez grabbed the Bible from Koresh and asked him what was wrong. Rodriguez recalls that Koresh said something about, "the Kingdom of God," and proclaimed, "neither the ATF nor the National Guard will ever get me. They got me once and they'll never get me again." Koresh then walked to the window and looked out, saying, "They're coming, Robert, the time has come." He turned, looked at Rodriguez and repeated, "They're coming Robert, they're coming."⁶⁶

According to the Treasury Department Report, Rodriguez went first to the undercover house announcing to the agents there and to James Cavanaugh, deputy tactical coordinator of the ATF operation, that Koresh was agitated and had said the "ATF and the National Guard were coming."⁶⁷ The report states that Cavanaugh asked Rodriguez whether he had seen any guns, had heard anyone talking about guns, or had seen anyone hurrying around. Rodriguez responded in the negative to all three questions. Cavanaugh then told Rodriguez to report his observations to Chuck Sarabyn, the tactical coordinator for the raid.⁶⁸

The Treasury Department Report states that Rodriguez called Sarabyn at the command post telling him that Koresh was upset, that Koresh had said the ATF and the National Guard were coming, and that as Rodriguez left Koresh was shaking and reading the Bible. The report continues that Sarabyn then asked Rodriguez a series of questions from a prepared list provided by the tactical planners concerning the presence of weapons, whether there had been a call to arms, and other preparations the Davidians were making, to which Rodriguez responded in the negative to each question.

⁶⁵ *Id.* at 84-89.

⁶⁶ *Id.* at 89.

⁶⁷ *Id.* at 89.

⁶⁸ *Id.*

The Treasury Department Report then notes that Sarabyn left the command post at the Texas State Technical College (TSTC) and went to the tarmac area nearby to confer with Phillip Chojnacki, the overall ATF incident commander, and that Sarabyn told Chojnacki what Rodriguez had said as well as the answers to the questions Sarabyn asked of Rodriguez. The Treasury Department Report states that Chojnacki asked Sarabyn what he thought should be done and that Sarabyn expressed his belief that the raid could still be executed successfully "if they hurried."⁶⁹

According to the Treasury Department Report, Sarabyn then went to the staging area, at the Bellmead Civic Center near the TSTC. When he arrived he was excited, "obviously in a hurry," and telling agents "get ready to go, they know we are coming" and "they know ATF and the National Guard are coming. We are going to hit them now."⁷⁰

b. Testimony before the subcommittees

At the hearings before the subcommittees, these individuals testified in a manner that was similar to, but not entirely consistent with the summary of these events in the Treasury Department Report. When he testified before the subcommittees, agent Rodriguez expanded upon the Treasury Department's description of the events on the morning of February 28th.

Mr. SCOTT. Mr. Rodriguez, is there—was there any question in your mind, having been inside the residence, that Koresh knew that the agents were coming that day?

Mr. RODRIGUEZ. Sir, there's no question in my mind that Koresh knew—there's no question in my mind that Koresh knew that we were coming, yes, sir.

Mr. SCOTT. And can you describe briefly his emotion when he got the word?

Mr. RODRIGUEZ. Yes, sir. We were—I was inside the compound, on that day, that morning. I had asked him some questions regarding a newspaper clipping. He sat down and started to explain to me the difference between his preachings and another subject's preachings.

As we were discussing the Bible, one of his subjects, Mr. Jones, came in and advised him that he had a telephone call. He ignored the call and continued to talk to me.

At that point, everything was normal. There was only three people in that living room at that point. Everything was calm. He was normal. He was talking to me as he always spoke to me during all our sessions. Nothing—nothing was wrong.

Mr.—Mr. Jones again came to the living room and advised him that he had an emergency call from England. At that time, he quickly got up and left the room. At that time it was still just Mr. Schneider and Sherri Jewell were in that room with me, at that time. He came back approximately 3 or 4 minutes later, and when he came back, I mean it was like day and night.

⁶⁹ *Id.* at 91.

⁷⁰ *Id.*

As he approached me, he was—he was shaking real bad. He was breathing real hard. At one time he put his hands in his pocket, in his jacket pocket, to probably keep his hands from shaking. He sat down next to me, probably about this far, and he continued to try to finish what he was talking to me about.

When he grabbed the Bible, he was shaking so bad that he could not actually read it. I grabbed the Bible and asked him what is wrong. At that time he stopped, and as I sit here I can remember, clearly, he took a deep breath, he turned and looked at me and said, "Robert, neither the ATF or the National Guard will ever get me. They got me once, and they'll never get me again."⁷¹

Later, Rodriguez continued his testimony:

Mr. EHRlich. And what did you do next?

Mr. RODRIGUEZ. I quickly—I felt—I felt very threatened and I stood up, I felt I had to—I had to leave the compound. By that time, there was more—more people that had come into the living room. At first there was only three when we first started.

Mr. EHRlich. All right, sir. Now, why did you feel you needed to leave the compound?

Mr. RODRIGUEZ. I was threatened because I didn't know—I was afraid that I would be exposed as to who I was. And as I stood there, I looked and I noticed that the door—there's people in front of the door, people behind me, there was no place for me to go. As I was—as I stood there, Koresh went from one window, did the same thing, looked outside, and came back to the other window and again looked outside and said, they're coming, Robert, they're coming.⁷²

* * * * *

Mr. EHRlich. All right, sir. And there came a point in time around 9:15, 9:20 where you left the house, correct?

Mr. RODRIGUEZ. Yes, sir. He finally—he motioned, he gave a head signal, they opened the door for me. I walked out. I got into my vehicle. It took me a while to get it started because I was—by then I was—I was pretty shaken. I quickly went back to the undercover house.⁷³

* * * * *

Mr. RODRIGUEZ. Well, what I did, I went into the—to the room where Mr. Cavanaugh was because that is where the STU phone was. I was supposed to use that telephone to call Mr. Sarabyn. When I got there, we all huddled up and I told Mr. Cavanaugh exactly what had happened in the residence, advised him.

Mr. EHRlich. And what was his reaction?

Mr. RODRIGUEZ. His reaction was we better call Chuck right now.

⁷¹Hearings, Part 1 at 749.

⁷²*Id.* at 768.

⁷³*Id.*

Mr. EHRLICH. All right, sir. You got on the phone and did just that, correct.

Mr. RODRIGUEZ. Yes, sir, I did.

Mr. EHRLICH. And please detail the nature of that conversation.

Mr. RODRIGUEZ. I got the phone, I called. He came to the phone. The only thing I can't remember was if somebody else answered. I think somebody else answered and he came to the phone.

Mr. EHRLICH. Who is he? Mr. Sarabyn?

Mr. RODRIGUEZ. Mr. Sarabyn.

Mr. EHRLICH. OK.

Mr. RODRIGUEZ. And the first thing that came out of my mouth was, Chuck, they know, Chuck, they know, they know we're coming. He says, well, what happened? And I explained to him what happened.

I explained to him all the events that took place inside the compound, and his questions were, well, did you see any guns? I said no.

What was he wearing? And I—I advised him of what he was wearing. At that time, he said OK, and that was about the extent of the phone call.

Mr. EHRLICH. All right, sir. Did you request that the raid be called off because the element of surprise had been lost?

Mr. RODRIGUEZ. No, sir. At that time I really didn't have the chance. It was a real quick question and answer thing. He asked me what he was wearing, said OK and he hung up. That's why—that's why I quickly left the undercover house to go talk to him at the command post because I wanted to have a more—more of a lengthy conversation with him about the events.⁷⁴

Rodriguez then testified that he drove to the command post, looking for Sarabyn, in order to further discuss with him in person the events of that morning. As Rodriguez testified:

Mr. RODRIGUEZ. I—I arrived at the command post and the first thing I asked was, where's Chuck? Where's Chuck? And they advised me that he had left.

At that time, I started yelling and I said, "Why, why, why? They know we're coming, they know we're coming."

Mr. EHRLICH. And what reaction did you get, what response?

Mr. RODRIGUEZ. Sir, everything was very quiet, very quiet, and if I remember right, everybody was really concerned. I went outside and I sat down and I remember starting to cry—starting to cry until Sharon Wheeler came to me and told me what was going on.⁷⁵

While the Treasury Department Report maintains that "all key participants now agree that Rodriguez communicated, and they understood, that Koresh had said the ATF and National Guard were

⁷⁴*Id.* at 769.

⁷⁵*Id.* at 769-770.

coming,"⁷⁶ Sarabyn maintained at the hearings before the subcommittees that while he understood the words Rodriguez had spoken, he did not feel that Koresh actually believed that law enforcement personnel were on their way to the residence. As Sarabyn testified:

I did not feel he knew that we were coming at that time. When I talked with Robert, like I testified before, I took notes while we were talking over the thing and I have read all of Robert's statements. Robert did—did a great job, but I think everything that you heard as far as testimony was not passed on to me.

In fact, Robert told the shooting review team, or commanders, he didn't go into detail or should have said more. When I went through the questions I asked him, you know, he had said specifically Koresh said, you know, ATF and the Guard are coming, but when I asked, trying to determine what he was doing from those questions, he wasn't doing anything, he was shaking, reading the Bible. He was preaching. I determined that, you know, in my opinion, his actions spoke louder than his words, so I didn't feel that anything was happening then.⁷⁷

At another point in the hearings, Chojnacki testified:

When I received the information from Mr. Sarabyn . . . [he] pointed out that he had finished talking with Agent Rodriguez and that Robert says he knows we are coming. He said, "The ATF and the National Guard were coming to get me," those kinds of comments that I took to be a repetition of the same comments that we had heard from his other preaching episodes where he preached that the ATF will be coming to get us. "The ATF is coming to get us."⁷⁸

Chojnacki was then questioned directly as to whether he believed at the time that Koresh did, in fact, know that the ATF was going to the Branch Davidian residence. He stated, "Not at that time, I didn't, no sir."⁷⁹

Later, during the hearings, however, Rodriguez questioned the truthfulness of the testimony given by Chojnacki and Sarabyn before the subcommittees. Mr. Rodriguez testified,

[T]hose two men know—know what I told them and they knew exactly what I meant. And instead of coming up and admitting to the American people right after the raid that they had made a mistake . . . they lied to the public and in doing so they just about destroyed a very great agency.⁸⁰

Several other agents also testified that Sarabyn had informed them that the Davidians knew the ATF was coming. Agent Roger

⁷⁶Treasury Department Report at 90.

⁷⁷Hearings, Part 1 at 778.

⁷⁸*Id.* at 466.

⁷⁹*Id.*

⁸⁰*Id.* at 780.

Ballesteros, who was present at the staging area when Sarabyn arrived testified:

I was in an auditorium along with a large party . . . and Mr. Sarabyn rushed into the room and made it clear to us that we needed to hurry up because, in fact, Mr. Rodriguez had come out and identified the fact that Koresh had been tipped off and that they knew we were coming.⁸¹

c. What the ATF commanders knew

It is difficult to reconcile Sarabyn's testimony that while he heard agent Rodriguez' words, he believed that Koresh's actions spoke louder than his words and that, as a result, he believed that the Davidians did not really think the ATF agents were on their way. In light of the testimony of Rodriguez and the other agents before the subcommittees, the subcommittees conclude that Sarabyn understood that the Davidians were tipped off and would have been lying in wait for the ATF agents to arrive.

The fact that Sarabyn felt it necessary to tell other agents of what Rodriguez had told him, regardless of how he understood it, indicates that he found the information to be important. Unfortunately, when Sarabyn told Chojnacki this information, Chojnacki did not believe it to be important enough to call off the raid. And, inexplicably, Sarabyn apparently did not believe it important enough to urge Chojnacki to delay the raid. Compounding these failures was the fact that the ATF line agents who heard Sarabyn's comments apparently were not confident enough to question their superiors' judgment in going forward with the raid, even given their concerns about the information relayed by Rodriguez.

B. WHO BEARS THE RESPONSIBILITY FOR THE FAILURE OF THE RAID?

The Treasury Department Report attempts to lay the blame for the failure of the raid squarely on the shoulders of Chojnacki and Sarabyn. Much has been made of what has come to be known as the loss of the "element of surprise," with administration officials asserting that Chojnacki and Sarabyn went forward in the face of a direction to the contrary if the element of surprise were lost.

In their report, Treasury Department officials assert that Stephen Higgins, then Deputy Director of the ATF, had instructed "those directing the raid . . . to cancel the operation if they learned that its secrecy had been compromised. . . ."⁸² This statement was purportedly made by Higgins to Ronald Noble, then Assistant Secretary-Designate of the Treasury for Law Enforcement, and John P. Simpson, the Acting Assistant Secretary of the Treasury for Enforcement. Noble and Simpson had expressed concerns about the raid when they first learned of it on the afternoon of the Friday before the raid was to take place and Simpson had initially ordered that the raid not go forward. According to the Treasury Department Report, Higgins made this statement to Noble and Simpson in response to their concerns about the raid and in order to con-

⁸¹ *Id.*

⁸² Treasury Department Report at 179.

vince Simpson to reverse his earlier decision.⁸³ At the hearings before the subcommittee, Under Secretary of the Treasury Noble testified:

It's been our—it's been our contention in the Department of the Treasury's report that only Mr. Hartnett and Mr. Chojnacki and Mr. Sarabyn deny, because Mr. Simpson—I mean Mr. Higgins made it absolutely clear that this raid was not supposed to proceed if the advantage of surprise was lost and Mr. Aguilera testified about that being clear on February 12th as well.⁸⁴

Representative Bill McCollum, cochairman of the joint subcommittees, read into the record at the hearing a similar statement that Mr. Noble had made during an appearance on the television news program "60 Minutes" in May 1995.⁸⁵

But ATF onsite commanders and senior ATF officials disputed the position asserted by the administration in the Treasury Department Report, by Noble in his television interview, and by Noble during his testimony to the subcommittees. As Dan Hartnett, Deputy Director of the ATF for Enforcement in February 1993, testified:

Mr. HARTNETT. I saw Ron Noble testify on a national program several months ago or a month ago where he said both Treasury and ATF ordered the commanders at Waco not to proceed, or to abort the raid if they lost the element of surprise. And what I'm saying to this committee is that I have never heard the term, "element of surprise," until after the raid, when we started using it ourself and the media started using it.

But I have to also add that in the briefings, the briefings that I had and Mr. Higgins had, the secrecy of the raid was discussed and was an element of the raid plan that was given to me and to Mr. Higgins. It was just that nobody ever called and said abort the raid if you lose the element of surprise. That just never happened. But secrecy was a part of the plan—secrecy and safety. I mean it was discussed over and over again.⁸⁶

Later, under further questioning on this point by Representative Bill Zeff, cochairman of the joint subcommittees, he stated that the administration had tried to cover up the failure of its senior Treasury Department officials to properly direct the actions of ATF officials:

Mr. ZELIFF. In fact, the element of surprise was never in that plan. Is that correct?

⁸³ *Id.*

⁸⁴ Hearings, Part 1 at 926-927.

⁸⁵ During that program Noble stated, "What was absolutely clear in Washington at Treasury and in Washington and ATF was that no raid should proceed once the element of surprise was lost." *Investigation Into the Activities of Federal Law Enforcement Agencies Toward the Branch Davidians (Part 2): Hearings Before the Subcommittee on Crime of the House Committee on the Judiciary and the Subcommittee on National Security, International Affairs, and Criminal Justice of the House Committee on Government Reform and Oversight*, 104th Cong., 1st Sess. 7 (1995) [hereinafter Hearings, Part 2].

⁸⁶ Hearings, Part 1 at 755.

Mr. HARTNETT. The terminology. Secrecy was part of the plan, sir.

Mr. ZELIFF. One final question so the record may stand clearly on its own. Do you believe that these facts demonstrate an effort to cover up the truth by the Treasury Department Report?

Mr. HARTNETT. Yes, yes, I do.

Mr. ZELIFF. By Ron Noble, specifically?

Mr. HARTNETT. Yes.

Sarabyn also testified before the subcommittees that he was never ordered not to go forward if the tactical advantage of surprise had been lost.

Mr. CHABOT. Mr. Sarabyn, I'd just like to follow up again with your statement, where you said, "Obviously, some people way up said some things after that which weren't true. It goes right down to the decision to go. And they were part of it." By "way up," you're talking about upper echelon officials, I assume. Is that correct?

Mr. SARABYN. What I was making reference to, sir, is the element of surprise. Throughout—at this point, it became a very big issue. The point I was trying to make is I was never given the order not to go if we lost the element of surprise. There has been much conversation after that about the element of surprise and I was trying to say I do not know who up above me, how far, whatever, gave that order to somebody, but I never received that order.⁸⁷

The Clinton administration's attempts to suggest that maintaining the "element of surprise" had been an overriding feature of the directives of Treasury Department officials to ATF officials is inaccurate. While the issue was discussed, there was no absolute direction given to ATF officials or ATF commanders onsite that if secrecy were compromised that they were to not go forward with the raid. The Clinton administration's attempt to suggest otherwise, appears to be a veiled attempt to distance the administration and its most senior officials from the results of the failed raid.

But as Hartnett testified, "Secrecy was part of the plan—secrecy and safety. I mean it was discussed over and over again."⁸⁸ And Secret Service Agent Louis Merletti, the Assistant Project Director of the Waco Administrative Review Team created by the Department of the Treasury to review the Waco incident, testified that there is no difference between "the element of surprise and secrecy." He testified that it was "basic to a dynamic entry" method of conducting a raid.⁸⁹ Later, however, Hartnett testified:

Mr. MICA. Mr. Hartnett, you had said you disagreed with Mr. Merletti . . . about some comments he made about assessing the element of surprise. Do you want to respond now?

Mr. HARTNETT. Well, I've always disagreed with that terminology, ever since the Waco review came out. I think

⁸⁷ *Id.* at 750.

⁸⁸ *Id.* at 755.

⁸⁹ *Id.* at 758.

that it's a created phrase, and I don't mean to mislead the committee.

You know, I've testified many, many times that a part of the raid was secrecy. But part of the raid was not specifically directed toward those commanders when they say they were given a direct order. That is just not true. They just were not given a direct order.⁹⁰

Regardless of whether it is called the "element of surprise" or simply "secrecy," it is difficult to understand why senior ATF officials did not require that sufficient checks be in place to ensure that secrecy had been maintained up to the beginning of the raid. And it is almost impossible to understand why ATF commanders did not find Rodriguez' information to be important enough to call off the raid. Given the type of tactical operation selected, maintaining the secrecy of the timing of the raid is so fundamental that the blame for the failure to ensure that it was maintained must be shared not only by the commanders on-site but by senior ATF officials.

It is unclear from the testimony and from the Treasury Department Report why ATF Director Higgins and Deputy Director Hartnett did not significantly involve themselves in the planning and oversight of the execution of a raid of this magnitude. This is especially puzzling in light of the amount of weaponry the ATF suspected was possessed by the Davidians. Given the high risk involved in any dynamic entry, and the fact that the open location of the Davidian residence created a greater risk to the ATF agents in using this tactic, it is simply incomprehensible that the most senior ATF officials were not directly involved with the planning of this operation and in overseeing its implementation. In retrospect, maintaining the secrecy of this operation was one of the most important aspects of this plan. To experienced law enforcement officials this fact should have been obvious from the beginning. In fact, it should have been the overriding concern of all involved. It was not something of which senior officials should have had to order agents to be aware.

Higgins and Hartnett must share a portion of the blame for the failure of the raid because they failed to become significantly involved in the planning for it. Had they done so, they presumably would have ensured that a procedure was in place through which Rodriguez' information was relayed to them and they would have acted upon it. At the very least, they share some blame for not instilling in the senior raid commanders an understanding of the need to ensure that secrecy was maintained in an operation of this type.

But most of the blame for the failure of the raid, and for the loss of life that occurred, however, must be borne by the raid commanders themselves, and in particular by Sarabyn. Both Sarabyn and Chojnacki understood what Rodriguez had told Sarabyn but, inexplicably, somehow did not find it to be significant enough to warrant calling off the raid. Perhaps they thought that because the Davidians were not arming themselves when Rodriguez left the residence that they would not do so. Perhaps they believed that the

⁹⁰ *Id.* at 765.

agents could have arrived at the residence before the Davidians had fully armed and taken up offensive positions against them. Perhaps they even thought that their abilities were so superior to those of the Davidians that they could have successfully overcome the Davidians, even if the Davidians had been expected to be lying in wait. Whatever the reason, however, the facts are that they knew or should have known that the Davidians had become aware of the impending raid and were likely to resist with deadly force. The only realistic conclusion that can be drawn is that Chojnacki and Sarabyn acted recklessly failing to call off the raid.

Given the manner in which Sarabyn relayed the information to Chojnacki, it is perhaps understandable that Chojnacki presumed that the information was not important. But Chojnacki's overriding concern on February 28 should have been that the secrecy of the mission be maintained. When any credible evidence was brought to his attention that secrecy might have been compromised he should have delayed the start of the operation until he could confirm or deny those reports.

As Chojnacki testified before the subcommittees, "I accept the responsibility for making the field decision. I was the incident commander, I was the person to make that decision."⁹¹ Regardless of whether he fully understood the significance of what Sarabyn told him, it was his job to take whatever steps were necessary to insure that secrecy was maintained. Because he did not, his portion of the blame for the failure of the raid and its consequences is equal to that of Sarabyn.

C. OTHER WAYS IN WHICH THE PLAN SELECTED WAS BUNGLED

While the failure of ATF's commanders to recognize and respond to the fact that their raid plan had been severely compromised was, by far, the most significant mistake made on February 28, a number of other failures came to light during the subcommittees' investigation.

1. COMMAND AND CONTROL ISSUES

A number of command and control issues significantly undermined the possibility of success for the raid. Most of these issues were addressed in the Treasury Department Report,⁹² however, three of them bear repeating here.

a. Assigning command and control functions under the ATF's National Response Plan

The decision to designate Chojnacki as incident commander and Sarabyn as tactical commander was mandated under the ATF's National Response Plan. While the tactical experts who testified at the hearings and briefed the subcommittees noted that the use of an overall coordinating document, such as the National Response Plan, is an appropriate organizational and standardization tool, some of the plan's requirements resulted in less qualified people being placed in positions of command and control when agents who

⁹¹Hearings, Part 1 at 751-752

⁹²Treasury Department Report at 152-156.

were more qualified for these positions, and who were already selected to be involved in the raid, were available.

Chojnacki was selected as incident commander because he was the Special Agent in Charge of the field office in whose region the raid was to occur. While the Special Agent in Charge of a geographic area may have a great interest in an operation that takes place in his area, his position has little bearing on his qualification to run the operation. And even though Chojnacki had 27 years of law enforcement experience, there were other agents involved in the raid who possessed substantially more experience in tactical operations.

Chojnacki, in turn, appointed Sarabyn, to be tactical coordinator because the National Response Plan required that position to be filled by an Assistant Special Agent in Charge who had completed Special Response Team (SRT) training, as had Sarabyn. But Sarabyn had attended SRT training only as an observer, and there were other agents of lesser rank who had more experience in this area.⁹³ As in the case with Chojnacki, the National Response Plan's emphasis on rank and geographical assignment created the unintended result of placing a less qualified person into a position for which he was either simply not qualified or for which there were others more qualified.

b. Command and control on the scene on raid day

Chojnacki decided to ride in one of the helicopters on raid day.⁹⁴ This decision placed him out of effective communications with the other raid commanders and SRT teams leaders prior to the beginning of the raid. Had he chosen to remain in central position from which he could control the evolving raid, he might have had other opportunities to learn of Rodriguez' information about what the Davidians' forewarning. He might also have been able to learn from agents in the undercover house that the Davidians were not where the ATF anticipated they would be on the morning of February 28, a key element of the tactical plan, but instead were lying in wait for the agents.

Sarabyn, the tactical commander, chose to ride in one of the cattle trailers⁹⁵ rather than observing the residence from a vantage point such as the undercover house, where he could monitor activity in and around the building, as well as view the approach of the ATF agents in the cattle trailers. By riding in the trailers with the agents who were to conduct the raid, Sarabyn severely limited his view of the Branch Davidian residence, which also prevented him from observing that the Davidians were not where the ATF expected them to be just before the raid began.

Additionally, once Sarabyn arrived at the residence he became pinned down with the other agents and was unable to communicate with many of the other agents at different points around the building. Had he chosen to place himself in a position where he would not have come under fire, such as the undercover house, he might have been able to communicate with all of the agents, perhaps di-

⁹³ *Id.* at 153.

⁹⁴ *Id.* at 154.

⁹⁵ *Id.*

verting or redirecting the actions of some and reducing the number of casualties sustained.

c. Command and control from Washington

On February 28, ATF activated its "National Command Center" at its Washington headquarters staffed with "high-level managers . . . experience[d] in field operations."⁹⁶ Yet it appears that the command center played no role in the planning or implementation of the operation until after ATF agents had been killed or wounded. The personnel in the command center never learned that Rodriguez knew the Davidians thought the raid was imminent because Chojnacki never told them. Apparently, the person in the command center with whom Chojnacki spoke did not know enough about the raid to know that an undercover agent was to have been inside with the Davidians until shortly before the raid was scheduled to begin and valuable information might have been available. In fact, according to the Treasury Department Report, no one in the command center asked any questions of Chojnacki at all when he reported in shortly before the raid.⁹⁷

2. THE LACK OF A WRITTEN RAID PLAN

The Treasury Department review of the ATF's investigation of David Koresh noted that the ATF agents who were in command of the raid did not prepare a written raid plan in advance of the raid. While two ATF agents took it upon themselves to create one, it was never reviewed by the senior raid planners and commanders, and never distributed to any of the agents who were to participate in the raid.⁹⁸

During the hearing before the subcommittees, several tactical experts testified that the drafting of a written raid is an important part of developing an overall operational plan. Indeed, the ATF's own National Response Plan, which was drafted to establish "consistent policies and procedures" when several Special Response Teams are involved in an operation,⁹⁹ requires that a written plan "for managing the critical incident or major ATF operation" be produced before the operation begins.¹⁰⁰ Yet this was not done in this case.

3. LACK OF DEPTH IN THE RAID PLAN

One problem with overall planning was the fact that no written plan existed. A factor that may have exacerbated the losses the ATF sustained on February 28 was the lack of depth in the oral raid plan. The plan involved agents in two cattle cars driving up an exposed driveway to the front of the Davidian residence and running out of the cars, with one group storming through the front doors while the other went to the side of the building, climbed ladders carried by agents onto the roof and in through the second-

⁹⁶ *Id.* at 175.

⁹⁷ *Id.*

⁹⁸ *Id.* at 207-208. Additionally, Agent Rodriguez testified before the subcommittees that he never saw any written raid plan. Hearings, Part 1 at 813.

⁹⁹ Treasury Department Report at 152.

¹⁰⁰ *Id.* at 207.

story windows.¹⁰¹ There was little else to the plan and, importantly, little or no discussion of what might go wrong.

There was almost no training given on how to withdraw from the residence.¹⁰² Even the written plan created after the raid and given to the Texas Rangers during their investigation (which was never distributed to the commanders or any agents in advance of the raid) devoted much of its 8½ pages to administrative issues. It contained no mention of what agents were to do if anything went wrong with the “dynamic entry” into the residence. The three short paragraphs under the heading “contingencies” simply mentioned the presence of an ambulance and nurse near the scene.¹⁰³

As discussed above, the most grievous failure on the part of ATF officials on February 28 was the failure to understand and appreciate the significance of undercover agent Rodriguez’ report that the Davidians knew the ATF raid was imminent. Yet, the omission of any contingency planning was a failure that may have led to the deaths of agents who might otherwise have survived. Contingency planning might have been effective at a number of stages: when the agents turned into the driveway; when they first realized they were coming under fire from the Davidians; or when the order was given to retreat in the face of the Davidians’ fire.

The Treasury Department Report states “the failure of the planners to consider that their operation might go awry and prepare for that eventuality is tragic, but somewhat understandable.”¹⁰⁴ It notes that most ATF agents were used to operations going without incident, or at least being resolved in favor of the ATF, and that the only other ATF operation similar in magnitude to the one against the Davidians had been resolved peacefully. The report places stronger blame on ATF’s national leadership for this failure, calling its failure to ensure that some contingency planning was done “simply unacceptable.”¹⁰⁵

The subcommittees agree that ATF leadership shares the blame for the failure of this operation and that, clearly, it would have been beneficial had they been involved in a meaningful way in the planning of the operation. But it should not take directives from Washington to ensure that agents in charge of the ATF’s various field offices and Special Response Teams, the people who actually conduct an operation, will know enough to ask the simple question “what happens if this doesn’t go as planned.” No amount of past success is reason enough to explain why this possibility wasn’t considered and planned for. The fact that it was not done is, at best, additional evidence of the lack of skill and sophistication of senior ATF commanders involved. At worst, it is evidence of grievous negligence on their part.

4. TACTICAL TEAMS TRAINED TOGETHER FOR ONLY 3 DAYS BEFORE THE RAID

Another fact which indicates a lack of skill on the part of both senior ATF officials and the ATF onsite commanders, particularly

¹⁰¹ *Id.* at 54–64.

¹⁰² *Id.* at 151.

¹⁰³ *Id.* at C–19.

¹⁰⁴ *Id.* at 151.

¹⁰⁵ *Id.*

overall incident commander Chojnacki, is the fact that the Special Response Teams (SRT's) involved in conducting the operation trained together for only 3 days prior to the operation.¹⁰⁶ The ATF does not maintain a large standing force of specially trained agents which can be dispatched to the site of a disturbance, such as the FBI's Hostage Rescue Team. Instead, the ATF put together its team for the operation against the Davidians by combining special response teams from several of the ATF's regional offices.

While the subcommittees do not conclude that the ATF should have created a special team such as the FBI's Hostage Rescue Team in advance of the raid (and does not conclude that it need do so now), it appears that the reason why the FBI maintains its HRT as a single unit is because coordination of the agents involved in a tactical operation, especially one involving great risk, is of the utmost importance. Senior ATF officials and the ATF's onsite commanders either were unaware of this fact or, more likely, simply ignored it for reasons which are unknown to the subcommittees. Regardless of the reason, however, the fact that ATF officials believed that they could create a force of over 70 agents, adequately trained to conduct an operation of this complexity against a heavily armed opposing force, indicates a lack of foresight on the part of these senior officials which is unacceptable.

5. TRUE NATIONAL GUARD ROLE ONLY MADE CLEAR 24 HOURS PRIOR TO THE RAID

The subcommittees have learned that when the Texas National Guard was asked to provide helicopters to the ATF, the purpose given was that they would be used as an observation platform or command and control platform.¹⁰⁷ When the National Guard pilots arrived at Fort Hood to train with the ATF the day before the raid they learned for the first time that the ATF intended to use the helicopters as a diversion just before the raid was to begin. The helicopters were to fly close to the residence, attracting the attention of those inside to the back side of the building, while the ATF agents arrived at the front of the structure.¹⁰⁸

While the National Guard was conducting its role in its title 32 status,¹⁰⁹ and so was not limited by the terms of the Posse Comitatus Act,¹¹⁰ this change in plan is still troubling. The failure to inform National Guard commanders of the true role for the National Guard troops and equipment well in advance of the raid is an omission that is, at best, additional evidence of the poor planning for the raid done by the ATF commanders. At worst, this may have been an attempt by ATF commanders to obtain operational assistance that, while not prohibited by law, might have been declined by the Governor of Texas as commander of the Texas National Guard had the ATF given sufficient notice for word to have reached her. In any event, it does not appear that senior ATF or Treasury

¹⁰⁶ *Id.* at 73.

¹⁰⁷ Interviews of National Guard personnel. [See documents produced to the subcommittees by the Department of the Treasury T005368, T005376 at Appendix [hereinafter Treasury Documents]. The Appendix is published separately.]

¹⁰⁸ Treasury Department Report at 95.

¹⁰⁹ For an explanation of the three "statuses" in which National Guard forces operate, see Section V of this report.

¹¹⁰ See Section V of this report.

officials gave any consideration to the negative image of military helicopters being used as part of a raid on American civilians.

D. SERVICE OF THE WARRANT

One of the issues considered by the subcommittees was whether the ATF agents serving the arrest and search warrants on February 28 were required to "knock and announce" their intention to serve the warrant before entering the Davidian residence. When the ATF agents conducted the raid on the Davidian residence the agents did not knock on the Davidians' front door and announce their intentions to serve the warrant. Rather, the ATF agents dismounted from the cattle trailers in which they were riding on the run. One group attempted to enter the residence forcibly through the front door. A second group attempted to enter the second floor windows via the roof.

The subcommittees' review of videotapes made of the training sessions during which ATF practiced the raid plan revealed that the plan was designed around this type of dynamic entry and did not involve a knock and announce approach. In other words, the use of these tactics was not the result of any circumstances which had occurred on February 28.

In 1917,¹¹¹ Congress enacted the Federal knock and announce statute.¹¹² Generally speaking, the statute permits forcible entry for the purpose of executing a search warrant only after the officer gives notice of his authority and his purpose but is refused admittance. Courts interpreting the statute, however, have adopted a number of exceptions to the rule allowing unannounced police entries in limited exigent circumstances. For example, courts have held that such an announcement is unnecessary when the facts known to officers would justify them in being virtually certain that the person on whom the warrant is to be served already knows the officers' purpose and that an announcement would be a useless gesture.¹¹³ Courts also have held that police need not knock and announce their intent to serve a warrant if they fear that to do so would allow the person on whom the warrant is to be served to destroy the evidence to be seized under the warrant.¹¹⁴ A third general exception to the rule requiring the police to knock and announce their intent to serve a warrant is when to do so would increase the risk of danger to the officers serving the warrant.¹¹⁵

Given the fact that the arrest and search warrants were based, in part, on the evidence that the Davidians were in possession of illegal automatic weapons, the subcommittees believe it was reasonable for the ATF to have presumed that the Davidians might fire on them had they announced their intent to serve the warrants

¹¹¹ See generally Robert J. Driscoll, *Unannounced Police Entries and Destruction of Evidence After Wilson v. Arkansas*, 29 Colum. J.L. & Soc. Probs. 1, 10 (1995).

¹¹² The Federal knock and announce statute is found in 18 U.S.C. §3901. That section states, "The officer may break open any outer or inner door or window of a house, or any part of a house or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant."

¹¹³ Driscoll, *supra* note 111, at 11.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

in advance. The Davidians own behavior in firing on the ATF agents proves the reasonableness of that belief.

E. UNRESOLVED ALLEGATIONS

1. WHO SHOT FIRST?

Much has been made of the issue as to which side in the gun battle shot first. Conflicting evidence on this point was presented to the subcommittees by the ATF agents who were involved in the raid, the Texas Rangers who conducted an investigation into the events of the raid following the end of the standoff on April 19, and by the attorneys for the Davidians.

ATF Special Agent John Henry Williams, a member of the SRT team assigned to enter the front door of the Davidian residence, and who spoke to David Koresh at the front door of the Davidian residence as the raid began, testified that he was convinced that the Davidians shot first. As Williams testified before the subcommittees,

As we approached the front door, David Koresh came to the front door dressed in black cammo fatigues.

As he closed the door, before we reached the door, one agent reached the door, and at that point that is when the doors erupted with gunfire coming from inside. It was 10 seconds or more before we even fired back.¹¹⁶

Later on that same day, Williams testified at greater length about the start of the gun battle.

Mr. SCOTT. Can you go through just very briefly, you were walking up to the door, and how close to the door were you when the shooting started?

Mr. WILLIAMS. About 10 feet from the door.

Mr. SCOTT. Was it your intention prior to that to—had Koresh come out by then?

Mr. WILLIAMS. Yes.

Mr. SCOTT. And how far from the door were you when he closed the door in your face?

Mr. WILLIAMS. Approximately 15 feet from the door.

Mr. SCOTT. And did you continue walking forward?

Mr. WILLIAMS. Yes.

Mr. SCOTT. And how close were you when the shooting started?

Mr. WILLIAMS. I—basically about 10 feet. After that, the shooting started immediately after he closed the door.

Mr. SCOTT. Is there any question in your mind as to where the shooting began?

Mr. WILLIAMS. None.

Mr. SCOTT. Thank you—excuse me, that was from the inside coming out.

Mr. WILLIAMS. Yes, from the inside coming out.¹¹⁷

Senior officers of the Texas Rangers also testified as to the findings of their investigation into these events after April 19. The

¹¹⁶ Hearings, Part 1 at 717.

¹¹⁷ *Id.* at 748.

Rangers interviewed virtually everyone who was present at the Branch Davidian residence on February 28, including several of the surviving Davidians and all of the ATF agents who were present. As Texas Ranger Captain David Byrnes testified to the subcommittees:

I believe the evidence was to me overwhelming in the trial that the Davidians fired first. The cameraman and the reporter, although very reluctantly, finally I believe conceded that. He had broadcast that several times. He was more or less a hostile witness. But in my mind there is no doubt who fired first.¹¹⁸

But the attorneys for the Davidians testified that they believed the gun battle erupted as the result of an accidental discharge by one of the ATF agents. Jack Zimmermann, attorney for David Koresh during the standoff, testified:

My personal opinion is that it was an accidental discharge by one of the ATF agents as he was dismounting and that that was a signal to open fire, which you haven't heard a testimony about. Nobody asked them, what was the signal to open fire if you did open fire? Who made that decision? What command was it?

But I believe that what the evidence from the trial, the criminal trial, was that somebody off to the side heard, somebody fired, and they testified that it came from behind them. . . . I will point out to you from talking to the foreman of the criminal trial jury, who heard 6 weeks of testimony by the Government in 2 days of testimony from the defense, they could not decide, he told me. The foreman of the jury told me they could not decide because the evidence was in such conflict as to who fired first.¹¹⁹

2. WERE SHOTS FIRED FROM THE HELICOPTERS?

Allegations were leveled by the Davidians' attorneys that agents in the National Guard helicopters used in the raid fired into the Branch Davidian residence from the air. The Davidians' attorneys testified that they were shown holes in the roof of the structure which appeared to them to be bullet holes fired from the outside into the structure.

Phillip Chojnacki, who was riding in one of the helicopters, testified, however, that no shots were fired from the helicopters. He testified that ATF personnel on the helicopters were armed only with 9-millimeter sidearms and that he observed no shots fired from the helicopters.¹²⁰ His testimony is supported by the sworn statements of each of the pilots of the helicopters, taken on April 20, 1993, that the helicopters were unarmed and that no ATF agents fired from the helicopters.¹²¹ Texas Ranger Captain David Byrnes also testified as to what the Rangers' investigation concluded with respect

¹¹⁸Hearings, Part 2 at 150.

¹¹⁹Hearings, Part 2 at 26.

¹²⁰Hearings, Part 2 at 813-814

¹²¹See Documents produced to the subcommittees by the Department of the Treasury T005723, T005730, T005731, at Appendix [hereinafter Treasury Documents]. The Appendix is separately published.

to this issue. He stated that the Rangers found no evidence that shots were fired from the helicopters.¹²²

The subcommittees reviewed videotape of the raid shot by agents in the helicopters as well as videotape of the exterior of the helicopters involved in the raid after the helicopters withdrew from the scene. At no point in the videotape does any ATF agent fire a weapon from the helicopters and the helicopters do not appear to have been equipped with machineguns or other weaponry. The videotape reviewed, however, is not continuous from the point from which the helicopters lifted off to the point at which they landed. The fact that videotape was taken at some points in the raid and not at others has not been explained to the subcommittees.

It has been suggested that the bullet holes in the roof of the Branch Davidian residence may have come from ATF agents on the roof who were firing into the structure as the firefight continued. Jack Zimmermann, the attorney for Branch Davidian Steve Schneider during the standoff, conceded that this was a possible explanation for the presence of the bullet holes during his testimony before the subcommittees.¹²³ Given that there were several ATF agents who were on the roof of the residence during the firefight with the Davidians, this explanation seems plausible.

F. THE FIRING AND REHIRING OF CHOJNACKI AND SARABYN

In October 1994, following the Treasury Department's review of the failed raid against the Davidians, the Department terminated the employment of the two senior raid commanders, Chojnacki and Sarabyn.¹²⁴ Both of them filed complaints with the Merit System Review Board. While those complaints were pending, the Treasury Department reached agreements with both Chojnacki and Sarabyn.¹²⁵ As a result of those agreements, both were rehired by the ATF. However, neither is assigned to positions of authority over other agents and neither is presently empowered to carry a weapon.

At the hearings before the subcommittees, Treasury Department officials were asked why a deal was struck with the two people on whom the Treasury Department blamed the failure of the Davidian raid. No sufficient answers to this question were provided. In light of the Treasury Department Report's conclusion that "raid commanders Chojnacki and Sarabyn appeared to have engaged in a

¹²² "Mr. MCCOLLUM. What about with regard to firing from the helicopters? Did any of the ATF agents tell you that there had been shots fired from the helicopters?"

"Mr. BYRNES. Quite to the contrary, we could find no evidence that there was ever any shots fired. Our best evidence is that they peeled off at about 300, 350 meters, because there was gunfire, and those pilots were not going to fly over that residence."

Hearings, Part 2 at 197.

¹²³ "I couldn't tell you whether those rounds were fired from a helicopter or not. All I could tell you is they come from the sky downward. If somebody were standing on top of the roof shooting down into the ceiling, it would look exactly the same way." Hearings, Part 2 at 27 (statement of Jack Zimmermann).

¹²⁴ Memorandum to Charles D. Sarabyn from ATF Deputy Director, "Decision to Remove from Position and from the Federal Service" (October 26, 1994); Memorandum to Phillip J. Chojnacki from ATF Deputy Director, "Decision to Remove from Position and from the Federal Service" (October 26, 1994). Treasury Documents T00012743-T00013735.

¹²⁵ Settlement Agreement, *Phillip J. Chojnacki v. Department of the Treasury*, Case No. DA-0752-95-0126-I-1, Merit Systems Protection Board, Denver Field Office (December 1994). Treasury Documents T00013868-T00013874. Settlement Agreement, *Charles D. Sarabyn v. Department of the Treasury*, Case No. DA-0752-95-0127-I-1, Merit Systems Protection Board, Denver Field Office (December 1994). Treasury Documents T00013428-T00013434.

concerted effort to conceal their errors in judgment,"¹²⁶ it is difficult to imagine any basis upon which the rehiring of these two individuals can be justified by Treasury Department officials.

G. FINDINGS CONCERNING THE RAID EXECUTION

1. *Chojnacki and Sarabyn jointly share most of the responsibility for the failure of the ATF raid against the Davidians.* The blame for the failure of the raid, and for the loss of life that occurred, must be borne by the senior ATF raid commanders, Phillip Chojnacki and Chuck Sarabyn. They either knew or should have known that the Davidians had become aware of the impending raid and were likely to resist with deadly force. Nevertheless, they recklessly proceeded with the raid, thereby endangering the lives of the ATF agents under their command and the lives of those residing in the compound. This, more than any other factor, led to the deaths of the four ATF agents killed on February 28.

2. *The former Director and Deputy Director of the ATF bear a portion of the responsibility for the failure of the raid.* Former ATF Director Stephen Higgins and former ATF Deputy Director Daniel Hartnett bear a portion of the responsibility for the failure of the raid because they failed to become involved in the planning for the raid. Had they done so, they might have ensured that a procedure was in place through which the undercover agent's information was relayed to them and they could have acted upon it. At the very least, they share some blame for not instilling in the senior raid commanders an understanding of the need to ensure that secrecy was maintained in an operation of this type.

3. *The planning for the raid was seriously flawed.* There were numerous problems with the ATF's planning for the raid. These failures evidence the lack of experience and sophistication of the senior ATF agents charged with developing the ATF's raid plan. They also suggest that the ATF's senior officials failed to fully train or monitor the actions of its senior operational commanders. Included among the failures were:

The ATF's own internal guidelines resulted in less qualified people being placed in command and control of the operation when other, more qualified agents, were available for these positions. The commanders also made strategic command and control errors on raid day, placing themselves in positions that hampered their ability to receive and act upon important information that might have led them to postpone the raid or redirect it to minimize casualties.

The raid plan itself lacked significant depth, principally in that it contained almost no contingency planning which might have minimized the losses suffered by the ATF on February 28.

ATF commanders also failed to adequately train the agents involved in the raid or to fully inform the Texas National Guard of the intended role that its personnel would play in the raid.

ATF commanders failed to reduce the raid plan to writing, as was required by ATF internal guidelines. Had this been done, and the written plan circulated to those involved in the raid, the errors in the raid planning might have been brought to light and corrected.

¹²⁶Treasury Department Report at 193.

The activation of the ATF National Command Center occurred only because it was required by the National Response Plan, and not because it was to have any meaningful role in the implementation of the raid plan. Had the senior ATF officials written the National Response Plan in such a way as to ensure that command center personnel would be briefed on the significant details of the operation and would have the clear authority to question onscene commanders, the raid might have been called off by command center officials asking about the report made by Rodriguez.

4. *The ATF agents executing the raid were not required to knock and announce their intention to serve the arrest and search warrants.* Given that the arrest and search warrants were based, in part, on the evidence that the Davidians were in possession of illegal automatic weapons, the subcommittees believe it was reasonable for the ATF to have presumed that the Davidians might fire on them had they announced their intent to serve the warrants in advance. Accordingly, the subcommittees conclude that the ATF was not required to knock and announce their intention to serve either the arrest warrant or the search warrant because to do so would have measurably increased the risk to the ATF agents involved.

5. *The evidence suggests that the Davidians fired the first shots on February 28, 1993.* The subcommittees believe that the question of who fired the first shot on February 28 cannot decisively be resolved given the limited testimony presented to the subcommittees. It appears more likely, however, that the Davidians fired first as the ATF agents began to enter the residence.

6. *The evidence presented to the subcommittees generally supports the conclusion that no shots were fired from the helicopters at the Branch Davidian residence.* The subcommittees believe, however, that there is insufficient evidence to determine with certainty as to who fired the shots that made the bullet holes in the roof of the Davidian residence.

7. *After the raid failed, Clinton administration officials inaccurately stated that the ATF raid commanders had been given explicit orders to not proceed with the raid if the secrecy of the raid was compromised.* After the raid failed, Assistant Treasury Secretary Ronald Noble attempted to lay the blame entirely on the ATF despite the fact that Treasury officials, including Noble, failed to properly supervise ATF activities leading to the raid. Moreover, Treasury officials, having approved the raid, failed to clearly and concisely communicate the conditions under which the ATF was to abort the raid.

8. *The subcommittees find no justification for the rehiring of Chojnacki and Sarabyn.* Given that the largest portion of blame for the failure of the raid against the Davidians must be borne by Chojnacki and Sarabyn, the subcommittees find no justification for their rehiring by the ATF. The fact that senior Clinton administration officials approved their rehiring indicates a lack of sound judgment on their part. It also further begs the question as to whether there are facts not disclosed to the subcommittees that led administration officials to agree to rehire these men.

H. RECOMMENDATIONS

Because the largest single cause of the ATF raid disaster was the failure of ATF's senior field commanders to recognize or act upon the undercover agent's information that the Davidians knew the ATF raid was underway, there is no overriding recommendation which, if implemented, would prevent similar tragedies from occurring in the future. The subcommittees believe, however, that had more experienced ATF agents been involved in the planning of this raid the many deficiencies in the raid plan itself would have been avoided. Most importantly, the subcommittees believe that had more experienced commanders been assigned to this operation, the information that the Davidians knew that the raid was impending would not have been ignored but, rather, understood for what it was and acted upon accordingly. There are, however, a number of steps that should be taken to correct other problems associated with the failed raid and which, taken together, might help prevent similar failures in the future.

1. *Congress should conduct further oversight of the Bureau of Alcohol, Tobacco and Firearms, the oversight of the agency provided by the Treasury Department, and whether jurisdiction over the agency should be transferred to the Department of Justice.* Congress should consider whether the lack of Treasury Department oversight of ATF activities in connection with the investigation of the Davidians, and the failures by ATF leadership during that investigation, indicate that jurisdiction over the ATF should be transferred to the Department of Justice.

2. *The ATF should revise its National Response Plan to ensure that its best qualified agents are placed in command and control positions in all operations.* As discussed above, the ATF's National Response Plan in effect in 1993 led to the placement of Chojnacki as incident commander and Sarabyn as technical commander for the raid, when more experienced ATF personnel were available. The subcommittees recommend that the National Response Plan be revised to provide that incident commanders for significant operations be selected by ATF headquarters personnel from among the most experienced agents in the ATF, rather than based upon any consideration of the agent who may have administrative responsibility for a given geographic area. Likewise, the subcommittees recommend that other senior positions in significant operations, such as tactical commander, also be selected by ATF headquarters personnel from ATF agents most experienced in these areas, regardless of geographical assignment.

3. *Senior officials at ATF headquarters should assert greater command and control over significant operations.* Just as the National Response Plan should be revised to allow greater control by ATF headquarters, the subcommittees recommend that ATF's most senior officials be personally involved in the planning and oversight of every significant operation. While the ATF did activate its National Command Center in Washington just prior to the commencement of the ATF raid against the Davidians, command center personnel played no actual role in the planning or the implementation of the operation until after it went awry.

The subcommittees recommend that ATF's most senior officials be directly involved in the planning of all significant operations and personally approve each operation in advance of its implementation. Additionally, the subcommittees recommend that the National Command Center be activated well before the commencement of an operation, that it be staffed with persons experienced in tactical operations and knowledgeable of the operation in question, and that these persons be given the authority to suspend the operation or revise the operation plan as the situation develops.

4. *The ATF should be constrained from independently investigating drug-related crimes.* Given that the ATF based part of its investigation of the Branch Davidians on unfounded allegations that the Davidians were manufacturing illegal drugs, and as a result improperly obtained military support at no cost, the subcommittees recommend that Congress restrict the jurisdiction of the ATF to investigate cases involving illegal drugs unless such investigations are conducted jointly with the Drug Enforcement Administration as the lead agency.

V. MILITARY INVOLVEMENT IN THE GOVERNMENT OPERATIONS AT WACO

U.S. military involvement is one of the least explored and most misunderstood elements of the events that took place near Waco, TX, in 1993. The Treasury Department Report dedicated only 3½ of 220 pages to explaining the military's involvement, and the Department of Defense and National Guard Bureau have only recently taken an interest in addressing some of the military issues that Waco raised.

A. THE EXPANSION OF MILITARY ASSISTANCE TO LAW ENFORCEMENT

Historically in America, there has been a general principle that the military should not be involved in civilian law enforcement. Congress codified this principle by enacting the Posse Comitatus Act¹²⁷ in 1878. The subcommittees have found that subsequent congressional actions and legal cases have eroded the Posse Comitatus Act to an alarming degree and blurred its legal restrictions.

In determining whether the military assistance provided at Waco was illegal, the subcommittees reviewed the current status of the Posse Comitatus Act and other laws governing the use of the military in civilian law enforcement, why changes in the laws have occurred and what effects those changes have had on the use of the military in civilian law enforcement.¹²⁸ Additionally, the subcommittees have addressed the common practice of Governors using National Guard (NG) personnel across State lines.

1. THE POSSE COMITATUS ACT

a. Overview of the law

The Posse Comitatus Act was enacted in the United States in 1878 in response to the improper use of military troops in the South during the post-Civil War Reconstruction period.¹²⁹ The Posse Comitatus Act provides:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be

¹²⁷ Posse Comitatus means "the power or force of the county. The entire population of a county above the age of fifteen, which a sheriff may summon to his assistance in certain cases; as to aid him in keeping the peace, in pursuing and arresting felons, etc." Black's Law Dictionary (1st ed. 1891) (citing 1 William Blackstone, Commentaries 343).

¹²⁸ Roger Blake Hohnsbeen, *Fourth Amendment and the Posse Comitatus Act Restrictions on Military Involvement in Civil Law Enforcement*, 54 Geo. Wash. L. Rev. 404, 404 (1986).

¹²⁹ "Until passage of the Posse Comitatus prohibition in 1878, the improper use of troops became a common method of aiding revenue officers in suppressing illegal production of whiskey; assisting local officials in quelling labor disturbances; and insuring the sanctity of the electoral process in the South by posting guards at polling places." Clarence I. Meeks, III, *Illegal Law Enforcement: Aiding Civil Authorities in Violation of the Posse Comitatus Act*, 70 Mil. L. Rev. 83, 90 (1975).

fined not more than \$10,000 or imprisoned not more than 2 years, or both.¹³⁰

However, as early as the Magna Carta, prohibitions against the use of the military in civilian affairs were being established.¹³¹ These prohibitions are based on the principle that the military should never be employed against the citizenry of the Nation it supports and is buttressed by the clear separation, in this country, between civilian authority and military support for that authority. The clear separation between civilian and military authority is embodied in the Declaration of Independence¹³² and the U.S. Constitution.¹³³

Nevertheless, no one has ever been prosecuted for violating the Posse Comitatus Act.¹³⁴ Due in part to a creeping acceptance of military involvement in law enforcement actions, the Posse Comitatus Act has been invoked very rarely.¹³⁵ Until the criminal cases arising from the 1973 Indian uprising at Wounded Knee,¹³⁶ civilian law enforcement apparently relied upon military support without fear of recourse.¹³⁷

Specifically, at Wounded Knee, the Nebraska National Guard and U.S. Air Force personnel conducted aerial reconnaissance photography of the site, while the South Dakota National Guard maintained military vehicles in the area of the siege.¹³⁸ Two regular Army colonels (title 10 personnel)¹³⁹ were present at Wounded Knee as Defense Department "observers"; however, these military personnel also provided "advice, urging and counsel . . . to Department of Justice personnel on the subjects of negotiations, logistics and rules of engagement."¹⁴⁰

Four criminal cases resulted from the Wounded Knee incident. Each raised similar challenges to the military's involvement.¹⁴¹

¹³⁰ 18 U.S.C. § 1385 (1988). A post-Waco amendment changed the penalty portion to read, "shall be fined under this title or imprisoned not more than two years, or both." Violent Crime Control and Law Enforcement Act of 1994 § 330016(L), Pub. L. 103-322, 108 Stat. 2147.

¹³¹ Congressional Research Service, *The Posse Comitatus Act & Related Matters: The Use of the Military to Execute Civilian Law 3* (1995) (citing Magna Carta, ch. 39 (1215)).

¹³² The Declaration of Independence (U.S. 1776).

¹³³ U.S. Const., Amend. II, III.

¹³⁴ Meeks, *supra* note 129, at 128.

¹³⁵ *Id.*

¹³⁶ In the 1973 Wounded Knee uprising, a dissident Indian group forcibly took control of the Wounded Knee Village on Pine Ridge Reservation, SD. This group entered a U.S. Post Office by force, held hostages and refused to allow Federal investigators into the area. In support of Federal law enforcement agents, military personnel provided an array of assistance, closely resembling the military assistance provided to Federal law enforcement agents during the Waco incident.

¹³⁷ Peter M. Sanchez, *The "Drug War:" The U.S. Military and National Security*, 34 A.F. L. Rev. 1, 109 (1991).

¹³⁸ As at Wounded Knee, aerial reconnaissance photography and maintaining military vehicles were also conducted by military personnel at Waco.

¹³⁹ These two soldiers at Wounded Knee were on active duty; i.e., full-time duty in the active military service of the United States. See 10 U.S.C. § 101 (d)(1), codified as amended by Pub. L. 102-484.

¹⁴⁰ Meeks, *supra* note 129, at 121. Ironically, approximately 10 active duty Special Forces soldiers were present at Waco as "observers" during various stages of the post-raid siege, including the day of the use of CS riot control agent and the fire. Additionally, at the request of the commander of the FBI Hostage Rescue Team, two senior Army Special Forces officers were present when Attorney General Reno was briefed on the FBI's plan to end the standoff. Prior to the meeting, one of those officers visited the site of the standoff by helicopter accompanied by the HRT commander.

¹⁴¹ *United States v. Jaramillo*, 380 F. Supp. 1375 (D.Neb. 1974), appeal dismissed, 510 F.2d 808 (8th Cir. 1975); *United States v. Banks*, 383 F.Supp. 368 (D.S.D. 1974); *United States v. Red Feather*, 392 F.Supp. 916 (D.S.D. 1975); *United States v. McArthur*, 419 F.Supp. 186 (D.N.D. 1976), *aff'd sub nom.*, *United States v. Casper*, 541 F.2d 1275 (8th Cir. 1976), *cert. denied*, 430 U.S. 970 (1977).

The diverse rulings on these challenges raised questions about the legality of much of the military assistance being broadly and regularly provided to law enforcement agencies. The courts in *United States v. Banks* and *United States v. Jaramillo* found certain military activities to be in violation of the Posse Comitatus Act, while the court in *United States v. Red Feather* found the military involvement at Wounded Knee permissible.¹⁴² The *Red Feather* court determined, that as long as military assistance was passive or indirect, such assistance did not violate the Posse Comitatus Act.¹⁴³

In order to resolve questions raised by the Wounded Knee cases, and at the urging of the Defense Department and Justice Department, Congress adopted the above distinctions set forth by the *Red Feather* court¹⁴⁴ and, in 1981, enacted a number of general exceptions to the Posse Comitatus Act.¹⁴⁵ In general, the 1981 exceptions authorized the military to make available to civilian law enforcement agencies information collected during military operations, training and advice, the use of military equipment and facilities, and the use of some Defense Department personnel.¹⁴⁶ However, direct participation in law enforcement activities like search, seizure and arrest was prohibited.¹⁴⁷

b. The war on drugs

By the mid-1980's, there was little question that the Nation was struggling with a major increase in illegal drug importation and use, and Congress summoned a massive increase of resources to confront this modern scourge. The fiscal year 1989 Department of Defense Authorization Act significantly expanded the role of the National Guard in support of law enforcement agencies.¹⁴⁸ The following year, the role of the military was expanded further in the fiscal year 1990 Department of Defense Authorization Act which "directed the U.S. Armed Forces, to the maximum extent possible, to conduct military training in drug interdiction areas."¹⁴⁹

After Congress and the courts expanded permissible military assistance to civilian law enforcement and the Defense Department assumed the lead in the war on drugs, military assistance to law enforcement greatly increased. This increased use of military personnel is most noticeable with the National Guard because of fewer legal restrictions on its use.

¹⁴² Congressional Research Service, *supra* note 54, at 23 n.63. The court in *McArthur* ruled that the Posse Comitatus Act is violated only when the civilians are subjected to the direct "regulatory, proscriptive or compulsory" aspect of the military involvement. *United States v. McArthur*, 419 F.Supp. at 194.

¹⁴³ Sanchez, *supra* note 137.

¹⁴⁴ *Id.* at 7 (citing to 10 U.S.C. § 371-375, as subsequently amended by Pub. L. No. 100-456, 102 Stat. 117 (1988)).

¹⁴⁵ Congressional Research Service, *supra* note 54, 23. See also Defense Department Authorization Act of 1982 § 905, Pub. L. No. 97-86, 95 Stat. 1114, as amended by National Defense Authorization Act Fiscal Year 1989 § 1004, Pub. L. No. 100-456, 102 Stat. 2043 (codified as amended at 10 U.S.C. § 377).

¹⁴⁶ 10 U.S.C., Ch. 18.

¹⁴⁷ *Id.*

¹⁴⁸ JTF-6 Operational Support Planning Guide (citing Pub. L. 100-456, 102 Stat. 1218, 2042, codified at 10 U.S.C. § 124 [See Documents produced to the subcommittees by the Department of the Treasury T08786, T08788, at Appendix [hereinafter Treasury Documents]. The Appendix is published separately.] See also 32 U.S.C. § 112 for the National Guard.

¹⁴⁹ JTF-6 Operational Support Planning Guide, Treasury Documents T08786, T08788. See also 10 U.S.C. § 371(b).

c. The National Guard and the Posse Comitatus Act under current law

The National Guard, for reasons that are at least partially historical, is not subject to the same legal restrictions placed on active duty and reserve military personnel with regard to involvement in civilian law enforcement.¹⁵⁰ Having evolved from the State militia concept, the National Guard holds the unique position as both a State and a national military force. Thus, a National Guard member can wear a U.S. Army or Air Force uniform, fly in a military aircraft, receive Federal military pay and allowances, be covered by the Federal Torts Claims Act and Federal military medical care. Yet, he or she can perform this military service not only as a member of the U.S. Armed Forces, but as a member of the State militia, having a Governor for a Commander-in-Chief rather than the President of the United States.

The ability of the National Guard to perform military service in this capacity exists because the National Guard has three different "statuses" under the law. The first two are a title 32 status (also called "state active duty" status) and a "pure state" status. Under either a title 32 or "pure state" status, National Guard troops are under the command and control of the Governor of their State and the Posse Comitatus Act does not apply.¹⁵¹ However under current law, while the National Guard is in a title 32 status and under the command and control of the Governor, it is still funded with Federal funds.¹⁵² An example of the National Guard being in a title 32 status is when National Guard personnel are conducting counterdrug operations.

The third National Guard status is called "title 10" or "Federal active duty" status. Title 10 status occurs when Congress or the President takes affirmative action to "federalize" a National Guard unit as in the case of a natural disaster or civilian disturbance. Only in a federalized status are National Guard troops under command and control of the President of the United States. Under this status, the Posse Comitatus Act applies.

Aside from the title 10 status and Wounded Knee cases, the Posse Comitatus Act has been widely interpreted as not applying to the National Guard. Thus under current law, the leading interpretation of the Posse Comitatus Act is that unless otherwise prohibited by policy directive, regulation or State law, the National Guard can participate actively in civilian law enforcement. The National Guard, however, does implement similar proscriptions as the

¹⁵⁰ Rich, *The National Guard, Drug Interdiction and Counterdrug Activities, and Posse Comitatus: The Meaning and Implications of "in Federal Service,"* 35 Army Law. 1 (1994). Active and Reserve military personnel are both subject to the proscriptions found in the Posse Comitatus Act, while the Posse Comitatus Act only applies to National Guard personnel when they have been called "into Federal service."

¹⁵¹ During the Waco incident, the National Guard was operating under title 32 or "state active duty" status as it provided assistance to the ATF and FBI. By contrast, the status of the Nebraska and South Dakota National Guard units during the 1973 Wounded Knee incident is unclear, since the courts did not rule on whether the Posse Comitatus Act applied to the National Guard personnel based upon their status. In *Jaramillo*, the court did not indicate whether or not the National Guard had been "federalized." Similarly, the *Red Feather* court decided the issue of improper military assistance based on whether the assistance was "active" or "passive," not on the legal status of the National Guard units.

¹⁵² In a pure State status, no Federal funding occurs.

Posse Comitatus Act by regulation even while in a title 32 status.¹⁵³

d. Active duty personnel and the Posse Comitatus Act under current law

Unlike the National Guard, active duty military personnel clearly fall within the proscriptions of the Posse Comitatus Act. Any assistance they provide to civilian law enforcement personnel must be either within a statutory exception or expressly authorized by the U.S. Constitution.

Many of the statutory exceptions to the Posse Comitatus Act have been enacted in the last 15 years and evolved from a desire to support counterdrug efforts. Title 10, U.S. Code, section 371 *et seq.* outlines the types of routine law enforcement assistance that active duty military personnel may provide. Such assistance, includes equipment, training and advice.

One of the most important issues for a civilian law enforcement agency in deciding whether to seek and accept military assistance, is whether the agency must reimburse the military for the assistance provided. Generally, a civilian law enforcement agency must reimburse the military for the cost of assistance, except under three circumstances. Reimbursement may be waived if the assistance: (1) is provided in the normal course of military training;¹⁵⁴ (2) results in a benefit to the unit providing the support "that is substantially equivalent to that which would otherwise be obtained from military operations or training;"¹⁵⁵ or (3) is for counterdrug operations.¹⁵⁶

The counterdrug statutory waiver has come to mean in practice that before a waiver of reimbursement can occur under the counterdrug operation exception, the civilian law enforcement agency must demonstrate the existence of a sufficient "drug nexus" in the investigation.¹⁵⁷ Although there is no defined standard for what constitutes a "drug nexus," it is essentially a quantum of credible evidence that links an otherwise nondrug investigation with the existence, or well-founded belief of the existence, of significant illegal drug crimes.

This waiver for counterdrug operations developed when Congress created a specialized subset of military assistance for counterdrug operations in 1990.¹⁵⁸ Military assistance for counterdrug operations provided under this statutory authority is on a nonreimbursable basis, which means civilian law enforcement agencies do not have to reimburse the military for the assistance. Instead, Congress provides a separate fund to the military for this type of assistance. However, these funds must be used solely for military as-

¹⁵³ Rich, *supra* note 150. The National Guard Bureau policy on authorized support to law enforcement currently lists 16 approved counterdrug missions. Any mission outside the parameters of the approved list must receive Department of Defense approval. See also NGB Reg. 500-2 and National Guard Counterdrug Coordinator's Handbook.

¹⁵⁴ 10 U.S.C. § 377.

¹⁵⁵ *Id.*

¹⁵⁶ Pub. L. No. 102-190 § 1088, 105 Stat. 1484 (1991). See also Pub. L. No. 101-510 § 1004, 104 Stat. 1629 (1990) and Pub. L. No. 101-189 § 1212, 103 Stat. 1567 (1989).

¹⁵⁷ Office of the Department of Defense coordinator for Drug Enforcement Policy and Support Memorandum, Subject: Priorities, Policies, and Procedures for DoD CD Support to Domestic Law Enforcement Agencies, 26 Jan. 95. Defense Documents 109-115, at 111.

¹⁵⁸ *Id.*

sistance to civilian law enforcement agencies for counterdrug operations. Significant portions of military assistance provided to ATF and even the FBI were funded through these counterdrug funds.

A further formalization of the military's increased support to the war on drugs involved the creation of Joint Task Forces¹⁵⁹ between civilian drug law enforcement agencies and the Regular Army. The Defense Department created these Joint Task Forces to increase the coordination between the military and civilian law enforcement agencies and to increase the civilian agencies' accessibility to Regular Army assets for counterdrug operations. For the southwest border region where the ATF investigation of the Davidians took place, Joint Task Force-Six (JTF-6)¹⁶⁰ was responsible for the operational support to ATF by active duty military personnel.

JTF-6's Operational Support Planning Guide, in explaining its support capabilities, states, "No list of military support capabilities is ever all-inclusive. Innovative approaches to providing new and more effective support to law enforcement agencies are constantly sought, and *legal and policy barriers to the application of military capabilities are gradually being eliminated.*"¹⁶¹ This quote from the JTF-6 Operation Support Planning Guide clearly and succinctly describes the weakening of the Posse Comitatus Act proscriptions since the 1973 Wounded Knee cases. This observation foreshadowed the potential for military involvement that was realized eventually at the 1993 Waco events.

2. INTERSTATE USE OF NATIONAL GUARD BY GOVERNORS

There is a common practice among the States of using National Guard personnel across State lines.¹⁶² States enter into memoranda of agreement with one another which provide for the mutual use of National Guard forces across State lines. However, these agreements raise several legal concerns, particularly when the National Guard personnel are used to assist civilian law enforcement.

Although a thorough examination of memoranda of agreement is far beyond the scope of the subcommittees' Waco investigation, the most significant legal issues arising from the use of memoranda of agreement will be highlighted. While the National Guard has attempted to address these legal issues, the Defense Department and the States have failed to adequately address the potential legal problems which memoranda of agreement raise. Two major legal concerns are (1) whether these memoranda of agreement, or other

¹⁵⁹In early 1989, the Defense Department, at the direction of Congress and the President, "tasked four war fighting, regional Commander's in Chief (CINCs) to carry out the drug interdiction mission. The CINC of Atlantic Command (USCINCLANT) created Joint Task Force, JTF-4 at the Key West Naval Air Station, Florida. The Pacific Command CINC (USCINCPAC) established JTF-5 at the Alameda Naval Air Station, California. And, the CINC for Continental Defense (USCINCFOR) established JTF-6 at Fort Bliss, Texas." Sanchez, *supra* note 137, at 17.

¹⁶⁰JTF-6 was created in 1989 to serve as the planning and coordinating (operational) headquarters for military assistance to counterdrug operations of drug law enforcement agencies. JTF-6 is located at El Paso, TX (Fort Bliss), and supports the Federal, State, and local law enforcement agencies within the southwest border region. It's region of responsibility mirrors that of Operation Alliance and includes the States of Texas, New Mexico, Arizona, and Southern California. [JTF-6 Operational Support Planning Guide, Treasury Documents T08786-08789.] As of October 1, 1995, JTF-6's area of responsibility expanded from the southwest border to the entire continental United States, Puerto Rico and the U.S. Virgin Islands.

¹⁶¹JTF-6 Operational Support Planning Guide, Treasury Documents T08786, 08791 (emphasis added).

¹⁶²The interstate use of National Guard personnel occurred at Waco with the use of the Alabama National Guard in Texas.

similar agreements between States are either a treaty, an alliance, or confederation in violation of the U.S. Constitution, or at the very least a compact requiring congressional ratification; and (2) whether these memoranda of agreement or similar agreements attempt to supersede State constitutions and statutes without legal authority.

a. States' power to enter memoranda of agreement

Only the Congress¹⁶³ and the President (to the extent presently delegated by law) have the power to use military force across State lines. Many argue that any agreement between States to concert their military forces for the use of force for any purpose constitutes a treaty or an alliance.¹⁶⁴ However, the U.S. Constitution specifically prohibits States from entering into treaties in any instance,¹⁶⁵ and into alliances or confederations without congressional consent.¹⁶⁶ Applying such an argument would mean that the use of the National Guard for law enforcement purposes across State lines is strictly prohibited by the U.S. Constitution. The National Guard bureau takes the position that such interstate use of force is prohibited, but the contrary opinion is advanced by the Defense Department General Counsel and the Army Staff Judge Advocate.¹⁶⁷

The National Guard bureau further argues, also contrary to the Defense Department General Counsel and the Army Staff Judge Advocate, that even if such agreements among States are not treaties, they are at the very least compacts which require the consent of Congress.¹⁶⁸ If an agreement among States results in a potential encroachment on Federal authority or a tendency to enhance State power, then it would constitute a compact requiring congressional consent.¹⁶⁹ The National Guard bureau argues that these National Guard memoranda of agreement enhance State power by allowing Governors to command militia employed for force across State

¹⁶³ "The Congress shall have Power . . . to provide for calling forth the Militia to execute the laws of the Union, suppress insurrections, and repel invasions." U.S. Const., art. I, § 8, cl. 15.

¹⁶⁴ The U.S. Supreme Court, in *U.S. Steel Corp. v. Multistate Tax Commission*, 434 U.S. 452 n.12 (1978) discussed the distinctions between treaties, compacts and mere agreements. "Military alliances" are cited as examples of treaties. The Court quotes Story to the effect that: "Treaties, alliances, and confederations . . . generally connote military and political accords and are forbidden by the States. Compacts and agreements, such as questions of boundary; interests in land situate in the territory of each other; and other internal regulations for the mutual comfort and convenience of States bordering each other." 434 U.S. at 464. See also 32 U.S.C. § 109 (b) which infers that States do not have the authority to employ their militia (i.e., the National Guard) outside their boundaries, "Nothing in this title limits the right of a State or Territory . . . to use the National Guard or its defense forces authorized by subsection (c) within its border in time of peace, or prevents it from organizing and maintaining police or constabulary."

¹⁶⁵ The treaty-making power is exclusively vested by the Constitution, in the President, with the advice and consent of the Senate. U.S. Const. art. 2, § 2, cl. 1.

¹⁶⁶ U.S.C.A. Const., art. I, § 10, cl. 1.

¹⁶⁷ National Guard Draft Legal Memorandum, "Cross Border use of National Guard for Law Enforcement: Constitutional Issues and Need for Congressional Ratification of Interstate Agreements" (Received by subcommittees on March 12, 1996).

¹⁶⁸ U.S. Const., art. I, § 10, cl. 3. "Not all agreements between states are subject to strictures of this clause; application of this clause is limited to agreements that are directed to the formation of any combination tending to increase the political power in the states and which may encroach on or interfere with the just supremacy of the United States." *U.S. Steel Corp. v. Multistate Tax Commission*, 434 U.S. 452 n.43 (1978) (citing U.S. Const., art. 1, § 10, cl. 3). See also, *Virginia v. Tennessee*, 148 U.S. 503 (1893).

¹⁶⁹ "Appellants further urge that the pertinent inquiry is one of potential, rather than actual, impact on federal supremacy. We agree." *U.S. Steel Corp. v. Multistate Tax Commission*, 434 U.S. 452, 472 (1978). This is the current position of the National Guard Bureau. However, the position of the Defense Department and the Army SJA is that these agreements violate the Compact Clause of the Constitution only if they actually encroach of Federal power or enhance State power.

lines, and therefore, encroach on the President's power to either deny or command and control such interstate use. Thus, the National Guard bureau believes they require congressional ratification.¹⁷⁰

Currently, none of the memoranda of agreement (or compacts) involving the use of National Guard personnel across State lines for law enforcement purposes have been ratified by Congress. Although the Southern Governors' Association recently amended its Southern Regional Emergency Management Assistance Compact at the advice of the National Guard bureau, to preclude the use of force across State lines *and* seek congressional approval of the compact, most of the interstate National Guard assistance to law enforcement agencies is occurring under the guise of memoranda of agreement, not congressionally approved compacts. Moreover, this issue expands beyond direct involvement in law enforcement actions, such as Waco, to the use of the National Guard for interstate assistance in disaster¹⁷¹ and emergency relief. In fact, the issue has arisen with respect to the proposed use of non-Georgia National Guard units to assist the Georgia National Guard during the 1996 Summer Olympics, in Atlanta, GA.

b. Memoranda of agreement may attempt to supersede State law without legal authority

During the ATF investigation of the Branch Davidians, National Guard assistance to ATF came not only from the Texas National Guard, but from the Alabama National Guard.¹⁷² At the behest of the ATF, the Adjutant General of the Texas National Guard requested and received support from the Alabama National Guard to take aerial photographs. Those aerial photographs were taken on January 14, 1993. This assistance was authorized by a "memorandum of agreement" between the Adjutant Generals of the Texas and Alabama National Guards which simply provided for the use of the Alabama National Guard at the request of the Texas Adjutant General. However, a review of the State laws of both Texas and Alabama raises legal concerns with the legal authority for conducting this interstate National Guard operation.

Texas law requires that, "[a] military force from another state, territory, or district, except a force that is part of the United States Armed Forces, may not enter the State without the permission of the governor."¹⁷³ Yet, National Guard personnel who were involved in post-raid National Guard investigations of the Waco incident have stated that Governors Richards did not approve the use of the Alabama National Guard. Military documents indicate that Governor Richards was unaware of the extent of even the Texas National Guard's involvement until after the failed raid occurred.

An examination of Alabama law indicates that the Alabama National Guard had no authority to conduct military operations out-

¹⁷⁰ National Guard Draft Legal Memoranda, *supra* note 167.

¹⁷¹ The subcommittees have been informed during meetings and followup discussion with National Guard Bureau personnel that the Bureau opposed the loan of Puerto Rico National Guard personnel to the Virgin Islands to suppress looting during Hurricane Marilyn based on these constitutionality concerns.

¹⁷² After Action Report of Texas National Guard Counterdrug Support in Waco, TX, as (April 29, 1993). [See Documents produced to the subcommittees 2344, at Appendix (hereinafter Defense Documents). The Appendix is published separately.]

¹⁷³ Tex. Code Ann., Title 4, § 431.001.

side Alabama because the Governor's authority over the Alabama National Guard appears only to extend to the State's boundaries.¹⁷⁴ Thus, it appears that the Alabama National Guard entered and conducted military operations in Texas without the proper authority to do so.

If the Alabama Governor's command and control authority ended at the Alabama State line and Governor Richards did not approve the Alabama National Guard's entrance into the State of Texas, then several questions are raised: Which Governor had command and control of the Alabama National Guard unit? Who (Texas, Alabama or the Federal Government) would have been liable for claims of injury and property damage had any occurred? If the Alabama unit is considered to be operating outside its scope of employment, would its personnel lose Federal Torts Claims Act's protection against personal liability? And, would the National Guard personnel risk losing their military health care and other military benefits in the event of an accident?

Memoranda of agreement currently used fail to address the intricacies which State laws present and they do not appear to have legal authority to supersede State constitutions and statutes. Because State laws differ, these questions must be addressed on a case by case basis if States are going to engage in the interstate use of National Guard personnel.

B. THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS' REQUEST FOR MILITARY ASSISTANCE AND THE MILITARY ASSISTANCE ACTUALLY PROVIDED

The pre-raid military assistance in Waco was provided through active duty and National Guard counterdrug units based on an alleged drug nexus. Much of the post-raid military assistance to the FBI and ATF also came from counterdrug units and funds. Central to understanding how the military became involved in the Waco matter is an understanding of how ATF's initial request for military assistance, based on alleged drug involvement, progressed.

1. OVERVIEW

a. The process for requesting military assistance along the southwest border

Military support to counterdrug operations along the Southwest border of the United States is designed "to assist law enforcement agencies in their mission to detect, deter, disrupt, and dismantle illegal drug trafficking organizations."¹⁷⁵ Thus, military support acts as a "force multiplier," allowing law enforcement agencies to focus on "interdiction seizure actions."¹⁷⁶

When a drug law enforcement agency¹⁷⁷ requests counterdrug military assistance along the southwest border, that request is received and reviewed by Operation Alliance, which acts as the clear-

¹⁷⁴ Ala. Code, § 31-2-7.

¹⁷⁵ JTF-6 Operational Support Planning Guide, Treasury Documents T08786.

¹⁷⁶ *Id.* at T08790.

¹⁷⁷ A drug law enforcement agency is a law enforcement agency that has jurisdiction over drug laws. ATF was authorized to investigate narcotics traffickers who use firearms and explosives as tools of their trade, especially violent gangs.

inghouse.¹⁷⁸ The request is then coordinated with support organizations such as JTF-6¹⁷⁹, the North American Aerospace Defense Command (NORAD),¹⁸⁰ the Regional Logistics Support Office¹⁸¹ and the pertinent National Guard. Operational support is provided as a joint effort by JTF-6, NORAD and the National Guard.¹⁸² Nonoperational support which would include, but is not limited to, equipment, institutional training, and use of facilities would be provided by the Regional Logistics Support Office.¹⁸³

To receive assistance through Operation Alliance and from these organizations, the civilian law enforcement investigation must involve criminal violations of U.S. drug laws; i.e., have a "drug nexus." Having initiated 232 Operation Alliance investigations through fiscal year 1989,¹⁸⁴ ATF was no stranger to Operation Alliance's counterdrug mission and its drug nexus prerequisite. In fact, documents dated as far back as March 15, 1990, designated ATF Special Agent Sarabyn, and ATF Special Agent Pali, the ATF coordinator for Operation Alliance during the Branch Davidian investigation, as ATF coordinators for military assistance.¹⁸⁵

b. Chronology of ATF's request

The chronology of ATF's request for military assistance provides insight into how early ATF wanted military assistance, how the military and ATF became concerned with the drug nexus issue, and how the military's concerns changed the scope of military assistance provided.

As early as November 1992, ATF agents were discussing the need for military support with Lt. Col. Lon Walker, the Defense Department representative to ATF.¹⁸⁶ In his "summary of events"¹⁸⁷ November entry, Lt. Col. Walker specifically states that, at that time, he was not told of any drug connection.¹⁸⁸

By December 1992 (almost 3 months before the raid), ATF agents were requesting Close Quarters Combat/Close Quarters Battle¹⁸⁹

¹⁷⁸ Operation Alliance is the clearinghouse for all civilian law enforcement requests for military support along the southwest border. Operation Alliance reviews all requests and coordinates the requests of Federal, State and local agencies, and determines the appropriate military agency to provide the support. JTF-6 Operational Support Planning Guide, Treasury Documents T08786, 08790.

¹⁷⁹ See note 160 and accompanying text.

¹⁸⁰ NORAD incorporated the counterdrug mission into its command structure in 1989.

¹⁸¹ The Regional Logistics Support Organizations are under the direct supervision of the Office of the Defense Department Coordinator for Drug Enforcement Policy and are the primary point of contact for Drug Law Enforcement Agency requests for equipment i.e., nonoperational support.

¹⁸² JTF-6 and NORAD employ active duty military personnel. The State National Guard personnel are in a title 32 status.

¹⁸³ JTF-6 Operational Support Planning Guide, Treasury Documents T08786, 08789.

¹⁸⁴ *Hearings before the Subcommittee on the Treasury, Postal Service, and General Government Appropriations of the House Committee on Appropriations*, 101st Cong., 2d Sess. 688, 695 (1991) (statement of Stephen E. Higgins, Director, Department of Treasury, Bureau of Alcohol, Tobacco and Firearms).

¹⁸⁵ Memorandum from Special Agent Eddie Pali, Tactical Operations Coordinator to the ATF SAC's in Dallas, Houston, and Los Angeles (March 15, 1990). Treasury Documents T006661.

¹⁸⁶ Lt. Col. Lon Walker's summary of events. Treasury Documents T007884.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Close Quarters Battle involves "combative techniques which include advanced marksmanship, use of special purpose weapons, munitions, demolitions and selective target engagement conducted by small, specially trained units against static or halted man-made targets to defeat a hostile force with a minimum of collateral damage." Headquarters, U.S. Army Special Forces Command, Policy Letter on Close Quarters Combat (CQC) Training (24 November 1993). The terms CQC and CQB have been used interchangeably for a number of years. CQC is the military doctrinally correct term. However, in this Report the subcommittees will continue to use CQB

(CQB) training by U.S. Army Special Forces soldiers for ATF agents.¹⁹⁰ A basic CQB course takes a minimum of 2 months and advanced CQB training takes a minimum of 6 months. Moreover, CQB is the type of specialized training a terrorist or hostage rescue team such as the FBI Hostage Rescue Team would use. CQB is also a perishable skill requiring frequent/continuous training that ATF, as an agency, is not designed to maintain or utilize. Somewhat surprisingly, neither the documents from the Treasury investigation, nor the Treasury Report, itself, never refer to this request.

However, one military document furnished to the subcommittees as part of their document request specifically states that *no written documentation* is available on this extraordinary request by ATF for CQB training.¹⁹¹ This is the case despite ongoing discussions in 1992 and early 1993 within the senior ranks of the U.S. Army Special Operations Command regarding the prudence of making SOT¹⁹² /CQB training available to civilian law enforcement and foreign military personnel.¹⁹³ These discussions are significant because they again foreshadow the potential use in civilian law enforcement of highly specialized military training, designed and intended for military operations.

On December 4, 1992, several ATF Special Agents, including the SAC's of the Dallas and Houston ATF offices, met at Houston's ATF field office for the first time to discuss the Waco investigation.¹⁹⁴ In attendance were SAC Phillip J. Chojnacki; SAC Ted Royster; Assistant Special Agent in Charge James Cavanaugh; Resident Agent in Charge Earl K. Dunagan; Special Agents Aguilera, Lewis, Petrilli, Buford, K. Lattimer, Williams, Carter, and John Henry.¹⁹⁵ Also present at that meeting was Lt. Col. Lon Walker, the Defense Department representative to ATF. Lt. Col. Walker's notes of the meeting reveal that he explained to those present "that the military probably could provide a great deal of

since that was the term used throughout the post-Waco investigations and the congressional hearings.

¹⁹⁰ After discussions between the Special Operations Command and Special Forces Command had taken place regarding U.S. Army Special Forces Command (Airborne) participation in conducting CQB/SOT for drug law enforcement agencies, the Commander of the U.S. Army Special Operations Command (USASOC) informed the Commander of JTE-6 by military message, dated 4 January 93 (within a very close proximity to ATF's request for CQB), that the USASOC would provide CQB Special Operations Training CQB/SOT training to law enforcement agencies. "It is anticipated that CQB/SOT training support requests may be filled by the U.S. Army John F. Kennedy Special Warfare Center and School (USAJFKSWCS) or other units that include CQB/SOT as part of their METL." The memorandum goes on to state that USASOC and USASFC(A) have only agreed to provide CQB/SOT instruction to the U.S. Border Patrol Tactical Unit (BORTAC).

¹⁹¹ "SOF Assistance to Federal Law Enforcement in Waco, Texas." Defense Documents D-1116A.

¹⁹² SOT stands for Special Operations Training. Although SOT is not an official military term for Special Operations Training; i.e., it is an acronym for a course taught at the U.S. Army John F. Kennedy Special Warfare Center and School (USAJFKSWCS), it will be used here to identify Special Operations Training because that is how it is used by the military documents referred to by the subcommittee investigators. See Headquarters, USASFC (A) Policy Letter on Close Quarters Combat Training (24 Nov. 1993) (unnumbered) for discussion on proper usage of SOT.

¹⁹³ See memorandum of 3rd Special Forces Group, Headquarter's Memorandum on Special Operations Training and Close Quarters Battl (21 Sept. 1992) (unnumbered); See also memorandum of U.S. Army Special Forces Command (Airborne) on USASFC policy for conducting counterdrug operations in the continental United States (23 Feb. 1993) (unnumbered) and Headquarters U.S. Army Special Forces Command (Airborne) Policy Letter on Close Quarters Combat Training (24 Nov. 1993) (unnumbered).

¹⁹⁴ Lt. Col. Lon Walker's summary of events. Treasury Documents T007884.

¹⁹⁵ Memorandum from Colleen Callahan and Robert Tevens to Geoff Moulton and Lew Merletti, "Chronology and Witnesses Re: Military Support of ATF" (July 14, 1993). Treasury Documents T004589.

support and [that he] suggested things like aerial overflight thermal photography.”¹⁹⁶ Lt. Col. Walker’s notes also state that he explained “that without a drug connection the military support would be on a reimbursable basis.”¹⁹⁷ This reference to reimbursement is significant because it reveals that military aid was, as of that date, understood to require reimbursement by ATF unless a drug nexus could be identified and articulated with sufficient specification to warrant military aid on a nonreimbursable basis. Lt. Col. Walker’s December 4th entry is followed by a handwritten note that states “Aguilera said there was no known drug nexus.”¹⁹⁸

On December 11, 1992, Special Agent Jose G. Viegra, the Resident in Charge (RAC) of the Austin, TX, ATF Office, met with representatives for the Texas Governor’s Office about the role of the military in any potential ATF action involving the Davidians.¹⁹⁹ Representatives of the Texas Governor’s Office present at the meeting were William R. Enney, Texas State Interagency Coordinator and his assistant, Lt. Susan M. Justice, Assistant Interagency Coordinator of the National Guard Counterdrug Support Program.²⁰⁰

This meeting was requested by ATF to discuss specifically what types of military assistance were available to the ATF for its raid on the Branch Davidian residence²⁰¹ in Waco, TX. During the meeting, Special Agent Viegra was told that military assistance through Operation Alliance would *not* be available unless there was a “drug nexus.” That meeting constituted the second time in 8 days that ATF agents inquiring about military assistance were told of a drug nexus prerequisite. At the December 11, 1992, meeting, Enney asked the ATF agents to determine whether a drug nexus did in fact exist.

Three days after their meeting with ATF, the Texas counterdrug representatives received a facsimile of a letter dated December 14, 1992, on “Houston SAC letterhead” from the RAC of the Austin ATF office, Earl K. Dunagan, requesting military assistance from the Texas Counterdrug Program.²⁰² The military assistance requested from the Texas National Guard was for aerial reconnaissance photography, interpretation and evaluation of the photos, and transportation of ATF agents aboard the aircraft during the reconnaissance.²⁰³ Although the request did not mention suspected drug violations (drug nexus), as would be required to secure non-reimbursable assistance or military assistance from a counterdrug unit, Lt. Col. Pettit, the Texas Counterdrug Task Force Commander, initialed his approval on the request.²⁰⁴

¹⁹⁶ Lt. Col. Lon Walker’s summary of events. Treasury Documents T007884.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ Memorandum from Colleen Callahan and Robert Tevens to Geoff Moulton and Lew Merletti, “Chronology and Witnesses Re: Military Support of ATF” (July 14, 1993). Treasury Documents T004589.

²⁰⁰ *Id.* Mr. Enney was designated by Texas Governor Richards as the Texas State representative for Defense Department coordination of the Texas National Guard Counterdrug Support Program.

²⁰¹ The Branch Davidian residence was termed a “compound” by ATF, during the investigation, and the media and other commentators subsequently adopted this militaristic term for a fortified or highly secure structure.

²⁰² Memorandum from Colleen Callahan and Robert Tevens to Geoff Moulton and Lew Merletti, “Chronology and Witnesses Re: Military Support of ATF” (July 14, 1993). Treasury Documents T004589, T004590.

²⁰³ *Id.*

²⁰⁴ *Id.*

Lt. Col. Pettit told National Guard investigators that he provided his approval because the request required another person's approval as well.²⁰⁵ However this decision, in itself, raises several unanswered questions. Did Lt. Col. Pettit assume a drug nexus existed or that one was not needed? Did he believe that the request should be approved *despite* the absence of legally required drug nexus? Or did he believe that ATF would reimburse the National Guard? These questions repeat themselves throughout the approval process, and are raised here to illustrate the difficulties encountered in disentangling a past approval of military aid involving a drug nexus.

Two days after Lt. Col. Pettit's approval, Special Agent Aguilera informed Lt. Col. Walker on December 16, 1992, that he received a facsimile from Marc Breault in Australia suggesting the existence of a methamphetamine lab at the Branch Davidian residence.²⁰⁶ Mr. Breault was a former Branch Davidian who left the group on bad terms, and exhibited strong personal animosity toward Koresh and several of the Davidians.

The following day, December 17, 1992, SAC Phillip Chojnacki held a meeting in his office with Special Agent Ivan Kallister, Special Agent Davey Aguilera, and Lt. Col. Walker regarding the Waco investigation.²⁰⁷ According to ATF, Lt. Col. Walker told SAC Chojnacki during the meeting that the Defense Department could provide nonreimbursable military support if there is a "suspicion of drug activity."²⁰⁸ Aguilera was subsequently instructed to "actively pursue information from his informants about a drug nexus."²⁰⁹ Additionally, ATF Intelligence Research Specialist Sandy Betterton searched criminal records to determine if Branch Davidians had "some" prior drug offenses.²¹⁰ It later was determined that only one Branch Davidian had a prior narcotics conviction.²¹¹

January 6, 1993, was the first National Guard overflight of the Branch Davidian residence and their auto body shop, called the "Mag Bag." This overflight was conducted by the Texas National Guard Counterdrug Unit in a UC-26 counterdrug aircraft. Forward Looking Infrared (FLIR)²¹² videotape taken during the overflight indicated a "hot spot" inside the residence and three persons outside behind the residence whom ATF designated as "sentries."²¹³ The Texas National Guard conducted five more reconnaissance/surveillance overflights over the Branch Davidian property from February 3, 1993, to February 25, 1993. These overflights were con-

²⁰⁵ Meeting with Army National Guard Brigadier General Sagsveen, in Washington, DC (October 19, 1995).

²⁰⁶ Memorandum from Colleen Callahan and Robert Tevens to Geoff Moulton and Lew Merletti, "Chronology and Witnesses Re: Military Support of ATF" (July 14, 1993). Treasury Documents T004589. This document lists the date as Dec. 17th. Lt. Col. Walker's Waco Summary of Events lists the date as the 16th. Treasury Documents T007884.

²⁰⁷ Memorandum from Colleen Callahan and Robert Tevens to Geoff Moulton and Lew Merletti, "Chronology and Witnesses Re: Military Support of ATF" (July 14, 1993). Treasury Documents T004589.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² A FLIR, also called a Thermal Imaging System (TIS), is a type of photography which images thermal heat sources.

²¹³ Memorandum from Special Agent Robert Tevens, "Chronology and Witnesses Re: Military Support of ATF" (July 14, 1993). Treasury Documents T004589, T004591.

ducted to “search for armed guards and drug manufacturing facilities.”²¹⁴

On the same day as the first National Guard overflight, January 6, 1993, Richard Garner, Chief of Special Operations Division of ATF, drafted another request on ATF headquarters letterhead directly to Col. Judith Browning, Director of Plans and Support, of the Office of the Department of Defense Coordinator for Drug Enforcement Policy and Support.²¹⁵ ATF requested the loan of various office equipment, a refrigerator, cots and sleeping bags to be made available on January 11, 1993. The letter states that the ATF was investigating violations of “firearms and drug laws” and requested the equipment as “part of Defense Department support for counterdrug effort.” Col. Browning responded by letter on January 15 approving the support to be provided by the Regional Logistics Support Office²¹⁶ in El Paso, TX.²¹⁷ The same questions asked of Lt. Col. Pettit above must be asked here of Col. Browning. Here, as with Lt. Col. Pettit, key documentation justifying the deployment of nonreimbursable military aid on the basis of a proven or suspected drug nexus is missing. Yet, Col. Browning approved the request and directed further ATF requests to be made directly to the Regional Logistics Support Office in Texas.

Within a week after Col. Browning’s response, Garner sent a further request to Maj. Victor Bucowsky, the Officer-in-Charge of the Regional Logistics Support Office requesting an MOUT²¹⁸ site for Special Response Team training, driver training and maintenance support for Bradley fighting vehicles, seven Bradley fighting vehicles, and on-call support in the event a siege occurred.²¹⁹ This was the largest request for assistance in Regional Logistics Support Office’s history and eventually had to be supplied by Texas National Guard because the Regional Logistics Support Office was unable to handle a law enforcement request of such magnitude.²²⁰

On February 2, 1993, Operation Alliance made a request to the Commanding General of JTF-6 for the use of Special Forces personnel assigned to his organization.²²¹ Lt. Col. Philip W.

²¹⁴Treasury Department Report at 44 n.18.

²¹⁵Treasury Documents T004601, T004602. The proper procedure for requesting military assistance along the Southwest border is to go through Operation Alliance. Letter from Operational Alliance to Special Agent Eddie Pali, ATF Coordinator for Operation Alliance (January 26, 1990). Treasury Documents T006663-006664. Despite ATF not following this process, documents provided by Treasury indicate their agents were aware the procedural requirements. *Id.*

²¹⁶See note 181.

²¹⁷Treasury Documents T004603.

²¹⁸MOUT stands for Military Operations on Urbanized Training “which would include all military actions that are planned and conducted on a terrain complex where man-made construction impacts on the tactical options available to the commander. These types of operations are characterized by large-scale offensive and defensive operations. The primary objective is to seize and hold ground using all available means. This often results in extensive damage to the area.” Memorandum from U.S. Army Special Forces Command regarding Policy Letter on Close Quarters Combat (CQC) Training (November 24, 1993).

²¹⁹Treasury Documents T004606 (dated January 22, 1993), T004612. Treasury Document T004610 is a duplicate of the letter except it is dated January 21, 1993 and has handwritten notes along the border. The notes along the border appear to indicate that JTF-6 was responsible for the SRT training and “No, T-32 TX” is written next to the Bradley training (T-32 apparently refers to Title 32).

²²⁰Memorandum of interview from Special Agent Robert Tevens for the Waco Administrative Review (September 14, 1993). Treasury Documents T005397, T005399.

²²¹Memorandum from Colleen Callahan and Robert Tevens to Geoff Moulton and Lew Merletti, “Chronology and Witnesses Re: Military Support of ATF” (July 14, 1993). Treasury Documents T004589, T004590.

Lindley,²²² the U.S. Army Special Forces Command Staff Judge Advocate, was notified of this request and advised JTF-6,

. . . that Rapid Support Unit (RSU)²²³ assistance in actual planning and rehearsal of proposed "takedown" could violate posse comitatus law, expose RSU to liability. [A q]uestion also arises as to appropriateness of RSU giving non-METL,²²⁴ i.e., SOT/CQB training to ATF.²²⁵

However, there again is no written documentation of ATF's request for this highly controversial training.

Within days, the training mission by Special Forces soldiers was revised to include only coordination on Army ranges and teaching ATF how to develop an operations order.²²⁶

c. Pre-raid military assistance requested by ATF and assistance actually received

The military assistance provided to ATF can be separated into four areas: (1) surveillance overflights by counterdrug National Guard units in January and February 1993; (2) training by Special Forces soldiers assigned to JTF-6 for counterdrug missions in late February 1993; (3) direct support by Texas National Guard counterdrug personnel who conducted an aerial diversion the day of the raid on February 28, 1993; and (4) post-raid support to FBI and ATF.

Six surveillance overflights were conducted by counterdrug National Guard units. Aerial photography missions by the Texas National Guard began on January 6, 1993.²²⁷ The January 6 missions and subsequent missions on February 3, 18, and 25, 1993, were taken by a Texas National Guard Counterdrug UC-26 aircraft.²²⁸ On January 14, 1993, aerial photographs were taken by the Alabama National Guard.²²⁹ And, on February 6, 1993, the Texas National Guard provided infrared video (FLIR) and aerial photography in a Counterdrug UC-26 aircraft.²³⁰

ATF's request for training of ATF agents by Special Forces soldiers went through several alterations before the actual training took place. Although ATF initially requested Bradley fighting vehicles, SOT/CQB training, onsite medical evacuation assistance and planning assistance, legal restrictions caused the ATF request to be

²²² At the time of the Waco incident Philip Lindley served as a Major in the U.S. Army. However, since that time, he has been promoted and testified before the subcommittees with the rank of the Lieutenant Colonel. He will be referred to as Lt. Col. Lindley throughout the Report.

²²³ A Rapid Support Unit (RSU) is comprised of a Special Forces Company with attached aviation asset. Rapid Support Unit Description Paper. Defense Documents D-1353. The subcommittees are aware of no RSU aviation assets being used at Waco. "RSU missions are characterized by small, short duration, *interdiction missions normally limited to border areas.*" *Id.* (emphasis added). The paper states under Mission Parameters that "the mission must be related to the Special Operations Mission Essential Task List (wartime tasks) and *should be intel-prompted.*" *Id.*

²²⁴ Mission Essential Task List (METL) includes soldiers' wartime tasks, i.e. what skills a soldier has been trained in and capable of training others in. Special Forces units who were assigned to Operation Alliance were restricted to their METL training law enforcement agents.

²²⁵ Defense Department Documents D118.

²²⁶ *Id.*

²²⁷ Texas National Guard After-Action Report (April 29, 1993). Defense Documents D2344 at D2346.

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

scaled down.²³¹ A Special Forces Rapid Support Unit, assigned to Operation Alliance, trained ATF on 25–27 February 1993, in company-level tactical C2, Medical Evacuation training, IV ABC's,²³² and assistance with Range and MOUT sites.²³³ According to military documents and military witnesses who appeared before the subcommittees, no non-Mission Essential Task List (wartime tasks) training, SOT/CQB, or direct involvement in actual planning occurred.²³⁴

For the February 28 raid, the Texas National Guard supplied three helicopters and 10 counterdrug personnel. When ATF requested National Guard assistance, their stated mission to the National Guard was to use the helicopters as a command and control platform during the raid, and to transport personnel and evidence after the area was secured.²³⁵ Only when the National Guard team arrived at Fort Hood for the pre-raid training, less than 24 hours before the raid, did ATF agents inform the National Guard personnel that the helicopters would be used as an aerial diversion during the raid itself. ATF had even assigned one of the National Guard counterdrug soldiers to hang from a monkey sling outside the helicopter to film the raid.²³⁶ The soldier was in that position when the helicopters took incoming fire.²³⁷ Although all of the three helicopters sustained damage from weapons fire, none of the National Guard crews or ATF personnel aboard were injured.²³⁸ Since such direct involvement is prohibited by National Guard bureau regulations²³⁹ and placed National Guard personnel in imminent danger, it is unclear why the National Guard consented to ATF's "last-minute" changes.

The National Guard's focal group review of the incident did not shed much light on the issue. The summary of its report, dated April 28, 1993, and the report itself "reveal only one major issue. The issue deals with the pre-raid threat assessment of the Davidians provided by ATF to the Texas National Guard as a 'docile' environment. A second issue, which is not included in the written report of the focal group but has been vocalized by Colonel Spence, deals with the suspected methamphetamine laboratory at the Branch Davidian residence. Colonel Spence contends that the drug issue is not included in the focal group report due to the potential media interest and any resulting Freedom of Information Act inquiries."²⁴⁰

²³¹"SOF Assistance to Federal Law Enforcement in Waco, Texas." Defense Documents D-1116A.

²³²Medical techniques for treating battlefield injuries including intravenous injections of fluids, clearing airways, controlling bleeding and treating shock. Sworn statement of Maj. Petree. Defense Documents D-1147.

²³³"SOF Assistance to Federal Law Enforcement in Waco, Texas." Defense Documents D-1116A.

²³⁴*Id.*

²³⁵Treasury Investigation interviews of National Guard personnel. Treasury Documents T005368.

²³⁶Treasury Investigation interviews of National Guard personnel. Treasury Documents T005376.

²³⁷*Id.* Interviews indicate that the helicopters were 350 feet from the Branch Davidian residence when they were hit. Treasury Documents T005370.

²³⁸Treasury Investigation interviews of National Guard personnel. Treasury Documents T005371.

²³⁹NGB-500-2.

²⁴⁰Memorandum of Interview from Special Agent Tevens for the Waco Administrative Review (March 16, 1995). Treasury Documents T008300.

d. Without the alleged drug nexus, the ATF most likely would not have received the same military assistance as was provided

Treasury and Defense Department officials have repeatedly maintained that ATF would have received military assistance even without a drug nexus, but that ATF would had to have paid for it. However, this statement is misleading because it fails to answer whether ATF would have received the same training it requested from units other than counterdrug units and for purposes other than counterdrug operations.

What is clear is that the ATF would not have received military assistance from the highly trained Special Forces units in such a short time frame and through the streamlined approval process which it enjoyed. As stated above, the ATF originally requested Close Quarters Combat training, a type of training available only from specialized military units like Special Forces. ATF's request was also the largest law enforcement request for military assistance in many of the counterdrug organizations' histories, such as the Regional Logistics Support Office. ATF further requested that its military training be conducted less than 30 days after its request, while even the streamlined Operation Alliance process normally required 90 days. Requesting through Operation Alliance also allowed ATF to avoid an approval process with a greater potential of independent oversight.

The same conclusion can be reached for the National Guard support. Had there been no drug nexus, there again would have been a different approval process. Without a drug nexus (i.e., non-counterdrug purpose), ATF's request for National Guard assistance would only be permitted if both the Texas State Constitution authorized the National Guard's involvement in the type of assistance ATF requested and the Governor was willing to expend State funds for that purpose.²⁴¹ National Guard personnel have indicated that the assistance would not have been provided under those circumstances.²⁴² This is supported by the fact that the National Guard bureau regulations prohibit the type of direct involvement ATF received from the National Guard counterdrug personnel, i.e., acting as a diversion during the ATF raid.²⁴³ Further, since the Texas National Guard depleted its fiscal year 1993 counterdrug funds during its assistance to ATF at Waco and had to request additional funding during its assistance, it is doubtful that Governor Richards would have approved State funding of so expensive an operation.

2. CONCERNS OF MILITARY LEGAL ADVISORS

Assistant Secretary of Defense Allen Holmes and Maj. Gen. John M. Pickler both appeared before the subcommittees. They testified that the approval process worked as it was intended.²⁴⁴ Yet, documents show that this was so only because Special Forces Command

²⁴¹ Memorandum from Debra Diener, Senior Counsel to Geoffrey Moulton, Director of the Treasury Waco Administrative Review regarding the statutory and regulatory criteria and requirements for requesting military assistance and National Guard assistance (August 12, 1993). Treasury Documents T008304 at T008307.

²⁴² Post hearing briefing by National Guard personnel.

²⁴³ Memorandum of Interview of Special Agent Tevens for the Waco Administrative Review (March 16, 1995). Treasury Documents T008300; Treasury Department Report at 95.

²⁴⁴ Hearings, Part 1 at 385-386.

legal advisors at the U.S. Special Forces Command Headquarters, who were outside the normal approval process, but who had learned of ATF's request for assistance from Special Forces soldiers at Operation Alliance, strongly voiced objections to the Special Forces training mission of ATF as proposed by JTF-6. As a result of these concerns reaching extremely senior levels of command within the Department of Defense, the training missions were scaled back significantly and potential violations of the law were avoided.

a. Involvement of Special Forces Command legal advisors

As referred to earlier, a Rapid Support Unit (RSU) from Third Company, Third Division, Special Forces Group was deployed on a regular rotation to JTF-6 for counterdrug missions. When the original ATF request was assigned to this RSU team, Maj. Ballard, the Special Operations Representative at JTF-6, telephoned Special Operation Command at Fort Bragg and expressed his concern with the ATF training mission to Mr. Crain, a civilian employee at Special Operations Command.²⁴⁵

Upon hearing the details of the original request, Mr. Crain also became concerned and immediately notified Lt. Col. Lindley.²⁴⁶ Lt. Col. Lindley subsequently spoke with Maj. Petree, the Special Forces Rapid Support Unit Commander, who also expressed similar concerns about the scope of the mission.²⁴⁷

Lt. Col. Lindley testified before the subcommittees that he was principally concerned with three areas of the support requested—the review and scrub of the ATF operation plan, medical support in close proximity to the scene, and assistance in developing and constructing the rehearsal sites.²⁴⁸ Lt. Col. Lindley's first concern was the review and scrub which is an analysis of a mission that has already been planned. The review and scrub of the operation plan and the review of the discriminating fire plan would have been done by the Special Forces unit assigned to JTF-6, which ultimately provided the military training to ATF.²⁴⁹ Lt. Col. Lindley was of the opinion that the actual planning and rehearsal of the take down was "active" and therefore illegal.²⁵⁰ He also believed that the Special Forces unit was not authorized to offer expert advice on deconstructing a drug lab.²⁵¹

Lt. Col. Lindley's second concern dealt with the use of military medical personnel. According to ATF's request, these military medical personnel would be onsite and directly involved in potential searches of individuals apprehended and in the collection of evidence, resulting in Posse Comitatus Act implications. This degree of direct involvement would also create liability issues associated with the treatment of the civilians.²⁵² The medical personnel potentially would be treating gunshot wounds of children, and military medical personnel do not have the training or equipment to treat

²⁴⁵ *Id.* at 368.

²⁴⁶ *Id.* at 352-353.

²⁴⁷ *Id.* at 368.

²⁴⁸ *Id.* at 350.

²⁴⁹ *Id.* at 351.

²⁵⁰ Memorandum for record of Lt. Col. Philip Lindley (3 February 1993). Defense Documents D-1168 at D-1169.

²⁵¹ *Id.* at D-1172.

²⁵² Hearings, Part 1 at 350-351.

such trauma wounds (gunshots) in small children. For example, some medical equipment for children such as breathing tubes require special sizes with which these medical teams are not be equipped.²⁵³

According to Lt. Col. Lindley, the JTF-6 informed him that the law enforcement action was a raid on a methamphetamine lab.²⁵⁴ Having been involved in law enforcement actions involving methamphetamine labs as a civilian, Lt. Col. Lindley was aware of concerns with the physical characteristics of methamphetamine production and the dangers in the chemicals, as well as ammunition considerations given the explosive nature of methamphetamine labs.²⁵⁵ Contamination of soldiers' clothing by chemicals used in the production of methamphetamines would involve those soldiers in the collection of physical evidence.²⁵⁶ Again, such direct involvement would violate the Posse Comitatus Act.

Upon completing his discussions with the Special Operations personnel, Lt. Col. Lindley directly contacted JTF-6 personnel to express his concerns about the mission. When Lt. Col. Lindley informed JTF-6 personnel that, from his initial analysis of the information presented, the request was impermissible as proposed, he received a hostile response from Lt. Col. Rayburn, the JTF-6 Legal Advisor.²⁵⁷ After his conversation with JTF-6 personnel, Lt. Col. Lindley began a memorandum for record detailing the chronology of events and conversations as they took place.²⁵⁸ JTF-6, not Lt. Col. Lindley, subsequently provided the legal review of the request.

After the requests for additional evidence of methamphetamine production, the military assistance allowed was drastically restricted.

3. EVIDENCE INDICATING PROBLEMS IN THE APPROVAL PROCESS

Contrary to assertions by Assistant Secretary Holmes, Brig. Gen. Huffman, and Maj. Gen. Pickler, the approval process did not work as it was supposed to.²⁵⁹ First, although concerns had been raised that JTF-6 had been providing military assistance to noncounterdrug activities, little documentation of ATF's requests for military assistance exists. Second, while some senior military officers and DEA officials had opportunities to voice concerns about ATF's alleged drug nexus, they chose not to exercise those opportunities. Third, because a few military officers identified major legal problems with the training mission and alerted senior military commanders, despite threats by other senior military officers, the mission was altered to avoid violations of the law. Finally, after Waco hearings were scheduled, the Secretary of Defense acknowl-

²⁵³ Interview of Lt. Col. Philip Lindley by Glenn R. Schmitt, Counsel to the Subcommittee on Crime, and Michele Lang, Special Counsel to the Subcommittee on National Security, International Affairs, and Criminal Justice, in Washington, DC (July 19, 1995).

²⁵⁴ Hearings, Part 1 at 367.

²⁵⁵ *Id.* at 367-368.

²⁵⁶ *Id.*

²⁵⁷ *Id.* at 353.

²⁵⁸ *Id.*

²⁵⁹ *Id.* at 385-386.

edged problems with the military assistance process and created a working group to review the process.²⁶⁰

a. Concerns of cheating by JTF-6

Military documents indicate that a problem existed with JTF-6 providing military assistance to law enforcement agencies in the absence of a drug nexus.²⁶¹ These concerns apparently had reached the highest levels of the Department of Defense.²⁶²

When JTF-6 provides military assistance in noncounterdrug related law enforcement actions, it is referred to as "cheating" because it allows the law enforcement agency to obtain military assistance without reimbursing the military. Moreover, military assistance provided under these circumstances is funded with money specifically appropriated for counterdrug activities.²⁶³ Furthermore, cheating allows JTF-6 to provide military assistance to non-counterdrug activities, outside the scope of its authorized purpose.²⁶⁴ Interviews with Defense Department counterdrug personnel revealed that self preservation in part fuels JTF-6 efforts to secure healthy budget allocations.²⁶⁵ Documents provided by the Treasury Department show that in the months following the tragic end of the Branch Davidian siege, JTF-6 and Operation Alliance were actively promoting their services to ATF. This was occurring even as senior military officials expressed concern that ATF misrepresented the required drug nexus in order to obtain military assistance.²⁶⁶

Assistant Secretary Holmes stated that JTF-6 *does not verify* whether a "drug nexus" exists before providing military assistance because it would potentially place the military in a capacity of conducting surveillance and investigations of American citizens, which

²⁶⁰ Memorandum of Military Support to Civil Authorities by William Perry, Secretary of Defense, to the Secretary of the Army, Chairman of the Joint Chiefs, Under Secretary of Defense (Policy), Under Secretary of Defense (Comptroller), and the General Counsel of the Department of Defense (May 17, 1995).

²⁶¹ "Desires to know the [U.S. Army Special Operations Command] position regarding the attached draft [message]. Intent is to go on record confirming the phoneloc arrangements, and to reinforce [Special Operations Forces] Resistance to potential 'cheating' which seems to recur at JTF-6." Comments from a U.S. Special Operations Command facsimile (February 17, 1993). The facsimile cover was attached to the February 3, 1993, message regarding the Special Forces training mission of ATF and had multiple routing destinations. (Unnumbered).

²⁶² *Id.*

²⁶³ National Defense Authorization Act Fiscal Year 1991, § 1004, Pub. L. 101-510 (as amended by National Defense Authorization Act Fiscal Year 1991 § 1088, Pub. L. 102-190, and by National Defense Authorization Act Fiscal Year 1993 § 1041, Pub. L. 102-484, FY 93 NDAA.).

²⁶⁴ Hearings, Part 1 at 367.

²⁶⁵ The subcommittees discovered a number of post-Waco promotions of military assistance and ATF requests for military assistance. A sampling of those include: According to a Defense Department memo dated September 9, 1993, ATF requested and received approval for 2 weeks of Special Forces Training for 20 ATF agents less than 5 months after the tragic incident at Waco. Defense Documents D-1167. Another Special Operations Judge Advocate memo addressing this Special Forces training, indicates that ATF again was attempting to obtain military assistance without reimbursing Defense Department: "we cannot waive reimbursement under the fiction that we are 'training the trainer' as is not so subtly suggested by the 3 Aug BATF letter." Defense Documents D-1166. A June 15, 1993 ATF memorandum from Special Agent Pali, the ATF Deputy Senior Tactical Coordinator at Operation Alliance to the Chief of the Special Firearms Division and the Special Agents in Charge of the Dallas, Houston and Los Angeles Field Divisions enclosing an Regional Logistics Support Office document describing the "latest information regarding the types of support and procedures for Drug Law Enforcement Agencies to request excess property, nonoperational support or training from the Department of Defense." Treasury Documents T006665.

²⁶⁶ "[T]he only question I have is related to how we got involved. Was the 'methamphetamine' lab a subterfuge to get our (military) (506) (?) Involvement? Seems to me we need to be sure that what the ground rules are. Reasonable man rule applies." Unsigned handwritten note on a lieutenant general's note paper. Defense Documents D-1363.

is a violation of U.S. law.²⁶⁷ Secretary Holmes' purported concern is not responsive to the issue. Contrary to Mr. Holmes' assertion, the verification of a drug nexus would not require military personnel to conduct surveillance of or otherwise investigate American citizens. Rather, verification could be accomplished simply by establishing a standard which requires sufficient documentation by the law enforcement agency of the existence of drug offenses, as opposed to mere speculation or suspicion. In addition, JTF-6's own planning guide states that it "reviews and validates all requests for support" in conjunction with Operation Alliance, the National Guard, and the Regional Logistics Office.²⁶⁸

b. Special Forces paper and ATF's response

Further evidence suggesting a serious problem in the military's approval of assistance to ATF in this case involves ATF agents' reactions to the Bureau's own claim that a methamphetamine lab existed in the Branch Davidian residence.

The alleged presence of a methamphetamine lab was the basis for which the Special Forces assistance provided to ATF. After Special Forces legal advisors concerns' with the proposed training and ATF's alleged drug nexus, Maj. Petree, the Commander of Special Forces Rapid Support Unit which was assigned to provide ATF support, ordered two of his Special Forces medics to research and write a paper on methamphetamine labs for ATF. These Special Forces medics, who are highly skilled military personnel with far more advanced training than a typical civilian paramedic, spent 3 to 4 days researching and writing a memorandum on methamphetamine labs for ATF.²⁶⁹

There is no doubt that a central purpose of the memorandum on methamphetamine labs was to inform the ATF of the potential dangers and special precautions required when dealing with an active methamphetamine lab. Yet, when Maj. Petree presented the paper to ATF agents during the February 4-5, 1993, Houston meeting, these agents openly chose to ignore this information in front of the soldiers who prepared the document. In fact, the ATF agents' dismissal of such vital information was so obvious that these agents' reactions alone made it clear that the ATF believed that a methamphetamine lab did not exist.²⁷⁰

Maj. Petree indicated that the purpose of the Special Forces paper was for the informational use of Special Forces units who might be involved in future counterdrug activities involving methamphetamine labs. Yet, when the subcommittees requested a copy of the Special Forces paper during a visit by subcommittees' staff to the U.S. Army Special Operations Command in Fort Bragg, NC,

²⁶⁷ Pre-hearing meetings with Assistant Secretary Allen Holmes. See also Hearings, Part 1 at 367 (statement of Maj. Gen. John M. Pickler).

²⁶⁸ JTF-6 Operational Support Planning Guide at 16. Treasury Documents T08786, T08803.

²⁶⁹ Hearings, Part 1 at 361.

²⁷⁰ *Id.* at 372. Maj. Petree had to have known, or certainly should have known, as a senior military officer assigned to JTF-6, that a drug nexus was absolutely necessary to receive assistance from his unit through JTF-6. Even though Staff Sgt. Pitts, one of the writers of the paper, noticed the ATF agents' disinterest in the vital paper and clearly came to the conclusion that a methamphetamine lab did not exist, Maj. Petree indicated that he did not notice any remarkable reaction by the agents.

they were informed that it could not be located.²⁷¹ Sgt. Fitts had not seen the Army Special Forces paper since the meeting in Houston and had no idea what became of the Special Forces paper after the meeting. If the Army Special Forces paper was written as an information resource, the Army Special Operations Command would be expected to have a copy of this paper on file.

c. Two DEA agents were members of the Operation Alliance board

Military officers were not alone in their inaction. Documents show that two senior DEA agents were assigned to Operation Alliance at the time of ATF's request for military assistance at Waco.²⁷² Yet, none of the documents indicate that either of these DEA agents expressed concerns about the evidence ATF offered in support of its claim of an active methamphetamine lab or how ATF was planning to take down the alleged methamphetamine lab.

These two senior DEA agents were members of the Operation Alliance Board which provides the final approval of military assistance missions to drug law enforcement agencies. It is reasonable to assume that these DEA agents were aware of the safety and health risks a methamphetamine lab would present.

Treasury and Defense Department documents provided to the subcommittees indicate that Operation Alliance at least twice requested additional information on ATF's drug nexus, that a very contentious discussion between legal advisors and senior military officials of Special Operations Command and Operation Alliance had taken place, and that this was the largest raid in law enforcement history. Yet, no evidence was presented to show that these DEA agents expressed any concerns that ATF was not addressing these risks in their operational planning.

d. Approval process did not work

Contrary to the testimony of Assistant Secretary Holmes and Maj. General Pickler, the training mission did not violate laws because the approval process worked, but in spite of it. Only because certain soldiers recognized a legal problem and had the courage to raise the issue in light of opposition from their chain of command at JTF-6, was a "major incident avoided, lives were saved, and the law was not violated."²⁷³

JTF-6 and Operation Alliance have the approval authority for law enforcement requests for military assistance along the southwest border, which means their legal advisors conduct the legal re-

²⁷¹The presence of the Special Forces paper alone would provide evidence to produce charges that: (1) Special Forces trainers were deficient in their training of ATF in failing to ensure ATF took proper precautions; (2) Special Forces trainers knew from ATF's failure to incorporate proper precautions that no methamphetamine lab existed and thus they inappropriately provided military assistance in a noncounterdrug law enforcement operation. Neither of these potential charges is flattering to JTF-6, and especially to Maj. Petree, who presented the paper to ATF and who commanded the Special Forces units which trained ATF.

²⁷²Senior DEA Representative William C. Rochon and DEA Staff Coordinator Richard G. Thomas were on the Operation Alliance board. However, Special Agent Thomas was on sick leave from approximately October 1992 until his retirement in January 1993, so he has no personal knowledge of Operation Alliance's activities in support of ATF's investigation of the Branch Davidians. Letter from the U.S. Department of Justice to the subcommittees (January 5, 1996) (responding to the subcommittees' October 25, 1995, request for information).

²⁷³Handwritten memorandum on the letterhead of Judge Advocate General's Corp, U.S. Army. Defense Documents D-1155 at D-1157. The memo refers to the soldiers actions as "doing the right thing, not the easy thing."

view of the proposed assistance, not Special Operations Command legal advisors at Fort Bragg.²⁷⁴

Soldiers are taught that they should always go through their chain of command to address a problem. Only under significant circumstances are soldiers encouraged to go outside their chain of command for assistance. The Special Forces soldiers assigned to assist ATF, apparently had been properly trained to go outside their chain of command, which at the time was at JTF-6, by contacting their legal advisor at Special Operations Command, (USAFC) if they had concerns about a mission.

The Special Forces soldiers assigned the ATF mission did just that. Maj. Ballard, the Special Operations Representative at Operation Alliance, contacted Mr. Crain at Special Operations Command. Crain then informed Lt. Col. Lindley of their concerns.

It was Lt. Col. Lindley, the legal advisor of the Special Operation Command, who raised the legal concerns with JTF-6. Lt. Col. Lindley received a hostile response from Lt. Col. Rayburn, the JTF-6 legal advisor who accused him of attempting to "undermine" and "undercut" JTF-6's mission.²⁷⁵ Lt. Col. Lindley was also told that he could consider Lt. Col. Rayburn's words a personal attack.²⁷⁶ Subsequent to Lt. Col. Lindley's telephone conversation with Lt. Col. Rayburn, these concerns were raised with the Commanding Generals of both Special Operations Command and JTF-6 and eventually reached the Office of the Secretary of Defense. When the legal concerns were reviewed at that level, the Special Forces training mission was modified to comply with the law.²⁷⁷

e. The working group established by the Secretary of Defense

The final piece of evidence that serious problems exist in the process by which the military provides support to civilian law enforcement agencies is the Secretary of Defense's creation of a working group to review the process in the wake of the subcommittees' announcement of Waco hearings which would also explore the military's role in the incident.

On May 17, 1995, Secretary of Defense William J. Perry directed the Under Secretary of Defense for Policy to establish a working group "to conduct a comprehensive review of the current system by which Defense Department evaluates and responds to requests for assistance initiated by outside agencies."²⁷⁸ Perry acknowledged in his memorandum that, "several recent events suggest that the

²⁷⁴ All law enforcement agency requests for military assistance along the southwest border must be routed through Operation Alliance. Once the request is received, it is reviewed by Operation Alliance. If Operation Alliance accepts the request, it is then sent to JTF-6 for processing. JTF-6 Operations Section will develop a draft operations order with the law enforcement agency. Once the planning is complete, the draft order is returned to Operation Alliance for its approval. A final approval of the operations order is then determined at a joint meeting of the heads of supporting field drug law enforcement agencies, the Special Forces Rapid Support Unit tasked by JTF-6 and the tactical coordinator for Operational Alliance. Letter from Operational Alliance Special Agent Eddie Pali, ATF Coordinator for Operation Alliance (January 26, 1990). Treasury Documents T006663-006664.

²⁷⁵ Memorandum for record from Lt. Col. Philip Lindley. Defense Documents D-1168 at D-1170.

²⁷⁶ *Id.*

²⁷⁷ Handwritten memo on the letterhead of The Judge Advocate General's Corps, U.S. Army. Defense Documents D-1155 at D-1156.

²⁷⁸ Memorandum of Military Support to Civil Authorities by William Perry, Secretary of Defense, to the Secretary of the Army, Chairman of the Joint Chiefs, Under Secretary of Defense (Policy), Under Secretary of Defense (Comptroller), and the General Counsel of the Department of Defense (May 17, 1995).

process by which Defense Department evaluates and approves outside requests for assistance may be less than adequate” and that “there are indications that Defense Department’s ability to respond smoothly is encumbered by conflicting directives, multiple entry points and diverse funding authorities.”²⁷⁹

C. THE ALLEGED DRUG NEXUS

As explained earlier, in order to receive military assistance at Waco from the military counterdrug units, ATF was required to have a drug nexus. The existence of a drug nexus also would have allowed ATF to receive that military assistance without being required to reimburse the military for the cost of the training. ATF’s allegation that a drug nexus existed at the Davidians’ residence raised two concerns: (1) whether ATF used this alleged drug nexus as a subterfuge in order to obtain free military assistance from specially trained Special Forces counterdrug units; and (2) assuming ATF actually believed a drug nexus existed, whether ATF ensured that its agents were aware of the extreme health and safety hazards that a methamphetamine lab presents, and were properly trained and equipped to address those hazards.

1. METHAMPHETAMINE LABORATORIES

ATF alleged to the military that it had evidence of an “active methamphetamine lab” on the premises of the Davidians’ residence. Unlike general narcotics seizures, clandestine labs, by their very nature, “present a unique series of hazards and risks to law enforcement personnel.”²⁸⁰ Therefore, an allegation of an active methamphetamine lab should alarm any law enforcement official, because of the extreme safety and health dangers involved.

a. Dangers associated with methamphetamine labs

Hazards which law enforcement agents may expect to encounter in clandestine lab operations include exposure to toxic chemicals, explosive and reactive chemicals, flammable agents, irritant and corrosive agents, boobytraps, and physical injury from close quarter contact with illegal lab operators.²⁸¹

Illegal methamphetamine labs use highly volatile chemicals during the production process. Notwithstanding the boobytraps law enforcement agents frequently encounter at methamphetamine labs, the firing of a single bullet, sparks from turning off and/or on light switches, flashlights, or even a flash from a typical photography flashbulb can easily trigger an instantaneous explosion. Toxic vapors produced during chemical reactions can permeate a building’s structure and buildings with poor ventilation and temperature controls (like the Davidians’ residence) “add to the potential for fire, explosion, and human exposure.”²⁸² One chemical used in clandestine

²⁷⁹ *Id.*

²⁸⁰ The Joint Task Force of the Drug Enforcement Administration, the U.S. Environmental Protection Agency, and the U.S. Coast Guard, Guidelines for the Cleanup of Clandestine Drug Laboratories 8. See also, Bureau of Justice Assistance, Developing a Strategy for a Multiagency Response to Clandestine Drug Laboratories 4 (September 1995).

²⁸¹ *Id.* at 8.

²⁸² *Id.* at 3.

tine drug labs is so deadly that an amount small enough to fit on the head of a pin, could kill a room full of people.²⁸³

Other health concerns are no less serious. In the absence of proper safety precautions and cleanup procedures, law enforcement agents may “experience both acute and chronic adverse health effects as a result of exposure to solvents, reagents, precursors, by-products, and drug products improperly used or generated during the manufacture of illegal drugs.”²⁸⁴ Toxic materials produced at these labs can injure the lungs or the skin, damage the liver, kidneys, even the central nervous system.²⁸⁵ Some toxins have been linked to malformation of embryos, other genetic damage, cancers, and reproductive failure.²⁸⁶

In determining appropriate safety and health precautions, the subcommittees relied on standards set forth by the Drug Enforcement Administration (DEA). DEA has primary jurisdiction over investigations of clandestine drug labs. As the lead Federal agency, it has established procedures that DEA agents must follow during the investigation and seizure of drug labs.²⁸⁷ Moreover, this approach by DEA has been a model for State and local agencies in developing their own clandestine drug lab programs.²⁸⁸

b. Certification/training requirements for deconstruction of methamphetamine labs

Law enforcement personnel engaged in the investigation and seizures of clandestine drug labs should have specialized training in the investigation of such labs, in appropriate health and safety procedures, and in the use of the protective equipment.²⁸⁹

The DEA requires all of its personnel to complete a course on clandestine methamphetamine labs and be certified *prior to ever participating* in a methamphetamine lab raid.²⁹⁰ Simply stated, no DEA agent may participate in “take downs” of methamphetamine labs without proper certification. Annual recertification also is required. In addition, DEA provides seminars on clandestine methamphetamine labs throughout the Nation to other local, State, and Federal law enforcement personnel.

DEA agents are also required to receive a “baseline medical screening, including an occupational/medical history, a complete physical examination, a blood chemistry screen, pulmonary function and spirometry testing, and a stress-treadmill test prior to assignment.”²⁹¹ Agents have regular followup medical evaluations and, because of the risks associated with long-term exposure, regularly are rotated out of the Clandestine Lab Program.

The initial entry team also must have and be trained in the use of “appropriate monitoring instrumentation, such as air-sampling pumps, explosimeters, oxygen meters, organic-vapor analyzers . . .

²⁸³ Drug Enforcement Administration briefing to the subcommittees (June 8, 1995) and subsequent telephonic interviews with DEA chemists.

²⁸⁴ *Id.* at iii.

²⁸⁵ Bureau of Justice Assistance, *supra* note 280, at 5.

²⁸⁶ *Id.*

²⁸⁷ The Joint Task Force of the Drug Enforcement Administration, the U.S. Environmental Protection Agency, and the U.S. Coast Guard, *supra* note 280, at 4.

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.* at 5.

²⁹¹ Bureau of Justice Assistance, *supra* note 280, at 16.

that are used to determine the lower explosive limit and the concentration of organic vapors in the laboratory atmosphere.”²⁹² All of the monitoring devices must be “designed to suppress sparks” that may ignite and cause fires or explosions.²⁹³

c. The special precautions required when law enforcement actions involve a methamphetamine lab

After an investigation has gathered sufficient probable cause to establish that a drug lab is operating on a premises, DEA agents obtain a search warrant. Agents may request in the warrant the authority to destroy any hazardous bulk chemicals and equipment.²⁹⁴ A forensic chemist is consulted prior to and during the seizure.²⁹⁵ Once the warrant is obtained, the case agents begin a six step process for conducting the seizure: planning, entry, assessments, processing, exit, and followup.²⁹⁶ Because ATF entered the Branch Davidian residence, only the first two steps will be discussed in detail.

In the planning stage, the case agents must first assess of the hazards likely to be encountered and determine who needs to be notified before the raid (i.e., police, fire department, hospitals, hazardous waste contractors.)²⁹⁷ This includes a determination of what chemicals the agents might encounter. Once the assessment is complete, certified teams, including a forensic chemist and site safety agent trained and equipped with the requisite safety equipment, are assigned.

The second stage is the initial entry to apprehend and remove the operators and to secure the lab. Typically in methamphetamine lab operations, law enforcement agents will attempt to arrest the suspects away from the premises to avoid many of the aforementioned dangers. This is usually accomplished through surveillance and investigative techniques which provide law enforcement agents with sufficient information to determine the lab’s exact location, what chemicals are being used, the stage of the production process and when the suspects will leave the premises.

If the lab operators cannot be apprehended away from the premises, then the initial entry takes place. “DEA protocol calls for the initial entry team to employ ballistic protection equipment and fire retardant clothing.”²⁹⁸ Other safety procedures include avoiding the use of shotguns or diversionary devices such as flashbangs, smoke, or tear gas canisters which can ignite fumes.²⁹⁹ Additionally, agents should avoid turning light electrical switches on or off, use only explosion-proof flashlights, and use electronic strobes, not

²⁹²The Joint Task Force of the Drug Enforcement Administration, the U.S. Environmental Protection Agency, and the U.S. Coast Guard, *supra* note 280, at 8.

²⁹³*Id.*

²⁹⁴ATF did not mention a drug lab or possession of illegal drugs as suspected crimes in its search warrant.

²⁹⁵The Joint Task Force of the Drug Enforcement Administration, the U.S. Environmental Protection Agency, and the U.S. Coast Guard, *supra* note 280, at 5.

²⁹⁶*Id.*

²⁹⁷“In seizing a clandestine drug laboratory, the law enforcement agency may encounter materials that technically qualify as hazardous wastes and therefore are ‘subject to regulation.’ If those wastes exceed certain minimal quantities, the law enforcement agency becomes a hazardous waste generator and is required to adhere to waste disposal regulations promulgated under RCRA, and to regulations governing the transportation of hazardous materials promulgated by the Department of Transportation.” *Id.* at iv.

²⁹⁸*Id.* at 8.

²⁹⁹*Id.*

flashbulbs.³⁰⁰ Once the premises are secure and everyone is evacuated, the assessment step begins.

d. Did ATF address the extreme safety and health concerns a methamphetamine lab presents in its raid on the Branch Davidian residence?

In 1990, Stephen E. Higgins,³⁰¹ the Director of the Bureau of Alcohol, Tobacco and Firearms, testified before the Subcommittee on the Treasury, Postal Service, and General Government Appropriations of the Committee on Appropriations. In written responses to questions from subcommittee members, Higgins acknowledged:

[W]e [at the ATF] are aware of the considerable hazards presented by the careless storage of chemicals and the sensitivity of the explosive mixtures at these [clandestine methamphetamine] laboratories. In an effort to ensure a safe and thorough investigation, ATF has proposed specific, specialized training for select ATF personnel to readily identify narcotics laboratories and to recognize certain hazardous materials associated with the laboratories.³⁰²

Given that Higgins was still the ATF Director during the period when David Koresh was being investigated, when the Waco raid took place and during the post-raid investigation, it is reasonable to conclude ATF was aware of the safety and health hazards presented by methamphetamine labs. Furthermore, since the case had the "highest interest of BATF Washington and had been approved at that level,"³⁰³ ATF headquarters was aware of the alleged presence of a methamphetamine lab.

Even so, in response to the subcommittees' inquiries, ATF has acknowledged that no "ATF agent who was present on February 28, 1993, . . . had received specific, specialized training in investigating methamphetamine laboratories."³⁰⁴ In reviewing videotapes of the Fort Hood training, subcommittee investigators also found no discussion of the potential safety and health hazards that the suspected active methamphetamine lab would present. In other words, ATF agents participating in the raid had little or no notice of the dangers they might have forced in the active methamphetamine labs.

From numerous briefings and a review of videotape shot on the day of the raid, it appears that ATF agents did possess ballistic protection equipment and fire retardant clothing. ATF agents also possessed regular flashlights and regular cameras (i.e. flash photography), shotguns and flashbangs,³⁰⁵ each of which could trigger

³⁰⁰ *Id.*

³⁰¹ Mr. Higgins was Director of the ATF both during the investigation and at the time of the February 28, 1993, raid on the Branch Davidian residence.

³⁰² *Hearings before the Subcommittee on Treasury, Postal Service, and General Government Appropriations of the House Committee on Appropriations*, 101st Cong., 2d Sess. 688, 695 (1991).

³⁰³ Operations Order, February 17, 1993, Defense Documents D-587.

³⁰⁴ Undated Department of Treasury response to subcommittees' request for information.

³⁰⁵ ATF policy on the use of "flashbang" diversionary devices states, "Drug laboratories or other explosive environments may be so hazardous as to preclude the use of [flashbang] devices." and "If [a flashbang] lands on a combustible material a fire is not only possible but likely, (laundry, newspaper, clothing, etc.)." [Page 66 of the ATF training manual on the use of diversionary devices] no mention of the alleged presence of a methamphetamine lab is mentioned in ATF's request to the Chief of Special Operations Division for the use of flashbangs during the raid. [Request to use flashbangs, dated February 5, 1993, Treasury Documents 008213-14].

instantaneous explosions if used in the vicinity of a methamphetamine lab. Nor is there any evidence that any ATF agents possessed appropriate monitoring equipment to determine the lower explosive limit and the concentration of vapors in the atmosphere, or explosion proof flashlights.

Clearly, ATF disregarded the safety of its agents and innocent civilians. Agencies involved in clandestine lab operations fall under OSHA regulations requiring the following actions by employers:³⁰⁶

“Communication to employees of clear, unambiguous warnings, as well as provision of educational programs on the hazards of chemical substances.”

“Training of all employees who may be exposed to hazardous substances in how to recognize and handle safety and health hazards at laboratory sites, in the use of protective equipment, and in safe work practices.” Training must meet OSHA standards.

Examining and monitoring the health of all employees exposed to hazardous substances including documentation of any exposure.

Provide information to employees regarding any hazardous conditions in their work environments.

When agencies fail to adhere to these requirements, “supervisors can be held strictly and severally liable for situations involving employee exposure to hazardous substances and the resulting adverse health effects.”³⁰⁷

2. EVIDENCE PURPORTING TO SHOW THE ALLEGED DRUG NEXUS

a. *Marc Breault's statement*

Coincidentally, after repeatedly being informed by military officials of the drug nexus requirements, Aguilera received a facsimile on December 16, 1992, from Marc Breault in Australia, which according to ATF “suggest[ed] the existence of an illicit methamphetamine laboratory at the Branch Davidian compound.”³⁰⁸ Mr. Breault's facsimile relays that upon taking over the Mount Carmel (Residence of the Branch Davidians) property from George Roden, the former Branch Davidian leader, Koresh found methamphetamine lab equipment and “recipes” and called the Sheriff's Department to turn over the materials.³⁰⁹ It had been long rumored that an individual who used to rent from Mr. Roden was into drugs but he had later gone to prison.³¹⁰ This individual was no longer on the property when Koresh took over.³¹¹

Mr. Breault's facsimile to Special Agent Aguilera also indicated that although Koresh did call the Sheriff's Department and Sheriff's Department personnel did come out to the property, one individual present at the residence when the Sheriff's Department visited said she did not personally observe Koresh turn the lab equipment over to the Sheriff's Department.³¹² Mr. Breault also stated

³⁰⁶ Bureau of Justice Assistance, *supra* note 280, at 7 (citing 29 CFR Part 1910).

³⁰⁷ *Id.* at 8.

³⁰⁸ Memo from Colleen Callahan and Robert Tevens to Geoff Moulton and Lew Merletti, “Chronology and Witnesses Re: Military Support of ATF” (July 14, 1993). Treasury Documents T004589, 004590. Actual facsimile, Treasury Documents T008912.

³⁰⁹ Facsimile from Marc Breault to Special Agent Davey Aguilera (December 16, 1992). Treasury Documents T00008912.

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² *Id.*

in his facsimile that one night in 1989, Koresh “was talking about trafficking drugs as a way of raising money.³¹³ He [Koresh] seemed very interested in getting money through this means.”³¹⁴ However, Mr. Breault also admits in his facsimile that he was the only ex-member who was present for this statement.³¹⁵ Mr. Breault goes on to say in the same document that the building in which he implies the drug lab equipment was located burned down in Spring 1990.³¹⁶ Lt. Col. Gen. Pickler testified before the subcommittees that this information from Mr. Breault regarding a methamphetamine lab also was told to the military by ATF.³¹⁷ However, military documents indicate that ATF was conveying to the military the presence of an active methamphetamine lab.³¹⁸

There were at least six significant problems with its credibility as evidence that the Branch Davidians were operating a methamphetamine lab prior to ATF’s raid. First, the allegations were very stale by legal standards. ATF received the information more than 5 years after the methamphetamine lab equipment was found and the Sheriff’s Department visited the premises to investigate the claim. Second, it is undisputed that Koresh found the methamphetamine lab equipment and Koresh himself called the Sheriff to pick up the equipment. Third, the person rumored to have been involved in drugs was an occupant of the premises prior to Koresh taking over, and subsequently was sent to prison. Fourth, the former leader, Mr. Roden, not Koresh, was suspected of having been involved in illegal drugs. Fifth, the alleged statement by Koresh about drugs could not be verified independently. Sixth, the building Mr. Breault implies housed the methamphetamine materials burned down in 1990, 3 years before the raid.

Perhaps the most disturbing fact about this information, however, is that all of this drug nexus information originated with Mr. Breault, a disgruntled former member who left the group in 1989. The fact that Mr. Breault maintained an extensive biographical data base on present and former members and was working with a self-proclaimed cult-buster Rick Ross in and of itself should have raised questions about Mr. Breault’s intentions and credibility to the ATF agents.

Lt. Robert A. Sobozienski, a New York City Police officer who acted as an expert consultant to the Treasury Department’s Waco Review Team, summarized the problem with the information Breault provided when he wrote in his Waco Raid Assessment, “Former cult members were interviewed and, apparently much, if not all of their statements are reported to be facts. No thought is given to the idea that these ex-cult members had been away from

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ Hearings, Part 1 at 369–370.

³¹⁸ There are numerous examples of where ATF indicated to the military there was an “active methamphetamine lab” and “deliveries of precursor chemicals.” A few are the February 17, 1993, Operations Order, and the February 2, 1993, letter from Operation Alliance to the Adjutant General of the Texas National Guard counterdrug unit informing them that ATF had requested National Guard assistance in serving a Federal search warrant “to a dangerous, extremist organization believed to be producing methamphetamine.” Treasury Documents T005551. See also Defense Documents D–581.

the residence for some time, or to the individual biases, or if they had an ax to grind with present cult members.”³¹⁹

ATF agents did check with the McLennan County Sheriff's Department personnel who acknowledged Koresh's request but “found no record” of the removal of methamphetamine lab equipment.³²⁰ However, Joyce Sparks³²¹ states in written testimony, that during her child protective services investigation in 1992 she checked with the Sheriff's Department and was told that Department personnel did receive drug evidence from David Koresh.³²² During her interviews with him, Koresh told her that he had given the Sheriff's Department information, pictures, and drug evidence but nothing had ever come of it.³²³ Koresh complained in his interviews with Sparks that the Sheriff's Department was aware of the illegal methamphetamine lab.³²⁴

The disposal of methamphetamine lab equipment and chemicals presents great risk and significant problems. As a matter of routine, DEA hires certified State and local chemical disposal companies to remove the lab equipment and chemicals for proper disposal under EPA guidelines.³²⁵ Because the cleanup costs can easily total \$20,000, or significantly more, depending on the size and condition of the lab site, local law enforcement officials sometimes choose not to remove the lab equipment and chemicals or not to follow the proper environmental guidelines for removal in an effort to avoid the legal liabilities and costs associated with such labs.³²⁶

b. The National Crime Center check

As mentioned earlier, after a December 17, 1992, meeting of SAC Chojnacki, Aguilera and Lt. Col. Walker in which Lt. Col. Walker informed the ATF agents that ATF could receive non-reimbursable military support if a drug nexus existed, ATF Intelligence Research Specialist Sandy Betterton was instructed to search criminal records of Davidians to identify prior drug offenses.³²⁷ However, when ATF Special Agent Pali was interviewed by Treasury Agents during the post-Waco review, he admitted that only one Branch Davidian had a prior drug conviction.³²⁸

³¹⁹ Waco Raid Assessment by Lt. Robert A. Sobozienski. Treasury Documents T00021383.

³²⁰ Treasury Department Report at 212.

³²¹ Ms. Sparks was an investigations supervisor for the Texas Department of Protective and Regulatory Services, Children's Protective Services, who was interviewed repeatedly by ATF.

³²² Prepared statement of Joyce Sparks. See Appendix. [The Appendix is published separately.]

³²³ *Id.*

³²⁴ *Id.*

³²⁵ The hiring of State and local chemical companies was the result of legislation which corrected the problem of DEA disposing of the methamphetamine lab materials. Each time DEA disposed of a methamphetamine lab, the agency came under the Hazardous Waste laws, as a hazardous waste generator.

³²⁶ Although the Sheriff's Department acknowledged visiting the Branch Davidian residence to remove methamphetamine lab materials at Mr. Koresh's request in 1989, there was no record of the actual removal of the methamphetamine lab materials. However, there could be numerous reasons why no such record existed from a Sheriff's call 4 years prior, and without further evidence of the methamphetamine lab's continued use or even its continued existence there is little probative value to Mr. Breault's information. Neither ATF's search warrant nor its supporting affidavit contain any information about suspected illegal drug activity.

³²⁷ Memorandum from Colleen Callahan and Robert Tevens to Geoff Moulton and Lew Merletti, “Chronology and Witnesses Re: Military Support of ATF” (July 14, 1993). Treasury Documents T004589, 004590.

³²⁸ *Id.*

c. FLIR hot spot

Treasury Department documents provided to the subcommittees indicate that at the request of ATF, Forward Looking Infrared Radar (FLIR) imaging was taken on January 6, 1993, by the Texas National Guard Counterdrug Unit in a National Guard counterdrug aircraft. Eugene Trevino, a Texas National Guard airman aboard the aircraft, offered an *unofficial interpretation* of the FLIR photos to the Austin ATF agents in which he stated that the “hot spot” inside the residence “could be indicative of ‘a methamphetamine lab.’”³²⁹ It is unclear whether ATF agents solicited Trevino’s personal interpretation or if he offered it on his own volition.

Regardless of the impetus for the interpretation, Lt. Col. Pettit and Lieutenant Justice “maintained that only information about grid coordinates was *officially* provided to ATF” and that “no official interpretation was ever provided to ATF regarding the ‘hot spot.’”³³⁰ Even though ATF never sought an official interpretation,³³¹ ATF agents later offered the “hot spot” as direct evidence of a methamphetamine lab to the military when JTF-6 requested additional proof of the drug nexus at a February 4, 1993, meeting.³³²

Major General Pickler testified that at the February 4 meeting there was some pictorial evidence (i.e., FLIR evidence) that an active methamphetamine lab was on the site of the residence and ATF expected the lab to be there.³³³ Interviews with DEA agents have revealed that FLIR imaging is not a technique used to identify clandestine drug labs because using “hot spots” as signatures for methamphetamine labs is too unreliable.³³⁴ DEA agents have informed subcommittee staff that the use of FLIR imaging to identify an active methamphetamine lab would be a last resort and only as “icing on the cake” under that circumstance.

d. The DEA lab team

Only when General Pickler of JTF-6 continued to request additional evidence of a methamphetamine lab, did ATF indicate it intended to include a lab team from the DEA in the operation.³³⁵ Treasury documents indicate that two DEA officials were at the Command Post at the Texas State Technical Institute on the day of the raid; but ATF declined the DEA offer of direct assistance from a DEA Clandestine Certified Laboratory Team.³³⁶ Such a lab team is specially trained and certified to “take down” active methamphetamine labs. These teams also have the specialized equipment and tactical training required for methamphetamine lab operations.

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ *Id.*

³³² *Id.*

³³³ Hearings, Part 1 at 363.

³³⁴ Drug Enforcement Administration briefing to the subcommittees (June 8, 1995) and telephone interviews with Drug Enforcement Administration chemists.

³³⁵ General Pickler testified that Lt. Col. Bertholf was told at the February 4 and 5, 1993, meeting in Houston that ATF had intended to include a DEA lab team in the Waco operation. Hearings, Part 1 at 369-370.

³³⁶ Treasury Document T4589.

e. The precursor chemicals used to produce methamphetamine

There are numerous methods to produce methamphetamine. However, certain chemicals required in the synthetic process are themselves incorporated into the molecule of the target drug (in this case methamphetamine).³³⁷ These chemicals are referred to as precursor chemicals and their delivery would be evidence that methamphetamine was being produced. While ATF agents repeatedly proffered evidence of deliveries of precursor chemicals to the Branch Davidian residence as proof of an active methamphetamine lab, the Treasury Department has since been unable to locate or produce the documents offered to support its precursor contentions.³³⁸

Treasury documents outlining the series of meetings between military, Texas National Guard, and ATF officials, describe a February 4, 1993, meeting held at the SAC/Houston office regarding military support. In attendance were Special Agent Lewis; Special Agent Sarabyn; Lt. Col. Bertholf; Special Agent Pali, ATF coordinator to Operation Alliance; William Enney, Texas State Interagency Coordinator; and Maj. Lenn Lannaham, JTF-6 Liaison. During the meeting, Sarabyn offered ATF documents including a list of methamphetamine precursor chemicals, in support of the drug nexus.³³⁹ As a result of the meeting, military support of the Branch Davidian investigation continued.

According to General Pickler's testimony before the subcommittees, Lt. Col. Bertholf was told at the February 4, 1993 meeting in Houston that precursor chemicals were discussed as one of the elements of proof proffered by ATF that an active methamphetamine lab existed and those chemicals may have been on site at the Branch Davidian residence.³⁴⁰ General Pickler testified that the ATF representative, while giving a background briefing as to why ATF had targeted the Davidians, indicated that UPS or shipping documents ATF was tracking included a great deal of precursor chemicals consistent with the production of illegal drugs.³⁴¹ However, General Pickler also testified that precursor chemicals were discussed in the context of the possibility of a delivery of those kinds of chemicals much earlier than 1993, but he is not exactly certain which precursor chemicals were there.³⁴²

General Pickler's testimony raises several questions: First, what did ATF actually tell the military about precursor chemicals? Second, General Pickler's testimony implies it was that information about deliveries of precursor chemicals that ATF offered when the

³³⁷ U.S. Department of Justice, Drug Enforcement Administration publication, *Chemicals Used in the Clandestine Production of Drugs* at ii (March 1995).

³³⁸ On February 2, 1993, ATF Special Agents Pali and Phil Lewis met with representatives of the JTF-6, Texas National Guard and Operation Alliance. Lewis mentioned the delivery of precursor chemicals to the residence. On February 4, 1993, ATF Special Agents Lewis, Pali, and ATF Special Agent Chuck Sarabyn met with representatives from JTF-6 and the Texas National Guard to discuss evidence of a possible drug nexus. Attendees recall Sarabyn showing documents detailing the delivery of precursor chemicals to the residence. However, Treasury has been unable to find those documents. Letter from Department of Treasury to the subcommittees (January 26, 1996) (responding to the subcommittees' request for information on November 16, 1995.)

³³⁹ Again, the subcommittees have never received this document listing the methamphetamine precursor chemicals, nor has ATF documentation on the delivery of such chemicals to the Branch Davidian residence been provided.

³⁴⁰ Hearings, Part 1 at 363, 369-370.

³⁴¹ *Id.* at 378. The Treasury Department has been unable to locate these documents.

³⁴² *Id.*

military requested additional evidence. If General Pickler was uncertain when precursor chemicals were present at the Branch Davidian residence, why did he approve the ATF training by an elite Special Forces military unit assigned to do counterdrug missions? Third, did General Pickler simply rely on the absence of a defined drug nexus standard in approving the training mission? Fourth, after he requested additional information before approving the military training, why did General Pickler and other military officials say it is not the position of the military to question the veracity of a drug law enforcement declaration that a drug nexus exists? Especially, since JTF-6's own planning guide States that in conjunction with Operation Alliance, the National Guard and Regional Logistics Office "reviews and validates all requests for support."³⁴³

3. EVIDENCE REFUTING ATF'S CLAIM OF A DRUG NEXUS

a. ATF failed to address the issue of an active methamphetamine laboratory into raid planning

Undermining ATF's claim that a methamphetamine lab existed at the Branch Davidian residence, is the fact that briefing papers which went up to ATF headquarters, status reports and other requests failed to mention the existence of a methamphetamine lab at the planned raid site or suspected illegal narcotics production.

A review of the January 5, 1993, briefing paper sent to ATF's Washington, DC, headquarters reveals that no mention of the subject of drugs or military involvement even though senior ATF officials at headquarters were signing off on requests for military assistance under the guise of a counternarcotics operation.³⁴⁴ Treasury documents indicate that this briefing paper was forwarded to the Assistant Secretary of the Treasury for Enforcement after review by the ATF Director and his staff.³⁴⁵ The forwarding of this type of briefing paper was the normal procedure the ATF Director used to notify Treasury of major ongoing cases.³⁴⁶

In addition to the January 5 briefing paper, monthly status reports were prepared by Aguilera, reviewed by Dunagan, the Assistant Resident Agent in Charge of the Austin, TX, office and approved by Chojnacki, the Special Agent in Charge of the Austin, TX, office who then forwarded the reports to the Special Agent in Charge of the Houston Office. Although these reports being provided over a 9-month period and almost daily during the weeks leading up to the raid, they never mention the case as a counternarcotics investigation or any military involvement.

As late as February 5, 1993, Chojnacki requested the use of flashbangs and failed to mention the possible existence of an "active methamphetamine lab," even though ATF policy states that drug laboratories or other explosive environments may be so hazardous as to preclude the use of flashbangs.³⁴⁷ In fact, the only consistent mention of any drug activity by Branch Davidians in any of the ATF Waco documents on Waco is in requests for military as-

³⁴³ JTF-6 Operational Support Planning Guide, p. 16-T08786, 08803.

³⁴⁴ Treasury Documents T004634-T004642.

³⁴⁵ Treasury Documents T004621-T004624.

³⁴⁶ *Id.*

³⁴⁷ Treasury Documents T008213-T008214.

sistance which required drug activity to justify military intervention and assistance.

b. ATF agents were not properly trained and certified

The second piece of evidence refuting ATF's claim that a drug nexus actually existed is the fact that ATF agents involved in the raid on the Branch Davidian residence were not trained and/or certified in methamphetamine operations. Furthermore, the lack of necessary safety precautions taken in the planning, training and operation indicate that these agents were ill-equipped and unprepared for the "suspected" presence of an active methamphetamine lab. These failures are in direct conflict with ATF's own guidelines on clandestine lab operations.

c. The DEA's offer of assistance

ATF's claim that a drug nexus actually existed is called into question by ATF's response to DEA's offers of assistance. The Drug Enforcement Administration is the lead Federal agency in enforcing narcotics and controlled substance laws and regulation. While Operation Alliance was assisting ATF with its investigation of the Davidians, DEA had a Senior Special Agent, Mr. William Roshon, acting as a Coordinator for DEA at Operation Alliance. On January 22, 1993, Deputy Tactical Coordinator William Roshon offered DEA assistance in the form of onsite laboratory technicians to ATF Special Agent Pali. Pali placed DEA Agent Roshon in touch with the SAC/Houston Office.³⁴⁸

Post-raid interviews of Pali by the ATF Waco Review Team revealed that ATF refused twice DEA's offer of onsite lab technicians, but did have two DEA officials from the Austin DEA office present at the Command Post the day of the raid.³⁴⁹ Two DEA agents from the Waco office were on standby for the raid.³⁵⁰

On February 2, 1993, ATF Agent Lewis provided a briefing to Operation Alliance members on the "suspected methamphetamine lab" at the Branch Davidian residence which, according to the ATF summary of events, was known at that date "to have received deliveries of chemical precursors for the manufacture of methamphetamine." After the briefing by Lewis, Gen. Pickler, Commander of JTF-6, stated "that it is not the position of the military to question the veracity of a law enforcement request regarding a drug nexus."³⁵¹ DEA Agent Rochon told Waco Review Team interviewers, after the February 2, 1993, briefing, that he had offered the assistance of a DEA Clandestine Certified Laboratory Team and Pali declined the request. However, Agent Rochon did provide Lewis the phone number of the Austin DEA Resident in Charge. Agent Roshon "'opined' that precursor chemicals for methamphetamine could also be used in the manufacture of explosives."³⁵² However, senior DEA chemists told subcommittee investigators when interviewed regarding the use of methamphetamine chemicals to make explosives, "that they had never heard that one be-

³⁴⁸ Special Agent Robert Tevens' "Chronology and Witnesses re: Military Support of ATF" (July 14, 1993). Treasury Documents T004589-T004593.

³⁴⁹ *Id.*

³⁵⁰ *Id.*

³⁵¹ Treasury Documents T004589-T004594.

³⁵² *Id.*

fore” and they were unaware of any chemicals used to produce methamphetamine which could be used to make explosives. Although some methamphetamine chemicals are very volatile in nature, using them to make explosives is another matter entirely. Given that ATF has jurisdictions over explosives and DEA has jurisdiction over illegal narcotics, it seems odd that ATF agents and DEA agent Rochon would attempt to blur this distinction.

Although DEA was never informed officially of the Waco investigation by ATF, two senior DEA officials were well aware of the facts surrounding the ATF investigation of the Davidians. Two senior DEA officials were members of the Operation Alliance board which reviewed law enforcement agency requests. Documents indicate that at least one of these DEA agents did offer DEA methamphetamine lab assistance and ATF declined that offer. However, no documents received by the subcommittees indicate that these DEA agents expressed any concern with ATF's apparent plan to raid an active methamphetamine laboratory.

In addition, when the subcommittees requested copies of the UPS receipts as proof of the delivery of chemicals that are required for the production of methamphetamine or any other evidence of the delivery of these chemicals, the subcommittees were informed that none could be found.

d. The Special Forces paper and the ATF response to it

The fourth piece of evidence undermining ATF's claim that a drug lab existed is ATF's own reaction to the Special Forces paper on the methamphetamine lab. Sergeant Fitts testified that he and another Special Forces medic were directed by Major Petree, their Commander, to research and draft a paper on methamphetamine labs.³⁵³ Interviews with Sgt. Fitts revealed that the paper addressed the dangers of methamphetamine labs from both tactical and exposure perspectives.³⁵⁴ Sgt. Fitts and the other medic took 3 or 4 days to complete the project.³⁵⁵

During the February 4–5 Houston meeting, Maj. Petree presented the paper to ATF agents who showed no interest in its contents. Sgt. Fitts testified that ATF agents never expressed any concern about the dangers that would be presented by a methamphetamine lab and that it was his impression that the subject of a methamphetamine lab “dropped off the face of the earth after the paper was presented.”³⁵⁶ In his opinion, it was obvious from the reaction of the ATF agents that no methamphetamine lab existed.³⁵⁷

³⁵³ Hearings, Part 1 at 361. Special Forces medics are considered to be highly trained.

³⁵⁴ The subcommittees requested a copy of the paper and were told that it could not be located. In its production of documents to the subcommittees, the Treasury Department failed to supply a copy of the paper although testimony before the subcommittees indicated that the paper was presented to ATF agents at a meeting on February 4–5, 1993 in Houston, TX.

³⁵⁵ Hearings, Part 1 at 361.

³⁵⁶ Hearings, Part 1 at 372; subcommittees' interview of Staff Sgt. Steve Fitts, in Washington, DC (July 11, 1995).

³⁵⁷ *Id.* Although it was very clear from the interview of Staff Sgt. Fitts and his testimony before the subcommittees, that this paper was drafted to be presented to ATF at a Houston meeting on February 4–5, 1993, Maj. Petree during a pre-hearing review at first said that he could not recall the paper and later whether it was presented to ATF. After Staff Sgt. Fitts answered under oath that he was present when Maj. Petree himself presented ATF the paper, Maj. Petree acknowledged that he had received it.

D. POST-RAID MILITARY ASSISTANCE TO THE FEDERAL BUREAU OF INVESTIGATION (FEBRUARY 28–APRIL 19)

The standoff between the government and the Branch Davidians began on February 28, 1993, as the cease-fire went into effect following the ATF's failed raid on the Branch Davidian residence. During that time personnel and equipment of the U.S. Armed Forces were present at or near the Branch Davidian residence.

1. MILITARY EQUIPMENT AND PERSONNEL PROVIDED

a. Active duty personnel and equipment

During the standoff, a limited number of active duty military personnel were present at the Branch Davidian residence providing services to the FBI in support of the FBI's activities during the standoff. Most of these troops were dressed in uniforms which indicated their, rank, service, and function. A small number of troops present at the site were assigned to Army Special Forces units. Because the military occupational specialties of these troops are classified, they dressed in civilian clothes while at or near the Branch Davidian residence and did not identify themselves as military personnel. Additionally, one of the two senior Army officers present at the April 14 meeting with the Attorney General also visited the Branch Davidian residence in order to personally view the tactical situation. This officer was present at the Branch Davidian residence for part of 1 day.

The type of support provided by the active duty troops consisted primarily of performing repairs and maintenance on sophisticated observation and electronics equipment³⁵⁸ provided by the Defense Department to the FBI. Active duty, enlisted military personnel set up the equipment and performed necessary maintenance on it. There is no evidence that military personnel actually operated the equipment. Instead, it appears that FBI agents operated this equipment. In one instance, however, civilian employees of the Department of Defense operated one piece of sophisticated electronics equipment.³⁵⁹ In addition, active duty, enlisted military personnel performed repair and maintenance work on the electronics equipment belonging to the FBI. The accounts given by all personnel familiar with this aspect of the operation and who were interviewed by the subcommittees confirm that, with this one exception, only FBI personnel operated the equipment during the standoff.

b. National Guard personnel and equipment

During the standoff, the Texas National Guard provided a number of military vehicles to the FBI. Principal among these were 10 Bradley Fighting Vehicles (Bradleys), 4 M728 Combat Engineering Vehicles (CEV's), 2 M1A1 Abrams tanks, and 1 M88 tank retriever. The weapons systems in those of these vehicles which are normally armed were removed before they were transported to the Branch Davidian residence.³⁶⁰

³⁵⁸ The electronics equipment was used to block the Davidians' television reception.

³⁵⁹ Hearings, Part 3 at 315 (statement of Allen Holmes, Assistant Secretary of Defense for Special Operations and Low Intensity Conflict).

³⁶⁰ *Id.* at 314.

During the standoff the Bradleys were used primarily as armored personnel carriers to transport FBI officials to meetings with the Davidians, to transport FBI agents to their observation posts around the Branch Davidian residence, and by FBI agents to guard the perimeter of the operation. During the insertion of the CS agent on April 19, the Bradleys were used by FBI agents to maneuver close enough to the Branch Davidian residence so that the agents could fire Ferret round projectiles containing CS agent into the windows of the residence.

The CEV's were not used until April 19. Attached to each CEV was a long triangular boom-like arm. Attached to the booms of two of the CEV's were mounted devices that sprayed CS agent mixed with carbon dioxide. On April 19, these CEV's were used to ram holes into the Davidians residence. The operators in each CEV then inserted CS agent into the building using the devices affixed to the boom. Insertions of CS agent occurred in four distinct phases throughout the morning of the 19th. At one point, one of the CEV's became damaged and could no longer spray CS agent. As the day progressed, the FBI began to use the CEV's to "deconstruct" the Branch Davidian residence, using them to ram into the corners and sides of the building, creating large openings in the building. At one point, part of the rear roof collapsed after one CEV made multiple entries into the side of the building.

In addition to these vehicles, a number of support vehicles (e.g., Humvees, used to transport personnel, and flatbed trucks, used to haul the Bradleys and CEV's to Waco) were located at or near the Branch Davidian residence. Additionally, Defense Department provided support equipment (e.g., tents, generators, concertina wire) to the FBI.

An unknown number of Texas National Guard personnel were present during the standoff. Most of these personnel performed maintenance on the military vehicles loaned to the FBI or to provide support services for these troops (i.e., National Guard cooks were present to prepare meals for the mechanics). Other National Guard troops provided remedial training to the FBI's HRT members who were to operate the Bradleys and CEV's. Additionally, on April 19, some National Guard troops assisted FBI agents in refilling the CEV's with the CS riot control agent.

c. Reimbursement

The Economy Act³⁶¹ requires the Justice Department to reimburse the Department of Defense for the cost of the equipment and personnel support provided to it. The subcommittees have been informed that this reimbursement has been made.

2. ADVICE/CONSULTATION PROVIDED BY MILITARY OFFICERS

a. Request by Texas Governor

When Texas Gov. Ann Richards learned of the failed ATF raid on February 28, she requested to consult with a knowledgeable military officer about the incident. In response to her request, the commander of the U.S. Army's III Corps at Fort Hood, TX, asked the assistant division commander of the First Cavalry Division of

³⁶¹ 31 U.S.C. § 1535.

the III Corps, also at Fort Hood, to meet with Governor Richards. That officer met with the Governor on the evening of February 28. During the meeting, the officer answered the Governor's questions concerning the types of military equipment the ATF had used during the raid and the types of military equipment which Federal law enforcement officials might use in the future. The Governor also requested that the officer meet with the Texas Adjutant General (the commander of the Texas National Guard), who only recently had been appointed to his position.

b. Visit to the Branch Davidian residence with FBI officials

Two senior Army officers participated in a meeting of Justice Department and FBI officials with the Attorney General on April 14. During the meeting, the participants discussed the FBI's plan to end the standoff. The subcommittees' investigation revealed that one of the Army officers visited the Branch Davidian residence on April 13, accompanied by HRT commander Rogers.

During a briefing of the subcommittees these officers indicated that Rogers had arranged for the officers to be included in the April 14 meeting and had invited one of them to view the Branch Davidian residence to better understand the tactical situation. Rogers met the officer at the Branch Davidian residence and arranged for a helicopter tour of the perimeter of the area. The officer informed the subcommittees that he only observed the FBI's activities there and did not take part in the ongoing operation. The officer and Rogers then left Waco to travel to Washington for the meeting with Attorney General Reno.

The officer further informed the subcommittees that his visit to the Branch Davidian residence was his first visit and that he did not return to the Branch Davidian residence after April 14. The other officer present at the April 14 meeting stated that he did not visit the Branch Davidian residence at any time. The subcommittees' interviews with both FBI and other military personnel present at Waco during the standoff confirmed the statements of the Army officers.

c. April 14, 1993 meeting with Attorney General Reno

On April 14, 1993, a meeting was held in the office of the Director of the FBI with Attorney General Reno and several Justice Department and FBI officials. According to the Justice Department Report, "several military representatives" were also present.³⁶² The subcommittees' investigation identified the two senior military officers present at the meeting. These two officers briefed the members of the subcommittees in a classified briefing in July of 1995 in conjunction with the subcommittees' public hearings. Additionally, a Defense Department representative testified before the subcommittees in open session generally as to the discussions between the officers and Attorney General Reno on April 14, 1993.

The officers present at the April 14 meeting at the invitation of FBI officials were to answer any questions Attorney General Reno might pose about the FBI's plan to end the standoff. The officers understood they had been selected to attend the meeting because

³⁶² Justice Department Report at 266.

of their special tactical training and experience. Additionally, HRT commander Rogers knew one of the officers personally and had facilitated the request from the Justice Department to Defense Department that the officers attend the meeting.³⁶³

The officers informed Attorney General Reno that they could not comment on specific FBI plans to end the standoff.³⁶⁴ One of the officers did inform Attorney General Reno that if the HRT had been a military force under his command, he would recommend pulling it away from the Branch Davidian residence for rest and retraining.³⁶⁵ They also explained to Attorney General Reno that if the military had been called in to end a barricade situation as part of a military operation in a foreign country, it would focus its efforts on "taking out" the leader of the operation.

The officers believed Attorney General Reno understood their comments as an illustration of the tactical principle that a group heavily dependent on a charismatic leader for direction, such as the Davidians, can best be controlled if the leader is removed from control. The officers believe Attorney General Reno understood that their comments were appropriate to a military operation abroad but were not directly applicable to the domestic law enforcement situation facing Attorney General Reno.

3. FOREIGN MILITARY PERSONNEL

Foreign military personnel were present at the Branch Davidian residence during the standoff sometime in March. The two persons present were members of the 22nd Regiment of the British Army's Special Air Service (SAS). This branch possesses special tactical military skills and has a role similar to U.S. Army Special Forces troops. American military personnel present during the standoff informed the subcommittees that the SAS personnel observed the activities of the FBI and took no part in the actions of the military or the FBI. The two SAS representatives were not present on April 19, the date the standoff ended.

Accordingly to the Justice Department's written response to questions submitted by the subcommittees, the SAS personnel were present at Fort Bragg, NC, in early 1993 on other business and requested to observe the FBI's HRT command post and forward tactical positions at Waco. FBI officials have informed the subcommittees that the HRT maintains liaison with the military and law enforcement counterterrorist units of friendly foreign countries, including the United Kingdom, Germany, Italy, Spain, Australia, and Denmark. HRT commanders occasionally invite representatives of these units, as well as the U.S. Army Special Forces, to observe operations in which the HRT is engaged, as each of the organizations has similar skills and performs similar functions. This professional courtesy apparently is extended to FBI officials as well by the U.S. Special Forces and the counterterrorist units of the countries listed above. The FBI explained the presence of the SAS personnel at the Branch Davidian residence as an example of this type of information-sharing.

³⁶³ Hearings, Part 3 at 304, 314 (statement of Allen Holmes, Assistant Secretary of Defense for Special Operations and Low Intensity Conflict).

³⁶⁴ *Id.* at 304.

³⁶⁵ *Id.* at 304, 314.

The subcommittees' investigation finds no support for the assertions made by some that SAS personnel, or any other foreign persons, took part in the activities of U.S. Government agencies at the Branch Davidian residence. Accordingly, the subcommittees conclude that the two SAS personnel were the only foreign persons present at the Branch Davidian residence³⁶⁶ and that they took no part in the government's activities there.

E. FINDINGS CONCERNING MILITARY INVOLVEMENT IN THE GOVERNMENT OPERATIONS AT WACO

1. *The Posse Comitatus Act was not violated.*

a. *No violations of the Posse Comitatus Act occurred up to February 28, 1993.* The subcommittees conclude that no actual violation of the Posse Comitatus Act occurred as a result of the military support provided to the ATF through February 29, 1993. The subcommittees review of this question was divided into two parts: the support provided by active duty military personnel prior to February 28 and the support provided by Texas National Guard troops up to and on February 28, 1993.

The subcommittees find no violation of the Posse Comitatus Act as a result of the support provided by the active duty military personnel who facilitated the training of ATF agents at Fort Hood, TX, in late February 1993. The ATF's initial request to Operation Alliance included a request that military medical personnel actually participate in the raid on the Branch Davidian residence. The ATF also requested that military personnel participate in the formulation of the ATF's overall raid plan against the Davidians' residence. These requests raised the concern of military lawyers due to their Posse Comitatus implications. The subcommittees conclude that these officers were correct to raise these concerns and that their actions helped prevent a violation of the Posse Comitatus Act.

As a result of the concern by these officers as to ATF's request, less support was provided than initially requested. That support was limited to providing and staffing a training area for the ATF at Fort Hood, teaching basic first aid, and providing general advice on communications questions. Because these activities do not rise to the level of direct participation in a law enforcement action, they did not violate the Posse Comitatus Act.

The subcommittees also find no violation of the Posse Comitatus Act as a result of the support provided by the Texas National Guard which participated in the training that the ATF conducted for its agents at Fort Hood, TX, in late February 1993 and which flew the helicopters on February 28 that were part of the ATF's raid on the Branch Davidian residence. The Texas National Guard troops who participated in these activities were acting in their "State national guard" status under the command and control of the Governor of Texas, even though the costs of the operation were paid by the Federal Government pursuant to title 32 of the U.S. Code.

The Posse Comitatus Act does not govern the actions of the National Guard when it is acting in a non-Federal (i.e., State) status. Because the Texas National Guard troops participating in the

³⁶⁶ Other than some of the Davidians, several of whom were foreign nationals.

ATF's training and the raid itself were acting in this status, the Posse Comitatus Act did not apply to them. Accordingly, no violation was possible and none, therefore, occurred.

b. No violations of the Posse Comitatus Act occurred after February 28, 1993. The subcommittees conclude that no actual violation of the Posse Comitatus Act occurred as a result of the military support provided to the FBI after February 28, 1993. The subcommittees review of this question involved two issues: the support provided by active duty military personnel prior to February 28 and the support provided by Texas National Guard troops through April 19, 1993.

The subcommittees find no violation of the Posse Comitatus Act as a result of the support provided by the active duty military personnel who were present at the Branch Davidian residence from February 28, 1993 to April 19, 1993. The subcommittees' investigation indicates, and the testimony of the witnesses who testified at the hearings confirmed that no active duty military personnel actively participated in any actions that can be characterized as the exercise of the law. The actions of the enlisted personnel appear to have been limited to setting up equipment and performing maintenance on it, or providing support to other military personnel (e.g., transportation, food service). All of the military personnel interviewed by the subcommittees confirmed that only FBI employees operated the military equipment during the law enforcement activities conducted at the Branch Davidian residence. The subcommittees found no evidence to the contrary.

As discussed above, the Posse Comitatus Act does not govern the actions of the National Guard when it is acting in a non-Federal (i.e., State) status. Accordingly, none of the actions taken by the National Guard during the standoff violated the Posse Comitatus Act. The subcommittees note, however, that it appears that the National Guard's role during the standoff was very limited. The National Guard role generally involved troops transporting to the Branch Davidian residence all of the military vehicles used by the FBI during the standoff and performing routine maintenance on them.

On April 19, National Guard troops assisted the FBI in refilling the CEV's with the CS agent used in the unsuccessful effort to induce the Davidians to leave the residence. Because the National Guard troops are not subject to the Prohibitions of the Posse Comitatus Act when acting in their State status, no violation occurred. The subcommittees note, however, that had the National Guard troops instead been active duty personnel, or acting in a Federal status, their participation in the execution of the CS gas plan would have violated the Posse Comitatus Act.

2. The ATF misled the Defense Department as to the existence of a drug nexus in order to obtain non-reimbursable support from the Defense Department. The subcommittees conclude that the ATF intentionally misled Defense Department and military personnel as to whether the Davidians were operating an illegal drug manufacturing operation at the Davidian residence. It appears that the ATF agents involved in planning the raid knew that they could obtain support from the military at no cost in preparation for their raid. It also appears that the ATF knew that this support would

be provided promptly if the presence of a drug manufacturing operation was alleged. While there had been allegations that a drug manufacturing operation was located at the Davidian residence at some point in the mid to late 1980's before Koresh took control of the group, there was no evidence that the drug operation continued into late 1992. The ATF's misrepresentations improperly enabled it to obtain military assistance from forces which otherwise would not have provided it, more quickly than might have been possible, and without having to reimburse the Defense Department as otherwise would have been required under Federal law.

The subcommittees also conclude that the commander of the military personnel providing the training knew or should have known that the ATF's allegations as to the existence of a drug manufacturing operation at the Davidian residence were, at best, overstated and were probably untrue. His failure to raise this issue with his superiors is troubling. The subcommittees believe this failure should be reviewed by Defense Department authorities.

3. *No foreign military personnel or other foreign persons took part in any way in any of the government's actions toward the Branch Davidians.* While some foreign military personnel were present in Waco during the Government's operations toward the Davidians, there is no evidence that any of these persons took part in the government's operations in any way.

4. *Civilian law enforcement's increasing use of militaristic tactics is unacceptable.* The FBI's and ATF's reliance on military type tactics greatly concerns the subcommittees. The Waco and Ruby Ridge incidents epitomize civilian law enforcement's growing acceptance and use of military type tactics. The subcommittees find this trend unacceptable.

When ATF faced the option of conducting a regulatory inspection or tactical operation, it chose the tactical operation. When ATF had to decide between arresting Koresh away from the Branch Davidian residence or a direct confrontation, it chose direct confrontation. ATF also decided to conduct a dynamic entry as opposed to a siege.

The subcommittees are not recommending that the use of militaristic tactics should always be precluded. The subcommittees acknowledge that there are certain circumstances in which military type tactics may be necessary. The subcommittees urge all Federal law enforcement agencies to review their policies on military training and tactics and develop appropriate guidelines for when such tactics are acceptable. Military training, especially specialized training in combat tactics, should be highly restricted and the use of military tactics, such as a dynamic entry should be approved at the highest agency levels.

F. RECOMMENDATIONS

1. *Congress should consider applying the Posse Comitatus Act to the National Guard with respect to situations where a Federal law enforcement entity serves as the lead agency.* The subcommittees acknowledge that the Posse Comitatus Act has been and continues to be a significant protection for the rights of the people. The events in Waco, however, suggest that these protections may not be as strong as most citizens assume.

As discussed above, the Posse Comitatus Act does not apply to the National Guard when it is acting in its State status. As the events at Waco illustrate, actions taken by National Guard troops can never violate this law, even when those same acts would violate the law were they undertaken by active duty military personnel. The subcommittees question whether this distinction is acceptable to the American people.

The purpose of the Posse Comitatus Act is to prevent the government from using the military against its own citizens. Yet the National Guard and the Reserve exists in part, to augment the active duty military in times of need. National Guard troops receive military training. National Guard units are equipped with military equipment, in some cases the most sophisticated and lethal military equipment in the Defense Department's arsenal, including tanks, fighter and bomber aircraft, and armored personnel carriers. These units, by design, possess many of the same capabilities as active military units. In fact, almost one-half of the U.S. Armed Forces is composed of National Guard and Reserve forces. When activated by the President, the National Guard becomes part of the active duty military.

While Federal law distinguishes between the National Guard in its various "statuses," this distinction is unclear to the vast majority of the public. Many citizens no doubt would be surprised and concerned to learn that components of the same forces the United States used in Operation Desert Storm, Somalia, and Bosnia also can be used against them in the United States as long as the "status" of the troops used fits within the proper category. Given that many National Guard units have force capabilities similar to that of active duty units, it makes little common sense that one unit's activities may be constrained by the Posse Comitatus Act while another's are not. In short, if it is important to prevent military force from being used to enforce the civil laws, it should matter little the "status" of the force used against the citizenry.

The question of applying the Posse Comitatus Act to the National Guard has not been examined recently by the Congress. Accordingly, the subcommittees recommend that Congress hold hearings on this matter to determine whether the Posse Comitatus Act should be broadened to apply to the National Guard and what exceptions to the act's prohibitions, if any, are appropriate to the National Guard in light of its role and mission.

2. *The Department of Defense should streamline the approval process for military support so that both Posse Comitatus Act conflicts and drug nexus controversies are avoided in the future.* The subcommittees' investigation revealed that Department of Defense procedures for receiving, evaluating, and deciding upon requests for assistance from domestic law enforcement agencies was unclear in early 1993. Generally, requests for military assistance to domestic law enforcement agencies were channeled through the Director of Military Support (DOMS), an Army two-star general headquartered at the Pentagon who heads a staff that is on-call 24 hours a day. In some cases, commanders of local military bases are authorized to provide support without approval of the DOMS if the requests are limited in scope.

As of 1993, requests for military support relating to counterdrug operations were not required to be submitted to the DOMS for approval but instead were channeled through Operation Alliance, a group representing agencies such as the ATF, the Border Patrol, and other Federal law enforcement agencies together with military representatives. Operation Alliance serves merely as a clearinghouse for requests, tasking actual military organizations to provide the support. In this case, Operation Alliance tasked Joint Task Force-6 and the Texas National Guard, two of the military organizations at its disposal.

Requests for support involving the use of lethal equipment, such as Bradley Fighting Vehicles and tanks,³⁶⁷ were to be made through the Office of the Secretary of Defense in the Pentagon. Apparently, however, that requirement was not complied with in this case.

The subcommittees believe that authority for approving military support for domestic law enforcement operations should be located within one office within the Office of the Secretary of Defense. Centrally locating this responsibility will help ensure that uniform standards are applied in evaluating all requests for military support and that no agencies can successfully "end-run" the approval process. It also will reduce confusion among law enforcement agencies which, under the process as it existed in 1993, first had to determine without Defense Department guidance the purpose for the support (i.e., counterdrug or not counterdrug) and the type of military assets that might be involved (i.e., lethal assets or strictly non-lethal assets). The subcommittees believe that it is best left to the military, in the first instance, to determine the nature and type of support it is able to provide, in keeping with the Posse Comitatus Act and its own need to fulfill its primary defense mission.

The process for civilian law enforcement agencies receiving military assistance must require that all requests and approvals be in writing, specifying in detail the requested and approved military assistance. Additionally, the Department of Defense needs to establish a clear and concise standard for what constitutes a sufficient drug nexus. Congress should specifically establish criminal and pecuniary penalties for willful violations of the drug nexus standard.

The subcommittees acknowledge that in May 1995, the Secretary of Defense directed the Under Secretary of Defense for Policy to establish a working group "to conduct a comprehensive review of the current system by which Defense Department evaluates and responds to request for assistance initiated by outside agencies." As a result of the working group's recommendations, the Secretary recently directed that requests for military support are to be channeled through the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict. The subcommittees commend this decision to centralize the approval process for providing this type of support. This policy should be frequently mon-

³⁶⁷ As discussed above, however, while some of these vehicles are considered lethal equipment the weapons systems in all of the military vehicles used by the FBI during the standoff had been rendered inoperative prior to the delivery of the vehicles to the Branch Davidian residence. Hearings, Part 3 at 314 (statement of Allen Holmes, Assistant Secretary of Defense for Special Operations and Low Intensity Conflict).

itored so as to ensure that law enforcement agencies, and field commanders, are complying with it.

3. *Congress should review the legal status of memoranda of agreement for the interstate use of National Guard personnel for civilian law enforcement purposes.* The subcommittees' investigation revealed that the use of National Guard personnel across State lines for law enforcement purposes is a common practice. This practice is conducted through simple, pro forma memoranda of agreement which rarely take into account State laws governing the use of the National Guard. The subcommittees believe that, in practice, many of these agreements supersede State constitutions and statutes without legal authority. The subcommittees are concerned that these agreements do not comply with Federal laws and may violate the U.S. Constitution.

The subcommittees recommend that Congress, the Department of Defense, and its National Guard Bureau come to an agreement on the proper legal status of these National Guard Memoranda of Agreement. If it is determined these agreements require congressional ratification, procedures to obtain such approval should be established by the National Guard Bureau.

Regardless of whether these memoranda of agreement require congressional ratification, however, the National Guard Bureau should establish a centralized review process for all Memoranda of Agreement involving the interstate use of the National Guard personnel. This review process must include a per case legal determination that pertinent State law is not violated by the agreement.

4. *The General Accounting Office should audit the military assistance provided to the ATF and to the FBI in connection with their law enforcement activities toward the Branch Davidians.* Given that the subcommittees have been unable to obtain detailed information concerning the value of the military support provided to the ATF and the FBI, the subcommittees recommend that the General Accounting Office conduct an audit of these agencies to ascertain the value of the military support provided to them and to ensure that complete reimbursement has been made by both agencies. If violations of the Anti-Deficiency Act or other Federal laws are found, the appropriate legal action should occur, including criminal prosecution if permitted under existing law.

5. *The General Accounting Office should investigate the activities of Operation Alliance in light of the Waco incident.* The subcommittees concluded that Operation Alliance personnel knew or should have known that ATF did not have a sufficient drug nexus to warrant the military support provided to it on a nonreimbursable basis. Senior DEA agents were members of the Operation Alliance board which approved requests for military assistance, yet they voiced no concerns regarding ATF's plan to directly assault an alleged active methamphetamine laboratory. Military officers were present when ATF was presented a paper detailing the potential dangers and special precautions required when dealing with an active methamphetamine laboratory. The purpose of the meeting was to determine whether a drug nexus existed. Even though there was evidence that no drug existed, those military officers present took no action. UPS receipts which allegedly detailed deliveries of precursor chemicals to the Branch Davidian residence and were used

to substantiate the drug nexus were nowhere to be found when the subcommittees requested copies.

Additionally, the subcommittees' review of military documents provided at their request and the results of interviews with persons involved in this matter clearly demonstrate that there was a continuing concern from senior military officers that JTF-6 was providing support to noncounterdrug activities, and that the Special Operations Command was attempting to reinforce resistance to this recurring misuse of military counterdrug assets and funds, referred to as "cheating." Given that the military assistance to ATF for Waco under dubious circumstances appears to not have been an anomaly, and the fact that Operation Alliance's jurisdiction has significantly expanded since Waco, the subcommittees recommend that the General Accounting Office investigate the activities of Operation Alliance.

VI. NEGOTIATIONS TO END THE STANDOFF WITH THE DAVIDIANS

Negotiations between the FBI and the Branch Davidians continued for 51 days during which time the negotiators utilized generally accepted negotiation techniques. The FBI was unwilling to engage in a novel approach toward the Davidians.

While American hostage negotiation training, especially FBI training, is thought to be the best in the world, there remains considerable room for reassessment and, based on the Waco record, improvement. The FBI possesses exceptional negotiators, but the Bureau was unwilling to engage outside experts and too eager to ignore the advice given by its own experts. The evolving nature of hostage barricade situations necessitates that in the future the FBI continually strive for the preparedness to confront more emotional and unpredictable barricaded subjects. At Waco, FBI resistance to different negotiation methods may have contributed to a premature decision to end the standoff.

A. THE CONFLICT BETWEEN TACTICAL COMMANDERS AND NEGOTIATORS

1. THE PROBLEM WITH TWO TEAMS: ONE NEGOTIATING TEAM AND A TACTICAL TEAM

At Waco, the FBI Crisis Management Team was deployed. The Crisis Management Team is made up of a variety of law enforcement professionals, among them agents trained as tactical agents and as negotiators. The team was divided into groups with separate leadership and different responsibilities. Each team gave its perspective to Jeffrey Jamar, the Special Agent in Charge, who determined which strategy to employ in negotiations. There often was a conflict between these two approaches.

Although disposed to the active approach, Jamar allowed the proposals of each team to be implemented simultaneously, working against each other.

a. Standard Procedure in Negotiations

According to the FBI's Chief Negotiator, Gary Noesner, the conflict between tactical and negotiating teams is the one universal element in law enforcement operations of this type.³⁶⁸ FBI tactical forces are trained to act in stressful, violent situations. Agents are inclined toward the "action imperative," the sense among agents that motivates them to act.³⁶⁹ Negotiators are more inclined to

³⁶⁸ Briefing by Federal Bureau of Investigation Supervisory Special Agent Gary Noesner to the subcommittees, November 1995.

³⁶⁹ *Id.*

seek a nonviolent resolution of the standoff simply by virtue of their training.

The FBI has a policy in place that favors a negotiated settlement.³⁷⁰ Through a type of negotiation called active listening, negotiators attempt to find ways to explain to the barricaded subject why it is in his best interest to seek a nonviolent solution. This FBI policy and training of negotiators conflicts with the “action imperative.”

b. Major disagreements between the two teams

Each team adamantly argued to Jamar on behalf of its perspective and adamantly opposed the other's.³⁷¹ Dr. Alan A. Stone³⁷² chronicled the progression in strategy that occurred among the FBI Commanders at Waco in his *Report and Recommendations*. At first, according to Stone, “the agents on the ground proceeded with a strategy of conciliatory negotiation, which had the approval and understanding of the entire chain of command. Pushed by the tactical leader, the commander on the ground began to allow tactical pressures to be placed on the residence in addition to negotiation.”³⁷³ Stone summarized the feelings of negotiators of this inevitable progression. Stone writes, “This changing strategy at the residence from (1) conciliatory negotiating to (2) negotiation and tactical pressure and then to (3) tactical pressure alone, evolved over the objections of the FBI's own experts and without clear understanding up the chain of command.”³⁷⁴

The disagreement was called a “fundamental strategy disagreement.”³⁷⁵ The negotiators suggested that tactical maneuvers worked against the negotiation process. The tactical team wanted to employ aggressive tactics. Regarding the conflict with tactical people, McClure says simply, “Tactical people think in tactical terms and negotiators think in negotiation terms.”³⁷⁶ Byron Sage, a Supervisory Special Agent and the lead day-to-day FBI negotiator at Waco, testified before the subcommittees, “[The conflict between tactical and negotiation teams] presented difficulties, for sure, but that is not unusual. These are not matters that we were not prepared to attempt to negotiate through.”³⁷⁷ In the end, however, the tactical team won the endorsement of Jamar.

Jamar decided to constrict the perimeter of the building by moving vehicles closer to the residence. On March 9, 1993, the FBI

³⁷⁰ *Id.*

³⁷¹ U.S. Department of Justice, Report to the Deputy Attorney General on the Events at Waco, TX, 75 (1993) [hereinafter Justice Department Report]. “The guiding principle in negotiation and tactical employment is to minimize the risk to all persons involved—hostages, bystanders, subjects, and law enforcement officers.” But the Justice Department report states that the negotiating components of the FBI strategies were “more often contradictory than complimentary.”

³⁷² Alan A. Stone, M.D., Touroff/Glueck Professor of Psychiatry and Law at Harvard University, originally was asked to participate in the Department of Justice Waco review team. For a variety of reasons, including time constraints, Dr. Stone submitted an individual report apart from the Justice Department Report. See *infra* note 373.

³⁷³ Alan A. Stone, Report: To Deputy Attorney General Philip Heymann, Report and Recommendations Concerning the Handling of Incidents Such as the Branch Davidian Standoff in Waco, TX, Panelist, Alan A. Stone, M.D., (November 8, 1993) [hereinafter Stone Report].

³⁷⁴ *Id.*

³⁷⁵ Hearings, Part 2 at 316. Gary Noesner testified before the subcommittees, “At Waco, there was a fundamental strategy disagreement on what was the best way to proceed. In Waco, the negotiation team wanted to have a lower-keyed approach and the tactical team's approach was more to apply pressure.” *Id.*

³⁷⁶ *Id.* at 147.

³⁷⁷ *Id.* at 321.

began to use Bradley Fighting Vehicles to clear debris (including automobiles and boats) from the front of Mount Carmel. On March 14, 1993, the FBI focused bright lights on the residence in an effort to disrupt the sleep of those inside. Four days later, loudspeakers were set up to communicate messages from the FBI to the Davidians inside the residence. Soon thereafter, the FBI began playing recordings of Tibetan chants, rabbits being slaughtered, and other sound effects.³⁷⁸

While negotiators were trying to gain the trust of Koresh and the Davidians, the actions of the tactical team gave Davidians reason to distrust FBI's negotiators. At the hearings, Sage explained, "It is not uncommon to, as part of the negotiation process, to actually try to ingratiate yourself a little bit more with Koresh and his followers by saying, look, this is out of our hands, but that is why you need to give us something to work with."³⁷⁹ It is difficult to imagine that use of tactical force could be a beneficial tool with those whom experts say should be treated with caution and conciliation. Notwithstanding Sage's description of the tactical maneuvers as helpful to negotiations, any consequences of aggressive movements on the part of FBI were not ones it intended. They were predicted, however. Gary Noesner remarked, "I do not awake from nightmares or have trouble sleeping at night . . . because everything that I predicted would happen, did happen."³⁸⁰

c. Insufficient communication between the two teams and their commanders

In testimony before the subcommittees, Jamar described the strategic decisionmaking process. He said, "The supervisors of each component would get together and report and discuss matters. And we would have various meetings."³⁸¹ Noesner said the problem was not one of communication. Jamar's office was across from the negotiation room. Noesner communicated the desired approach of negotiators with regularity and often in heated exchanges. Jamar heard opinions from the negotiators and tactical agents given with equal force. He let each strategy go forward as if it was the primary one.³⁸²

d. Decisions between the options presented by the two teams

In early 1993, FBI policy was to place the Special Agent in Charge of the FBI's regional office in charge of making operational decisions in a crisis like Waco. Noesner described the role of the SAC saying, "He has to take the information and couple that with the information he receives from other intelligence sources, from the tactical team and he has to weigh all those things, weigh them with his own experiences and his own perceptions and he has to come to a decision."³⁸³

Noesner emphasized the fact that the real problem in Waco was one of leadership. The situation at Waco required someone to make the decision on what strategy to utilize to confront this "unconven-

³⁷⁸ Justice Department Report at 78.

³⁷⁹ *Id.*

³⁸⁰ Briefing by Gary Noesner to the subcommittees.

³⁸¹ Hearings, Part 2 at 300.

³⁸² Briefing by Gary Noesner to the subcommittees.

³⁸³ Hearings, Part 2 at 311.

tional” group. He characterized Jamar as an action-oriented agent, one who fell prey to the “action imperative.”³⁸⁴

Stone describes the action imperative in terms of the FBI’s “group psychology.” The options available to the FBI, according to Stone, fell somewhere between “doing nothing (passivity) and a military assault (the action imperative).”³⁸⁵ In light of the fact that “the appeal of any tactical initiative to an entrenched, stressed FBI must have been overwhelming,” Stone reasons, “the desultory strategy of simultaneous negotiation and tactical pressure was enacted as a compromise.”³⁸⁶ Stone concluded that tactical maneuvers were initiated as a way to relieve agents’ desire to act. It is left to the SAC to override the group psychology of the agents on the ground and make the decisions necessary to reach a peaceful conclusion. Stone writes, “The FBI should not be pushed by their group psychology into misguided *ad hoc* decision making the next time around.”³⁸⁷

e. The effect on negotiations of the decision to employ tactical maneuvers

The decision to employ tactical maneuvers had the exact result negotiators and experts predicted. The experts advised against antagonizing the Davidians.³⁸⁸ In a memorandum coauthored by Peter Smerick, an FBI Criminal Investigative Analyst, and Park Dietz, Clinical Professor of Psychiatry and Biobehavioral Sciences at the UCLA School of Medicine, the FBI was advised that “negotiations coupled with ever increasing tactical presence . . . could eventually be counterproductive and could result in loss of life.”³⁸⁹ When tactical maneuvers were utilized, negotiations were set back. The Davidians were unable to sleep with sounds of loud music and rabbits being slaughtered. The Davidians were angered by movements of the armored personnel carriers. They were angered by the clearing of debris from the grounds.³⁹⁰ As Richard DeGuerin, the lawyer representing Koresh, says, tactical maneuvers appeared to be “calculated to discourage anyone from coming out.”³⁹¹

The effect that the tactical maneuvers had on negotiations was only one of the problems resulting from that decision. In fact, some believe that playing loud music bonded the Davidians closer together.³⁹²

f. Tactical maneuvers may have fed into the vision anticipated by Koresh

Koresh often warned Davidians that they would die in a fire brought on by “the Beast.”³⁹³ In Smerick’s March 8 memo, he rec-

³⁸⁴ Briefing by Gary Noesner to the subcommittees.

³⁸⁵ Stone Report at 23.

³⁸⁶ *Id.*

³⁸⁷ *Id.* at 24.

³⁸⁸ Memorandum from Criminal Investigative Analyst Peter Smerick and Dr. Park Dietz, Clinical Professor of Psychiatry and Biobehavioral Sciences at the UCLA School of Medicine (March 5, 1993).

³⁸⁹ *Id.*

³⁹⁰ Hearings, Part 2 at 74–75.

³⁹¹ *Id.*

³⁹² *Id.* at 195. Captain McClure thought the playing of chants and rabbit slaughters was unwise.

³⁹³ Thomas Robbins & Dick Anthony, *Sects and Violence: Factors Enhancing the Volatility of Marginal Religious Movements*, in *Armageddon in Waco: Critical Perspectives on the Branch*

commended that tactical pressure “should be the absolute last option we should consider, and that the FBI might unintentionally make Koresh’s vision of a fiery end come true.”³⁹⁴ When the FBI began to play loud music and inch closer to the residence in armored vehicles, experts maintained that those were exactly the wrong tactics.³⁹⁵ More than simply bonding the Davidians together, experts concluded that these actions proved Koresh right in the minds of the Davidians. The Justice Department Report notes, “Some of the experts felt that the aggressive tactical moves played into Koresh’s hands.”³⁹⁶ Even Jamar, who made the decision to use these tactics, said, “I did not like it.”³⁹⁷

B. NEGOTIATION OPPORTUNITIES LOST

1. WHY THE FBI CHANGED NEGOTIATORS

Soon after the raid, the FBI was called to take command of the situation at the Davidian residence. Edward Dennis writes that “ATF requested assistance from the FBI on February 28, 1993, after ATF agents had attempted to serve an arrest and search warrant on the Branch Davidian Compound.”³⁹⁸ Before the FBI took over, negotiations with the Davidians had begun. Lt. Larry Lynch, of the McClennan County Sheriff’s Department, and Branch Davidian Wayne Martin talked over the Waco 911 Emergency line.³⁹⁹ Soon thereafter, ATF Assistant Special Agent in Charge James Cavanaugh and Davidians Steve Schneider and Koresh spoke by telephone in an attempt to resolve the initial firefight.⁴⁰⁰ Finally, Cavanaugh successfully negotiated an end to the shooting.

Cavanaugh, with the help of the Texas Department of Public Safety, made measurable progress toward release of Davidians. Communication was extremely difficult between Davidians inside and ATF agents outside. Nonetheless, Cavanaugh manipulated the dialog from the hysterical screaming during the gun battle to productive conversation leading to a cease fire.

a. Cavanaugh’s rapport with the Davidians

The most difficult task after the raid failed was to establish a reliable, common-sense method for communicating with those inside Mount Carmel. Communicating the agreed upon cease-fire was made difficult by the size of Mount Carmel and the fragmentation of ATF agents.⁴⁰¹ Eventually, however, the shooting stopped and negotiations began.

Davidian Conflict 236, 240 (Stuart Wright ed., 1996). “Koresh clearly anticipated a government assault, and the actual military-style raid that the BATF perpetrated against the Waco Davidian settlement in late February 1993 ‘seemed to those inside to validate at least part of Koresh’s prophecy.’” *Id.*

³⁹⁴Memorandum from Criminal Investigative Analyst Peter Smerick (March 8, 1994).

³⁹⁵Justice Department Report at 185.

³⁹⁶Justice Department Report at 185.

³⁹⁷Hearings, Part 2 at 317.

³⁹⁸Edward S.G. Dennis, Jr., Evaluation of the Handling of the Branch Davidian Standoff in Waco, TX, 5 (1993) [hereinafter Dennis Report].

³⁹⁹McLennan County Sheriff’s Department, 911 Transcripts (February 28, 1993).

⁴⁰⁰*Id.*

⁴⁰¹Justice Department Report at 105. [E]ven after Schneider and Cavanaugh had agreed to call a cease-fire, it took several minutes to achieve one. Schneider for his part had to walk throughout the residence to tell people inside to stop shooting. Cavanaugh, who had no direct radio link to each agent, had to advise the team leaders of the cease-fire and the team leaders

Continued

In his statement to the Department of Justice, Agent Cavanaugh gave a compelling description of the first moments after the raid.⁴⁰² The atmosphere was frenetic and hostile. Cavanaugh's tone was friendly as he sought to gain the trust of those in the residence.

Cavanaugh gained the Davidians' trust by acknowledging the Davidians' point of view.⁴⁰³ He granted many of their requests.⁴⁰⁴ He talked with them as though they were "equals" trying to achieve the same goals. Cavanaugh assuaged their concerns by promising that they would be addressed. Most importantly, Cavanaugh established a routine that produced the release of some Davidians.⁴⁰⁵

Cavanaugh established a rapport with Koresh and other Davidians. When Cavanaugh left the negotiations, Koresh mentioned that he missed Cavanaugh. He noted that Cavanaugh promised to be there until the end.⁴⁰⁶ But on March 4, 1995 Cavanaugh left Waco, only to return briefly in April. After Cavanaugh's departure, the negotiations were an FBI operation.

b. Why the FBI was brought in

The ATF asked for the aid of the FBI and agreed that it would be best for the FBI to assume operational control of the entire siege.⁴⁰⁷ All of the official reports note that the FBI was asked to take over the siege.⁴⁰⁸

According to the Justice Department Report, the FBI Hostage Rescue Team was the law enforcement organization best equipped to handle the standoff.⁴⁰⁹ It is because of its expertise that the FBI

in turn had to communicate with their agents. The cease-fire was negotiated for a period of time before the shooting finally stopped. *Id.*

⁴⁰² Department of the Treasury Document, statement of James Cavanaugh:

"I called the compound directly on the phone from the undercover house. I reached a man named Steve, later identified as Steve Schneider. I told him I was an ATF agent and I wanted to talk to him about this situation. As should be expected, the activity inside the compound was very frantic, people were screaming and yelling, and there was still shooting going on both sides. Steve was very excited and very hostile.

"I wanted to negotiate a cease fire, and he [Schneider] was agreeable. I am not going to be good on the time of how long it took, but it took a little while to negotiate that. He had to go throughout the compound, which is very large, telling everyone not to shoot. While he was doing this, there was still shooting going on both sides. I had to get on the command net frequency and tell the commanders on the ground there not to shoot, and they had to relay that to all 100 agents, who were around there, so it took a little time to arrange it.

"Once I returned to the rear command post I called back in on the telephone to the residence about 2:00 p.m. and I spoke with Steve and David Koresh about what was going on. We had long conversations about the warrant and we also had a lot of conversations about Biblical passages and Mr. Koresh's belief that he was the Lamb of God, who would open the Seven Seals. As you might assume, he was very hostile, very angry, and very upset."

⁴⁰³ Hearings, Part 2 at 187. ATF agent James Cavanaugh, the initial negotiator during the standoff, testified before the subcommittees, "[The FBI] established trust with Koresh. *Id.* Cavanaugh appears to have been accomplished at active listening. The FBI, however, did not choose to retain Cavanaugh.

⁴⁰⁴ A summary of the Davidians' requests can be found in the Justice Department Report in the Appendix.

⁴⁰⁵ Hearings, Part 2 at 74. Representative Peter Blute, when questioning a witnesses, stated, "We also know that, after the raid, when the siege started, the initial negotiator was getting through to Koresh and they had a kind of relationship intellectually that allowed numerous people to be released during that period. . . ." *Id.*

⁴⁰⁶ Transcripts of the Negotiations Between the FBI and the Davidians (March 4, 1993) [hereinafter Negotiation Transcripts].

⁴⁰⁷ Justice Department Report at 22.

⁴⁰⁸ Treasury Department Report at 114. Justice Department Report at 1.

⁴⁰⁹ Justice Department Report at 144. At the time, the FBI's HRT consisted of a 50-person force. It was trained to deal with highly dangerous missions. The team boasts "sophisticated armament including infra-red aiming devices, daytime and nighttime sniper capabilities, explosive and mechanical breaching abilities, and certain non-lethal weapons." The agents are trained for

is called in to take control of complex barricade situations throughout the country and the world. According to the Treasury Department Report on the incident, ATF knew immediately after the raid began that it would need the help of the FBI. The apparent unanimity is expressed in the Treasury Department Report.⁴¹⁰ Once the decision was made to turn the operation over to the FBI, the FBI was in charge of the scene in Waco within a matter of hours.

2. WHY THE FBI DIDN'T ALLOW OTHERS TO PARTICIPATE IN THE NEGOTIATIONS

The FBI was disinclined to allow anyone, other than the FBI's own negotiators, to participate in negotiations with the Davidians. Many were offering their assistance, but few were allowed to participate. McLennan County Sheriff Jack Harwell and the Texas Rangers were suggested and offered their help. Attorneys for Davidians repeatedly asked to speak with the Davidians. It was with great hesitance that the FBI allowed Sheriff Harwell to speak with the Davidians, and with even greater reluctance that the FBI allowed the attorneys into the residence.⁴¹¹

a. Sheriff Jack Harwell

Early in the negotiations, Koresh and the Davidians told the negotiators they had a cordial relationship with Sheriff Jack Harwell. On March 13, Jamar allowed Sheriff Harwell to participate in negotiations. According to the Justice Department Report, to allow an untrained negotiator to participate in such operations was a "departure from conventional negotiation doctrine."⁴¹² In preparation for these negotiations, Noesner and the FBI negotiators put Harwell through quick and intense training in professional negotiations. Harwell was put in this position only because he was a person whom both sides trusted. And although the negotiators were

tactical operations on land and at sea. The HRT was created in the 1980's to confront a growing number of unusually dangerous and complicated criminal situations.

⁴¹⁰U.S. Dept. of the Treasury, Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco and Firearms Investigation of Vernon Wayne Howell also known as David Koresh at 113-114 (1993) [hereinafter Treasury Department Report].

Shortly after the shoot-out, Chojnacki spoke with Hartnett, who was in Washington, DC, and recommended that the FBI Hostage Rescue Team be brought to Waco to handle what had become a siege situation. At roughly the same time, FBI Director William Sessions learned of the shoot-out, contacted ATF Director Stephen Higgins and offered his condolences and his agency's assistance. After Hartnett arrived at the National Command Center and was fully briefed, he determined that the FBI HRT should be sent to Waco.

Soon after the cease-fire Hartnett contacted Douglas Gow, FBI Associate Deputy of Investigations, and formally requested FBI assistance. Gow, in turn, contacted FBI SAC Jeffrey Jamar (San Antonio) and briefed him on the situation. FBI Special Agent James Fossum (Waco) was informed of the crisis by both AUSA Phinizy and another local FBI agent. Shortly after [Fossum] arrived, Chojnacki told him the ATF would welcome whatever assistance the FBI could provide.

* * *

Clarke informed [Noble] that a request for the HRT had already been made by ATF and that the HRT was on its way to the residence to evaluate the situation.

Jeffrey Jamar (San Antonio), as the SAC of the affected district, was given command of the FBI operation. He arrived in Waco at about 5:30 p.m. and together with Fossum and several other local FBI agents, immediately began to establish a command post and assess the situation. The balance of the HRT members began arriving on March 1. After further discussions with FBI, ATF and Treasury officials, Noble spoke with ATF Director Higgins and ADLE Hartnett early March 1. Noble advised them that if the FBI determined that the HRT was needed for a long term, the FBI should have operational command to resolve the standoff. *Id.*

⁴¹¹Justice Department Report at 133.

⁴¹²*Id.*

worried about Harwell making the situation worse, negotiators' worries were soon quelled when they discovered, according to Noesner, "Harwell was a natural."⁴¹³

Two days after he began participating in negotiations, Harwell participated in a face-to-face meeting with Sage and Davidians Martin and Schneider. The meeting produced no substantial change in the situation. Harwell and Sage attest to the fact that a "rapport was established, particularly with Schneider."⁴¹⁴ Unfortunately, whatever success may have been brought about by Harwell's participation was hindered by what Sage called a "distinct change in negotiation strategy."⁴¹⁵ From that point on, Harwell's participation in the negotiations consisted of having his previous conversations broadcast into the residence via loudspeaker.

b. The Texas Rangers

Another group for which Davidians expressed their trust was the Texas Rangers. A longstanding and well respected law enforcement entity, the Texas Rangers were charged with conducting the final investigation into the raid on the Davidians. The Rangers were never allowed to participate in negotiations with the Davidians. They often had concerns about the conduct of the siege and attempted to express these concerns to Jamar. The Rangers were frustrated by a lack of communication with Jamar. As Captain Byrnes testified before subcommittees, "[I]f I went over there, the door was already closed to where Mr. Jamar was. Several times I waited a half hour, 45 minutes to see him and never saw him, and I finally quit going over there. We couldn't even get a phone call through. It was total lack of communication."⁴¹⁶

c. The attorneys for the Davidians

Another concern of the Rangers was the FBI's decision to allow face-to-face meetings between the Davidians and their attorneys. While it is common for a client under investigation or prosecution to meet with his attorney, it is rare for an attorney to meet with his client while his client is the subject of a "hostage barricade situation."⁴¹⁷ The negotiators and the tactical agents had different opinions on the wisdom of letting the attorneys into the residence.⁴¹⁸

The negotiators were concerned that any third party intermediary was ill equipped to be thrust into the fragile negotiations that consume barricade situations. Negotiators were willing to use the attorneys in ways that would jumpstart the negotiations.⁴¹⁹ The tactical team, along with the Texas Rangers, were

⁴¹³ Briefing of Gary Noesner to the subcommittees.

⁴¹⁴ Justice Department Report at 133.

⁴¹⁵ *Id.* at 134.

⁴¹⁶ Hearings, Part 2 at 159.

⁴¹⁷ *Id.* at 23. DeGuerin says it's a frequent practice of attorneys to meet with their clients before they are arrested. *Id.* Texas Ranger Captain Byrnes testified before the subcommittees, "We went to see Mr. Jamar and offered a Ranger to help with the negotiations, if that would be helpful—not one of the captains but one of the Rangers that had been trained, most of them, by the FBI. He thanked us for that offer, and we never heard anything else about it." *Id.* at 297.

⁴¹⁸ *Id.* at 23.

⁴¹⁹ FBI Commander Jeffrey Jamar testified before the subcommittees, "I was hopeful they could appeal to his self-interest. Everything Mr. Koresh did was to his self-interest." *Id.* at 312-313.

concerned about the opportunity that DeGuerin and Jack Zimmermann, the attorney for Steve Schneider, would have to destroy evidence. But even Texas Ranger Senior Captain Maurice Cook agreed with the wisdom of letting the attorneys into the residence by saying, “[Y]ou got to do what works.”⁴²⁰ Jamar made the decision because he was “focused on resolving the standoff peacefully.”⁴²¹ DeGuerin and Zimmermann entered the residence on several occasions. The attorneys spent a total of 32 hours with Koresh.⁴²²

(i) *Progress was made from the visits.*—Negotiators and Jamar had the sense that the meetings were “positive.”⁴²³ On April 1, when the attorneys requested extensions of the preapproved time limits, they described their progress as “terrific.” In that meeting, David Koresh promised to come out “after Passover.”⁴²⁴ The actual date of Passover, however, was a matter of controversy.

On April 14, a telephone conversation between DeGuerin and Koresh produced what DeGuerin called a promise to come out.⁴²⁵ The FBI called this promise “a new precondition for his coming out.”⁴²⁶ The precondition was the completion of David Koresh’s written interpretation of the “Seven Seals,” discussed in the Bible’s Book of Revelation.

A letter attesting to the surrender offer followed the verbal promise. But the FBI remained skeptical.⁴²⁷

(ii) *Negotiator and lawyers consultation after the first visit.*—After each visit and on occasion when there was no visit, the FBI and the lawyers had discussions about strategy and about arranging more visits with Davidians. The agents worked closely with the attorneys before each visit and attorneys cooperated with the FBI.

Before the trips into the Davidian residence, the agents and attorneys arranged time limits and topics for discussion while the attorneys were inside.⁴²⁸ On only one occasion did the attorneys ask to remain in the residence longer than the arranged time.

⁴²⁰ Texas Ranger Captain Cook testified before the subcommittees that when all else fails in negotiations, “you got to do what works. I think you can get too formalized.” Although formal training opposes this, McClure says it can be used as a last resort. *Id.* at 145.

⁴²¹ Justice Department Report at 91. “The proposed face-to-face meeting between Koresh and DeGuerin caused significant controversy within law enforcement. SAC Jamar made the decision to permit the meeting, clearing it with U.S. Attorney Ederer. The AUSA’s [Assistant U.S. Attorney] and the Texas Rangers, who would be responsible for the eventual prosecutions, strongly opposed the meeting. Jamar was focused on resolving the standoff safely, while the prosecutors and the Texas Rangers were focused on the integrity of future court proceedings. The prosecutors and Texas Rangers were afraid that the defense attorney would give advice to Koresh which could result in the destruction of evidence and cause a more difficult prosecution.” The attorneys met inside the residence approximately seven times.

⁴²² Hearings, Part 2 at 79.

Mrs. THURMAN: How many total hours did you spend with [Koresh], do you think, in the period of time that you represented him.

Mr. DEGUERIN: About 32 hours.

⁴²³ *Id.* at 304–306.

⁴²⁴ *Id.* at 47.

⁴²⁵ Negotiation Transcripts (April 14, 1993).

⁴²⁶ Hearings, Part 2 at 304–306.

⁴²⁷ Jamar testified before the subcommittees, “They would build their [DeGuerin and Zimmermann] spirits up. I can remember one instance when DeGuerin came out and, believe me, he put his best effort in and I give him all the credit in the world for the effort he made. He would build him up and then cut his legs out from under him. I remember one instance where he said he was making a point with him and Koresh feigned illness. It happened to us all the time.” *Id.* at 297–298.

⁴²⁸ *Id.*

C. LACK OF APPRECIATION OF OUTSIDE INFORMATION

1. WHY THE FBI DID NOT RELY MORE ON RELIGIOUS ADVISORS TO UNDERSTAND KORESH

Many argue that the reason negotiations failed was that the FBI failed to grasp the nature and strength of Branch Davidian beliefs. There exists a conflict among those who believe negotiators should never become sympathetic with the “hostage taker” and others who believe the only way to negotiate is to understand the subject of the negotiations.⁴²⁹ The FBI became frustrated with endless dissertations of Branch Davidian beliefs and ignored assertions of religious experts that Koresh could be negotiated with on a theological level.⁴³⁰ The FBI grew skeptical that Koresh could be convinced that ending the siege was in his best interest.

a. The FBI standard in negotiations

Mainstream negotiation tactics call for the negotiator to remain aloof from the subject of the negotiations, to pursue crisis management team goals, and never become embroiled in the message of the hostage taker.⁴³¹ The focus of negotiation training is “active listening.” The negotiator is supposed to find out what the subject wants or demands.

Negotiation training gives preference to those with a social science background. The FBI negotiation curriculum includes abnormal psychology and the social sciences. Time after time, David Koresh, and Davidians Wayne Martin and Steve Schneider, sought to speak with someone who could understand the Branch Davidian interpretation of the Seven Seals. The FBI resisted the desire to engage Koresh in such a discussion, saying that it was sure to be fruitless.⁴³² McClure testified at the hearings that he had been involved in a similar situation when religious discussions of a barricaded group had proved fruitless. He said, “In 1987, I was involved in a situation in Atlanta where 1,400 Cubans were holding 121 hostages. Their religious belief was very important to them during that period of time. Those hostages were held for 12 days. Every time that we gave a negotiations and responded to their religious questions and got in their head or tried to get into their head and they tried to get into our about religion, no progress was made. When we talked about secular issues, we got people out.”⁴³³ This experience appears to have led the FBI to avoid religious discussions with the Davidians.

⁴²⁹ Noesner Briefing. Noesner maintains that a negotiator should never become embroiled in a discussion of the beliefs of the subject of the negotiations; never give the barricaded person the benefit of believing he has control of the conversation. Dr. Phillip Arnold, of the Reunion Institute in Houston, TX, and Dr. James Tabor, Associate Professor of Religious Studies at the University of North Carolina at Charlotte, suggest that Koresh could have been dealt with through a discussion of his biblical interpretations. According to the Harvard Negotiation Project, “negotiating [with people acting out of religious conviction] does not require compromising your principles. More often success is achieved by finding a solution that is arguably consistent with each side’s principles.” Roger Fisher et al., *Getting to Yes* (1991).

⁴³⁰ Justice Department Report at 26–28. The Department of Justice report recounts Koresh’s attempt to tell his side of the situation.

⁴³¹ Noesner Briefing.

⁴³² Hearings, Part 2 at 181.

⁴³³ *Id.*

b. Experts consulted

When the FBI first arrived in Waco, it had little information about David Koresh and the Davidians. Negotiators sought as much information as possible about the group. It was left to the experts hired by the FBI to create a profile of David Koresh and develop a plan to negotiate with the Davidians.

Dr. Eugene Gallagher, professor of Religion at Connecticut College, calls Glenn Hillburn, Dean of the Baylor University Department of Religion, “the one expert with a firm grasp of the history of the Davidians within the framework of the Seventh-day Adventists.”⁴³⁴ According to the Justice Department report, Glenn Hillburn, Dean of the Baylor University Department of Religion, “provided information on the Book of Revelations, the Seven Seals, and other Biblical matters.”⁴³⁵ The report makes no mention of special insight Hillburn provided into the peculiar habits of the Davidians or David Koresh. Other than Dr. Hillburn, Dr. Gallagher concludes, the FBI consulted few religious experts with knowledge of Branch Davidians and what they believed. Indeed, Stone says in his Report and Recommendations, “One of my fellow panelists believes—and I am convinced—that the FBI never actually consulted with a religious expert familiar with the unconventional beliefs of the Davidians.”⁴³⁶

c. The failure to consult outside experts

The FBI relied on experts with whom it was familiar. But, there were individuals who embraced the peaceful resolution of the situation in Waco as their personal crusade. Among those who made serious efforts to help were Phillip Arnold, Associate Professor of Religious Studies at the University of North Carolina at Charlotte, and Gene Tabor of the Reunion Institute in Houston, TX. It was difficult for Arnold and Tabor to intercede. The Justice Department Report mentions that “[t]he FBI refused to permit a live telephone conversation” between Arnold and Schneider although Schneider requested Arnold by name.⁴³⁷

d. What communications did they have with Koresh?

Tabor and Arnold saw a video sent out by Koresh and thought effective negotiation was possible if the FBI dealt with Koresh within a framework of the Bible, particularly the Seven Seals.⁴³⁸ Koresh had heard Arnold giving his interpretation of the Seven Seals and offering assistance on the KJBS radio.⁴³⁹

Neither Arnold nor Tabor ever spoke with Koresh. Koresh and Schneider repeatedly asked to speak with Phillip Arnold. Arnold and Tabor were allowed to send in tapes of their interpretations at

⁴³⁴ Interview of Dr. Eugene Gallagher by Robert J. Shea, Special Assistant to the Subcommittee on National Security, International Affairs, and Criminal Justice, in New London, CT (October 23, 1995).

⁴³⁵ Justice Department Report at 189.

⁴³⁶ Stone Report at 43, 44.

⁴³⁷ Justice Department Report at 186. “On March 17, Schneider told the FBI that he and some of the other residence members had heard of Dr. Arnold as someone with expertise about the Book of Revelations and the Seven Seals, and that they wanted to speak with him. The FBI refused to permit a live telephone conversation, but offered an exchange of audiotapes instead. On March 19, the FBI sent an audiotape that Dr. Arnold had made into the compound.” *Id.*

⁴³⁸ Hearings, Part 2 at 46–47.

⁴³⁹ *Id.*

the request of DeGuerin, Zimmermann and Koresh, himself. But at no time were they allowed to participate in the negotiations.

e. Did the FBI take any of this advice?

It goes against standard negotiation policy to allow outsiders to participate in serious and dangerous "hostage" negotiations. Consistent with the advice of FBI experts, the negotiators in Waco did not allow outsiders to participate in negotiations out of fear that something they said might inflame David Koresh. Arnold and Tabor were no exception, they were ignored.

From the very beginning, negotiators failed to take seriously the point of view of the Davidians.⁴⁴⁰ According to the Justice Department Report, "There were certain areas of activity in which the FBI did not seek outside help. The FBI did not request assistance . . . with negotiations, since the FBI's best negotiators were assigned to Waco throughout the 51-day standoff."⁴⁴¹ It appears that the FBI paid no attention to those experts who believed Koresh could have been reasoned with within the proper religious and biblical context.

Koresh and Davidians talked frequently in religious terms. In their book, Tabor and Gallagher quote the following passage from the negotiation tapes to point out frustration with the FBI's lack of familiarity with theology:

HENRY. Let's not talk in those terms, please.

KORESH. No. Then you don't understand my doctrine. You don't want to hear the word of my God.

HENRY. I have listened to you and listened to you, and I believe in what you say, as do a lot of other people, but the, but the bottom line is everybody now considers you David who is going to either run away from the giant or is going to come out and try to slay the giant. For God's sake, you know, give me an answer, David. I need to have an answer. Are you going to come out?

KORESH. Right now, listen.

HENRY. Right now you're coming. . .

KORESH. "He that dasheth in pieces is come up before thy face: keep the munition." What's the munition? "Watch the way."

HENRY. One of the things, one of the things is I don't understand the scriptures like you, I just don't.

KORESH. Okay, if you would just listen, then I would show you. It says here—it says here, "The Chariots shall be with flaming torches." That's what you've got out there [referring to the tanks].⁴⁴²

FBI negotiators maintain that they never discounted Branch Davidian beliefs. However, in one conversation with Koresh, Byron

⁴⁴⁰ *Id.* at 362. Cavanaugh testified before the subcommittees, "I fully respected their religious beliefs. I think all the other negotiators did, also. I do not mean to be sarcastic, but my feeling was they can worship a golden chicken if they want to, but they cannot have submachineguns and handgrenades and shoot Federal agents. I played the role as policeman. I did not try to fool the Davidians that I was something else. I think that is one reason that Koresh certainly trusted me from the beginning." *Id.*

⁴⁴¹ Justice Department Report at 157.

⁴⁴² James Tabor and Eugene Gallagher, *Why Waco?* 110 (1995).

Sage responds to another long dissertation by Koresh. Sage says, "That's garbage." Later in that same conversation, Sage says, "No one in the FBI has ever scoffed at your beliefs."⁴⁴³

In their book about Waco, Tabor and Gallagher are critical of the negotiations. They write, "Koresh's interpretations went completely over the heads of the FBI negotiators, who were understandably put off by this approach."⁴⁴⁴ Despite the fact that the overwhelming majority of David Koresh's communications involved intense and lengthy dissertations on Biblical text, the FBI refused to allow a religious expert to engage David Koresh or to consult in negotiations.

Much of the criticism of negotiations centered on the fact that the FBI never engaged Koresh or the Davidians in a discussion of theology. Noesner said "there are two consistent themes that you will hear from every mental health expert that knows anything about crisis intervention, crisis negotiation, and that is that you neither embrace someone's belief system nor do you discount it."⁴⁴⁵ Some are convinced that a prerequisite to successful negotiations with the Davidians is a firm grasp of the religious doctrine on which they base their beliefs.⁴⁴⁶ In hearings before the subcommittees, Arnold testified that the FBI negotiators were ill prepared for productive discourse with the Davidians, "[The negotiators] were not able to perceive the meaning of the religious language the Davidians were using. They were not able to understand the actions the Davidians took. Had they had knowledge of the religious faith of the Davidians, this story could have ended in a much better and happier way."⁴⁴⁷ Others simply suggested that negotiators should search out experts to grasp better the subjects of the negotiations. As Representative Henry Hyde, chairman of the Committee on the Judiciary, said, "There is an unwillingness to understand or believe that there are people in the world who are persons of belief and they believe strange things by our standards. [H]ad the understanding been these weren't hostages, these were willing members of a religious group, and to get in there and to dissipate them would take persuasion, argumentation from their frame of reference, not tear gas and tanks."⁴⁴⁸ With at least a good background on the subject of religion, particularly the religious dogma professed by the Davidians, the negotiators could have better manipulated the conversations.

2. OTHERS WHO CONTRIBUTED INFORMATION

It is clear that all of the attention focused on Waco and the standoff at Mount Carmel encouraged many people to contribute their ideas to the negotiations. The method for processing this in-

⁴⁴³ Negotiation transcripts, March 17, 1993.

⁴⁴⁴ *Id.*

⁴⁴⁵ Hearings, Part 2 at 325.

⁴⁴⁶ Nancy T. Ammerman, *Waco, Federal Law Enforcement and Scholars of Religion, in Armageddon in Waco: Critical Perspectives on the Branch Davidian Conflict*, 282-283 (Stuart Wright ed., 1996). Ammerman writes, "Did [the FBI] not know that apocalyptic beliefs should be taken seriously, that they were playing the role of the enemies of Christ? Did they not know that any course of action that did not seem to come from the Bible would be unacceptable to these students of Scripture? I have yet to encounter a single sociologist or religious studies scholar who has the slightest doubt that the strategies adopted by the FBI were destined for tragic failure."
Id.

⁴⁴⁷ Hearings, Part 2 at 144-145.

⁴⁴⁸ *Id.* at 47-48.

formation is central to discerning whether any valuable advice or data was omitted or, inadvertently or intentionally, ignored. In this case, as in others, the actions taken by the FBI depended largely upon the information used, and to whom it was made available when key decisions were being made.

a. How much information was coming in?

It is clear that a great deal of unsolicited information was being sent to Waco. In addition to people honestly offering assistance, a variety of people came to Waco to express a variety of sentiments to officials onsite.⁴⁴⁹ This was in addition to the experts retained by the FBI. As the Justice Department report suggests, "The FBI also received unsolicited advice and offers of assistance from many individuals; not surprisingly, this input was rarely useful." The report continues, "A smaller number of offers came from individuals lacking a firm grip on reality, such as people claiming to be God or Jesus offering to 'order' Koresh to leave the compound."

Negotiator Byron Sage recounted in a Justice Department interview that "an incredible number of people called the negotiators offering help.⁴⁵⁰ [I] tried to field these offers early on, but then [I] farmed it out to the behavioral science people to weed out the good stuff."⁴⁵¹ Others indicate that information was indiscriminately delivered to negotiators.⁴⁵² According to Dr. Stone, "all kinds of experts . . . allegedly were consulted . . . and took it upon themselves to offer unsolicited advice." Stone continues, "the prevailing pattern in the information flow during the crisis was for each separate expert to offer the FBI an opinion." The problem, it seems, was too much information.⁴⁵³

b. The method set up to communicate with people calling to help

Many people called who were deemed "lacking a firm grip on reality." When asked about such contacts with agents and officials in Waco, Chief Negotiator Gary Noesner said he knew nothing about them. Offers for help, however, were referred to the consulting experts. The experts analyzed the information provided or the assistance offered and passed it along to the negotiators in the form of

⁴⁴⁹Justice Department Report at 156. The report discusses the amount and type of information coming into Waco. "The FBI also received unsolicited advice and offers of assistance from many individuals; not surprisingly, this input was rarely useful." For example, on March 16, 1993 a well-known rock band contacted the FBI and offered to perform outside the Mount Carmel Residence, and to play a song that U.S. helicopters broadcast at enemy troops to demoralize them during the Vietnam war. On the other hand, the FBI received an unsolicited letter from the Harvard Negotiation Project containing thoughtful and specific suggestions to assist the negotiators in formulating a framework for further negotiations with Koresh. A smaller number of offers came from individuals lacking a firm grip on reality, such as people claiming to be God or Jesus offering to "order" Koresh to leave the compound. One person was arrested on his way to the compound brandishing a samurai sword, which he said "God had told him to deliver to Koresh." *Id.*

⁴⁵⁰All incidents investigated by the Department of Justice contain interviews of those involved in the incident. This interview was conducted in conjunction with the investigation of the incident at Waco.

⁴⁵¹U.S. Department of Justice, record of interview of Byron Sage by Susan DeBusk (August 26, 1993).

⁴⁵²Stone Report at 43.

⁴⁵³Hearings, Part 2 at 145. Tabor registers his sympathy for the FBI in the fact that they were on information overload. He also suggests some procedural way of compiling information and discerning the "nuts from the bolts." *Id.*

memoranda.⁴⁵⁴ Rarely did these people talk to negotiators, themselves, and never were they allowed to speak to the Davidians.

Sage maintains that the theologian on whom he depended the most was Glenn Hillburn, the chairman of the Baylor School of Religion. In addition to his role as religious advisor to Sage, Hillburn "provided . . . his feeling as to the credibility and bona fides of people who called in offering their help."⁴⁵⁵ In one instance, an offer of assistance was made by the Harvard Negotiation Project.⁴⁵⁶ The letter sent to Waco was written by Roger Fisher, director of the Harvard Negotiation Project, and was based on an analysis of the situation that was underway at the project and utilized the principles of negotiation that the project taught every day. The proposal made in the letter to Jamar included putting together "a small team . . . as familiar as possible with Koresh and the situation inside the residence" that would "find a potential 'third party' and work urgently on putting together a package that would be attractive to Koresh." The letter suggested that the Government allow "the third party to come to Waco and make the offer, which will inherently expire if not accepted before the third party leaves Waco in two or three days."⁴⁵⁷ The advice that the Harvard Negotiation Project offered was disregarded. Although the letter is mentioned in the Justice Department report, there is little evidence that the negotiators took any of that advice.

Despite a steady flow of information and advice, the FBI did not make any serious attempt to evaluate and disseminate the suggestions that came to its attention. The Justice Department maintains that it kept "meticulous"⁴⁵⁸ track of the offers of assistance. It also concedes that it did not need or accept help in many areas.⁴⁵⁹ Yet it is difficult to understand why the offers of help from respected, credible religious experts and experts in negotiations were rejected.

D. THE FBI'S FAILURE TO FOLLOW ITS OWN EXPERT'S RECOMMENDATIONS

1. WHAT THE FBI'S OWN EXPERTS RECOMMENDED

According to Stone, "the FBI investigative support unit and trained negotiators possessed the psychological/behavioral science expertise they needed to deal with David Koresh and an unconventional group like the Davidians."⁴⁶⁰ Among the many experts, the talent was extraordinary and the amount of information they had

⁴⁵⁴ U.S. Department of Justice, record of interview with Byron Sage by Susan DeBusk (August 26, 1993). In this interview, Sage recounted how he got information from those offering assistance. In that interview, Sage says, "Many of the contacts with experts would be through the behavioral science people rather than through the negotiators. The negotiators would get the end result of their input from people like Smerick, Young and Van Zandt."

⁴⁵⁵ *Id.*

⁴⁵⁶ The Harvard Negotiation Project is an enterprise of Harvard Law School that attempts to present alternatives to traditional negotiation techniques.

⁴⁵⁷ Letter from the Harvard Negotiation Project to Jeffrey Jamar (March 29, 1993).

⁴⁵⁸ Justice Department Report at 156.

⁴⁵⁹ *Id.* at 156 "Throughout the Waco standoff, the FBI meticulously kept track of all unsolicited offers of assistance, and followed up on those that seemed to promise any reasonable chance of producing helpful information. There were certain areas of activity in which the FBI did not seek outside help. For example, the FBI did not request assistance from any outside law enforcement agencies in performing any of its tactical operations; it did not request assistance with negotiations, since the FBI's best negotiators were assigned to Waco throughout the 51-day standoff, and it did not consult with outside experts regarding the decision to play loud music and Tibetan Monk chants over the loudspeakers to irritate those inside the residence." *Id.*

⁴⁶⁰ Stone Report at 12.

to use was enormous. It was not difficult for the experts to come to a consensus.

The clearest consensus among the FBI experts and others was not to provoke the Davidians. The experts feared that any provocation could lead Koresh to initiate the fiery end he predicted. FBI experts agreed with this approach.⁴⁶¹ As Stone writes in his separate evaluation, "I believe the FBI behavioral science experts had worked out a good psychological understanding of Koresh's psychopathology. They knew it would be a mistake to deal with him as though he were a con-man pretending to religious beliefs so that he could exploit his followers."⁴⁶²

Smerick coauthored six memoranda on David Koresh based on Koresh's past behavior and listening to negotiations. In each of the early memoranda, Smerick proposed that the FBI approach the Davidians with caution and avoid provocation. Smerick said that the cautionary memoranda were written expressly because "the FBI commanders were moving too rapidly toward a tactical solution, and were not allowing adequate time for negotiations to work."⁴⁶³ In his final memorandum, Smerick proposed "other measures' . . . because negotiations had met with only limited success."⁴⁶⁴ As the Justice Department Report maintains, "those other measures included sporadically terminating and reinstating of utilities; moving equipment and manpower suddenly; downplaying the importance of Koresh in the daily press conferences; controlling television and radio reception inside the compound; and cutting off negotiations with Koresh."⁴⁶⁵ Although these suggested measures are exactly the tactics the FBI used in Waco, Smerick suggests that while the "negotiators were building bonds . . . the tactical group was undermining everything."⁴⁶⁶ Smerick continued, "[e]very time the negotiators were making progress the tactical people would undo it."⁴⁶⁷

During the hearings before the subcommittees, Smerick was questioned about this abrupt change in his advice; and whether senior Justice Department officials pressured him to change his advice to match the course of action preferred by the onscene commanders. Smerick testified that he felt "no overt pressure"⁴⁶⁸ to alter his memoranda. But he said that he was aware that the FBI wanted different advice. Smerick told the subcommittees:

⁴⁶¹ Edward Dennis summarized the opinions of the experts as follows:

On March 3, 1993 the behavioral experts wrote a joint memo recommending a strategy of trying to work within the Davidians own belief system to talk them out. They recommended acknowledging the conspiracy against the Davidians and their right to defend themselves, and creating an illusion that Koresh could win in court and in the press and would not go to jail. On March 5 behavioral experts wrote a memo advising that the negotiation strategy focus on insuring the safety of the children and facilitating the peaceful surrender of the Davidians. This memo recommended a deescalation of tactical pressure because movement of tactical personnel would validate Koresh's prophesy that his followers must die defending their faith. As an alternative tactic, the memo recommends that efforts be made to drive a wedge between Koresh and his followers by convincing them that a battle is not inevitable.

Dennis Report at 49.

⁴⁶² Stone Report at 13.

⁴⁶³ Justice Department report at 182.

⁴⁶⁴ *Id.*

⁴⁶⁵ *Id.*

⁴⁶⁶ U.S. Department of Justice, record of interview of Peter Smerick (August 24, 1993).

⁴⁶⁷ *Id.*

⁴⁶⁸ Hearings, Part 2 at 328.

I had received information from FBI headquarters that FBI officials were not happy with the tone of my memos. From the standpoint that they felt it was tying their hands, meaning they were not going to be able to increase any type of pressure within that compound and instead were going to have to rely on strictly negotiations.⁴⁶⁹

Smerick developed profiles and memoranda that corroborated the opinions of qualified experts both in and outside the FBI. Smerick's opinion on this matter is the only expert opinion that changed as the crisis continued.

E. THE DECISION TO DISMISS THE SURRENDER PLAN

On March 2, everyone in the residence was lined up, ready to exit, when Koresh was "told by God to wait."⁴⁷⁰ As far as the FBI was concerned, Koresh's credibility was broken. After a trip into the residence, DeGuerin and Zimmermann told Jamar of a new surrender plan based on the writing of the Seven Seals. The FBI did not believe it. But there was evidence that pointed to a genuine change in attitude.⁴⁷¹

1. "KIDS LINED UP WITH THEIR JACKETS ON"

The surrender plan on March 2 was marked by evidence that everyone but Koresh was prepared to exit the residence. After making much of his promise to come out, Koresh maintained that God told him to wait. In preparation for the surrender, the FBI and the Davidians worked out a complicated plan that involved everything from buses that would carry the Davidians to the order in which everyone would stand. A proposal to involve the Texas Rangers in a surrender "wasn't rejected, but it wasn't greeted with a lot of enthusiasm."⁴⁷²

In connection with the DeGuerin and Zimmermann visits to the residence, Jamar negotiated a similar surrender plan with the attorneys. The only change that the attorneys and the Davidians suggested was that the children come out with their parents, rather than separately.⁴⁷³

2. BREAKTHROUGH WITH KORESH'S LETTER

Following one visit to the residence by DeGuerin and Zimmermann, Koresh sent out a letter attesting to the fact that he was working on the Seven Seals.⁴⁷⁴ On April 13 and 14, Koresh said that he had "received his mission" from God and that he would be out of the residence soon. According to DeGuerin, "everyone was relieved they did not have to die."⁴⁷⁵ Koresh had written letters before. Most had been rambling biblical dissertations. The final letter was different, because it mentioned a deadline by which to deter-

⁴⁶⁹ *Id.*

⁴⁷⁰ Justice Department Report at 35.

⁴⁷¹ Hearings, Part 2 at 68-69.

⁴⁷² *Id.* at 49.

⁴⁷³ *Id.* at 77.

⁴⁷⁴ Letter from David Koresh to Dick DeGuerin (April 4, 1993).

⁴⁷⁵ Hearings, Part 2 at 77.

mine when Koresh would surrender. That deadline was the writing of Koresh's interpretation of the Seven Seals.

There were other reasons that some saw the letter as a true breakthrough. The April 14 letter was written in a prosaic form different from the other letters. Koresh's letter expressed the desire to come out of the residence and to "stand before man to answer any and all questions regarding my actions."⁴⁷⁶ More important to some religious scholars and observers than a professed desire to surrender, however, was the fact that the letter indicated Koresh had found a basis for surrender in his own religious doctrine.⁴⁷⁷ Tabor and Arnold had been attempting to persuade Koresh that adequate reason for surrendering could be found in the Bible. The major change in the April 14 letter, according to Tabor, was that "Koresh used the religious arguments in this letter for why he had now seen that the scriptures told him to come out."⁴⁷⁸ Arnold and Tabor, among others, found affirmative evidence that Koresh would surrender in the fact that "[Koresh] could come out and preach his message."⁴⁷⁹ Tabor told the subcommittees that "[t]hat was the positive end. And court was negative. But DeGuerin convinced [Koresh] that court would end positively."⁴⁸⁰ Tabor, Arnold, DeGuerin and Zimmermann believed that a surrender was eminent.

Further evidence of the fact that Koresh's letter was a genuine breakthrough was the reaction of those in the residence to the news of the surrender. Upon discovery that Koresh had given a deadline for surrender, there was obvious "jubilation" at the prospect of ending the siege.⁴⁸¹ In the background of the tapes, cheering can be heard. As Tabor told the subcommittees, "You can exactly see the mental state of the people inside. It is buoyant. They are talking about coming out. They are excited about it."⁴⁸² And in interviews on the subject, Tabor quotes surviving Davidians as saying, "We were so joyful that weekend because we knew we were coming out, that finally David had got his word of how to do this legally, the lawyers, and theologically in terms of his system."⁴⁸³ The Davidians believed that they were coming out.

3. THE BREAKTHROUGH COMMUNICATED TO JAMAR

On April 14, DeGuerin gave Koresh's letter to Jamar. Jamar testified that he knew of the "breakthrough." Upon reading the letter and talking with DeGuerin and Zimmermann, Jamar told them "that there was plenty of time."⁴⁸⁴ In his testimony before the subcommittees, Jamar recalled, "What I said was, if there is writing of a manuscript, if there is progress, we will take the time."⁴⁸⁵ Jamar gave DeGuerin and Zimmermann the impression that he believed the offer to surrender was serious. DeGuerin and Zimmermann were so confident that Koresh was writing the seals and

⁴⁷⁶ Letter from David Koresh to Dick DeGuerin (April 14, 1993).

⁴⁷⁷ Hearings, Part 2 at 68-69.

⁴⁷⁸ *Id.*

⁴⁷⁹ *Id.* at 199-200.

⁴⁸⁰ *Id.*

⁴⁸¹ Negotiation transcripts April 14, 1993.

⁴⁸² Hearings, Part 2 at 172.

⁴⁸³ *Id.* at 173.

⁴⁸⁴ *Id.* at 42.

⁴⁸⁵ *Id.* at 305.

would soon surrender, that they returned to Houston. Jamar, however, never took the surrender offer seriously. He told the subcommittees, "It was serious in [DeGuerin's and Zimmermann's] minds. I think they were earnest and really hopeful but in Koresh's mind, never a chance. I'm sorry."⁴⁸⁶

4. THE FAILURE TO COMMUNICATE THIS BREAKTHROUGH UP THE CHAIN OF COMMAND

In the final days of the standoff, no one communicated to the Attorney General or anyone senior to Jamar that there might be a genuine attempt to end the siege by Koresh. No one put forth the possibility that a surrender was in the future. When asked by the subcommittees whether the Attorney General had been notified of the surrender plan, Jamar said, "I doubt it because it was not, from our understanding . . . a serious plan."⁴⁸⁷ In an April 15 conversation, Sage told Associate Attorney General Webster Hubbell that there was little use in negotiating further.⁴⁸⁸ Sage, Jamar, and Ricks all acted as though nothing out of the ordinary had occurred in Waco on April 14. They did not give the Department of Justice all of the information they had about the situation in Waco and misled them about the previous success of some negotiators.

It appears that DeGuerin and Zimmermann were the only people involved in the negotiations who took Koresh's promise seriously. SAC Jamar and the FBI negotiators saw this as another attempt at delay by Koresh. As a result, they did not give this new surrender offer a chance to work.

5. EVIDENCE THAT KORESH WAS WRITING HIS INTERPRETATION OF THE SEVEN SEALS

The FBI had no concrete evidence that the Seals were being written.⁴⁸⁹ Even negotiation transcripts give conflicting indications as to whether the work was in progress. Only after physical evidence was removed from the destroyed residence did the FBI find proof that the Seals were being written. Surviving Branch Davidian Ruth Riddle said that the Seals were being written.⁴⁹⁰ Judy Schneider was transcribing the Seals and Riddle had the computer disc containing that writing.⁴⁹¹ It is clear that some work was being done on Koresh's interpretation of the Seven Seals.

6. WHY THE FBI DISREGARDED THE EVIDENCE THAT THE SEVEN SEALS WERE BEING WRITTEN

Although Koresh indicated he was writing his interpretation of the Seven Seals, the FBI was not willing to give the surrender plan

⁴⁸⁶ *Id.* at 323.

⁴⁸⁷ *Id.* at 305.

⁴⁸⁸ Justice Department Report at 270. "Hubbell recalls that Sage said further negotiations with the subjects in the residence would be fruitless. The only people Koresh had released were older, or people who had given him problems during the time they were in the residence, or children who he had not fathered." Sage further advised Hubbell that Koresh had been disingenuous in his discussions with Sage about the "Seven Seals." He was also convinced that the FBI had not succeeded in getting anyone released from the residence through negotiation. Sage indicated that he had never been in any previous situation in which he had experienced such an impasse. *Id.*

⁴⁸⁹ Hearings, Part 2 at 323.

⁴⁹⁰ *Id.*

⁴⁹¹ *Id.* at 69.

an opportunity to work. The FBI was frustrated and appeared to give to Justice Department officials only one option. Of the breakthrough to write the Seals, Sage testified before the subcommittees that "this first of all was not a new revelation to us as far as the Seven Seals."⁴⁹² From early in the standoff it appeared that the FBI had made up its mind that the Davidians weren't coming out of the residence of their own free will. Of the possibility of surrender, Jamar testified, "From [Koresh's] conduct from February 28th until April 19th, I would have every reason to believe he would not [surrender]."⁴⁹³ The FBI was convinced Koresh would never surrender.

F. FINDINGS CONCERNING THE NEGOTIATIONS TO END THE STANDOFF WITH THE DAVIDIANS

1. *The FBI allowed negotiators to remain in position at the Branch Davidian residence for too long, resulting in the physical and emotional fatigue, affecting the course of the negotiations.* The negotiators were in place for 51 days. Negotiations occurred almost constantly 24 hours a day. Despite a steady rotation of negotiators, it is clear from the transcripts that negotiators allowed their emotions to influence the discussions.

2. *The FBI did not take appropriate steps to understand the mindset of the subjects of the negotiations.* Numerous experts offered their advice on the specific beliefs of Koresh and the Davidians. Throughout the process, it is clear that the negotiators did not engage the Davidians in meaningful negotiations by ignoring the Davidian point of view. The subcommittees believe that the course of the negotiations could have been better directed by an increased understanding of the Davidians' religious perspective.

3. *The FBI leadership failed to make crucial decisions about which strategy to employ.* Two separate strategies were enacted simultaneously. The tactical pressure constantly worked against the strategy of negotiation. FBI leadership engaged these two strategies in a way that bonded the Davidians together and perpetuated the standoff.

G. RECOMMENDATIONS

1. *Federal law enforcement agencies should redesign negotiation policies and training so that physical and emotional fatigue will not influence the course of negotiations.* In anticipation of future negotiations involving unusually emotional subjects, such as Koresh, or those which may involve prolonged periods of time during which negotiators may become physically or emotionally fatigued, law enforcement agencies should implement procedures to ensure that these factors do not influence the recommendations of negotiators to senior commanders. Such procedures may involve using additional negotiators in a team approach, limiting the amount of time a particular negotiator remains on duty, limiting the amount of interaction between law enforcement officials and the subject of the negotiations until satisfactory behavior is elicited from the subject,

⁴⁹² *Id.* at 357.

⁴⁹³ *Id.* at 306.

or applying other "rewards" and "punishments" in order to elicit positive responses from the subject during negotiations.

2. *Federal law enforcement agencies must take steps to foster greater understanding of the target under investigation.* The subcommittees believe that had the Government officials involved at Waco taken steps to understand better the philosophy of the Davidians, they might have been able to negotiate more effectively with them, perhaps accomplishing a peaceful end to the standoff. The training, policies and procedures of Federal agencies should be revised to emphasize the importance of developing an understanding of their investigative targets.

3. *Federal law enforcement agencies should implement changes in operational procedures and training to provide better leadership in future negotiations.* The subcommittees believe that senior commanders should be given additional training in critical decision-making and that operational procedures be modified in accordance with this training. The subcommittees believe that the result of these changes should be that commanders will be better equipped to make necessary decisions from limited options with limited information during critical incidents. The benefits of these changes will protect not only the targets of Government action but, by making it more likely that Federal law enforcement officials will carry out their mission in the manner most likely to succeed, but will help to protect the safety of the law enforcement officers as well.

4. *Federal law enforcement agencies should take steps to increase the willingness of its agents to consider the advice of outside experts.* The subcommittees recommend that Federal law enforcement officials expand their capacity to obtain behavioral analyses of the targets of their investigations. This could be done through an expansion of those parts of the agencies in which behavioral analyses is performed. Additionally, this capacity could be enhanced through more formal arrangements with reputable outside consultants. The Nation's universities contain a wealth of experts whose expertise cuts across all fields of human behavior. Federal law enforcement should consider a more formal process for identifying qualified experts and entering into arrangements with them whereby they would be available when called upon.

5. *Federal law enforcement agencies should modify standard negotiation policies to allow senior commanders to seek outside expert participation in negotiations when warranted by special and extenuating circumstances and the absence of in-house expertise.* The immense number of people seeking to assist in the negotiations at Waco provided a good pool of resources from which to choose experts. Some of those people offering their assistance could have proven useful in the negotiations. The FBI should encourage agents to reach out for creative solutions to barricade situations in the future.

VII. THE ATTORNEY GENERAL'S DECISION TO END THE STANDOFF

A. OVERVIEW OF THE PLAN TO END THE STANDOFF

On April 12, 1993, the FBI presented Attorney General Janet Reno with a plan to end the standoff with the Branch Davidians. On April 17, 1993, the Attorney General gave her approval for the plan to be implemented on April 19. The stated mission of the plan was to "secure the surrender/arrest of all adult occupants of the residence while providing the maximum possible security for the children within the compound." A key component of the plan was the decision to use CS, a chemical riot control agent, which would be sprayed into the Branch Davidian residence in an attempt to induce the Davidians to leave. The plan was implemented on April 19, but the Davidians did not leave their residence as government officials suggested. Instead, 6 hours after the beginning of the operations, a fire erupted inside the structure, ultimately consuming it and the more than 70 persons inside.

B. THE OPERATION PLAN FOR APRIL 19, 1993

1. OVERVIEW OF THE WRITTEN OPERATION PLAN TO END THE STANDOFF

As early as March 22, 1993 the FBI began formulating an operation plan to end the standoff with the Davidians.⁴⁹⁴ On April 12, 1993, the FBI presented its plan to the Attorney General for her approval.⁴⁹⁵ According to the Justice Department Report, "Over the next several days the Attorney General and Senior Justice Department and FBI officials discussed, debated and dissected every aspect of the plan."⁴⁹⁶

The operations plan provided that its mission was to "secure the surrender/arrest of all adult occupants of the residence while providing the maximum possible security for the children within the compound." The key component of the plan was the delivery of a chemical riot control agent, known as CS, into the Branch Davidian residence in order to induce the Davidians to leave. While the CS agent was being inserted, FBI officials planned to use a loud speaker system and the telephone to advise the Davidians that tear gas was being inserted into the residence to force them to leave, but that an attack was not underway. The plan also provided for a de-

⁴⁹⁴ U.S. Department of Justice, Report to the Attorney General on the Events at Waco, Texas, 79 (1993) [hereinafter Justice Department Report]. Larry Potts, Assistant Director of the FBI in 1993, testified before the subcommittees that "[I]n terms of the formation of the gas plan, I think that Mr. Jamar first contacted me around March 27th or sometime near the very end of March, to indicate that such a plan was being submitted [to senior FBI officials]." Hearings, Part 2 at 480.

⁴⁹⁵ Justice Department Report at 263.

⁴⁹⁶ *Id.*

mand that all subjects leave the building and surrender to authorities.⁴⁹⁷

The plan provided for the operation to last up to 48 hours or until all subjects had exited the residence and surrendered. The plan provided for the first insertion of CS agent to be made into the front/left portion of the residence. After a period of time, which was to be dependent on the Davidians' response to the initial delivery of the CS agent and any subsequent negotiations that were possible, an additional tear gas delivery was to be made into the back/right portion of the residence. After a third delivery of CS, into an area not specified in the plan, all subsequent deliveries of CS agent were to be made into the upper and lower windows of the residence.⁴⁹⁸

During the first three insertions, the CS agent was to be delivered into the residence by two combat engineering vehicles (CEV's), an armored vehicle similar to the Bradley Fighting Vehicle (Bradley), but which is unarmed. The CEV's at Waco were mounted with boom-like arms which were capable of penetrating the walls of the structure. Mounted on the arms of the CEV's were mechanical devices designed to spray a stream of CS agent into the holes made by the booms. After the third insertions of CS agent, the operations plan called for agents located in unarmed Bradley Fighting Vehicles to maneuver close enough to the residence so that they could fire Ferret round projectiles through the windows of the structure. These small nonexplosive grenade-like projectiles contained CS agent which would rise into the air when the projectile broke open upon impact. The use of Ferret rounds was to be in addition to continuing insertions of CS by agents in the CEV's.

The plan also provided for specific assignments for the different HRT and SWAT teams involved in the operation. It specified the maneuvers to be made by the two CEV's, the nine Bradley Fighting Vehicles, and the M-88 tank retrieval vehicle, and provided for miscellaneous administrative and logistical issues such as types of uniforms to be used and the appropriate manner for handling prisoners.

Additionally, the plan provided to the Attorney General on April 12, 1993, included details concerning where the FBI's snipers were to be positioned and the positioning and capabilities of SWAT team members. The plan contained a "medical annex" providing for a means to treat "the potentially large number of casualties which could exceed the current medical capabilities of any single agency present" as well as procedures to be followed to arrest persons who had been exposed to CS. The annex also provided for locations where the injured were to be treated, provided a list of local and secondary hospitals (including address, latitude/longitude location, and estimated air travel time). And the medical annex provided instructions to the agents on the procedure to handle a mass surrender by the Davidians.

Finally, the plan provided for the possibility that the Davidians might not surrender. The final contingency provision in the plan

⁴⁹⁷ Federal Bureau of Investigation, Briefing for the Attorney General, at 25. [See Documents produced to the subcommittees by the Department of Justice 003370-003480, at Appendix [hereinafter Justice Documents]. The Appendix is published separately.]

⁴⁹⁸ *Id.*

stated that "if all subjects failed to surrender after 48 hours of tear gas, then a CEV with a modified blade will commence a systematic opening up/disassembly of the structure until all subjects are located."

2. ACCELERATION PROVISIONS OF THE OPERATIONS PLAN

While the operations plan called for the Government's actions to end the standoff to unfold over a period of 2 days, the plan also contained contingency provisions that allowed for a departure from the concept of a methodical insertion of CS. One of these provisions was implemented on April 19 and resulted in a rapid acceleration of the insertion of CS agent.

The first of the two contingency provisions in the plan provided that if the Davidians were observed in the tower during the operations, after having been informed not to be there, agents were permitted to insert CS gas into the tower by firing Ferret round projectiles into the tower. More importantly, however, the second contingency provision in the plan provided:

If during *any* tear gas delivery operations, subjects open fire with a weapon, then the FBI rules of engagement will apply and appropriate deadly force will be used. Additionally, tear gas will immediately be inserted into all windows of the compound utilizing the four Bradley Vehicles as well as the CEV's.⁴⁹⁹

C. THE WAY THE PLAN ACTUALLY UNFOLDED

At approximately 5:55 a.m., Dick Rogers, commander of the FBI's Hostage Rescue Team, ordered the two CEV's, which were to insert the CS riot control agent, deployed to the compound. At 5:56 a.m., the FBI's chief day-to-day negotiator, Byron Sage, telephoned the residence and asked to speak with Davidian Steve Schneider. It took approximately 3 minutes for someone to come to the phone.⁵⁰⁰ At 5:59 a.m., Sage informed the person answering the telephone that "We are in the process of putting tear gas into the building. This is not an assault. We will not enter the building." The person on the other end of the telephone responded "You are going to spray tear gas into the building?" whereupon Sage replied, "In the building . . . no, we are not entering the building."⁵⁰¹ While the Justice Department Report is ambiguous on the person to whom Sage was speaking, Sage testified at the hearings before the subcommittees that the person he talked with was Schneider.⁵⁰² At the conclusion of this conversation, someone threw the telephone outside of the building.⁵⁰³

From 6 a.m. to approximately noon on April 19, 1993, FBI agents implemented the operations plan and injected a large quantity of CS riot control agent into the Branch Davidian residence in four distinct phases. The agents moved close to the Davidian residence

⁴⁹⁹ *Id.*

⁵⁰⁰ Justice Department Report at 285.

⁵⁰¹ Justice Department Report at 286.

⁵⁰² Hearings, Part 3 at 269.

⁵⁰³ Justice Department Report at 286.

in CEV's equipped with devices⁵⁰⁴ which could shoot a horizontal stream of CS agent in short bursts or continuously for up to 15 seconds.⁵⁰⁵ The device uses carbon dioxide as a disburstant to propel a stream of CS agent, suspended in methylene chloride, horizontally into the air. Once the CS stream is fired, the carbon dioxide quickly evaporates and the methylene chloride gas disperses the CS evenly through a room, until the methylene chloride itself evaporates. The CS agent, which is a fine powder, then slowly falls to the floor, where it remains. The capacity of each delivery system on the CEV's was 30 grams of CS agent.

The insertion of CS agent into the Branch Davidian residence was performed in four phases. The first two phases employed two CEV's. On one CEV was mounted two CS delivery systems, while four systems were mounted on the second CEV. The CEV's were operated in tandem, each inserting the entire contents of the six CS agent delivery systems during the first two phases of the operation, at 6 a.m. and again at approximately 8 a.m. In each of the first two phases, a total of 180 grams of CS was delivered. The third and fourth phases, also 2 hours apart, involved only one CEV, as the second CEV had experienced mechanical difficulties and no longer operated. Four cylinders of CS were delivered in each of these two phases, for a total 120 grams of CS inserted into the residence. Thus, over the entire 6 hours of the operation, a total of 600 grams of CS agent was inserted into the Branch Davidian residence.

During the standoff with the Davidians, FBI agents used unarmed Bradley Fighting Vehicles as a means of transportation while guarding the perimeter of the residence. The FBI's overall operational plan for April 19 provided for the Bradleys to be used in a contingency plan to be implemented in the event the Davidians began to fire on the CEV's. If that occurred, agents in Bradleys who had maneuvered close to the building and were standing ready were to insert additional quantities of CS agent into all parts of the building. Agents in the Bradleys were to fire Ferret round projectiles into the residence. Ferret rounds⁵⁰⁶ resemble large plastic bullets, and are fired from hand-held grenade launchers. Each projectile carries 3.7 grams of CS agent, mixed in a suspension of methylene chloride.

Once the Davidians began firing on the CEV's Rogers gave the order to implement the contingency plan. The agents in the Bradleys then maneuvered close to the Branch Davidian residence and began to fire the Ferret round projectiles through the windows of

⁵⁰⁴The delivery systems mounted on the CEV's were Protecto-jet Model 5 Tear Gas Delivery Systems manufactured by ISPRA, Ltd., an Israeli company. The systems were sold to the FBI by Advanced Materials Laboratories, Inc. of Forrest Hills, NY. The Justice Department Report refers to the systems as Mark V systems. See Justice Department Report at 287. The subcommittees investigation indicates that while the Mark V system does exist, there is no evidence that it was used at Waco. The evidence indicates that only the Protecto-jet Model 5 system was mounted on the CEV's furnished to the FBI by the Defense Department. The references to the Mark V system in the Justice Department Report appear to be in error.

⁵⁰⁵The Protecto-jet Model 5 system consists of a cylinder approximately 27 inches long, 4 1/8 inches in diameter, weighing approximately 16 lbs., which is connected to a hose with a nozzle. The device uses carbon dioxide to propel a chemical agent, such as CS, mixed in a suspension of methylene chloride, into the air. The range of the device is 15-20 yards in still air. The device can be used to shoot 13-17 1-second bursts or a continuous burst for up to 15 seconds.

⁵⁰⁶Ferret Rounds are 37, 38, and 40 millimeter projectiles which can be fired from hand-held grenade launchers. Each projectile carries 3.7 grams of CS riot control agent, mixed in a suspension of methylene chloride.

the building. During the 6-hour operation, 400 Ferret round projectiles were fired at the Branch Davidian residence, a number of projectiles struck the side of the building and did not enter the building. Estimates of the number of projectiles that actually entered the residence range from 300 to 380. Had all 400 projectiles fired at the residence actually entered the residence, however, the total quantity of CS agent delivered by the Ferret round projectiles would have been 1,480 grams.

D. OVERVIEW OF THE USE OF CS CHEMICAL AGENT

1. INTRODUCTION

Chlorobenzylidene malononitrile, commonly called CS, is one of a family of approximately 15 chemical compounds used to control civilian populations during periods of disturbance and unrest. These "riot-control agents" cause acute irritation to the eyes, mouth, nose, and upper respiratory tract, that is relatively brief and not usually accompanied by permanent toxic effects. Exposure to riot-control agents renders the victim temporarily incapacitated, but the symptoms typically persist for only a few minutes after cessation of exposure.⁵⁰⁷

The first riot control agent was developed in the early 1900's.⁵⁰⁸ In 1928, two chemists, Corson and Stoughton, developed 2-chlorobenzylidene malononitrile, code named CS. However, CS was not developed as riot-control agent until the 1950's, when the British War Office began to search for a chemical that was more potent than either CA or CN.⁵⁰⁹ By the 1960's, CS had replaced CN as the preferred tear gas among police authorities around the world. Its popularity stemmed from the fact that it was shown to be a more potent irritant than CN, and appeared to cause less long-term injury, particularly to the eye.⁵¹⁰ Military forces also saw CS as a potent weapon for particular operations. Large quantities of CS were used by the United States during the Vietnam War. CN is no longer used by the U.S. military operations, but it is still used by some civil authorities, and by individuals for self-defense. Among civilian law enforcement agencies CS is, by far, the most widely-used riot control agent.

⁵⁰⁷ F.W. Beswick, *Chemical Agents Used in Riot-Control and Warfare*, 2 Hum. Toxicology 247-256.

⁵⁰⁸ The first riot-control agent may have been ethyl bromacetate, which was used by the Paris police in a handgrenade to disable criminal gangs. The German chemical industry that produced many lethal chemical weapons during World War I (e.g., nerve gases) also developed new tear gases. For example, xylol bromide was packed in 150-mm artillery shells and used during the battle against the Russians at Bolimow in January 1915. This early military use of a tear gas was not judged to be a success, owing to the failure of the chemical to vaporize in the sub-zero temperatures on the battlefield. However, it provided an early indication of the importance of weather conditions to the effectiveness of these agents. By 1918, the French had developed bromobenzylcyanide, known by the military code CA, and the British and Americans had developed chloroacetophenone, known by the military code CN, which became the most effective and widely used tear gas. In the postwar period, the urban crime wave and emergence of gangsters in the 1920's in the United States spurred renewed efforts to develop riot-control agents. By the mid-1920's, small explosive cartridges containing CN were available over the counter for personal protection. CN rapidly became the tear gas of choice for law-enforcement authorities. Howard Hu, *Toxicodynamics of Riot-Control Agents (Lacriminators)* 271, 273 in *Chemical Warfare Agents* (Satu M. Somani ed., 1992).

⁵⁰⁹ J. Cookson and J. Nottingham, *A Survey of Chemical and Biological Warfare* (1969).

⁵¹⁰ Hu, *supra* note 508.

2. CONCERNS OVER USE OF CS

CS has gained wide acceptance as a means of controlling and subduing riotous crowds. However, its widespread use has raised questions about its safety. Most published studies have concluded that, if used correctly, the irritant effects of exposure are short-lived and do not cause permanent damage.⁵¹¹ However, there have been isolated reports of fatalities from the use of riot control agents. The most common reports involve deaths attributed to the use of riot control agents by American military personnel in Vietnam.⁵¹² Additionally, other reports involve injury and death from the use of CS in Chile, Panama, South Korea, and the Gaza Strip and West Bank of Israel.⁵¹³ It has been unclear from these reports, however, whether the riot control agent used was CS or another, more toxic, agent.⁵¹⁴ Of particular concern, however, has been the indiscriminate use of riot control agents in enclosed and indoor spaces where it is feared that resulting high concentrations may have resulted in harmful levels of exposure. Severe injuries from exploding tear gas grenades as well as deaths from the toxicity of riot control agents used in confined, indoor spaces have been reported.

⁵¹¹The most thorough study of the use of CS agent against humans is the Himsworth Report, which investigated the use of CS agent in Northern Ireland in 1969. It concluded that exposure to CS did not produce long-term injury or death in humans. Home Office, report of the enquiry into the Medical and Toxicological aspects of CS (Ortho-chlorobenzylidene malononitrile), Part II: Inquiry into Toxicological Aspects of CS and its use for Civil Purposes (1971) [hereinafter Himsworth Report]. A recent study of the use of CS on 1,500 persons in a confined area space made the same findings. P.J. Anderson et al., *Acute effects of the potent lacrimator o-chlorobenzylidene malonitrile (CS) tear gas*, 15 *Hum. & Experimental Toxicology* 461, 464-465 (1996).

⁵¹²The United States used large amounts of CS during the Vietnam War in both offensive and defensive military operations. The basic doctrine for the use of CS weapons by U.S. sources is summarized in the following passage taken from a 1969 Army training circular:

The employment of riot-control agents (CS, CN) in Counter guerrilla operations is most feasible in tactical situations characterized by close combat in which rapidly responding systems are essential and permanent effects are undesirable. Riot-control munitions can be used tactically to temporarily disable hostile troops, to suppress their fire, or to cause them to abandon their position. Offensively, riot-control agents can be used to "flush out" unprotected enemy troops from concealed positions or to reduce their ability to maneuver or use their weapons. Defensively, riot-control munitions can be integrated into defensive perimeters to provide rapid CS delivery in case of enemy attack.

CS was employed for defensive purposes such as in the event of a surprise attack from superior enemy forces, and to help secure helicopter extractions of combat units or downed airman. It was used extensively in area-denial operations to render terrain uninhabitable by the enemy. CS was also used routinely in direct engagement of the enemy during offensive combat operations.

U.S. forces were issued gas masks to protect themselves against use of CS and other tear gases by the enemy. According to one U.S. evaluation, the North Vietnamese had only a limited supply of tear gas, but they used it to good effect. During the conflict, the general service respirator was replaced by a lighter mask, which went through a number of further modifications. The protection which it conferred was adequate but not complete, because dense CS aerosols can have a strong irritant effect on bare skin, especially in hot and humid conditions when the skin is moist.

⁵¹³See generally, H. Jack Geiger & Robert M. Cook-Deegan, *The Role of Physicians in Conflicts and Humanitarian Crises, Case Studies from the Field Missions of Physicians for Human Rights, 1988 to 1993*, 270 *JAMA* 616 (1993).

⁵¹⁴In a 1989 report, the General Accounting Office noted that the group Physicians for Human Rights had conducted a factfinding trip to investigate allegations of deaths from the use of CS in the occupied territories but that the members of the group could not confirm that any of the reported deaths were attributable to tear gas inhalation. See e.g., U.S. General Accounting Office, Israel: Use of U.S.—Manufactured Tear Gas in the Occupied Territories 3 (1989) (citing Physicians for Human Rights, "The Casualties of Conflict: Medical Care and Human Rights in the West Bank and Gaza Strip," Report of a Medical Fact Finding Mission by Physicians for Human Rights (1988)). The GAO report also noted that while Amnesty International had reported concerns over a "pattern of death [that] appeared to follow exposure to high concentrations of tear gas" they also stated that "Amnesty International noted that it was in no position to verify the exact cause of death in every case." *Id.* at 4.

Critics of the use of these agents argue that the available toxicological data is insufficient to describe with any confidence the potential for long-term pulmonary, carcinogenic, and reproductive effects. One recently published review of the toxicological data on riot control agents concluded that relatively little has been published in the mainstream medical literature and that epidemiologic studies following tear gas use under actual field conditions are almost nonexistent. The author of this review wrote:

There is clearly a great need for openly conducted research illuminating the full health consequences of exposure to riot-control agents including outcomes such as tumor formation, reproductive effects, and pulmonary disease. Consideration must be given to the possible effects of these agents on the young, the elderly, and other persons who might have increased susceptibility.⁵¹⁵

E. CLINICAL EFFECTS AND TOXICITY OF CS

1. COMMON EFFECTS OF EXPOSURE TO CS

All riot control agents, including CS, produce intense sensory irritation even in the most minute concentrations. For most of these agents, the eye is the most sensitive organ, with pain arising rapidly, accompanied by conjunctivitis, excessive tearing, and uncontrolled blinking. The inside of the mouth and nose experience a stinging or burning sensation, and there is usually excessive discharge of nasal mucus. Chest tightness and burning are accompanied by coughing, sneezing, and increased secretions from the respiratory passageways. A burning sensation is felt on the skin, often followed by inflammation and redness, and in some cases, actual burning of the skin occurs. Tear gas exposure may also irritate the stomach, leading to vomiting and possibly diarrhea. In addition to the physical symptoms, panic and severe agitation are common among those individuals with no prior experience of exposure to tear gas.⁵¹⁶

Most of the symptoms are felt within 10 to 30 seconds after exposure to the agent. After cessation of exposure, however, most symptoms continue to persist for a period of minutes before subsiding and disappearing.⁵¹⁷ The effects of exposure vary among individuals. Additionally, weather conditions, such as temperature and humidity, can heighten the potency of these agents.⁵¹⁸

2. TOXICITY OF CS

A review of the scientific literature concerning the use of CS indicates that limited conclusions as to the toxicity and lethality of CS are known. It seems generally accepted by the scientific community that the concentration of CS agent which is noticeable by humans and which will provoke physical responses in humans is 4 milligrams per cubic meter (4 mg/m³).⁵¹⁹ While no studies on humans

⁵¹⁵ Hu, *supra* note 508, at 284–285.

⁵¹⁶ See generally *Id.* at 276; Anderson, *supra* note 511, at 461.

⁵¹⁷ Hu, *supra* note 508, at 276.

⁵¹⁸ *Id.* at 277.

⁵¹⁹ Bryan Ballantyne, *Riot Control Agents, Biomedical and Health Aspects of the Use of Chemicals in Civil Disturbances* 27 (1977); Hu, *supra* note 508, at 279.

have been conducted concerning the lethality of CS, several studies have projected the concentrations at which CS is lethal to humans from the effects of studies performed on animals. Those studies estimate that the concentration of CS agent which would prove lethal to 50 percent of any given human population ranges from as low as 25,000⁵²⁰ to as high as 150,000 mg-min/m³.⁵²¹ Recent estimates by the U.S. military, however, estimate that the lethal concentration for humans is 61,000 mg-min/m³.⁵²² That study projects that the concentrations which would be injurious to the health of approximately 50 percent of any human population range from between 10–20 mg-min/m³.⁵²³

It is important to note, however, that there are no published studies which find that any human death has been caused by exposure to CS agent. While a number of unverified reports of human deaths can be found in the literature, in all of these reports it is unclear precisely whether CS or some other, more toxic, riot control agent was used or whether some other circumstance could have caused the deaths. The most extensive study of the use of CS agent on humans, by United Kingdom forces in Northern Ireland in the late 1960's, found that no deaths (and no long-term injuries) resulted from the widespread use of CS agent there.⁵²⁴ The only other documented study of the effects of CS used on a large number of humans confirms this finding.⁵²⁵

Some people may find curious the fact that all of these studies (and similar studies on the effects of chemical agents) uniformly give estimates of the level at which CS is lethal or injurious to 50 percent of a given population of humans. It appears from the literature that the effect of CS on humans (and on other animals) is not "linear," i.e., that proportionately greater concentrations do not have equally proportionate increases in effect. While scientists can estimate the levels which would prove lethal to 50 percent of a given population, it would be incorrect to presume that half of that quantity would kill 25 percent of that population. In fact, the most well-known study of the effects of CS on humans estimates that the likelihood of death after exposure to a dose of CS that is one-tenth the estimated lethal dose is less than 1 in 100,000.⁵²⁶ Accordingly, any analysis of the lethality of the CS agent used in the concentrations that resulted on April 19 can only be performed in light of the 50 percent lethality estimates.

Even when the quantities of CS riot control agent used do not reach lethal toxic levels, there are, nevertheless, significant physical consequences that occur from exposure to CS, and often severe emotional reactions caused by the symptoms brought on from exposure to CS. As discussed above, one recent study of the use of large quantities of CS against a population unable to leave the area in which the CS was used indicated that first, second, and even third

⁵²⁰ Dow Chemical Co., Material Data Safety Sheet (1988); Ballantyne, *supra* note 519.

⁵²¹ *Id.*

⁵²² Headquarters, Departments of the Army, Navy, and the Air Force, Potential Military Chemical/Biological Agents and Compounds 59 (1989).

⁵²³ *Id.*

⁵²⁴ Himsworth Report, *supra* note 511, at 23–25.

⁵²⁵ Anderson, *supra* note 511, at 464–465.

⁵²⁶ Himsworth Report, *supra* note 511, at 55–56; Ballantyne, *supra* note 519, at 30.

degree burns are possible when skin is exposed to CS.⁵²⁷ Additionally, some studies have shown that exposure to CS can cause allergic contact dermatitis.⁵²⁸ Other studies have shown that when CS can cause severe gastroenteritis when ingested, whether directly or as a result of ingesting mucus secretions containing CS from oral inhalation.⁵²⁹

Additionally, some studies on animals have suggested that exposure to CS might cause cancer and genetic abnormalities.⁵³⁰ Some studies have stated that exposure to high concentrations of CS for prolonged periods could result in inflammatory changes in the respiratory tract that might be conducive to secondary respiratory infection.⁵³¹ And it is believed that CS may exacerbate existing medical conditions of persons with bronchitis or asthma, although no reports of death from these conditions exist.

F. EFFECT OF THE CS AND METHYLENE CHLORIDE IN THE QUANTITIES USED ON APRIL 19TH

1. LETHALITY OF CS AS USED AT WACO

Testimony before the subcommittees presented contradictory evidence on the effects of CS riot control agent. The published literature described above, however, is more consistent in the conclusions drawn. While it cannot be concluded with certainty, it is unlikely that the CS riot control agent, in the quantities used by the FBI, reached lethal toxic levels. The evidence presented to the subcommittees does indicate, however, that CS insertion into the enclosed bunker at a time when women and children were assembled inside that enclosed space could have been a proximate cause of or directly resulted in some or all of the deaths attributed to asphyxiation in the autopsy reports.

In order to answer the question of whether the quantities of CS agent inserted into the residence might have reached lethal levels, the subcommittees attempted to determine the concentrations that were present in the residence under the "worst-case" circumstances. To make this determination, a number of assumptions must be made. Many of these assumptions were overstated solely for the purpose of calculation in order to place the greatest scrutiny on the government's actions.

In each of the first two phases of insertion into the Branch Davidian residence, a total of 180 grams (180,000 mgs) of CS was delivered.⁵³² For the purposes of analysis, the subcommittees assumed an "extreme case" scenario, where all 180 grams were delivered into the building by the two CEV's at the same instant, and that one-quarter of the Ferret rounds fired at the residence were fired at the precise moment that the CS delivered by the CEV's entered the residence.⁵³³ If so, then during the first and second

⁵²⁷ Anderson, *supra* note 511, at 463-464.

⁵²⁸ Hu, *supra* note 508, at 280.

⁵²⁹ *Id.*

⁵³⁰ *Id.*

⁵³¹ Ballantyne, *supra* note 519, at 30.

⁵³² CEV-1 emptied its four 30-gram cylinders while CEV-2 emptied the contents of its two 30-gram cylinders. The total delivered was thus $(4 \times 30) + (2 \times 30) = 180$ grams.

⁵³³ Each Ferret round carried 3.7 grams of CS agent. A total of 400 Ferret rounds were fired at the residence. Thus, the total quantity of CS agent in one quarter of the Ferret rounds used was 370 grams (3.7×100) .

phases of the CS operation, 550 grams (550,000 mgs) of CS were delivered to the residence.⁵³⁴ During the first and second phases, therefore, the total concentration of CS delivered into the compound was 108.92 mgs/m³.⁵³⁵ During the third and fourth phases, due to the mechanical failure of the second CEV, only 490 grams (490,000 mgs) of CS agent was delivered into the residence.⁵³⁶ During each of the third and fourth phases the total concentration at the (assumed) moment of insertion was 97.04 mgs/m³.⁵³⁷

Assuming the Branch Davidian residence been air-tight, so that none of the CS agent escaped the building (which was not the case), the total amount of CS agent delivered present in the building would have been 411.92 mgs/m³.⁵³⁸ This concentration is far below the 61,000 mgs/m³ amount projected to be lethal to 50 percent of a given population of humans. Stated in another way, it would take a concentration of CS 148 times greater than the greatest amount that could have been present at the Branch Davidian residence on April 19 to reach that lethal level.

In reality, the concentrations of CS inside the Branch Davidian residence did not reach even these levels. The Branch Davidian residence was a poorly constructed structure which allowed for air to move in and out of the residence continuously. The air circulation carried some of the CS agent out of the building. Adding to the air circulation inside the Davidians residence that day was the fact that the FBI began to use the CEV's to ram openings into the building, ostensibly to create a means of escape for the Davidians and, later, to "deconstruct" portions of the structure in an effort to prevent the Davidians from occupying those areas of the residence. These actions greatly enhanced the circulation into the residence and further depleted the concentration of CS agent inside the residence. Additionally, on April 19th, the winds were gusting up to 25 mph.⁵³⁹ This fact greatly enhanced the air circulation inside the residence, adding to the dissipation of the concentration of CS agent in the residence. Thus, the actual levels of CS inside the Davidian residence were less than those calculated above.

Some who have contacted the subcommittees have suggested that the above analysis is flawed because it does not allow for the possibility that some CS agent was concentrated in certain areas of the residence rather than being evenly distributed throughout the entire structure. The subcommittees believe that it is important to address that possibility.

Because the largest group of bodies recovered after the fire was found in the area of the residence commonly known as the gun

⁵³⁴ On each of the first two phases, 180 grams of CS agent was delivered by the CEV's and approximately 370 grams was delivered by Ferret Rounds. This totals 550 grams, or 550,000 milligrams.

⁵³⁵ The Branch Davidian residence contained approximately 178,310 cubic feet of living area. Converted into meters, the volume of the residence was 5,049.7 cubic meters. The concentration inside the building, therefore, was 108.92 mgs/m³ (550,000 mgs/5,049.7m³ = 108.92 mgs/m³).

⁵³⁶ The 180 grams from CEV-1 and the approximately 370 grams from 100 of the Ferret Rounds totals 490 grams, or 490,000 milligrams.

⁵³⁷ 490,000 mgs/5049.7 m³ = 97.04 mgs/m³.

⁵³⁸ The concentration inside the building, therefore, was 108.92 mgs/m³ + 108.92 mgs/m³ + 97.04 mgs/m³ + 97.04 mgs/m³ = 411.92 mgs/m³.

⁵³⁹ The National Oceanic and Atmospheric Administration recorded high winds beginning at noon on April 18, 1993. The winds continued through April 19. At 11:52 a.m. on April 19, winds were recorded at 25 mph with gusts to 30 mph.

room or bunker⁵⁴⁰ consideration was given to the concentrations of CS in that area.⁵⁴¹ The bunker was a solid concrete room inside the Davidian residence. It had no windows or other access to the outside of the building, but did open into a hallway inside the residence. It appears that there was little opportunity for CS to have been directly sprayed into the bunker and that any CS that was present in the bunker likely drifted into that room after it was sprayed into one or more of the rooms along the outside of the structure. The subcommittees note, however, that the videotape of the insertion of CS on April 19 indicates that one of the CEV's drove into the structure near the bunker during the fourth phase of the CS insertion. If the door to the bunker had been open at that time, it is possible that CS might have been injected directly into the bunker.

Based on this possibility the subcommittees attempted to determine, as a worst case scenario, the concentration of CS that would have been present in that room had the CEV emptied the entire contents of one of its CS containers into the bunker. It appears, however, that even in that event the concentration of CS would not have reached lethal levels.

The volume of the bunker room was approximately 44.40 cubic meters. Assuming that an entire cylinder (30 grams) of CS was injected into the room, the concentration at that moment would have been 675.67 mgs/m³.⁵⁴² As discussed above, the concentration level estimated to be lethal to humans is 61,000 mgs-min/m³. Even had the CEV which was mounted with four containers of CS inserted the contents of all four containers into the bunker, the resulting concentration would have been 2,702.70 mgs/m³.⁵⁴³ Again, this figure is well below the concentration level estimated to be lethal to humans.

Another worse case scenario considered by the subcommittees was the possibility that one of the CEV's might have delivered the entire contents of one of its cylinders of CS agent into one of the smallest rooms of the residence, and that that room was inhabited at the time. It still appears that the concentration of CS would not have reached lethal levels. The smallest rooms in the structure were the women's quarters located on the second floor of the residence. The smallest of these had a total volume of 16.17 cubic meters. Assuming that an entire cylinder of CS had been injected into this room, the concentration at that moment would have been 1855.29 mgs/m³.⁵⁴⁴ Assuming further that a number of Ferret rounds also happened to be fired into the room at the exact moment that the CS was injected by the CEV (assume an impossible event such as 20 rounds entering the room at the same instant), the concentration at that instant would have been 6,431.66 mgs/

⁵⁴⁰ See Justice Documents at the Appendix for a diagram of the floor plan of the Branch Davidian residence.

⁵⁴¹ It should be noted, however, that none of the autopsies of the persons found in the bunker indicate the cause of death was from exposure to CS.

⁵⁴² Each cylinder of CS contained 30 grams, or 30,000 milligrams, of CS. $30,000 \text{ mgs}/44.40 \text{ m}^3 = 675.67 \text{ mgs/m}^3$.

⁵⁴³ $120,000 \text{ mgs}/44.4 \text{ m}^3 = 2,702.70 \text{ mgs/m}^3$.

⁵⁴⁴ Each cylinder of CS agent contained 30 grams, or 30,000 milligrams. $30,000 \text{ mgs}/16.17 \text{ m}^3 = 185.52 \text{ mgs/m}^3$.

m³.⁵⁴⁵ Again, these figures fall far below the concentrations estimated to be lethal to humans.

While concluding that it is unlikely that the CS reached toxic levels, the subcommittees note the level of exposure to CS experienced by an individual Davidian cannot be determined. It is possible that a person near one of the CEV's injecting the CS may have been subject to a level of CS that was high enough to cause death. Additionally, 10 of the autopsies indicate asphyxiation as the cause of death, but do not indicate whether CS or other factors may have lead to this. The subcommittees are unable to conclude that CS did not play a part in the deaths of these persons.

2. LETHALITY OF METHYLENE CHLORIDE USED WITH CS AT WACO

During the gassing operation, each cylinder of the CS riot control agent introduced into the Branch Davidian residence by the CEV's was mixed with approximately 1,070 grams of methylene chloride. This suspension was then dispersed into the structure by carbon dioxide, which almost immediately evaporated, leaving the suspension of CS and methylene chloride. Additionally, each of the Ferret round projectiles contained 33 grams of methylene chloride as the dispersant medium for the CS agent.

The four phases of insertion of CS agent into the Branch Davidian residence were conducted approximately 2 hours apart. During the first and second phases six cylinders of CS agent were inserted into the residence, delivering approximately 6,420 grams of methylene chloride in each phase.⁵⁴⁶ During the third and fourth insertions only four cylinders of CS agent were inserted, accounting for approximately 4,280 grams of methylene chloride during each insertion. Assuming a worse case scenario of all of the CS insertions in one phase occurring at the same moment and approximately 1/4 of the Ferret round projectiles entering the building at that same time, thus adding an additional 3,300 grams of methylene chloride in each phase,⁵⁴⁷ the total concentration of methylene chloride delivered into the building during the first and second insertions was 1,924.87 mgs/m³.⁵⁴⁸

A review of the scientific literature concerning CS agent has located no estimates of the concentration of methylene chloride which would prove harmful or lethal to humans. The only estimates which do exist are with respect to mice and rats. For example, the concentration that would prove lethal to 50 percent of a rat population is estimated to be 2,640,000 mgs-min/m³.⁵⁴⁹ As can be seen from the above figures, therefore, the total concentrations of meth-

⁵⁴⁵ 30 grams of CS agent from a CEV plus 74 grams of CS agent from 20 Ferret rounds is a total of 104 grams (30 + (3.7 x 20) = 104), or 104,000 milligrams. 104,000 mgs/16.17 m³ = 6,431.66 mgs/m³.

⁵⁴⁶ Each cylinder contained 1,070 grams of methylene chloride. Six cylinders totaled 9,720 grams.

⁵⁴⁷ Each Ferret round contained 33 grams of methylene chloride. One hundred Ferret rounds thus inserted 3,300 grams of the chemical into the building.

⁵⁴⁸ In the first two phases the total quantity of methylene chloride delivered was 9,720 grams ((6 x 1,070) + (100 x 33)) or 9,720,000 milligrams. Divided by the cubic footage of the building (5,049.7 m³) the distribution of the substance throughout the building in these phases was 1,924.87 mgs/m³. In the third and fourth two phases the total quantity of methylene chloride delivered was 7,580 grams ((4 x 1,070) + (100 x 33)) or 7,580,000 milligrams. Divided by the cubic footage of the building (5,049.7 m³) the distribution of the substance throughout the building in these phases was 1,501.08 mgs/m³.

⁵⁴⁹ See generally Mallinckrodt, Inc., Material Data Safety Sheet 2 (1989); Dow Chemical, Inc., Material Data Safety Sheet 3 (1988).

ylene chloride at the Davidian residence on that day were less than the concentrations that would prove lethal to even rats.⁵⁵⁰ It appears, therefore, that the methylene chloride used with the CS agent could not have caused the death of any of the Davidians.

As in the case with CS, the subcommittees considered the possibility that some methylene chloride was concentrated in certain areas of the residence rather than being evenly distributed throughout the entire structure. Because the largest group of bodies recovered after the fire was found in the area of the residence commonly known as the gun room or bunker, consideration was given to the concentrations of methylene chloride in that area.⁵⁵¹ As discussed above, the bunker was a solid concrete room with no windows or other access to the outside of the building, but did open into a hallway inside the residence. Again, it appears that there was little opportunity for the methylene chloride carrying the CS agent to have been directly sprayed into the bunker and that any methylene chloride that was present in the bunker likely drifted into that room after it was sprayed into one or more of the rooms along the outside of the structure. But the subcommittees again note that the videotape of the insertion of CS on April 19 indicates that one of the CEV's drove into the structure near the bunker during the fourth phase of the CS insertion. If the door to the bunker had been open at that time, it is possible that methylene chloride carrying the CS agent might have been injected directly into the bunker.

Based on this possibility the subcommittees attempted to determine, as a worst case scenario, the concentration of methylene chloride that would have been present in that room had the CEV emptied the entire contents of one of its CS containers into the bunker. It appears, however, that even in that event the concentration of CS would not have reached lethal levels.

The volume of the bunker room was approximately 44.40 cubic meters. Assuming that an entire cylinder of CS (with 1,070 grams of methylene chloride as a dispersant) was injected into the room, the concentration at that moment would have been 24,099 mgs/m³.⁵⁵² Even if the CEV that was mounted with four cylinders of CS inserted the contents of all four containers into the bunker, the resulting concentration would have been 96,396 mgs/m³.⁵⁵³ Both of these figures are well below the concentrations estimated to be lethal to rats.⁵⁵⁴

Another worse case scenario considered by the subcommittees was the possibility that one of the CEV's might have delivered the entire contents of one of its cylinders of CS agent into one of the smallest rooms of the residence, and that that room was inhabited at the time. It still appears that the concentration of methylene chloride would not have reached lethal levels. The smallest rooms in the structure were the women's quarters located on the second

⁵⁵⁰The total quantities from each of the four insertions of CS agent was only 5,356.74 mgs/m³. ((2 x 1,924.87) + (2 x 1,501.08) = 5,356.74).

⁵⁵¹It should be noted, however, that none of the autopsies of the persons found in the bunker indicate the cause of death was from exposure to methylene chloride.

⁵⁵²Each cylinder of CS contained 1,070 grams, or 1,070,000 milligrams, of methylene chloride. 1,070,000 mgs/ 44.40 m³ = 24,099 mgs/m³.

⁵⁵³4,280,000 mgs/ 44.40 m³ = 96,396 mgs/m³.

⁵⁵⁴As stated, there are no studies estimating the lethal concentration levels to humans of exposure to methylene chloride.

floor of the residence. The smallest of these had a total volume of 16.17 cubic meters. Assuming that an entire cylinder of CS had been injected into this room, the concentration of methylene chloride at that moment would have been 66,171.93 mgs/m³.⁵⁵⁵ Assuming further that a number of Ferret rounds also happened to be fired into the room at the exact moment that the CS was injected by the CEV (assume, for example, an event as unlikely as 20 rounds entering the room at the same instant), the concentration at that instant would have been 106,988 mgs/m³.⁵⁵⁶ Again, these figures fall far below the concentrations estimated to be lethal to rats.

3. OTHER POSSIBLE EFFECTS OF METHYLENE CHLORIDE USED WITH CS AT WACO

While the subcommittees conclude that the levels of methylene chloride did not reach lethal toxic levels, the subcommittees also considered whether the levels of methylene chloride may have affected the Davidians in other ways. At levels over 1,000 parts per million (ppm) anesthetic effects begin to occur in humans.⁵⁵⁷ At levels above 2,300 ppm, exposure to methylene chloride may cause dizziness.⁵⁵⁸

Because methylene chloride evaporates rapidly when released into the air, the subcommittees considered separately the concentrations of methylene chloride during each of the four phases of the CS agent insertion. The levels of methylene chloride were greatest during the first two phases (because one of the CEV's was unable to inject the CS agent/methylene chloride mixture during the third and fourth phase).

During the first and second phases, six cylinders of CS agent were inserted into the residence, delivering approximately 6,420 grams of methylene chloride in each phase.⁵⁵⁹ Assuming that all of the CS inserted by the CEV's during one phase was inserted at a single moment, and that approximately 1/4 of the Ferret round projectiles used during the entire operation also entering the building at that same time (thus adding an additional 3,300 grams of methylene chloride in each phase⁵⁶⁰), and that the Davidian residence was airtight, the concentration of methylene chloride during each of the first two phases would have been 548 ppm.⁵⁶¹ At this concentration, studies have shown no observable effects in humans.⁵⁶²

⁵⁵⁵ Each cylinder of CS agent contained 1,070 grams of methylene chloride, or 1,070,000 milligrams. $1,070,000 \text{ mgs} / 16.17 \text{ m}^3 = 66,171 \text{ mgs/m}^3$.

⁵⁵⁶ 1,070 grams of methylene chloride from a CEV plus 660 grams of methylene chloride from 20 Ferret rounds is a total of 1,730 grams ($1,070 + (33 \times 20) = 1,730$), or 1,730,000 milligrams. $1,730,000 \text{ mgs} / 16.17 \text{ m}^3 = 106,988 \text{ mgs/m}^3$.

⁵⁵⁷ 2 G. Clayton & F. Clayton, *Patty's Industrial Hygiene and Toxicology* 3449-3455 (1981); R. Stewart et al., *Methylene Chloride: Development of a Biological Standard for Industrial Workers by Breath Analysis* (1974).

⁵⁵⁸ *Id.*

⁵⁵⁹ Each cylinder contained 1,070 grams of methylene chloride. Six cylinders totaled 9,720 grams.

⁵⁶⁰ Each Ferret round contained 33 grams of methylene chloride. One hundred Ferret rounds thus inserted 3,300 grams of the chemical into the building.

⁵⁶¹ The molecular weight of methylene chloride gas is 85. One mole of methylene chloride gas is 24.2 liters. $9,720 \text{g MC} / 85 = 114 \text{ moles}$. $114 \text{ moles} \times 24.2 \text{ liters/mole} = 2758 \text{ liters of MC}$. There was 5,049,700 liters of volume in the Davidian residence ($5.049.7 \text{ m}^3 \times 1000 \text{ liters/m}^3 = 5,049,700$). Thus $2758.34 / 5,049,700 \times 10^6 = 548 \text{ ppm}$.

⁵⁶² U.S. Department of Commerce, Agency for Toxic Substances and Disease Registry, *Toxicological Profile for Methylene Chloride* (1993).

In considering the possibility that some methylene chloride was concentrated in certain areas of the residence, rather than being evenly distributed throughout the entire structure, the subcommittees found that it was possible that the levels of methylene chloride reached concentrations that might have caused levels that produced anesthetic effects in humans.

Again, the subcommittees considered the possible concentration in the bunker, as the largest group of bodies recovered after the fire was found there. The volume of the bunker room was approximately 44.40 cubic meters. Assuming that an entire cylinder of CS (with 1,070 grams of methylene chloride as a disburstant) was injected into the room, the concentration at that moment would have been 6,861 ppm.⁵⁶³ This concentration was sufficient to induce dizziness and other anesthetic effects in humans.

As stated, however, the evidence is not determinative as to whether one of the CEV's did, in fact, insert CS directly into the bunker. Additionally, it is unknown if the bunker door was open or closed, a factor that would have significantly affected the concentration levels inside the room. Finally, the air circulation inside the building would have affected the levels of methylene chloride present at any one time. The subcommittees conclude, however, that it is possible that the levels of methylene chloride in the bunker were such that the chemical impaired the Davidians' ability to escape the room. Additionally, the possibility cannot be dismissed that other Davidians, in other areas of the residence, might have been similarly adversely affected if they were directly exposed to an insertion of an entire cylinder of the CS agent/methylene chloride mixture. Thus, the levels of methylene chloride that were present in the Davidian residence as a result of the use of the CS riot control agent might have impaired the ability of some of the Davidians to be able to leave the residence had they otherwise wished to do so.

G. ANALYSIS OF THE ATTORNEY GENERAL'S DECISION TO END THE STANDOFF ON APRIL 19, 1993

1. THE DECISION NOT TO STORM THE RESIDENCE

The subcommittees received testimony concerning the FBI's decision not to storm the residence in order to end the standoff. Additionally, the Justice Department Report on these events also discusses the factors that went into this decision. According to that report, FBI tactical experts believed that there was a substantial likelihood of significant casualties to FBI agents if a frontal assault on the residence was attempted. The FBI believed that the Davidians had fortified the residence and were ready to offer resistance equal to or perhaps even greater than that they had showed during the failed February 28 assault on the residence by the ATF. The FBI was also concerned about the possibility of suicide by the Davidians in the event of such an assault.⁵⁶⁴

⁵⁶³ 1,070 g MC/ 85 = 12.59 moles. 12.59 moles x 24.2 liters/mole = 304.63 liters of MC. There was 44,400 liters of volume in the bunker (44.40 m³ x 1000 liters/m³ = 44,400). Thus 304.63/44,400 x 10⁶ = 6,861 ppm.

⁵⁶⁴ Justice Department Report at 259.

Experts on tactics testified before the subcommittees that a frontal assault is one of the riskiest types of tactical operations.⁵⁶⁵ That risk was even greater in this situation given the large size of the structure and the wide-open areas around the structure with the resulting lack of cover for any approach to the residence.

The FBI's decision to pursue options other than a frontal assault in order to end the standoff was a wise one. It seems clear that a raid, even one better planned than that of the ATF of February 28, was of unacceptably high risk. It is likely that FBI agents would have sustained casualties in such an assault. Any assault on the Branch Davidian residence also risked the lives of the Davidians. Additionally, the FBI appropriately considered the possibility of suicide by the Davidians in the event of an assault.

2. THE REASONS ASSERTED FOR ENDING THE STANDOFF ON DAY 51

a. The situation would not soon be resolved

One of the key factors influencing the FBI's decision to recommend to the Attorney General that the standoff be ended on day 51 was the belief by FBI officials that continuing to negotiate with the Davidians would not lead to their peaceful surrender. At the hearings held by the subcommittees, FBI chief negotiator Byron Sage testified that he believed that further negotiations would not be fruitful.⁵⁶⁶ Tactical commander Jeffrey Jamar testified that he was skeptical that negotiations would end the standoff, and that he became even more skeptical after Koresh reneged on a promise to come out on March 2.⁵⁶⁷ Documentary evidence reviewed by the subcommittees indicated, however, that some of the FBI's behavioral experts believed that there were further steps that could be taken through negotiations. Additionally, at the subcommittees' hearings, testimony was received from the attorneys for the Davidians that they believed further negotiations could have led to the Davidians' peaceful surrender.⁵⁶⁸

Sage's view was that Koresh had broken many of the promises he had made throughout the standoff. After experiencing a number of these broken promises, Sage and the other FBI commanders believed that they could not rely on Koresh's assurances.

Another factor that may have affected the FBI commanders' view of the situation, but which was given little emphasis in the Justice Department report, is mental and emotional fatigue affecting the FBI decisionmakers. Sage was one of the first FBI agents on the scene on February 28. He worked every day, all day, of the 51-day standoff, and only returned to his home in Austin for a short period of time on 1 day to gather more clothes. Jamar and the other senior FBI commanders were also on site for almost the entire time of the standoff. It seems only natural then, that physical and mental fatigue would begin to set in and that dealing with Koresh's rhetoric and disingenuousness would lead to emotional fatigue as well. Indeed, the Justice Department Report indicates that the law

⁵⁶⁵ Hearings, Part 2 at 315, 318 (statement of Donald A. Bassett).

⁵⁶⁶ "I never abandoned the concept or the hope that negotiations could successfully and peacefully resolve this matter. My statement to [Hubbell] at the time . . . was that I felt that negotiations were at an impasse . . ." Hearings, Part 2 at 345 (statement of Byron Sage).

⁵⁶⁷ Hearings, Part 2 at 306-307.

⁵⁶⁸ See section VI E of this report.

enforcement personnel present were tired and that their “tempers were fraying.”⁵⁶⁹

Nevertheless, FBI commanders to become firmly convinced that nothing more would come from further negotiations with Koresh. That belief was communicated by Sage to Associate Attorney General Webster Hubbell during a 2-hour telephone conversation on April 15.⁵⁷⁰ This belief played a crucial role in influencing Attorney General Reno’s decision to end the standoff on April 19.⁵⁷¹

During the hearings, however, the subcommittees received testimony from the Davidians’ attorneys that Koresh was hard at work writing his interpretation of the Seven Seals discussed in the Book of Revelation in the Bible. They believe that Koresh was willing to surrender when he finished his writing.

The FBI’s commanders knew of Koresh’s desire to write this manuscript but did not believe he was actually working on it. It appears that fatigue and frustration at the lack of achieving success in obtaining the release of additional Davidians may have led the negotiators to be less than receptive to this information. That the negotiators were not open to this new information, and did not pass it on to their superiors, played a part in the Attorney General’s decision to end the standoff on April 19 and in the manner chosen to end it.

b. The Davidians might attempt a breakout, possibly using the children as shields

Another factor that went into the FBI’s recommendation to the Attorney General to end the standoff on day 51 was the fear that the Davidians might attempt to breakout of the residence using the children as human shields. According to the Justice Department Report, “some [unnamed] experts” had suggested this possibility and that to combat this possibility, the FBI had to be certain that its best trained troops (the Hostage Rescue Team members) would be on the scene.⁵⁷² There was some doubt as to how much longer the HRT could remain at the residence.

There was little evidence to support this fear. At no time did Koresh or Schneider threaten that the Davidians might attempt to break out of the residence or take any other offensive action. In fact, from February 28 to April 19 all of the Davidians’ actions could be viewed as defensive in nature—defending what they believed to be sacred ground, their residence. Given the Davidians’ professed devotion to their residence, it is difficult to understand why the FBI thought the Davidians would try to leave. Given that the FBI also knew that the Davidians were very much aware of the perimeter security around the residence it is difficult to understand why the FBI thought the Davidians believed they could escape. In short, there appears to have been little support for the FBI’s concern that the Davidians would try to break out of the residence. To the extent it played a part in the FBI’s decision to recommend that the standoff be ended on April 19, this unfounded fear contributed to the tragic results of that day. The Attorney General knew or

⁵⁶⁹ Justice Department Report at 271.

⁵⁷⁰ *Id.* at 270.

⁵⁷¹ *Id.*

⁵⁷² *Id.* at 261.

should have known that the fear of breakout argument was unfounded.

c. The FBI Hostage Rescue Team needed rest and retraining

According to the Justice Department Report, another important factor that played a part in the Attorney General's decision to end the standoff on April 19 was concern over the continuing readiness of the Hostage Rescue Team.⁵⁷³ It is unquestioned that the HRT possesses more skills and skills that are more highly developed than any other civilian tactical unit within the Federal Government. These skills need constant use in order to be retained, much as a superior athlete must train each day to maintain his or her level of athletic skill. Without that training, these skills begin to deteriorate.

According to the Justice Department Report and testimony presented to the subcommittees, the concern about the possible deterioration in HRT skills was raised at a meeting of Justice Department and FBI officials with the Attorney General on April 14, 1993.⁵⁷⁴ By that date, the HRT members had been present at the Branch Davidian center for almost 7 weeks without the opportunity for the type of training that they otherwise would be pursuing every day. Also present at that meeting were several military officers. As a Defense Department witness testified before the subcommittees, the officers explained that they were present at the April 14, 1993, meeting at the invitation of FBI officials in order to answer any questions that the Attorney General might pose to them about ending the standoff. The officers had been selected because of their special tactical training and experience. During the meeting, one of the officers advised the Attorney General that if the HRT were military troops under his command he would recommend pulling them away from the Branch Davidian center for rest and retraining.⁵⁷⁵

According to the Justice Department report, HRT commander Dick Rogers informed the Attorney General that the HRT members "were not too fatigued to perform in top capacity in any tactical operation at that time" but that if the standoff continued for any extended period of time he would recommend that they "stand down" for rest and retraining.⁵⁷⁶ At the subcommittees' hearings Mr. Rogers and Floyd Clarke, Deputy Director of the FBI in early 1993, each testified that they believed the HRT could have remained on site for at least 2 additional weeks before he would have recommended that they "stand down."⁵⁷⁷

The point at which the deterioration of HRT members skills becomes unacceptable is not a fact which appears to be readily quan-

⁵⁷³The FBI's HRT is comprised of FBI special agents selected through a rigorous screening program. Unique in Federal law enforcement, the HRT trains 5 days a week, all year in tactics related to its mission to take control of and end hostage and barricade situations without loss of life to any innocent persons who may be involved. Unlike the several FBI SWAT teams or ATF SRT teams, HRT members do not carry an investigative case load in addition to their tactical duties. Thus, they train each working day, whereas the SWAT and SRT members conduct tactical training only a few days each month.

⁵⁷⁴Justice Department Report at 268.

⁵⁷⁵Hearings, Part 3 at 304, 314 (statement of Allen Holmes, Assistant Secretary of Defense for Special Operations and Low Intensity Conflict).

⁵⁷⁶Justice Department Report at 268.

⁵⁷⁷Hearings, Part 2 at 577 (statement of Dick Rogers); Hearings, Part 3 at 73 (statement of Floyd Clarke).

tifiable, but rather is a matter of informed judgment. Nothing in the evidence presented to the subcommittees leads to the conclusion that the HRT members' skills were not deteriorating or that the recommendation of the military officers and the HRT commander to remove the HRT members for rest and retraining was not well-informed. But this observation does not answer the questions of what weight this fact should have played in the Attorney General's decision to end the standoff on day 51.

The Justice Department Report states that the Attorney General discussed with the FBI the possibility of using FBI SWAT teams to relieve the HRT for a time so that the HRT could be pulled from the scene, rested, and retrained but that the FBI discouraged that option and took the position that it should be used only as a last resort. At the hearings before the subcommittees, however, Floyd Clarke, Deputy Director of the FBI in early 1993, testified that the FBI was formulating plans to use FBI SWAT teams in place of the HRT teams if the Attorney General did not approve the plan to end the standoff in mid-April.⁵⁷⁸

The FBI testified that the qualification of its several SWAT teams do not equal that of the HRT. What must be considered, however, is the actual task for which the SWAT teams would have been used. It would not have been an attempt to enter and take control of the residence. As the Justice Department Report and hearing testimony made clear, during the 51-day standoff the HRT was used only for perimeter security—keeping the Davidians in and outsiders out of the residence. Had the HRT had been relieved by SWAT teams, they would have been assigned to the same task. In short, while HRT capabilities exceed SWAT capabilities, the HRT's additional capabilities are not those essential to the task of securing the perimeter of a crime scene.

Given that the threat of a Branch Davidian breakout was minimal at most, it appears that the FBI was overcautious in informing the Attorney General that its own SWAT teams were not capable of securing the residence perimeter.⁵⁷⁹ While the HRT might best have done the job of securing the residence, nothing in the record suggests that the SWAT teams could not have done that job adequately for a short time. Indeed, had the Attorney General not approved the plan to end the standoff in mid-April, the FBI was planning to use its SWAT teams to relieve the HRT. It does not appear that the FBI informed the Attorney General of this fact, however.

Representatives of the Texas Rangers testified before the subcommittees that they believed that State police SWAT teams could have relieved the FBI HRT and maintained the perimeter while the HRT was rested.⁵⁸⁰ Representatives of the Texas Rangers

⁵⁷⁸ Hearings, Part 3 at 73 (statement of Floyd Clarke).

⁵⁷⁹ For example, the Justice Department points to the fact that HRT members had been training in the maneuvering of the armored vehicles loaned to the FBI by the military, implying that the SWAT teams did not have this training. Yet, even the HRT members had to receive remedial training on the use of these vehicles while at the residence. In fact, at one point, an armored vehicle driven by an HRT member who was being retrained drove over an automobile belonging to a member of the press, destroying the vehicle. Surely it would not have taken much more training to enable the SWAT members to perform their task adequately, even if it were not up to HRT skill levels. It is unclear why the SWAT members could not have received sufficient training to drive these vehicles around the perimeter of the residence.

⁵⁸⁰ "Mr. MCCOLLUM. In your opinion, knowing the Texas officers, you all don't have SWAT teams, do you, the Texas Rangers, but the State police do, don't they?"

"Mr. BYRNES. Yes, they have a SWAT team."

interviewed by subcommittees' staff stated that the Texas State police did offer to assist the FBI in maintaining the perimeter during the standoff but that this offer was rejected.

The FBI's decision to reject outside assistance is consistent with the prevailing FBI attitude of resisting any involvement from other agencies, whether Federal, State, or local. This attitude is counter-productive. While the subcommittees cannot evaluate the capabilities of the Texas State police, and are mindful of the command and control problems that may be encountered when bringing together members for organizations that have had no previous experience together, it appears shortsighted for the FBI to have rejected out of hand the offer of assistance from the State police and, specifically for not considering using State police SWAT teams to help maintain the perimeter around the Branch Davidian residence. Given FBI concerns with the size of the perimeter to be maintained, it would seem that these additional personnel could have been of some assistance to the FBI, even if they were used in a merely supporting role, such as at a secondary perimeter established beyond that maintained by the FBI.

While using FBI SWAT teams to relieve the HRT might not have been the optimal approach to the problem, using them (perhaps augmented by State police teams) would have enabled the FBI to rest and retrain the HRT so that it could have been redeployed to the scene after an appropriate time. The FBI's failure to recommend to the Attorney General that SWAT teams be used to relieve the HRT, or to inform her that the FBI planned to use them for this very purpose had she not approved the plan to end the standoff, limited the options and created an unnecessary sense of urgency about ending the standoff. The Attorney General knew or should have known that the HRT did not need to stand down to rest or retrain for at least 2 more weeks after April 19, and if and when it did stand down, FBI and local law enforcement SWAT teams could have been brought in to maintain the perimeter. If she did not know the true facts it is because she did not ask the questions of the FBI that a reasonably prudent person faced with the decision would have asked. If the Attorney General did ask these questions, someone in the FBI lied to her or was grossly negligent in reporting the facts. If the latter was the case, the responsible party should have been disciplined long ago. The absence of such

"Mr. MCCOLLUM. Either the State police or the local officials in the area, were there SWAT teams or combinations thereof that could have been put together from State law enforcement or local law enforcement that could have maintained that perimeter for a few days or a week or two, if necessary, to let this FBI hostage team regroup had the negotiations continued for another month or something?"

"Mr. BYRNES. Well, to answer your question, just generically, yes. Frankly, I don't know. And let me say that the HRT team, in my opinion, is probably the most highly trained unit for what they are doing in the world, and I think they were the people to be there."

"Mr. MCCOLLUM. I don't doubt that for a minute. I am not even questioning that, I am just asking because I know you may not know all of this, but we have looked into it, and it appears that is a factor. We are going to hear more from them."

"Mr. BYRNES. I never heard that before."

"Mr. MCCOLLUM. Whether it is or not, the question I was really asking, just because you are here tonight, you believe that, at least from the standpoint of holding the perimeter—and I would ask that to you as well, Captain Cook—that State police or SWAT teams from local police units could have been mustered if you had been asked and consulted with to do that, even though they wouldn't have been as effective at it perhaps as the FBI's HRT team. Is that right or not?"

"Mr. COOK. I think it could have been accomplished. I think that is just a basic law enforcement trait, No. 1. We have police officers trained in different areas." Hearings, Part 2 at 198.

action leads the subcommittees to conclude that the Attorney General was herself negligent.

d. Conditions inside the residence were deteriorating

Another factor that the Attorney General says played a part in her decision to end the standoff on April 19 was a concern about deteriorating conditions inside the residence. There is little support for this concern and it should not have played any significant part of the decision to end the standoff.

The concern about deteriorating conditions is mentioned in only two places in the Justice Department Report.⁵⁸¹ The report also States, however, that the FBI became convinced that while Koresh was rationing water to ensure discipline he was continuing to replenish the water supply.⁵⁸² The report further states that the FBI believed that the Davidians had food to last up to 1 year.

In short, if the concern about conditions inside the residence was a factor in the Attorney General's decision, it could only have been about lack of electricity or the lack of sanitation inside the residence. While electricity to the residence was cut off for the final time on March 12,⁵⁸³ the Davidians had kerosene lamps inside the residence which they used to illumine the interior. And while the Davidians had no way to cook food, they had ample stores of food that did not need to be cooked. In short, there is no evidence that the lack of electricity resulted in any real harm to the Davidians.

The purported concern over sanitary conditions inside the residence is also exaggerated. Even before the February 28 raid, the Davidians had never had running water or other sanitation inside the residence. Human waste was collected in buckets and other containers each day and taken outside to an designated dumping site for the waste. During the standoff, waste was dumped into the half-finished swimming pool next to the residence. Apart from the odor from the swimming pool, however, there is no evidence that the materials in the pool was leaking or leeching into the residence. At the hearings before the subcommittees, one of the surviving Davidians testified that sanitation "was no worse on the last day than it was throughout the 51 days."⁵⁸⁴ The assertion in the Justice Department Report that "sanitary conditions had deteriorated significantly" is simply incorrect.

In summary, the conditions inside the residence had changed only slightly from those in which the Davidians lived before February 28. The conditions appear to not have presented any immediate health risk to the adults or children inside the residence. If concerns about these conditions played a role in the Attorney General's decision to end the standoff on April 19, they were unfounded and she knew or should have known this.

e. There was the possibility of ongoing physical and sexual child abuse

The Justice Department Report states that during the week of April 12, an (unnamed) individual informed the Attorney General

⁵⁸¹ Justice Department Report at 269, 275.

⁵⁸² *Id.* at 269-270.

⁵⁸³ *Id.* at 67.

⁵⁸⁴ Hearings, Part 3 at 195 (statement of Clive Doyle).

that the FBI had learned that the Davidians were physically abusing the children in the residence and that this abuse had occurred after February 28. The report states, “[T]he Attorney General had no doubt that the children were living in intolerable conditions.” The report goes on to state that the Attorney General had been told that Koresh had sexually abused minors in the past and “continued to have sex while recovering from his wounds.”⁵⁸⁵ The report does not state on what intelligence these assertions were based.

In another part of the report, however, the Justice Department admits that the FBI had no direct evidence of physical or sexual abuse. As the reports states,

[T]here was no direct evidence establishing that any children were being either sexually abused or physically abused the February 28 through April 19 time period. There were circumstantial indications, however, that the children were living in a deteriorating environment, and that the prospect of living in a deteriorating environment, and that the prospect of sexual or physical abuse was likely as the standoff continued.⁵⁸⁶

There is little circumstantial evidence revealed in the report as well.

It is clear that Koresh sexually abused minor females at the residence, in addition to having consensual sexual relations with a several of the adult females who lived there. A number of former Davidians provided affidavits detailing these sexual relations, including the sexual abuse involving minors females. Joyce Sparks, an employee of the Texas Children’s Protective Services agency provided the FBI with a report of an interview she conducted with a child who lived at the residence detailing an incident of sexual abuse. This child testified about her experience before the subcommittees at the July hearings. Also, during conversation between the FBI and Steve Schneider during the week of April 14, Schneider admitted that he knew of Koresh’s sexual abuse of a minor female.⁵⁸⁷ While all of these incidents occurred prior to February 28, FBI behavioral expert Dr. Park Dietz, in an April 17 memoranda to the FBI, opined that “Koresh may continue to make sexual use of any minor female children who remain inside.”⁵⁸⁸

It also appears certain that Koresh employed severe physical punishments as a means of disciplining the children. A March 26 report of Dr. Bruce Perry, a child psychiatrist who interviewed the children who had been released during the standoff, confirmed that Koresh physically abused children who had misbehaved.⁵⁸⁹

On April 19, the Attorney General made several television statements during which she stated that her concern of ongoing child abuse was factor that led her to decide to end the standoff. While the Attorney General’s concerns for the children’s welfare were real, there was no reliable evidence that conditions inside the compound had worsened substantially from those existing prior to

⁵⁸⁵ Justice Department Report at 275.

⁵⁸⁶ *Id.* at 226.

⁵⁸⁷ *Id.* at 222–223.

⁵⁸⁸ *Id.* at 223.

⁵⁸⁹ *Id.* at 223–224.

the February raid or that the Davidian children were suffering greater harms than they had in the past. Additionally, as the Justice Department report makes clear, the Attorney General was aware of the potential for extreme danger to the children in pursuing the FBI's assault plan.⁵⁹⁰

Given the lack of evidence that the children inside the compound faced immediate life-threatening harm from the ongoing standoff and the Attorney General's awareness of the extreme risks of an assault, including the potential for serious or even life-threatening injury to the children, the Attorney General's decision to approve the raid based on concerns for the children's welfare was flawed.

While the Justice Department Report tries to downplay this factor by asserting that the Attorney General was more influenced by other factors,⁵⁹¹ the Attorney General's public statements on and after April 19 indicate otherwise. Particularly troublesome is the statement in the Justice Department Report that "[u]ltimately, it made no difference whether the children were undergoing contemporaneous abuse, because the environment inside the residence was intolerable in any event."⁵⁹² This statement is an attempt to mask the fact that the Attorney General either was misinformed or misunderstood what was happening inside the residence as of the third week of April or intentionally exaggerated the conditions to provide an excuse for approving the plan she knew could likely end in violence and put the children at greater risk.

3. THE DECISION AS TO HOW TO IMPLEMENT THE PLAN

a. *The FBI's mindset—"This is not an assault"*

At 5:59 a.m. on April 19, FBI chief negotiator Byron Sage spoke with Steve Schneider by telephone and told him, "[W]e're in the process of putting tear gas into the building. This is not an assault. We will not enter the building."⁵⁹³ Schneider responded by throwing the telephone out of the residence. Sage then began to broadcast the following message over loudspeakers pointed toward the residence:

We are in the process of placing tear gas into the building. This is not an assault. We are not entering the building. This is not an assault. Do not fire your weapons. If you fire, fire will be returned. Do not shoot. This is not an assault. The gas you smell is a nonlethal tear gas. This gas will temporarily render the building uninhabitable. Exit the residence now and follow instructions.

You are not to have anyone in the tower. The tower is off limits. No one is to be in the tower. Anyone observed to be in the tower will be considered to be an act of aggression and will be dealt with accordingly.

⁵⁹⁰ The Attorney General ruled out a proposal to end the standoff during the weekend of April 17 because of her concern about the availability of emergency rooms. In addition, during pre-raid approval meetings she questioned the FBI's planned response to the potential threat of individuals carrying children while firing weapons, and to the possibility of children being held up windows and being threatened to be shot. *Id.* at 272–273.

⁵⁹¹ *Id.* at 216.

⁵⁹² *Id.* at 217.

⁵⁹³ *Id.* at 286.

If you come out now, you will not be harmed. Follow all instructions. Come out with your hands up. Carry nothing. Come out of the building and walk up the driveway toward the Double-E Ranch Road. Walk toward the large Red Cross flag.

Follow all instructions of the FBI agents in the Bradleys. Follow all instructions.

You are under arrest. This standoff is over.

We do not want to hurt anyone. Follow all instructions. This is not an assault. Do not fire any weapons. We do not want anyone hurt.

Gas will continue to be delivered until everyone is out of the building.⁵⁹⁴

Immediately after Sage spoke with Schneider, two CEV's approached the residence. Both CEV's were fitted with a long triangular boom-like arm on which was fitted a device that would spray CS agent mixed with carbon dioxide. The CEV's were maneuvered close enough to the residence so that the boom could be rammed into and through the wall of the building. The operator then inserted CS agent into the building using the device affixed to the boom of the CEV. Insertions of CS agent by the CEV's occurred in four distinct phases throughout the morning of the April 19.

During this phase of the plan, FBI agents in the Bradleys also maneuvered close to the residence. The agents used hand-held grenade launchers to fire CS agent in projectiles known as Ferret rounds through a firing port in the Bradleys and into the windows of the residence. This activity also went on throughout the morning of the 19th.

As Sage testified at the subcommittees' hearings, the FBI did not consider these actions to be an assault against the residence. To Sage, the fact that the FBI did not plan to enter the residence at any time, and did not enter the residence, was determinative as to whether the operation was an assault. While this distinction may have made complete sense to the FBI, it made sense only because FBI agents, and especially HRT members, deal with these concepts each day as part of their duties.

The FBI assessed the situation only on their terms. They failed to consider how their actions would be perceived by those who were the targets of their actions—the Davidians inside the residence. This failure was a significant error.

b. The FBI's failure to consider the "Reasonable Branch Davidian"

As the FBI implemented its plan to end the standoff the Branch Davidians were confronted with the sound of military vehicles approaching their home, the vibrations from holes being rammed into the sides of their home, and by the effects of a gas-like substance being sprayed into their home. Most people would consider this to be an attack on them—an "assault" in the simplest terms. If they then saw other military vehicles approaching, from which projectiles were fired through the windows of their home, most people are even more likely to believe that they were under an assault. If

⁵⁹⁴ *Id.* at 286-287.

those vehicles then began to tear down their home there would be little doubt that they were being attacked. These events are what the Davidians inside the residence experienced on April 19, yet the FBI did not consider their actions an assault.

Compounding this situation is the fact that the Davidians were not “most people.” They were a close-knit group with ties to their home stronger than those of most people. The Davidians considered their residence to be sacred ground. Their religious leader led them to believe that one day a group of outsiders, nonbelievers, most likely in the form of Government agents, would come for them. Indeed, they believed that this destiny had been predicted 2,000 years before in Biblical prophecy. Given this mindset, it can hardly be disputed that the Davidians thought they were under assault at 6 a.m. on April 19.

The FBI’s failure to consider how the Davidians might respond to their actions was important. The FBI’s operations plan called for a systematic insertion of the CS riot control agent at different intervals throughout the day. But the plan also called for a backup operation if the armored vehicles used in the operation came under fire. This contingency plan involved rapid insertion of CS agent and the eventual “deconstruction” or tearing down of the residence itself. The vehicles came under fire almost immediately after the gas insertion began. The FBI resorted to their fallback plan as of 6:07 a.m.⁵⁹⁵

As the Justice Department Report makes clear, the majority of the FBI’s briefing to the Attorney General involved the main FBI plan involving the deliberate, slow insertion of CS agent. Little discussion apparently took place about the contingency provision in the plan calling for the rapid insertion of CS agent and the deconstruction of the residence.

Curiously, the FBI seemed to know that their principal plan would not govern the way that events would actually unfold on April 19. The FBI’s overall commander, Jeffrey Jamar, testified at the subcommittees’ hearings that he had a belief to a 99-percent certainty that the contingency plan would be implemented, as he believed the Davidians would open fire on the CEV’s. As he testified before the subcommittees, “I believed it was 99 percent when we approached with the tank they would fire. I believe that. Not all people agree with me on that, but I believed that at the time, yes.”⁵⁹⁶ Although the Justice Department Report does not mention that Jamar informed his superiors of his belief, it is clear the Attorney General also believed the Davidians would open fire on the FBI. In referenced to firing on the FBI, the Attorney General testified that she “knew what these men would do.”⁵⁹⁷

It cannot be known whether the Attorney General would have decided differently had she known that the FBI expected the contingency provisions of the operations plan to be implemented. What

⁵⁹⁵ *Id.* at 288–289.

⁵⁹⁶ Hearings, Part 2 at 484.

⁵⁹⁷ Hearings, Part 3 at 367. The Attorney General testified:

“I think it is important that when you consider the use of tanks that they be considered as vehicles providing the armored capacity to prevent the penetration of these—this ammunition that we knew Koresh had. I can’t speak to whatever was done prior to the time I took office, but, clearly, with respect to the day of April the 19th, I could not put FBI agents out there exposed when I knew what these men would do and when they started immediately to fire on the FBI. *Id.* [emphasis added].

is clear is that she never had the opportunity to consider this fact because the FBI believed that their actions did not constitute an attack, based on an incomplete understanding of the Davidians. Had the FBI considered how the Davidians would perceive their actions they might have been able to predict that the fall back plan would be used. If this fact had been communicated to the Attorney General she might have decided things differently.

H. PRESIDENTIAL INVOLVEMENT IN THE EVENTS AT WACO, TX

The involvement of the White House occurred in several ways. According to White House Chief of Staff Mack McLarty, two parallel lines of communication existed—one from Acting Assistant Attorney General Stuart Gerson to McLarty, and the other from Gerson to White House Counsel Bernard Nussbaum. Senior advisor Bruce Lindsey also kept informed on developments in Waco.⁵⁹⁸

No White House officials objected to the plan to end the standoff at an April 13, 1993, meeting between White House and Justice Department officials, including Hubbell, Nussbaum, Lindsey and Deputy White House Counsel Vince Foster. On Sunday, April 18, 1993, Reno called the President to inform him that she had decided to approve the FBI's request to use CS as part of a plan to end the standoff. The President told Reno "it is your decision."⁵⁹⁹ Clinton later told the American people, "I was aware [of the plan to insert CS into the residence.] I think the Attorney General made the decision. I knew it was going to be done, but the decisions were entirely theirs."⁶⁰⁰

I. FINDINGS CONCERNING THE PLAN TO END THE STANDOFF

1. *The Attorney General's decision to end the standoff on day 51 was premature, wrong, and highly irresponsible.*

The decision by Attorney General Janet Reno to approve the FBI's plan to end the standoff on April 19 was premature, wrong, and highly irresponsible. In authorizing the CS assault to proceed Attorney General Reno was seriously negligent. The Attorney General knew or should have known that the plan to end the standoff would endanger the lives of the Davidians inside the residence, including the children. The Attorney General knew or should have known that there was little risk to the FBI agents, society as a whole, or to the Davidians from continuing this standoff and that the possibility of a peaceful resolution continued to exist.

a. The "benefits" of avoiding problems were not properly evaluated. The FBI's belief that the standoff was likely to continue indefinitely was too pessimistic given the advice of behaviorist Dr. Murray Miron and the Davidians' attorneys that Koresh was turning his attention to what he considered to be his principal theological work, his interpretation of the meaning of the Seven Seals. As they believed that no resolution was possible through further negotiations, the FBI wrongly concluded and convinced the Attorney General that there was no alternative to going forward with the plan to end the standoff. The only issue was timing. There was

⁵⁹⁸ Justice Department Report at 242.

⁵⁹⁹ *Id.*

⁶⁰⁰ White House statement, April 19, 1993.

also no need to rush into action on April 19, but having lost patience with the negotiating process and facing an initially reluctant Attorney General, FBI officials manufactured or grossly exaggerated arguments for urgency.

There was never any overt act or even a statement made by Koresh to support the FBI's asserted fear that the Davidians might try a breakout. Using the threat of a breakout as a reason to go forward with the CS assault plan sooner rather than continue the negotiations was wrong. The FBI and the Attorney General knew or should have known there was no remotely imminent threat of such a breakout. Also, there was no reason to go forward on April 19 out of concern that the HRT was exhausted and needed to step down for retraining. According to the HRT's own commander, the HRT could have remained on duty at the residence for at least 2 more weeks. In addition, FBI and local law enforcement SWAT teams could have been brought in to maintain the perimeter if the HRT had to step down for a short time. The FBI and the Attorney General knew or should have known this.

The Attorney General wrongly based her decision to act in part on concerns that the conditions inside the residence were deteriorating and that children were being abused. There was no evidence that sanitary and other living conditions inside the residence, stark at the beginning of the standoff, had deteriorated appreciably during the standoff. Further, while there is no question that physical and sexual abuse of minors occurred prior to February 28 and may have continued thereafter, there is no evidence that minors were being subjected to any greater risk of physical or sexual abuse during the standoff than prior to February 28. The Attorney General knew or should have known this. In light of the risk to the children from a forced end to the standoff, and the remaining possibility of a peaceful resolution, it was inappropriate for the Attorney General to have been occupied with apprehending Koresh for violations of State law which were outside her jurisdiction to enforce.

b. The risks of ending the standoff were not fully appreciated. In deciding to end the standoff on April 19, the FBI and the Attorney General failed to properly evaluate the risks to the Davidians of the FBI's operational plan. The FBI's plan was based on an assumption that most reasonable people would flee the residence when CS agent was introduced. The FBI failed to fully appreciate the fact that the Davidians could not be relied upon to act as other reasonable people might. The FBI failed to properly account for the Davidians' resolve, group cohesiveness, and loyalty to what they believed to be sacred ground.

More troubling is the fact that the FBI commanders either knew or should have known that the contingency provisions of the plan presented to the Attorney General would likely be implemented. While the plan as described to the Attorney General called for a slow and deliberate insertion of CS agent in an effort to deny the Davidians access to some areas of the residence and encourage them to exit the residence in specific locations, the contingency provision in the plan called for much larger quantities of CS to be inserted all at once, and in all areas of the residence, if the Davidians opened fire on the agents inside the CEV's. The result of the contingency provision would be much larger quantities of CS

being present inside the residence with the attendant greater likelihood that harmful concentrations might be reached, and also the strong likelihood that the all-out assault would cause panic in the people inside the residence.

Jeffrey Jamar, the FBI's overall commander at the residence testified before the subcommittees that he believed there was a 99-percent chance that the contingency provision would be implemented because the Davidians would open fire on the FBI against. Clearly, given the Davidians' actions in response to the ATF raid on February 28, it was almost certain that the Davidians would respond to the FBI's actions with gunfire. Yet, Jamar never communicated his opinion to the Attorney General, or apparently to anyone else for that matter. Other senior FBI officials, however, should have realized that the Davidians would respond with gunfire and that the contingency provision of the plan would be quickly implemented. Given this, they should have more fully briefed the Attorney General on this aspect of the plan.

More importantly, however, the Attorney General herself admitted during her testimony before the subcommittees that she expected the Davidians to fire on the tanks, and that she understood that if they did the rapid acceleration of contingency plan would be implemented. It is evident the Attorney General knew or should have known that the contingency provision of the plan would be implemented once the operation began on April 19, that the Davidians would not react by leaving the residence as suggested by the FBI, and that there was a possibility that a violent and perhaps suicidal reaction would occur within the residence. At no time has the Attorney General indicated that she reflected on the consequences of the possibility. At the very least this demonstrates gross negligence on the part of the Attorney General in authorizing the plan to proceed.

3. *FBI commanders in Waco prematurely ruled out the possibility of a negotiated end to the standoff.* After Koresh and the Davidians broke a promise to come out on March 2, FBI tactical commander Jeffrey Jamar viewed all statements of Koresh with extreme skepticism and thought the chances for a negotiated surrender remote. While chief negotiator Byron Sage may have held out hope longer, FBI officials on the ground had effectively ruled out a negotiated end long before April 19 and had closed minds when presented with evidence of a possible negotiated end involving Koresh's work on interpreting the Seven Seals described in the Bible's Book of Revelation.

4. *FBI tactical commander Jeffrey Jamar and senior FBI and Justice Department officials acted irresponsibly in advising the Attorney General to go forward with the plan to end the standoff on April 19.* Jamar and senior FBI and Justice Department officials advising the Attorney General knew or should have known that of the reasons given to end negotiations and go forward with the plan to end the standoff on April 19 lacked merit. To urge these as an excuse to act at the time the Attorney General made the decision to do so was wrong and highly irresponsible.

5. *The FBI's refusal to ask for or accept the assistance of other law enforcement agencies during the standoff demonstrated an institutional bias at the FBI against accepting and utilizing such as-*

sistance. Throughout the 51-day standoff the FBI refused to ask for the assistance of other law enforcement agencies and even refused offers of such assistance. The subcommittees find that there is an institutional bias inside the FBI against allowing other agencies to participate in FBI operations. Such bias is short-sighted and, in this case, proved to be counterproductive in that the failure to seek or accept assistance added to the pressure to end the standoff on April 19.

6. *It is unlikely that the CS riot control agents used by the FBI reached toxic levels, however, in the manner in which the CS was used the FBI failed to demonstrate sufficient concern for the presence of young children, pregnant women, the elderly, and those with respiratory conditions.* CS riot control agent is capable of causing immediate, acute and severe physical distress to exposed individuals, especially young children, pregnant women, the elderly, and those with respiratory conditions. In some cases, severe or extended exposure can lead to incapacitation. Evidence presented to the subcommittees show that in enclosed spaces, such as the bunker, the use of CS riot control agent significantly increases the possibility that lethal levels will be reached, and the possibility of harm significantly increases. In view of the risks posed by insertion of CS into enclosed spaces, particularly the bunker, the FBI failed to demonstrate sufficient concern for the presence of young children, pregnant women, the elderly, and those with respiratory conditions. While it cannot be concluded with certainty, it is unlikely that the CS riot control agent, in the quantities used by the FBI, reached lethal toxic levels. The presented evidence does indicate that CS insertion into the enclosed bunker, at a time when women and children were assembled inside that enclosed space (i.e., during the fourth CS riot control agent insertion), could have been a proximate cause of or directly resulted in some or all of the deaths attributed to asphyxiation in the autopsy reports.

It is clear from the testimony at the hearings that the FBI expected the adult members of the community to care for the children by removing them from exposure to the CS agent by coming out of the residence with them. This presumption was flawed. As the Defense Department's witness testified before the subcommittees, one of the two senior military officers who attended the meeting with the Attorney General on April 14, told the Attorney General that during the use of CS mothers might "run off and leave their children." Yet the Attorney General failed to appreciate the fact that this possibility was in direct contravention to a key assumption of the plan's provision for the use of the CS agent—that the adult members of the community would care for the children.

The FBI failed to properly inform the Attorney General of the risks of using CS agent on children by not appreciating the military officer's warning that parents might abandon their children and by not fully apprising the Attorney General that there was little scientific information on the effects of CS on children. While the Attorney General cannot be faulted for relying on the advice given her by persons whose job it was to be fully informed about the use of CS, it appears that the Attorney General failed to fully consider the flawed assumption in the FBI's plan once it should have become obvious to her.

7. *There is no evidence that the FBI discharged firearms on April 19.*

8. *Following the FBI's April 19 assault on the Branch Davidian compound, Attorney General Reno offered her resignation. In light of her ultimate responsibility for the disastrous assault and its resulting deaths the President should have accepted it.*

J. RECOMMENDATIONS

1. *Federal law enforcement agencies should take steps to foster greater understanding of the target under investigation.* The subcommittees feel strongly that Government officials failed to fully appreciate the philosophy or mindset of the Davidians. If they had, those officials might have been better able to predict how the Davidians would react to the plans to raid the residence on February 28 and the plan to end the standoff on April 19. If so, perhaps many of the errors made on February 28 and during the standoff could have been avoided.

The subcommittees found troublesome the fact that many of the ATF and FBI officials involved in this matter seemed uninterested in understanding the Davidians' goals and belief system. The views of these officials ranged from assumptions that the Branch Davidian were rational people likely to respond to authorities as would most citizens to a belief that the Davidians were a "cult" which could not be dealt with in any way other than by force. Seldom did these officials seem interested in actually trying to understand this group of people and their motivations. This attitude was shortsighted and contributed to several of the mistakes that the Government officials made at different points from February 28 through April 19.

This change in organizational culture can only result if senior officials in the Federal law enforcement agencies implement changes in training and operational procedures. The benefits of these changes will not only protect the targets of Government action but, by making it more likely that Federal law enforcement officials will carry out their mission in the manner most likely to succeed, will help to protect the safety of the law enforcement officers as well.

2. *Federal law enforcement agencies should revise policies and training to encourage the acceptance of assistance from other law enforcement agencies, where possible.* The subcommittees recommend that FBI officials take steps to change the prevailing FBI culture that leads agents to believe that only the FBI knows best how to handle a situation. While agency pride is appropriate, and deserving in the case of the FBI, this pride appears to have caused the agents to have been foreclosed to other possibilities of dealing with the situation at hand, such as by allowing other persons whom the Davidians trusted to become more involved in negotiations or using other law enforcement agency forces to maintain the Branch Davidian center perimeter and thus relieve pressure on the HRT. The FBI could have been open to these possibilities while maintaining its ultimate control of the situation. The FBI needs to take steps now to ensure that this close-mindedness does not occur in the future.

3. *The government should further study and analyze the effects of CS riot control agent on children, persons with respiratory condi-*

tions, pregnant women, and the elderly. The subcommittees recommend that the FBI and Department of Defense investigate further the effects of exposure to CS on children, pregnant women, the elderly, and persons with respiratory problems. Until such time as more is learned about the actual effects of exposure to this agent, the subcommittees recommend that CS not be used when children, persons with respiratory conditions, pregnant women, and the elderly are present.

4. *The FBI should expand the size of the Hostage Rescue Team.* One of the pressures that led the FBI to recommend to the Attorney General that the standoff be ended on April 19 was the need to rest and retrain the HRT. There were not sufficient numbers of HRT members to both guard the perimeter of the residence and to relieve members on the line periodically. Given this limitation, the subcommittees also note that if another hostage or barricade situation had developed involving a Federal law enforcement agency while the standoff with the Davidians was continuing, the FBI would have been faced with the choice of not responding to that situation or pulling the HRT out of Waco and moving them to the new location.

Both of these scenarios suggest the need to enlarge the size of the HRT. While the subcommittees are aware that the FBI has increased the size of the HRT from the 48 "operator" agents on the team as of early 1993 to 78 operators as of July 1996, the subcommittees recommend that further consideration be given to this issue. As the subcommittees have concluded that the Government should have waited beyond April 19 and continued to negotiate with the Davidians, inherent in that recommendation was that the HRT or some other tactical force should have remained at the residence. The FBI should ensure that the HRT is large enough to maintain a long standoff in the future, should the need arise, while also having the capacity to respond to another hostage or barricade situation elsewhere in the country during the standoff.

VIII. THE FIRE

At 12:07 p.m., Central Standard Time, more than 6 hours after the FBI began to implement the plan to end the standoff, fire was detected inside the Branch Davidian residence. Within a period of 2 minutes, two additional fires were detected in two other parts of the structure. In less than 8 minutes the fire had spread throughout the structure. By the end of the afternoon, the structure was completely destroyed.

The subcommittees received testimony from the leader of a team of fire experts called together by the Texas Rangers to investigate the origins of the fire,⁶⁰¹ a fire expert retained by the Justice Department to join with the team assembled by the Texas Rangers,⁶⁰² and an independent arson investigator.

During the testimony of these witnesses, the subcommittees also reviewed videotape recordings of the development and spread of the fire. Included in this review was a videotape using "forward looking infrared" (FLIR) technology, which was taken from an FBI observation plane circling the Branch Davidian residence throughout the morning and afternoon of April 19. The FLIR type of video, also called a Thermal Imaging System, is a type of video photography which images thermal heat sources. Because of its sensitivity to changes in the quantity of heat given off by an object the FLIR videotape showed the beginning of the fires within the Branch Davidian residence prior to the point at which the flames were visible to persons on the outside of the structure. Time lapse indicators on the videotape recordings were used by the witnesses to establish the times at which each fire within the Branch Davidian residence began.

A. SUMMARY OF THE DEVELOPMENT OF THE FIRE

During the hearings, James Quintiere, professor of Fire Protection Engineering at the University of Maryland and one of two fire experts retained by the Justice Department to join the fire review team assembled by the Texas Rangers, used the FLIR videotape to demonstrate the development of the fire on April 19. Dr. Quintiere's responsibilities as a part of the Review Team were to analyze the development of the fire and draw interpretations and conclusions from that analysis.⁶⁰³ In addition to reviewing the FLIR video, the fire investigation team reviewed television coverage of the fire by the Canadian Broadcasting Corp., which was also time dated, and television coverage of the fire by a local Waco television station. The team also reviewed aerial photographs and

⁶⁰¹U.S. Department of Justice, Report to the Deputy Attorney General on the Events at Waco, Texas, 329 (1993) [hereinafter Justice Department Report].

⁶⁰²These individuals visited the scene of the fire on April 22-24, 1993. Hearings, Part 3 at 119 (statement of James Quintiere).

⁶⁰³*Id.*

other materials. During his testimony to the subcommittees, Dr. Quintiere played a videotape that simultaneously played each of the three videotapes of the fire synchronized to the same time.

The videotape demonstration showed that the first fire began at 12:07:42 p.m. As part of his testimony to the subcommittees, Dr. Quintiere narrated the videotape demonstration. As the first fire developed, Dr. Quintiere testified,

If you look at this point here, you will see this window begin to turn slightly grayish, it does right now. Nine seconds later the window on the opposite side right here is going to also show an illumination which is due to this temperature rise, and in my opinion that is due to smoke being transported from the fire started at one end of the room to the other end of the room. . . . The room was a second floor room approximately 16 x 11 in dimensions and about 8 feet high, which is presumed to have been a bedroom. One minute later the second fire begins on the first floor at the rear of the dining room.⁶⁰⁴

Dr. Quintiere then described the development of the second fire.

We are looking at the development of the fire in that bedroom area, the second floor right tower. What we are going to see here at 12:09:42, we will see an event known to people who investigate and study fire. That event is called flashover, and that is a point when we have a transition in this fire in which the fire goes from a discrete object that you could discern very readily burning in a room such as this to a point where flames now fill the room, and that transition can occur in seconds. It is known as flashover. Before that time the room might be survivable.

After that time it is definitely not, and now the fire is a threat to spreading to other rooms.⁶⁰⁵

Finally, Dr. Quintiere described the inception of the third fire, which occurred on the first floor in the chapel area.⁶⁰⁶ He also noted that 38 seconds later there emerged hot gases at a point 45 feet away from the point where the third fire began. He testified that this could have been a separately set, fourth fire, but that the development of this fire was consistent with someone placing a trail of gasoline or other liquid fuel between those two points and allowing the third fire to spread over that trail.⁶⁰⁷

As Dr. Quintiere summarized his conclusions:

If we can just pause at this point, you can see the fire here, the first fire. A minute later, a fire began in the dining room area, and a minute after that a fire began in this chapel. It has not burned through the roof yet, but the ignition in the debris area because of the wind has now propagated significantly over that debris area. These are three distinct fires.

⁶⁰⁴Hearings, Part 3 at 135.

⁶⁰⁵*Id.* at 136.

⁶⁰⁶*Id.*

⁶⁰⁷*Id.* at 136-137.

From this information I can conclude that these three fires that occurred nearly 1 minute apart were intentionally set from within the compound. Also, you have the time periods involved and the very discrete different locations. None of these three fires could have caused any of the others because their growth rates would not provide sufficient heating to cause such remote ignitions.⁶⁰⁸

The experts testified that they believed the fires were intentionally set by Branch Davidian members in order to destroy the structure.⁶⁰⁹ Supporting this conclusion is that fact that the fire review team found that a number of accelerants were present in the structure and on the clothing of some of the surviving Davidians, including gasoline, kerosene, Coleman fuel, and other accelerants.⁶¹⁰ As Dr. Quintiere testified,

Although normal furnishings and interior construction characteristics would provide a means for fire propagation, the more than usual rapid spread of these fires, especially in the dining room and the chapel areas, indicates to me that some form of accelerant was used to encourage to the rapid spread of these fires.⁶¹¹

B. OTHER THEORIES CONCERNING THE DEVELOPMENT OF THE FIRE

1. WHETHER THE METHYLENE CHLORIDE IN THE CS RIOT CONTROL AGENT USED BY THE FBI CAUSED THE FIRE

One of the theories forwarded to the subcommittees concerning the origin of the fire is that methylene chloride, a chemical used as a dispersant to carry the CS riot control agent injected into the Branch Davidian residence, may have ignited and started the fire. During the hearings Dr. Quintiere testified that it was his opinion that the methylene chloride in the CS agent neither caused nor contributed to the spread of the fire.

According to Dr. Quintiere, methylene chloride, when a vapor in air, is flammable at ambient air levels of 12 percent or greater.⁶¹² This conclusion is supported by information provided by the manufacturers of methylene chloride.⁶¹³ The subcommittees review of the evidence presented indicates that the levels of methylene chloride present in the residence on April 19 was far below this concentration.⁶¹⁴ Additionally, a spark, flame, or other source of heat is necessary for methylene chloride to ignite and a fireball-like event would have resulted. As Dr. Quintiere testified,

In other words, anything above 12 percent to approximately 20 percent, it would be in the flammable range, and if we had a spark or a small match and if we had con-

⁶⁰⁸ *Id.* at 138.

⁶⁰⁹ *Id.* at 138, 191 ("I don't discount that the fires were started inside by the people inside.") (statement of Rick Sherron).

⁶¹⁰ *Id.* at 166, 187-188 (statement of Paul Grey).

⁶¹¹ *Id.* at 138.

⁶¹² *Id.* at 140.

⁶¹³ Letter from Peter Voytek, executive director, Halogenated Solvents Industry Alliance, Inc., to Glenn R. Schmitt, counsel to the Subcommittee on Crime (July 25, 1995). See also generally Mallinckrodt, Inc., Material Data Safety Sheet 1 (1989); Dow Chemical, Inc., Material Data Safety Sheet 1 (1988).

⁶¹⁴ See section VII F of this report.

ditions like that, we would have a fire propagating through the atmosphere much like a fireball. There was no observation like that made for this fire.⁶¹⁵

The only fireball which did occur took place well after the fires had engulfed the building, and was most likely due to the explosion of a canister of propane gas.⁶¹⁶ Accordingly, because there was no explosion prior to the beginning of the fire, there is no evidence that methylene chloride vapor present in the air caused the outbreak of the fire.

Dr. Quintiere also noted that methylene chloride is generally in a liquid state and that as the methylene chloride vapor condensed and fell in droplets to the floor of the structure after the CS was inserted the methylene chloride generally would have evaporated. In some instances, however, the chemical could have collected in a puddle. He testified that such a puddle would have been difficult to ignite due to the presence of chlorine in the chemical. He testified that "in some sense [methylene chloride] acts like an inhibitor."⁶¹⁷ He further testified that he conducted experiments using methylene chloride as a "wetting" agent by depositing it on wood, paper, and other flammable objects that might have been found in the structure in an effort to determine whether the methylene chloride might have burned along with these items. As a result of these experiments, he concluded "that the methylene chloride had no enhancement effect on the fires spread over the room furnishings and other things that burned in the compound."⁶¹⁸

2. WHETHER THE IRRITANT CHEMICAL IN THE CS RIOT CONTROL AGENT USED BY THE FBI CAUSED OR CONTRIBUTED TO THE SPREAD OF THE FIRE

At the hearings Dr. Quintiere testified that he had reviewed the literature concerning the ignition point of the chemical irritant in CS agent and noted that the temperature at which that chemical would ignite was comparable "to what we would find from most fuels around us."⁶¹⁹ Based upon his review of the literature, Dr. Quintiere testified that it was his opinion that the CS powder that is an active irritant in the riot control agent did not enhance the spread of the fire.⁶²⁰

3. WHETHER THE COMBAT ENGINEERING VEHICLES USED BY THE FBI ON APRIL 19 STARTED THE FIRE

Some theories concerning the origin of the fire involve an explanation that one of the combat engineering vehicles used by the FBI to inject CS chemical agent and to demolish portions of the Branch Davidian residence may have actually caused the fire, either intentionally or unintentionally.

⁶¹⁵Hearings, Part 3 at 140.

⁶¹⁶"[T]he explosion happened well after the building was totally destroyed. It was very unlikely that that explosion was anything other than a propane cylinder. . . . There was, in fact, a hundred pound propane cylinder with a piece of the top blown out about the size of a football exactly where that explosion occurred, and I have no doubt that that is what the big explosion is. . . ." *Id.* at 175-176 (statement of Paul Gray).

⁶¹⁷*Id.* at 140.

⁶¹⁸*Id.*

⁶¹⁹*Id.*

⁶²⁰*Id.*

At one point in the video record of the operation on April 19, a combat engineering vehicle is seen driving into a portion of the residence. The first fire begins in that same location shortly thereafter. Some have suggested that the CEV might have overturned a lighted kerosene lantern inside the residence, causing the fire to begin. The fire that begins in that area, however, is not discernible in the FLIR video until 1½ minutes after the CEV leaves that side of the structure.⁶²¹ During the hearings, Dr. Quintiere was questioned on the significance of this fact.

Mr. SCHIFF. Well, if there were lanterns in use and if you had, either through vibrations of tanks hitting walls or through a number of people, panicking inside at what they might have perceived was an assault, notwithstanding the FBI broadcast going to them, couldn't either or both of those factors easily overturned lanterns inside the compound?

Dr. QUINTIERE. Well, the only evidence of a tank being in the vicinity of one of the fires is the first fire, and that tank has not left 1½ minutes after the fire has begun. If that tank knocked over a lantern and the lantern were lit, we would have seen it in that FLIR video because it would have been sensitive enough to see that. If the tank had spilled a lantern and there was no flame there to ignite it, that's possible, but somebody would have to come in and put a flame in that.⁶²²

Some citizens have contacted the subcommittees to suggest that the combat engineering vehicles used by the FBI at Waco carried flamethrowing devices which were used to intentionally set the fires inside the Branch Davidian residence. During the hearings, the fire experts were questioned about this theory.

Mr. SCHUMER. Another theory we have heard mentioned is that a flamethrower from the tanks started the fire. Now as I understand it, we would have to have seen on the FLIR a hot streak going from the tank to the building for that to happen.

Dr. QUINTIERE. Absolutely.

Mr. SCHUMER. And we did not; is that correct?

Dr. QUINTIERE. Absolutely.

Mr. SCHUMER. So you are saying a flamethrower from the tanks starting the fire—is that consistent—is that theory consistent with what we saw on the tape?

Dr. QUINTIERE. No, indeed. There was no such thing as a flamethrower on those vehicles.⁶²³

On another day of the hearings, a Defense Department witness testified that all of the military vehicles loaned by the Defense Department to the Department of Justice and used at Waco were unarmed.⁶²⁴ Additionally, the subcommittees' interviews with other

⁶²¹ *Id.* at 135 (statement of James Quintiere).

⁶²² *Id.* at 143.

⁶²³ *Id.* at 144. See also *Id.* at 172 ("The flame-throwing tank absolutely did not happen.") (statement of Rick Sherrow).

⁶²⁴ *Id.* at 314 (statement of Allen Holmes, Assistant Secretary of Defense for Special Operations and Low Intensity Conflict).

persons present at the Branch Davidian residence on April 19 confirms that none of these vehicles was armed.

C. WHETHER THE DAVIDIANS COULD HAVE LEFT THEIR RESIDENCE AFTER THE FIRE BEGAN

Throughout the morning of April 19, none of the Davidians left their residence. After the fire broke out, however, nine persons left the building.⁶²⁵ This indicates that at least some opportunity existed for the Davidians to safely leave the structure had they wanted to do so. One of those who escaped the fire left the residence almost 21 minutes after the outbreak of the first fire.⁶²⁶ Clearly, some means of escape from the residence existed for a significant period of time after the fire broke out.

An important question, however, is whether the Davidians might have been overcome by smoke and prevented from leaving the residence. The autopsies of the Davidians indicate that deaths from smoke inhalation or asphyxiation from carbon monoxide poisoning accounted for only half of the Davidians who died in the residence. The other causes of death were gunshot wounds, burns, or other trauma. Thus, even after the fires began to consume the structure, at least half of the Davidians were not so affected by the smoke and fumes from the fire that they were physically unable to leave the structure.

Additionally, the location of the bodies of the Davidians indicates that few of the Davidians actually attempted to escape the building. Many of the bodies were huddled together in locations in the center of the building.⁶²⁷ Few of the bodies were located at points of exit from the building, and autopsies indicate that the cause of death of several of the bodies at exit points were self-inflicted gunshot wounds or gunshots from very close range.

At the hearings before the subcommittees, Dr. Quintiere testified as to his opinion as to whether the Davidians could have left the structure. He testified,

I've estimated . . . that the occupants would have had sufficient warning in no doubt [sic] that the fire occurred, and this would have enabled them to escape for up to 5 minutes from the start of that first fire or perhaps as many as 20 minutes in some protected areas of the building.

So between and interval of five minutes after the fire started and maybe as much as 20 minutes, a person could have escaped from some parts of the building.⁶²⁸

Paul Gray, Assistant Chief of the Houston Fire Department and leader of the fire review team assembled by the Texas Rangers, agreed with this opinion, "I would take an educated guess of about 20 to 22 minutes from the inception of the fire, from the first igni-

⁶²⁵ Justice Department Report at 298. Two of these persons, Clive Doyle and David Thibodeau testified before the subcommittees at the hearings.

⁶²⁶ Hearings, Part 3 at 139 (statement of James Quintiere).

⁶²⁷ A chart indicating the location of the bodies found after the fire in the remains of residence is contained in the Appendix.

⁶²⁸ Hearings, Part 3 at 139.

tion that there may have been some viable conditions inside the building.”⁶²⁹ As the report of the team led by Gray summarized,

[A] great many of the occupants could have escaped to the outside of the compound even as the building burned. . . . [C]onsidering the observable means of exit available, we must assume that many of the occupants were either denied escape from within or refused to leave until escape was not an option.⁶³⁰

In light of this evidence, the subcommittees conclude that there was a period of time after the fires began within which the Davidians could have escaped the residence. The evidence presented to the subcommittees indicates that the Davidians did not attempt to leave the building during the fire. In light of the Davidians’ religious beliefs that fire would play a part in the end of their worldly lives, the subcommittees conclude that most of the Davidians either did not attempt to leave their residence during the fire or were prevented from escaping by other Davidians. Had they made such an attempt and not been hindered in the attempt, however, conditions were such that for sufficient period of time after the fires broke out many of the Davidians could have survived.

D. THE FBI’S PLANNING FOR THE FIRE

According to the Justice Department Report, at a meeting in early April, one of the Government attorneys raised the possibility of fire at the compound and suggested to the FBI that “firefighting equipment be placed on standby on the scene.”⁶³¹ Additionally, the Medical Annex to the operations plan for April 19, which listed the locations of “primary” and “secondary” hospitals in the area noted that local hospitals should not be used to treat major burns but that one of the secondary hospitals was “primary for major burns.”

According to the Justice Department Report, the FBI decided to not have firefighting equipment at the scene “for fear that they would be fired upon by Koresh and his followers.”⁶³² Yet shortly after the reports of fire, the FBI command post requested firefighting assistance be requested. The first firefighting vehicles arrived in the vicinity 20 minutes later and, at 12:41 p.m., approached the structure. In total, the fire crews did not reach the structure until 31 minutes after the fire had first been reported.⁶³³ The report also asserts that Jeffrey Jamar, the FBI’s onscene commander at Waco, stated to Justice Department officials during the their internal investigation of the incident that “even if the firefighters had arrived at the compound earlier he would not have permitted them to enter due to the great risk to their lives.”⁶³⁴

The subcommittees do not dispute the Justice Department’s position that at the outbreak of the fire it would have been dangerous for firefighters to approach the structure. Yet, the subcommittees

⁶²⁹ *Id.* at 183.

⁶³⁰ Justice Department Report at 335.

⁶³¹ *Id.* at 302.

⁶³² *Id.*

⁶³³ *Id.*

⁶³⁴ *Id.*

find it troubling that even though the Government clearly believed there existed a strong possibility of fire, no provision was made for fire fighting units to be on hand, even as a precaution. If, as the Justice Department's Report implies, the Government had decided in advance that it would not attempt to fight any fire that occurred (and thus did not make provision for firefighting units to be present at the compound), it is difficult to understand why the FBI placed a call for firefighting units to be summoned to the scene immediately upon the commencement of the fire.

E. FINDINGS CONCERNING THE FIRE

1. *The evidence indicates that some of the Davidians intentionally set the fires inside the Davidian residence.* While the evidence is not dispositive, the evidence presented to the subcommittees suggests that some of the Davidians set the fires that destroyed their residence. The evidence demonstrated that three distinct fires began in three separate parts of the Branch Davidian residence within a 2 minute period on April 19. Additionally, the fire review team found that a number of accelerants were present in the structure, including gasoline, kerosene, and Coleman fuel, and that in at least one instance these accelerants contributed to the spread of the fire in a manner that indicates an intention to spread the fire.

2. *The methylene chloride in the CS riot control agent used by the FBI did not cause the fire.* There is no evidence that methylene chloride vapor in the air in the residence, present as the result of its use as a dispersant for the CS riot control agent, caused the outbreak of the fire. The evidence presented to the subcommittees indicated that for the methylene chloride to have burned some spark must have ignited the methylene chloride vapor and that a fireball would have resulted. Because no fireball was observed until well after the fire had become established, the subcommittees conclude that methylene chloride did not cause the fire.

3. *The subcommittees conclude that Federal law enforcement agents did not intentionally set the fire.* The evidence before the subcommittees clearly demonstrates that no fire began at or near the time when any of the combat engineering vehicles used by the FBI came into contact with the structure. Had a flamethrower or similar device been installed on one of the CEV's and used to start the fire its use would have been observable in the infrared videotape of the fire. No such use is recorded on the that videotape. Accordingly, the subcommittees conclude that the FBI did not use any of the CEV's intentionally to cause the fire.

4. *The subcommittees conclude that Federal law enforcement agents did not unintentionally cause the fire.* The evidence presented to the subcommittees suggests that it is highly unlikely that Federal law enforcement officials unintentionally caused the fires to occur. The evidence demonstrates that the fires broke out at points in time when no vehicle used by the FBI was in contact with the structure or had been in contact with the structure immediately prior to those points. Because this would have been the case had these vehicles inadvertently caused the fires to break out by disturbing flammable materials inside the Davidian residence, the subcommittees conclude that it is highly unlikely that the vehicles inadvertently caused the fires to occur.

5. *The FBI should have made better preparations to fight the fire.* While it may have been too dangerous to fight the fire when it initially erupted, it remains unknown as to whether it might have been safe for firefighters to approach the building at some point earlier than the half hour later when they were allowed access. While firefighting efforts might not have extinguished the fire, they could have delayed the spread of the fire or provided additional safe means of escape for some of the Davidians. It also does not appear as though the FBI considered obtaining armored firefighting vehicles from the military. In any event, given the Government's strong belief that a fire might take place, and its action in summoning firefighting units to the scene, the subcommittees conclude that the FBI should have made better provision for the presence of firefighting equipment as part of its overall plan to end the standoff.

6. *The Davidians could have escaped the residence even after the fire began.* After the fire broke out on April 19, nine persons left the Davidian residence. This indicates that at least some opportunity existed for the Davidians to safely leave the structure had they wanted to do so. As one person left the structure 21 minutes after the outbreak of the first fire, some means of escape from the residence existed for a significant period of time after the fire broke out. The autopsies of the Davidians indicate that many of the Davidians were not so affected by the smoke and fumes from the fire that they were physically unable to leave the structure. Additionally, the location of the bodies of the Davidians indicates that few of the Davidians actually attempted to escape the building. In light of this evidence, the subcommittees conclude that there was a period of time after the fires began within which the Davidians could have escaped the residence.

ADDITIONAL VIEWS OF HON. ILEANA ROS-LEHTINEN

For the record, while I agree with the Waco-specific conclusions in the report, I want to note that Janet Reno has had a distinguished career in public service beginning in 1971 with the Judiciary Committee of the Florida House of Representatives. Her record of service and history of public integrity is long and worthy of additional comment. From the Florida House, she held positions with a State Senate committee, Dade County State Attorney's Office, was eventually appointed State Attorney for Dade County and elected to the position for five consecutive terms, culminating in her present position as Attorney General of the United States.

Ms. Reno is widely respected as a woman of integrity and a selfless public servant. Indicative of her sincerity, she took complete responsibility and offered her resignation for the actions of Federal agencies toward the Branch Davidians near Waco, TX, in 1993, after serving only a month as Attorney General. Ms. Reno has endeavored to improve the U.S. Justice System as shown by her recent and complementary handling of the Montana Siege which ended in a peaceful resolution. Her leadership in the Department of Justice has, in my view, since Waco been of considerable benefit to the citizens of the United States.

ILEANA ROS-LEHTINEN.

ADDITIONAL VIEWS OF HON. WILLIAM H. ZELIFF, JR.

In response to concerns raised by two members of the minority at the committee markup, I want to set the record straight regarding the extensive majority efforts to cooperate with the minority throughout the entire investigative process.

First, the subcommittees made an unprecedented attempt at genuine accommodation in holding 10 days of investigative hearings. In a concession that had no apparent precedent during prior Congresses, the majority accepted 90 percent of the witnesses suggested by the Democrats.

Second, minority members were invited on key factfinding trips, such as to Waco itself.

Third, the majority shared all available documents, set up a document room accessible to all staff, and shared all indexes received to those documents; by contrast the majority subsequently learned that the minority staff received and intentionally withheld from majority staff the key Treasury Department index to tens of thousands of documents. This minority tactic led to the unnecessary expenditure of tens of hours of indexing by the majority prior to being able to use the documents they received. As another indication of the difficulties the majority faced, two Democrat staffers apparently met secretly with the Texas Rangers and told them that they should not or did not need to honor subpoenas issued by the majority; these kinds of obfuscatory tactics during and prior to the hearings did not enhance majority-minority cooperation.

Fourth, the appendix to this report consists largely of documents that are in the public domain from the hearings, or are otherwise available to the minority; we have never had a request to see these documents, and we know that most were separately sent to the minority staff by the departments themselves; accordingly, complaints about not seeing the appendix ring hollow.

Fifth, the 10 footnotes missing from the distributed draft are either in documents the minority already have or are merely *ids* or *ibids* to documents already once cited elsewhere in the report's other 600 footnotes.

Sixth, the post-hearing investigation consisted largely of asking for documents that the majority had already asked for on June 5, 1995, and never received from the departments; interrogatories that pertained to unanswered hearing questions; and issues first raised at the hearings or interviews. There were no surprises in these requests.

Seventh, the press conference held on the day the report was distributed to Members simply made available the recommendations of the two subcommittee chairmen to the respective subcommittees and committees, and the summary—well within the House Rules—was made available to the minority at the same time. Ironically, the week prior to the business meeting, one of my staffers received

a call from the Justice Department in which the Department indicated that they had received—presumably from a minority staff member or member—a copy of the whole Waco report. For the record, that is a clear and unequivocal violation of Rule 4, if any majority member had wished raise it—and when asked for a chance to correct facts that might be unclear or wrong, the department made no such proffer. In fact, they never sent any corrections whatsoever, despite five followup telephone calls to get corrections.

Eighth, cooperation with the departments was, frankly, an exercise in extreme patience; the majority even had to suffer having the Secretary of Treasury calling Democrats and telling them not to ask any embarrassing questions at the hearings. Surely, that is not the proper reaction to congressional oversight, and it is not consistent with President Clinton's promises of full cooperation. In a further example of unjustifiable manipulation, the Treasury Department also flew the Texas Rangers who were going to testify to Washington ahead of time and at taxpayer expense—to brief them for 2 days on what they should say. In my view, there can be little question that that action was patently offensive to both the word and spirit of cooperation.

Ninth, the majority has actually allowed the minority four times the amount of time normally allowed—and under House rules required—to review a report prior to a business meeting. On balance, I believe the record will show clearly that the entire investigative process was conducted not only patiently, inclusively, exhaustively and with an extraordinary emphasis on cooperation, but with an incontrovertible premium on fairness. In fact, I know of no set of investigative hearings or report that has ever been conducted with this level of inclusiveness, cooperation, or fairness.

WILLIAM H. ZELIFF, JR.

ADDITIONAL VIEWS OF HON. BOB BARR

The hearings into the 1993 Waco tragedy, conducted jointly in June 1995 by the Crime Subcommittee of the House Committee on the Judiciary and the Subcommittee on National Security, International Affairs, and Criminal Justice, of the House Committee on Government Reform and Oversight, was a painful expose of perhaps the greatest law enforcement tragedy in American history. Yet, it was a necessary exercise, because it gave those of us on the subcommittees, and all Americans, the opportunity to examine why it happened and to at least begin to implement steps to avoid a recurrence of the tragedy. It would not be a significant overstatement to describe the Waco operation from the Government's standpoint, as one in which if something could go wrong, it did. The true tragedy is, virtually all of those mistakes could have been avoided.

After nearly 2 weeks of hearings, the subcommittees closed down the proceedings, and moved on to other business. Now, over a year later, we have a report. While the report contains many conclusions that I believe are accurate and appropriate, along with several important recommendations, it fails to address several extremely important matters that came to light during the hearings and which deserve far more scrutiny than accorded heretofore.

I would hope that in the next Congress, followup hearings are held, and legislative measures introduced and passed. Avoiding tragedies such as Waco ought to be a top priority for the Congress and the administration.

Rather than repeat all the conclusions and recommendations of the report, many of which I agree with (especially those concerning the ATF, the Treasury Department failure to monitor, and the decisionmaking at the FBI and the top levels of the Justice Department), I will note those with which I have serious disagreement, from my perspective as a Crime Subcommittee member, as a former U.S. attorney, and as a citizen deeply concerned with the militarization of domestic law enforcement and the lack of accountability by Federal law enforcement.

MILITARIZATION OF LAW ENFORCEMENT

Law enforcement officials have long been required to abide by the Bill of Rights, enshrined in our Constitution. These principles underlie virtually everything they do in their capacity as officers sworn to protect our citizens; and they limit what they can do in fulfilling their specific responsibilities.

However, with the phenomenal growth in the power of the Federal Government, touching virtually every facet of our lives—personal, business, educational, government, religious, recreational, etc.—there has developed a mentality on the part of law enforcement that they can do anything and not be held accountable for it. Along with this we have witnessed the development of a militaris-

tic approach to domestic law enforcement, in everything from dress (black military uniforms and helmets), to equipment (armored vehicles and military surplus helicopters), to outlook, to execution.

Our Armed Forces, in carrying out their mission to protect and project our national interests abroad, are not bound by the constitutional restraints placed on domestic law enforcement. This reflects the significant differences between conducting domestic law enforcement operations, and conducting warfare overseas. In a war situation, our Armed Forces do not and should not have to give "Miranda" warnings before shooting the enemy; they need not have "probable cause" before an attack. Domestically, our law enforcement officers must do these things.

Unfortunately, we saw in the Waco tragedy one logical result of the blurring of lines between domestic law enforcement and military operations: an operation carried out pursuant to a strategy designed to demolish an "enemy," utilizing tactics designed to cut off avenues of escape, drive an enemy out, and run roughshod over the "niceties" of caring for the rights of those involved. The protestations of the Attorney General to the contrary, that she authorized the injection of debilitating CS gas into closed interior quarters with no ventilation where dozens of women and children were concentrated, out of concern for the children do not match the Government's actions. While the report reflects this view to some extent, I believe very firm steps must be taken to "demilitarize" Federal domestic law enforcement, through substantive legislation and funding restrictions.

POSSE COMITATUS AND MILITARY INVOLVEMENT

While the report touches on the issue of military involvement in this operation, focusing primarily on disingenuous steps taken by the civilian law enforcement agencies in order to obtain military assistance without paying for it, my concerns go deeper.

I seriously question the role of military officers being involved in strategy sessions, on sight "observers" and the presence of foreign military personnel, and the use of military equipment such as armored vehicles. Contrary to the conclusion of the report, I am not convinced that the separation between military operations and domestic law enforcement, codified in the U.S. Code's "Posse Comitatus" provisions, was not violated in the Waco operation.

HOSTAGE RESCUE TEAMS

During the questioning of Attorney General Reno on the last day of the hearings, I asked her what specific steps had been taken by the Government to ensure that another Waco would not recur. The only specific step the Attorney General cited to me in response to my question, was that the "Hostage Rescue Teams" (HRT's) had been expanded. The report agrees that HRT's should be expanded. I disagree.

In my view, based on the Waco incident (and others), part of the problem is the HRT's themselves; they are relied on too heavily, and are used in circumstances in which no hostages are present, or which do not lend themselves to HRT tactics. Rather than ex-

panding the size and use of HRT's, I believe they ought to be more carefully circumscribed, controlled and scaled back.

FLIR TAPES AND WHAT THEY SHOW

Forward Looking Infrared Radar (FLIR) was used by the Government, in cameras aboard helicopters and planes flying over the Branch Davidian compound on the day of the final assault. Portions of the FLIR tapes were shown at the hearings; these were under the control of the Government. Of course, the Government used the tapes to buttress its arguments that no shots were fired on April 19 (the day of the assault on the compound) from outside the compound into the compound, and that the fire that destroyed the compound was not started from the outside or by the Government vehicles.

Given the severe limitations on questioning by subcommittee members, and the inability to truly review and analyze the Government's evidence, I do not agree with the conclusions in the report that the evidence clearly establishes the Government's position on these issues.

On further examination of FLIR tapes, after the hearings, and in discussions with private parties who have reviewed the tapes, I believe sufficient questions have been raised to warrant further study of these two issues: were there shots fired from outside the compound into the compound on April 19th, and were the fires started—intentionally or unintentionally—by the armored military vehicles or personnel therein?

Unlike the report, I do not dismiss out of hand the civilian analyses of these tapes and other evidence. (On a related issue, I also believe further study ought to be made, and additional evidence examined, concerning the cause of the explosion that occurred during the fire on April 19.)

USE OF CS GAS

The Government's use of CS gas in the manner it did, that is, clearly designed to incapacitate men, women and children in a confined, unventilated space, after avenues of escape had been deliberately cut off, was unconscionable; as was the cursory manner in which the Government, and especially Attorney General Reno "bought into" the conclusory and simplistic analyses that the use of CS gas posed an "acceptable" level of risk.

The fact is, while experts may—and did—differ over the precise effects of CS gas on children, or how and in what ways the use of CS gas might act as a catalyst for a fire, no rational person can conclude that the use of CS gas under any circumstances against children, would do anything other than cause extreme physical problems and possibly death.

For the Government of this country to consciously use CS gas in the way it did on April 19, 1993, in Waco is utterly indefensible and should never be allowed to be repeated. I believe the deaths of dozens of men, women and children can be directly and indirectly attributable to the use of this gas in the way it was injected by the FBI.

I would go further than the report, and call for a prohibition on the use of CS gas in situations in which children or the elderly are present or are the targets.

THE FIRE

While the report concludes that the evidence clearly establishes that the fire that eventually consumed the Branch Davidian structure was started inside by the Davidians, I think that the most that can be said is that the fire may have been started inside, and even if it did, the evidence that it was deliberately set is inconclusive. I believe there is also the possibility that the fire, or at least some of the fires, may have been caused as a result of the demolishing efforts of the armored military vehicles. While there is no direct evidence that the fire was started from the outside, further study (of the FLIR tapes, for example) ought to be conducted.

ESCAPE

The report concludes that there was opportunity for the Davidians to escape. While obviously this is true—a handful did escape the maelstrom—I conclude there was no opportunity for the vast majority of the Davidians to have any hope of escape, because of the Government's tactics the morning of the 19th of April.

Essentially, the use of the armored vehicles, methodically smashing down portions of the building, cutting off avenues of escape (for example, smashing the walls down to cover the "escape" hatch to the tunnel out of the main building), intimidated the inhabitants into seeking "safety" in the one secure part of the structure (the concrete "bunker" in the center). With massive quantities of CS gas pumped into this area, it virtually guaranteed that most inhabitants would be incapacitated; which they were, and they died in the ensuing fire because of the incapacitating effects of the CS gas and the cutting off of escape routes.

BREACH OF ETHICS AND POSSIBLE OBSTRUCTION

One area of inquiry which I pursued during the hearings involved what clearly are breaches of ethics, and possible obstruction of justice by Government attorneys and investigators. This aspect of the hearings is completely overlooked by the report. Government documents clearly show deliberate efforts by Government attorneys to stop the collection of evidence and possibly cover up evidence the Government did not want to be available later on. While the Department of Justice went so far as to issue a news release during the hearings, to refute my conclusions, I consider it extremely serious; especially when considered with evidence that two of the ATF agents first disciplined and fired and then later reinstated and records sealed, to raise very troubling questions of ethical violations at best and obstruction at worst. Attorneys who testified at the hearings also raised serious concerns about the attitude and policies reflected in these documents.

Documents explicitly showed that "DOJ [Department of Justice] does not want Treasury to conduct any interviews . . . [that might] generate . . . material or oral statements which could be used for impeachment" of Government witnesses, and that hopefully if such

material is not gathered, "the passage of time will dim memories." (Memorandum from Treasury Assistant General Counsel for Enforcement, dated April 14, 1993.)

Earlier, on March 1, 1993, in interview notes, the ATF's initial "shooting review" of the February 28, 1993, initial assault at which time ATF agents fired their weapons, the ATF is advised to "stop the ATF shooting review because ATF was creating Brady material." (Note: "Brady" material is evidence that would tend to establish innocence or which could be used in mitigation of guilt.)

In handwritten notes, taken at some point during the siege, Government attorney Ray Jahn directs that interviews are to stop because exculpatory statements may be generated.

This pattern of activity to deliberately avoid collection of relevant evidence, because it might tend to establish a person's innocence, or, as is apparent from other documents, might embarrass the ATF, raises very troubling questions to say the least, about the interests of the Government in establishing the truth and in seeing that justice is done. Neither goal would be met under the circumstances evidenced by these documents. That the Department of Justice casually dismisses these concerns should be of concern to the Congress and to the people of this country.

COMMITTEE RULES AND RESTRICTIONS

The procedures under which these hearings were conducted did not lend themselves to adequate inquiry. Important evidence was not available because of tactics by the Government and minority members of the subcommittees to keep evidence out of our hands; such as the weapons taken by the Government from the burned Davidian compound. We were never able to test the weapons to establish whether they were in fact unlawful weapons as the Government charged (which provided a primary justification for the Government's initial action against Koresh and the Branch Davidians).

The method of questioning employed—in 5-minute increments, alternating back and forth between majority and minority—with no comity from the minority to provide both sides with longer periods within which to question, lent itself to a scenario whereby savvy witness (most Government witnesses are very familiar with how to answer questions and stall so as to use up large segments of the questioner's time) were able, time and again, to minimize or completely neutralize the member's ability to obtain answers to questions.

Starting out at the mercy of the minority to control and minimize the majority's ability to effectively question and elicit timely, forthcoming and nondilatory responses, set the stage for hearings much less productive than these could have been. Some exploration of instituting other methods of conducting investigative hearings ought to be explored. Moreover, many witnesses who simply did not answer members' questions, were allowed to escape with dilatory or nonresponsive tactics; which again limited the productivity of the hearings.

CONCLUSIONS

Despite the severe limitations in procedure, and the other matters noted above, these hearings were extremely valuable; perhaps historic. They resulted in very important evidence which, if properly followed-up, can help establish, through laws, regulations, and procedures, more effective and more accountable Federal law enforcement. However, that followup has not yet occurred, and many troubling questions, some going to the very integrity of the Government's actions and personnel, remain. These hearings in June 1995 should be viewed not as the conclusion of the efforts by the Congress to get to the bottom of the Waco tragedy, but the beginning of that process.

BOB BARR.

DISSENTING VIEWS OF HON. CARDISS COLLINS, HON. KAREN L. THURMAN, HON. HENRY A. WAXMAN, HON. TOM LANTOS, HON. ROBERT E. WISE, JR., HON. MAJOR R. OWENS, HON. EDOLPHUS TOWNS, HON. LOUISE M. SLAUGHTER, HON. PAUL E. KANJORSKI, HON. CAROLYN B. MALONEY, HON. THOMAS M. BARRETT, HON. BARBARA-ROSE COLLINS, HON. ELEANOR HOLMES NORTON, HON. JAMES P. MORAN, HON. CARRIE P. MEEK, HON. CHAKA FATTAH, AND HON. ELIJAH E. CUMMINGS

The text of the majority report entitled "Investigation Into the Activities of Federal Law Enforcement Agencies Toward the Branch Davidians" is based on 10 days of hearings (July 19–August 2, 1995), jointly held by the Committee on Government Reform and Oversight's Subcommittee on National Security, Criminal Justice, and International Affairs and the Committee on the Judiciary's Subcommittee on Crime. During those hearings, the committees heard testimony from over 90 witnesses and viewed voluminous photographic, video and documentary exhibits concerning the events at Waco.

Throughout those hearings, the minority repeatedly insisted that no new facts or evidence emerged as a result of this extensive investigation. The majority report proves that basic point.

The text of the report agrees with recommendations and positions taken as a result of the 1993 Department of Justice and the 1993 Department of the Treasury investigations of the Waco incident. The report agrees that the tragedy at Waco would not have occurred but for the criminal conduct and aberrational behavior of David Koresh. The report also confirms a number of other important points emphasized by the minority during the hearings: that there was probable cause to issue warrants to search the premises and arrest David Koresh; that the military assistance received by ATF did not violate Posse Comitatus; that planning and intelligence operations prior to the raid were inadequate; that the Branch Davidians started the fire on April 19, 1993; that Koresh and his followers had ample time to leave the compound after the fire started; and that the amount of tear gas the FBI used was far below the quantities that would have been required to cause injury or death. These are not new discoveries revealed as a result of the majority's investigation, but previously known findings which the majority has finally accepted.

While we accept those findings in the majority report that are largely duplicative of the recommendations contained in previous Department of Treasury and Department of Justice investigations, we reject the false assumptions and unfounded allegations raised by the majority's report. The report is fundamentally flawed in a number of important areas. In an effort to correct those flaws and provide clarity to facts obfuscated by the majority report, we in the

minority file these Dissenting Views to address basic factual errors, resolve internal contradictions, meliorate certain deficiencies and express our disagreement with certain original recommendations made by the majority report. Additionally, we wish to express strong disagreement with the majority's unfair criticism of Treasury Secretary Bentsen and their call for the resignation of Attorney General Reno.

The majority report suffers from several deficiencies. First, the findings reached are not supported by the hearing record or other evidence. The text of the report states that the Davidians started the fire, however the findings conclude that the evidence is not dispositive on the question of who started the fire.

Second, the report is internally inconsistent. For example, while critical of the FBI for failing to consult those outside of its control during the negotiations, it then commends the FBI for allowing lawyers representing the Davidians to enter the compound and conduct several hours of discussions with their clients. Clearly, these attorneys were not controlled or directed by the FBI. Their efforts to end the standoff were discussed by the majority report.

Third, the report omits important evidence from the hearings. At no point does the report discuss the allegations of child physical and sexual abuse perpetrated by David Koresh. Additionally, the report fails to mention the riveting testimony of Kiri Jewell who testified at the hearings concerning Koresh's sexual molestation of her when she was 10 years old. Instead the report dismisses the criminal conduct of David Koresh by summarily stating that Koresh was not subject to congressional oversight.

Fourth, the report reflects a willingness to believe Koresh over Federal law enforcement officers and personnel. For instance, the report asserts that Koresh's lawyers negotiated a credible surrender agreement. However, Federal law enforcement personnel on the advice of psychiatric and linguistic experts determined that the "agreement" was a continuation of prior manipulative stalling tactics. The report ignores no fewer than four prior instances in which Koresh reneged on promises that he and his followers would leave the compound. Moreover, the report ignores that Koresh did not state a time certain for surrender and had not allowed anyone to leave the compound for 3 weeks prior to the "agreement" or 5 days following the agreement.

The majority report criticizes Secretary Bentsen for failing to take an active role in preraid planning but ignores testimony and evidence presented at the hearing which conclusively showed that under the structure that existed at the time, the ATF exercised independence in planning and implementation of enforcement actions. This structure existed under several administrations. Secretary Bentsen's post-Waco order changed the structure to require additional oversight by main Treasury.

Additionally, the majority report calls for Attorney General Janet Reno's resignation because of her decision to allow the insertion of CS tear gas. Attorney General Reno stated during the hearings that the decision to use tear gas was a difficult one but all those consulted who had personal knowledge or professional expertise agreed that the use of tear gas was the only way to compel the Branch Davidians to leave the compound without use of force or

loss of life. Evidence and testimony during the hearing clearly indicated that the CS tear gas was not direct, or proximate cause of the ignition or acceleration of the fire. Evidence conclusively found that the Branch Davidians started the fire. Therefore, the deaths of the Davidians who remained in the compound should not be laid at Attorney General Reno's feet. This finding of the majority squarely contradicts their finding that Koresh was the author of the events at Waco.

I. COMMITTEE PROCEDURAL ISSUES

During and following the Waco Hearings, certain procedural issues arose which need to be addressed and remedied by the majority of this committee.

Prior to the hearings, the majority conducted a series of interviews in Waco, TX. Apparently, these interviews involved surviving members of the Branch Davidians and other residents of Waco. The minority was not informed of these interviews, invited to participate or allowed to review interview notes. The minority first learned of these interviews from the majority report. During this prehearing phase, the minority was not allowed to participate in the formation of the document request to the Federal agencies involved. Moreover, contrary to the implications in the majority report, the majority of this committee did not willingly grant the witness requests of the minority. In fact, our early witness requests were summarily rebuffed. The minority of this committee was only able to obtain witnesses by working with the minority staff of the Judiciary Committee.

During the hearing, at least two witnesses acknowledged under oath, that they were contacted by representatives of an outside interest group prior to their appearance before the panel. One witness testified that in at least one instance, an employee of the interest group identified herself as a congressional staffer. We believe that this raises serious questions of witness tampering by an outside group with congressional proceedings. During the hearings, we requested that the majority investigate whether this outside group was operating with the knowledge or at the behest of the majority staff. To date, the majority has refused further investigation of these instances of improper witness tampering.

After the hearings, these practices of exclusion continued. At the conclusion of the hearings, the majority conducted extensive investigations and interviews without the knowledge or participation of the minority. This fact did not come to light until the release of the report.

Finally, one year after the hearings nothing had changed. On July 11, 1996, the majority released a summary of this report to the press. This press summary was substantially similar if not identical to the executive summary contained in the report and contained all recommendations made by the majority report. On July 12, 1996, Members and staff of the minority obtained a copy of the report.

This pattern of exclusion of the minority members of this committee from the production of something that purports to be a committee document should not be allowed. This practice is a serious departure from prior practice and from the respect that members

of this committee have held for each other in the past. It serves as dangerous precedent that should not continue.

II. FACTUAL BACKGROUND

On February 28, 1993, agents from the Bureau of Alcohol, Tobacco and Firearms (ATF) attempted to serve an arrest warrant on David Koresh and a search warrant on the Branch Davidian compound outside of Waco, TX. While executing these lawful warrants, the agents were met with a hail of gunfire. ATF agents Conway C. LeBleu, Todd W. McKeehan, Robert J. Williams and Steven D. Willis died as a result of gunshot wounds inflicted during the ambush. In addition to those agents who were killed, 20 ATF agents were wounded by hostile fire emanating from the compound. After negotiating a cease-fire with the Branch Davidians, the agents were allowed to remove the bodies of their fallen comrades.

Within hours of the initial shooting, the Bureau of Alcohol, Tobacco and Firearms requested assistance from the Federal Bureau of Investigation's Hostage Rescue Team. The FBI arrived on the scene of the shooting within 24 hours. A 51-day standoff between Federal law enforcement agents and the Branch Davidians led by David Koresh followed. Between the time of their arrival and the tragic conclusion of the events, the FBI conducted several hundred hours of negotiations with Koresh and others within the Branch Davidian Compound. Despite these efforts, only 14 children and 21 adults left the compound as of March 23.

Between March 23 and April 12, negotiations continued but no one left the compound. During that period, the FBI held a conversation with a 6-year-old girl who identified herself as Melissa Morrison. The FBI negotiator asked Melissa whether she would like to leave the compound. She replied in the affirmative. The FBI negotiator asked her why she did not leave. Her response was that she could not leave because "David won't let me." Melissa died in the fire.

On April 12, the FBI presented its tear gas proposal to Attorney General Reno. Between April 12 and April 17, the Attorney General conducted no fewer than eight meetings with military and civilian tear gas experts to debate the tear gas plan, advantages and disadvantages of using tear gas in a barricade situation, the properties of the tear gas chosen and the medical and scientific information concerning the toxicity and flammability of the type of tear gas proposed and the effects of tear gas on vulnerable populations such as children, the elderly and pregnant women. On April 17, the Attorney General approved the tear gas insertion plan and informed the President of her decision.

On April 19, 1993, the Federal Bureau of Investigation began to insert tear gas via combat engineering vehicles into the Branch Davidian compound. However, instead of advising his followers to leave, David Koresh and other unknown members of the Branch Davidians spread highly flammable liquids throughout the compound and set fire to the entire building. Because of the poor construction of the building and the use of chemical accelerants, the entire compound was engulfed in flames and completely destroyed within 15 minutes.

In the aftermath of the fire, the bodies of over 70 Branch Davidians were recovered. According to autopsy reports by the Tarrant County (TX), Coroner, 30 people died of asphyxiation due to smoke inhalation, 2 people died of injuries resulting from blunt force trauma and 20 people, including David Koresh and a 20-month-old infant, died of gunshot wounds inflicted at close range by themselves or others within the compound. Of the nine Branch Davidians who survived the fire, seven escaped through openings in the walls and windows of the compound created by the combat engineering vehicles. The shoes and clothing of several of those who escaped contained concentrations of gasoline, kerosene and other flammable liquids.

After the siege, the Texas Rangers conducted an extensive search of the Branch Davidian compound. They discovered 48 illegal machineguns, seven illegal explosives of various types, nine illegal silencers and over 200,000 rounds of ammunition.

A series of indictments were returned against 10 Branch Davidians between March 30 and July 20, 1993. The indictments contained charges relating to the ambush of ATF officers on February 28 and various firearms violations committed between February 1992 and February 1993. On August 6, 1993, the U.S. Attorney's office in Waco obtained another superseding indictment from the grand jury combining all previous indictments into one and added two additional defendants.

On September 9, 1993, Kathryn Schroeder entered a guilty plea to one count of armed resistance of a Federal law enforcement officer. As a part of her plea agreement, she agreed to testify against the other 11 defendants. A Texas jury convicted 8 of the 11 Branch Davidian defendants of various firearm offenses. The convicted defendants received sentences ranging from 3 to 40 years with 7 of the 8 defendants serving sentences of 40 years imprisonment.

Several congressional hearings were held which solely or predominantly addressed the events at the Branch Davidian compound. The President instructed the Department of the Treasury to conduct a review of the actions of the Bureau of Alcohol, Tobacco and Firearms at Waco. That report, entitled "Report of the ATF Investigation of Vernon Wayne Howell, a.k.a. David Koresh" was released to the public on September 30, 1993. Additionally, the President ordered the Department of Justice to conduct a review of the Federal Bureau of Investigation's actions at Waco. That report, entitled "Report to the Deputy Attorney General on the Events at Waco, TX, February 28 to April 19, 1993" was released to the public on October 8, 1993.

Two years after the conclusion of the events at Waco, the Committee on Government Reform and Oversight, Subcommittee on National Security, International Affairs, and Criminal Justice and the Committee on the Judiciary, Subcommittee on Crime held extensive hearings on "Matters involving the Branch Davidians at Waco, TX." These hearings began on July 19 and ended on August 2, 1995. During those hearings, the committees heard testimony from over 90 witnesses and viewed voluminous photographic, video and documentary exhibits concerning the events at Waco. Despite the comprehensive nature of this examination, we believe that no new facts emerged. However, we believe that there are certain in-

disputable conclusions which can be reached by reasonable minds regarding the events that transpired at the Branch Davidian complex in Waco, TX, between February 28, 1993, and April 19, 1993.

III. DAVID KORESH WAS THE AUTHOR OF THE EVENTS AT WACO

We agree with the majority's conclusion that the criminal conduct and aberrational behavior of David Koresh and other Branch Davidians led to the tragedies that occurred in Waco. We share their judgment that David Koresh bore the ultimate responsibility for the deaths of 4 Federal law enforcement agents and 80 of his Branch Davidian followers. Additionally, we note that Koresh should also be held responsible for the serious gunshot and shrapnel wounds of 20 Federal law enforcement officers and the nonfirearm associated injuries suffered by 11 Federal officers.

IV. THE ARREST AND SEARCH WARRANTS WERE LEGALLY SUFFICIENT

We agree with the majority's finding that the ATF had probable cause to obtain an arrest warrant for David Koresh and search warrants for the Branch Davidian compound and the facility known as the "Mag Bag." However, we disagree with the majority's assertion that the affidavit filed in support of the warrant contained false statements.

The ATF began its investigation of Koresh after receiving complaints from the McLennan County (TX), Sheriff's Department in May 1992. A deputy sheriff asked ATF to investigate following a report from a concerned United Parcel Service driver. The driver relayed his concern about a recent delivery. In delivering the package, the container in which it was shipped broke open and revealed suspicious materials including grenade casings and a substantial quantity of black powder. The driver relayed that this was not the first package he had delivered to the compound that caused him concern. Following this conversation, the deputy learned from neighbors of the compound and other members of the community that the residents of the compound were constructing what appeared to be a barracks-type cinder block structure; had buried a school bus to serve as both a firing range and a bunker; and apparently were stockpiling arms and other weapons.

Before opening a formal investigation, the ATF agent spoke with local officials, interviewed gun dealers and searched national firearms registries to determine if any resident of the compound was licensed as a firearms manufacturer or dealer. Additionally, the agent searched the national registry to determine if any resident of the compound was licensed to own a fully automatic weapon. These searches revealed that no resident of the compound had registered to manufacture or sell weapons. Moreover, no resident of the compound was licensed to own a fully automatic weapon. During these discussions, the ATF agent learned of the delivery of grenade casings, black powder and large shipments of firearms.

While initially focusing on the paper trail generated by the weapons and explosives purchased by Koresh and his followers, the agent determined that an Arms company had recently shipped a substantial quantity of AR-15 parts to the "Mag Bag." Although

not within the compound, the "Mag Bag" was an automotive repair facility operated by the Branch Davidians which was situated less than a mile away from the compound, on the grounds owned by the Branch Davidians. He also learned that a gun dealer had sold more than a dozen AR-15 lower receivers to Koresh a few months earlier. As the agent knew from previous investigations, someone with access to metal milling machines and lathes and the knowledge to use them could readily convert AR-15 semiautomatic rifles into fully automatic machineguns (similar to M-16 machineguns), by obtaining legally available parts. Additionally, the agent learned that 36 weapons had been sold to Vernon Howell (a.k.a. David Koresh) and additional weapons had been sold to other persons the agent knew to reside on the Branch Davidian compound. Moreover, the agent learned that approximately 65 AR-15 lower receivers reflected in a local gun dealers records were not present in the inventory. When questioned about this discrepancy, the dealer claimed that the firearms were being stored at the house of David Koresh.

The agent obtained further evidence by speaking with one of Koresh's neighbors who had served in an army artillery unit. The neighbor reported that since 1992 he had frequently heard spurts of weapons fire coming from the compound at night, including .50 caliber and automatic weapons fire. In mid-November a deputy sheriff reported that while on patrol a few days earlier he had heard a loud explosion at the compound accompanied by large clouds of gray smoke.

In an attempt to gain additional information about the manufacture and possession of illegal weapons at the compound, the agent spoke with several former followers. They confirmed seeing numerous weapons including grenades, pump shotguns, and AK-47 machineguns. Additionally, they provided information on the extent that Koresh dominated the lives of the residents of the compound. Branch Davidians had not only surrendered monetary assets to Koresh but allowed him to administer corporal punishment to children as young as 8 months old which often led to bleeding and severe bruising; permitted him to dictate the dissolution of marriages; empowered him to forbid married couples to engage in sexual relations; and authorized him to engage in sexual relations with all female members of the Davidians including girls as young as 10 years old.

In January 1993, the agent spoke with David Block, who had been a Branch Davidian from 1981 through 1992. Block relayed that he had seen two other Branch Davidians using a metal milling machine and metal lathe to produce weapons and which can be used to convert legal weapons to illegal automatic weapons. Block described an arsenal that included .50-caliber rifles, AR-15's AK-47's, several 9mm pistols and three "streetsweepers."¹

The findings of this extensive investigation formed the basis of the agent's statements contained in the affidavit in support of an arrest warrant for Koresh and a search warrant for the compound and the "Mag Bag." This affidavit was presented by an Assistant U.S. Attorney to a Federal Magistrate who determined that the in-

¹A "streetsweeper" is a 12 gauge, 12 shot, shotgun with a spring driven drum magazine and folding buttstock. Each time the trigger is released after firing a shot, the magazine rotates to position the next shot for firing.

formation contained therein was credible and sufficiently current to issue warrants.

Therefore, while assertions contained in the underlying affidavits concerning the physical and sexual abuse of children may have been beyond the scope of the ATF's jurisdiction, it is abundantly clear that probable cause existed to obtain an arrest warrant for David Koresh and search warrants for the Mount Carmel compound and the facility known as the "Mag Bag."

Any doubts Koresh or others may have had about the validity of the warrants should have been expressed through lawful means. However, instead of challenging the validity of the warrants through the judicial system, Koresh chose to instruct his followers to open fire on Federal agents in the lawful execution of their duties.

It should be remembered that at the criminal trial of the 11 Branch Davidians, none of the defense lawyers challenged the validity of the warrants. A successful challenge by any of the defense attorneys at trial would have excluded evidence of the firearms and would have been a major step in acquitting the defendants of the firearms violations. Therefore, it seems incomprehensible that had such a challenge been possible, it would not have been mounted by one of the many able attorneys representing the 11 Branch Davidians. However, no attorney questioned the validity of the warrants.

Additionally, it should be noted that evidence obtained from the scene after the fire, conclusively proved that Koresh amassed a huge cache of weapons and materials to manufacture illegal weapons. Although much evidence may have been destroyed by the April 19 fire set by the Davidians, at least 47 fully automatic weapons, which are illegal under Federal law, were recovered along with seven illegal explosives, several grenade casings, nine illegal silencers and 200,000 rounds of ammunition.

In its attack on the validity of the warrants, the majority does not present any facts that would undermine the integrity of the core paragraphs of the ATF affidavits establishing probable cause. Instead of providing testimonial or documentary evidence to challenge the validity of the warrants, the majority raises the unsupportable implication that a Federal law enforcement officer made false statements in securing the warrants. Such an unwarranted and unsupported attack on the credibility of a Federal law enforcement officer is simply irresponsible.

V. ACCELERATED SERVICE OF THE WARRANTS

We disagree with the majority's assertion that there was no compelling reason to serve warrants on February 28. After a year long investigation the ATF had probable cause to believe that Koresh had amassed a substantial cache of illegal weapons and materials necessary to manufacture additional illegal weapons. While the particular date is not significant, it would have been extremely imprudent to wait long enough for him to amass, manufacture and potentially distribute additional illegal weapons. Additionally, we should note that the original raid was planned for March 1. However, on February 27, a local newspaper began a highly critical seven-part series of articles focusing on Koresh and the Branch

Davidians. The series detailed several allegations against Koresh of child physical and sexual abuse which could have potentially exposed him to serious State criminal charges. Therefore, there was reason to believe that Koresh would expect a heightened interest from State or Federal authorities following the conclusion of the series and may have destroyed evidence of the illegal weapons in anticipation of a search. The date of the raid was moved from March 1 to February 28.

VI. MILITARY ASSISTANCE DID NOT VIOLATE POSSE COMITATUS

We agree with the majority's conclusion that Posse Comitatus was not violated and share their concerns over the implementation of formal guidelines and criteria in the nonreimbursable use of Department of Defense resources in drug cases. However, we are concerned that the implementation of such a litmus test could result in the denial of needed assistance in the fight against the importation, production, distribution and use of illegal drugs. Therefore, although we understand this concern, we cannot support a recommendation for such guidelines and criteria when there is no objective evidence to believe that the military has failed in its role to accurately and appropriately gauge the need of domestic law enforcement agencies for nonreimbursable assistance. However, it would be appropriate and would not hamper the fight against illegal drugs if the Department of Defense, the National Guard and Federal law enforcement agencies developed operational parameters for determining when a drug nexus is sufficient to justify nonreimbursable assistance.

Posse comitatus is the statute that limits military participation in civilian law enforcement. Military personnel may provide training to Federal, State and local civilians law enforcement officials, as long as it is not "large scale or elaborate." Such assistance may not involve DOD personnel in a direct role in law enforcement operations, except in specific and narrowly drawn circumstances.

The Department of Defense provided minor nonreimbursable assistance to the ATF in connection with the events at Waco. Under 10 U.S.C. 371 and 32 U.S.C. 112, the Secretary of Defense is authorized to provide military support to law enforcement agencies engaged in counterdrug operations. The Secretary of Defense is authorized to pay for the support pursuant to Section 1004 of P.L. 101-510, Section 1088 of P.L. 102-190, and Section 1041 of P.L. 102-484. If a drug nexus does not exist, the Economy Act requires that as a general matter, reimbursement is required when equipment or services are provided to agencies outside the Department of Defense. An exception may be made if there is some training value to the DOD personnel involved.

In the planning stages of the raid, the ATF requested Special Forces assistance from the Department of Defense. This request was forwarded through Operation Alliance and Joint Task Force 6. The initial request raised legal questions with Special Forces attorneys regarding the permissible scope of assistance. Specifically, Special Forces Attorneys were concerned with the proposal for DoD to review the ATF raid plan and perform onsite medical emergency services. Acceding to such a request would have clearly violated the Posse Comitatus Act's mandate prohibiting the military's "partici-

pation” in civilian law enforcement activities. Therefore, the initial request was significantly scaled back and limited to the facilitation of ATF training. The military did not offer any training involving the specific details of the raid plan or any advice concerning the accomplishment of the mission. Special forces provided assistance limited to facilitating ATF training at Fort Hood. This included helping to construct models of the doors and windows of the compound; creating a schematic prototype of the compound’s exterior; operating firing ranges for weapons practice and providing limited training in emergency medical assistance. Additionally, it should be noted that there is no evidence to suggest that Department of Defense personnel were present at the time of the raid or at any time during the siege.

Federal courts have concluded that the National Guard is a State force which is not subject to the restrictions of the Posse Comitatus Act, except when called into Federal service, (*United States v. Benish*, 5 F.3d 20 (1993)). While in State militia status, the range of permissible activities are governed by the laws and constitutions of the respective States. However, it is possible for a National Guard unit to become a Federal law enforcement entity. A State National Guard Unit is “federalized” when it is called into service by the President to suppress domestic violence or insurrection against a State government or the authority of the United States (10 U.S.C. 331–333). When a State guard unit is “federalized,” law enforcement actions taken pursuant to that status are governed by the provisions of the Posse Comitatus Act.

The Texas and Alabama Air National Guard units provided pre-raid assistance by conducting aerial reconnaissance to photograph the compound. They conducted six flights over the compound and the facility known as the “Mag Bag” from January 6 through February 25, 1993. In addition to the reconnaissance flights, the Texas National Guard supplied three helicopters for training exercises on February 27 and for the raid on the following day.

In sum, there is no evidence to suggest that the Posse Comitatus Act was violated by the Department of Defense. Additionally, the National Guard units utilized by the ATF were not in a “federalized” status and therefore were not subject to the proscriptions of the act.

VII. DESPITE INADEQUATE INTELLIGENCE OPERATIONS, ATF DID NOT PREMATURELY REJECT THE SIEGE OPTION

We disagree with the majority’s findings that the primary reason that the dynamic entry route was chosen was because ATF did not have the experience, negotiators or capability to conduct a siege of any significant duration.

Once ATF agents concluded that there was probable cause to obtain warrants to search the premises and arrest Koresh, attention turned to the execution of those warrants. Three options were considered (1) arrest Koresh away from the compound and then serve the warrants; (2) place the compound under siege and (3) serve the warrants by “dynamic entry or raid.”

The first option to arrest Koresh away from the compound followed by a subsequent service of warrants was rejected after careful consideration. Contrary to the majority’s assertion, the ATF ex-

explored the possibility of arresting Koresh away from the compound. However, there are two problems with this assertion. The first problem is that it ignores the fact that a lawful search warrant had to be served for the premises. There is no reason to believe that the Davidians in the compound would not have reacted in the same manner had the search warrant been served without Koresh on the premises or attempted to destroy evidence if time elapsed between Koresh's arrest and the execution of the search warrant. Second, as of February 1993 the ATF had conducted several hundred raids of this kind. There had only been one case involving prolonged armed resistance. Moreover, Koresh had previous encounters with the State officials, police authorities and the judicial system. During these previous encounters, Koresh did not react violently to searches or service of process. Therefore, neither the agency's history nor Koresh's personal history yielded any information that would tend to indicate a violent reaction. It is pure speculation for the majority to argue that Koresh could have been arrested away from the compound.

As acknowledged in the Treasury report, ATF failed to collect sufficient information to determine whether an off-premises arrest of Koresh could have been achieved. The ATF raid planners made serious mistakes in the intelligence gathering operations conducted prior to the raid. Successful intelligence operations require the development of adequate and accurate information. That information must be distributed to persons in the organizational hierarchy who are able to recognize the meaning and limitations of that information.

On January 11, 1993, the ATF began an undercover operation in a house across the road from the Branch Davidian compound. The agents involved were given the cover of being students at a local technical college. However, from the beginning several neighbors became suspicious of their activities because the agents appeared too old to attend the college and the cars they drove were too new to belong to students. However, even if the "cover stories" used by the agents had been successful, the operations of the undercover investigation itself were abysmal. They failed to keep accurate logs and failed to turn over the available logs to raid planners. However, it should be noted that the agents were given little if any meaningful direction from the raid planners (Sarabyn and Chojnacki). Therefore, without adequate guidance from their superiors, the agents were almost destined to fail. Although Agent Rodrigues obtained a good deal of relevant and reliable information about Koresh and the Davidians, those agents charged with the responsibility of surveillance were poorly served by raid planners Sarabyn and Chojnacki.

Because of this inadequate supervision, the surveillance operation was not able to determine the frequency of Koresh's departures from the compound, the routine activities within the compound or other information that might have been useful in deciding the optimal time, place and manner to effect service of the warrants.

However, based on the scant information possessed at the time, the agents concluded that such an arrest was not a viable alternative. They knew that Koresh's infrequent departures from the

compound were unpredictable. A social worker who had visited the compound to investigate the health and safety of children present, had informed the case agent that she thought Koresh did not leave the compound very often. On February 17, Koresh told the undercover agent that he did not often leave the compound. Further, it should be noted that after April 19, all reports of Koresh having been seen off the compound were thoroughly investigated by the Treasury Review. The reviewers were able to document only isolated trips off the compound, most occurring long before the time of the raid.

Additionally, it should be noted that prior to the hearing, majority subcommittee staff spent several days in Waco to gather facts and interview prospective witnesses. It should be noted that in hearings that lasted 10 days and had over 90 witnesses, no witnesses who were not members of the Branch Davidians or lawyers for the Branch Davidians were produced to testify supporting the majority's present contention that Koresh left the compound with sufficient frequency to affect an arrest away from the premises.

As noted in the Treasury report and by several witnesses, a siege was rejected because of a belief that any protracted encounter with a heavily armed and philosophically isolated and insular group would not be likely to produce an optimal result. The majority incorrectly concludes that the dynamic entry approach was prematurely abandoned. The decision to pursue a dynamic entry was made during a meeting that took place between January 27-29, 1993, after surveillance and undercover operations had begun. Prior to that meeting a siege option was under active consideration as was the possibility of luring Koresh off the compound. The Treasury report noted that the surveillance operations could have been better coordinated and intelligence better utilized in making this tactical decision. While the Treasury report concluded that the process used to decide that a dynamic entry should be undertaken was flawed, a siege option presented its own risks of failure. Four of the five independent reviewers who addressed the issue found that the dynamic entry plan could have been successful if surprise had not been lost.

VIII. TREASURY DEPARTMENT OFFICIALS SHOULD HAVE TAKEN A MORE ACTIVE ROLE IN RAID PLANNING

We disagree with the majority's assertion that officials at the Treasury Department should have taken a more active role in pre-raid planning. The majority seems to forget that prior to President Clinton and Secretary Bentsen's order, the Bureau of Alcohol, Tobacco and Firearms exercised independence in planning and implementation of enforcement actions. Prior to this failed raid, there was no practice, history or reason to believe that additional oversight was necessary.

The Treasury Secretary is responsible for the actions of over 165,000 people and numerous bureaus and offices. During his first month in office, Secretary Bentsen relied on the Department's existing organizational and operational structure. This structure had been used by the previous Republican and Democratic administrations. In the enforcement area, this organizational structure included a chain of command from the law enforcement bureau head

through the Assistant Secretary of the Treasury for Enforcement to the Deputy Secretary and then to the Secretary of the Treasury. This structure placed responsibility on the law enforcement bureau head for bringing significant matters to the attention of his or her immediate supervisor. It is unfair, inaccurate and irresponsible to castigate Secretary Bentsen for the adoption of an organizational structure and operational approach that had been in place for years.

Under the structure that existed at that time, then ATF Director Steven Higgins' immediate supervisor was Deputy Assistant Secretary John Simpson, a career civil servant who had served at Treasury for many years. Mr. Simpson was carrying out the duties of the Assistant Secretary for Enforcement, pending the confirmation of an Assistant Secretary for Enforcement designee Ronald Noble. Having been ATF's Director for approximately 10 years, Mr. Higgins was very familiar with the reporting process.

The suggestion that a meeting between Secretary Bentsen and ATF Director Higgins would have led to earlier notification of ATF's planned raid of the Branch Davidian compound is pure conjecture. In fact Director Higgins did not tell his immediate supervisor in Treasury of the planned raid until 2 days before its planned execution.

IX. THE RAID SHOULD HAVE BEEN ABORTED WHEN THE UNDERCOVER AGENT REPORTED THAT KORESH KNEW THE RAID WAS ABOUT TO OCCUR

The majority report errs in concluding that Treasury officials failed to clearly communicate the conditions under which the raid was to be aborted. In fact, the Treasury Report and ATF Director Higgins' testimony before Congress on several occasions made it clear that the ATF knew it was supposed to call off the raid if Koresh learned that the ATF had planned a law enforcement operation against them. Director Higgins never questioned the clarity of his message from the Treasury Department. He testified that he told his subordinates if anything looked unusual, the raid should be called off. Consistent with the ATF's plan, Agent Rodriguez clearly communicated Koresh's awareness of an impending ATF law enforcement operation to his field supervisors. Unfortunately, Mr. Sarabyn and Chojnacki failed to heed this clearly communicated warning. All six of the independent tactical operations experts who analyzed the ATF's failed raid concluded that based on Mr. Rodriguez' information, the raid commanders should have called off the raid.

We concur with the majority's finding that despite their contrary testimony before this committee, evidence clearly shows that Agents in Charge Sarabyn and Chojnacki understood yet consciously chose to disregard warnings by Undercover Agent Rodriguez on the morning of the raid. Rodriguez advised Sarabyn and Chojnacki that the ATF's operations had been compromised and the element of surprise had been lost. The most significant mistake was the decision of the onsite raid commander to proceed after he had been informed by an undercover agent that Koresh was aware that a raid was about to occur. This error in judgment allowed Koresh to have an estimated 30-45 minute preparation

time prior to the arrival of the agents. Koresh used this opportunity to arm himself and his followers. Despite the majority's assertions to the contrary, Treasury acknowledged in its report that the raid commander was questioned by the Washington commanders and knew or should have known that the raid should not have proceeded if secrecy or surprise had been lost or compromised.

X. THE FBI NEGOTIATIONS AND TACTICAL OPERATIONS WERE SOMETIMES CONTRADICTORY

The Department of Justice has acknowledged that there could have been better coordination and communication between the officials responsible for tactical decision and the negotiators. Alternating tactics of negotiating, granting demands and then using tactical operations such as cutting off electricity to punish Koresh for renegeing on agreements, may have allowed Koresh to increase his hold on his followers.

In an effort to improve coordination and communication between negotiators and tactical command in the future, the Department of Justice has created that Critical Incident Response Group. As a part of this team, negotiators and tactical personnel train together to facilitate improved coordination of operations.

However, the majority's main criticism of the FBI involves its alleged reluctance to use outside experts. This criticism is not valid. Following the suggestions of behavioral experts, FBI negotiators repeatedly stressed to Koresh that if he left the compound, he would have every opportunity to spread his message to a worldwide audience, that he would be presumed innocent of any wrongdoing with respect to the ATF raid, and that the judicial process would provide him with an opportunity to tell his side of the conflict. The FBI negotiated with Koresh for 51 days. During that course of time, over 36 demands by the Davidians were documented and granted by the FBI. Contrary to the majority's assertion, there is no indication that FBI negotiators were adversely affected by physical or emotional fatigue.

We disagree with the majority's assertions that on the 46th day of the siege, the FBI should have believed the representations of Koresh's attorney who relayed Koresh's representation that he and his followers would leave the compound if Koresh were allowed to write his exposition on the Seven Seals of the Biblical Book of Revelations. Early in the siege, Koresh was allowed to speak to religious scholars concerning his interpretation. In response to a promise to surrender, an audiotape containing his interpretation of the First Seal was played on a radio broadcast. However, Koresh did not surrender at that time. FBI behavioralist Murray Miron believed that this latest attempt was merely another stalling tactic. Therefore, based on his prior behavior and manipulative personality, it was not unreasonable for negotiators to conclude that Koresh would not honor this latest promise. We would note that had Koresh been interested in surrendering to authorities, he could have done so at any time during the 51-day siege. During the same period, 37 of his followers surrendered and called into the compound to inform Koresh and others that they were being treated well and had not been hurt. Therefore, whatever compelled Koresh to remain in the compound and prevented other followers

from leaving was not something that a deal involving Koresh's composition of the written exposition of his religious tenets would have resolved.

XI. LAW ENFORCEMENT OFFICERS COULD BENEFIT FROM FUTURE USE OF OUTSIDE BEHAVIORAL AND PSYCHOLOGICAL EXPERTS

We disagree with the majority's assertion that the FBI should have developed a thorough understanding of the religious tenets of the Davidians. During the course of the negotiations, the FBI attempted this approach and abandoned it because it became clear that the tenets were based on Koresh's personal thoughts and rapidly changed to suit the occasion. Therefore, this would not only have been futile but would have pushed back the time of the service of the warrants thereby allowing Koresh to amass even more illegal weapons.

We disagree with the majority assertion that the FBI negotiators did not appear to recognize the potential benefit of using religious experts in working with Koresh. We refer the majority to the Department of Justice report which listed the opinions of independent religious experts and FBI behavioral experts consulted during the siege. The FBI solicited and received input from various experts in many fields including psychology, psychiatry, psycho linguistics, religion and theology, cult theory and negotiation techniques. Religious experts and theologians consulted by the FBI included Dr. Phillip Arnold of the Reunion Institute; Dr. Bill Austin, chaplain, Baylor University; Jeriel Bingham, vice president, Davidian Seventh-day Adventist Association; Reverend Trevor Delafield, Seventh-day Adventist Church; Dr. Robert Wallace and Dr. John Fredericks, Lighthouse Mission; Dr. Michael Haynes, Doctor of Theology and Psychology and Dr. Glenn Hilburn, Dean, Department of Religion, Baylor University. Additionally, the majority of those experts concluded that Koresh was manipulative and likely to deceive. All the experts agreed that Koresh would not leave the compound voluntarily. Therefore the FBI negotiators tactics which focused on Koresh as a manipulative and deceitful individual were precisely in accord with the viewpoint of the religious experts and psychological experts and with the experience of those negotiators who spent over 400 hours talking to Koresh and his followers.

XII. THE USE OF TEAR GAS WAS UNFORTUNATE BUT NECESSARY

The majority report suggests that the decision to use gas was not the only option available to compel the Branch Davidians to leave the compound. In support of their theory that additional time would have yielded a nonviolent surrender, the majority report points to the release of 21 children between February 28 and March 3 as an indication that continued negotiations would have eventually secured the release of the remaining 80 adults and children within the compound. They argue that other options including expansion of and continuation of the negotiation strategy, waiting for the depletion of food and water supplies, or waiting for Koresh to complete his written exposition on the meaning of the Biblical Seven Seals prophecy were prematurely rejected in an effort to end the confrontation.

However, after March 23, additional releases had not been obtained. Koresh repeatedly reneged following the FBI's performance of agreed upon terms. Repeatedly, Koresh would explain his decision to remain in the compound by saying that God had not yet told him it was time to leave. Additionally, it should be noted that the "regular" conditions within the compounds were austere (no running water or plumbing) and there was a vast supply of military style MRE's (meals-ready to eat) and an artesian well with water storage tank housed within the compound.

Because the FBI decided not to fire any shots during the standoff, the Davidians walked outside of the building on several occasions to smoke cigarettes, empty chamber pots, feed chickens and gather water from rain water runoff. Finally, the large amount of firearms and ammunition (200,000 rounds) found within the compound, and the gathering of other interested and potentially dangerous individuals (paramilitary and Militia groups) contributed to their concern about the continued degradation of the situation and their ability to adequately secure the perimeter of the compound.

In fact, during the standoff two people, not people previously affiliated with the Davidians, infiltrated the perimeter and entered the compound. The FBI was concerned that failing to end the standoff would allow others (particularly paramilitary militia groups) who had begun to descend upon the compound to enter the perimeter. Threats posed by gathering militia and paramilitary groups in the area increased security problems and underscored the need for a quick resolution to the situation. There was a genuine concern as to whether these groups had gathered as observers or sought to engage in the standoff.

On April 12, the FBI presented its tear gas plan to Attorney General Reno. Over the ensuing days, several meetings were held to debate the tear gas plan, the properties of the gas chosen and the effects of gas on vulnerable populations such as pregnant women and children. Between the initial presentation of the plan on April 12 and the Attorney General's April 17 decision to use tear gas, Reno attended no fewer than eight meetings to discuss the tear gas option. Those meetings were attended by military and tactical experts who briefed the Attorney General on the advantages and disadvantages of the use of tear gas in a barricade situation as well as the available medical and scientific information concerning the toxicity and flammability of CS tear gas.

CS tear gas is a common riot control agent used in the United States and Europe. The purpose of tear gas is to cause irritation of the eyes, skin and respiratory system sufficient to encourage an individual to leave the premises or any open area. CS is considered the least toxic agent in the family of chemical tear gas irritants. In order to reach a level which would be lethal to 50 percent of the population, CS must be in concentrations of 25-150 thousand milligrams per minute, cubed. The CS gas used at the Davidian compound was significantly less concentrated than the lethal level. The CS gas used was in a concentration which would only reach 16,000 milligrams per minute (cubed) if all of the gas used had been released at the same time, in a single closed room and the residents of that room had been exposed continuously for 10 min-

utes. At Waco, CS tear gas was released throughout different areas of the building while openings were created in the windows and walls. The CS gas was inserted for a total of 5 minutes over a 6-hour period. A total of twenty CS canisters were deployed on April 19. Additionally, several commentators discuss the fact that the wind velocity reached 35 knots during the tear gas delivery. Therefore, given the amount of tear gas used, the presence of high winds, building ventilation and the delivery of gas to different areas of the compound, it is highly unlikely that anything close to the fifty percent lethality rate was reached.

There are no documented cases in which the use of CS gas caused death. Reports that Amnesty International linked use of the gas to deaths of Palestinians in the occupied territories, is an extremely biased reading of the report. Released in June 1988, the report discussed the use of two kinds of tear gas, CS and CN. CN gas has proven to be lethal in closed quarters. The overwhelming majority of evidence on ill-effects of CS was anecdotal. Medical care had not been sought or documented. Moreover, because of religious prohibitions autopsies had not been performed. Therefore, there is no reliable scientific data which would lead to the conclusion that CS alone was implicated in any of the deaths. As Physicians for Human Rights found when visiting the occupied territories "we could not confirm the reports of deaths from tear gas inhalations."

The Himsworth Report, issued by the British Government, found that there is no evidence of any special sensitivity of the elderly, children or pregnant women. Additionally, the Himsworth Commission chronicled the effect of CS gas exposure on one infant and found that the child recovered rapidly after removal from the area affected by CS tear gas. This report was supported by a report which appeared in a Medical journal. The author not only set forth a treatment protocol for children exposed to CS tear gas but noted that full recovery was highly likely.

Moreover, the majority report contends that the presence of CS gas may have acted as an accelerant during the fire. That is unlikely. While CS is combustible (it will burn if ignited, much like paper), it is not a chemical accelerant or a flammable agent. Additionally, the method of delivery or the compounds in which the CS particulate was contained (methylene chloride and carbon dioxide) will not burn and will actually inhibit fire ignition.

The original CS insertion plan required that the tear gas be inserted by CEV's over a course of 2 to 3 days. The theory was that the gas insertion over several days and in different parts of the compound would gradually render the entire compound uninhabitable. However, within 5 minutes of the initiation of the original plan, the insertion of tear gas was dramatically escalated.

The original gas insertion plan provided that in the event that the CEV's or others were fired upon during the insertion of gas, that the insertion would be escalated. The plan vested authority with the SAC Jamar to make the escalation decision. Therefore, when reports of shooting coming from the compound were confirmed and it became clear that the CEV's were being fired upon by the Davidians, Jamar decided to escalate insertion of the tear gas delivery schedule.

We agree with the majority report that it should have been obvious to all concerned that the insertion of CS tear gas would have prompted Koresh to order the vehicles fired upon and that this would have resulted in the acceleration of tear gas insertion. However, the majority fails to recognize that if the vehicles were fired upon, the parties at risk would be the FBI. Following the conclusion of the insertion of tear gas, the building would be uninhabitable and the occupants would have evacuated. Therefore, it seems that this underscores the FBI's determination to compel the occupants to leave without any loss of life inside the compound, despite potential harm to themselves.

XIII. WHITE HOUSE OFFICIALS WERE INFORMED BUT NOT INVOLVED IN THE DECISION TO USE TEAR GAS

White House officials were informed but not consulted about the use of tear gas.

On April 18, Webb Hubbell, Justice Department White House Liaison, and Attorney General Reno informed the President about the plan to gradually insert tear gas into the compound over a 2- to 3-day period in an effort to render the compound uninhabitable and compel the occupants to leave. During that conversation, Reno told the President that April 19 was not envisioned as "D-Day" and that the use of the tear gas would not be the beginning of an assault on the compound.

Critics maintain that the White House pressured Reno to end the standoff by any means necessary. They contend that this directive led to the lack of clear decisionmaking and a less than objective examination of the potential hazards concerning the use of CS gas. The majority report implies that had expediency not been a factor, Reno would have continued to wait for the Davidians to surrender. This contention is pure speculation that is not supported by the facts. As noted earlier, Attorney General Reno held eight meetings to discuss various aspects of the tear gas plan with tear gas experts. If speed had been her concern, she would not have consulted with various experts and waited a week between the first proposal of the plan and its implementation.

XIV. THE BRANCH DAVIDIANS STARTED THE FIRE AND CHOSE TO REMAIN WITHIN THE COMPOUND WHILE IT BURNED

On April 19, approximately 20 minutes after the last tear gas insertion, the Davidian compound erupted in flames. The first indication of fire was seen and noted at 12:07 p.m. By 12:11 p.m., the entire compound was substantially involved.

There is no doubt that the Branch Davidians started the fire. We disagree with the conclusion of the majority report which states that the evidence concerning the origin of the fire is not dispositive. The majority report ignores evidence contained in the arson report which proved three separate ignition points within the compound and conclusively found that chemical accelerants were placed throughout the compound. Additionally, there was eyewitness testimony as well as film footage which chronicled the rapid spreading of the blaze. Moreover, the clothes of surviving Davidians who escaped the compound were laced with gasoline and other flammable

materials. Finally, and most poignantly, several surviving Davidians admitted that those within the compound had started the blaze. These statements are supported by recorded statements in which voices are heard asking about the location and timing of fuel pouring and lighting activities. Additionally, it should be noted that an examination of the vehicles involved inserting tear gas was conducted. These vehicles did not have flamethrowing equipment and were not of the type that could have been equipped with flamethrowing equipment. All evidence clearly indicates that the fire which destroyed the Branch Davidian compound on April 19 was ignited by individuals inside the compound.

It should be noted that the fire department was called after the blaze began. However, they did not attempt to put out the fire because during the blaze gun shots were heard coming from and within the compound. The safety of any firefighter who approached the compound could not be assured. Therefore, the FBI determined that the local firefighters should not be allowed to approach the compound. However, it should be noted that after the fire began nine survivors exited the compound.

There has been some speculation that the tear gas used may have contributed to the fire. The CS tear gas did not act as an accelerant for the fire. CS is a powdery particulate. When used in a tear gas canister or other tear gas delivery system, CS particulate is suspended in methylchloride and carbon dioxide. Neither CS particulate, methylchloride or carbon dioxide are flammable. They actually inhibit the outbreak of fire. We agree with the majority's conclusion that the use of CS tear gas prior was not a direct, proximate cause or contributing factor to the rapid ignition and expansion of the blaze. The audiotape and forensic evidence clearly indicate that the rapid ignition and spread of the blaze was due to the use of chemical accelerants (including gasoline, kerosene and camp fuel oil) distributed throughout the compound by individuals within the compound. Additionally, the materials used in the construction of the building itself (largely plywood) in conjunction with storage of materials such as hay and propane gas containers and high winds combined to significantly contribute to the rapid combustion of the building.

XV. RECOMMENDATIONS

Finally, the report makes 17 recommendations that are largely duplicative of recommendations made by the extensive internal reviews undertaken by the Department of Treasury and the Department of Justice. Those recommendations and our responses are as follows:

1. Congress should conduct further oversight of the Bureau of Alcohol, Tobacco and Firearms and jurisdiction should be transferred to the Department of Justice. While additional oversight is always proper, it should be noted that the proposal to transfer jurisdiction of ATF first surfaced in the Carter administration and has been rejected several times. Rejections have been based on concerns about placing total enforcement of the firearms laws in one agency. A separation of investigative and prosecutorial functions in separate agencies maintains an important check and balance system.

2. If false statements were made in the affidavit filed in support of the search and arrest warrants, criminal charges should be pursued. There is absolutely no evidence to suggest that the agent in question made false statements. This recommendation is an example of a willingness to disbelieve Federal law enforcement personnel which is manifest throughout this report.

3. Federal law enforcement should verify the credibility and timeliness of the information used in obtaining warrants. An assistant U.S. attorney and a Federal Magistrate reviewed the affidavit and found the information sufficiently fresh to issue warrants. Additionally, in finding that probable cause existed, the majority report implicitly agrees with the determination that the information was not stale.

4. The ATF should revise its National Response Plan to ensure that its best qualified agents are placed in command and control positions. The Treasury Department made this finding in its internal review. The ATF has implemented procedures to comply.

5. Senior officials at ATF should assert greater command and control over significant operations. The Treasury Department made this finding in its internal review. The ATF has implemented procedures to comply.

6. The ATF should be constrained from independently investigating drug-related crimes. This recommendation may lack administrative and operational feasibility.

7. Congress should consider applying the Posse Comitatus Act to the National Guard with respect to situations where a Federal law enforcement entity serves as the lead agency. This recommendation may lack administrative and operational feasibility and may unduly hamper the State's ability to use the guard in domestic law enforcement operations (e.g. drug trafficking patrols, civil disturbance).

8. The Department of Defense should streamline the approval process for military support so that drug nexus controversies are avoided in the future. This recommendation may deprive the Department of Defense of the operational flexibility necessary to provide assistance. The inability to pass a "litmus test" should not preclude the provision of otherwise justifiable assistance.

9. The GAO should audit the military assistance provided to the ATF and to the FBI in connection with their law enforcement activities toward the Branch Davidians. It should be noted that Members of Congress can request GAO audits on any topic at anytime.

10. The GAO should investigate the activities of Operation Alliance in light of the Waco incident. It should be noted that Members of Congress can request GAO audits on any topic at anytime.

11. Federal law enforcement agencies should redesign their negotiation policies and training to avoid the influence of physical and emotional fatigue on course of future negotiations. The FBI has doubled the size of the Hostage Rescue Team.

12. Federal law enforcement agencies should take steps to foster greater understanding of the target under investigation. The Department of Justice and the Department of the Treasury currently consult a wide range of outside experts on various topics.

13. Federal law enforcement agencies should implement changes in operation procedures and training to provide better leadership

in future negotiations. Recent successful negotiations with the Viper Militia and the Freemen indicate implementation of successful negotiation policies.

14. Federal law enforcement agencies should revise policies and training to increase the willingness of their agents to consider the advice of outside experts. Recent successful negotiations with the Viper Militia and the Freemen indicate policies evincing a willingness to employ the advice of outside experts.

15. Federal law enforcement agencies should revise policies and training to encourage the acceptance of outside law enforcement assistance, where possible. Federal law enforcement officers currently network within and among officers from Federal, State and local law enforcement entities.

16. The FBI should expand the size of the hostage rescue team. The HRT has been doubled in the 3 years since the events at Waco.

17. The Government should further study and analyze the effects of CS tear gas on children, persons with respiratory problems, pregnant women and the elderly. Numerous studies have concluded that there is no increased toxicity or adverse effect when these populations are exposed to CS tear gas. Currently, data is gathered by exposing new Armed Forces recruits to tear gas. It seems that there would be a problem in conducting tests on human subjects within the population categories suggested by the majority report. Although traditional tests with control and noncontrol groups would not be possible, persons should be monitored and data collected whenever exposure occurs.

XVI. CONCLUSION

The events at Waco were a tragedy. However, the majority investigation, hearings and report add nothing new to the understanding of the tragedy or the prevention of future events similar to Waco.

We live in dangerous times where the threat of domestic terrorism is real. The bombing of the Alfred P. Murrah Federal Building in Oklahoma, more than any other single event, stands as a testament to the possible impact that a few people with illegal weapons and destructive purposes can have on a Nation. Groups or individuals bent on undermining the constitutional democracy of this country are a clear and present danger to the rights, liberties and freedoms that every American enjoys.

In such troubling times, it seems irresponsible for the majority report to engage in speculation and unsupported theories and unproven allegations against Federal law enforcement agencies and officers. The agencies involved should be commended for their extensive and unyielding investigations as well as their quick and decisive efforts to take corrective actions to ensure that there is no

reoccurrence of this type of event. It appears that the successful handling of events such as the "Freeman" standoff in Montana and the Viper Militia arrests in Arizona are testament to the determination of these agencies to learn from previous mistakes.

CARDISS COLLINS.
KAREN L. THURMAN.
HENRY A. WAXMAN.
TOM LANTOS.
ROBERT E. WISE, JR.
MAJOR R. OWENS.
EDOLPHUS TOWNS.
LOUISE M. SLAUGHTER.
PAUL E. KANJORSKI.
CAROLYN B. MALONEY.
THOMAS M. BARRETT.
BARBARA-ROSE COLLINS.
ELEANOR HOLMES NORTON.
JAMES P. MORAN.
CARRIE P. MEEK.
CHAKA FATTAH.
ELIJAH E. CUMMINGS.

ADDITIONAL VIEWS OF HON. TOM LANTOS

I welcome the dissenting views on the majority report, which I have signed with a large number of my colleagues. That statement points out clearly the many serious deficiencies of the majority report.

One issue, which is completely ignored in the majority report but which was raised at the time of the original hearings and which is raised in the dissenting views which I have signed, is the issue of the highly questionable involvement of an outside interest group—the National Rifle Association—in the investigation which preceded the hearing.

It is my view that this issue deserves greater attention and investigation. The active involvement of an outside organization in a subcommittee investigation raises the most fundamental questions about the integrity of the entire investigation, and the failure to address this important matter is a fundamental flaw of the majority report.

The outside organization—the National Rifle Association (NRA)—is not a disinterested third party. That organization and its leaders have made it clear that they had a particular point of view on the matters being considered by the subcommittee. Members of the subcommittee repeatedly urged the chairman of the subcommittee to investigate these matters, and the chairman has repeatedly refused to do so. In the interest of fairness and integrity, it is important that these issues be made part of this report.

The first matter is the subcommittee majority's use of outside "experts" to test firearms. These "experts" were contracted for and paid for (at a cost of some \$25,000) by the National Rifle Association. Furthermore, the chairman of the subcommittee and members of the majority staff initially tried to cover up the involvement of the National Rifle Association, and majority staff even refused to identify to officials of the U.S. Department of Justice the name of the outside advocacy group which selected and paid for the outside experts. Furthermore, in conversation with Justice Department officials, majority staff admitted that the so-called "experts" in fact had no expertise whatsoever in firearms testing. Later, during the course of the hearings the involvement of the National Rifle Association in this case did become public.

The second issue is the matter of an employee of the National Rifle Association identifying herself as a member of the subcommittee staff to at least one individual who was called to testify before the subcommittee. Furthermore, two witnesses testified under oath during the hearings that they were contacted by an employee of the National Rifle Association prior to testifying at the hearing. This raises serious questions about witness tampering. Again this issue was not investigated by the subcommittee chairman and is not dealt with in the majority report.

Both of these instances regarding the involvement of the National Rifle Association in the congressional hearing and investigative process not only raise questions about the ethical behavior of the majority staff, but also may be a violation of the law. This issue was raised in a July 17, 1995, letter from Congressman John Conyers, Jr., and Congressman Charles E. Schumer to the chairman of the Judiciary Committee and the chairman of the Government Reform and Oversight Committee. The instances of the National Rifle Association providing valuable services to the subcommittee may have violated the law and the Rules of the House. This issue should have been investigated and resolved. It was not.

The refusal of the subcommittee chairman and the majority to investigate these issues fully and openly—despite repeated requests by me and other Members who participated in the hearings—raises the most fundamental questions about the integrity of the majority report as well as the hearing and investigation conducted by the subcommittee.

TOM LANTOS.

PART 2.—APPENDIX TO HOUSE REPORT 104-749

SELECTED DOCUMENTS PROVIDED BY THE DEPARTMENT OF THE
TREASURY AT THE REQUEST OF THE SUBCOMMITTEES

DATE: JULY 14, 1993

TO: GEOFF MOULTON
LEW MERLETTI

FROM: COLLEEN CALLAHAN AND ROBERT TEVENS

SUBJECT: CHRONOLOGY AND WITNESSES RE: MILITARY SUPPORT OF ATF

December 4, 1992

- A meeting was held regarding the Howell investigation at the SAC/Houston Office. In attendance are LTC Walker, SAC Phillip J. Chojnacki, SAC Ted Royster, Assistant Special Agent in Charge (ASAC) James Cavanaugh, Resident Agent in Charge (RAC) Earl K. Dunagan, Special Agents Aguilera, Lewis, Petrilli, Buford, Lattimer, Williams, Carter, and John Henry.
- LTC Walker provided the ATF representatives with information about the military support available and suggested that an aerial reconnaissance overflight utilizing thermal imaging photography be conducted.
- LTC Walker maintained that he informed ATF that without a drug connection, military support provided would be on a reimbursable basis.
- Specifics regarding a drug connection were not discussed.

December 11, 1992

- Special Agent Jose G. Viegra, SAC/Austin, Texas met with William R. Enney, Texas State Interagency Coordinator and his assistant, Lieutenant Susan M. Justice, Assistant Interagency Coordinator, National Guard, Counterdrug Support Program, Camp Mabry, Austin, Texas. Mr. Enney is designated by Texas Governor Ann W. Richards as the Texas State representative for DoD coordination of the Texas National Guard Counterdrug Support Program.
- Agent Viegra asked general questions of Lieutenant Justice about the aerial reconnaissance photography capabilities of the Texas National Guard and provided her with a brief synopsis of the Howell investigation.
- Lieutenant Justice informed Agent Viegra of the various available surveillance assets and asked him if the Howell investigation was drug related.
- Agent Viegra responded that he can not provide Lieutenant Justice with information about any narcotics related violations. She then tells Agent Viegra that non-reimbursable military support of the investigation, without a drug nexus, is not possible.
- Mr. Enney also stressed the need for a drug nexus and told Viegra to return to his office for a determination as to whether or not such a nexus existed. Mr. Enney added that, if a drug case did exist within the Howell investigation, ATF should then prepare an official written request for support to be forwarded to the Counterdrug Support Office.
- Essentially, Mr. Enney had simply provided Agent Viegra with a verbal interpretation of NGR 500-2.

December 14, 1992

- Mr. Enney and Lieutenant Justice received a facsimile of a SAC/Houston

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letter, dated December 14, 1993, which requested military support for aerial reconnaissance photography of the Branch Davidian compound, McLennan County, Texas. The signature of RAC Earl K. Dunagan, RAC/Austin is on the SAC/Houston request. The request cited violations of the Gun Control Act of 1968 and the Organized Crime Control Act of 1970, Title XI, specifically the alleged manufacture of machine guns and explosive devices.

- The above memorandum also included a request for the transport of ATF agents aboard the aircraft during reconnaissance missions, as well as the interpretation and evaluation of the photographs. The request, which did not include any information about suspected drug violations, identified Agents Viegra and Jeffrey Brzosowski as contacts.
- Lieutenant Justice showed the request to LTC Pettit, who initialed his approval on the memorandum.

December 16, 1992

- Group Supervisor (G/S) Curtis D. Williams, SAC/Houston; USCS Criminal Investigator Gary Prior, Houston Aviation Branch; USCS Pilot Glen Goodwin, Houston Aviation Branch; and USCS Pilot Thomas Tait, Houston Aviation Branch flew a USCS Citation fixed wing aircraft over the Branch Davidian compound.
- The overflight mission included the use of an infra red sensor camera for the purpose of detecting "hot spots". The goal of the mission was to identify concentrations of individuals congregated within the compound, not to locate a methamphetamine laboratory.
- The mission, which was flown at a high altitude to evade detection, was not successful. A 35mm camera is also utilized, but the resulting photographs were of no investigative value.

December 17, 1992

- SAC Phillip J. Chojnacki held a meeting about the Howell investigation in his office. In attendance were SAC Chojnacki, Special Agent Ivan Kallister, Special Agent Davy Aguilera, and LTC David Lon Walker.
- LTC Walker told SAC Chojnacki that DoD could provide non-reimbursable military support of the investigation if there is a suspicion of drug activity. This meeting generated the ATF interest in obtaining information about any drug activity at the Branch Davidian compound.
- Consequently, Agent Aguilera was told to actively pursue information from his informants about a drug nexus.
- On December 17, 1992, LTC Walker received a telephone call from Agent Aguilera, who informed him of a facsimile transmission from Marc Breault in Australia that suggested the existence of an illicit methamphetamine laboratory at the Branch Davidian compound.
- Additionally, Intelligence Research Specialist Sandy Bettarton queried the criminal records of Branch Davidians and identified "some" prior drug records.

December 18, 1992

- Mr. Enney and Lieutenant Justice received a facsimile copy of a SAC/Houston letter, dated December 18, 1993, which requested military support for aerial reconnaissance photography of the Mag Beg, Limestone County, Texas. The signature of RAC Dunagan was on the request. The request cited suspected violations of the Federal Firearms Laws, specifically the alleged illegal possession of firearms and "possibly

004590

narcotics".

The request asked for an interpretation and evaluation of the photographs. Agent Brzosowski was identified as the contact for the request. -This was the first ATF written request for military support that mentioned a drug nexus. It is based upon the suspicion of a methamphetamine laboratory and the prior drug records of Branch Davidians.

December 21, 1992

-Mr. Ensey initialed/approved the December 18, 1992 National Guard support request.

Late December 1992 or early January 1993

-Special Agent Buford met with LTC Walker in his Washington office and provided him with more detailed information about the suspected methamphetamine laboratory.

January 4, 1993

-LTC Walker received a request for military support via facsimile from RAC Dunagan, Austin. The request was for command post furnishings.

January 5, 1993

-LTC Walker discussed the military support with ASAC Sarabyn.

January 6, 1993

-The first National Guard sortie is flown over the Branch Davidian compound and the Mag Bag sites by the Texas National Guard Counterdrug UC-26, which is a fixed wing dual engine prop aircraft.

-Eugene Trevino, National Guard, coordinated scheduling/logistics for ATF, in regard to the Korash investigation.

-Numerous aerial reconnaissance photographs were taken by the crew. Additionally, the mission included the use of the Thermal Imaging System (TIS) previously known as Forward Looking Infrared (FLIR).

-During the above mission, the TIS identified a "hot spot" inside the Branch Davidian compound and three sentries outside and behind the compound.

-Trevino offered unofficial interpretations to the Austin agents indicating that the photos could be indicative of "a meth lab"; but LTC Petit and Lieutenant Justice maintained that only information about grid coordinates were officially provided to ATF. No official opinion was provided to ATF regarding the "hot spot".

January 6, 1993

-LTC Walker prepared a letter with signature of Assistant Director Richard L. Garner, Chief, Special Operations Division, ATF Headquarters, addressed to Colonel Judith A. Browning, U.S. Army, Director of Plans and Support at the Pentagon.

-LTC Walker hand carried the letter to Commander Gary Harrell of Colonel Browning's staff. The letter requested the loan of office equipment in support of the Howell investigation.

-It should be noted that the request routing was unusual, but, met military guidelines. Walker told the WRT that he has since learned that it is preferable to initially coordinate with Operation Alliance.

January 14, 1993

004591

-The second National Guard sortie was flown over the Branch Davidian compound and the Mag Bag sites by the Alabama National Guard RF4-C A. Numerous OBLIQUE aerial photographs, providing low angle shots of the compound were obtained.

January 15, 1993

-Assistant Director Garner, Chief, Special Operations Division, received a letter from Colonel Judith A. Browning. In the letter, Colonel Browning acknowledged receipt of Mr. Garner's January 6, 1993 request for the loan of office equipment in support of an on-going ATF operation. She stated that she forwarded the request to the Regional Logistical Support Office (RLSO), Operation Alliance, El Paso, Texas. The letter is turned over to ATF Special Agent Tate and LTC Walker.

January 21, 1993

-With the concurrence of ASAC Chuck Sarabyn and Col. Browning, LTC Walker prepared a letter (with Col. Browning's concurrence) for signature of Assistant Director Garner, addressed to Major Victor Bucovsky, Officer in Charge of the Regional Logistics Support Office (RLSO), Operation Alliance.

-The memorandum requested seven Bradley Fighting Vehicles plus on-call maintenance support for a two week period to commence on February 8, 1993. An enclosure to the memorandum entitled, "WACO Case Military Support" requested additional field and office equipment/supplies.

-Major Bucovsky received the above mentioned letter from Assistant Director Garner via facsimile transmission.

-That afternoon, Major Bucovsky brought the request to Agent Eddie S. Pali, ATF Coordinator for Operation Alliance, and informed him that the RLSO can not furnish an equipment request of such magnitude. Agent Pali told the Major that he is unaware of the request but that he will handle the matter. Agent Pali opined that the above listed equipment is indicative of a planned siege, not a raid, and that the request was the largest in ATF history.

January 22, 1993

-Agent Pali made the following telephone calls:

1. Assistant Director Garner- about his January 21, 1993 letter, which identified LTC Lon Walker as the point of contact for the request. Assistant Director Garner did not discuss the drug case during his conversation with Agent Pali and told him to contact LTC Walker for specific information about the request.
2. LTC Walker- learned that Walker had been working with ASAC Sarabyn and that LTC Walker has visited the SAC/Houston office prior to submitting the request. Agent Pali and LTC Walker did not discuss the drug case. (LTC Walker recalled the telephone conversation with Agent Pali, but could not recall relevant specifics about their discussion; However, sometime prior to the departure of LTC Walker for Waco, Agent Pali and LTC Walker had a discussion about "hot spots" and Branch Davidian criminal record checks that suggested the existence of a methamphetamine laboratory.)
3. ASAC Sarabyn- learned that ATF Houston Division Operations Officer Phillip A. Lewis was the Logistics Coordinator for the equipment request in the Howell case. During the above telephone conversation with ASAC Sarabyn; Agent Pali asked ASAC Sarabyn for more detail on

004592

the drug case. Agent Pali requested the information about the drug case because of questions he anticipated from the military and others that he had already received from LTC Bertholf, JTF-6. In response to Agent Pali's question, ASAC Sarabyn responded that there are several subjects with prior narcotics conviction records, who are "connected" with the Branch Davidian compound and that one individual was suspected of being a "cooker" in the operation of a methamphetamine production laboratory on the compound premises. Also, ASAC Sarabyn reportedly told Agent Pali that he had information about the receipt of chemicals at the compound which could be used as precursors in the production of methamphetamine.

During the interview of Agent Pali by the WRT, he was asked if he believed the above details on the drug case provided by ASAC Sarabyn to be accurate, based upon the fact that the previous resident of the Branch Davidian compound, Roden, had been identified as being previously associated with the methamphetamine laboratory. Agent Pali admitted that ultimately, only "one" individual at the compound had a prior narcotics conviction, not several individuals. Additionally, Agent Pali mentioned that the chemicals being received at the compound could also be used as precursors for explosives.

4. Deputy Tactical Coordinator William Roshon, Senior Special Agent and Coordinator for the Drug Enforcement Administration (DEA), Operation Alliance: Agent Roshon offered the assistance of DEA to ATF in the form of on-site laboratory technicians. Agent Pali placed Agent Roshon in touch with the ATF SAC/Houston office. (Agent Pali maintained that two DEA officials were present at the Command Post at the Texas State Technical Institute on the day of the raid. During his interview with the WRT, Agent Roshon verified that DEA Group Supervisor Lex Henderson and DEA Special Agent Delfino Sanchez of the DEA Austin office, were on site at the Texas State Technical Institute ATF Command Post on February 28, 1993. Two DEA agents from the Waco office, Jay Ubanks and Brad Watson, were on stand-by.)
-It should be noted that Lex Henderson reported to WRT that DEA had independent information to corroborate ATF's suspicion regarding the meth. lab.
5. Agent Lewis- Arranged for a February 1 meeting at Operation Alliance. The purpose of the meeting was for Agent Lewis to brief LTC Jan Bertholf and other members of JTF-6, who could facilitate the request.

-Finally, Agent Pali completed the standard Operation Alliance Support Request Form which included the following comment in the remarks section: "Possible meth lab w/ wpns..."

February 2, 1993

-Agent Lewis provided a briefing about the Howell investigation to members of Operation Alliance. Agent Pali suggested the use of Light Armored Vehicles (LAV) instead of Bradley Fighting Vehicles. It was determined that the LAV's could not withstand fire from a 50 caliber weapon, which was believed to be in the possession of the Branch Davidians.
-Agent Lewis also provided an update about the suspected methamphetamine laboratory at the Branch Davidian compound, which is known to have received deliveries of chemical precursors for the manufacture of methamphetamine. (During his interview with the WRT, Operation Alliance Coordinator for DEA, Senior Special Agent William C. Rochon, advised that

004593

he offered the assistance of a DEA Clandestine Certified Laboratory Team. Agent Pali declined the request, however Agent Rochon provides Agent Lewis with the telephone number of RAC Arthur C. Wilson, DEA/Austin, Texas.)

- Agent Rochon opined that precursor chemicals used in the manufacture of methamphetamine, of which he understood was for use by the Branch Davidians and not for sale off their compound, can also be used in the manufacture of explosives.
- Deputy Senior Tactical Coordinator for Operations, U.S. Border Patrol Agent James E. Bowen, Operation Alliance, asked Agent Pali about the drug case in the Howell investigation. Agent Pali provided him with the background on the Branch Davidians at which time Bowen said he had no problem with the possibility that such a methamphetamine laboratory existed. Agent Bowen bases this on his experience with cult extremist groups that he has encountered in Southern California.
- After the briefing of Agent Lewis to Operation Alliance personnel, Brigadier General John Pickler, Commander, JTF-6, stated that it is not the position of the military to question the veracity of a law enforcement request regarding a drug nexus. Agent Pali continued to work on the request with Agent Lewis for the next several days.

Later on February 2, 1993

- Acting Deputy Senior Tactical Coordinator for Operations, U.S. Border Patrol Agent George A. Gunnoe, Operation Alliance, signed a letter drafted by ATF Coordinator Pali and addressed to the Office of the Adjutant General, Texas National Guard, to request the assistance in the Howell investigation on behalf of ATF Headquarters.
- The letter mentioned the impending execution of a federal search warrant by ATF at a location known to be occupied by "...a dangerous extremist organization believed to be producing methamphetamine". DoD Liaison Officer to ATF Headquarters, LTC David Lon Walker, was identified as the point of contact for the request.
- Also on February 2, 1993, Agent Gunnoe signed a second letter, identical to the above mentioned letter, which was addressed to the Commander of the Joint Task Force Six, requesting assistance in the Howell investigation on behalf of ATF Headquarters.

February 3, 1993

- The Operation Alliance Support Request form, dated January 22, 1993, is approved and the time frame for the operation is estimated to occur within a two-week window to commence on February 22, 1993.
- RAC Earl K. Dunagan, RAC/Austin, Texas signed a request, which was addressed to LTC William G. Pettit, Texas National Guard and Texas State Interagency Coordinator William R. Enney. The request was for an additional photographic sortie over the Branch Davidian compound and the Mag Bag.
- (LTC Pettit has informed the WRT that any interpretations of the aerial reconnaissance photographs provided by SRA Trevino are deemed "unofficial").
- The third National Guard sortie was flown over the Branch Davidian compound and the Mag Bag sites by the Texas National Guard Counterdrug UC-26 aircraft. Numerous aerial reconnaissance photographs, which included infra-red video, were taken by the crew.

February 4, 1993

004594



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

MAR 16 1992

Colonel Judith Browning
Counterdrug Coordinator
Department of Defense
The Pentagon, [REDACTED]
Alexandria, Virginia 20301

Dear Colonel Browning:

The Bureau of Alcohol, Tobacco, and Firearms (ATF) is currently investigating a case in Texas involving several dozen people in apparent violation of firearms and drug laws. As part of our investigation, we are establishing a forward command post for command and control.

We would appreciate the loan of office equipment as part of the DOD support for counterdrug efforts. We will pick up the furniture and ensure proper accountability.

We would appreciate your consideration of the enclosed support list. Our point of contact is LTC Lon Walker, at [REDACTED] fax [REDACTED]. Your support is appreciated.

Sincerely yours,

Richard L. Garner
Chief, Special Operations Division

Enclosure

004601

Made available for pick up anywhere near Waco, Texas,
on January 11, 1993

Tables, approximately 6 feet long: 4

Desks, office: 5

Desk chairs: 20

Cots: 6

Sleeping bags: 15, with cover and water proof bag

Refrigerator: 1, any size

Typewriter, electric: 2

004602



OFFICE OF THE DEPARTMENT OF DEFENSE
 COORDINATOR FOR
 DRUG ENFORCEMENT POLICY AND SUPPORT
 WASHINGTON, DC 20301-1510



15 JAN 1993

Mr. Richard L. Garner
 Chief, Special Operations Division
 Bureau of Alcohol, Tobacco
 and Firearms (ATF)
 Washington, D.C. 20226


Dear Mr. Garner:

I am responding to your letter of January 6, 1993,
 requesting the loan of office equipment to support an on-going
 ATF operation.

The request was forwarded to the Regional Logistical Support
 Office (RLSO) in El Paso, Texas. RLSO El Paso has contacted the
 ATF representatives in Texas and I understand that we will be
 able to support your request. Any requests for further support
 should be addressed to:

RLSO El Paso
 P.O. [REDACTED]
 El Paso, TX 79908-8051
 [REDACTED]

Sincerely,


 Judith A. Browning
 Colonel, U.S. Army
 Director, Plans and Support

004802



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

JAN 22 1993

Major Victor Bucowsky
Officer-in-Charge
Regional Logistics Support Office
P.O. Box [REDACTED]
El Paso, Texas [REDACTED]

Dear Major Bucowsky:

We appreciate the assistance your office has provided the Bureau of Alcohol, Tobacco and Firearms. Our on-going case in central Texas, has developed to the point where we must ask for additional help.

We need the following support:

A MOUT site in central Texas, for Special Response Team training early in February 1993, preferably 3 consecutive days. Fort Hood is suitable for our needs if available, and a weekend is acceptable.

Driver training and on-call maintenance support for Bradley Fighting Vehicles, and the loan of seven Bradleys February 8 for 2 weeks. The Bradleys will be used only for their armor protection and thermal sight capability; no weapons system will be used.

The on-call support listed in the enclosure is required in the event the case requires a long-term siege.

This equipment and operational support is a continuation of the firearms and drug case supported by your office, based on our January 6 request to Colonel Judith Browning. The military personnel will be under

004606



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

JAN 21 1993

Major Victor Bucovsky
Officer-in-Charge
Regional Logistics Support Office
P.O. Box [REDACTED]
El Paso, Texas [REDACTED]

Dear Major Bucovsky:

We appreciate the assistance your office has provided the Bureau of Alcohol, Tobacco and Firearms. Our on-going case in central Texas, has developed to the point where we must ask for additional help.

We need the following support:

JTF-6 ①
A MOUT site in central Texas, for Special Response Team training early in February 1993, preferably 3 consecutive days. Fort Hood is suitable for our needs if available, and a weekend is acceptable.

FBI ②
Driver training and on-call maintenance support for Bradley Fighting Vehicles, and the loan of seven Bradleys February 8 for 2 weeks. The Bradleys will be used only for their armor protection and thermal sight capability; no weapons system will be used.

③
The on-call support listed in the enclosure is required in the event the case requires a long-term siege.

This equipment and operational support is a continuation of the firearms and drug case supported by your office, based on our January 6 request to Colonel Judith Browning. The military personnel will be under

004610

WACO Case Military Support 27'

ON CALL EFFECTIVE 0800 hrs, 15 FEB 93, TO BE DELIVERED AND ESTABLISHED/SETUP WITHIN A 10 MILE RADIUS OF WACO, TEXAS, WITHIN 8 HOURS

Tents- GP Medium 3: 2 sleeping, 1 command post
GP Small 2: 1 VIP sleeping and 1 VIP meeting

Field Tables with chairs= 12

Heaters- Herman Nelson, 5 for tents with operator

Light sets- enough for 5 tents with operator

Flood lights- enough to illuminate a large building
360 degrees with operator

Generators, with operators for 24 hr operation= enough to operate lights and provide 110 volt battery charger power in tents

Cots= 50

Sleeping bags= 90

Field phones= 12, with 6 miles of wire

Switchboard with operator for 24 hour operation, to handle 12 phones

Immersion heaters= 4 Water Buffalo= 1

Smoke generators with operators to cover 2 square kilometers with concealment smoke

Sand bags= 500 Drivers' goggles= 50

2 1/2 ton truck with 1 operator= 2 for water buffalo movement and transport of agents on site.

Loud speakers with amp and power with operator

Night vision goggles= 15

Gas Masks= 100

MREs (for purchase) 100 cases

004612

PLEASE READ ALONG WITH 5-VOLUME SET OF ATF DOCUMENTS

These are notes taken during a May 5, 1993 interview with SA John Malone, ATF, to agents Paul Irving and Tom Smith (Waco Administrative Review). The interview was conducted so that SA Malone could provide the Waco Administrative Review with a synopsis of information contained in a 5 volume set of documents which had been provided to the Waco Administrative Review by ATF.

Volume A

Section 1 - Information From Marc Breault

This section begins with background material of the Branch Davidian Cult. Most of the information in this section was provided by former cult member Marc Breault. Breault was noted by Malone as one of the more articulate former members of the cult. Breault now lives in his native country, Australia. Breault was flown to Los Angeles by the ATF for the interview.

The section begins with facsimile correspondence between Marc Breault, and Davy Aguilera (Aguilera was the case agent), followed by Breault's database of all Davidian members he was aware of.

Malone said that Breault was able to provide extensive biographical data on past and present cult members. Breault used his own computer data-base for a synopsis of each member.

Apparently, ATF reached most former cult members through information provided by Breault.

Section 2 - 3270.2's

This section contains all of the ATF written memorandum reports (3270's) on the investigation since its inception; June 9, 1992. The case reports are all assembled in chronological order beginning on June 9.

Malone indicated that agents' statements and rough field notes are not included in this section. Malone said that all statements and case agent notes would be in the case file; now in the possession of the Texas Rangers, or the Office of the U.S. Attorney.

SA Malone indicated that beginning in July of 1992, the case was made a "sensitive - significant" case; monitored closely by Headquarters. The monitor, or review, is conducted by the Program Manager within the Firearms Division who reports to the SAIC of the Firearms Division, who reports to the Chief of the Firearms Division. The Chief reports to the Director and his staff.

This section does contain some surveillance and undercover reports. This section also contains a statement by former cult member Poia Vaega about the cult.

Section 3 - La Verne P.D. Information

A branch of the Davidian Cult was located at a house in La Verne, California.

This section focuses on the investigation of the Davidian cult in La Verne, California. The information in this section is what ATF accumulated from evidence seized during the execution of a search warrant on a house inhabited by cult members (March 8, 1993), and by interviews of current and past cult members.

Malone indicated that most of the evidence seized pursuant to the warrant was in the nature of video and audio tapes wherein Koresh demonstrated a "propensity toward violence". Malone said that the search warrant also yielded some chemicals used to manufacture explosives. *

This section also contains notes by Marc Breault that related to cult members living in California.

Section 4 - McLennan County Information

This section contains some background information about the cult and Koresh, obtained from the McLennan County Sheriff's Office (near Waco). There is background information here relative to the 1987 shoot-out with former cult member Rodan.

Section 5 - Human Resource (Child Abuse Reports)

This section contains background information accumulated by ATF relative to the children present in the compound. Most of this information was obtained through the Texas Department of Human Resources which was called upon to investigate the compound. The majority of complaints to the TDRR were from former cult members.

Section 6 - Branch Davidian Background Information

This section contains a historical portrayal of the Branch Davidian cult, from the birth of its leader to David Koresh.

This historical rendition is a 24 page paper written by former cult member Marc Breault. In addition, Breault has provided numerous documents handed out by Koresh during his sermons.

Volume B -

Section 7 - Old Statements (Ex-Members)

This section contains the results of interviews of former cult members. These interviews were conducted with the hopes of obtaining as much information about the cult as possible. Most of this section contains affidavits of former cult members about the cult itself, its founder Vernon Howell, etc.

Section 8 - (The concept of the) National Response Plan

This section contains the relatively new ATF Manual section regarding the implementation of their National Response Plan. This plan is implemented in the event that ATF has to deploy large numbers of agents to a designated location. Malone noted that the SRT concept was developed before implementation of the National Response Plan.

Section 9 - Miscellaneous

This section contains miscellaneous interviews, all having to do with the cult.

The report by Joyce Sparks, Texas Department of Health and Human Services regarding the cult is the primary document in this section. }

This section also contains statements and affidavits made by former cult members in reference to background material on the cult.

This section also contains a synopsis of the UPS deliveries to the compound, and a listing of the firearms purchased by Korsh (a copy of the original 4473 form signed by Korsh is included). where

Section 10 - SRT request

This section contains information relative to the ATF's request to use the Texas National Guard for the operation which included allegations of a "meth" lab at the compound. Also included were the results of fly-overs and grid plans.

Section 11 - Communication Plan

This section contains the Radio Communications Plan for the Operation. The original plan was formulated January 6, 1993; a subsequent plan was written dated January 25, 1993.

Malone noted that radio technician Don Shidler recorded much of the radio traffic on the day of the raid. Malone thinks that the tapes and transcripts are in the possession of the Office of the U.S. Attorney. However, Malone stated the ATF Headquarters have a copy of the communications plan. ^{raid tape}

Malone said that on the day of the raid, each SRT team (3 teams total at the raid) was on its own radio frequency. It was up to each individual SRT leader to switch frequencies to communicate with the other SRT if the need arised. Malone said that each member of the SRT had the capability to switch frequencies; the option to do so was left to the SRT leaders.

Malone also said that a communication van was present at the raid site which monitored all frequencies.

Section 12 - Affidavit

This section contains the original affidavit for search warrant dated February 25, 1993 written by case agent Davy Aguilera..

Section 13 - Briefing Paper

This section contains a briefing paper written by the Firearms Division (dated January 5, 1993) outlining the operation. This paper was forwarded to the Secretary of the Treasury for Enforcement (probably Peter Nunes) after review by the ATF Director and his staff. SA Malone indicated that this was normal procedure when the Director of ATF wanted to apprise Treasury of major on-going cases.

Malone said that usually, all search warrants are approved at the field SAIC level. In this case, however, due to the immensity of the operation (relatively large expenditures) Headquarters became the approving entity.

Section 14 - Operation Outline

This section outlines the operational plan. The actual operational plan for the raid was dated February 9, 1993, although Malone said that the development of the operational plan was "well before this date." This operational plan details all aspects of the operation. The root of the operation is contained in the National Response Plan (detailing SRT duties, use of air support, designated hospitals, ambulance, etc.). Malone said that the plan was written by SAC Sarabyn (with input from case agent Aguilera).

Proof of HCS materials
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req. it

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Houston Field Division

**VERNON WAYNE HOWELL
INVESTIGATION**

53110-92-1069X



FOR OFFICIAL USE ONLY

004634

Briefing Paper
Houston Field Division
Houston, Texas
January 5, 1993

SUBJECT: Vernon Wayne Howell, et. al.
53110-92-1069X
Monitor Number F53192-09

BACKGROUND

This investigation was opened during June of 1992 on a referral of information from the McLennan County, Texas Sheriff's Department. The information related to the possession and manufacture of Title I, Title II firearms and explosives by Vernon W. Howell, aka: David Koresh, Route 7, Box 471-B, Waco, Texas. This address consists of a massive compound on 70 acres of land. The compound is occupied by approximately 70 - 80 individuals of which 20 - 30 are adult males, 20 - 30 adult females and 20 - 30 children. These individuals are members of an active cult known as the "Branch Dividian" and Vernon Howell is their leader.

This land has been in the possession of the "Branch Dividian" for numerous years, however, according to statements of ex-members, over the last few years, the

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violence associated with the cult has dramatically increased. Vernon Howell became the leader in November of 1987 when he and seven other armed individuals got into a 45 minute gun battle with the previous leader. The eight were indicted for attempted murder, but later found not guilty during a jury trial. As a result of the gun fight, Vernon Howell succeeded in taking over the leadership of the cult. The ex-leader later killed two people and is currently in the custody of the Texas Department of Corrections.

PROBABLE CAUSE

Records from the United Postal Service (UPS) from March 1992 through June 1992, reveal that Howell has received in excess of \$44,000.00 in firearms parts and or explosive parts and materials, to include, various chemicals, ignitor cord, large quantities of black powder, aluminum metal powder, numerous M-16 kits, 200 practice (M-31) rifle grenades, an M-76 grenade launcher, approximately 200 lower or upper receivers for AR-15's, AK1's, K5A's, K5B's, K1B's and K2B's with AZFS and thousands of rounds of ammunition. Howell has been receiving shipments from UPS for four years. Information from those shipments are know being obtained. Firearms Technology and Explosives

Technology has received a list of the shipments Howell has received between March and June and will try to determine what components are missing to classify the firearms as Title II or what components are needed to construct a destructive device and identify a source Howell may be using to obtain those components.

Of the 30 plus people who have been identified in the compound, no one has an FFL and or a manufacturers license. No one has any NFA weapons registered to them. The address is also clear for both, however, FFL, Henry S. McMahon, frequents the compound and supplies both Howell and other members with firearms.

During the last 15 months, Howell has purchased over 50 firearms many of them are AK's and AKS's. During a recent inspection of the FFL, records revealed that 73 SGW lower receivers and 26 firearms had been sold to Howell, but not logged in his records nor was a 4473 executed. At the request of the FFL, Howell went back to the FFL and completed a 4473, listing the above. There were numerous other violations discovered, but the inspection was terminated in order to keep the investigation from being jeopardized once the FFL brought up Howell.

Statements have been obtained from 2 neighbors who are familiar with automatic weapons and have military backgrounds and have heard automatic gunfire on numerous occasions over the years coming from the compound. The last automatic gunfire was heard approximately February of 1992.

During 1992, an underground firing range was built on the compound. This was observed by a Department of Human Services worker in December of 1992 when a child on the compound spoke to her about the men on the compound carrying guns and shooting them.

Statements from 5 previous members who lived on the compound at various times reveal that all of the men on the compound are always armed, the compound has guards 24 hours a day, 7 days a week. This has been corroborated by surveillance and other sources. At this time one high ranking member of the cult has been identified as a convicted felon. Several other possibilities are being checked to confirm convictions and as new people are being identified, they are being checked for criminal records.

In addition, individual members from this group can testify that they have observed Howell shoot an AK-47 on the compound. That during a gathering of all members, an AK-47 fully automatic firearm was passed around for everyone to familiarize themselves with it. That Howell instructed 3 members to go to California to pick up a conversion kit which was given to them and then taken back to the compound. None of these people have been on the compound during the last year and none of them will go back.

One previous member identified another current member who worked in a bomb factory before joining the cult. On November 13, 1992, Deputy Terry Fuller from the Sheriff's Office heard a loud explosion on the compound while driving by and saw a big cloud of gray smoke. An ATF pole camera was in operation at that time but was pointed in a different direction.

This investigation was discussed by the case agent and the ARAC with the AUSA in Waco when we had only about half of the probable cause that we have now. The AUSA felt that we had more than enough probable cause to get a historical search warrant for the compound and an arrest warrant for Howell. We should now be able to get an additional arrest warrant for the convicted

felon that we have identified. The case agent and ARAC are now preparing a draft affidavit which will go into much more detail and document the exact times and places that the events listed in this document occurred. The draft affidavit will continually be updated as new probable cause is developed.

PLANS

A. INVESTIGATIVELY:

We continue to further develop our probable cause. We currently have a pole camera in operation on the compound. We have an affidavit prepared for a pen register which has been approved by the AUSA and as soon as the phone company can identify all of the telephone numbers at the compound the pen register will be in operation. We have an undercover/ surveillance house next to the compound which will go into operation 24 hours a day, 7 days a week on January 11, 1993. This will enable us to identify everyone that comes and goes from the compound. It is hoped that we will be able to get undercover agents on to the compound and into some of the buildings. We have identified some new ex-members that want to talk

to us. They will be interviewed and we will also be re-interviewing some other ex-members. As mentioned earlier in this report, we will be working with UPS, Firearms Technology and Explosives Technology, following up all potential leads. We also hope to identify more convicted felons who live at the compound.

B. TACTICALLY:

We continue to analyze the compound, the buildings, the people, develop intelligence, discuss alternatives, develop a list of equipment, and resources that would be needed and where we could get them. We are also discussing our strategy, should we decide to recommend the execution of a search warrant. We are also trying to estimate the potential cost.

CONCLUSION

On January 22, 1993, a meeting of the effected individuals is scheduled in Houston, Texas to discuss what we have learned or developed from our listed plans. The following week depending on what occurs, we may be in a position to come to headquarters

(SAC/ASAC/Case Agent) to present a proposal for some type of activity in February or we will prepare an additional briefing paper discussing our progress and future plans at that time if we feel further work is needed to be done.

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AFFIDAVIT

Affiant alleges the following grounds for arrest of defendant:

I, Davy Aguilera, being duly sworn, depose and state that:

I am a Special Agent with the U. S. Treasury Department, Bureau of Alcohol, Tobacco and Firearms, Austin, Texas, and I have been so employed for approximately 5 years. This affidavit is based on my own investigation as well as information furnished to me by other law enforcement officers and concerned citizens.

As a result of my training and experience as a Special Agent for the Bureau of Alcohol, Tobacco and Firearms, I am familiar with the Federal firearms and explosive laws and know that it is unlawful for a person to manufacture, possess, transfer, or to transport or ship in interstate commerce machineguns, machinegun conversion parts, or explosives which are classified, by Federal law, as machineguns, and/or destructive devices, including any combination of parts either designed or intended for use in converting any firearm into a machinegun, or into a destructive device as defined by Federal law, and from which a destructive device may be readily assembled, without them being lawfully registered in the National Firearms Registration and Transfer Record, U.S. Treasury Department, Washington, D.C.

During my 5 years experience with the Bureau of Alcohol, Tobacco and Firearms, I have investigated persons who have unlawfully possessed, transferred or shipped in interstate or foreign commerce firearms and/or explosive devices which were not registered to them with the National Firearms Registration and Transfer Record, and have successfully participated in the prosecution of several of these individuals.

On June 4, 1992, I met with Lieutenant Gene Barber, McLennan County Sheriff's Department, Waco, Texas, who has received extensive training in explosives classification, identification and the rendering safe of explosive devices and has been recognized in Federal Court as an expert witness in this field. Lt. Barber stated that he had received information in May 1992, from an employee of United Parcel Service, Waco, Texas, that from April through June of 1992, several deliveries had been made to a place known as the "Mag-Bag", Route 7, Box 355-B, Waco, Texas, 76705, located on Farm Road number 2491, in the names of Mike Schroeder and David Koresh, which the UPS employee believed to be firearms components and explosives. Through my investigation, I know that the place known as the "Mag-Bag" is a small tract of land located at the above address which has two metal buildings located on it.

The name "Mag-Bag" comes from the shipping label which is accompanied many items shipped to the above address. I and other agents have personally observed vehicles consistently over the past six months at the "Mag-Bag" location which are registered to Vernon Wayne Howell, aka: David Korash. Lieutenant Barber further stated that the UPS employee, Larry Gilbreath, became suspicious and concerned about the deliveries, most of which were shipped Cash On Delivery, (C.O.D.) because of their frequency and because of the method used by the recipient to receive the shipments and to pay for them.

Lieutenant Barber explained that David Korash was an alias name used by Vernon Wayne Howell who operated a religious cult commune near Waco, Texas, at a place commonly known as the Mount Carmel Center, which is one of the premises to be searched and more specifically described above. I have learned from my investigation, particularly from my discussions with former cult members that Vernon Howell adopted the name David Korash more than a year ago. The name "David Korash" was chosen by Howell because Howell believed that the name helped designate him as the messiah or the anointed one of God. Lieutenant Barber further related that he was told by Gilbreath that he has been making deliveries to the "Mag Bag" and the Mount Carmel Center on Double EE Ranch Road, Waco, Texas, for several years, but he had never been suspicious of any of the deliveries until 1992. Gilbreath became concerned because he made several C.O.D. deliveries addressed to the "Mag-Bag", but when he would stop at that location he was instructed to wait while a telephone call was made to the Mount Carmel Center by the person at the "Mag-Bag", usually Woodrow Kendrick or Mike Schroeder, notifying the person who answered the phone at the Mount Carmel Center that UPS was coming there with a C.O.D. delivery, after which Gilbreath would be instructed to drive to the Mount Carmel Center to deliver the package and collect for it. That on those occasions when he was at the Mount Carmel Center to deliver and collect for the C.O.D. packages. He saw several manned observation posts, and believed that the observers were armed.

Lieutenant Barber stated that he was told by Larry Gilbreath (UPS) that in May of 1992 two cases of inert hand grenades and a quantity of black gun powder were delivered by him to the "Mag-Bag." The source of these shipments was unknown to Gilbreath.

On June 9, 1992, I was contacted by Lieutenant Barber who told me that he had learned from Larry Gilbreath that in June of 1992, the United Parcel Service delivered ninety (90) pounds of powdered aluminum metal and 30 to 40 cardboard tubes, 24 inches in length and 1 1/4 to 1 1/2 inches in diameter, which were shipped from the Fox Fire Company, Pocatella, Idaho, to "Mag-Bag." From another shipper whose identity is unknown, two parcels containing a total of sixty (60), M-16/AR-15 ammunition magazines were delivered by UPS to the "Mag-Bag" on June 8, 1992. I know based upon my training and experience that an AR-15 is a semi-automatic rifle

practically identical to the M-16 rifle carried by United States Armed Forces. The AR-15 rifle fires .223 caliber ammunition and, just like the M-16, can carry magazines of ammunition ranging from 30 to 60 rounds of ammunition. I have been involved in many cases where defendants, following a relatively simple process, convert AR-15 semi-automatic rifles to fully automatic rifles of the nature of the M-16. This conversion process can often be accomplished by an individual purchasing certain parts which will quickly transform the rifle to fire fully automatic. Often times templates, milling machines, lathes and instruction guides are utilized by the converter.

Lieutenant Barber related to me the following background information about the Mount Carmel Center commune, which is located at Rt. 7, Box 471-B, Waco, Texas, and consists of some seventy (70) acres of land, occupied by Vernon W. Howell, a/k/a David Koresh and others.

The property was once owned and occupied by George Buchanan Roden, who once was an unannounced candidate for the office of President of the United States. Roden inherited the property sometime in the 1950's, and beginning about January 1986 established and led a religious cult group with about twenty (20) followers. He claimed to be the Prophet of the group. The property at that time was known as the "Elk Property/Mt. Carmel Center." About this same time, Roden was in jeopardy of losing the property by foreclosure due to delinquent taxes which had not been paid since 1968.

About this same time, Vernon Wayne Howell, had established a similar group in Palestine, Texas, known as the Branch Davidian Seventh-Day Adventists. Sometime in 1987, Howell, laid claim to ownership of the Mt. Carmel Center property and wanted to acquire it by any means possible. On November 3, 1987, Howell led an armed group of eight men into Roden's camp and a 45-minute gun battle ensued. Roden was shot in the finger and was the only person injured.

Eight people, including Vernon W. Howell and Paul Gordon Fatta were arrested by the McLennan County Sheriff's Department, Waco, Texas, and were indicted for attempted murder by a McLennan County Grand Jury. All eight subjects were tried in State court at Waco, Texas, and were acquitted of the charges of attempted murder by a jury.

After the armed assault by Howell and his followers, George Roden vacated the property. In 1987, the property was taken over by Howell and his cult group. The taxes owed on the Mt. Carmel Center have been paid by Howell's group. His cult has grown to about seventy (70) to eighty (80) people which includes men, women and children who now live on the Mount Carmel Center property.

Lieutenant Barber furnished me with recently taken aerial photographs of the Mount Carmel Center which had been taken by

Captain Dan Weyenberg of the McLennan County Sheriff's Department, Waco, Texas. Among the things noted in the photographs was a buried bus near the main structure and an observation tower, approximately three or four stories tall with windows on all four sides enabling a view from the structure of 360 degrees.

I was also advised by Lieutenant Barber that Robert Carvenka, a known long time McLennan County citizen, who lives near the Mount Carmel Center compound, had, on several occasions, from January through February of 1992, heard machinegun fire coming from the compound property. Mr. Carvenka offered law enforcement authorities his residence to be used as a surveillance post.

On July 21, 1992, I met with Robert L. Carvenka, Route 7, Box 103, Riesel, Texas. Mr. Carvenka farms the property surrounding the east side of the Mount Carmel property. Mr. Carvenka stated that he has farmed that area since 1948. From about January and February of 1992 he has heard machinegun fire on the Vernon Howell property during the night hours. He is familiar with and knows the sound of machinegun fire because he did a tour overseas with the U.S. Army. He believes that some of the gunfire he heard was being done with 50 caliber machineguns and possibly M-16 machineguns.

On November 13, 1992, I spoke with Lieutenant Gene Barber who told me that Mr. Carvenka, whose ranch is adjacent to the Mount Carmel Property, had reported hearing bursts of gunfire from the Mount Carmel compound on November 8, 1992, at approximately 2:45 p.m.

On June 8, 1992, based on information gained from Gilbreath by Lieutenant Barber, I interviewed Dave Hauptert, Olympic Arms Inc., Olympia, Washington, a company which had shipped several parcels to David Korash at the "Mag-Bag", Route 7, Box 555-B, Waco, Texas. Mr. Hauptert told me that the records of Olympic Arms Inc., indicated that approximately forty-five (45) AR-15/M16 rifle upper receiver units, with barrels of various calibers, had been shipped from March through April of 1992 to the Mag-Bag Corporation for a total cost of \$11,107.31, cash on delivery.

On January 13, 1993, I interviewed Larry Gilbreath in Waco, Texas, and confirmed the information which had previously been related to me by Lieutenant Barber. Mr. Gilbreath told me that although he had been making deliveries at the "Mag Bag" and the Mount Carmel Center for quite some time, his suspicion about the packages being delivered to those places never was aroused until about February 1992. At that time the invoices accompanying a number of packages reflected that they contained firearm parts and accessories as well as various chemicals. He stated that in May 1992, a package which was addressed to the "Mag Bag" accidentally broke open while it was being loaded on his delivery truck. He saw that it contained three other boxes the contents of which were "pineapple" type hand grenades which he believed to be inert. He stated that there were about fifty of the grenades and that he later delivered them to the

Mount Carmel Center. The Mount Carmel Center is that tract of land depicted in the photograph labeled "Attachment B", with the main residential structure being depicted in "Attachment C."

Mr. Gilbreath stated that these suspicious packages were usually addressed to the "Mag Bag" or to David Koresh. When he would stop to deliver them to the "Mag Bag"; he was met most of the time by Woodrow Kendrick, and on other occasions by Steve Schneider. They would have him wait while they telephoned the Mount Carmel Center to tell them that UPS was coming with a C.O.D. package. He would be instructed to take the package(s) to the Mount Carmel Center. Upon arriving at the Mount Carmel Center, he was usually met by Perry Jones or, on occasion, by Steve Schneider, who would pay the C.O.D. charges in cash and would accept delivery of the shipments.

On this same date, June 8, 1992, I interviewed Glen Deruiter, Manager, Sarco Inc., Stirling, New Jersey, and learned from him that in May of 1992, their company shipped one M-16 parts set kit with a sling and magazine to the "Mag-Bag" in the name of David Koresh. The total value of these items was \$284.95.

Also on June 8, 1992, I interviewed Cynthia Aleo, Owner/Manager, Nesard Gun Parts Company, Barrington, Illinois, and learned from her that in May of 1992, her company shipped to the "Mag-Bag", two (2) M-16 machinegun car kits and two (2) M-16 machinegun EZ kits. These kits contain all the parts of an M-16 machinegun, except for the lower receiver unit which is the "firearm" by lawful definition. Ms. Aleo stated that the total amount of sales to the Mag-Bag was \$1227.00. Within the past month, I have spoken with Curtis Bartlett, Firearms Technician with BATF and have learned that Nesard Company has been under investigation in the past by ATF for engaging in a scheme to supply parts which would enable individuals to construct illegal weapons from various component parts.

On June 9, 1992, I requested that a search of the records of the National Firearms Registration and Transfer Record, Washington, D.C., to determine if Vernon W. Howell and/or Paul G. Fatta, one of Howell's closest followers, had any machineguns or other NFA weapons registered to them. The result of the search was negative.

On this same date, June 9, 1992, I requested a search of the records of the Firearms Licensing Section of the Bureau of Alcohol, Tobacco and Firearms, Atlanta, Georgia, to determine if Howell, Fatta or the "Mag-Bag" Corporation were licensed as Firearms dealers or manufacturers. The result of this search was negative.

On June 10, 1992, I requested a search of the records of the Firearms Licensing Section of the Bureau of Alcohol, Tobacco and Firearms, Atlanta, Georgia, to determine if David Koresh, Howell's alias name, or David M. Jones, a known associate of Howell, were licensed as Firearms dealers or manufacturers. The result of this

search was negative.

On June 23, 1992, I spoke with ATF compliance Inspector Robert Souza, Seattle, Washington, who inquired about the Mag Bag Corporation, Route 7, Box 838, Waco, Texas. He had received some invoices reflecting a large quantity of upper receivers and AR-15 parts being shipped to "Mag Bag", Waco, Texas, from Olympic Arms Inc., 624 Old Pacific Hwy., S.E. Olympia, Washington. Inspector Souza faxed me copies of invoices, reflecting purchases of twenty (20) AR-15 upper receiver units with barrels by the "Mag Bag" on March 26th and 30th, 1992. These items are in addition to the items referred to above.

As a result of my investigation of shipments to Howell/Koresh and Mike Schroeder at the "Mag-Bag" Corporation, Waco, Texas, through the United Parcel Service, and the inspection of the firearms records of Henry McMahon, dba, Hewitt Hand Guns, Hewitt, Texas, I have learned that they acquired during 1992, the following firearms and related explosive paraphernalia:

One hundred four (104), AR-15/M-16, upper receiver groups with barrels.
 Eight thousand, one hundred (8,100) rounds of 9mm and .223 caliber ammunition for AR-15/M-16.
 Twenty (20), one hundred round capacity drum magazines for AK-47 rifles.
 Two hundred sixty (260), M-16/AR-15, magazines.
 Thirty (30) M-14, magazines.
 Two (2) M-16 EE kits.
 Two (2) M-16 Car Kits.
 One M-76 grenade launcher.
 Two hundred (200) M-31, practice rifle grenades.
 Four (4) M-16 parts set Kits "A".
 Two (2) flare launchers.
 Two cases, (approximately 50) inert practice hand grenades.
 40-50 pounds of black gun powder.
 Thirty (30) pounds of Potassium Nitrate.
 Five (5) pounds of Magnesium metal powder.
 One pound of Igniter cord. (A class C explosive)
 Ninety-one (91) AR/15 lower receiver units.
 Twenty-six (26) various calibers and brands of hand guns and long guns.
 90 pounds of aluminum metal powder.
 30-40 cardboard tubes.

The amount of expenditures for the above listed firearm paraphernalia, excluding the (91) AR-15 lower receiver units and the (26) complete firearms, was in excess of \$44,300.

From my investigation, I have learned that a number of shipments to the "Mag-Bag" have been from vendors with questionable trade practices. One is presently under investigation by the Bureau of

Alcohol, Tobacco and Firearms, for violations of the National Firearms Act, which prohibits unlawful possession of machineguns, silencers, destructive devices, and machinegun conversion kits.

Because of the sensitivity of this investigation, these vendors have not been contacted by mail for copies of invoices indicating the exact items shipped to the Mag-Sag.

On November 13, 1992, I interviewed Lieutenant Coy Jones, McLennan County Sheriff's Department, Waco, Texas, and learned from him that he had spoken with an employee of the United Parcel Service, Waco, Texas, who wished to remain anonymous. This person told Jones that Marshal Keith Butler, a relative of the person who wishes to remain anonymous, is a machinist by trade, and is associated with Vernon Howell.

The records of the Texas Department of Public Safety reflect that Butler has been arrested on seven (7) occasions since 1984 for unlawful possession of drugs. Two of the arrests resulted in convictions for possession of a controlled substance. Butler's latest arrest and conviction was in January 1992. Butler received a sentence of three (3) years in the Texas Department of Corrections. In April 1992 Butler was paroled to McLennan County, Texas.

On November 13, 1992, I interviewed Terry Fuller, a deputy sheriff for the McLennan County Sheriff's Department, Waco, Texas, and learned from him that on November 6, 1992, at approximately 1:25 p.m., while on routine patrol in the area of the Mount Carmel Center, the property controlled by Vernon Howell, he heard a loud explosion in the area of the north part of the Mount Carmel property. As he drove toward the area where he thought the explosion had occurred, he observed a large cloud of grey smoke dissipating from ground level on the north end of the Mount Carmel property.

On December 7, 1992, I spoke with Special Agent Carlos Torres, Bureau of Alcohol, Tobacco and Firearms, Houston, Texas, who had been assisting me in a portion of this investigation. He related to me the results of his interview on December 4, 1992, with Joyce Sparks, Texas Department of Human Services, Waco, Texas. Special Agent Torres told me that Ms. Sparks received a complaint from outside the state of Texas, that David Koresh was operating a commune type compound, and that he was sexually abusing young girls. Ms. Sparks stated that on February 27, 1992, she along with two other employees of the Texas Department of Human Services and two McLennan County Sheriff's Deputies responded to the complaint. They went to the Mount Carmel Center compound located east of Waco in McLennan County. When they arrived at the compound, they were met by a lady who identified herself as Rachel Koresh, the wife of David Koresh.

Mrs. Korash was reluctant to talk with Ms. Sparks because David Korash was not there. She had strict orders from him not to talk with anyone unless he was present. Ms. Sparks finally was able to convince Mrs. Korash to allow her to talk with some of the children who were present. She talked to a young boy about 7 or 8 years old. The child said that he could not wait to grow up and be a man. When Ms. Sparks asked him why he was in such a hurry to grow up, he replied that when he grew up he would get a "long gun" just like all the other men there. When Ms. Sparks pursued the subject, the boy told her that all the adults had guns and that they were always practicing with them.

Ms. Sparks also told Special Agent Torres that she was escorted thorough part of the building where she noted a lot of construction being performed. She also said that she could not determine how many people were in the group, but estimated about sixty (60) to seventy (70) people there including men, women and children. She stated that she saw about 15 to 20 adult males there.

Ms. Sparks also said that on April 6, 1992, she visited the compound again. On this occasion she talked with David Korash. She asked Korash about the firearms which she had been told by the small child. Korash admitted that there were a few firearms there, but said that most of the adults did not know of them, and that there were too few to be of any significance. Ms. Sparks said that when she pressed Korash about the firearms and their location at the compound, he offered to show her around. He requested that she wait about 30 minutes until he could get the other residents out of the building so they would not see where he had the firearms stored. After a period of time, Ms. Sparks was escorted through part of the building by Korash. She notes that there was more construction activity and that the inside of the structure looked quite different from her previous visit. Each time Ms. Sparks asked Korash about the location of the firearms, he would tell her that they were in a safe place where the children could not get to them. He then would change the subject.

Ms. Sparks said that she noticed a trap door in the floor at one end of the building. When she inquired about it, Korash allowed her to look into the trap door. She could see a ladder leading down into a buried school bus from which all the seats had been removed. At one end of the bus she could see a very large refrigerator with numerous bullet holes. She also saw three long guns lying on the floor of the bus, however, she did not know the make or caliber of them. She stated that there was no electricity in the bus. Everything she saw was with the aid of a pen light. When questioned by Ms. Sparks, Korash said that the bus was where he practiced his target shooting in order not to disturb his neighbors.

Ms. Sparks felt the entire walk through the compound was staged for her by Korash. When she asked to speak with some of the children

and other residents, Korash refused, stating they were not available. She said that during her conversation with Korash, he told her 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. Korash stated that it would be a "military type operation" and that all the "non-believers" would have to suffer.

On December 11, 1992, I interviewed Robyn Bunds in LaVerne, California. Robyn Bunds is a former member and resident of Vernon Howell's commune in Waco, Texas. She told me that in 1988, at the age of 19, she gave birth to a son who was fathered by Vernon Howell. Her departure from the commune in 1990 was a result of Howell becoming progressively more violent and abusive.

While she was there, she and the other residents were subjected to watching extremely violent movies of the Vietnam war which Howell would refer to as training films. Howell forced members to stand guard of the commune 24 hours a day with loaded weapons. Howell always was in possession of firearms and kept one under his bed while sleeping. Robyn stated that her present residence in California belonged to her parents. For a period of several years Howell had exclusive control of the residence and used it for other members of his cult when they were in California. It was later relinquished by Howell to Robyn's mother. In June 1992, while she was cleaning one of the bedrooms of the residence she found a plastic bag containing gun parts. She showed them to her brother, David Bunds, who has some knowledge of firearms. He told her that it was a machinegun conversion kit. She stored the gun parts in her garage because she felt certain that Howell would send some of his followers to pick them up. Subsequent to her discovery of the conversion kit, Paul Fatta, Jimmy Riddle, and Neal Vaega, all members of Howell's cult and residents of the commune in Waco, came from Waco, Texas, to California and picked up the conversion kit.

On December 13, 1992, I interviewed Jeannine Bunds, the mother of Robyn and David Bunds. She told me that she was a former member of Howell's group in Waco, Texas, having left there in September 1991. She is a registered nurse and was working in that capacity at the Good Samaritan Hospital, Los Angeles, California. While at Howell's commune in Waco, she participated in live fire shooting exercises conducted by Howell. She saw several long guns there, some of which she described as AK-47 rifles. Mrs. Bunds described the weapon to me and was able to identify an AK-47 from among a number of photographs of firearms shown to her by me. I believe that she is well able to identify an AK-47. In July of 1991, she saw Howell shooting a machinegun on the back portion of the commune property. She knew it was a machinegun because it functioned with a very rapid fire and would tear up the ground when Howell shot it. Mrs. Bunds also told me that Howell had fathered at least fifteen (15) children from various women and young girls at the compound. Some of the girls who had babies fathered by Howell were as young as 12

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years old. She had personally delivered seven (7) of these children.

According to Ms. Bunds, Howell annuls all marriages of couples who join his cult. He then has exclusive sexual access to the women. He also, according to Mrs. Bunds, has regular sexual relations with young girls there. The girls' ages are from eleven (11) years old to adulthood.

On January 6, 1993, I interviewed Jeannine Bunds again in Los Angeles, California. I showed her several photographs of firearms and explosives devices. She identified an AR-15 rifle and a pineapple type hand grenade as being items which she had seen at the Mount Carmel Center while she was there. She stated that she saw several of the AR-15 rifles and at least one of the hand grenades.

On January 7, 1993, I interviewed Deborah Sue Bunds in Los Angeles, California. She was the wife of David Bunds, and she had been a member of the "Branch Davidian" since birth. She stated she first met Vernon Wayne Howell in July 1980. When Howell assumed leadership of the "Branch" in Waco, Texas, in 1987, he began to change the content of their Doctrine. While she was at the Mount Carmel compound in Waco, Texas, she was assigned, under Howell's direction, to guard duty with a loaded weapon. About February 1989, she observed Howell shooting a machinegun behind the main structure of the compound. She is sure the firearm was a machinegun because of the rapid rate of fire and the rate of fire was much different from that which was usually conducted during practice exercises on the compound. After describing the firing of this weapon to me, I believe that Ms. Bunds was describing the firing of an automatic weapon.

Mrs. Deborah Bunds also told me that during an evening meal a short time after having seen Howell shoot the machinegun, she overheard Howell and his closest associates discussing machineguns. Howell was very excited about having a machinegun. He voiced a desire to acquire additional machineguns, specifically AK-47 type machineguns.

During this investigation I made inquiries of a number of law enforcement data bases for information about those commune residents who I have been able to identify. Through TECS I learned that some forty (40) foreign nationals from Jamaica, United Kingdom, Israel, Australia and New Zealand have entered the United States at various times in the past and have used the address of the Mount Carmel Center, Waco, Texas, as their point of contact while here. According to INS records most of these foreign nationals have ever stayed their entry permits or visas and are therefore illegally in the United States. I know that it is a violation of Title 18, United States Code, Section 922 for an illegal alien to receive a firearm.

10 004709

On January 1, and January 3, 1993, Mrs. Poia Vaega of Mangere, Auckland, New Zealand, was interviewed telephonically by Resident Agent in Charge Bill Buford, Bureau of Alcohol, Tobacco and Firearms, Little Rock, Arkansas, who also is assisting me in this investigation. The results of Special Agent Buford's interview on January 1, 1993, was reduced to writing and furnished to me. Special Agent Buford's interview on January 3, 1993, was tape recorded with the permission of Poia Vaega and has since been transcribed and typewritten. Both the tape recording and the transcription was furnished to me by Special Agent Buford. Both interviews with Poia Vaega revealed a false imprisonment for a term of three and one half (3 1/2) months which began in June of 1991 and physical and sexual abuse of one of Mrs. Vaega's sisters, Doreen Saipala. This was while she was a member of the "Branch Davidian" at the Mount Carmel Center, Waco, Texas. The physical and sexual abuse was done by Vernon Wayne Howell and Stanley Sylvia, a close follower of Howell, on several occasions.

It was learned from Mrs. Vaega that she and her husband, Leslie, were also members of Howell's group in Waco for a short period of time in March 1990. Upon their arrival at Mount Carmel Center, she and her husband were separated and not allowed to sleep together or have any sexual contact.

According to Mrs. Vaega, all the girls and women at the compound were exclusively reserved for Howell. She stated that Howell would preach his philosophy, which did not always coincide with the Bible, for hours at a time. She and her husband left the compound after ten (10) days because her husband did not agree with Howell's doctrine, but that her two sisters stayed behind.

Mrs. Vaega also related that she was present at one of the study periods held by Howell when Howell passed his personal AK-47 machinegun around for the group to handle and look over.

On January 6, 1993, I received the results of an examination conducted by Jerry A. Taylor, Explosives Enforcement Officer, Bureau of Alcohol, Tobacco and Firearms, Walnut Creek, California, in response to a request from me to render an opinion on device design, construction, functioning, effects, and classification of explosives materials which have been accumulated by Howell and his followers. Mr. Taylor has received extensive training in Explosives Classification, Identification and rendering safe of explosive devices and has been recognized on numerous occasions as an expert witness in Federal Court. Mr. Taylor stated that the chemicals Potassium Nitrate, Aluminum, and Magnesium, when mixed in the proper proportions, do constitute an explosive as defined by Federal law. He further stated that Igniter cord is an explosive. Also Mr. Taylor stated that the inert practice rifle grenades and hand grenades would, if modified as weapons with the parts available to Howell, become explosives devices as defined by Federal law. Finally he stated that black powder, is routinely

used as the main charge when manufacturing improvised explosive weapons such as grenades and pipe bombs. I know that Title 26, United States Code, Section 5845 makes it unlawful for a person to possess any combination of parts designed or intended for use in converting any device into a destructive device. The definition of "firearm" includes any combination of parts, either designed or intended for use in converting any device into a destructive device such as a grenade, and from which a destructive device may be readily assembled. See United States v. Price, 877 F.2d 336 (5th Cir. 1989). So long as an individual possesses all of the component parts, it constitutes a destructive device even though it is not assembled, so long as it can be readily assembled. United States v. Russell, 468 F.Supp. 322 (D.C. Tex. 1979).

On January 8, 1993, I interviewed Marc Braault in Los Angeles, California. He is an American citizen who lives in Australia with his wife Elizabeth. He was once a member of the "Branch Davidian" in Waco, Texas. He lived at the Mount Carmel Center from early 1988 until September 1989. While there he participated in physical training and firearm shooting exercises conducted by Howell. He stood guard armed with a loaded weapon. Guard duty was maintained twenty-four (24) hours a day seven (7) days a week. Those who stood guard duty were instructed by Howell to "shoot to kill" anyone who attempted to come through the entrance gate of the Mount Carmel property. On one occasion, Howell told him that he wanted to obtain and/or manufacture machineguns, grenades and explosive devices. Howell stated he thought that the gun control laws were ludicrous, because an individual could easily acquire a firearm and the necessary parts to convert it to a machinegun, but if a person had the gun and the parts together they would be in violation of the law. On another occasion, Howell told him that he was interested in acquiring the "Anarchist's Cook Book", which I know is a publication outlining clandestine operations to include instructions and formulas for manufacturing improvised explosive devices.

On January 12, 1993, I spoke with Special Agent Earl Dunagan, Bureau of Alcohol, Tobacco and Firearms, Austin, Texas, who is assisting me in this investigation. He related the results of his inquiry to the ATF Firearms Technology Branch, Washington, D.C., for an opinion concerning the firearms parts which have been accumulated by Howell and his group. Special Agent Dunagan stated that he had spoken with Curtis Bartlett, Firearms Enforcement Officer, Washington, D.C., and was told by Officer Bartlett that the firearms parts which Howell has received and the method by which he has received them, is consistent with activities in other ATF investigations in various parts of the United States, which have resulted in the discovery and seizure of machineguns. Mr. Bartlett stated that the firearms parts received by Howell could be used to assemble both semi-automatic firearms and machineguns. He has examined many firearms which had been assembled as machineguns which included these type parts.

Mr. Bartlett also told Special Agent Dunagan that one of the vendors of supplies to Howell has been the subject of several ATF investigations in the past. ATF executed a search warrant at this Company and had seized a number of illegal machineguns and silencers.

Special Agent Dunagan told me that on January 12, 1993, he spoke with Special Agent Mark Mutz, ATF, Washington, D.C., who was the case agent on the above ongoing investigation dealing with the illicit supplier who has provided gun parts to Howell. Special Agent Mutz stated that during the execution of the Federal search warrant at the company's office in South Carolina, he saw large quantities of M-16 machinegun and AK-47 machinegun parts. The company maintained their inventory of these parts as "replacement parts" so they fell easily within a loophole in the Federal law which prohibited ATF from seizing the parts. Special Agent Mutz stated that the company had all the necessary parts to convert AR-15 rifles and semi-automatic AK-47 rifles into machineguns if their customers had the upper and lower receivers for those firearms. Based on my investigation, as stated above in the description of gun parts shipped to Howell, I know that Howell possesses the upper and lower receivers for the firearms which he is apparently trying to convert to fully automatic.

Mr. Bartlett told me that another one of the vendors of supplies to Howell, Nesard Gun Parts Co., 27 W. 990 Industrial Rd., Barrington, Ill., has also been the subject of an ATF investigation. Officer of that company, Gerald Grayson Cynthia Alee and Anthony Alee all pled guilty to ATF charges. The Nesard Co., which owned Sandra Corporation, was shipping AR-15 receivers through the Sandra Corp., along with part kits from the Nesard Co. When these parts are assembled it resulted in the manufacture of a short barreled rifle. Even though the above subjects are convicted felons they continue to conduct business because the Nesard Gun Parts Co., distributes gun parts and not firearms.

On January 25, 1993, I interviewed David Block in Los Angeles, California. He stated that he was a member of Howell's cult at the Mount Carmel Center, Waco, Texas, from March 1992, until June 13, 1992. During the time he was there, he attended two Gun Shows with Vernon Howell, Mike Schroeder, Paul Fatta, and Henry McMahon who is a Federally licensed firearms dealer. The gun shows were in Houston and San Antonio, Texas.

While at the Mount Carmel Center he saw a metal lathe and a metal milling machine which were normally operated by Donald Bunds and Jeff Little. Donald Bunds, a mechanical engineer, has the capability to fabricate firearm parts, according to Block. On one occasion at the Mount Carmel Center, he observed Bunds designing, what Bunds described as a "grease gun/sten gun" on an Auto Cad Computer located at the residence building at the compound. The computer has the capability of displaying a three dimensional

rendering of objects on a computer monitor screen. The object appeared to be a cylindrical tube with a slot cut into the side of it for a bolt cocking lever. Sunds told him that Howell wanted Sunds to design a "grease gun" which they could manufacture. Mr. Block told me that on another occasion at the Mount Carmel Center he saw Donald Sunds designing a template which Sunds explained was to fit around the "grease gun" tubes indicating where the bolt lever slots were to be milled out. This was another step in manufacturing "grease guns" which had been requested by Howell. I know that a "grease gun" is a machinegun following after the design of a World War II era military weapon.

During his time at the Mount Carmel Center Mr. Block was present several occasions when Howell would ask if anyone had any knowledge about making hand grenades or converting semi-automatic rifles to machineguns. At one point he also heard discussion about a shipment of inert hand grenades and Howell's intent to reactivate them. Mr. Block stated that he observed at the compound published magazines such as, the "Shotgun News" and other related clandestine magazines. He heard extensive talk of the existence of the "Anarchist Cook Book".

Mr. Block told me that he observed a .50 caliber rifle mounted on a bi-pod along with .50 caliber ammunition. However, what Mr. Block described to ATF Agents, was a British Boys, .52 caliber, anti-tank rifle (a destructive device). Mr. Block further stated that he also heard talk of the existence of two additional .50 caliber rifles on the compound. There was also extensive talk about converting the .50 caliber rifles and other rifles to machineguns.

Mr. Block also told me that he met James Paul Jones from Redding, California, who was visiting the Mount Carmel Center in April or May of 1992. According to Howell, Jones was a firearms and explosives expert.

On February 22, 1993, ATF Special Agent Robert Rodriguez told me that on February 21, 1993, while acting in an undercover capacity, he was contacted by David Koresh and was invited to the Mount Carmel compound. Special Agent Rodriguez accepted the invitation and met with David Koresh inside the compound. Vernon Howell, also known as David Koresh played music on a guitar for 30 minutes and then began to read the Bible to Special Agent Rodriguez. During this session, Special Agent Rodriguez was asked numerous questions about his life. After answering all the questions Special Agent Rodriguez was asked to attend a two week Bible session with David Koresh. This was for Special Agent Rodriguez to learn the 7 Seals and become a member of the group. Special Agent Rodriguez was told that by becoming a member he (Rodriguez) was going to be watched and disliked. David Koresh stated that Special Agent Rodriguez would be disliked because the Government did not consider the group religious and that he (Koresh) did not pay taxes or local taxes


because he felt he did not have to. David Koresh told Special Agent Rodriguez that he believed in the right to bear arms but that the U.S. Government was going to take away that right. David Koresh asked Special Agent Rodriguez if he knew that if he (Rodriguez) purchased a drop-in-sear for an AR-15 rifle it would not be illegal, but if he (Rodriguez) had an AR-15 rifle with the sear that it would be against the law. David Koresh stated that the sear could be purchased legally. David Koresh stated that the Bible gave him the right to bear arms. David Koresh then advised Special Agent Rodriguez that he had something he wanted Special Agent Rodriguez to see. At that point he showed Special Agent Rodriguez a video tape on ATF which was made by the Gun Owners Association (G.O.A.). This film portrayed ATF as an agency who violated the rights of Gun Owners by threats and lies.

I believe that Vernon Howell, also known as David Koresh and/or his followers who reside at the compound known locally as the Mount Carmel Center are unlawfully manufacturing and possessing machineguns and explosive devices.

It has been my experience over the five years that I have been a Special Agent for the Bureau of Alcohol, Tobacco and Firearms, and that of other Special Agents of the Bureau of Alcohol, Tobacco and Firearms, some of whom have the experience of twenty (20) years or more, who have assisted in this investigation that it is a common practice for persons engaged in the unlawful manufacture and possession of machineguns and explosive devices to employ surreptitious methods and means to acquire the products necessary to produce such items, and the production, use and storage of those items are usually in a protected or secret environment. It is also my experience that persons who acquire firearms, firearm parts, and explosive materials maintain records of receipt and ownership of such items and instruction manuals or other documents explaining the methods of construction of such unlawful weaponry.


Davy Aguilera, Special Agent
Bureau of ATF

Subscribed and sworn to before me this 25th day of February 1993.


Dennis C. Green,
United States Magistrate Judge
Western District of Texas - Waco

6/14

3:05P - 5:05PM

(W)

(AGTK TO)

AUSTIN, TX 78763-5218

(P)

1969 - GRAD. S-MA25 SAN ANTONIO - BUSINESS

COMM 2 LT 6/1/69. 8/25/70 - EN-2 ARM.

GRAD. FLT SCHOOL 10/70. RELEASED 3/72.

4/76 JOINED GUARD TO PRESENT (S)

REJECTED TO WARRANT OFFICER 1980; WANTED TO STAY IN

AVIATION AND HAVE ABILITY TO STAY IN.

WIN - FULL TIME 590.

→ COMMANDING PILOT: WING (BUNKER), WING (HARRY SPENCER)

*2/2/82 - same Bunker

- MID-80s: TOLD THEY HAVE A mission in Waco (Ensign: 2/82)
Told administration.

- LATER TOLD TO BE @ F. HEAD ON 2/29; TIME AT 12:00 TO 2/2-

- Told by Lt. Justice TO BE AT F. HEAD ON 2/27 @ 12:00.

Got info in bits + pieces; Originally TOLD THAT THE

WOUND WAIT UNTIL REPT WAS SECURE THEN TALKED

EVIDENCE. LT. DICKENS SAID IT WAS

ACCORDING TO REGS.

005388

3
 BEO EARLY 2/27

C-26 OUT OF HOUSTON DID "PRE-RAID SURVEILLANCE AND METH. LAB. SEARCH."

2/28/83 - TSTG BY 0530. WENT AS 3 CREW MEMBERS
 A GROUP (OSS + WE 60 CREWS). TOMMY REYNOLDS
 CAME TELLING.
 PRE-FLIGHTED. LT. DICKENS SAID THEY APPROX 5 ATF
 WERE TX'D TO "START UP EARLY". DICKENS AGENTS
 WHO W/ SURVEIL
 WAS THE AIR MISSION COMMANDER
 CRAIG BOENHART SAID - "THEY KNOW WE'RE
 COMING" → TOOK OFF AND DID SLOW
 CIRCLES 5 MILES TO NORTH OF
 THE COMPOUND. THAT'S NORMAL ACTIVITY
 FOR WACO. WHILE CIRCLING HE HEARD O-
 FIXED WINGS. SAW "THEY WANT YOU TO
 COME IN." (ON GUARD FREQ (F.A.A. EMERGENCY FREQ))
 FOLLOWED OSS IN, AT APPROX 9:45 AM (SUSPECT TO
 BE 100M). (JUST KNOWS IT FROM EXPERIENCE)
 - AS THE, CROSSED THE TREE-LINE (350 FT FROM)
 COMPOUND) HE HEARD THEM GETTING
 HIT BY ROUNDS; TOOK A HARD RIGHT.
 SURVIVAL LIKE A SEMI-AUTO RIFLE. BIG NOISE
 IN THE TAIL AND ONE UNDER THE
 WING. HE REMEMBERS (1) SO MANY CARS
 BEHIND (2) LONG TRAIL (UNLOADING
 AS HE CROSSED); SO HE THOUGHT THE
 OSS WERE ON-TIME SIMULTANEOUS
 ATTACK. HE WIFE HIT; OSS ANNOUNCED

(43)

INTWID BY TEXAS RANGERS

LANDED ON OTHER SIDE OF TRACKS. CHECKED THEIR (K THEM)
MOVED IN TO CAMP W/ OH588.

OH588 (1440) 3 ROUNDS

OH588 1 ROUND

UH60 - 2 ROUNDS

- IN AGENT SAID HE HEARD ^{ON ROAD} THERE WAS MORE
TREE-LINE. ALL 3 WENT BACK TO

TSTC (10:30AM)

- SHUT-DOWN; WENT INTO C.P. + LISTENED
COL PETT CALLED BILL ENNEY AND
THEY WERE INFORMED THAT A MAINTENANCE
BRO WOULD COME IN (IT DID EARLY AFTER)
STAYED IN CP 10:30AM - 2:00PM. PEOPLE (SA's)
WERE WATCHING TV. TRYING TO FIGURE OUT
WHAT WAS GOING ON. IT SEEMED THAT
SOMEONE WAS 'DOING SOMETHING' IN A JONICK RM.

- 4:30PM - ARRIVED IN GUSTIN IN ^(UH60) MAINTENANCE
CHOPPER. MAINTENANCE PEOPLE FOLLOWED
IN DAMAGED CRAFT.

- RE-FUELED AND FLEW BACK INTO WACO
AT ~~8:00PM~~ 8:00PM - BROUGHT A GENERATOR +
NIGHT VISION GEAR.

- INTO C.P.

005871

3/1-3/13 ON STICKS IN WACO

3/1-3/13 ON STICKS IN WACO

③
 - HANGING OUT ON MONKEY HARNESS,

AND HEARD "POP-CORN PIPING SOUNDS"

- HELO BANKED RIGHT AND PILOTS YELLED AT
 HIM TO LOOK FOR DAMAGE, HE COULDN'T
 SEE ANYTHING - WENT BACK IN

REF PILOTS REPORT FOR DETAILS
 POST RAID

- TOOK VIDEO OF HELO INSPECTION OF
 ROUNDS, AT SECOND LANDING POINT (W)
 OTHER ONES. GOOD VIDEO OF ROUNDS

- 10:30AM - BACK AT TSTC

STAYED BY HELO AND TOOK VIDEO
 OF DAMAGED HELOS + PANORAMIC VIEW
 OF OUTSIDE OF CP

- APPROX 8PM DROVE BACK TO CAMP MARIANA
 WITH DIV EQUIP, AND BROUGHT IT BACK.

2/25/93 - WENT TO FORWARD CP AND GAVE

SA INFORMAL CLASS IN USE OF NIGHT
 VISION EQUIPMENT FOR NIGHT DUTY SAF.

- STAYED P.O.N. BEST WESTERN

3/1/93 - 3/5/93 - MANNED MAIL GUARD DESK AT

- C CP. (ADM V). DELIVERED + MAINTENANCE
 OF VIS. EQUIP TO FORWARD CP.

DUCD : PPOX 3/14/93

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MEMORANDUM OF INTERVIEW

PAGE: 13

FILE TITLE: MILITARY	DATE: September 14, 1993
INTERVIEWING AGENT: ROBERT E. TEVENS & COLLEEN CALLAHAN	WACO ADMINISTRATIVE REVIEW

6. Two sofas
7. Two sofa chairs
8. Six beds with linens
9. Six waste baskets
10. One microwave
11. One large coffee pot, cups, towels, cream/sugar
12. Refrigerator
13. Paper shredder

Also that day, CI Prior receives a telephone call from G/S Williams, who requests additional training on the USCS UH-60 Blackhawk helicopter for the SAC/Houston SRT. The training, which is scheduled to take place the week of January 11, 1993, incorporates the use of full raid gear for the SRT.

On Tuesday, January 5, 1993, LTC Walker discusses military support of the Howell investigation with ASAC Sarabyn.

On Wednesday, January 6, 1993, the first National Guard sortie is flown over the Branch Davidian compound and the Mag Bag sites by the Texas National Guard Counterdrug UC-26, which is a fixed wing dual engine prop aircraft. Numerous aerial reconnaissance photographs are taken by the crew. Additionally, the mission includes the use of the Thermal Imaging System (TIS) previously known as Forward Looking Infrared (FLIR). The improved TIS provides a more comprehensive view of the compound due to its ability to film thermal objects at various angles instead of the forward looking only view of the FLIR.

During the above mission, the TIS locates a "hot spot" inside the Branch Davidian compound and also identifies three sentries outside and behind the compound. Although the ATF has officially requested an interpretation and evaluation of the photographs, LTC Pettit and Lieutenant Justice maintain that only information about grid coordinates are officially provided to ATF. No official opinion is provided to ATF about the "hot spot".

Also that day and as a result of the January fourth request of RAC Dunagan, LTC Walker prepares a letter for signature of Chief Garner addressed to Colonel Judith A. Browning, U.S. Army, Director of Plans and Support at the Pentagon. LTC Walker hand carries the letter, which requests the loan of office equipment in support of the Howell investigation, to U.S. Navy Commander Gary Harrell of Colonel Browning's staff. LTC Walker is told that the request can be directed to the RLSO but he chooses to secure the approval of Colonel Browning. Additionally, Commander Harrell informs LTC Walker that there is no formal standard by which the military defines a drug nexus within a law enforcement investigation. The request for the following equipment, which is never facilitated by the RLSO but ultimately by the Texas National Guard, is to be made available for pick up anywhere near Waco on January 11, 1993:

005397

MEMORANDUM OF INTERVIEW

PAGE: 15

FILE TITLE: MILITARY	DATE: September 14, 1993
INTERVIEWING AGENT: ROBERT E. TEVENS & COLLEEN CALLAHAN	WACO ADMINISTRATIVE REVIEW

On Tuesday, January 19, 1993, CI Prior, USCS, again provides classroom training to G/S Williams and members of the SAC/Houston SRT. The training consists of a safety briefing, emergency procedures, and practice on entry and exit techniques with the UM-60 flying in and landing quickly.

On Thursday, January 21, 1993, with concurrence of ASAC Sarabyn, LTC Walker prepares another letter for signature of Chief Garner, addressed to Major Victor Bucovsky, Officer in Charge, RLSO, Operation Alliance. The letter, which is in addition to the January sixth seven-item list of Chief Garner, requests "seven Bradley Fighting Vehicles plus on-call maintenance support for a two week period to commence on February 8, 1993". The request cites, "This equipment and operational support is a continuation of the firearms and drug case supported by your office, based on our January 6 request to Colonel Judith Browning." An enclosure to the memorandum entitled, "WACO Case Military Support" requests the following additional equipment:

1. Three GP Medium Tents (2 sleeping, 1 command post)
2. Two GP Small Tents (1 VIP sleeping and 1 VIP meeting)
3. Twelve Field Tables with Chairs
4. Five Herman Nelson Heaters with Operator (for use in tents)
5. Five Light Sets with Operator (for use in tents)
6. Flood Lights with Operator (enough to light large building 360 deg)
7. Generators with Operators (for 24 hour operation)
8. Fifty Cots
9. Ninety Sleeping Bags
10. Twelve Field Telephones with Six Miles of Wire
11. One Switchboard with Operator (for 24 hour operation)
12. Four Immersion Heaters
13. One Water Buffalo
14. Five Hundred Sand Bags
15. Smoke Generators with Operators for 2 sq km & Concealment Smoke
16. Fifty Driver's Goggles
17. One 2 1/2 Ton Truck with Operator (for water buffalo and agents)
18. Loud Speakers with Amp and Power plus Operator
19. Fifteen Night Vision Goggles
20. One Hundred Gas Masks
21. One Hundred Cases of MRE's (for purchase)

Subsequently, Major Buckowski receives the above mentioned military support request from Chief Garner via facsimile transmission and walks the request over to the office of Senior Special Agent Eddie Z. Pali, Deputy Senior Tactical Coordinator for ATF, Operation Alliance. Major Buckowski informs Agent Pali, who is unaware of his agency's request, that the RLSO cannot furnish an equipment request of such magnitude. Agent Pali tells the Major that he will handle the matter and opines that the above list, which represents the largest military request in ATF history, is indicative of a planned siege, not a raid.

005399



OPERATION ALLIANCE

P.O. BOX 8051
EL PASO, TEXAS 79908

February 2, 1993
OAC# 25.2.139.0293

Office of the Adjutant General
ATTN: AGTX-CD
P. O. Box 5218
Austin, Texas 78763-5218

The Bureau of Alcohol, Tobacco and Firearms, (ATF) Washington, DC requests the assistance of the Department of Defense in acquiring the following support:

1. A "Joint Military Planning Cell" with representatives from the Texas National Guard and Joint Task Force-Six (JTF-6) to assist ATF in planning, training, equipping and command and control in serving a federal search warrant no earlier than 22 February 1993, to a dangerous extremist organization believed to be producing methamphetamine.
2. Due to the private land concerns, request this support be joint Texas National Guard and JTF-6. The specifics are to be worked out at a meeting to be held 4 Feb 93.
3. Special assistance is needed in medical evacuation contingency planning and on site trauma medical support.
4. There will be no Title 18 personnel in direct support of this operation. Direct involvement of Title 32 personnel will be at the discretion of the Texas National Guard.
5. Direct liaison between JTF-6, the Texas National Guard and the Bureau of Alcohol, Tobacco and Firearms is authorized.

This assistance is in direct support of interdiction activities along the southwest border. POC for this request will be LTC Lon Walker at [REDACTED] SKYPAGE [REDACTED] or FAX [REDACTED]

Thank you for your assistance in this matter.

James E. Bowen
James E. Bowen
Deputy Senior Tactical
Coordinator-Operations
Operation Alliance

005551

April 20, 1993

On the morning of February 28, 1993, I was pilot in command of a UH-60L helicopter assigned the task to act as a diversion while ATF personnel approached the Mount Carmel compound outside of Waco, Texas.

At approximately 0945 we approached the compound from the Northeast following two OH-58 helicopters. We began to receive gunfire on the approach but at no time returned the fire.

My helicopter was not armed nor did any of the crewmembers carry weapons. The ATF agents we were transporting carried side arms but at no time did they discharge said weapons while on board the aircraft.

The aircraft, SN 91-26319, carried external fuel pods and flew with all doors closed making it impossible to discharge weapons from the passenger compartment.

I submit that these statements are true and correct.


CW4, AGTX-CD

005723

SWORN STATEMENT			
For use of this form, see AR 196-48; the proposing agency is Office of The Deputy Chief of Staff for Personnel.			
LOCATION AAASF	TX 78723	DATE 20 APR 93	TIME 1530
LAST NAME, FIRST NAME, MIDDLE NAME		SOCIAL SECURITY NUMBER	GRADE/STATUS
HNC, AVN BDE			W3
ORGANIZATION OR ADDRESS		AUSTIN, TX 78723	
I, [REDACTED], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:			
<p>ON FEB 28, 1993 AT APPROX. 0945 I WAS FLYING AN OH-68 (70-15246) AS PILOT IN COMMAND WHILE SUPPORTING ATF DURING OPERATION "TROYAN HORSE". OUR MISSION WAS TO CREATE A DIVERSION TO ENABLE ATF AGENTS TO SERVE A WARRANT AT A LOCATION APPROX. 8 MILES SOUTHEAST OF WACO, TX.</p> <p>WE APPROACHED THE LOCATION FROM THE NORTH AND WHEN WE WERE APPROX. 300 METERS FROM THE TARGET, WE RECEIVED SMALL ARMS FIRE SUSTAINING A HIT IN THE TAIL OF THE AIRCRAFT. THE TWO OTHER AIRCRAFT IN THE FLIGHT ALSO RECEIVED GUNFIRE DAMAGE FROM THE TARGET LOCATION. ALL AIRCRAFT IMMEDIATELY TURNED AWAY FROM THE SOURCE OF FIRE AND FLEW NORTH.</p> <p>THERE WERE NO WEAPONS ON BOARD MY AIRCRAFT AND THERE WAS NO WEAPONS FIRE FROM ANY OF THE AIRCRAFT IN THE FLIGHT.</p> <p>//// // // // // Nothing Follows // // // // //</p>			
SIGNATURE [REDACTED]		PAGE 1 OF 1 PAGES	
<p>ADDITIONAL PAGES MUST CONTAIN THE NAME, STATEMENT OF, TAKEN AT, DATED, CONTINUED, AND THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE OF PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.</p>			
DA FORM 2823 JUL 72		SUPERSEDES DA FORM 2823, 1 JAN 66, WHICH WILL BE USED.	

005730



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Houston, Texas 77060
March 15, 1990

LE:OA:H:EZP
3350

MEMORANDUM TO: SAC, Dallas
SAC, Houston
SAC, Los Angeles

FROM: Tactical Operations Coordinator
(Operation Alliance)

SUBJECT: Request for Military Support

Enclosed with this memorandum are two self-explanatory documents from the Operation Alliance (OA) Coordination Center in El Paso, Texas, regarding military assistance available to ATF as a "Drug Law Enforcement Agency (DLEA)" from the Joint Task Force - 6 (JTF-6) Command. In addition, we are working with JTF-6 to identify a list of specific items that are needed on a frequent, time sensitive basis, i.e. M-16's, grenades, etc., as props in on-going investigations that would be maintained as standard inventory at strategic military installations throughout the OA area. We envision these items would then be accessible through a telephonic request with a follow-up written confirmation. I will keep you advised on the progress of this initiative.

The referenced letter dated January 26, 1990, sets forth the requirements, as to content and procedure, for submitting a request for assistance through OA to JTF-6. But prior to this phase, the ATF requirements must be completed as follows:

1. Request and receive appropriate approvals as established in the pertinent ATF Manual Order.
2. Contact the ATF Coordinator to OA:
Eddie Z. Pali
(Beeper) 1-800-443-PAGE
Alternate:
Charles D. Sarabyn, SAC, Special Programs Br
(ATF Comm Center)

006661



OPERATION ALLIANCE

P.O. BOX 370637
EL PASO, TEXAS 79937

1/26/90

OAC 89

Eddie Z. Pali
Bureau of Alcohol, Tobacco and Firearms
[REDACTED]
Houston, TX

Dear Mr. Pali,

Currently, representatives of the Joint Task Force-Six (JTF-6), are touring the Southwest Border while providing mission briefings to field managers of the various drug law enforcement agencies, (DLEA's). Following those presentations it is anticipated many requests soliciting military assistance will be generated. This letter is intended to clarify procedures when submitting such requests.

First, all requests by civilian law enforcement agencies must be routed to Operation Alliance in order to be considered by JTF-6. Requests which have not been submitted through Alliance and not approved by this office will not be accepted by JTF-6. Depending upon individual agency procedure, ie. Border Patrol, Customs, DEA or other Federal, state and local agencies, those requests for military assistance may involve higher level approvals within a particular agency prior to being transmitted to Operation Alliance. However in all cases, any request must eventually be sent via Alliance before JTF-6 will receive and act upon it.

Secondly, all requests should contain at a minimum, three items, which are; a description of the situation or the concept which may lend itself to an assistance role by the military; the frame when assistance is required; and the name and telephone number of a point of contact designated to serve as the actual project officer in liaison with military J-3 planning elements. Optionally, recommendations may be made if there is a certain type of equipment, or other resource capability considered desirable, however generally, those issues will be addressed by the JTF-6 J-3 planners who will research inventories and recommend unit tasking.

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Once a request from the field DLEA is received by Operation Alliance and is reviewed/concurred, it is sent to JTF-6, concurrently an acknowledgement will be sent to your office. Thereafter, as the request is processed by JTF-6 it will be tracked by Alliance to keep you apprised of it's status. During the processing period, JTF-6 J-3 planners will contact your designated point of contact personnel to develop a draft operation order. Once the planning phase is completed, the draft order, which includes field input, is returned to Alliance for concurrence. A third and final approval of the operation order is determined by a joint meeting of the heads of supported field DLEA, the military unit tasked by JTF-6 and the tactical coordinator for Alliance. This last step before actual implementation is to ensure all involved entities are in agreement with the intended action.

Approval of requests by Operation Alliance is not meant to usurp any agency's authority nor it's operational prerogatives, but rather is merely intended to prevent duplication of requests and ensure that agencies soliciting military assistance are fully aware, beforehand, of any costs or conditions associated with implementing that project. Alliance approval should be defined in this sense as acting as a liaison and coordinating body only.

At the present time, JTF-6 requires substantial lead time, sixty to ninety days, in order to evaluate requests and arrange unit tasking details; however, in the future as operations are conducted and assessed, a capability will be developed to more rapidly deploy units and resources for similar reoccurring scenarios so that response times are quickened substantially.

If you have any questions or comments concerning this matter do not hesitate to contact myself or one of the deputy tactical coordinators within Alliance at [REDACTED] or FTS [REDACTED]

Brian K. Pledger

Brian K. Pledger
Senior Tactical Coordinator
Operation Alliance

006664



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DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
P. O. Box 8051
El Paso, Texas 79908
June 15, 1993

LE:OA:EP:EZP
3350


MEMORANDUM TO: Chief, Special Programs Division ✓
SAC, Dallas Field Division
SAC, Houston Field Division
SAC, Los Angeles Field Division

FROM: Deputy Senior Tactical Coordinator (ATF)
Operation Alliance

SUBJECT: Request Procedures for the Regional Logistics
Support Office (RLSO)

On June 11, 1993, Major Victor Buckowsky, RLSO III, El Paso, Texas distributed this document at the Operation Alliance Coordination Center, El Paso, Texas. It will provide you and your staff with the latest information regarding the types of support and procedures for Drug Law Enforcement Agencies (DLEA's) to request excess property, non-operational support or training from the Department of Defense. As a reminder, all RLSO support requests that have a drug nexus initiated in the states of Texas, New Mexico, Arizona and California (Southern half) must be submitted to Operation Alliance for action. We encourage that all requests in these states be submitted to Operation Alliance because of our ongoing, direct contact within the military command structure and the RLSO's ability to query their system, on an international basis, to determine the availability of the requested property.

It is requested that this document be furnished to your appropriate Branches and Field Offices. If I can be of further assistance, please contact me at the Operation Alliance Coordination Center, El Paso, Texas, [REDACTED] or via 1-800-Sky Page (Pin [REDACTED]).


Eddie Z. Fain

Enclosure

006665

WACO SUMMARY OF EVENTS

WLT- 983-I
#183

November, asked by Ian Kalister to call Houston field division to discuss upcoming Waco case and see if there is a military support role. I can't remember who I spoke with but was not told of any drug connection.

December 4 Attended a meeting in Houston where the Dallas and Houston SACs and several others met for the first time to learn about the Waco investigation. I was asked about available military support. I explained that the military probably could provide a great deal of support and suggested things like aerial overflight thermal photography. Also explained that without a drug connection the military support would be on a reimbursable basis. AGUILERA SAID THERE WERE NO MORE NEWS

December 16 Advised by SA Aguilera, case agent, of a fax he received from Australia regarding the presence of a meth lab in the Waco compound.

late Dec or early Jan Met with SA Bill Buford who advised of the meth lab presence explaining the drug connection.

Jan 4 Received fax from Earl Dunagan asking for military office equipment.

Jan 5 Discussed support with Chuck Sarabyn.

Jan 6 Prepared letter to Col Browning asking for support. Hand carried letter to Commander Gary Harrell on Col Browning's staff. Discussed drug connection. Was told there is no formal standard for a drug connection.

Jan 15 Received Col Browning's reply.

Jan 21 Prepared letter to Maj Bucowsky for additional support. Received Chuck Sarabyn concurrence.

Sometime prior to departure for Waco, was briefed by Eddie Pali of hot spots on aerial photos and told intell analysts said were indicative of a meth lab.

Feb 24 Picked up Ivan and Herman at Austin and drove to Ft Hood. Attended evening meeting.

25 *Overflight confirmed hot spots*
Feb 25 Training began. Long morning meeting with leaders. Pete Mastin and I briefed Ft Hood PAO. Picked up canvas for trailers from Army. Asked for smoke, denied based on Army legal decision.

Feb 26 Continued training. Even received call from

007884



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Houston, TX 77032-1965

February 5, 1993

LE:TX:HA:CDW
3310

MEMORANDUM TO: Chief, Special Operations Division
FROM: Special Agent in Charge
Houston Field Division
SUBJECT: Request for Authorization to Use
Diversionary Devices for SRT Operation

It is requested that authorization be granted for the use of diversionary devices during the execution of a Federal Search Warrant by the Houston and New Orleans Special Response Teams. The devices will not be used to make entry, but will be used for safety purposes while clearing the building if the situation dictates. Information concerning the operation is provided as follows:

DATE OF OPERATION: MARCH 1, 1993 (approximately)
LOCATION: Route 7, Box 471B, Waco, Texas
INVESTIGATION NO.: 53110-92-1069 x
SUBJECT: Vernon Wayne Howell, aka David Koresh, et al.

BACKGROUND:

Vernon Howell, W/M, DOB 081759, is the leader of a religious cult known as the Branch Dividian Seventh-Day Adventists. Howell and his followers (which number approximately 75 to 80 men, women, and children) reside in an expansive structure located on 77 acres of land; address Route 7, Box 471 B, Waco, McLennan County, Texas.

Information has been developed during this investigation which has identified Howell as a mentally deranged individual who believes himself to be the reincarnated "Jesus Christ." He controls his followers with the assistance of approximately eight close male associates through means of fear and intimidation as part of a "brain washing" process. Howell has a history of violence. In 1988, he was tried for attempted murder along with seven associates; however, they were all acquitted. Within the past year, Howell and his

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Request for Authorization to Use
Diversionary Devices for SRT Operation

-2-

followers have acquired approximately 100 firearms, many of which are believed to have been assembled from purchased parts. The firearms include 9 MM pistols, AK-47 type assault rifles, and AR-15 assault rifles. Some of the rifles are reported to be modified as machineguns. They have also acquired components and chemicals for explosives to manufacture hand grenades. Large quantities of ammunition have also been acquired.

The cult members have regular firearms training in order to defend their property. Howell has prophesied, "authorities" will attempt to take their children and that they will resist with their firearms.

The quarters for the women and children are segregated from the men's living areas. The children are not permitted in the men's area. The Dallas SRT will be responsible for securing the areas assigned to the women and children and will not use diversionary devices.

The Houston and New Orleans SRT's will be responsible for securing the rest of the complex. No children, handicapped, or elderly persons are expected to be in those areas. However, prior to the use of any diversionary device, visual inspection will be made of threat areas in compliance with ATF directives.

There are no indications of explosives or flammable materials in the area to be secured by the Houston team. There may be some in the area to be cleared by the New Orleans team. The devices will not be used in the area identified with explosives and/or flammable materials.

OPERATIONAL PLAN:

The Houston, New Orleans, and Dallas SRT's will be exclusively responsible for entry of the location. Other ATF personnel assigned to those three divisions will be responsible for the perimeter.

Phillip J. Chojnacki

008214

MEMORANDUM OF INTERVIEW

PAGE: 7

LE TITLES: TERS.REV	DATE: March 16, 1993
INTERVIEWING AGENT: ROBERT K. TEVENS	WACO ADMINISTRATIVE REVIEW

At approximately 7:00PM, Agent Pali and Texas National Guard personnel attend a briefing of the search warrant support team at the Best Western Hotel. Agent Pali recalls that some of the ATF personnel present include ASAC Sarabyn, SAC Chojnacki, Agent Lewis, Agent Robert Alley, SAC Peter Mastin, SAC Ted Royster, and Agent Davy Aguilera. The briefing consists of the specific assignments of the search warrant support team.

At approximately 9:45AM, the raid team encounters gunfire and begins to receive casualties. The Texas National Guard helicopters are not authorized to act as a medivac unit for the transport of wounded, due to liability constraints.

On Tuesday, 04/27/93, Colonel Philip W. Spence, National Guard Bureau, writes a summary of a focal group review of the Waco incident, which is addressed to the Director, Counterdrug Task Force. Attached to the summary is the focal group report, dated April 28, 1993. The summary and report reveal only one major issue. The issue deals with the pre-raid threat assessment of the Branch Davidians provided by ATF to the Texas National Guard as a "docile" environment. A second issue, which is not included in the written report of the focal group but has been vocalized by Colonel Spence, deals with the suspected methamphetamine laboratory at the Branch Davidian compound. Colonel Spence contends that the drug issue is not included in the focal group report due to potential media interest and any resulting Freedom of Information Act inquiries.

On Thursday, 04/29/93, LTC Pettit signs a memorandum addressed to the Chief, National Guard Bureau, The Pentagon, Washington, D.C. The memorandum serves as an after-action report, which provides an "...explanation and clarification of the support provided by the Military Forces of Texas to the Bureau of Alcohol, Tobacco and Firearms and the Federal Bureau of Investigation prior to, during, and after OPERATION TROJAN HORSE and a subsequent Hostage Rescue Mission in the vicinity of Waco, Texas." Throughout the after-action memorandum, LTC Pettit never questions the veracity of the ATF drug case within the Howell investigation. Conversely, LTC Pettit writes, "The initial Texas National Guard objective was to provide quiet, honest, and professional counterdrug support in assisting ATF in an ongoing firearms and drug case in Central Texas."

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DEPARTMENT OF THE TREASURY
WASHINGTON

August 12, 1993

22
TRE- 30006

MEMORANDUM TO GEOFFREY MOULTON
DIRECTOR
WACO ADMINISTRATIVE REVIEW

FROM DEBRA N. DIENER *AS/AL*
SENIOR COUNSEL
(LAW ENFORCEMENT)

SUBJECT Statutory and Regulatory Criteria and
Requirements for Requesting Military and National
Guard Assistance

Overview

You initially requested research on the statutory and regulatory criteria by which a law enforcement agency could request National Guard assistance. I have expanded the research to cover the requirements for requesting military and National Guard assistance since there are different statutes and procedures for each.

I. Military Assistance: Title 10: Counterdrug and Non-Counterdrug Support

A. Statutory Authority and Types of Assistance

Congress has expressed over recent years a clear intention that the military provide support assistance to local, State and Federal law enforcement agencies ("LEA") in their efforts. The kinds of routine law enforcement assistance which can be provided are outlined in 10 U.S.C. §371 et seq. These provisions, and the implementing regulations, 32 CFR §213.1 et seq. apply to all requests by an LEA for assistance.

The Department of Defense ("DoD") may provide equipment, training and expert advice in support of a LEA's law enforcement efforts. The equipment and personnel which can be provided under Sections 372 and 373 apply for a variety of law enforcement requests. This DoD support must be provided on a reimbursable basis to the requesting LEA but reimbursement may be waived if the support is: 1) provided in the normal course of military training or operations; or 2) results in a benefit to the DoD unit which is providing the support which is substantially equivalent to the kind of benefit which that unit would obtain from military operations or training. See, 10 U.S.C. § 377. If

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II. National Guard: Title 32: Counterdrug and Non-Counterdrug Support

A. Statutory Authority and Types of Assistance

National Guard personnel can serve in State active duty status (Title 32) or in Federal active duty status (Title 10; S.G.A., Gulf War). Their annual training and weekend drills are done in their Title 32 status, but the annual training is paid for by Federal funds. There is a real distinction between what State National Guard personnel can do in their State active duty status and their Federal active duty status.

An LEA may request assistance from a State National Guard for assistance in support of its counterdrug or non-counterdrug efforts. As with DoD, a State National Guard may loan an LEA equipment (tents, tanks, cots, desks, etc.) on a reimbursable basis because the equipment belongs to the Federal government.

However, if an LEA approaches a State National Guard requesting other kinds of assistance (S.G.A., training, personnel, operational support such as aerial reconnaissance) the nature of the law enforcement request becomes important. If it is for a non-counterdrug purpose, then the State National Guard may provide the requested support if: 1) the State Constitution authorizes the Guard's involvement in the type of requested assistance; and 2) the Governor is willing to expend State funds for that purpose.

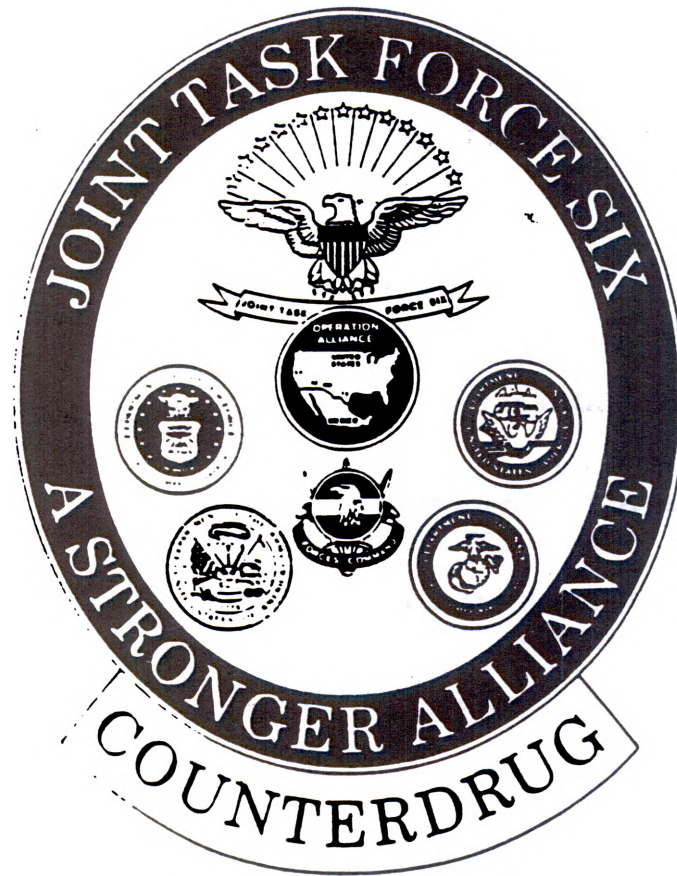
I have been told that it is more likely that a State or local law enforcement agency, rather than a Federal law enforcement agency, would seek the kinds of assistance from a State National Guard which the Guard would provide in its State active duty status. I was told that it is more often the case that a Federal law enforcement agency will approach a State National Guard through a group such as Operation Alliance, seeking assistance based on the Guard's unique capabilities and thus tapping into the Federal source of funding. NB: However, there is nothing in the materials which I have found indicating whether such non-counterdrug support is provided to a Federal law enforcement agency if it is done on a reimbursable or nonreimbursable basis. I have contacted an attorney for the National Guard and will forward the answer after I speak with him.

B. Counterdrug Support

State National Guard efforts in support of counterdrug activities fall within a separate category of consideration as specified under 32 U.S.C. §112 and may be provided using Federal

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JOINT TASK FORCE SIX



OPERATIONAL SUPPORT PLANNING GUIDE

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00-122-040-M
JTF-6

INTRODUCTION

The President's **"National Drug Control Strategy"** provides a clear objective and coherent structure which facilitates development of an operational level concept for military support to Southwest Border (SWB) law enforcement agencies (LEAs). The FY89 DoD Authorization Act expanded the role of the National Guard (NG) in support of the LEAs. The 1990 DoD Authorization Act further directed that the U.S. Armed Forces, to the maximum extent possible, conduct military training in drug interdiction areas. The designation of the SWB as a High Intensity Drug Trafficking Area (HIDTA) further identifies the priority for military support to SWB LEAs.

In September 1989, Defense Secretary Cheney issued guidance designating drug trafficking as a threat to U.S. national security. In support of the President's **"National Drug Control Strategy,"** Secretary Cheney assigned NORAD the mission of air operations and monitoring of illegal drug traffickers. Commander-in-Chief, U.S. Pacific Command (CINCPAC) was assigned the mission to coordinate all DoD (Title 10) operational support to counterdrug operations within the continental United States (CONUS), with priority to the Southwest Border.

In November 1989, Secretary Cheney announced the activation of Joint Task

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Force Six (JTF-6) at Fort Bliss, Texas, to serve as the planning and coordinating (operational) headquarters providing support to federal, state, and local LEAs within the SWB region. JTF-6's area of responsibility has since been expanded to match that of Operation Alliance and now encompasses the states of Texas, New Mexico, Arizona, and southern California. Secretary Cheney also directed the establishment of the Regional Logistics Support Office (RLSO) responding to LEA requests for non-operational military support (equipment loan, institutional training, facilities, etc.).

This guide is designed to give the law enforcement community an understanding of support available from the Department of Defense, the most effective methods of employing and integrating that support, and the means to request it.

The LEA military environment along the SWB is dynamic. JTF-6 is committed to providing responsive, quality, professional support and continues to address legal issues which currently inhibit our ability to optimize the application of DoD capabilities. As changes occur, information will be disseminated by all means possible.

CONCEPT OF MILITARY SUPPORT

Military support to SWB counterdrug operations is designed to assist LEAs in their mission to detect, deter, disrupt, and dismantle illegal drug trafficking organizations. JTF-6 support is intended to serve as a force multiplier to law enforcement agencies with the potential to enhance LEA effectiveness or release significant LEA resources to focus on interdiction seizure actions. JTF-6 will provide support to LEAs using a Total Force approach -- support packages drawn from a variety of sources and guided by priorities established by Operation Alliance as the integrating operational law enforcement element for the SWB region. The Total Force approach will result in joint (LEA/Military) operations involving Title 10 (JTF-6, NORAD) and Title 14 (National Guard) personnel, and non-operational assets from the Regional Logistics Support Office to provide a variety of enhanced capabilities to support LEAs. A summary of the mission and responsibilities of each of these agencies is contained in Annex C.

Operation Alliance, collocated with JTF-6 in El Paso, TX, reviews all requests for Military support, coordinates the efforts of federal, state and local agencies, and determines the appropriate military agency to provide the support.

JTF-6 support to LEA supply reduction

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efforts is categorized as Operational (integral military units providing tactical support through the execution of mission related training), General (augmentation of LEA with military specific skills, training, transportation, etc.), and Engineer (horizontal & vertical construction, road & range repair, etc.). A list of mission subcategories routinely available is provided at Annex A. Detailed descriptions of some typical mission types are contained in Annex B. No list of military support capabilities is ever all-inclusive. Innovative approaches to providing new and more effective support to LEAs are constantly sought, and legal and policy barriers to the application of military capabilities are gradually being eliminated.

JTF-6 military units providing support to law enforcement will be in direct support of the lead LEA. This means they provide assistance directly to the supported agency. During all phases of the support, these units will be under the tactical control (TACON) of JTF-6, and will establish and maintain contact with the JTF-6 Joint Operations Center.

JTF-6's primary measure of effectiveness is a twofold system which seeks to determine how well the LEA's objectives were met, and the value of the training derived by the unit providing the support. As Title 10 Federal forces under JTF-6 TACON are precluded by the Posse Comitatus Act from performing search, seizure, arrest, or other similar law

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enforcement activities, drug seizure data
are not maintained or reported by JTF-6.
Requests for such information will be
referred to the supported LEAs.

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MISSION PLANNING CONSIDERATIONS

**** RULES OF ENGAGEMENT:** Title 10 military support to LEAs is governed by The Joint Chiefs of Staff (JCS) peacetime rules of engagement (ROE). Military personnel deployed to border areas are authorized to be armed with their issued weapons for self-defense only. They may return fire when threatened with deadly force to defend either themselves, accompanying law enforcement personnel, or others present. These general rules provide adequate protection for military personnel engaged in counterdrug operations. Title 32 military support to LEAs is governed by similar rules as modified by each state governor.

**** POLITICAL SENSITIVITIES:** During joint (LEA/military) operations conducted near the U.S./Mexican border, appropriate measures will be taken to respect Mexican sovereignty. Military units operating in close proximity (3km for ground opns, 3nm for avn opns) of the border will plan and implement extensive redundant control measures to eliminate the potential for border violations. Additionally, efforts will be made to minimize the perception of militarizing the border. These include restrictions against deployment of combat tracked vehicles, not visibly exhibiting crew-served weapons, and not arming

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aviation platforms on the border. Political sensitivities also extend to considerations of the employment of military forces in such a way as to avoid any potential confrontation with the civilian populace or American Indians on an established reservation.

**** PUBLIC AFFAIRS GUIDANCE:** Many aspects of counterdrug operations are inherently sensitive and involve various risks which may be heightened by the release of information to the public. Announcements regarding a drug-related investigation, seizure or arrest will be made by the agency that actually makes the seizure or arrest. Military public affairs officer will be available to provide specific information and assist the LEA as required. Military spokespersons will appreciate that military elements serve in support of the LEA, and that DoD is not the lead agency. Finally, "speaking with one voice" is critical; therefore, release of information must be consistent, accurate, timely, and thoroughly coordinated with all appropriate agencies.

**** CLOSE PROXIMITY:** During joint operations which involve a substantial likelihood that tactical units will encounter criminal elements, a duly empowered law enforcement agent will normally be an integral member of each deployed team. The specific requirements for Close Proximity will be addressed and determined during joint planning for each support

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operation.

**** LEA RESPONSE PLAN:** During tactical operations designed to detect and report illegal drug activity, LEAs will be required to have a plan to respond for interdiction purposes or, in the case of intelligence gathering missions, for emergencies. These plans must accommodate a minimum of a 30 minute LEA response capability in order to be effective.

**** REQUEST LEAD TIME:** All major military commands follow a quarterly/annual training schedule which must be adjusted to accommodate unforecasted military support to law enforcement. LEA requests should allow 90 days for planning (lead-time) for small (platoon - 50 or less) operations; 120 days for medium (company - 200 or less) operations; and 180 days for large deterrent operations (battalion sized). Appropriate lead-time for planners will ensure that the most appropriate unit is matched to the mission, that proper unit planning and coordination is effected, and that appropriate operational security (OPSEC) measures are implemented; all of which contribute to a safer, smoother, and more effective mission. Annual requests for mission support (submitted no later than 1 September each year for the following calendar year) greatly facilitate planning by permitting military units to include this support in their training plans.

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Allocate appropriate resources, and reduce the cost of these missions. Annual LEA requests need not specify exact date at time of submission. Adjustments can be made as necessary. As an exception to requested lead-time, Joint Task Force Six can provide the Rapid Support Unit (RSU) for detection, in support of interdiction based on real-time intelligence, within 48 hours.

**** DURATION OF SUPPORT:** The duration of missions varies based upon the capability being employed. JTF-6 Planners can assist LEAs in determining the optimum mission duration based on lessons learned. For other missions (e.g., analytical support) regulations limit operational support for a single request to no longer than 179 days. JCS considers periods beyond 179 days as non-temporary permanent change of station PCS. This rule is predicated on the individual's need to maintain mastery of his military occupational skills and integrate with his team/unit in a collective training environment to achieve and sustain a high level of operational readiness. Absence of individuals from their units for periods beyond 179 days necessitates considerable training to re-establish proper cohesion. For manpower requirements greater than 179 days, in exigent circumstances, LEAs must accept the fact that military personnel will be rotated through the same duty position.

**** OPERATIONAL SECURITY (OPSEC):** Operational security is the process by which the

adversary is denied that information (critical indicators) which would provide him sufficient knowledge to determine LEA/military intentions and operations. Military units providing support within the SWB will conduct analyses to identify critical indicators, and determine and implement appropriate countermeasures to enhance force protection and mission effectiveness.

**** SAFETY:** The safety of military personnel will never be compromised. Missions that have unacceptable risk to service personnel providing support will not be approved.

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OPERATIONAL RESTRICTIONS

•• **POSSE COMITATUS:** Title 10 (Federal) military forces are prohibited by law from searching, seizing, arresting, or conducting any related law enforcement activity involving civilians. Title 32 (State National Guard) military forces are not subject to the provisions of Posse Comitatus but are generally restricted, as a matter of policy, from direct participation in search, seizure, arrest, or related law enforcement activities. National Guard forces are actively involved in passenger vehicle and commercial cargo inspection operations at ports of entry and are normally accompanied by a law enforcement agent while performing these functions. Both Title 10 and Title 32 forces may conduct detection and monitoring missions in support of the LEAs. Suspected criminal activity observed by the supporting military forces is then reported to the supporting LEA for appropriate LEA interdiction action.

•• **ECONOMY ACT:** Federal law normally requires interagency reimbursement when support is provided from one government agency to another. However, when military support is provided to LEAs and that support maintains or enhances individual or unit operational readiness, the support is exempt from the provisions of the Economy Act. During the military support

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planning phase, every effort will be made to ensure joint (LEA/military) training benefits are derived from the support mission. In some cases, particularly for non-operational support, interagency reimbursement is required. DoD will make every effort to minimize the reimbursable costs associated with these support missions. Section 1212 of the DoD Authorization Act provides exemptions for specific types of military support.

**** ACCESS TO PRIVATE LAND:** Title 10 (Federal) military forces are not authorized access to private lands without prior approval of the landowner. This applies even when accompanied by a duly empowered law enforcement agent with statutory authority for unrestricted access to private lands. Land use agreements facilitate the employment of Federal forces on private lands. In that regard, LEAs should consider obtaining long term, limited scope land use agreements in those areas where future military operations are envisioned. Title 32 (National Guard) military forces are not subject to this limitation.

**** INTELLIGENCE COLLECTION AND DISPOSITION:** Executive Order 12333 and various other laws and regulations govern DoD Intelligence Collection activities. DoD agencies are prohibited from collection of intelligence on U.S. persons and organizations within the continental U.S. unless those persons or organizations

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are reasonably believed to be involved in international drug trafficking. Certain collection methods are also restricted by law. All information acquired by military units during LEA support operations will be provided to the support LEA for appropriate dissemination. Subject to the approval of the supported LEA, the supporting military unit will provide intelligence products to other military units, EPIC, and Operation Alliance. Military units are not authorized to retain any data on U.S. persons or organizations after mission completion.

**** CONTINUOUS OBSERVATION:** Until we receive policy and operational guidance from the Office of the Secretary of Defense and Joint Chiefs of Staff (JCS) concerning the proper application of the land detection and monitoring mission given to JTF-6 in the FY 93 DoD Authorization Act, military units providing support to LEAs are prohibited from pursuing suspect vehicles or persons for the purpose of providing their containing coordinates to LEA or conducting systematic or deliberate observation on a continuing basis. This does not preclude continuous observation from a fixed point, such as an LP/OP, established for the purpose of detecting drug trafficking activity. Further, ground reconnaissance is limited to area coverage and excludes the specific targeting of buildings, vehicles, or persons. This restriction also impacts on the application of Forward Looking Infra-Red

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(FLIR). Though the use of FLIR is authorized for area coverage, use of FLIR to detect cross-border incursions is limited to a "one-time" report to LEAs because continued tracking would constitute continuous observation. Pending legislative actions may soon alleviate some of these restrictions and changes will be publicized as they occur. We expect these restrictions to be relaxed somewhat once the land detection and monitoring authority is applied to the Southwest Border.

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PROCEDURES FOR REQUESTING SUPPORT

Request procedures remain flexible, and allow individual agencies to follow their own established formats or write directly to Operation Alliance on agency letterhead requesting the support required. The basic "who, what, when, where, and why" should be addressed in the request, and a Point of Contact (POC) must always be identified. LEAs requiring assistance in determining the availability of assets, the type of capability best suited for their requirement, or the current policy/legal restrictions of employing specific assets, may contact the JTF-6 Liaison Officers (LNO), assigned to each state. The LNOs and their telephone numbers are listed on pages 18 & 19.

ESSENTIAL ELEMENTS OF A REQUEST

WHO: Requesting agency and specific POC.

WHAT: Specific need for which support is requested. May include recommendation as to type support to accomplish mission.

WHEN: Date required and duration desired. If specific date is undetermined, provide range.

WHERE: Specific location for the proposed operation. Needs to specify whether location is private or public land.

WHY: Brief statement as to why military support is needed to assist in determining

the type of equipment required.

REQUEST STAFFING PROCEDURES

Operation Alliance, in conjunction with the liaison officers from the National Guard, the Regional Logistics Support Office (RLSO), and JTF-6, reviews and validates all requests for support.

Requests for operational support forwarded to JTF-6 by Operation Alliance are received by the J3 Plans Branch. The Chief of the Plans Branch will assign staff responsibility for planning the support and the action officer immediately begins to work the request.

The action officer (AO) will contact the requestor to resolve any issues and begin the search for a unit to provide the support. JTF-6 has no tasking authority, but it has direct liaison authority with the Service's Major Commands, and sourcing a mission is never difficult given sufficient planning time. The AO then prepares a Concept Plan (CONPLAN) which is forwarded to Forces Command (FORSCOM) and, in the case of missions of large scope for long periods of time, JCS for approval. CONPLANS are standardized, and CINCFOR has been delegated much of the approval authority, thereby expediting this process. JCS Delegation of Authority (DOA) messages have delegated significant approval authority to CINCFOR, and this allows us to be more responsive to

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requests from the field. Further delegation will be requested in the future.

Members of the supporting unit are then brought to JTF-6 for a series of briefings to begin the planning process. This is followed by a site visit to coordinate directly with the requesting LEA. At the conclusion of its planning, and prior to mission execution, the supporting unit provides the supported LEA and JTF-6 an Operations Order (OPORD) briefing on their concept of operations or Program of Instruction for Mobile Training Teams. This serves as the agreement between the LEA and the military on the actual execution of the mission. It is customary for the LEA to brief the reaction response plan at the conclusion of the OPORD.

When CINCPAC has approved the mission, an Execute Order is published and support is rendered. Units are required to conduct After Action Reviews (AAR) and submit a formal after action report at the conclusion of each operation to capture lessons learned.

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JOINT TASK FORCE SIX

J3 PLANS	(915) 568-8415
J3 OPERATIONS	(915) 568-8843
J3 ENGINEER	(915) 568-8209
J2 INTEL	(915) 568-8133/9183
J2 IMAGERY	(915) 568-8788
JOINT OPERATIONS CENTER (TOLL FREE)	(800) 525-8864
JOINT OPERATIONS CENTER (NON-SECURE FAX)	(915) 568-8322
JOINT OPERATIONS CENTER (SECURE FAX)	(915) 568-8713

ON-SIGHT LIAISON OFFICERS

LNO CALIFORNIA	(916) 854-3865
LNO ARIZONA	(602) 746-4401
LNO NEW MEXICO	(505) 846-4507/4473
LNO TEXAS	(512) 465-5592

REGIONAL LOGISTICS SUPPORT OFFICE	(915) 568-9088
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OPERATION ALLIANCE

OPERATION ALLIANCE	(915) 540-6130
OPERATION ALLIANCE FAX	(915) 540-7532
NG LNO to OPALL	(915) 568-9082
JTF-6 LNO to OPALL	(915) 568-9083

DEA LNO to JTF-6	(915) 568-8994
USCS AVN LNO to JTF-6	(915) 568-8159
USBP LNO to JTF-6	(915) 568-8663

NORTH AMERICAN AEROSPACE DEFENSE COMMAND

NORAD J3 (OPERATIONS)	(719) 554-3423
NORAD J2 (INTELLIGENCE)	(719) 554-2329

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ANNEX A:**JOINT TASK FORCE SIX
SUPPORT CAPABILITIES*****Aviation Operations***

Avn Recon by Military Units Only
 Avn Recon with LEAs on Board
 Avn Trans of Contraband/Vehicles
 Avn Trans of LEAs outside CONUS
 Avn Trans of LEAs to Bust Site

Engineer Operations

Construction of Buildings
 Heliport Construction
 Range Construct/Repair (Rifle/Pistol)
 Build/Repair Border Roads/Fences
 Installation of Border Lights
 Erect Rappelling Towers

General Support

Mobile Training Teams
 Canine Support
 Maintenance & Repair of Equipment
 Air/Ground Transportation

General Support INTEL

Intel Analyst Support
 On-Site Transcription/Translation
 Data Base Construction

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Ground Reconnaissance**Ground Surveillance Radar****Imagery Operations**

Forward Looking Infra-Red (FLIR)
Photo Imagery

Listening Posts/Observation Posts (LP/OP)**Major Operations**

Deterrent Operations
Multi-Disciplined Intel Operations
Large Scale Ground Recon

Rapid Support Unit (RSU) Operations

Special Reconnaissance
Mobile Training Teams
Dive Operations

Sensor Operations**Water Operations**

Dive Operations
Riverine Operations
Watercraft Insert/Extract of LP/OPs

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ANNEX B:**AVIATION OPERATIONS (RECONNAISSANCE)**

DESCRIPTION: The purpose of aviation reconnaissance operations is to provide real time information to the LEA or ground unit commander. Reports include information on illegal border crossings (both ground and air), and the identification and/or observation of roads and trails which could be used by drug traffickers. An advantage of aviation reconnaissance is its ability to quickly cover large areas. Aviation reconnaissance missions can be conducted with or without LEA onboard the aircraft. Additionally, Forward Looking Infra-Red (FLIR) capable aircraft may be requested. The employment of FLIR allows for day/night operations with selected aircraft.

MISSION PARAMETERS

DURATION: Support normally ranges from 1 to 30 days. LEAs determine the number of days.

COMBINED CAPABILITY: Aviation is a significant force multiplier when combined with ground forces, either military or LEA.

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CONSIDERATIONS:

- A. Lead time for request: 90 days is preferred planning time.
- B. Must conform to statutory limitations when employing FLIR or other technology to detect cross-border smuggling.
- C. Beware of political/public sensitivities associated with operating aircraft near the international border or populated areas.
- D. Unit must coordinate with Southwest Air Defense Sector (SWADS) and U.S. Customs Air (C3IWEST) prior to operating near the border.
- E. Must establish control measures when operating within 3 NM of the border.

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AVIATION TRANSPORTATION

DESCRIPTION: Aviation Transportation is provided by Air Mobility Command (AMC) using military aircraft to transport law enforcement agents, vehicles, and illegal drugs in support of ongoing counterdrug operations. The military unit provides its own command, control and communications and takes care of logistic and administrative functions. Example missions include movement of tractor/trailer combinations containing seized illegal drugs LEAs wish to use to exploit the "Receiving End" in an ongoing investigation which is time sensitive. The size of the unit providing the support will vary from 5 to 20 personnel based on the number and type support aircraft and requirements.

MISSION PARAMETERS

DURATION: Missions are normally conducted in a one day period. Return flights after drug busts are not considered "critical, emergent requirements" and LEAs must coordinate for these.

EQUIPMENT: Can include the following:
Air Force C130, C141, or C5 aircraft.

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COMBINED CAPABILITY: Can be used in conjunction with intelligence operations to capitalize on intel received and provide rapid deployment of personnel and cargo, including oversized cargo.

CONSIDERATIONS:

- A. Lead time for request.
- * Immediate Requirements - Minimum of 24 hours.
 - * Routine Requests - Minimum of 14 days.
- B. LEA must provide the following information before a mission can be scheduled:
- * Agent (passenger) name and social security number.
 - * Detailed vehicle description, height, length, and weight.
 - * Detailed itinerary.

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AERIAL IMAGERY/RECONNAISSANCE

DESCRIPTION: Aerial imagery and reconnaissance is the process of obtaining photographs from an airborne platform for the purpose of identifying suspect activity such as: landing strips, possible cultivation sites, updating road and trail information, and other probable drug related activity. Black and white film is normally used but color film can be used for select missions which are small and well defined. The imagery is interpreted by trained photo analysts and the final product consists of annotated photographic prints.

MISSION PARAMETERS

DURATION: Flights of the target area are usually completed within one day. Mission parameters are set to minimize possibility of detection. After flight completion, final product should be delivered within three weeks.

COMBINED CAPABILITY: Can be used to determine the need for a ground operation. When a ground operation is deemed necessary, aerial imagery will assist in the planning and execution phases of the operation.

CONSIDERATIONS

A. Lead time for request: 90 days is

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preferred, but a shorter lead time can be handled subject to aircraft availability.

B. Target area size: Size of target area determines what can be seen in the photos. Target size and photo scale go hand-in-hand; the larger the area, the smaller the scale - just like a map. Growing site detection requires a small target area; an area overview is an example of a large target area mission. Request for extremely large area coverage (i.e. counties, whole national parks, etc.) are extremely costly and have little tactical value.

C. Request process: Due to the number of variables involved in the aerial reconnaissance process, phone coordination with the JTF-6 imagery section should be conducted as soon as possible during the request process.

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DETERRENT OPERATIONS

DESCRIPTION: The purpose of ground deterrent missions is to deny a portion of the border to drug traffickers. The LEA's intent for having a military presence on the border may include delaying the movement of drugs across the border or disrupting the drug trafficker's normal movement schedule or routes. Ideally the trafficker will be forced to shift operations to a preplanned point for law enforcement interdiction. The effectiveness of this mission is enhanced by scheduling a stay-behind force to follow-up the deterrent mission. The supporting unit's composition and size depends of the size of the area of operation and LEA's intent. Ground, motorized, and aviation units can perform this mission. Supporting units have ranged from 100 to 750 personnel.

MISSION PARAMETERS

DURATION: Support ranges from 14 to 30 days. Multiple sequential missions may be planned to enhance the effect of deterrent operations.

COMBINED CAPABILITY: Aviation is an excellent force multiplier in deterrent operations. Aviation can provide aerial observation, insert/extract of ground forces, emergency evacuation, and transportation of LEA response teams.

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CONSIDERATIONS:

A. 90 days is the absolute minimum time allotted to plan for a request of this magnitude. 180 days or greater lead time facilitates planning even further.

B. Detailed unit planning, site reconnaissance, and IFB process to select LP/OP sites and patrol routes are part of mission preparation.

C. Land use agreements with private land-owners and permission from state and federal agencies to operate on their lands are required.

D. Dependent upon the size, scope, and location of the operation, an environmental assessment of the area of operation may be required. Assessments can take up to 120 days to complete.

E. Unit LEA cross-training includes unit knowledge of rules of engagement, test of control measures to ensure unit does not violate the international border, and test the of LEA's response team procedures.

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GENERAL INTELLIGENCE

DESCRIPTION: Intel support generally entails on-site support to the requesting LEA and usually involves one to eight personnel who will usually be deployed in civilian clothes. Missions include multiple intel-related functions, such as historical analysis, target selection, link and pattern analysis, intel data base construction/management, situation briefs, intel product dissemination, intel preparation of the battlefield (IPB), foreign language transcription and translation of court ordered Title III wire taps, and technical intel support.

MISSION PARAMETERS

DURATION: Support normally ranges from 60 to a maximum of 179 days; however, actual mission duration will be determined by type of support requested, the intelligence resources involved, and the scope of work.

COMBINED CAPABILITY: Can be used in conjunction with ground operations, air assets and aerial imagery to complement intel support to LEAs. Use of intel analyst support to complete IPB prior to ground missions greatly enhances the effectiveness of the ground mission and increases the probability of success.

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CONSIDERATIONS:

- A. Lead time for request: 90 days is preferred, but a shorter time can be accommodated.
- B. Unit screening of selected intelligence personnel is done to ensure they have the appropriate security clearance and that no adverse personnel actions are pending.
- C. Use of intelligence assets requires Service General Counsel approval.
- D. Extensions of "By-Name" analysts beyond approved mission duration dates will not be favorably considered. Further, repeat or multiple 179 day mission requests will not be accepted.
- E. General Intelligence missions are unique and, due to their tour length are normally offered to the Reserve Component. Reserve assets are generally available for up to 179 days. Short extensions are possible on a case by case basis.

GROUND RECONNAISSANCE

DESCRIPTION: Ground Reconnaissance missions are for the purpose of physically moving through a specified area of land, usually on foot, in order to determine by visual verification whether production and/or trafficking of illegal drugs is occurring. This mission is highly effective when followed by LP/OP operations that can observe illegal sites discovered by the ground reconnaissance force. Supporting unit is usually about 20 to 40 personnel (platoon sized) and provides its own equipment, command, control and communications. Each recon team normally consists of 4 to 6 personnel. Area coverage is determined by number of teams, type of terrain and vegetation, and duration of the mission. These missions are normally conducted by light or dismounted Army Infantry units, Marine Infantry or Reconnaissance units or Special Operations Forces (SOF). Cavalry units have also proven very effective, conducting integrated ground/air operations.

MISSION PARAMETERS

DURATION: Normally 14 to 21 days.

EQUIPMENT: Can include the following:

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secure communications, secure TACSAT communications, global positioning system, night/day observation devices, medical support, tactical maps, and individual weapons for force protection.

COMBINED CAPABILITY: When available, helicopters can be integrated with the reconnaissance mission to enhance insertion/extraction and observation.

CONSIDERATIONS:

A. Lead Time for Request:

* Annual Requests - Submit request including Ground Recon and all other type missions for next calendar year by 1 Sep of year prior.

* Routine Ground Recons - 90 days prior.

B. LEA response plan for reaction must be coordinated prior to the mission operation order.

C. Patrols conducted in areas where probability of smuggler-military confrontation is high will require an accompanying LEA.

GROUND SURVEILLANCE RADARS

DESCRIPTION: The purpose of ground surveillance radar (GSR) missions is to provide detection of movement along the border or around LEA checkpoints. The system can be used for intelligence collection of activity in an area or to assist in interdiction operations. GSR can detect vehicular and foot traffic. In support of intelligence collection missions, the GSR can provide the LEA with the amount and type of traffic moving through a sector. In support of interdiction missions, the GSR provides data for LEA response teams regarding the type of traffic and general direction of movement. The GSR is best employed with redundant means of observation to confirm the GSR reports.

MISSION PARAMETERS

DURATION: Support normally ranges from 7 to 14 days. LEAs determine the number of days. Our experience has shown that missions in excess of 14 days quickly lose their training value.

COMBINED CAPABILITY: GSRs can be combined with other ground elements, such as sensors or LP/OPs, to confirm GSR reports.

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CONSIDERATIONS:

A. Lead time for request: 90 days is the desired mission planning time.

B. Mission normally entails detailed unit planning, site reconnaissance, and IPB process to select GSR sites.

C. Obtain land use agreements with private landowners and permission from state and federal agencies to operate on their lands if systems are anticipated to operate on private land. Units can operate from public land and observe a target area located on private land.

D. Employ the system within its capabilities. The GSR has a significant signature on the ground.

LISTENING POST/OBSERVATION POST

DESCRIPTION: LP/OPs are hidden, manned observation sites which are usually occupied by 3 to 6 people with a mission to watch for suspicious activity and report it to law enforcement. Normally 2 to 10 LP/OPs are manned in an area at the same time; however, this is the decision of the supported LEA. The military unit provides its own command, control, and communications and takes care of logistics and administrative functions. The size of the unit providing the support will vary from 10-100 people (team/platoon to company sized) and can be manned 24 hours a day. Border LP/OPs watch for the illegal movement of drugs across the border via manpack, pack animals, or vehicles. Airfield LP/OPs are conducted to detect drug smuggling aircraft landing or airdropping on remote/clandestine airstrips. LP/OPs can also be positioned to observe illegal movement along routes leading to domestic marijuana production areas.

MISSION PARAMETERS

DURATION: The mean is 21 days for missions conducted across the Southwest Border. LEAs will determine the length based upon their objectives, the threat, and the area being covered.

EQUIPMENT: Can include the following: secure communications, secure TACSAT communications, night observation devices,

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thermal imagery devices, tactical maps, medevac capability, and individual weapons for force protection.

COMBINED CAPABILITY: Other capabilities can be integrated with the LP/OP to increase effectiveness such as, helicopters, vehicles, ground sensors, and ground surveillance radars.

CONSIDERATIONS

- A. Lead time for request:**
- Rapid Support Unit - 72 hours
 - Routine LP/OP - 90 days
 - Annual Requests - Submit annual program of multiple LP/OPs by 1 September each year for next calendar year.
- B. LEA response plan for reaction must be coordinated prior to mission operation order.**
- C. Sites positioned where the possibility of smuggler-military confrontation is high will require an accompanying LEA.**

MILITARY ENGINEERING/CONSTRUCTION

DESCRIPTION: Military engineering units may be used to clear vegetation, emplace or remove obstacles, construct or improve combat trails/roads and fences, perform light construction or demolish condemned facilities to block/deter drug smuggling corridors/activities along the international boundary of the United States. Military engineers can also construct or improve Law Enforcement Agency (LEA) firing ranges and training facilities. Requests for engineer support received through Operation Alliance are governed by a prioritization program that addresses factors such as the training value to engineer units, environmental and cultural impact of engineer operations, time of construction and feasibility of completing each construction mission. Military engineering is focused on projects that have the greatest impact on the counterdrug effort of LEAs.

CONSTRUCTION PARAMETERS

MATERIALS: Bills of materials are developed by engineer units for each project. The supported LEA must provide the funding for, as well as procure, the materials for each project through their own supply channels.

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PERSONNEL AND EQUIPMENT: JTF-6 sources the personnel and equipment for each project and funds all contracts related to transportation, equipment, billeting and meals of military personnel.

CONSIDERATIONS

A. The average engineer construction mission consists of 50 personnel and lasts for a period of 40-60 days.

B. Allow 9-12 months for planning engineer missions due to environmental and cultural assessments, cost and contracting requirements incurred by construction projects, material and equipment availability, and coordination with land-owners and other affected parties.

C. Environmental assessments required for engineer missions are coordinated and funded by JTF-6 incidental to project planning.

D. An average of 40 construction projects are completed each fiscal year.

MOBILE TRAINING TEAM

DESCRIPTION: Military and/or civilian training team consisting of one to five personnel, able to instruct on specific subjects selected by the requesting law enforcement agency. Advantages of Mobile Training Teams (MTT) are that they can be tailored to meet specific LEA needs with regard to when, where, and how the instruction will be presented. The leader of the unit selected to perform the MTT will conduct an on-site visit with the requesting LEA for the purpose of ensuring the program of instruction (POI) fits law enforcement needs.

Examples of MTTs: Camouflage techniques, small unit tactics, land navigation, raid planning and execution, basic first aid, emergency medical training, marksmanship, vehicle maintenance, weapons training, interview/interrogation techniques, intel data base establishment, radio communications procedures, intel techniques, staff planning and organization, basic survival training, use of pyrotechnics, booby trap techniques, reconnaissance operations, and rappelling. The examples listed above are not all-inclusive. Training in an area not mentioned above may be obtained by contacting JTF-6 for assistance, and determining whether the capability to perform such training exists within DoD.

MISSION PARAMETERS

DURATION: MTTs can normally be accomplished within 3 to 5 days, although one day MTTs are common. Actual duration will depend on the amount of training requested and the number of students.

Equipment: MTTs usually provide the necessary training aids. Again, this depends on the type of training (e.g., for weapons training, LEAs may be required to provide their own weapons and ammunition.

CONSIDERATIONS:

- A. Lead time for request:**
- * Rapid Support Unit - 72 hours.
 - * Routine - 90 days. Actual time is dependant on type of training requested and availability of training team.
 - * Submission of annual requests by 1 September each year for the next calendar year greatly facilitates planning, preparation, and tasking of appropriate instructors. Annual requests do not require specific class date. Exact dates can be determined at a later date.
- B. LEA must have feasible training area.**

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WATER OPERATIONS

DESCRIPTION: Includes open water (ocean), riverine, and dive operations. Military units have the capability to insert, extract and navigate in rivers or open water enabling observation of islands or rivers. Dive operations are normally conducted for hull searches of ocean-going vessels. SEALS, Special Forces, and Marine Reconnaissance are the military forces of choice for these missions, and these units range in size from 6 to 10 personnel for dive operations to approximately 50 personnel for riverine/open water operations.

MISSION PARAMETERS

DURATION: Generally 14 to 21 days.

EQUIPMENT: Combat rubber raiding craft (CRRC), rigid raider craft (RRC), SCUBA, secure communications, global positioning system (GPS), day/night observation devices, navigation charts, medevac capability, and individual weapons for force protection.

COMBINED CAPABILITY: Helicopters can be combined with water operations to enhance insert, extract and observation capabilities.

CONSIDERATIONS

- A. Lead time for request:**
- * Rapid Support Unit (RSU)
(Actionable Intelligence) - 72 hours or less.
 - * Routine LP/OP - minimum of 90 days preferred.
 - * Annual Requests - Submit annual requests, including water operations and all other type missions by 1 September for the following calendar year.
- B. LEA response plan for reaction must be coordinated prior to mission operation order.**
- C. Sites positioned where the possibility of smuggler-military confrontation is high will require an accompanying LEA.**
- D. National sovereignty issues preclude water operations in the Rio Grande (U.S./Mexican Border) River.**

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**ANNEX C:
MILITARY SUPPORT AGENCIES**

The following military organizations are the focus of military support (operational manpower and non-operational equipment/schools only) provided to LEAs in the Operation Alliance area of responsibility:

Joint Task Force Six - JTF-6 coordinates all DoD Title 10 (Active and Reserve federal military) support for LEAs within the Southwest Border region (AZ, Southern CA, NM, TX,) to assist them in their mission to detect, deter, disrupt, and dismantle illegal drug trafficking organizations. To facilitate coordination of that support, JTF-6 has liaison officers located in each of the Southwest Border states (see list on page 18). The JTF-6 liaison officers are available to answer questions, assist with support requests, provide information on availability and capability of military support, and assist with the coordination and de-confliction of military support operations. The entire array of Total Force (Active and Reserve components) DoD resources are available to support LEAs subject to certain legal and policy constraints mentioned previously.

National Guard (NG) - The Adjutant General (TAG) of each of the border states (CA, AZ, NM, TX) provides NG (Title 32) military support to federal, state, and local LEAs as directed by the Governor and as resourced by the National Guard Bureau.

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The National Guard offers considerable capability to perform military missions in support of law enforcement and is not subject to some of the constraints affecting Title 10 forces.

Regional Logistic Support Office (RLSO)
(El Paso AND Long Beach) - The RLSO is the focal point for local, state, and regional offices of LEAs seeking non-operational logistic and training support. A major element of the RLSO mission is to develop points of contact within the various services and local military installations who will provide timely replies to requests for appropriate military equipment/training from LEAs in order to accomplish their CD mission. The Southwest Border is basically covered by the El Paso office, which is collocated with JTF-6 and Operation Alliance. California is also covered by the Long Beach office, although this office concentrates primarily on assistance requests from agencies north of Fresno, California.

North American Aerospace Defense Command (NORAD) - NORAD is assigned the role of air surveillance operations into and over North America. This mission includes responsibility for detection and monitoring of suspected aerial transit of illegal drugs into the U.S. and Canada, integrating NORAD operations into the counterdrug command, control, communications, and intelligence network, and coordinating with other federal agencies engaged in detecting and

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monitoring suspected drug trafficking.
The Commander in Chief (CINC), NORAD
conducts this mission in coordination with
other supported and supporting CINCs
(including the JTFs) and agencies as part
of their normal peacetime air sovereignty
mission.

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DPS-FBT

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FACSIMILE COVER PAGE

To: Davey Aguilera
From: MARC BREULT
Date: 17:15 EST 16-Dec-92
Subject: Some deails, more coming later

Transmitting 6 pages in addition to this cover page.

Delivered by CompuServe Mail 

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DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

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OCT 26 1994

MEMORANDUM TO: Charles D. Sarabyn
Assistant Special Agent in Charge
Houston Field Division

FROM: Deputy Director

SUBJECT: Decision to Remove from Position and
from the Federal Service

By memorandum dated February 4, 1994, Charles R. Thomson, who was then Acting Associate Director (Law Enforcement), notified you of his proposal to remove you from your position of Supervisory Criminal Investigator (Assistant Special Agent in Charge), GN-1811-15, and from the Federal service. This action was proposed in accordance with Chapter 75 of Title 5 of the United States Code and Part 752 of Title 5 of the Code of Federal Regulations, and was based on the following reasons:

- REASON 1: Committing a Gross Error in Judgment in Recommending that the Raid on the Branch Davidian Compound on February 28, 1993, be Allowed to Proceed After Receiving Information that the Raid Had Been Compromised.
- REASON 2: Making False Statements in the Course of a Criminal Investigation.
- REASON 3: Making Inconsistent and Misleading Statements to Investigators.
- REASON 4: Use of Poor Judgment in Making Alterations to the Raid Plan After the Texas Rangers Requested a Copy of the Plan.

This is the final decision on that proposed action. In reaching my decision, I have given full and careful consideration to all of the information relied upon and provided to you by the proposing official: the Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco and Firearms Investigation of Vernon Wayne Howell.

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Charles D. Sarabyn
Assistant Special Agent in Charge

also known as David Koresh, dated September 1993, as well as certain documentation assembled by the Treasury Waco Review Team and relied on by them in preparing their report;¹ the notice of proposed removal; your written reply dated March 22, 1994; your oral reply, which you presented to me on March 24, 1994; and your written comments on the official summary of your oral reply, dated April 14, 1994. Based on all of this information, I find the following: Reason 1 is sustained, Reason 2 is sustained, Reason 3 is sustained, and Reason 4 is sustained. My decision is discussed specifically below.

I will not restate all of the specific details of your actions which led Mr. Thomson to propose that you be removed, as those details are fully presented in the proposal notice.

REASON 1: Committing a Gross Error in Judgment in Recommending that the Raid on the Branch Davidian Compound on February 28, 1993, be Allowed to Proceed After Receiving Information that the Raid had been Compromised-- Sustained

I have fully considered the evidence relied upon by the proposing official and your oral and written replies. I find that the facts and reasoning outlined in the notice of proposed removal are fully supported by the evidence. Your arguments and supplemental documentation submitted in response to the proposal fail to dissuade me that your recommendation to the incident commander that the raid proceed represents a gross error in judgment, given the information you had before you at the time, and given the instructions you had from Headquarters.

As ASAC of the Houston Field Division, you participated in the final development of the tactical plan for the raid on the Branch Davidian Compound and in the presentation of that plan to Headquarters. You and SAC Chojnacki were the two individuals with ultimate responsibility for coordinating

¹ You have raised several general objections to the body of evidence relied upon. I have considered your arguments and I do not find anything improper in the process by which these charges have been proposed and considered and I do not find that you have been in any way disadvantaged in your ability to respond to the charges.

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Charles D. Sarabyn
Assistant Special Agent in Charge

the preparation for and execution of the planned operation. I find disingenuous your assertions in reply to your proposed removal that surprise and the men working outside in the pit were not, in fact, key elements of the plan. I am astounded by your suggestion that surprise is not an essential factor in executing a raid of this nature. In support of this premise you assert that the raid was going to be a "dynamic entry, not a dynamic/surprise entry." Yet you then proceed to define "dynamic entry" as "a sudden, vigorous and unexpected entry." Reply at 3 (emphasis added).

Your efforts at obfuscation also fail with respect to the importance of the men working in the pit. In your explanation of the plan to Headquarters, you emphasized the importance of the men working in the pit as a significant factor, in particular in response to questions concerning how ATF could safely execute the raid at 10 a.m. You admit in your reply that to serve the warrants safely, the guns had to be separated from the Branch Davidians who were capable of using them against the agents. You admit that surprise as to timing of the raid and activity in the pit were means of ensuring that the guns were kept separate. You imply that there were other means, but you suggest none. Indeed, no other means were part of the plan or appear to have been reasonably contemplated. In light of this, if, as you assert, by the time of the raid, you and others involved in the raid knew that in all likelihood the men would not be working in the pit, I am only further convinced of your gross inability to make the types of judgments critical to the position of a special agent and to the role you were assigned with respect to this operation.

I am convinced, that at the time you recommended proceeding with the raid, you knew that Korsh knew that ATF and the National Guard were coming. Your statements at the staging area confirm as much. Despite your suggestions that surprise was not a key element to the plan, you seek in your reply to persuade me that you did not know at the time that surprise was in fact lost because you did not know that Korsh knew the raid was imminent. Your assertions in reply are but additional variations of the several inconsistent statements you have made in the past about what you knew at the time. Nevertheless, in your written reply you admit that you understood Korsh's statement to be different than his usual statements about ATF because of his reference to the National Guard. You further acknowledge that Rodriguez told you that Korsh was nervous and agitated. You also

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Charles D. Sarabyn
Assistant Special Agent in Charge

admit that you felt that "something was up." You knew that even if you started the raid ahead of schedule, more than 45 minutes would elapse from the time Rodriguez left the compound until the agents would reach it, ample time for Korsh to have distributed the weapons. Given that you admit you understood at the time, your belief that the raid could still be safely executed represents a gross error in judgment. At the very least, you should have recognized that the circumstances presented an unacceptable risk of violent confrontation. Your error represents a gross failure to properly analyze and process information to arrive at realistic conclusions. The safety of fellow agents and the public depends on such skills, and they are essential to the duties of a special agent and a supervisor. Your actions cause me to have no confidence that you can properly perform the functions of a special agent in the future, much less a supervisory agent.

You attempt to avoid being held accountable for this gross error in judgment by suggesting that others at the staging area or the undercover house, who know of Rodriguez' report, did not voice objection to going forward. This argument does not persuade me that your recommendation was not a gross error in judgment, nor does it persuade me that others share the same responsibility. The silence of others does not equate with approval, much less agreement. Deference to the chain of command at a critical juncture in a law enforcement action may stifle individual doubts. Others did not occupy your key leadership position, nor were they privy to all of the information you had or should have had, and for which you were logically perceived by them to have had.

For the foregoing reasons, I fully sustain Reason 1. I further find that the charge warrants the penalty of removal and a lesser penalty would be inadequate. In reaching this conclusion, I have considered all appropriate factors, including the nature and seriousness of this conduct in relation to the duties and responsibilities of your position and to your years of experience.

REASON 2: Making False Statements in the Course of a Criminal Investigation--Sustained

I have fully considered the evidence relied upon and your replies to Reason 2 and find your arguments unpersuasive. The basis for the charge is fully articulated in the notice of proposed removal and I conclude that the notice is fully supported by the evidence relied upon. Nothing in your

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Charles D. Sarabyn
Assistant Special Agent in Charge

replies causes me to question the conclusion of the proposing official that you were not being truthful when, in the course of a criminal investigation, you repeatedly told the Texas Rangers that Rodriguez had failed to clearly inform you that Korash knew that ATF and the National Guard were coming and that if he had so informed you, you would not have proceeded with the raid. In your reply you acknowledge that your statements to the Rangers were incorrect. I conclude that your lack of truthfulness was intentional.

While admitting that your statements were not correct, you argue in reply that the statements were not false because there was no intent to deceive and because some time after your original statements, you corrected them in a supplemental statement to the Texas Rangers. Your supplemental statement to the Texas Rangers does not obviate the absence of truthfulness and candor you displayed in your interview. The supplemental statement does not provide a credible explanation for such significant misstatements of fact, nor does it fully correct the false statements. The supplemental statement does not cause me to doubt that, at the time of the interview, you intended to deceive the Texas Rangers.

I have seriously considered your arguments and documentation about trauma and stress as well as the lessons contained in the ATF training video on shooting reviews. I am not persuaded that your critical misstatements of fact were unintentional or symptomatic of post traumatic stress. Your statements to SAC Chojnacki and SAC Royster, your statements to others at the command post and the staging area, and your actions to hurry the raid ahead of schedule, unequivocally demonstrate that you clearly heard and understood Rodriguez' report that Korash knew that ATF and the National Guard were coming. Your misstatements to the Texas Rangers reflect an intentional effort to deflect blame away from yourself for allowing the raid to go forward. I have no confidence that you will speak truthfully and with candor in future inquiries into events in which you might play a role. The Bureau must be able to have such confidence in all of its special agents and must know that an agent's credibility will not be called into question.

I fully sustain Reason 2. I have considered all appropriate factors in reaching a determination that the penalty of removal is the only appropriate penalty for the charge.

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Charles D. Sarabyn
Assistant Special Agent in Charge

REASON 3: Making Inconsistent and Misleading Statements to Investigators Regarding Your Conversation with Special Agent Rodriguez and Your Knowledge and Belief that the Raid had Been Compromised--Sustained

I have fully considered the evidence relied upon in the notice of proposed removal as well as your submission in reply relevant to Reason 3. The basis for the charge is fully and accurately set forth in the notice and I find that the charge is fully supported by the evidence relied upon. You do not deny making the statements at issue. However, you argue that others also made contradictory statements and that your contradictory statements resulted from stress and trauma. I find these arguments do not excuse the inconsistent and misleading statements at issue. I find that the particular statements at issue in this decision, taken together, represent a conscious effort on your part to avoid being held accountable for your actions on the day of the raid. As a highly trained and experienced investigator you are expected to accurately recall and truthfully recount your thoughts, actions, and observations in the course of critical events in which you are involved, even under very stressful situations. I have no confidence that you will report in the future with candor and veracity on events in which you are involved and in which you might be held accountable for some error. It is essential that an agent's credibility will not be called into question.

I sustain Reason 3 in its entirety. I have fully considered the record, including your replies, and all other appropriate factors in evaluating whether the penalty of removal from the Federal Service is the appropriate penalty for Reason 3. Given the nature and seriousness of your repeated inconsistent and misleading statements, your effort to avoid accountability for your actions, and the implication of your misstatements (e.g., to shift blame to a subordinate), I have no confidence in your ability to properly perform the duties of a supervisory or nonsupervisory special agent. A lesser penalty would not be adequate.

REASON 4: Use of Poor Judgment in Making Alterations to the Raid Plan After the Texas Rangers Requested a Copy of the Raid Plan--Sustained

I have fully considered the evidence relied upon and your replies relevant to Reason 4. I find that the evidence

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Charles D. Sarabyn
Assistant Special Agent in Charge

relied upon fully supports the charge as articulated in the notice of proposed removal. Whether the document at issue is characterized as a "raid plan" or an "operational plan," whether the document was required under an ATF order or was merely a draft plan required under the newly signed but undistributed National Response Plan, are issues entirely irrelevant to the misconduct stated in Reason 4. Your exercise of poor judgment relates to the making of post-raid changes to a document which purported to set forth the plan and rationale for the raid and which you knew was to be provided to the Texas Rangers for use in their criminal investigation.

You acknowledge in your replies that you did in fact make changes in the document but state that your changes were limited to "pen and ink" changes to reflect the actual date of the raid. Other substantial changes were made to the document including narrative text and annexes, but you state that you cannot recall making any changes other than to the dates. Had you exercised the type of judgment expected of special agents of your experience, you would not have allowed changes in the document to be made (certainly not without noting on the face of the document that the changes were made after the raid). Given the significance of the event to which the document relates, your role in the operation, and the fact that you knew this document would be relied upon by the Texas Rangers, your error in judgment is particularly troubling. Your lack of judgment in this matter appears symptomatic of a pattern of conduct reflecting a greater concern for avoiding criticism than for accuracy.

Regardless of whether the changes were made with the intent to deceive, your judgment in altering the raid plan, which you knew was requested by the Texas Rangers, reflects the exercise of extremely poor judgment for a special agent with your experience and training. In addition, your efforts to minimize the importance of the document at issue and to shift responsibility to others (e.g., Agent Dyer) cause me to further question your integrity and judgment. I fully sustain Reason 4.

Standing alone, your error in relation to this charge would not necessarily warrant the penalty of removal. However, your actions viewed in the context of all four reasons at issue in this decision cause me to come to a different conclusion and compel me to conclude that removal is the only appropriate penalty.

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Charles D. Sarabyn
Assistant Special Agent in Charge

In reaching my final decision to remove you from the Federal service based upon the four charges enumerated, both individually and together, I have considered many factors, including the ones specifically discussed above, as well as the following: the nature and seriousness of the offenses, and their relation to your position, including whether your conduct was intentional or repeated; your supervisory role and the prominence of your position; whether you have been disciplined in the past; your record of performance and length of service; the effect your behavior has had on your supervisors' confidence in your ability to do your job; consistency of the penalty with those imposed for similar offenses; the notoriety of your conduct and the impact of your actions on the reputation of the Bureau; the clarity with which you were on notice of the instructions or standards you violated; any mitigating circumstances; and the adequacy of alternative sanctions to ensure against such conduct in the future.

Based upon a weighing of these factors, I find that your removal from your position as Supervisory Criminal Investigator (Assistant Special Agent in Charge), GM-1811-15, Houston Field Division, Office of Criminal Enforcement, Office of Law Enforcement, Bureau of Alcohol, Tobacco and Firearms and the Federal service is warranted and necessary to promote the efficiency of the service. A lesser penalty would not be adequate.

Your removal from your position and Federal service will be effective on Friday, October 28, 1994.

You have the right to appeal this action to the Merit Systems Protection Board (MSPB) no sooner than the day after the effective date of this action and no later than thirty (30) calendar days after the effective date of this action. Your appeal must be made pursuant to the procedures contained in Part 1201 of Title 5 of the Code of Federal Regulations (C.F.R.). The procedures for appeal are found in the attached excerpt from Title 5 of the C.F.R. Your appeal should be addressed to:

Regional Director
Dallas Regional Office
Merit Systems Protection Board
1100 Commerce Street, Room 6F20
Dallas, Texas 75242

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Charles D. Sarabyn
Assistant Special Agent in Charge

Your appeal should inform the MSPB that the records of your case may be obtained by writing to the Chief, Employee and Labor Relations Branch, Bureau of Alcohol, Tobacco and Firearms, [REDACTED] Washington, DC 20226. This will assist the MSPB in processing your appeal.

It is required that all petitions for appeal to the MSPB be in writing and set forth the reasons for contesting the adverse action. In addition, all of the information called for in Part 1201, Appendix I, must be provided. This information may, as indicated, be provided on the copy of the appeal form attached to this memorandum.

If you believe that prohibited discrimination based on race, color, religion, national origin, sex, age, or handicap is involved in this decision, you may wish to contact the Dallas Regional Office of Equal Opportunity (EO) at (214) [REDACTED]. You may appeal to MSPB and have the allegation of discrimination be considered as part of the appeal, or pursue the matter under EO discrimination regulations, but not both. If you elect to file a complaint of discrimination, you must contact an EO counselor within forty-five (45) days after the effective date of this action.


Daniel R. Black

Attachments

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UNITED STATES OF AMERICA
 MERIT SYSTEMS PROTECTION BOARD
 DENVER FIELD OFFICE

CHARLES D. SARABYN,)	
)	
Appellant,)	
)	
v.)	DOCKET NUMBER
)	DA-0752-95-0127-I-1
DEPARTMENT OF THE TREASURY,)	
)	
Agency.)	
)	

SETTLEMENT AGREEMENT

The parties, solely to resolve this matter without further litigation, freely and voluntarily enter into the following agreement in settlement of this appeal.

1. The Agency will reinstate Charles D. Sarabyn (hereinafter "Appellant") to Federal service retroactive to October 28, 1994, with back pay and benefits, less any offsets or withholdings required by law. Pursuant to the terms specified below, Appellant will be reassigned to the position of Chief, Visual Information Branch (Series 1801, Grade 14, step 10), in the Office of Science and Information Technology, Bureau of Alcohol, Tobacco and Firearms (hereinafter "ATF"), a position under the law enforcement retirement system (hereinafter "6(c) retirement") that receives law enforcement "Availability pay."

2. Upon execution of this agreement, and until the effective date of his reassignment under paragraph 6,

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Appellant will be returned to his last position and grade of record, and Houston, Texas, will remain his permanent duty station.

3. Upon execution of this agreement, Appellant will be detailed to the position of Chief, Visual Information Branch, the assignment to be performed in Washington, DC, or other appropriate locations. However, in no event will the Appellant be required to remain in a travel status away from his permanent duty station more than two consecutive weeks.

4. Upon execution of this agreement and until January 7, 1995, or a later date, agreed to by Appellant and Agency, Appellant will be allowed to use annual leave.

5. If by January 9, 1995, Appellant has any unused annual leave in excess of 240 hours, commonly referred to as "use or lose time," Appellant will be allowed to carry over this unused "use or lose" leave to 1995.

6. No earlier than June 15, 1995, Appellant will be permanently reassigned to the position of Chief, Visual Information Branch, described in paragraph 1.

7. Effective with Appellant's reassignment to ATF Headquarters and permanent change of position, described in paragraph 6, Appellant will be granted a permanent change of station move (PCS) with all benefits provided by Federal law and regulations. No provision of this agreement will adversely affect these benefits.

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8. In the event the position of Chief, Visual Information Branch, is abolished or loses its receipt of 6(c) retirement or Availability pay while occupied by the Appellant, the Agency will, consistent with Federal law and regulations, secure another position with the same benefits.

9. The Agency will not take any action with regard to Appellant that is inconsistent with, in derogation of, or in detriment to this settlement agreement, including any rights Appellant may have to representation by counsel.

10. By entering into this agreement, neither party admits to any violation of law, rule, or regulation, and Appellant does not admit to the charges made by the Agency.

11. The Agency will pay Appellant's attorney's fees to the extent that such fees are reasonable, not otherwise covered by a legal defense fund, and are in accordance with law and substantiated by an itemized statement of services. The Agency will not pay fees that have been paid by insurance and that are not subject to a subrogation clause. An itemized statement of services will be provided to the Agency by Stephen Gardner and Gail M. Dickenson prior to payment of any fees by the Agency. Gail M. Dickenson's itemization of services will include an itemization of services for the period of her joint representation of Appellant and Phillip Chojnacki. The Agency agrees to pay any uncontested fees to Appellant's attorney(s). If any

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portion of the fees is contested, the parties mutually agree that the issue of contested attorney's fees will be jointly submitted to MSPB Judge James Kasic for mediation. If mediation by Judge Kasic does not resolve the issue, the Appellant will file a petition for enforcement as to any fees remaining in dispute. The parties further agree that the issue of attorney's fees may be divided for purposes of resolution between services provided by Stephen Gardner and Gail M. Dickenson. As of December 6, 1994, Stephen Gardner claims attorney's fees in the amount of \$18,028.13 and Gail M. Dickenson claims attorney's fees in the amount of \$21,424.29.

12. The parties agree that this settlement agreement will be submitted to the Merit Systems Protection Board for incorporation as a part of the official record of this appeal. The parties jointly agree to the continued jurisdiction of the Board for purposes of enforcing the terms of this agreement upon either party. Both parties further agree that all documents filed by them or on their behalf including, but not limited to, the petition of appeal, the Agency File, motions, and supporting documents, to the extent allowed by applicable Board law and regulation, will be withdrawn from the official record of this appeal. Appellant and Appellant's counsel agree not to disclose reports of the interviews conducted by the Waco

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Administrative Review Team, the Texas Rangers interviews, and the ATF shooting review notes. The parties understand that it is the intention of the Board to forward to the Agency for processing all pending and future Freedom of Information Act requests relating to the withdrawn documents.

13. This agreement constitutes a final settlement of any and all claims, charges, or causes of action that were or could have been brought by the Agency against the Appellant relating to ATF's investigation of Vernon Wayne Howell, aka, David Koresh, and the Branch Davidians outside of Waco, Texas, and subsequent related investigations or reviews by the Texas Rangers or the Department of the Treasury, and all claims, charges, or causes of action against Appellant known to the Agency at the time of the execution of this agreement.

14. The Appellant freely and voluntarily agrees to the terms of this agreement and upon acceptance into the record by the Board of this agreement, the Appellant further agrees to the dismissal of this appeal. The Appellant will not pursue any further legal action in any forum with respect to any issue arising out of the personnel action which is the subject of this MSPB appeal, except to the extent necessary to ensure the Agency's compliance with the settlement agreement.

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15. The Appellant's official personnel file (OPF) will reflect his voluntary reduction in grade and voluntary change in service. Any reference in the OPF, the employee performance file (EPF), and in any disciplinary file, to this disciplinary action will be expunged. Any documents in these files relating to or concerning disciplinary action will be removed and destroyed. The SF 50 reflecting the Appellant's removal will be expunged and replaced with an SF 50 reflecting a voluntary action by the Appellant.

16. Except as otherwise noted herein, the parties agree to bear their own costs and fees incurred in connection with this appeal. The parties specifically note that Appellant may petition for additional fees and costs incurred if required to bring an action to effect compliance with this settlement agreement or in the event of a breach of this agreement.

17. The terms and conditions set forth in this agreement constitute the full understanding of the parties in relation to the settlement of this appeal, and no understanding or agreements exist between the parties except as expressly set forth herein.

It is the understanding of the parties that by entering into this agreement Appellant will continue in a position in Federal service in the Agency that will preserve his 6(c) retirement status and will preserve his continued receipt

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of Availability pay, consistent with Federal law and regulations. In light of the above settlement agreement and stipulations, the parties respectfully request that this settlement agreement be accepted into the Board's official record of these proceedings and that a decision be rendered incorporating the terms of this agreement and dismissing this appeal.

FOR THE APPELLANT:

Charles D. Sarabyn
Charles D. Sarabyn
Appellant

12/20/94
Date

Stephan Gardner
Stephan Gardner
Attorney for Appellant

12/21/94
Date

FOR THE AGENCY:

Daniel R. Black
Daniel R. Black
Deputy Director, ATF

12/16/94
Date

Federico W. Lopez
Federico W. Lopez
Agency Counsel

Dec 16 1994
Date

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DIRECTOR

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

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OCT 26 1994

MEMORANDUM TO: Phillip J. Chejnacki
Special Agent in Charge
Houston Field Division

FROM: Deputy Director

SUBJECT: Decision to Remove from Position and
from the Federal Service

By memorandum dated February 4, 1994, Charles R. Thomson, who was then Acting Associate Director (Law Enforcement), notified you of his proposal to remove you from your position of Supervisory Criminal Investigator (Special Agent in Charge), GN-1811-15, and from the Federal service. That action was proposed in accordance with Chapter 75 of Title 5 of the United States Code and Part 753 of Title 5 of the Code of Federal Regulations, and was based on the following reasons:

- REASON 1: Gross Failure to Properly Supervise ATF's Attempt to Serve Arrest and Search Warrants on the Branch Davidian Compound Outside of Waco, Texas, on February 28, 1993.
- REASON 2: Making False Statements.
- REASON 3: Attempting to Wrongfully Shift Responsibility to a Subordinate for Your Failure to Properly Supervise the Raid.
- REASON 4: Use of Poor Judgment in Allowing Alterations to be Made to the Written Raid Plan and Not Providing Notice of Such Alterations to the Texas Rangers and to the Department of the Treasury.

This is the final decision on that proposed action. In reaching my decision, I have given full and careful consideration to all of the information relied upon and provided to you by the proposing official: the Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco and Firearms Investigation of Varnes Wayne Howell,

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Phillip J. Chojnacki
Special Agent in Charge

also known as David Koresh, dated September 1993, as well as certain documentation assembled by the Treasury Waco Review Team and relied on by them in preparing their report;¹ the notice of proposed removal; your written reply dated March 22, 1994; your oral reply, which you presented to me on March 24, 1994; and your written comments on the official summary of your oral reply, dated April 14, 1994. Based on all of this information, I find the following: Reason 1 is sustained, Reason 2 is sustained, Reason 3 is sustained, and Reason 4 is sustained. My decision is discussed specifically below.

I will not restate all of the specific details of your actions which led Mr. Thomson to propose that you be removed, as those details are fully presented in the proposal notice.

REASON 1: Gross Failure to Properly Supervise ATF's Attempt to Serve Arrest and Search Warrants on the Branch Davidian Compound Outside of Waco, Texas, on February 28, 1993--Sustained

Nothing you have presented in either your written or oral reply persuades me that the facts or reasoning outlined in the notice of proposed removal are erroneous. To the contrary, the evidence relied upon by the proposing official, and further reinforced by the content of your written and oral replies, convinces me that your decision to proceed with the raid represents a gross failure to properly supervise the planned action. This failure and your stated reasons for the decision cause me to have no confidence in your ability to perform the duties of a special agent, much less the duties of a supervisory special agent.

As the incident commander of the operation, you had the duty to responsibly supervise the execution of the warrants in a manner consistent with the plan (as presented to and approved by Headquarters), avoiding undue risks to the safety of the agents as well as to the safety of the occupants of the compound. Based upon the information you

¹ You have raised several general objections to the body of evidence relied upon. I have considered your arguments and I do not find anything improper in the process by which these charges have been proposed and considered and do not find that you have been in any way disadvantaged in your ability to respond to the charges.

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Phillip J. Chojnacki
Special Agent in Charge

admit you had before you at the time, you should have known that to go forward with the raid under such circumstances was inconsistent with the key elements of the plan and specific instructions from Headquarters, and posed an unacceptable risk of violent confrontation. Even if I were to accept your assertions that you did not know that the raid was compromised, you failed to provide any credible explanation for why you allowed the raid to proceed prior to the 10 a.m. time period established in the approved plan as the earliest time at which you could be confident that the men would be outside working, separated from the other occupants of the compound and from access to the arms.

To the extent that you claim you were "desensitized," and that the possibility of a "tip off" was "not fathomable" to you, such claims do not serve to mitigate my judgment of your conduct. To the contrary, it is not fathomable to me that you would not have seriously considered the possibility of a "tip off" in light of all of the facts and risks known to you at the time, and particularly given your negotiations with the *Neco Tribune-Herald*.

You state that you accept full responsibility for the raid decision, yet you repeatedly suggest that others bear responsibility for failing to raise objections to going forward or for failing to abort the raid. You seek to excuse your actions on the grounds that others allegedly did not recognize the import of Rodriguez' report either and that others were the experts. However, others did not have the same responsibility to be in full command of the operation as you had. Others did not have the responsibility to make the final decision whether to go forward. Others were not necessarily privy to the same scope of information and discussions of which you were or should have been cognizant. To the extent that you might have been ignorant of relevant information related to the operation, or ignorant of weaknesses in pre-raid planning or intelligence gathering, such ignorance represents failures in the quality of your supervision of the operation.

Your failure to fully evaluate the information available to you, your disregard of the key elements of the plan and instructions from Headquarters, and your efforts to shift responsibility to others, represent a gross failure to fulfill your responsibilities as the Special Agent in Charge of the Houston Field Division and incident commander of the operation. Accordingly, I sustain Reason 1 in its entirety.

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Phillip J. Chojnacki
Special Agent in Charge

I have fully considered the record, including your replies, and all appropriate factors in evaluating whether the penalty of removal from the Federal service is the appropriate penalty for Reason 1. Given the nature and seriousness of your failure to properly supervise the operation, as discussed above, and your repeated suggestions that others bear responsibility, I have no confidence that you can properly perform the functions of a supervisory special agent in the future. These same reasons cause me to have no confidence in you as a nonsupervisory special agent. I conclude that no penalty less than removal is adequate for the charge specified in Reason 1.

REASON 2: Making False Statements--Sustained

I have fully considered the evidence relied upon by the proposing official and your replies to Reason 2. I find your arguments unpersuasive and lacking in candor and credibility. The basis for the charge is fully articulated in the notice of proposed removal and I find that the notice is fully supported by the evidence relied upon. Nothing in your reply causes me to question the conclusion that you were untruthful in your repeated statements to the Texas Rangers and to the Waco Review Team that you did not believe the raid had been compromised. I find entirely unpersuasive your efforts to explain why, if you did not believe the raid was compromised, you rushed ahead with the raid earlier than 10 a.m., the time set to surprise the Devidians. You and the other raid planners established this raid time as the safest because at 10 a.m. you believed the men would have begun working outside in the pit, separated from the firearms and the women and children.

You assert that the absence of dissenting voices in proceeding forward with the raid is confirmation of your view that you and others did not believe the raid was compromised. However, the fact that others involved in the raid did not at that time voice objections to going forward with the raid is not relevant to whether you knew or should have known that the raid was compromised. Further, the absence of vocal dissension is not evidence that others did not know that the raid was compromised. In fact, the material relied upon reveals that others recognized that the raid was compromised.

Your repeated statements reflect a conscious purpose to avoid the truth and to avoid being held accountable for your actions. I fully sustain Reason 2. I have considered all

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Phillip J. Chejnecki
Special Agent in Charge

appropriate factors in determining whether the penalty of removal is appropriate to this charge. I conclude that a lesser penalty would be inadequate. Honesty and integrity are character traits essential to the positions of trust which special agents occupy. Your lack of candor in the aftermath of the raid makes it impossible to have confidence in your integrity in the future. It is essential that an agent's credibility will not be called into question. In light of the significance of the events that gave rise to this action, the seriousness of the offense, and the nature of the responsibilities of a special agent, the penalty of removal is appropriate to this reason alone.

REASON 3: Attempting to Wrongfully Shift Responsibility to Subordinate for your Failure to Properly Supervise the Raid--Sustained

I have fully considered the evidence relied upon and your replies to Reason 3. You admit that you made statements to the Texas Rangers which are quoted in the notice of proposed removal. I find unpersuasive your denial that the statements reflect an effort to shift blame to SA Robert Rodriguez. The statements at issue convey the impression that SA Rodriguez somehow contributed to your faulty decision to proceed. I am persuaded that this is the impression which you intended to convey. Indeed, I find disingenuous your assertion, proffered in response to this charge, that you have never tried to shift the responsibility for your actions to others. In your reply to each of the four reasons for your proposed removal, you repeatedly attempt to shift responsibility beyond yourself. I fully sustain Reason 3.

I agree with the proposing official that unfairly and inaccurately attempting to shift blame to a subordinate is one of the most serious breaches of trust a supervisor can commit. Supervisors and managers regularly receive credit for the hard work and heroic conduct of their subordinates. I am therefore particularly disturbed to find a manager attempting to avoid responsibility for his own errors by unfairly and inaccurately suggesting that a subordinate failed in some way. Such misleading statements reflect a lack of candor and an unwillingness to accept responsibility. They also cause me to lack confidence that you would respond truthfully and forthrightly in connection with official matters in the future. It is essential that an agent's credibility will not be called into question. For these reasons and after consideration of all appropriate

00013732

Phillip J. Chojnacki
Special Agent in Charge

factors, I find that the penalty of removal is the only appropriate penalty for this charge.

REASON 4: Use of Poor Judgment in Allowing Alterations to be Made to the Written Raid Plan and Not Providing Notice of Such Alterations to the Texas Rangers and to the Department of the Treasury--Sustained

I have fully considered the evidence relied upon and your replies to Reason 4. I find that the evidence relied upon fully supports the charge as articulated in the notice of proposed removal. Whether the document at issue is characterized as a "raid plan" or an "operational plan," and whether the document was required under an ATF order or was merely a draft plan required under the newly signed but undistributed National Response Plan, are issues entirely irrelevant to the misconduct stated in Reason 4.

Your exercise of poor judgment relates to the making of post-raid changes to a document which purported to set forth the plan and rationale for the raid and which you transmitted to the Texas Rangers for use in a criminal investigation, and later to the Waco Review Team, in response to a request for a copy of the raid planning documentation. You transmitted the documentation without providing oral or written notice of the post-raid changes. Written notice on the face of the document would have made clear to any subsequent reader that the document contained modifications made after the raid. You knew that the Texas Rangers and the Waco Review Team requested the documentation for use in the course of their respective investigations. Your lack of judgment in this matter appears symptomatic of a pattern of conduct reflecting a greater concern for avoiding criticism than for accuracy.

Regardless of whether the changes were made with the intent to deceive, your failure to advise the Texas Rangers and the Waco Review Team of the changes in the plan by oral and written communication, including notice on the document itself, reflects the exercise of extremely poor judgment for a special agent with your experience and training. Your efforts to minimize the importance of the document at issue and to shift responsibility to others (e.g., Agent Dyer) cause me to further question your integrity and judgment. I fully sustain Reason 4.

00013733

Phillip J. Chojnacki
Special Agent in Charge

Standing alone, your error in relation to this charge may not necessarily warrant the penalty of removal. However, your actions, viewed in the context of all four reasons at issue in this decision and after consideration of all appropriate factors, cause me to come to a different conclusion and compel me to conclude that removal is the only appropriate penalty.

In reaching my final decision to remove you from Federal service based upon the four charges enumerated, both individually and together, I have considered many factors, including the ones specifically discussed above, as well as the following: the nature and seriousness of the offenses, and their relation to your position, including whether your conduct was intentional or repeated; your supervisory role and the prominence of your position; whether you have been disciplined in the past; your record of performance and length of service; the effect your behavior has had on your supervisors' confidence in your ability to do your job; consistency of the penalty with those imposed for similar offenses; the notoriety of your conduct and its impact on the reputation of the Bureau; the clarity with which you were on notice of the instructions or standards you violated; any mitigating circumstances; and the adequacy of alternative sanctions to ensure against such conduct in the future.

Based upon a weighing of these factors, I find that your removal from your position as Supervisory Criminal Investigator (Special Agent in Charge), GM-1811-15, Houston Field Division, Office of Criminal Enforcement, Office of Law Enforcement, Bureau of Alcohol, Tobacco and Firearms, and the Federal service, is warranted and necessary to promote the efficiency of the service. A lesser penalty would not be adequate.

Your removal from your position and the Federal Service will be effective on Friday, October 28, 1994.

You have the right to appeal this action to the Merit Systems Protection Board (MSPB) no sooner than the day after the effective date of this action and no later than thirty (30) calendar days after the effective date of this action. Your appeal must be made pursuant to the procedures contained in Part 1201 of Title 5 of the Code of Federal Regulations (C.F.R.). The procedures for appeal are found in the attached excerpt from Title 5 of the C.F.R. Your appeal should be addressed to:

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Phillip J. Chojnacki
Special Agent in Charge

Regional Director
Dallas Regional Office
Merit Systems Protection Board
1100 Commerce Street, Room 6F20
Dallas, Texas 75242

Your appeal should inform the MSPB that the records of your case may be obtained by writing to the Chief, Employee and Labor Relations Branch, Bureau of Alcohol, Tobacco and Firearms, [REDACTED] 4300, Washington, DC 20226. This will assist the MSPB in processing your appeal.

It is required that all petitions for appeal to the MSPB be in writing and set forth the reasons for contesting the adverse action. In addition, all of the information called for in Part 1201, Appendix I, must be provided. This information may, as indicated, be provided on the copy of the appeal form attached to this memorandum.

If you believe that prohibited discrimination based on race, color, religion, national origin, sex, age, or handicap is involved in this decision, you may wish to contact the Dallas Regional Office of Equal Opportunity (EO) at (214) [REDACTED]. You may appeal to MSPB and have the allegation of discrimination be considered as part of the appeal, or pursue the matter under EO discrimination regulations, but not both. If you elect to file a complaint of discrimination, you must contact an EO counselor within forty-five (45) days after the effective date of this action.


Daniel R. Black

Attachments

00013735

UNITED STATES OF AMERICA
 MERIT SYSTEM PROTECTION BOARD
 DENVER FIELD OFFICE

PHILLIP J. CHOJNACKI,)	
)	
Appellant,)	
)	
v.)	Docket No.
)	DA-0752-95-0126-I-1
DEPARTMENT OF THE TREASURY,)	
)	
Agency.)	
_____)	

SETTLEMENT AGREEMENT

The parties solely to resolve this matter without further litigation freely and voluntarily enter into the following agreement in settlement of this appeal.

1. The Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (hereinafter "Agency"), will reinstate Phillip J. Chojnacki (hereinafter "Appellant") to Federal service retroactive to October 28, 1994, with back pay and benefits, less any offsets or withholdings required by law. Pursuant to the terms specified below, Appellant will be reassigned to the position of Enforcement Programs Specialist (Series 1801, Grade 14, step 10), Criminal Enforcement Programs, Bureau of Alcohol, Tobacco and Firearms, a position under the law enforcement retirement system (hereinafter "6(c) retirement") and which receives law enforcement Availability pay (hereinafter "Availability

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pay"). This reassignment is being made in the interest of the Agency and entitles Appellant to pay retention under the provisions of 5 C.F.R. Part 536.

2. Upon execution of this agreement and until the effective date of his reassignment under paragraph 5, Appellant will be returned to his last position and grade of record, and Houston, Texas, will remain his permanent duty station.

3. Upon execution of this agreement and until January 9, 1995, Appellant will be detailed to the Criminal Enforcement Program. Upon execution of this agreement and until January 7, 1995, Appellant will be in an annual leave status.

4. If by January 9, 1995, Appellant has any unused annual leave in excess of 240 hours, commonly referred to as "use or lose time," Appellant will be allowed to carry over this unused "use or lose" leave to 1995.

5. Effective January 9, 1995, and until January 8, 1997, Appellant will be permanently reassigned to the position of Enforcement Programs Specialist, and will be stationed in Houston, Texas. During this period Appellant will be detailed to perform meaningful duties with the U.S. Customs Service, Houston, Texas.

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6. Effective January 9, 1995, and until Appellant's mandatory retirement at age 57, Appellant will receive retained pay.

7. Effective January 9, 1997, the Agency may transfer Appellant to another post of duty consistent with Agency needs.

8. In the event the position of Enforcement Programs Specialist is abolished or loses its receipt of 6(c) retirement or Availability pay while occupied by the Appellant, the Agency will, consistent with Federal law and regulations, secure another position with the same benefits and duty station.

9. The Agency will not take any action with regard to Appellant that is inconsistent with, in derogation of, or in detriment to this settlement agreement including any rights Appellant may have to representation by Counsel.

10. By entering into this agreement, neither party admits to any violation of law, rule, or regulation, and Appellant does not admit to the charges made by the Agency.

11. The Agency will pay Appellant's attorney's fees to the extent that such fees are reasonable, not otherwise covered by a legal defense fund, and are in accordance with law and substantiated by an itemized statement of services. The Agency will not pay fees that have been paid by insurance and that are not subject to a subrogation

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clause. An itemized statement of services will be provided by Appellant's counsel prior to payment of any fees by the Agency. Gail M. Dickenson's itemization of services will include an itemization of services for the period of her joint representation of Appellant and Charles Sarabyn. The Agency agrees to pay any uncontested fees to Appellant's attorney. If any portion of the fees is contested, the parties mutually agree that the issue of contested attorney's fees will be jointly submitted to MSPB Judge James Kasic for mediation. If mediation by Judge Kasic does not resolve the issue, the Appellant will file a petition for enforcement as to any fees remaining in dispute.

12. The parties agree that this settlement agreement will be submitted to the Merit Systems Protection Board for incorporation as a part of the official record of this appeal. The parties jointly agree to the continued jurisdiction of the Board for purposes of enforcing the terms of this agreement upon either party. Both parties further agree that all documents filed by them or on their behalf including, but not limited to, the petition of appeal, the Agency File, motions, and supporting documents, to the extent allowed by applicable Board law and regulations, will be withdrawn from the official record of this appeal. Appellant and Appellant's counsel agree not to disclose reports of the interviews conducted by the Waco

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Administrative Review Team, the Texas Rangers interviews, and the ATF shooting review notes, which were provided to them in the course of this matter. The parties understand that it is the intention of the Board to forward to the Agency for processing all pending and future Freedom of Information Act requests relating to the withdrawn documents.

13. This agreement constitutes a final settlement of any and all claims, charges, or causes of action that were or could have been brought by the Agency against the Appellant relating to ATF's investigation of Vernon Wayne Howell, aka, David Koresh and the Branch Davidians outside of Waco, Texas, and subsequent related investigations or reviews by the Texas Rangers or the Department of the Treasury, and all claims, charges, or causes of action against Appellant known to the Agency at the time of the execution of this agreement.

14. The Appellant's official personnel file (OPF) will reflect his voluntary reduction in grade and voluntary change in service. Any reference in the OPF, the employee performance file (EPF), and in any disciplinary file, to this disciplinary action will be expunged. Any documents in these files relating to or concerning disciplinary action

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will be removed and destroyed. The SF 50, reflecting the Appellant's removal will be expunged and replaced with an SF 50 reflecting a voluntary action by the Appellant.

15. Except as otherwise noted herein, the parties agree to bear their own costs and fees incurred in connection with this appeal. The parties specifically note that Appellant may petition for additional fees and costs incurred if required to bring an action to effect compliance with this settlement agreement or by the event of a breach of this agreement.

16. It is the understanding of the parties that by entering into this agreement Appellant will continue in a position in Federal service in the Agency that will preserve his 6(c) retirement status and will preserve his continued receipt of Availability pay, consistent with Federal law and regulations.

17. The terms and conditions set forth in this agreement constitute the full understanding of the parties in relation to the settlement of this appeal, and no understanding or agreement exists between the parties except as expressly set forth herein. The parties further agree that no modification of this agreement will be effective unless agreed to in writing by the Appellant and the Agency.

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In light of the above settlement agreement and stipulations, the parties respectfully request that this settlement agreement be accepted into the Board's official record of these proceedings and that a decision be rendered incorporating the terms of this agreement and dismissing this appeal.

FOR THE APPELLANT:

Phillip J. Wojnacki
Phillip J. Wojnacki
Appellant

12/20/94
Date

Gail M. Dickenson
Gail M. Dickenson
Attorney for Appellant

12/21/94
Date

FOR THE AGENCY:

Daniel R. Black
Daniel R. Black
Deputy Director, ATF

12/16/94
Date

Federico W. Lopez
Federico W. Lopez
Agency Counsel

Dec 16, 1994
Date

00013374

cult members in a compound in Waco, Texas. From the exhaustive information put together by the investigation team, as well as interviews conducted by the review panel, I would like to discuss some topics and offer some opinions and suggestions relative to the warrant execution on that day. It is hoped that all law enforcement personnel will gain additional insight and understanding as the events of Waco are studied.

Many questions have been raised in the aftermath of the law enforcement activities at Waco, Texas. One of the most perplexing is whether ANY law enforcement agency is adequately prepared to handle a similar assignment. I cannot answer that question. I can only caution against the thought of military intervention in a like situation. Unlike the military, in civilian law enforcement there can never be consideration given to any acceptable casualty losses. Occurrences of this type are nightmares for every police planner, manager and chief.

ANALYSIS OF PLAN

After dissecting A.T.F.'s involvement with the Vernon Howell investigation, it is my feeling that the raid on the Mount Carmel Center was doomed to fail even before the first highly trained SRT member stepped out of the cattle trailers on February 28, 1993.

One of the key ingredients to any successful plan is intelligence gathering. Good, sound, correct and up to the minute information is essential for any raid plan, not to mention the mammoth undertaking in Waco. This was an area in need of major improvement in the A.T.F. investigation.

It is my opinion that the case agent did his homework. I believe he conducted as thorough an investigation as was possible within the bureaucratic framework at A.T.F. There was mention of the fact that he only had five years experience in investigations and that this was his first big case. The fact remains, he developed the investigation and obtained critical information to substantiate probable cause, which led to the arrest warrant for Howell and search warrants for the compound and the "Mag Bag."

There was, however, a lot of missing information and poor intelligence gathered before the raid and on the raid day itself. Added to this was the fact that vital intelligence was overlooked, discarded or not used. This information was obtained by a host of A.T.F. personnel.

Examples of this can be seen when former cult members are interviewed and, apparently, much if not all of their statements are reported to be facts. No thought is given to the idea that these ex-cult members had been away from the

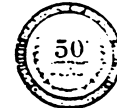
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SELECTED DOCUMENTS PROVIDED BY THE DEPARTMENT OF DEFENSE
AT THE REQUEST OF THE SUBCOMMITTEES



OFFICE OF THE DEPARTMENT OF DEFENSE COORDINATOR
FOR DRUG ENFORCEMENT POLICY AND SUPPORT

1510 DEFENSE PENTAGON,
WASHINGTON, DC 20301-1510



25 MAY 1994

MEMORANDUM FOR UNDER SECRETARY OF THE NAVY (NIE)
PRINCIPAL DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PL&E)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(RA&CDP)
DIRECTOR, JOINT STAFF
CHIEF, NATIONAL GUARD BUREAU

SUBJECT: Priorities, Policies and Procedures for Department of
Defense Counterdrug Support to Domestic Drug Law
Enforcement Agencies

REFERENCES:

- A. Department of Defense Domestic Counterdrug Operational Support to Drug Law Enforcement Agencies, December 15, 1994.
- B. Department of Defense Directive 5525.5, DoD Cooperation with Civilian Law Enforcement Officials, January 15, 1986.
- C. National Drug Control Strategy, The White House, February 1994.
- D. Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3710.01, Delegation of Authority for Approving Operational Support to Drug Law Enforcement Agencies and Counterdrug-Related Deployment of DoD Personnel, May 28, 1993.
- E. Department of Defense Directive 5525.10, Using Military Working Dog Teams (MWDTs) to Support Law Enforcement Agencies in Counterdrug Missions, September 17, 1990.
- F. Letter and Memorandum, Office of the Department of Defense Coordinator for Drug Enforcement Policy and Support, to Federal Drug Law Enforcement Agencies, the Joint Staff and National Guard Bureau, subject, DoD Fixed-Wing Air Transportation Support to Federal Drug Law Enforcement Agencies, November 15, 1994.

The Department of Defense (DoD) conducted a review of counterdrug (CD) operational support it provides domestic drug law enforcement agencies (DLEAs), reference A.



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DoD Directive 5525.5, reference B is being revised based on changes in legislation and changes in the National Drug Control Strategy, reference C.

This memorandum establishes specific priorities, policies and procedures to make best use of DoD resources, addresses approval authority for operational and non-operational support, details criteria that must be used to approve requests for support, and outlines reporting requirements to measure effectiveness.

Disciplining the System -- Approval Process

The Department must discipline itself to ensure that requests for support are approved only by the proper authority.

- CJCSI 3710.01, reference D, contains guidance on the types of operational support that may be approved by the CD supported Commanders-in-Chief within their designated areas of responsibility (AORs). DoD Instruction 5525.10, reference E, governs MWDTs and assigns the Secretary of the Air Force as MWDT Executive Agent. While MWDT support is operational support, the Air Force retains approval authority.

- Approval authority for non-operational support other than excess personal property rests with the Services and Defense Agencies. The Secretary of Defense (SECDEF) has delegated authority under section 1208 of the FY 1990 - 1991 National Defense Authorization Act, Transfer of Excess Personal Property, to the DoD Coordinator for Drug Enforcement Policy and Support, who has redelegated some of this authority to the Regional Logistical Support Offices (RLSOs).

- State National Guard (NG) CD Coordinators have authority to approve requests for NG CD support based on the annual Governors' plans for CD support as approved by the SECDEF.

The attached diagram depicts the approval authorities and process for operational support to domestic DLEAs. Because DLEAs submit requests for support to multiple locations, DoD must discipline itself so that regardless of where DLEAs submit their requests, the requests are forwarded to the proper authority for approval. This process should be transparent to the DLEAs.

Approval authorities must coordinate among themselves to ensure that requests for support are sourced by the most appropriate and effective personnel and forces, either active, reserve or NG. They also must coordinate to ensure that they do

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not duplicate support of multiple DLEA requests for the same mission. Additionally, they must coordinate with the DLEAs requesting support and the military organizations providing the support to ensure that DLEA needs and supporting military organizations' capabilities are compatible. For example, coordination for fixed-wing air transportation support must ensure that the cargo can in fact fit on the aircraft; coordination for mobile training teams must ensure that the requested training is appropriate for the students and within the capabilities of the unit conducting the training.

Support Approval Criteria

The following criteria must be met before requests for DoD support are approved:

- There must be a valid CD nexus. Each request must:
 - Originate with an appropriate official of a federal, state, or local government agency who has responsibility for CD activities (see section 1004(a) of the National Defense Authorization Act of 1991, as amended, and sections 372 and 374 of title 10, U.S. Code).
 - Solicit CD support that DoD is authorized to provide (i.e., section 1004 of the National Defense Authorization Act of 1991, as amended; section 1208 of the National Defense Authorization Act of 1990 - 1991; chapter 18 of title 10, U.S. Code; or section 112 of title 32, U.S. Code).
 - Solicit support that will assist CD activities of the requesting agency within the U.S.
 - Solicit support that is consistent with DoD's implementation of the National Drug Control Strategy. In particular, support must assist or improve DLEA capabilities in detecting, deterring, or disrupting the production, distribution or transport of illegal drugs within the U.S., or the dismantling of drug trafficking organizations.
- There must be military training value associated with the support. Support that is approved and executed should provide DoD personnel and units with an opportunity for training which contributes to military combat readiness. Additionally, the support should complement, not conflict with other military training requirements or contingencies. NG personnel assisting with U.S. Customs Service or U.S. Postal Service inspections,

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participating in marijuana eradication, or providing operational/investigative case support are exempt from this requirement.

-- For individuals, support must be tied to military skills, except in the case of NG personnel, where it must be compatible with the military occupational skill Air Force specialty code of support personnel wherever practical, in accordance with paragraph 2-7e, NGR(AR) 500-2/NGR(AF)55-6.

-- For units, support must be tied to unit mission essential task list.

-- DoD personnel will not perform clerical or administrative duties such as secretarial, receptionist, or janitorial.

- DoD operational support should enhance DLEA operational capabilities and should be tied to specific cases or operations, versus augmenting DLEA staffs.

- Approval authorities are authorized to approve requests for operational support per reference D. Requests for SECDEF approved extensions should not become routine in nature.

- DoD operational support is not intended to be a continuing, on-going, long-term commitment for missions or operations at the same location. Rather, it is intended to provide short-term assistance with military skill, experience or capability, that DLEAs are unable to provide themselves. Approval authorities must closely examine repetitive requests for DoD to provide the same type of support for different missions or operations at the same location. Although there may be some valid repetitive requests for support, approval authorities must ensure that each request complies with the support approval criteria and priorities for support included in this memorandum.

Requests from DLEAs that approving authorities desire to support, but may adversely affect military preparedness, must be submitted in writing through the Joint Staff to SECDEF for approval.

Priority of Support

Requests from DLEAs for DoD support continue to increase in number and scope, exceeding available resources in terms of funding and personnel. Because of this, the following priorities

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are established to ensure that DoD provides effective support where it is most needed:

- 1) DLEA multi-jurisdictional, multi-agency task forces that are in a high intensity drug trafficking area (HIDTA).
- 2) Individual DLEAs that are in a HIDTA.
- 3) DLEA multi-jurisdictional, multi-agency task forces that are not in a HIDTA.
- 4) Individual DLEAs that are not in a HIDTA.

The most critical, drug trafficking areas in the Country have been designated as HIDTAs. DoD must tailor its efforts and align its resources to support the specific needs and requirements of the DLEAs located within the HIDTAs.

DoD will implement these priorities through funding allocations to the various project codes and yearly funding guidance to appropriate agencies. For example, this office directed the NG to provide 40% of fiscal year (FY) 1995 funding to those states that have HIDTAs, and within those states, to give priority to the HIDTAs.

Exceptions to the priorities listed above include fixed-wing air transportation support and specific classes taught by the U.S. Army Training and Doctrine Command, which are discussed below:

- DoD's first priority for fixed-wing air transportation support is controlled deliveries and its second priority is for other personnel and equipment movements, as stated in reference F. State and local DLEAs requesting fixed-wing air transportation support should submit requests to their state NG CD Coordinators. If the NG cannot provide the support, state or local DLEAs should coordinate with a federal DLEA, and request that federal DLEA sponsor their request and submit it to DoD per reference F. DoD will only approve requests for fixed-wing air transportation support from state and local DLEAs that are submitted in writing by a federal DLEA national level headquarters.

- The Rehabilitation Training Instructor Course is primarily for state and local corrections officers who perform duties as drill instructors in "boot camp" corrections programs. The Field Tactical Police Operations Course is for state and local DLEAs who perform marijuana eradication missions.

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Other Areas

To help HIDTA DLEAs maximize the benefit of DoD support, approval authorities will work closely with HDTAs located within their designated AORs. They will advise the HIDTA Executive Committees and DLEAs on the types of DoD support available, assist them in developing and prioritizing annual and unscheduled requirements, and act as the point of contact for DoD support.

In order to maximize DoD support to field operations, DoD CD funding will not be used for temporary duty (TDY) personnel to perform duties with or augment DLEA federal headquarters in the Washington, D.C. area, or with the National Drug Intelligence Center or El Paso Intelligence Center. Likewise, DoD CD funding will not be used for TDY personnel to perform duties with or augment military organizations or headquarters. DoD also will not fund resident school initial entry pilot training or language training for DLEAs. Requests for exception to this policy will be considered on a case-by-case basis and should be submitted in writing through the Joint Staff to this office.

RLSOs do not play a role in operational support. Their mission is to transfer excess DoD personal property (EPP) to federal, state, and local agencies for CD activities. They do not have responsibility for coordinating DLEA requests for training. One of the functions of the RLSOs is to screen EPP at Defense Reutilization and Marketing Offices. This provides a means for DLEAs to request and obtain EPP from DoD through the RLSOs. EPP is subject to a central screening process within specified time frames for DoD and domestic DLEAs.

Assessing DoD's Support

To measure DoD's effectiveness, the Department needs data that accurately depicts the amount of support it provides DLEAs in terms of level of effort. The Department also needs data that links its support to DLEA arrests and seizures. Finally, it needs anecdotal information, when available, that succinctly describes the impact, utility, and value added of DoD support to the DLEAs.

Although most of the level of effort data will be available through DoD sources, approval authorities will need to coordinate with supported DLEAs to obtain arrest and seizure data, and anecdotal information. These data and information will be reported quarterly. Detailed guidance describing reporting

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procedures will be published separately. This data will be used as a management tool to evaluate overall DoD effectiveness, establish priorities for support, and determine how best to allocate DoD resources among the various programs.

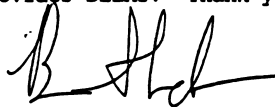
Planning, Programming and Budgeting Requirements

The Services and Defense Agencies will continue to participate in the budget process by justifying program levels based on historical data, projected efforts, and fiscal constraints.

Funds will be allocated based on Department priorities. The Services, Defense Agencies, and military commands who execute the programs will base their efforts on these priorities.

Conclusion

I look forward to working with you to improve the quality of support the Department provides DLEAs. Thank you for your support.

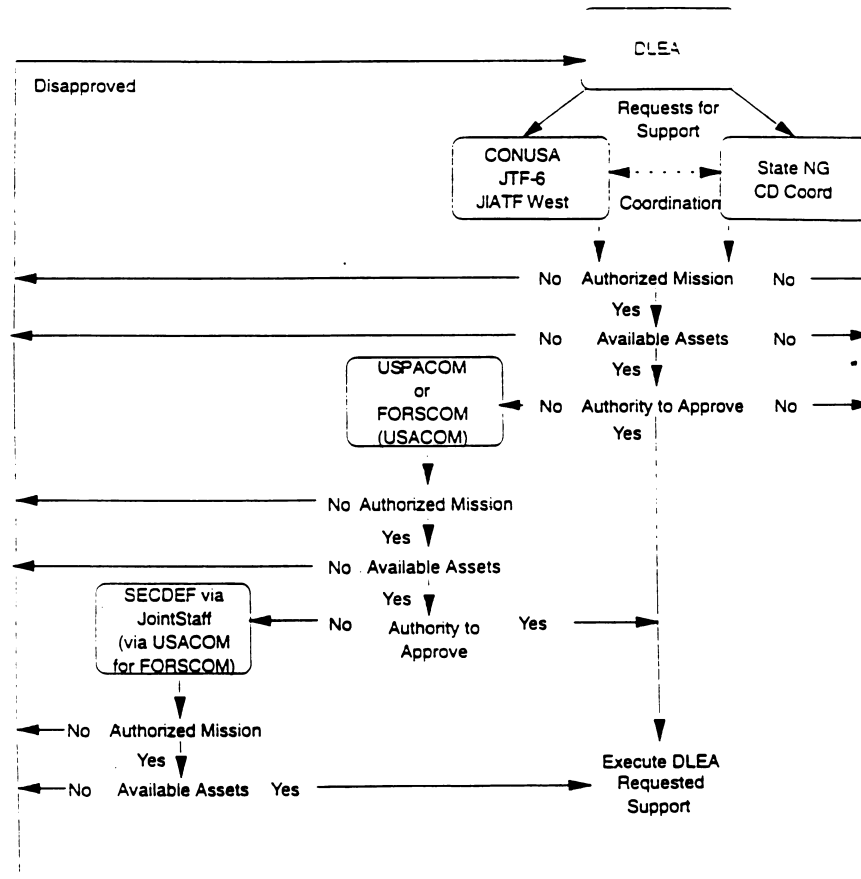


Brian E. Sheridan
Deputy Assistant Secretary for
Drug Enforcement Policy and Support

Attachment:
As stated

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Approval Process Operational Support to Domestic DLEAs



Note, although coordination should be an ongoing process among approval authorities, when either the CONUSAs, JTF6, and JIATF-West or the state NG CD coordinators cannot source a request for support, they MUST coordinate with each other.

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~~SECRET~~

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CJTF SIX FT BLISS TX//CG//
 CINCPAC ... MCPHERSON GA//FCJ3-00//FCJ2-10//FCJA//FCPA//
 INFO JOINT STAFF WASHINGTON DC//J3-CNOD/SOD//
 SECDEF WASHINGTON DC//OCDEP-S//
 DA WASHINGTON DC//DAMO-0DD/SAGC/SAILE/DAJA-10//
 USCINCSOC MACDILL AFB FL//SOJ3-SCN-C//
 CDRUSASOC FT BRAGG NC//A00P-POC//
 CDRUSASFC FT BRAGG NC//A0S0-GC0-0//
 CDREDSFGA FT BRAGG NC//S-3//
 CDRIICORPS FT HOOD TX//AFZF-CG/AFZF-GT//
 BATF WASHINGTON DC
 OPERATION ALLIANCE FT BLISS TX

S E C R E T

OPER/JT002E-93/CJTF-6 002-93//

MSGID/ORDER/CJTF-6-J3/93-002/FEB//

AMPN/SUBJ: OPERATION ORDER - COUNTERDRUG TRAINING SUPPORT MISSION JT
002E-93//

REF/A/RMG/CJTF-6 FCJT-J3/172245ZSEP92/-/NOTAL/-//

AMPN/CONF MSG/SUBJ: COUNTERDRUG SUPPORT REQUEST FOR FY93 RAPID
SUPPORT UNIT (RSU) DEPLOYMENTS JT001-93, JT002-93, JT003-93 AND⑨
[REDACTED] OPERATIONS OFFICER

DSN 978-8434/8888

JOHN M. PICKLER, BG, USA, CG

*John M. Pickler*SECRET
LEA SENSITIVE
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UNCLASS

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JT004-93 (U) //

REF/B/RMG/CINCFOR FCJ3/03218Z0CT92/-/NOTAL//

AMPN/CONF MSG/SUBJ: APPROVAL TO EXECUTE COUNTERDRUG MISSION JT

001-93/JT002-93 (U) //

REF/C/RMG/CJCS/190050ZDEC91/-/NOTAL//

AMPN/UNCLAS MSG/SUBJ: DELEGATION OF AUTHORITY FOR APPROVING
OPERATIONAL SUPPORT TO DRUG LAW ENFORCEMENT AGENCIES AND COUNTERDRUG
RELATED DEPLOYMENT OF DOD PERSONNEL//

REF/D/LTR/CINCFOR FCJ3-0D/09 MAR 92/-/NOTAL//

AMPN/UNCLAS MEMO/LIMITED DELEGATION OF AUTHORITY FOR APPROVING CD
OPERATIONAL SUPPORT TO DLEAS//

REF/E/LTR/OPERATION ALLIANCE/2 FEB 93/-/-//

AMPN/UNCLAS LTR/OPERATION ALLIANCE SUPPORT REQUEST//

ORDTYP/EXORD/JTF-6 JT002E-93//

TIMEZONE/Z//

NARR/PER REF D, BG PICKLER IS APPROVAL AUTHORITY FOR THIS

OPERATION//

HEADING/TASK ORGANIZATION//

SUNIT

/UNITDES

/UNITLOC

/CHNTS

①
OPERATIONS OFFICER

DSN 978-8434/8888

JOHN M. PICKLER, BG, USA, CG

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/JTF-6 /FT BLISS, TX /TACTICAL CONTROL//
 /CINCSOC /HALLWELL AFB, TX /RSU ASSETS//

GENTEXT/SITUATION/(S) OPERATION ALLIANCE HAS SUBMITTED A REQUEST TO JTF-6 ON BEHALF OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS (BATF) FOR EMPLOYMENT OF RSU ASSETS IN SUPPORT OF AN UPCOMING BATF COUNTERDRUG OPERATION INVOLVING TASK ORGANIZED SWAT TEAMS FROM HOUSTON, NEW ORLEANS, AND DALLAS BATF DIVISIONS. THIS OPERATION HAS THE HIGHEST INTEREST OF BATF, WASHINGTON AND HAS BEEN APPROVED AT THAT LEVEL. ASSISTANCE IS REQUIRED TO ESTABLISH A TRAINING SITE FOR APPROXIMATELY 85 BATF AGENTS TO CONDUCT REHEARSALS PRIOR TO TACTICAL EXECUTION OF A WARRANT IN THE VICINITY OF WACO, TEXAS. THE SUSPECT GROUP IS AN EXTREMIST CULT/SURVIVALIST ORGANIZATION. INTELLIGENCE INDICATES AN ACTIVE METHAMPHETAMINE LAB AND DELIVERIES OF THE REQUIRED CHEMICALS TO PRODUCE THE SYNTHETIC METHAMPHETAMINES. EXTENSIVE BATF INTELLIGENCE INDICATES THE GROUP IS HEAVILY ARMED WITH LARGE CALIBER AUTOMATIC WEAPONS AND IS CONSIDERED WILLING TO USE THEM. BATF CONSIDERED TWO CONCEPTS PRIOR TO REQUESTING ASSISTANCE THROUGH OPERATION ALLIANCE: A SEIGE OR A DIRECT ASSAULT. BASED ON EXTENSIVE INTEL ON THE BACKGROUND OF THE CULT AND ITS LEADER, BATF CONCLUDED THAT A DIRECT ASSAULT WOULD BE THE MOST PRUDENT.

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LEA/CJTF-6 INTENT IS TO CONDUCT MODIFIED FOREIGN INTERNAL DEFENSE TRAINING AND PROVIDE GENERAL TACTICAL TRAINING ASSISTANCE TO THE BATF. LEA HAS ALREADY PLANNED THEIR OPERATION. RSU WILL NOT PROVIDE MISSION SPECIFIC ADVICE. JTF-6 HAS BEEN ASKED TO PROVIDE EXPERT TRAINING AND SAFETY ADVICE DURING LEA PREPARATION AT FORT HOOD. TRAINING ASSISTANCE WILL ADDRESS TACTICAL (COMPANY LEVEL) COMMUNICATIONS NET TRAINING, EMERGENCY MEDICAL EVACUATION TRAINING, PZ/LZ OPERATIONS TRAINING, AND TACTICAL VEHICLE DISMOUNT TRAINING. RSU TEAMS WILL NOT ACCOMPANY BATF TEAMS ON EITHER THE OPERATION NOR ANY SITE VISIT WITHIN THE AREA OF OPERATION. RSU ASSETS WILL COORDINATE RANGE, MOUT SITE, MANEUVER AREAS AND BILLETING WITH FT HOOD. RSU WILL PROVIDE RANGE SAFETY COVERAGE.//

GENTEXT/MISSION/(S) ELEMENTS FROM THE RSU CONDUCT MODIFIED FOREIGN INTERNAL DEFENSE TRAINING/MTT VICINITY FT HOOD, TEXAS FROM 22 TO 28 FEB 93 IN SUPPORT OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS.//

GENTEXT/EXECUTION: 1. (U) CONCEPT OF OPERATIONS:

A. (LEA) RSU ASSETS DEPLOYED INITIAL SURVEY TEAM TO HOUSTON, TEXAS ON 04 FEB 93 AND COORDINATED MISSION PARAMETERS/FINALIZED TRAINING PROGRAM WITH THE LEA.

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- B. (LEA) TRAINING SITE SURVEY WILL DEPLOY TO FT HOOD TO VIEW PROSPECTIVE TRAINING AREAS/FACILITIES.
- C. (S) RSU PHASES OF TRAINING/1. PRE-DEPLOYMENT - TEAM PREPARED LESSON PLANS AND CONTINUES TO CONDUCT REHEARSALS FROM 08 TO 21 FEB 93.
2. (S) DEPLOYMENT - TEAM DEPLOYS TO FT HOOD ON OR ABOUT 22 FEB 93.
3. (S) EMPLOYMENT - TEAM CONDUCTS TRAINING FROM 23 TO 28 FEB 93.
4. (S) REDEPLOYMENT - TEAM RETURNS TO MCGREGOR RANGE CAMP ON OR ABOUT 28 FEB 93, BEFORE THE ACTUAL OPERATION.
- D. (U) THE MISSION WILL INVOLVE NO MORE THAN 10 PERSONNEL.
- E. (U) ALL TRAINING SUPPORT WILL TAKE PLACE ON PUBLIC LANDS (FT HOOD).
2. (U) COORDINATING INSTRUCTIONS:
- A. (U) RSU PERSONNEL WILL NOT BECOME INVOLVED IN SEARCH, SEIZURE, ARREST, OR SIMILAR LAW ENFORCEMENT RELATED ACTIVITIES. TRAINING WILL NOT INCLUDE PARTICIPATION IN LEA OPERATIONS.
- B. (U) RSU PERSONNEL ARE AUTHORIZED TO BE ARMED WITH INDIVIDUAL WEAPONS FOR INSTRUCTIONAL PURPOSES. AMMUNITION IS BEING SUPPLIED BY LEA. JCS PEACETIME RULES OF ENGAGEMENT ARE IN EFFECT.
- C. (U) MISSION APPROVAL CATEGORY IS PARA(2C)(TECHNICAL TRAINING SUPPORT) REF C. STATUTORY AUTHORITY IS UP SECTION 1004. PARA (B)(5)

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OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FY 91, AS AMENDED.
ADDITIONAL AUTHORITY IS UP TO USC 373.

D. (U) CJTF-6 HAS APPROVED EXECUTION OF MISSION JTOO2E-93 UP OF PARA
2, REF D.

E. (U) RSU ASSETS WILL NOT BECOME DIRECTLY INVOLVED IN BATF
OPERATIONAL PLANNING, NOR ASSUME RESPONSIBILITY FOR THE BATF PLAN.
OBSERVING AND CRITIQUING THE REHEARSAL OF THE OPERATIONAL PLAN IS
AUTHORIZED, PARTICULARLY IN THE AREAS OF SAFETY. REHEARSAL CRITIQUE
COMMENTS WILL BE PROVIDED AS THE OPINION OF TRAINED MILITARY
OBSERVERS, NOT AN OFFICIAL DOD ENDORSEMENT OF THE SOUNDNESS OF THE
PLAN.

F. (S) CG III CORPS HAS BEEN EXTREMELY HELPFUL IN THE PROVISION
OF BILLETING, RANGE, MOUT SITE, AND MANEUVER AREA FOR THIS OPERATION.

3. (U) RSU WILL DEPLOY WITH 15 MEDICAL BAGS AND PROVIDE OWN MEDICAL
COVERAGE.

4. (U) ESTIMATED COST IS 9,500.00 DOLLARS, OPERATIONAL MANDAYS ARE
60.

5. (U) REIMBURSEMENT OF DOD BY SUPPORTED LEA IS WAIVED UNDER
PROVISIONS OF 30 USC 377 BECAUSE OF THE SUBSTANTIAL TRAINING BENEFIT
RECEIVED BY THE PARTICIPATING UNIT.//

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GENTEXT/COMMAND AND SIGNAL/3. (U) SIGNAL:

A. (U) RSU WILL UTILIZE LAND LINES TO REPORT DAILY STATUS OF TRAINING TO ADVANCED OPERATIONAL BASE (AOB). AOB PROVIDES DAILY STATUS TO JTF-6.

B. (U) PUBLIC AFFAIRS GUIDANCE WILL BE IAW ORIGINAL GUIDELINES OUTLINED IN THE RSU APPROVAL MESSAGES. ADDITIONS ARE AS FOLLOWS:

01. WHAT UNIT IS SUPPORTING JOINT TASK FORCE SIX AND OPERATION ALLIANCE?

A1. A U.S. ARMY UNIT ASSIGNED TO THE U.S. SPECIAL OPERATIONS COMMAND WILL BE CONDUCTING TRAINING IN REMOTE AREAS IN TEXAS, NEW MEXICO, ARIZONA, AND CALIFORNIA. WHILE CONDUCTING THE TRAINING, THE UNIT WILL BE WORKING WITH OPERATION ALLIANCE WHICH IS ASSISTING JTF-6 AND THE UNIT WITH IDENTIFICATION OF SUITABLE TRAINING SITES. (AT THIS TIME, ELEMENTS OF THE UNIT ARE TRAINING WITH THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS (BATF) ON MILITARY RESERVATIONS.)

02. WHAT TYPE OF TRAINING IS THE UNIT DOING?

A2. THE UNIT WILL BE CONDUCTING NORMAL MISSION RELATED TRAINING. THE COMBINATION OF REMOTE, ISOLATED TERRAIN AND A HARSH DESERT ENVIRONMENT IN THE SOUTHWEST OFFERS MANY OPPORTUNITIES FOR SMALL UNIT TRAINING ON UNFAMILIAR TERRAIN WHICH IS IDEAL FOR MANY MILITARY

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UNITS. TRAINING EXERCISES WILL BE DESIGNED TO IMPROVE INDIVIDUAL AND UNIT SKILLS IN MAP READING, TERRAIN ORIENTATION, COMMUNICATIONS AND COORDINATION TECHNIQUES, AND UNIT LEADERSHIP RELATED TO COMMAND AND CONTROL OF SMALL UNIT MOVEMENT AND TACTICS.

Q3. WHERE WILL THE UNITS BE TRAINING?

A3. WE DO NOT COMMENT ON THE LOCATION OF TRAINING SITES NOR DO WE COMMENT ON THE EXACT IDENTIFICATION OF UNITS CONDUCTING TRAINING. THERE MAY BE SUPPORT ELEMENTS SUCH AS SUPPLY AND MAINTENANCE TEAMS FOR AVIATION AND VEHICLES ASSOCIATED WITH VARIOUS TRAINING EXERCISES. THE UNIT WILL BE BASED WITH JTF-6 AT FORT BLISS, TEXAS.

Q4. WHY IS THE MILITARY CONDUCTING THE TRAINING?

A4. THE DEPARTMENT OF DEFENSE SUPPORTS THE PRESIDENT'S NATIONAL DRUG CONTROL STRATEGY BY SUPPORTING FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT AGENCIES ALONG THE SOUTHWEST BORDER. JTF-6 COORDINATES DEFENSE DEPARTMENT SUPPORT TO LAW ENFORCEMENT AGENCIES THROUGH OPERATION ALLIANCE. WHILE CONDUCTING TRAINING SPONSORED BY LAW ENFORCEMENT, MILITARY UNITS PROVIDE ASSISTANCE TO LAW ENFORCEMENT AND RECEIVE VALUABLE EXPERIENCE IN DEPLOYMENT FROM HOME STATION, PLANNING SUPPORT OPERATIONS, AND EXECUTING MISSION-RELATED TASKS WHILE PROVIDING ASSISTANCE TO LAW ENFORCEMENT.

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Q5. HOW MANY PERSONNEL ARE INVOLVED IN THE TRAINING?
 A5. WE DO NOT COMMENT ON THE SIZE OF UNITS OR THE EXACT NUMBER OF SOLDIERS TRAINING.
 Q6. HOW LONG WILL THE UNITS BE TRAINING IN THE AREA?
 A6. WE DO NOT COMMENT ON THE LENGTH OF TRAINING TO PRESERVE THE TRAINING REALISM FOR THE UNIT AND TO OPTIMIZE ACCOMPLISHMENT OF TRAINING OBJECTIVES. NORMALLY, UNIT TRAINING MISSIONS CONDUCTED WITH JTF-6 ARE SHORT-DURATION, INTENSE EXERCISES IN REMOTE AREAS ASSOCIATED WITH PUBLIC LANDS AND MILITARY INSTALLATIONS.

2. (U) COMMAND:

A. (U) JTF-6 EXERCISES TACON OF DEPLOYED RSU ASSETS.

B. (U) USCINCSOC EXERCISES OPCON OF DEPLOYED RSU ASSETS.

C. (U) RSU ASSETS ARE IN DIRECT SUPPORT OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS.//

GENTEXT/POC (9) (5) DSN: 978-8434 OR 8888//

GENTEXT/AUTHENTICATION (37) DEPJ3/OFFICIAL: (12)

ACOS.//

AKNLDG/Y//

(9) OPERATIONS OFFICER

DSN 978-8434/8888

JOHN M. PICKLER, BG, USA, CG

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CINCFOR FT MCPHERSON GA//FCDJ//

CJTF SIX FT BLISS TX//FCJT-JE//

INFO JOINT STAFF WASHINGTON DC//JE-CN0B/S0B//

SECDEF WASHINGTON DC//ESA/OCDEP&S/ASDPA-DPL//

DA WASHINGTON DC//DAMO-GDD/SAGC/SAILE/DAJA-IO//

USCINCSOC MACDILL AFB FL//SOJE-SCN//

CDRUSASOC FT BRAGG NC//A00P-POC//

CDRUSASFC FT BRAGG NC//A0E0-GC0-0//

CDR3RDSFGA FT CAMPBELL KY//SE//

OPERATION ALLIANCE FT BLISS TX

BUREAU OF ALCOHOL TOBACCO FIREARMS WASHINGTON DC

UNCLAS E F T O LEA SENSITIVE

OPER/UT002E-RE/CJTF-SIX/CINCFOR 7400-90//

MSGID/GENADMIN/FORSCOM FCJ3-0D/001/FEB//

SUBJ/APPROVAL TO EXECUTE COUNTERDRUG (CD) OPERATION UT002E-93//

REF/A/ORDER/CJTF-SIX JE/-----ZFEB93//

AMPN/SECRET MSG, SUBJ: OPERATION ORDER - COUNTERDRUG TRAINING

SUPPORT MISSION UT002E-93 (U)//

REF/B/MSG/CJCS/140050ZDEC93//

FCJ3-A0-0C-0D-RM, FCJA, FCPA, FCJ2, SJS

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FCJ3-0D, SB10

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C. G. MARSH, MG, FCJ3, 6448

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FEB 93

*NOT SENT Due to
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OPORD*

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AMPN/SUBJ: DELEGATION OF AUTHORITY FOR APPROVING OPERATIONAL SUPPORT
TO DRUG LAW ENFORCEMENT AGENCIES AND COUNTERDRUG-RELATED DEPLOYMENT
OF DOD PERSONNEL//

REF/C/SYS.RRM/FORSCOM FCJE-0D/251300ZMAR92/--NOTAL//

AMPN/SUBJ: CD POLICY MESSAGE 02-92: CD OPERATION AFTER ACTION
REPORTS//

REF/D/MSG/FORSCOM FCJE/113710ZSEP92//

AMPN/SUBJ: FY 93 COUNTERDRUG BUDGET GUIDANCE AND OBLIGATION REPORT//

NARR/REF A IS JTF-5 OPORD FOR APPROVAL TO CONDUCT CD TRAINING MISSION

JT02E-93, WHICH PROVIDES MODIFIED FOREIGN INTERNAL DEFENSE TRAINING

ASSISTANCE TO THE BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS (BATF)

FROM 22-28 FEB 93 IN THE VICINITY OF FT HOOD, TX. REF A IS

SUBMITTED FOR CINCPAC APPROVAL BECAUSE OF THE SENSITIVITY OF THIS

TRAINING SUPPORT. REF B IS CJCS DELEGATION OF AUTHORITY. REF C

PROVIDES AFTER ACTION REPORTING GUIDANCE. FUNDING IAW REF D://

POC/ [REDACTED] PRIPHN:DSN 367-5010/--/SECPHN:(404)667-5010//

AKNLDG/NO// (10)

RMKS/D. (LEA) IAW PARA E.C OF REF B, CINCPAC APPROVES EXECUTION OF

JT02E-93 PER REF A. RATED SUPPORT UNIT ASSETS WILL NOT BECOME

DIRECTLY INVOLVED IN BATF OPERATIONAL PLANNING, NOR ASSUME

C. G. MARSH, MG, FCDS, 6448

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RESPONSIBILITY FOR THE BATE PLAN.

E. OBSERVING AND CRITIQUING THE REHEARSAL OF THE BATE OPERATIONAL PLAN IS AUTHORIZED. HOWEVER, REHEARSAL CRITIQUE COMMENTS WILL BE PROVIDED AS THE OPINION OF TRAINED MILITARY OBSERVERS, NOT AN OFFICIAL DOD ENDORSEMENT OF THE SOUNDNESS OF THE PLAN.

E. LEGAL ISSUES:

A. STATUTORY AUTHORITY IS SECTION 1004 (B) (5), NATIONAL DEFENSE AUTHORIZATION ACT (NDAA) FOR FY93 AS AMENDED. ADDITIONAL AUTHORITY IS UP 10 USC 373.

B. REIMBURSEMENT OF DOD BY SUPPORTED DLEA IS WAIVED UP 10 USC 377 SINCE PARTICIPANTS WILL RECEIVE SUBSTANTIAL TRAINING BENEFIT IN FOREIGN INTERNAL DEFENSE TRAINING.

4. DAILY REPORTS NOT REQUIRED. HOWEVER, SIGNIFICANT ACTIVITIES, TO INCLUDE START AND END OF MISSION SUPPORT, WILL BE REPORTED VIA COMMANDERS SITUATION REPORT (SITREP), AS THEY OCCUR. OPERATIONAL SUMMARIES WILL BE REPORTED IN JTF-B WEEKLY REPORT TO FORSCOM. SUBMIT AFTER ACTION REPORT UP REF C WITHIN 15 DAYS OF COMPLETION.//

5. FUNDING IAW REF D.

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 M JTF SIX FT BLISS TX//CG//
 O CINCFOR FT MCPHERSON GA//FCJ3-OD/FCJ2-IO/FCJA/FCPA//
 NFO JOINT STAFF WASHINGTON DC//J3-CNOD/SOD//
 ECDEF WASHINGTON DC//OCDEP-S//
 DA WASHINGTON DC//DAMO-ODD/SAGC/SAILE/DAJA-IO//
 SCINCSOC MACDILL AFB FL//SOJ3-SCN-C//
 DRUSASOC FT BRAGG NC//AOOP-POC//
 DRUSASFC FT BRAGG NC//AOSO-GCO-O//
 DR3DSFGA FT BRAGG NC//S-3//
 DR11ICORPS FT HOOD TX//AFZF-CG/AFZF-GT//
 BAIF WASHINGTON DC
 OPERATION ALLIANCE FT BLISS TX
 BT
 S E C R E T
 OPER/JT002E-93/CJTF-6 002-93//
 MSGID/ORDER/CJTF-6-J3/93-002/FEB//
 AMPN/SUBJ: OPERATION ORDER - COUNTERDRUG TRAINING SUPPORT MISSION JT
 002E-93//
 REF/A/RMG/CJTF-6 FCJT-J3/172245ZSEP92/-/NOTAL/-//
 AMPN/CONF MSG/SUBJ: COUNTERDRUG SUPPORT REQUEST FOR FY93 RAPID
 SUPPORT UNIT (RSU) DEPLOYMENTS JT001-93, JT002-93, JT003-93 AND
 JT004-93. (U)//
 REF/B/RMG/CINCFOR FCJ3/012218Z OCT92/-/NOTAL/-//
 AMPN/CONF MSG/SUBJ: APPROVAL TO EXECUTE COUNTERDRUG MISSION JT
 002E-93/JT002-93 (U)//
 REF/C/RMG/CJCS/190050Z DEC91/-/NOTAL/-//
 AMPN/UNCLAS MSG/SUBJ: DELEGATION OF AUTHORITY FOR APPROVING
 OPERATIONAL SUPPORT TO DRUG LAW ENFORCEMENT AGENCIES AND COUNTERDRUG
 RELATED DEPLOYMENT OF DOD PERSONNEL//
 REF/D/LTR/CINCFOR FCJ3-OD/09 MAR 92/-/NOTAL/-//
 AMPN/UNCLAS MEMO/LIMITED DELEGATION OF AUTHORITY FOR APPROVING CD
 OPERATIONAL SUPPORT TO DLEAS//
 REF/E/LTR/OPERATION ALLIANCE/2 FEB 93/-/-//
 AMPN/UNCLAS LTR/OPERATION ALLIANCE SUPPORT REQUEST//
 ORDTYP/EXORD/JTF-6 JT002E-93//
 TIMEZONE/Z//
 NARR/PER REF D, BG PICKLER IS APPROVAL AUTHORITY FOR THIS
 OPERATION.//
 HEADING/TASK ORGANIZATION//
 SUNIT

/UNITDES	/UNITLOC	/CMNTS
/JTF-6	/FT BLISS, TX	/TACTICAL CONTROL//
/CINCSOC	/MACDILL AFB, FL	/RSU ASSETS//

GENTEXT/SITUATION/(S) OPERATION ALLIANCE HAS SUBMITTED A REQUEST
 TO JTF-6 ON BEHALF OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
 (BATF) FOR EMPLOYMENT OF RSU ASSETS IN SUPPORT OF AN UPCOMING BATF
 COUNTERDRUG OPERATION INVOLVING TASK ORGANIZED SWAT TEAMS FROM
 HOUSTON, NEW ORLEANS, AND DALLAS BATF DIVISIONS. THIS OPERATION HAS
 THE HIGHEST INTEREST OF BATF, WASHINGTON AND HAS BEEN APPROVED AT
 THE HIGHEST LEVEL. ASSISTANCE IS REQUIRED TO ESTABLISH A TRAINING SITE FOR

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APPROXIMATELY 85 BATF AGENTS TO CONDUCT REHEARSALS PRIOR TO TACTICAL EXECUTION OF A WARRANT IN THE VICINITY OF WACO, TEXAS. THE SUSPECT GROUP IS AN EXTREMIST CULT/SURVIVALIST ORGANIZATION. INTELLIGENCE INDICATES AN ACTIVE METHAMPHETAMINE LAB AND DELIVERIES OF THE REQUIRED CHEMICALS TO PRODUCE THE SYNTHETIC METHAMPHETAMINES. EXTENSIVE BATF INTELLIGENCE INDICATES THE GROUP IS HEAVILY ARMED WITH LARGE CALIBER AUTOMATIC WEAPONS AND IS CONSIDERED WILLING TO USE THEM. BATF CONSIDERED TWO CONCEPTS PRIOR TO REQUESTING ASSISTANCE THROUGH OPERATION ALLIANCE: A SEIGE OR A DIRECT ASSAULT. BASED ON EXTENSIVE INTEL ON THE BACKGROUND OF THE CULT AND ITS LEADER, BATF CONCLUDED THAT A DIRECT ASSAULT WOULD BE THE MOST PRUDENT. LEA/CJTF-6 INTENT IS TO CONDUCT MODIFIED FOREIGN INTERNAL DEFENSE TRAINING AND PROVIDE GENERAL TACTICAL TRAINING ASSISTANCE TO THE BATF. LEA HAS ALREADY PLANNED THEIR OPERATION. RSU WILL NOT PROVIDE MISSION SPECIFIC ADVICE. JTF-6 HAS BEEN ASKED TO PROVIDE EXPERT TRAINING AND SAFETY ADVICE DURING LEA PREPARATION AT FORT HOOD. TRAINING ASSISTANCE WILL ADDRESS TACTICAL (COMPANY LEVEL) COMMUNICATIONS NET TRAINING, EMERGENCY MEDICAL EVACUATION TRAINING, PZ/LZ OPERATIONS TRAINING, AND TACTICAL VEHICLE DISMOUNT TRAINING. RSU TEAMS WILL NOT ACCOMPANY BATF TEAMS ON EITHER THE OPERATION NOR ANY SITE VISIT WITHIN THE AREA OF OPERATION. RSU ASSETS WILL COORDINATE RANGE, MOUT SITE, MANEUVER AREAS AND BILLETING WITH FT HOOD. RSU WILL PROVIDE RANGE SAFETY COVERAGE.// GENTEXT/MISSION/(S) ELEMENTS FROM THE RSU CONDUCT MODIFIED FOREIGN INTERNAL DEFENSE TRAINING/MTT VICINITY FT HOOD, TEXAS FROM 22 TO 28 FEB 93 IN SUPPORT OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS.//

NTEXT/EXECUTION: 1. (U) CONCEPT OF OPERATIONS:

- A. (LEA) RSU ASSETS DEPLOYED INITIAL SURVEY TEAM TO HOUSTON, TEXAS ON 04 FEB 93 AND COORDINATED MISSION PARAMETERS/FINALIZED TRAINING PROGRAM WITH THE LEA.
 - B. (LEA) TRAINING SITE SURVEY WILL DEPLOY TO FT HOOD TO VIEW PROSPECTIVE TRAINING AREAS/FACILITIES.
 - C. (S) RSU PHASES OF TRAINING/1. PRE-DEPLOYMENT - TEAM PREPARED LESSON PLANS AND CONTINUES TO CONDUCT REHEARSALS FROM 08 TO 21 FEB 93.
 2. (S) DEPLOYMENT - TEAM DEPLOYS TO FT HOOD ON OR ABOUT 22 FEB 93.
 3. (S) EMPLOYMENT - TEAM CONDUCTS TRAINING FROM 23 TO 28 FEB 93.
 4. (S) REDEPLOYMENT - TEAM RETURNS TO MCGREGOR RANGE CAMP ON OR ABOUT 28 FEB 93, BEFORE THE ACTUAL OPERATION.
 - D. (U) THE MISSION WILL INVOLVE NO MORE THAN 10 PERSONNEL.
 - E. (U) ALL TRAINING SUPPORT WILL TAKE PLACE ON PUBLIC LANDS (FT HOOD).
2. (U) COORDINATING INSTRUCTIONS:
- A. (U) RSU PERSONNEL WILL NOT BECOME INVOLVED IN SEARCH, SEIZURE, ARREST, OR SIMILAR LAW ENFORCEMENT RELATED ACTIVITIES. TRAINING WILL NOT INCLUDE PARTICIPATION IN LEA OPERATIONS.
 - B. (U) RSU PERSONNEL ARE AUTHORIZED TO BE ARMED WITH INDIVIDUAL WEAPONS FOR INSTRUCTIONAL PURPOSES. AMMUNITION IS BEING SUPPLIED BY LEA. JCS PEACETIME RULES OF ENGAGEMENT ARE IN EFFECT.
 - C. (U) MISSION APPROVAL CATEGORY IS PARA(2C)(TECHNICAL TRAINING SUPPORT) REF C. STATUTORY AUTHORITY IS UP SECTION 1004. PARA (B)(5) OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FY 91, AS AMENDED. ADDITIONAL AUTHORITY IS UP 10 USC 373.

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- D. (U) CJTF-6 HAS APPROVED EXECUTION OF MISSION JT002E-93 UP OF PARA REF D.
- E. (U) RSU ASSETS WILL NOT BECOME DIRECTLY INVOLVED IN BATF OPERATIONAL PLANNING, NOR ASSUME RESPONSIBILITY FOR THE BATF PLAN. OBSERVING AND CRITIQUING THE REHEARSAL OF THE OPERATIONAL PLAN IS AUTHORIZED, PARTICULARLY IN THE AREAS OF SAFETY. REHEARSAL CRITIQUE COMMENTS WILL BE PROVIDED AS THE OPINION OF TRAINED MILITARY OBSERVERS, NOT AN OFFICIAL DOD ENDORSEMENT OF THE SOUNDNESS OF THE PLAN.
- F. (S) CG III CORPS HAS BEEN EXTREMELY HELPFUL IN THE PROVISION OF BILLETING, RANGE, MOUT SITE, AND MANEUVER AREA FOR THIS OPERATION.
- G. (U) RSU WILL DEPLOY WITH M5 MEDICAL BAGS AND PROVIDE OWN MEDICAL COVERAGE.
- H. (U) ESTIMATED COST IS 9,500.00 DOLLARS, OPERATIONAL MANDAYS ARE 60.
- I. (U) REIMBURSEMENT OF DOD BY SUPPORTED LEA IS WAIVED UNDER PROVISIONS OF 10 USC 377 BECAUSE OF THE SUBSTANTIAL TRAINING BENEFIT RECEIVED BY THE PARTICIPATING UNIT.// GENTEXT/COMMAND AND SIGNAL/1. (U) SIGNAL:
- A. (U) RSU WILL UTILIZE LAND LINES TO REPORT DAILY STATUS OF TRAINING TO ADVANCED OPERATIONAL BASE (AOB). AOB PROVIDES DAILY STATUS TO JTF-6.
- B. (U) PUBLIC AFFAIRS GUIDANCE WILL BE LAW ORIGINAL GUIDELINES OUTLINED IN THE RSU APPROVAL MESSAGES. ADDITIONS ARE AS FOLLOWS:
- Q1. WHAT UNIT IS SUPPORTING JOINT TASK FORCE SIX AND OPERATION ALLIANCE?
- A1. A U.S. ARMY UNIT ASSIGNED TO THE U.S. SPECIAL OPERATIONS COMMAND WILL BE CONDUCTING TRAINING IN REMOTE AREAS IN TEXAS, NEW MEXICO, ARIZONA, AND CALIFORNIA. WHILE CONDUCTING THE TRAINING, THE UNIT WILL BE WORKING WITH OPERATION ALLIANCE WHICH IS ASSISTING JTF-6 AND THE UNIT WITH IDENTIFICATION OF SUITABLE TRAINING SITES. (AT THIS TIME, ELEMENTS OF THE UNIT ARE TRAINING WITH THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS (BATF) ON MILITARY RESERVATIONS.)
- Q2. WHAT TYPE OF TRAINING IS THE UNIT DOING?
- A2. THE UNIT WILL BE CONDUCTING NORMAL MISSION RELATED TRAINING. THE COMBINATION OF REMOTE, ISOLATED TERRAIN AND A HARSH DESERT ENVIRONMENT IN THE SOUTHWEST OFFERS MANY OPPORTUNITIES FOR SMALL UNIT TRAINING ON UNFAMILIAR TERRAIN WHICH IS IDEAL FOR MANY MILITARY UNITS. TRAINING EXERCISES WILL BE DESIGNED TO IMPROVE INDIVIDUAL AND UNIT SKILLS IN MAP READING, TERRAIN ORIENTATION, COMMUNICATIONS AND COORDINATION TECHNIQUES, AND UNIT LEADERSHIP RELATED TO COMMAND AND CONTROL OF SMALL UNIT MOVEMENT AND TACTICS.
- Q3. WHERE WILL THE UNITS BE TRAINING?
- A3. WE DO NOT COMMENT ON THE LOCATION OF TRAINING SITES NOR DO WE COMMENT ON THE EXACT IDENTIFICATION OF UNITS CONDUCTING TRAINING. THERE MAY BE SUPPORT ELEMENTS SUCH AS SUPPLY AND MAINTENANCE TEAMS FOR AVIATION AND VEHICLES ASSOCIATED WITH VARIOUS TRAINING EXERCISES. THE UNIT WILL BE BASED WITH JTF-6 AT FORT BLISS, TEXAS.
- Q4. WHY IS THE MILITARY CONDUCTING THE TRAINING?
- A4. THE DEPARTMENT OF DEFENSE SUPPORTS THE PRESIDENT'S NATIONAL DRUG CONTROL STRATEGY BY SUPPORTING FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT AGENCIES ALONG THE SOUTHWEST BORDER. JTF-6 COORDINATES DEFENSE DEPARTMENT SUPPORT TO LAW ENFORCEMENT AGENCIES THROUGH

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OPERATION ALLIANCE. WHILE CONDUCTING TRAINING SPONSORED BY LAW ENFORCEMENT, MILITARY UNITS PROVIDE ASSISTANCE TO LAW ENFORCEMENT TO RECEIVE VALUABLE EXPERIENCE IN DEPLOYMENT FROM HOME STATION, PLANNING SUPPORT OPERATIONS, AND EXECUTING MISSION RELATED TASKS WHILE PROVIDING ASSISTANCE TO LAW ENFORCEMENT.

25. HOW MANY PERSONNEL ARE INVOLVED IN THE TRAINING?

A5. WE DO NOT COMMENT ON THE SIZE OF UNITS OR THE EXACT NUMBER OF SOLDIERS TRAINING.

26. HOW LONG WILL THE UNITS BE TRAINING IN THE AREA?

A6. WE DO NOT COMMENT ON THE LENGTH OF TRAINING TO PRESERVE THE TRAINING REALISM FOR THE UNIT AND TO OPTIMIZE ACCOMPLISHMENT OF TRAINING OBJECTIVES. NORMALLY, UNIT TRAINING MISSIONS CONDUCTED WITH JTF-6 ARE SHORT-DURATION, INTENSE EXERCISES IN REMOTE AREAS ASSOCIATED WITH PUBLIC LANDS AND MILITARY INSTALLATIONS.

2. (U) COMMAND:

A. (U) JTF-6 EXERCISES TACON OF DEPLOYED RSU ASSETS.

B. (U) USCINCSOC EXERCISES OPCON OF DEPLOYED RSU ASSETS.

C. (U) RSU ASSETS ARE IN DIRECT SUPPORT OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS.//

GENTEXT/POC/[REDACTED] DSN: 978-8434 OR 8888//

GENTEXT/AUTHENTICATION/[REDACTED]/OFFICIAL: [REDACTED]

ACOS.//

AKNLDG/Y//

DECL: OADR

BT

#0125

NNNN

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PLANNING CHRONOLOGY
JT 002E-93, MTT, BATF

DATE	EVENT
6 Jan 93	Request from BATF to ONDCP for support for an ongoing drug case.
22 Jan 93	Letter received by Operation Alliance from BATF requesting MOU site, Bradley Fighting Vehicles, tents, light sets, heaters, generators, and other military items of equipment.
1 Feb 93	JTF-6 makes informal inquiry with New Equipment Team (Ft Benning) to establish minimum training requirements to qualify operators for BFV. (5 days minimum was answer)
2 Feb 93	Briefing at Operation Alliance by BATF on the operational and logistics requirements. Support Request, 25.2.139.0293, forwarded by Operation Alliance to JTF-6 and TXNG. JTF-6 was to provide a mobile training team at Fort Hood, if possible.
3 Feb 93	MSG, 032140Z FEB 93(S) from JTF-6 to Cdr III Corps requests range and training areas for 18-21 Feb (initial dates).
4-5 Feb 93	JTF-6 J3Ops, and RSU Commander (with Det team planners) travel to Houston and participate in an initial planning conference to establish the minimum parameters, finalize training objectives, and assess subjects the RSU could provide IAW DoD policy. On-site trauma medical support is discussed. Mission connection to counterdrug identified.
4 Feb 93	Initial Warning Order to FORSCOM (OPNOTE, JVIDs, 041603Z FEB 93) indicating an RSU mobile training team support request is being planned. This warning order also introduces the possibility for CONTOMS (contingency tactical medical support--Bethesda, Md) to provide emergency trauma teams.

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DATE	EVENT
4 Feb 93	BATF decides to handle on-scene medical support with their own agents and local civilian medical assets. Notified FORSCOM J3OD that CONTOMS would not be necessary.
5 Feb 93	JTF-6 conducts IPR on specifics of support request. Counterdrug nexus reviewed (BATF and Operation Alliance again verified drug relationship) and overall JTF-6 concept narrowed to an MTT on Fort Hood. Overall commanders intent is to provide general training support on Ft Hood only. Title 10 personnel would not be use for C ² , specific mission planning, or medical evacuation.
5 Feb 93	Coordination is made with CINCOSOC staff.
5 Feb 93	BATF changes their execution dates. JTF-6 notifies G3 staff action officer, III Corps, of new training dates (25-27 Feb) and for training area, ranges, and the MOUT site. Followed up with a new BATF request for billeting (for approx 95 personnel).
8 Feb 93	RSU Det ODA 381 begins lesson plan preparation at Ft Bliss, Texas.
11 Feb 93	SAC, Houston, BATF, briefed their concept to BATF, Washington DC. They receive approval.
12 Feb 93	JTF-6 Concept Message draft FAXed to FORSCOM for review and comment.
14 Feb 93	RSU ODA Detachment receives RSU Commander internal operations order for MTT.
15 Feb 93	ODA 381 RSU team begins isolation at Ft Bliss for MTT
16 Feb 93	FORSCOM FAXes proposed EXORD with language to be integrated in final message: "RSU assets will not become involved in BATF operational planning, nor assume responsibility for the BATF plan. Observing and critiquing the rehearsal of the operational plan is authorized, particularly in the areas of safety. Rehearsal critique comments will be provided as the opinion of trained military observers, not an official DoD endorsement of the soundness of the plan."

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DATE	EVENT
17 Feb 93	Operation Alliance and Houston BATF review content of JTF-6 support and agree to subjects and parameters of support.
17 Feb 93	Upon coordination with FORSCOM J3 and extensive legal review, confirmed delegation of authority lies with CG, JTF-6 for approval of this mission. CG, JTF-6 approves mission and releases EXORD MSG, 172145Z FEB 93 with specific FORSCOM recommended comments.
22 Feb 93	RSU team deploys to Fort Hood to begin actual preparations. (Range surveys and support facilities)
24 Feb 93	RSU commander arrives Ft Hood to provide supervision of his Detachment.
25 Feb 93	Range safety coverage of MOUT site provided. Test fire range and helicopter LZ/PZ is surveyed. Medical classes conducted (ABCs, two-man and one-man carries). Communications net training for company-level force given to communications support personnel.
26 Feb 93	Range safety coverage continues. RSU Det assists in MOUT site modifications (minor tape-off of building schematic and construction of a free-standing double door. RSU runs a known-distance range (KD) for confirmation of zero and function checks for "forward observer"/sharpshooters. AR15 zero and qualification range is supervised by RSU. Medical I.V. training is conducted.
27 Feb 93	RSU continues to provide range safety coverage for the MOUT site and KD range. A pistol and submachinegun range is run for the confirmation of zero and weapons function checks. RSU detachment polices, breaks down, and clears all range facilities.
27 Feb 93	Six personnel exfiltrated by Det 160 SOAR at 2000 to Ft Bliss. Arrived 0300 28 Feb.

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DATE	EVENT
28 Feb 93	The remaining 4 personnel cleared all billeting with Ft Hood and departed for Ft Bliss at 0430 by ground vehicle.

DECLAS: OADR

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D-594

**SOP ASSISTANCE TO FEDERAL LAW ENFORCEMENT
IN WACO, TEXAS**

(U) DESCRIPTION:

- (U) JANUARY, 1993, BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS (BATF) REQUESTED, THROUGH OPERATION ALLIANCE, CJTF-6, ASSISTANCE IN SERVING FEDERAL WARRANTS ON "CULT/SURVIVALIST" GROUP "BELIEVED TO BE MANUFACTURING SYNTHETIC METHAMPHETAMINE"
- (U) BATF INITIALLY WANTED BRADLEYS, SOME SOT/CQB TRAINING, ON-SITE MEDICAL EVACUATION ASSISTANCE, AND ASSISTANCE IN PLANNING
- (U) LEGAL RESERVATIONS CAUSED REQUEST TO BE DOWNSCOPED TO MTT TRAINING IN COMPANY-LEVEL TACTICAL C2, MEDICAL EVACUATION TRAINING, IV ABC'S, ASSISTANCE WITH RANGE AND MOUT SITES
- (U) JT002-93, ODA 381, COMPANY C, 3D BATTALION, 3D SFG(A) CONDUCTS MTT WITH BATF AGENTS 25-27 FEB 93. NO NON-METL TRAINING, SOT/CQB, OR DIRECT INVOLVEMENT IN ACTUAL PLANNING
- (S) MARCE, 93, [REDACTED] SENDS REPRESENTATIVE TO WACO TO OBSERVE, AND CJCS APPROVES LOAN OF MILITARY [REDACTED] WITH OPERATOR, FROM [REDACTED]
- (S) 14 MAY 93, [REDACTED] MEET WITH FBI DIRECTOR, ATTORNEY GENERAL, OVER PLAN TO END SIEGE. BOTH AGREE THAT TEAR GAS CAN BE "EFFECTIVE" BUT THAT SOME PEOPLE MAY PANIC. THEY DECLINE INVITATION TO PASS ON PLAN, BUT DO VOLUNTEER THAT, IF IT WERE A MILITARY MISSION, THEY WOULD "FOCUS ON THE LEADERSHIP."

(U) FUNDING: N/A**(U) ISSUES/CONCERNS:**

- (U) [REDACTED]
- (U) [REDACTED]
- (U) [REDACTED]

(U) IMPACT: N/A

RED BY USCINCPAC
 ISFY ON OADK

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D-1116A

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(S) RECOMMENDATIONS:

- (U) ODA 381 SCRUPULOUSLY OBSERVED LIMITATIONS OF LAW PROHIBITING USE OF ARMED FORCES FOR DOMESTIC LAW ENFORCEMENT. AS A GENERAL PRINCIPLE, WHAT SOP DO DOES NOT LEAD ITSELF TO MOST LAW ENFORCEMENT SITUATIONS

-- (U) POSSIBILITY THAT DRUG-CONNECTION WAS OVERSTATED TO SECURE COST-FREE SOP TRAINING AND ASSISTANCE. NO MENTION OF DRUGS IN PUBLIC MEDIA

-- (U) ODA 381 NEITHER FORMULATED, APPROVED, NOR CRITIQUED SATF PLAN FOR EXECUTION OF WARRANTS. ONLY ASSISTED THEM IN REHEARSING FOR IT

- (S) [REDACTED] WERE PRESENT AT MEETING AT DIRECT REQUEST OF ATTORNEY GENERAL, [REDACTED]. [REDACTED]. THEY RESPONDED ONLY TO SPECIFIC QUESTIONS, AND DID NOT APPROVE, CRITIQUE, OR ATTEMPT TO INFLUENCE "TEAR GAS" PLAN

(ENCLOSURE) CHRONOLOGY

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[0117]

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(U) Dec 92 - Jan 93: BATF engaged in contact with Operation Alliance, over "case in Central Texas." Idea of SOT/CQB training by SF for BATF first surfaces. (No hardcopy available on this request.)

(U) 22 Jan 93 - Ltr from BATF to Operation Alliance, requests MOOT site in central Texas for 3 days, training in Bradley Fighting Vehicles, and loan of seven Bradleys for two weeks in February. Also requested various other items of military equipment, including sleeping bags, tents, generators, 2 1/2 ton truck with operator, telephones, smoke generators, gas masks, etc.

(U) 2 Feb 93 request from Op Alliance to CJTF-6, requests JTF-6, and Texas Nat Guard assistance, in serving federal search warrant "to a dangerous extremist organization believed to be producing methamphetamines." Assistance "is in direct support of interdiction activities along the southwest border." Specific request is for medical evac contingency planning, on-site trauma medical support, and "to assist ATF in planning, training and equipping LEA forces." Texas Nat Guard requested to assist in C2.

(U) 2 Feb 93, USASFC (A) SJA advises that RSU assistance in actual planning and rehearsal of proposed "takedown" could violate posse comitatus law, expose RSU to liability. Question also arises as to appropriateness of RSU giving non-METL, i.e., SOT/CQB training to BATF.

(U) 3 Feb 93, Mission revised to include only coordination on army ranges and teaching BATF how to develop OPORD.

(U) FRAGO E to OPORD JT002-93, promulgated for ODA 381(+), limited to training for company level emergency/tactical med evac, tac communications net planning, tac assault dismounts.

(U) 172145Z Feb 93, CJTF 6/CS message requests RSU to establish a training site for approximately 85 BATF agents to conduct rehearsals prior to tactical execution of a warrant in Waco, TX. Suspect group "is an extremist cult/survivalist organization" with intelligence indications of an active methamphetamine lab and deliveries of required chemicals to produce synthetic methamphetamines. RSU will not accompany BATF teams on either operation or any site visit within AOR. "RSU assets will not become directly involved in BATF operational planning, nor assume responsibility for the BATF plan. Observing and critiquing the rehearsal of the operational plan is authorized, particularly in the areas of safety. Rehearsal critique comments will be provided as the opinion of trained military observers, not an official DoD endorsement of the soundness of the plan."

(U) 22 - 23 Feb 93: ODA 381, Company C, 3d Battalion .

0118

3d SFG (A), arrives, ~~performs pre-employment~~ tasks at Ft. Hood.

(U) 25-27 Feb 93: ODA 381 conducts MTT for BATT at Ft Hood, TX. Work included assistance in constructing mock-up of site at Hardgrove MOUT site, company level communications net planning, tactical evacuation planning, transport of sick and wounded, IV training and ABC's. In addition, ODA personnel assisted in coordination with ranges, range safety, and acted the part of target group in ATF walk-through rehearsals at MOUT site.

(S) [REDACTED]

(S) [REDACTED]

(S) 14 May 93: Meeting at DoJ with AG Janet Reno. In attendance is [REDACTED] FBI Director, [REDACTED] opine that CS would be effective in making the compound uninhabitable, but that "some people may panic." [REDACTED] refuses invitation to "grade the FBI paper," as this was not a military mission. However, [REDACTED] did obliquely suggest that if it were a military mission, they "would focus on the leadership," meaning "[f]ind the right moment and capture or kill Koresh and hope that the situation ended there."

[01119]

STATEMENT

I Major Mark B. Petree, [REDACTED] Co C, 3d Bn, 3d SFG(A), provide the following statement under oath, to clarify certain details and aspects of mission JT002E not documented elsewhere at USSOCOM:

On or about 3 Feb 93, I was functioning as the Rapid Support Unit (RSU) Commander during 3/3 support for JTF-6. I received telephonic from MAJ Brent Ballard of a mission that was beginning to solidify. MAJ Ballard is the Sp. Forces LNO assigned to JTF-6 and functions as the RSU operations officer. The mission was to support a LEA (no mention of BATT was made) with Bradley vehicle operations. Specifically, I was asked if I had any ILMs. Apparently there was a tasking going on for 4 Bradley IFVs to support the LEA and the matter had been being discussed since o/a 14 Jan 93. From the very beginning there was mention of a methamphetamine laboratory (since this was the only way we could be tasked). I can provide the following documents which are attached hereto and incorporated herein by reference. 1) Operation Alliance memorandum to JTF-6 dated 2 Feb 93. 2) BATT's Memo dated 22 Jan 93 to RLSC 3) The support Memo for WACC. Per normal SOP, I was provided these documents during follow-up discussions with MAJ Ballard. After lengthy discussions with the legal section at JTF-6 and SF Command at Ft Bragg, I was informed that since this was an actual law enforcement mission, there were restrictions placed upon our support by federal law. My guidance was that ISDs could not provide direct support to the assault and we did not. My ISDs did some basic first aid training prior to mission, that is IVs and ABCs, but the LEA was responsible for medical coverage on the actual mission. We were also told that since this was an actual law enforcement mission, we would not offer advice on the tactical plan and we did not. The essence of our plan was stated in a FRAGO (4 pages) which I am attaching to my statement. When we got to Ft Hood, our support was limited to Company size communications network planning, Company level (medical) evacuation planning, transport of the sick and wounded (i.e. buddy carries off the objective), IV training and ABC's, and running the ranges. We did some minor engineer work, in helping them construct mock-ups of their diagrams, but we offered no advice on conducting the raid based upon the mock-ups constructed. On my own, I decided that we would be on our way back to El Paso prior to any assault by the LEA and we did so. I would like to add one further point, based upon the mission constraints, I picked the team which would support BATT based upon the fact that none had attended Special Operations Training in Close Quarter Battle (SOT/CQB). When we got to Ft. Hood, this fact was told to the BATT so that they would not think of the Special Forces element as experts in SOT/CQB. Finally, an ILM is a Bradley Infantryman. An IFV is a Bradley Infantry Fighting Vehicle. ISDs are Special Forces Medics. IVs and ABCs are medical techniques for treating battlefield injuries including intravenous injections of fluids, clearing airways, controlling bleeding and treating shock.

Subscribed and sworn to this 14th day of May, 1993 at Ft. Bragg, NC


MARK B. PETREE

COUNTY OF CUMBERLAND
STATE OF NORTH CAROLINA

Sworn and subscribed before me, URBALDO HERRERA JR., a notary public in and for the State of North Carolina, on this the 14th day of May, 1993.


URBALDO HERRERA JR. (SEAL)
NOTARY
My Commission expires: 31 Jan 95

D-1147



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The Judge Advocate General's Corps
United States Army

5 Mar 93

- This memo was prepared by
 (26) [redacted] Deputy re
 [redacted] in early Feb with JTF-6.
- This is your copy for reference.
- Several things went very right.
 1. The RSU cdr. recognized a major legal problem with JTF-6's plan.
 2. The RSU cdr. raised this issue to JTF-6, when told that he should continue to plan the op he called SF cmd.
 3. (25) [redacted] immediately contacted the JAGr when he was briefed by RSU cdr.
 4. JAGr felt that there was

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a potential violation of the
Posse Comitatus Act based on
the way JTF-6 was planning
mission.

5. ⁽²⁵⁾ [redacted] relayed this to
RSLC cdr.

6. OSJA SFC contacted "technical
chain" IAW regulation to
alert OSJA's USA/OC, USOCOM
that a major legal problem
was developing with a JTF-6
mission.

7. ⁽²⁶⁾ [redacted] called the
Marine JAG at JTF-6 to
clarify facts and get their
perspective.

8. 2 weeks later JTF-6 modified
mission to comply with law.

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- (3)
- The RSU cdr and (26) [redacted] along with (27) [redacted] did the right thing not the easy thing.
 - This incident highlights 2 things
 - ① That the Counterdrug Legal Training Program is working
 - ② The the Operators & JA's are working together to support the cdr's & their soldiers.
 - Per discussion with SJA, USSOCOM SI cmdr's actions avoided a major incident, saved lives, and avoided violations of law. (25)

UR, [redacted] (25)
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SOJA

SUBJECT: Proposed USAJFKSWC Training Support for BATF

TO: SOJ3

FROM: SOJA

DATE: 9 Sep 93 1st END

1. Non-concur in the action as stated. The Joint Staff form 136 has a signature element which is to be signed, from all appearances, by the Director of the Joint Staff. The coordination line for SOJ3 signature is neither adequate nor appropriate for USSOCOM to articulate USASOC's reservations on that form, nor would the proposed memorandum to the Executive Secretary of the Office of the Secretary of Defense be sufficient to put BATF on notice that this is not a free lunch.


2. This is the sort of training which precipitates the Economy Act, 31 USC 1535(a), which requires that one agency of government reimburse another for supplies, services rendered. Inasmuch as the training is being conducted at the SWC in the ordinary classroom environment, we cannot waive reimbursement under the fiction that we are "training the trainer" as is not so subtly suggested by the 3 Aug BATF letter.

3. A collateral point bears mentioning here. USASOC's more recent involvement with BATF came in the form of training the agents who ultimately were tasked to "take down" the Branch Davidian compound in Waco, Texas. In that instance, we were persuaded to provide BATF free training with the allegation, never confirmed, proven, or even acknowledged, that it was for a "suspected methamphetamine laboratory." By thus characterizing it, BATF was able to use the liberal waiver provisions of the Economy Act which cover assistance to counterdrug LEAs, when, if the truth had been known, the training would have required reimbursement.

4. I have attached for your consideration an instrument for SOJ3 signature reflecting these concerns.

SEP

(14)


 Acting Staff Judge Advocate

-2-

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SOJ3

9 Sep 93

MEMORANDUM FOR: DIRECTOR, JOINT STAFF

SUBJECT: Letter to BG M. B. Sherfield, ES OSD from Dept. of
Treasury RE: Request Special Forces Training for Two Weeks

1. USASOC has indicated their ability to support subject request, and has provided two possible time frames, 6-17 Dec 93 and 13-26 June 1994. Concur in the provision of subject training subject to following:
 - a. Full reimbursement by BATF for all training subject to the provisions of the Economy Act, 31 USC 1535(a);
 - b. Class size not to exceed 20 students;
 - c. Training shall be scheduled so as not to conflict with or disrupt regular scheduled training at the USAJFKSWC.
2. Request these stipulations be incorporated into the DJS instrument forwarded to the Executive Secretary.

LLOYD W. NEWTON
Maj General, USAF
Director of Operations

D-1167

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AOSO-JA

3 February 1993

MEMORANDUM FOR RECORD

SUBJECT: RSU Mission JTF-6

1. About 031125 (all times Romeo) Feb 93, ⁽²⁵⁾ SPC PROJ/CD, USASFC(A) G-3 came to this office seeking a legal opinion on a JTF-6 mission. According to ⁽²⁵⁾ a Federal DLEA in JTF-6's AOR had identified a methamphetamine production site and requested RSU support to:

- a. Review and "scrub" the operations plan for the DLEA
- b. Assist in developing rehearsal site and conduct rehearsals with the DLEA.
- c. Provide 18D medical support at a casualty evacuation site (not on the "target" but in proximity thereto) where triage for casualties would be conducted before follow-on transportation to civilian medical facilities.

2. ⁽²⁵⁾ further advised that both bad guys and "civilians" (i.e. women and children) were located at the drug production site (issue: SOT/CQB) that the civilian DLEA was intending to "take down". It was noted that this is an actual law enforcement mission with civilian targets and civilian property within CONUS to be attacked.

3. Advised ⁽²⁵⁾ that I was of the opinion that 18 USC 1385 (the Posse Comitatus Act) was the first hurdle to clear in that with identified civilian subjects on an identified civilian lab site with an on-going federal (civilian) law enforcement investigation an exception under federal law would have to be found. Also discussed was the issue of METL related tasks, that this was operational, not training (requiring reimbursement under 31 USC 1535, the Economy Act), and was outside of the training concept of the RSU as I understood it, as well as missions not delegated to CINC per CJCS message 190050Z Dec 91 (as well as USASOC directives implemented in response to SECDEF Memo of 18 Sep 89).

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AOSO-JA

SUBJECT: RSU Mission JTF-6

4. I informed [redacted] that while 10 USC 373 allowed the military to provide training and expert advice to the DLEAs (Issue: can JTF-6 "loan" 3d Group soldiers they do not own?), we were not permitted direct participation in searches, seizures, arrests, or similar activity unless permitted by law (10 USC 375). I was of the opinion that the degree of involvement proposed crossed the line and exposed the RSU to criminal as well as civil liability. Unless the RSU is engaged in "free lance" activities, their element is not an expert on "take downs", discriminating fire, SOT/CQB, laboratory considerations (a DEA Criminal Laboratory Enforcement Team task), etc. The issue of 18D medical involvement in providing initial care to any civilian casualties was also outside of the MAST program, AR 40-1 and 3, was outside of scope and should best be provided by the appropriate civilian EMTs with responsibility for the AOR. Even in an "off set" the 18Ds would be involved in direct participation in the search and arrest of the civilians.

5. [redacted] called the RSU from my office. I also talked to [redacted] the Company Commander (RSU) and advised him that as I understood the mission, it was not permissible. I raised the issue of which AUSA was involved in the planning of this mission, since in some instances evidence has been suppressed by courts for this sort of activity. Additionally, any federal violations would most likely be tried in a US District Court and AUSA involvement would provide limited protection. I reiterated my opinion that although the line was gray, at the point where the RSU assisted in the actual planning and rehearsal of the take down, participation in the arrest was "active". This was my opinion based upon the law as interpreted after Army officers provided the FBI advice during the Wounded Knee occupation (for instance US v. Red Feather, 392 F. Supp. 916 (D.S.D. 1975), US v. Banks, 383 F. Supp. 368 (D.S.D. 1974), US v. Jaramillo, 380 F. Supp. 1375 (D. Neb. 1974)). NOTE: No AUSA is involved in the review of the proposed operation. While 10 USC 371 et seq. has expanded permissible activities, the case law is clear and the burden is still upon the government to prove beyond a reasonable doubt that the military's actions were permissible in order to convict the civilians in a US District Court. No "war on drugs" will be won if the guilty cannot be convicted... .

6. Additionally the issue of civil liability and outside scope concerning the tasking on 18Ds was presented. Finally the training concept for the RSU and METL tasks was addressed. Since this was not an emergency situation, in full control of the civilian authorities on civilian lands with expert civilian laboratory "take down" teams available and civilian medical facilities presumably within the AOR, this appeared to go beyond the DoD guidance for these missions. I advised against the operation and [redacted] asked for my return number so JTF-6 legal advisor could contact me.

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AOSO-JA

SUBJECT: RSU Mission JTF-6

7. About 031150 Feb 93 I briefed the SJA and CSOL personnel on the context of what was discussed and all agreed that mission as stated was not advisable.

8. About 031332 Feb 93 I received a telephone call from (46) legal advisor to JTF-6. (46) was under the impression that the entire mission was permissible IAW US v. Yunis, 681 F Supp 891 (D.D.C. 1988). [The Yunis case involves the Navy allowing the FBI to use a Naval ship to apprehend a terrorist and addressed whether this was a violation of the Posse Comitatus Act - it's not.]

9. (46) explained that the proposed mission was merely providing expert advice as allowed by 10 USC 373. I tried to explain to the Colonel that the RSU did not have expertise in any of the functions proposed, that this was analogous to the SOT/CQB issue that others (civilians) were available and should be involved.

(Note: To my raising the issue of US Attorney involvement, (46) responded, "that's a BATF problem" - in other words, there is no confirmation of US Attorney involvement). I raised liability issues as well as the Economy Act. I was told in so many words that I was wrong, that the mission was permissible, that the Wounded Knee issue didn't apply [it is raised in Yunis at p. 892] and that I was out to, "undermine" and "undercut" JTF's mission. I advised (46)

(46) that with my law enforcement background [over 6 1/2 years as a federal agent and 2 1/2 years with the State of SD] I would do anything legal to facilitate a mission and that I considered his words a personal attack. I was advised that I could take it personally. I again tried to get the Colonel to discuss legal analyses of the mission but either we were preempted or (46) hung up.

10. About 031348 Feb 93 I briefed the SJA and was advised to coordinate with SJA CINCSOC as well as SJA ASOC. I then attempted to call (47) OSJA USSOCOM who was TAD.

11. About 031351 Feb 93 I discussed the case with (5) SJA, USSOCOM who opined that the facts, as known, presented a problem and that before execution his office at USSOCOM should be informed. It was agreed that this is an operations issue and G-3 should take the lead action with SJA coordination.

12. About 031359 Feb 93 I discussed the case with (45) OSJA ASOC. In going over the facts, (45) offered the opinion that the RSU might go so far as to go over the DLEA plan (e.g. evaluate a 5 paragraph operations order per METL tasking) but the rehearsals probably went too far.

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AOSO-JA
SUBJECT: RSU Mission JTF-6

13. About 031410 Feb 93 I went to G-3 and met with CD personnel. It was agreed that G-3 would take the lead with input from OSJA (with my name listed as legal coordinator).
14. About 031421 Feb 93 [redacted] talked to SOF personnel at JTF-6. Personnel related that they "got their ass chewed" for talking to USASFC(A) OSJA personnel. Concept is going forward to DoD for approval via message traffic as well as for commo support (off-site), medivac assistance and no C2. We will receive info copy of message.
15. About 031509 Feb 93 returned to office. [redacted] JTF-6 legal advisor had left message to call 978-8758/9008. Attempted to call both numbers, no response.
16. Briefed SJA.
17. About 031715 Feb 93 advised to report to G-3. Briefed DCO who requested draft copy of this Memo.
18. Group JA, 3d SFG(A) came by office and was advised of the situation.
19. 031815 Feb 93, again attempted to return call to [redacted] JTF-6 at 978-8758. [redacted] answered the phone and indicated that [redacted] was down at the CG's office waiting to see the CG in reference to the mission we had discussed earlier. Asked [redacted] to relay that I had returned his call and was asked to stand by. After a short wait [redacted] stated that she had just seen [redacted] as he entered COMJTF-6's office and delivered the message. I was to be advised that [redacted] called to say the first call had been cut off and that his position had not changed. [redacted] stated that she was under the impression that this mission had been elevated one level in our chain of command and what was their position? I advised [redacted] that I did not suppose to speak for any higher HQs, but that the issue had been raised with [redacted] at ASOC as well as COL Decort at USSOCOM. In response to her questions I advised that although the opinions vary slightly, there existed problems with the mission as proposed, that USSOCOM and ASOC could speak for themselves, and that we were under the impression that JTF-6 would be sending message traffic to DoD for approval of the mission. I advised [redacted] that when that message was received, all our higher HQs could respond. The call was terminated with the understanding that we would await their message traffic.

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AOSO-JA
SUBJECT: RSU Mission JTF-6

20. 031856 Feb 93. Received message from SJA that 3d Gp JAG had just called. [REDACTED] informed 3d Gp JAG that medical mission was off and that plan was not going forward for execution. Only RSU involvement was to coordinate for army ranges and to teach DLEA how to develop 5 paragraph OPORD. Discussed entire case with SJA who agreed that our opinions are based upon facts as presented by our clients. Noted that perhaps there is some "garbled message traffic" here and that we should wait and see the actual mission message traffic before providing a written opinion on the mission.

21. 031928 Feb 93. Completed updated draft of Memo for record and terminated activities for the day. Noted that if paragraph 20 is correct, there exist no problems. If mission is to go as earlier planned, then 3/3 is not in a position to offer expert advice per 10 USC 373 on taking down a drug lab (military assistance to law enforcement). Since these are point targets with identified civilian subjects, this falls outside the scope of JTF mission approval and can not be accomplished under that theory either.

26
[REDACTED]

D-1172

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DESCRIPTION The Rapid Support Unit (RSU) is comprised of a Special Forces Company with attached aviation assets from 160th SOAR. The RSU is collocated with JTF-6 at Ft Bliss, Texas and is under the tactical control (TACON) of CG, JTF-6. The RSU provides the capability to provide rapid, responsive support to immediate LEA needs based on perishable intelligence. The RSU is capable of conducting Special Reconnaissance (LP/OP, Ground Recon, Dive Operations); Mobile Training Teams; and Aviation Support Operations. Requests for the RSU must be sent through Operation Alliance. The RSU can be used to augment or cover flanks of other ongoing operational missions. With the RSU's enhanced low visibility insertion techniques, these elements are ideal for drug smuggling corridors only sparsely covered by law enforcement. Additionally they can be used as low-visibility stay-behind teams after another operation departs.

MISSION PARAMETERS RSU missions are characterized by small, short duration, interdiction missions normally limited to border areas. Support normally ranges 1-14 days in duration with the requesting LEA determining the number of days. Utilization is based on the priority assigned by Operation Alliance. The mission must be related to the Special Operations Mission Essential Task List (wartime tasks) and should be intel-prompted.

ORGANIZATION & EQUIPMENT The RSU is composed of a Special Forces B Detachment which consists of 6 Special Forces A-teams that can be deployed simultaneously. Each team can be deployed independently and averages 8 to 9 specially trained personnel. Individuals skills consist of advanced medical, communications, weapons, and demolitions. All personnel are cross-trained and are capable of providing instruction in these skills. The RSU is augmented with a Special Operations communications team to facilitate long-range, immediate secure comms via satellite and burst transmission. Teams are outfitted with advanced communications, night vision, and long-range optics. The aviation augmentation consists of 2 MH60 Blackhawks capable of extended range and navigation under limited visibility. These aircraft are rigged for fast rope and repelling.

CONSIDERATIONS

- a. Lead time for request. The RSU can be activated for insertion with 72 hours telephonic notice to Operation Alliance. (Some missions have been done with only 24 hours notice.) If aviation operations are anticipated within 3 nautical miles of the border, or ground elements/positions are planned within 3 km of the border, 72 hours notification is desired.
- b. Missions should be planned for short duration as the RSU constitutes a reusable asset.
- c. RSU assets are limited, hence Operation Alliance will determine priorities when conflicts occur.
- d. Operation must be conducted on public land or private land-use agreements must be obtained.
- e. Aviation assets may be requested to support other JTF-6 missions supported by Special Operations Forces. The availability of aircraft and priority will be determined by the CG, JTF-6.
- f. In high-risk operations where close proximity (LEA with RSU elements) is in effect, cross-training of both the RSU and LEA agents is imperative.
- g. Interdiction operations where the RSU is used as an initial detection force requires a reaction force by the LEA.

For Further Information, call your agency representative at Operation Alliance, 915-540-6130

D-1353

Thru [redacted] 58
 To MC Davis,

Basically, the only question I
 have is related to how we got involved.
 Was the "metaphotocams" lab a subproject
 to get our (military) (SOF) (?) involvement?
 Seems to me we need to be sure what
 the ground rules are. Reasonable man
 rule applies.

VPL

[redacted] 59

D-1363



D 2344
 012000

ADJUTANT GENERAL'S DEPARTMENT

Post Office Box 5218
 Austin, Texas 78763-5218
 512-465-5001

AGTX-CD (500-2)

29 April 1993

MEMORANDUM THRU

The Adjutant General of Texas, Attn: AGTX-OT (LTC [REDACTED] 17C)
 PO Box 5218, Austin, Texas 78763-5218

The Adjutant General of Texas, ATTN: AGTX-A (MG Turk),
 PO Box 5218, Austin, Texas 78763-5218

FOR Chief, National Guard Bureau, Attn: NGB-CD, The Pentagon,
 Washington, D. C. 20310-2500

SUBJECT: After Action Report of Texas National Guard Counterdrug
 Support in Waco, Texas

1. GENERAL

a. This narrative will provide explanation and clarification of the support provided by the Military Forces of Texas to the Bureau of Alcohol, Tobacco and Firearms (ATF) and the Federal Bureau of Investigation (FBI) prior to, during, and after OPERATION TROJAN HORSE and a subsequent Hostage Rescue Mission in the vicinity of Waco, Texas. The format and verbiage selected for this presentation is intended to make this product understandable to both military and civil audiences. The purpose of this document is to provide fact in an objective manner. Texas National Guard (TXNG) support to law enforcement will be explained; debate over law enforcement actions beyond this support will be avoided.

b. Inclusive dates were: 11 December 1992 - 27 April 1993

c. Scope of Operation:

(1) The initial Texas National Guard objective was to provide quiet, honest, and professional counterdrug support in assisting ATF in an ongoing firearms and drug case in central Texas. This was done in accordance with National Guard Regulation (NGR) 500-2 and provided support from the following Office of the Secretary of Defense approved National Guard counterdrug missions:

✓ 20-0
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Mission #3	Surface Transportation Support
Mission #4	Aerial Reconnaissance
Mission #5	Aerial Surveillance
Mission #6	Aerial Transportation Support
Mission #11	Coordination, Liaison, and Management
Mission #13	Film Processing for Photo Reconnaissance
Mission #14	Administrative, Information, ADP, Logistics, and Maintenance Support
Mission #16	Aerial Interdiction Support

* ATF was loaned certain TXNG equipment authorized under NGR 500-2, Chapter 3, para 3-1, to meet their mission requirements in OPERATION TROJAN HORSE (serving the warrant).

(2) Exigent circumstance encountered during the initial ATF mission prompted both ATF and FBI to request certain TXNG equipment and supplies to meet their new mission requirements. Loans of such items is covered under Army Regulation (AR) 700-131. Strict adherence to said regulation was the order of the day.

(3) In addition to Texas National Guard Counterdrug support personnel, military members from the following Texas National Guard units provided support to both OPERATION TROJAN HORSE and the subsequent FBI Hostage Rescue Mission:

HQ, STARC
TROOP COMMAND
49TH ARMORED DIVISION

(4) The vast majority of TXNG personnel funding for this operation was accomplished by using congressional monies authorized under 32 USC 112. Fiscal year 1993 funds had been provided to the Governor of Texas for use authorized by Article 1, Section 8, Clause 16, U. S. Constitution for this purpose. The totals listed below include mandays, to reflect the efforts of TXNG staff members and support personnel who provided assistance in addition to performing their traditional and ongoing TXNG roles.

<u>NUMBER OF MANDAYS</u>	<u>TOTAL PERSONNEL</u>
896	<u>PER DIEM & TRAVEL COSTS</u>
	\$102,301

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* Approximately 14% of the man-days were officers.

2. OPERATIONAL SUPPORT

Texas National Guard support provided the Bureau of Alcohol, Tobacco, & Firearms and the Federal Bureau of Investigation can best be portrayed in the following phasic manner:

(1) Initial Planning and Coordination (11 December 1992 - 27 February 1993)

An initial ATF inquiry seeking information on the availability of TXNG aerial photography to support an ongoing ATF investigation was received on 11 December 1992. This initial inquiry led to a series of requests from ATF and Operation Alliance seeking support for an upcoming ATF mission. The requests asked for aerial photography, aerial thermal imagery, and general operational support. A coordination meeting was held in ATF Headquarters, Houston, Texas on 4 February 1993. This meeting was attended by ATF & TXNG Counterdrug Command Group representatives.

(2) Support to OPERATION TROJAN HORSE Serving the Warrant (11 December 1992 - 28 February 1993)

Aerial photography missions requested by ATF were flown on 6 January and 3, 18, & 25 February 1993 by the Texas National Guard Counterdrug UC-26. On 14 January 1993 aerial photographs were taken by RF4-C aircraft from the Alabama National Guard. Additional aerial photography and infra-red video was requested by ATF and provided by the Texas National Guard UC-26 on 6 February 1993. A mission request with final general operational support needs was received on 24 February 1993 and the initial TXNG support package was dispatched to Fort Hood, Texas and Texas State Technical College (TSTC), Waco, Texas. All participating TXNG Counterdrug personnel attended training rehearsals and mission briefings 25 - 27 February 1993. All involved TXNG Counterdrug support personnel were in attendance of the final mission briefing at 1900 hours on 27 February 1993. On 28 February 1993 all TXNG support personnel reported to TSTC at 0800 hours. Certain TXNG ground support personnel staged at ATF assembly area, and TXNG aircrews prepared their aircraft for the mission. Final positions for TXNG Counterdrug ground support

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SUBJECT: After Action Report of Texas National Guard Counterdrug Support in Waco, Texas

personnel was 600 - 700 meters from the Branch Davidian site. The TXNG Counterdrug aircraft final position was 300 - 450 meters north of the Branch Davidian site. Texas National Guard aircraft arrived at their predetermined operational position simultaneously with the arrival of ATF personnel at the Branch Davidian site. All three aircraft received gunfire while slowing to hover at their final position. All aircraft turned North, away from the Branch Davidian site, and departed the area.

- * The TXNG Counterdrug Task Force Commander was onboard one of the TXNG aircraft. His charge was to insure no existing regulation or law was violated in the provision of TXNG support to this law enforcement action.
- * No one on board TXNG aircraft was injured.
- * Damage encountered by TXNG aircraft amounted to \$ 13,948.
- * No TXNG personnel onboard the TXNG aircraft were armed.
- * Nothing, but videotape was shot from the TXNG aircraft on 28 February 1993!!!

(3) Hostage Rescue Mission
(28 February 1993 - 19 April 1993)

Initiation of hostile activities between ATF and the Branch Davidians resulted in a myriad of actions affecting Texas National Guard Counterdrug Support to both ATF initially, and later the FBI. These actions include but are not limited to:

- * The Adjutant General of Texas (TAG) and the Adjutant General's Department (AGTX) primary staff notified of situation.
- * National Guard Bureau (NGB) Emergency Operation Center (EOC) notified of situation.
- * Establishment of Texas National Guard EOC in Austin, Texas to coordinate with NGB EOC in Washington, D. C. on a 24-hour basis.
- * Office of the Governor informed of situation.

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- * Requests were received from ATF for Bradley fighting vehicles, night vision equipment, fuel, field rations, and personal protective equipment.
- * TXNG aviation safety personnel inspected and evaluated damage to TXNG aircraft.
- * Bradley fighting vehicles were transported from Gatesville, Texas to Waco, Texas.
- * ATF agents were trained to operate said vehicles.
- * Bradley fighting vehicles, combat engineer vehicles, personal protective equipment, field rations, fuel and drivers training was requested by the FBI.
- * Requested vehicles were transported to Waco, Texas.
- * FBI agents were provided vehicle driver's training.
- * Loan agreements were initiated for tracked vehicles between ATF, FBI, and Texas National Guard. Vehicles were released to the agencies.
- * Reimbursement agreements were initiated and expendable supplies were issued to the Federal agencies.
- * Daily vehicle maintenance, fueling, and support schedules were established and maintained.
- * A TXNG counterdrug representative was dispatched to NGB to explain and provide information to an NGB Focal Group.
- * Numerous situational requests for equipment, logistics, training facilities and general support were received, staffed, and either provided or passed to other agencies.
- * An equipment recovery plan was prepared, staffed, and coordinated.
- * Daily situation reports were provided to authorized audiences.

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(4) Recovery Plan Implementation
(20 - 27 April 1993)

Upon cessation of hostile activities between federal agencies and Branch Davidians, the Texas National Guard equipment recovery plan was activated. The objective of the recovery plan was to insure all TXNG equipment was accounted for, recovered, and that all losses, damages, and destruction were identified. Full cooperation with all supported agencies was evident. Activities involved in the recovery plan included:

- * Members of the Adjutant General's USPPF and Command Logistics Office were dispatched to assist TXNG Counterdrug personnel and Law Enforcement Agencies (LEA) in the action.
- * TXNG property was recovered and inspected.
- * Reimbursement documents for consumables were jointly prepared and agreed upon between TXNG and federal agencies.
- * Reimbursement documents for damage, loss, or repair to TXNG equipment were prepared and agreed upon by TXNG and federal agencies.
- * TXNG equipment was returned to TXNG, cleaned, and transported to lending TXNG units.

3. ADMINISTRATION

a. Public Affairs. As per MGR 500-2, para 2-10(a), the supported LEAs released and controlled information regarding TXNG support of the operation. The TXNG Public Affairs Office (PAO) coordinated with the Governor of Texas' Press Secretary. Thirty-nine (39) requests from media or agency representatives were received reference this operation or TXNG Counterdrug Support in general.

b. Personnel Actions. Publication of orders and travel related expenses were monitored and controlled by the TXNG Counterdrug Command Group.

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c. Morale and Discipline. The morale of TXNG support personnel remained high throughout the entire operation. A sense of camaraderie and purpose was evident.

d. Casualties/Injuries. NONE!

4. TXNG LOGISTICS/SERVICE SUPPORT

a. The following TXNG equipment was operated, flown by, or maintained by Texas National Guard personnel at some period in support of OPERATION TROJAN HORSE and the subsequent Hostage Rescue Mission:

UC-26 Aircraft	Fuel Trucks
OH-58 Helicopters	2 1/2 Ton Trucks
UH-60 Helicopters	Water Trailers
Utility Vehicles	Armored Personnel Carrier
Buses	Transport Trailers
Photographic Equipment	Power Generators

b. The following TXNG supplies and equipment were loaned to, provided to, purchased by, or maintained for federal agencies at some period during OPERATION TROJAN HORSE and the subsequent Hostage Rescue Mission:

Bradley Fighting Vehicles	Military Utility Vehicles
Combat Engineer Vehicles	1/4 Ton Jeeps
Ammunition Trailers	Search Lights
Tracked Recovery Vehicle	Field Rations
Protective Masks	Night Vision Equipment
Military Helmets	Flak Vests
Canteens	Tentage
Light Sets	Litters
Weapon Slings	Ammunition Magazines
Sandbags	Tables/Chairs
Wet Weather Gear	

*THE DAILY MAINTENANCE AND REPAIR OF THE LOANED TING TRACKED VEHICLES TO FEDERAL AGENCIES WAS CRUCIAL TO THE MISSION AT HAND. THE PROFESSIONALISM AND RAPPORT DEVELOPED AND DISPLAYED BETWEEN TING MAINTENANCE PERSONNEL AND FEDERAL AGENTS INVOLVED IN THIS MONUMENTAL TASK, WAS PHENOMENAL!!!!!!

*Coordination and communications requirements were greatly enhanced by the use of cellular phones (secure and non-secure)

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provided to the TXNG Counterdrug Program by Central Procurement actions at the National Guard Bureau Level.

5. TEXAS NATIONAL GUARD COSTS

a. The following costs were funded with existing FY93 TXNG Counterdrug funds supplied Texas for the purpose of supporting LEAs in such operations.

(1) <u>Personnel</u> (Pay, Travel, & Per Diem)	\$ 102,301
(2) <u>Ground Transportation</u> (Fuel)	410
(3) <u>Telephone</u> (Landline & Cellular)	1,995
(4) <u>Fixed Wing Aircraft</u> (UC-26)	8,032
(5) <u>Rotary Wing Aircraft</u> (UH-60 & OH-58)	3,120
(6) <u>Damage to Aircraft</u> (UH-60 & OH-58)	<u>11,948</u>
(7) <u>Total Costs Incurred</u>	\$ 129,806

b. Federal LEAs have agreed to reimburse the TXNG for consumables and loss, damage, or repair to TXNG equipment.

\$ 205,752

6. PROBLEM AREAS AND RECOMMENDATIONS

a. General Considering the magnitude, severity, and scope of this particular support mission, few, if any, major problems were encountered. Personalities, vanities, and opinions did surface to near problematic degrees, but this can be attributed to stressed and sleepless, but concerned personnel.

b. Public Affairs

(1) Problem: A law enforcement representative on three occasions presented information at daily press briefings that did not accurately portray specific military mission aspects or the specific military organization of an individual.

(2) Discussion: Para 2-10 a., NGR 500-2, directs that the supported law enforcement agency will assume the lead and make determinations as to what information will be released to the press. In this particular operation, both Title 10 and Title 32 forces were supporting law enforcement. The magnitude of information necessary for the law enforcement briefer to absorb was monumental. It is quite understandable, that in one case, a National Guardsman was reported injured; actually it was a Title 10 soldier. This caused a bit of consternation throughout the National Guard community. The misinformation was readily

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SUBJECT: After Action Report of Texas National Guard Counterdrug Support in Waco, Texas

corrected through existing lines of communications between the Texas National Guard, the Office of the Governor of Texas, and the National Guard Bureau. Other misquotes were noted, but caused no immediate chagrin and don't appear at this time to be significant.

(3) Recommendation: Do not change NGR 500-2, Para. 2-10 a., this paragraph wisely allows for a single source of media release and prevents possible operational security problems.

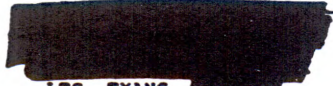
7. CONCLUSION

There exists in NGR 500-2 a phrase, and that phrase is "EXIGENT CIRCUMSTANCE". It is a phrase difficult to define, but generally presents a condition that is an unforeseen, unavoidable, and omnipresent. The regulation states, "Exigent circumstances are situations in which immediate action is necessary to protect police officers, Guard personnel, and other persons from injury; to prevent the loss or destruction of evidence..."

What began as traditional Texas National Guard Counterdrug support to a federal law enforcement agency resulted in just such a condition. All previous Texas National Guard Counterdrug support situations had fallen within and been addressed by existing regulation and law.

Events in Waco tested and validated the Texas National Guard's ability to react to "EXIGENT CIRCUMSTANCE." The integrity, common sense, and ingenuity demonstrated by TXNG personnel and supported law enforcement agencies resulted in timely and necessary actions.

Existing regulation should and will be examined in wake of the previous mentioned events. REACTIVE REGULATION "shouldn't" be implemented to stifle, reduce, or hamper National Guard Counterdrug support that has to this point been performed in a fashion that is legally, ethically, and tactically correct in accordance with existing guidance, regulation, and law.

 (95)
LTC, TXANG
Task Force Commander

TXNG SUPPORT COSTS
**OPERATION TROJAN HORSE &
 HOSTAGE RESCUE MISSION
 WACO, TEXAS**

Following costs were funded with existing FY93 TXNG Counterdrug funds supplied to Texas for the purpose of supporting LEAs in such operations

Personnel (Pay, Per Diem, & Travel) Paid from Existing AGTX-CD Funds	\$102,301
Fuel & Telephone Expenses Paid from Existing AGTX-CD Funds	\$2,405
Aircraft Operation Paid from Existing AGTX-CD Funds	\$11,152
Damage to Aircraft Paid from Existing NGB-CD Funds	\$13,948
Federal LEAs have agreed to reimburse the TXNG for consumables and loss, damage, or repair to TXNG equipment	\$205,752
TOTAL SUPPORT COSTS	\$335,558
TOTAL AMOUNT DUE TEXAS	\$205,752

Use of existing AGTX-CD funds to support this operation will not detract from future planned Counterdrug Support FY93 activities

AFTER ACTION REPORT

D-2354

PART I: Mission Summary Data

1. AAR prepared on 28 Sep 93
2. AGTX-CD providing CW support-LTC [REDACTED] (45)
3. Mission # MGS 303 93 AT7 16
4. Type Mission: Cargo Pickup of BDU's.
5. Operation dates: 21 Apr 93.
6. Location: Henry Post AAF, Oklahoma
7. Other military units providing support: None
8. DLEA requesting support: Alcohol, Tobacco and Firearms
9. Other participating DLEA's: Federal Bureau of Investigations
10. Military personnel participating: LTC [REDACTED] (594), CPT [REDACTED] (130), SSG [REDACTED] (77)
11. Uniform: Flight suits and BDUs
12. Communications equipment used: Normal Aircraft Radios
13. Other equipment: None
14. Flight hours by aircraft type: 3.9 Hrs C-26A
15. Arrests: None
16. Seizures: None
17. Other results: N/A (28)
18. POC: Major [REDACTED] (239) LST 954-2460 (28)

OPTIONAL FORM NO 10-88

FAX TRANSMITTAL

To: CAPT [REDACTED]	From: [REDACTED]
Direct/Agency: AGTX	Phone: 954-2460
Fax: 954-5695	Fax: 954-2109

ISSN 7546-01-217-7280 5010-101 GENERAL SERVICES ADMINISTRATION

Part II: Mission Narrative

D-2355

a. Mission Description

1. Military support requested: Pick up BDU's and deliver to Waco
2. Military support provided: Picked up BDU's and delivered to Waco
3. Military Chain of Command: LTC [redacted] - LTC [redacted] - CPT [redacted]
SSG [redacted] (594) [redacted] (95) [redacted] (130) [redacted] (17)
4. DLEA Chain of Command: Unknown
5. Communications Network: None

b. Lessons Learned

1. Observations: Needed more help at Henry Post AAF, Ok to sort and load BDU's
2. Discussion: Prior coordination was minimum due to hurry up nature of mission.
3. Lessons learned: N/A
4. Recommended action: None
5. Comments: N/A

Part III: Mission Planning, Execution, and Recovery

1. Chronology: Received request by telephone to pick up BDU's in Oklahoma and deliver to ATF and FBI agents in Waco. Complied with request. .
 2. OPLAN/OPARD: None
 3. SOP (if applicable): N/A
-

STATE COUNTERDRUG SUPPORT OPERATIONS
Proposed Agency: NGB-CDD

D 2356

NATIONAL GUARD COUNTERDRUG SUPPORT OPERATIONS NATIONAL GUARD SURVEY						
Chief, National Guard Bureau ATTN: NGB-CD The Pentagon Room 2D378 Washington, DC 20310-2500				FROM: AGTX-CD		
				DATE: 29 Sep 93		
OPERATION NUMBER:	State	Serial #	FY	Agency	NGB #	OPERATION CODE NAME:
	TX	0303	93	ATP	06	Air Transport
MG POC: MAJ AKERS			DSW: 954-5633		FAX: 954-5695	
START DATE: 21 Apr 93		SCHEDULED END DATE: 21 Apr 93				
PURPOSE: To provide Senior DoD Staff and Congress with timely feedback concerning National Guard Support to Law Enforcement Agencies						
RATING SCHEME: 1 (Poor) 2 (Good) 3 (Excellent)						
It is requested that this survey be completed by the senior National Guard Member participating in this operation. Score each question with a numerical score (1-2-3) as follows:						
1. WAS THE SUPPORT PROVIDED AS PER LEA REQUEST ?						2
DID SUPPORT START ACCORDING TO LEA REQUEST ?						2
3. WAS THE NATIONAL GUARD PROPERLY EQUIPED TO SUPPORT THIS OPERATION ?						3
4. DID THE NATIONAL GUARD FEEL THAT THE OPERATION WAS SUCCESSFUL ?						3
5. WAS THERE A COOPERATIVE ATTITUDE AMONG ALL PARTIES ?						3
6. WAS THE SUPPORT OF TRAINING VALUABLE TO THE NATIONAL GUARD ?						2
7. WAS THERE A PRE-COMMITMENT BRIEFING CONDUCTED WHICH OUTLINED THE RULES OF ENGAGEMENT AND USE OF DEADLY FORCE ?						3
8. DID THE NATIONAL GUARD PERSONNEL FULLY UNDERSTAND THE MISSION ?						3
9. WAS THERE AMPLE FLEXIBILITY IN THE NATIONAL GUARD CHAIN OF COMMAND ?						3
10. WAS THERE ADEQUATE TIME FOR NATIONAL GUARD PERSONNEL TO PREPARE FOR THE MISSION ?						3
					TOTAL POINT VALUE	(130) 27
Officer/MCO In-Charge		(Name/Title):		Signature: [Redacted]		
		Mission Cdr:		[Redacted] (239)		
1. This survey if completed must be submitted as an attachment to the National Guard After Action Report (AAR:NGB 525-6-R).						
2. Success Equals (0-10 poor) (11-19 good) (20-30 excellent)						

NGB FORM 525-4-R



DEPARTMENT OF THE ARMY
HEADQUARTERS
3rd SPECIAL FORCES GROUP (AIRBORNE)
FORT BRAGG, NORTH CAROLINA 28307-5230

REPLY TO
ATTENTION OF:

AOSO-SFT-CO (350-1d)

21 September 1992

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Special Operations Training (SOT) and Close Quarters Battle (CQB)

1. SOT/CQB training is a non-exportable, high-risk, perishable skill developed and taught to specific units with a directed mission of specific military operations on urbanized-terrain. 3rd SFG(A) does not have a Mission Essential Task List (METL) which encompasses this skill. The course Memorandum of Instruction (MOI) specifies for a good reason that foreign students are not eligible for the training. The proliferation of the tactics, techniques and procedures (TTP) disseminated in this course has adverse consequences for the units tasked with maintaining and using these skills in a hostile environment.
2. 3rd SFG(A) will continue to participate in schools teaching the basic marksmanship and operations associated with SOT in order to incorporate the ancillary benefits of this training in our day to day operations. This training is specifically allowed for internal use only and will not be disseminated outside the Group. There is a wide gulf between infantry Military Operations on Urbanized Terrain (MOUT) and SOT/CQB. MOUT is defined in FM 7-8 and does not involve mixed friend/foe situations or the need for discriminatory shooting.
3. The Group cannot hope to maintain the level of proficiency, currency and skill necessary to effectively teach and disseminate this skill on an on-going basis without adversely diverting assets needed elsewhere. 3rd SFG(A) will not solicit or accept ad hoc requests for this type of training. No other type of high-risk, perishable skill training would be undertaken with less than adequate training; this will not be an exception.
4. The following will be strictly adhered to with respect to inquiries and discussions of SOT/CQB:
 - a) 3rd SFG(A) will not teach, discuss, or disseminate TTP associated with SOT/CQB without the specific written permission of the Group Commander.
 - b) SOT/CQB will not be discussed during planning conferences or exercise pre-deployment site surveys. If queried, 3rd SFG(A) representatives will explain MOUT as defined in FM 7-8 and the skills which can be taught. No discussion of comparisons or contrasts between MOUT and SOT/CQB will be entered into.
 - c) SOT/CQB should not be a subject for unit training schedules. Since this skill is not a METL task it should

afforded training resources only after all other METL skills have reached a high level of proficiency. Battalion Commanders will specifically approve unit SOT/CQB training and then discuss it with the Group Commander prior to execution.

d) SOT/CQB training, when allowed, will not be conducted with either participation or observation by individuals or units other than 3rd SFG(A).

e) No mention of SOT/CQB training or proficiency will be made in unit After Action Reports (AARs). Recommendation referring to this type of training/proficiency will not be made (verbally or in writing).

4. I cannot overemphasize the importance and sincerity with which I view this type of training. Unit commanders will ensure this policy is disseminated and understood by all principle staff members as well as every 18-series individual in the Group prior to 30 September 1992. Battalion Commanders and principle staff elements in the Group Headquarters will Reply by Indorsement (RBI) that this has been accomplished.



PHILIP R. KENSINGER JR.
COL, SF
Commanding

DISTRIBUTION:
A



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY
SPECIAL FORCES COMMAND (AIRBORNE)
FORT BRAGG, NORTH CAROLINA 28307-4300



REPLY TO
ATTENTION OF
S.M.A.
AOSO-GCO-C

FEB 23 1993

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: United States Army Special Forces Command (Airborne)
Policy for Conducting CONUS Counterdrug Operations

1. The United States Army Special Forces Command (Airborne) (USASFC(A)) supports the United States Special Operations Command and the United States Army Special Operations Command commanders' guidance for conducting counterdrug operations in support of Drug Law Enforcement Agencies (DLEA) within the United States. Our primary mission is to support all warfighting CINCs, which includes Commander in Chief, Forces Command. The USASFC(A) views CONUS counterdrug support as an outstanding training opportunity that is as important as operational missions. Therefore, it is the position of this command that all Special Forces groups will participate in the President's war on drugs.
2. Effective immediately all Special Forces groups will include support to Joint Task Force-Six (JTF-6), Project North Star (PNS), and the Continental United States Armies (CONUSA) as part of your annual training requirements. This headquarters does not intend to set a minimum number of counterdrug missions that your units should support; however we do expect all MSUs to participate. Training opportunities exist for special reconnaissance missions, multiple subject MTTs, area assessments, intelligence analyst support, linguistic support and other special forces Mission Essential Task List (METL)-related missions. This headquarters will not forward requests to your units that do not fall within your METL.
3. The Commanding General, USASFC(A) also desires all active component MSUs to participate in our Rapid Support Unit (RSU) support requirement to JTF-6. Once this command is tasked by USSOCOM and USASOC to provide fiscal year 1994 RSU mission support, we will schedule quarterly RSU rotations supported by all MSUs. As previously planned, the 5th Special Forces Group will provide support for the 3d and 4th quarters of fiscal year 1993 RSU iterations.
4. Discussions have taken place concerning USASFC(A) MSU participation in conducting close quarters special operations training (CQSOT) at forward law enforcement agencies. The Commander, USASOC, has informed the Commander, JTF-6 in a

AOSO-GCO-C

SUBJECT: United States Army Special Forces Command (Airborne)
Policy for Conducting CONUS Counterdrug Operations

4 Jan 93 message that USASOC will provide CQB/SOT training to law enforcement agencies; however, the supporting unit will be determined by the level of training requested. It is therefore anticipated that CQB/SOT training support requests may be filled by USAJFKSWCS or other units that include CQB/SOT as part of their METL.

5. In order to clarify the USASFC(A) position on conducting CQB/SOT training for law enforcement, the following guidance will apply:

a. USASOC and USASFC(A) have agreed to provide CQB/SOT training assistance to the U.S. Border Patrol Tactical Unit (BORTAC) as part of the RSU mission. Our agreement with BORTAC is to provide assistant instructor and demonstrators for CQB/SOT training, wherein the classes are taught from the BORTAC POI, not from skills acquired from USAJFKSWCS (SFARTAEC, SOTIC, etc.).

b. USASFC(A) MSUs will not provide CQB/SOT instruction to any other law enforcement agency. USASFC(A) MSUs may be requested to conduct MOUT training that falls within the training outlined in FM 7-8 and FM 90-10. To eliminate questions with regard to what is or is not CQB/SOT training, the following guidelines apply on what may NOT be included in any training program of instruction:

- (1) Training that includes discriminating fire. No situations that require friend/foe target acquisition.
- (2) No linear targets may be utilized. This includes aircraft, buses, etc.
- (3) No hostage rescue scenarios.

6. All individuals will receive predeployment legal training from their Group Judge Advocate IAW the OSJA, USASFC(A) Counterdrug Deskbook prior to deployment.

7. It is imperative that no "free-lancing" of skills acquired by Special Forces personnel through Special Warfare Center and Schools (SWCS) be taught to civilian law enforcement personnel.

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SUBJECT: United States Army Special Forces Command (Airborne)
Policy for Conducting CONUS Counterdrug Operations

To instruct on non-METL-related skills/subjects could result in Economy Act violations as well as civil liability. It is the intention of this command to provide the law enforcement community with the highest quality instruction in those skills that may improve their ability to conduct interdiction operations, as long as those skills fall within our METL.

8. Counterdrug operations give our units opportunities to conduct METL-related training at little or no cost. In this era of decreased operating and training budgets and the current draw-down of forces, our contribution to this effort cannot be over emphasized.

9. Points of contact at this headquarters are Mr. Chris Crain or CW2 Chuck Anderson, G-3 Unit Training and Operations, DSN 236-2508, or CPT Fred Taylor, Chief, Operations and International Law, OSJA, DSN 236-7176/8647.


ROBERT C. JACOBEL
COL, SF
Deputy Commanding Officer

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11th SFGA, ATTN: AOSO-SFD-CO, Fort Meade, MD 20755-5340

12th SFGA, ATTN: AOSO-SFE-CO, Arlington Heights, IL 60005-2449

Commander, USASOC, ATTN: AOSP-POC, Fort Bragg, NC 28307-5000

3d SFGA, ATTN: AOSO-SFT-CO Fort Bragg, NC 28307-5000

commander's office symbol.



REPLY TO
ATTENTION GP

DEPARTMENT OF THE ARMY
HEADQUARTERS UNITED STATES ARMY
SPECIAL FORCES COMMAND (AIRBORNE)
FORT BRAGG, NORTH CAROLINA 28307-5200



AOSO-GC

NOV 24 1993

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Policy Letter on Close Quarters Combat (CQC) Training

1. GENERAL.

a. Effective immediately this is the CQC policy for all USASFC(A) Major Subordinate Units (MSUs). This policy supersedes all prior guidance by this command on CQC.

b. United States Army John F. Kennedy Special Warfare Center and School (USAJFKSWCS) is the USASOC(A) proponent for all aspects of CQC training and has been tasked to:

- (1) Produce a document that explains how to conduct this training.
- (2) Define terms and standards.
- (3) Establish levels of training for each type of mission.

c. USAJFKSWCS is currently producing two documents:

- (1) Close Quarters Combat - ST 31-20-6-1.
- (2) A classified FM - 31-20-6.

They expect to publish these documents in November 1993 and September 1994 respectively.

d. To clarify terms and their definitions, the following are defined by United States Army Infantry School (USAIS) and Directorate of Training and Doctrine (DOTD), USAJFKSWCS:

- (1) Military Operations on Urbanized Terrain (MOUT) - includes all military actions that are planned and conducted on a terrain complex where man-made construction impacts on the tactical options available to the commander. These types of operations are characterized by large-scale offensive and defensive operations. The primary objective is to seize and hold ground using all available means. This often results in extensive damage to the area. Conventional infantry units are

AOSO-GC

SUBJECT: Policy Letter on Close Quarters Combat (CQC) Training

most often used for this type of operation. MOUT is not a Special Forces Mission, but can be taught to other forces by Special Forces teams.

(2) Advanced Military Operations in Urbanized Terrain (AMOUT) - encompasses advanced offensive techniques used in urban terrain conducted by units trained to a higher level than conventional infantry. Techniques include advanced breaching and marksmanship, selected target engagements, and dynamic assault techniques using organizational equipment and assets. AMOUT is primarily an offensive operation where clearing of a large built-up area is necessary; collateral damage must be kept to a minimum and non-combatants are or may be present. Ranger units are trained to meet this requirement. The clearing of the Tocumen Airport during Just Cause and the reoccupation of the U.S. Embassy in Kuwait City during Desert Storm are examples of AMOUT. Again, this is a capability that can be taught to other nations by our Operational Detachment Alphas (ODAs).

(3) Close Quarters Combat (CQC) - are combative techniques which include advanced marksmanship, use of special purpose weapons, munitions, demolitions, and selective target engagement conducted by small, specially trained units against static or halted man-made targets to defeat a hostile force with a minimum of collateral damage. The use of the terms CQC and CQB (Close Quarters Battle) have been interchangeable in the last several years. According to the Doctrine Development Branch of DOTD, USAJFKSWCS, the use of the term CQC will be doctrinally correct in the near future. An example of CQC is the Son Tay Raid in Vietnam, or the SAS take-down of the Iranian Embassy in Princess Gate, London.

e. Special Operations Training Course (SOTC) and SFARTAETC are not terms, they are courses taught by USAJFKSWCS:

(1) Special Operations Training Course (SOTC) is taught to ODAs and select personnel from the 75TH Ranger Regiment to provide specialized techniques used by Special Operation Forces (SOF) to conduct Direct Action (DA) Missions and Unilateral Special Operations of a limited scope and duration in an urban environment. These missions include Personnel/Equipment Recovery and Snatch Operations. It does not, repeat does not, include hostage rescue or linear targets. This type of training does include a degree of discriminating fire and can be conducted with weapons and equipment organic to Special Forces Groups and Ranger elements.

AOSO-GC

SUBJECT: Policy Letter on Close Quarters Combat (CQC) Training

(2) SFARTAETC is taught to Special Forces personnel on orders to or assigned to Special Mission Units (SMUs) requiring this training; select personnel from the United States Marine Corps (USMC) and Naval Special Warfare Groups (SEALs). The purpose is to provide training needed by personnel to conduct specialized missions.

2. United States Army Special Forces Command (Airborne) Policy.

a. Special Operations Forces (SOF) have valid mission requirements to maintain proficiency in CQC skills. The major differences in these skills/techniques are the level of training and standards of performance for the application of target discrimination and marksmanship. Only Special Mission Units (SMUs) have SFARTAETC-level training in their Mission Essential Tasking List (METL).

b. Special Operations Training Course (SOTC)-type training of foreign troops requires theater Special Operations Commander (SOC) approval prior to any planning conferences or informal coordination. Requests for SFARTAETC-type training will first be directed to theater SMUs. If it determined that a USASFC CONUS based ODA is to conduct this training, the designated personnel will require pre-mission train-up from USAJFKSWCS, after USASOC approval.

c. Training for other U.S. Agencies.

(1) The USASOC(A) and USASFC(A) have agreed to provide CQC training assistance to the U.S. Border Patrol Tactical Unit (BORTAC) as part of the Rapid Support Unit (RSU) mission. Our agreement with BORTAC is to provide assistant instructors and demonstrators for CQC training. The classes are taught from the BORTAC POI, not from skills acquired from USAJFKSWCS courses (SFARTAETC, SOTC, etc.).

(2) No USASFC(A) MSUs will provide CQC instruction to any other law enforcement agency. All USASFC(A) MSUs may be requested to conduct MOUT training that falls within the training outlined in FM 7-8 and FM 90-10. If any of the following scenarios, targets, or training is included in the Agency's POI, it will not be taught:

(a) Training that includes discriminating fire. No situations that require friend/foe target acquisition will be taught.

AOSO-GC
SUBJECT: Policy Letter on Close Quarters Combat (CQC) Training

(b) Linear targets may not be utilized. This includes aircraft, buses, etc.

(c) No hostage rescue scenarios will be utilized.

These topics and techniques will be taught by USAJFKSWCS or SMU personnel.

3. LIVE FIRE TRAINING REQUIREMENTS.

a. Battalion Commanders will conduct a formal risk assessment prior to conducting unit CQC training.

b. Commanders will ensure that all facilities used by their units during live fire training are inspected at least semiannually for safety.

c. Ensure that training conducted by their units is in accordance with published doctrinal literature and guidance on close proximity live fire training.

d. Ensure that the unit requires the training to support their METL or upcoming mission requirements.

e. Purchase and maintain adequate amounts of safety equipment to support units conducting live fire training.

f. Chain of command reviews. Live fire training must be reviewed/pre-checked by the chain of command two levels above the unit that will execute the training to ensure it meets training objectives, complies with all safety requirements, and is IAW installation range regulations. Leaders will conduct a walk-through to confirm appropriateness of training, scenarios, target placement, and compliance with safety and range constraints. Following the conduct of a formal risk assessment, leaders will emphasize the crawl, walk, run approach to training. Planning sessions, briefings, talk-through, walk-through, blank-fire or dry-fire run-through are required prior to live fire exercises. Progression of training will be adjusted to the demonstrated ability of personnel being trained. Additionally, the designated commander will conduct a detailed safety briefing with all participants present prior to any live fire training.

g. Observers and Evaluators. Personnel will not position themselves downrange for any reason. Caution will be observed on facilities having overhead "catwalks/walkways."

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SUBJECT: Policy Letter on Close Quarters Combat (CQC) Training

h. Explosive Breaching Safety. Extreme caution will be exercised when explosively breaching multiple entrances along a common or facing wall. Assault Team Leaders will ensure their charge has detonated prior to executing an assault. Failure to do so can cause team members to be wounded by late detonating charges. Charges that do not detonate will be treated as a misfire IAW FM 5-25 (Explosives and Demolitions) prior to continuing the assault. A waiver to AR 385-63 is required to conduct close proximity firing.

i. Ensure that all soldiers and evaluators/instructors conducting this type training have as a minimum: a ballistic vest (NIJ Level III or higher), ballistic eye protection, protective gloves, and Kevlar Helmet. A written waiver from the Commander, USASOC(A) must be obtained to train with less than the above mentioned equipment.

j. Ensure assaulters conduct dry-fire or blank-fire walk-through prior to live fire engagements. This deconflicts target placement and team members' positions.

k. Targets. Bullet holes in targets will be checked and pasted over after each scenario. This will verify marksmanship skills and serve as a means to evaluate soldiers.

l. Weapons employment and safety. Use only small arms in shooting facilities. Shotguns can be employed either as door breaching tools or primary weapons. Rounds must impact within the shooting house and not escape through an open roof. Hinge breaching will normally be limited to the bottom hinges of the door if ceramic type rounds (Shok Lok, Lock Busters, etc.) are used. Whenever shotgun breaching is conducted on second or higher floors, ensure proper techniques are used so that no shrapnel is fired through the floor onto team members below. All weapons employment must conform to the range and apparatus regulations and fire fans.

m. Fire control. Semiautomatic fire should be used; this enhances accuracy and weapon control. Identify limits of advance, range fans, sectors of fire, and other administrative safety measures which facilitate realism and safety.

n. Target placement. Target placement planning and inspection is essential to safety. Targets must NOT obstruct a

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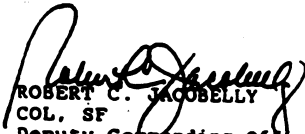
SUBJECT: Policy Letter on Close Quarters Combat (CQC) Training

shooter's view of another team member. At least two personnel will be utilized to place targets for live fire scenarios.

o. Obstacles and furnishings. Training aids used in live fire scenarios to limit advance or channelize personnel will be constructed of soft materials that absorb rounds without producing ricochets. When conducting risk assessments, special consideration will be made to identify items which have a high probability of causing ricochets. This includes, but not limited to, metal and hard wood furnishings. Target and furniture placement will take into considerations these hazards. Also, beware of possible fire hazards.

4. Points of contact at this headquarters are LTC Parker, G-3, DSN 236-1941; and CPT Taylor, Chief, Operations and International Law, DSN 236-7176.

FOR THE COMMANDER:



ROBERT C. JACOBELLY
COL, SF
Deputy Commanding Officer

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Commander, USASOC, ATTN: AOOP, Fort Bragg, NC 28307-5200

Classification



Name/Office Symbol	Phone Number	OPSCOM Loc.			
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Subj: RSM MSN JT 002E-93					
Classification	Precedence	Page(s) of Attachment	Date/Time	MO	YR
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To:	Command	Name	Office Symbol	Phone Number
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4				
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ADDITIONAL COMMENTS or INSTRUCTIONS:

50J3-0, COL BERNHARDT, DESIRES TO KNOW THE USASOC POSITION REGARDING THE ATTACHED DRAFT MSG. INTENT IS TO GO ON RECORD CONFIRMING THE PROMOTION ARRANGEMENTS, AND TO REINFORCE SOF RESISTANCE TO POTENTIAL "CHEATING" WHICH SEEMS TO RECUR @ JTF-6. REG. FEEDBACK



DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
2200 ARMY PENTAGON
WASHINGTON DC 20310-2200



REPLY TO
ATTENTION OF
DAJA-IO (27-1a)

3 November 1995

MEMORANDUM FOR CHIEF OF STAFF, ARMY

SUBJECT: Cross-Border Use of National Guard Personnel for Law Enforcement Purposes

1. This office has reviewed the attached National Guard Bureau Information Paper on this subject and offers the following comments.

a. The subject Information Paper sets forth the position that the cross-border use of National Guard personnel for law enforcement purposes is solely within the purview of the President.

b. This position is based on the premise that the interstate application of military force by State forces in State status, pursuant to agreements effected by State Governors, would constitute a violation of the President's prerogative to employ such forces in interstate law enforcement missions under the authority of 10 United States Code, Chapter 15.

c. This view is contrary to that taken on this issue by the offices of both the Army and DOD General Counsel. Those offices have opined that an all-encompassing statutory or constitutional prohibition against agreements entered into by State authorities, for the cross-border use of Guard personnel for law enforcement activities does not exist. In their view, it is only in those cases where a State action of this nature would actually interfere with the statutory or constitutional prerogatives of the Federal government that such a prohibition would apply. It is also the opinion of these offices that there exists no constitutional requirement that all cross-border National Guard "law enforcement" agreements entered into between State Governors be specifically consented to by Congress.

d. This office concurs with the position taken by the offices of the Army and DOD General Counsel concerning this subject.

e. In the two contexts in which this matter has arisen recently - support to the Hurricane Marilyn relief effort and to the 1996 Olympic Games in Atlanta - interference with a Federal

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DAJA-IO

SUBJECT: Cross-Border Use of National Guard Personnel for Law Enforcement Purposes

prerogative was and is not an issue. Accordingly, there existed no constitutional or statutory prohibition against the Governors of the U.S. Virgin Islands and Puerto Rico entering into an agreement under which military police personnel from Puerto Rico would be made available to perform law enforcement duties in the Virgin Islands. Though such support could not be provided under the aegis of the Southern Regional Emergency Management Assistance Compact (SREMAC) - an approach specifically excluded in that document, upon the recommendation of the National Guard Bureau - there existed no prohibition against the Governors concerned entering into a separate agreement dealing with this subject. Similarly, nothing would prohibit the Governor of Georgia from entering into specific agreements with other State Governors for the provision of National Guard personnel to perform law enforcement duties in support of the 1996 Olympic Games.

2. This Memorandum has been coordinated with the office of the Army General Counsel.

FOR THE JUDGE ADVOCATE GENERAL:



DAVID E. GRAHAM
Colonel, JA
Chief, International and
Operational Law Division

**CROSS-BORDER USE OF NATIONAL GUARD FOR LAW ENFORCEMENT PURPOSES
CONSTITUTIONAL ISSUES AND
NEED FOR CONGRESSIONAL RATIFICATION
OF INTERSTATE AGREEMENTS**

On September 27, 1993, in response to an inquiry from the National Guard Bureau relating to concerns about possible infringement of the President's authorities under Chapter 15 of title 10, United States Code, if the Southern Regional Emergency Management Assistance Compact (SREMAM) were to permit use of force by the National Guard of one state in another state to assist in law enforcement, the Deputy General Counsel, DOD, opined that neither Chapter 15 nor constitutional provisions prohibit consummation of the Compact unless implementation of that agreement is prejudicial in any given instance to the ability of the Federal government to take action under the provisions of Chapter 15. On November 3, 1995, the Chief, International and Operational Law Division, Office of the Judge Advocate General, Department of the Army, agreed with this opinion and took issue with the Bureau's views as expressed in a 20 September NGB-ARO-OM information paper that the use of the National Guard across state lines for law enforcement is solely within the purview of the President.

This issue has arisen in two specific instances besides the overall question of the SREMAM - a proposal to send Puerto Rico National Guard members in Commonwealth duty status to the Virgin Islands to suppress looting in the wake of Hurricane Marilyn, and interstate National Guard assistance in state active duty status for security support to the 1996 Summer Olympics.

NGB-JA disagrees with DOD General Counsel and the Army Judge Advocate Division Chief. In our view, the SREMAM, or any similar agreement between states, is, if it permits interstate use of military force by Governors, either a treaty, alliance or confederation expressly prohibited by the Constitution, or at least a compact requiring ratification by Congress.

There is support for the notion that any agreement for the states to concert their military forces for the use of force for any purpose constitutes a treaty or alliance, and thus is forbidden even with the consent of Congress. Furthermore, an argument can be made that the requirement for the United States to protect the states from domestic violence and the authority for Congress to call the militia into Federal service to enforce the laws preempt any authority for the states to use military force to assist each other for these purposes. The records of the Constitutional ratifying conventions strongly imply an incapacity of the states to render military assistance to one another. Furthermore, the Continental Congress rejected an amendment to the Articles of Confederation which would have permitted a state to keep troops for the purpose of aiding another state actually invaded or in imminent danger thereof.

If such agreements are not treaties they are at least compacts requiring Congressional consent. Only the Congress and the President (to the extent presently delegated by law) now have this power, and granting it to Governors would increase their political power, would eliminate the President's power to either deny or command and control such interstate use in particular instances, and would allow the governors to command militia employed for force across state lines rather than exclusively the President. We believe DOD GC misconstrues the import of the precedents, which make potential encroachment on Federal authority or a tendency to enhance state power the criterion for the requirement of Congressional consent, not actual encroachment or enhancement. "Appellants further urge that the pertinent inquiry is one of potential, rather than actual, impact on federal supremacy. We agree." U.S. Steel v. Interstate Tax Commission, 434 U.S. 452, at 472. This directly contradicts the General Counsel's statement that consummation of the SREMAC is not prohibited "unless implementation of that agreement is prejudicial in any given instance to the ability of the federal government to take action itself under the provisions of Chapter 15." If such agreements or compacts have these potentials, and we believe they do, including SREMAC as originally constituted, then consent is required. We note that the Southern Governors' Association amended their compact in January 1995 to preclude the use of force across state lines, and even with this change now intend to seek Congressional ratification.

We also consider the potential for erosion of the balance between Federal and state authority that would result from permitting military alliances between states, even for internal purposes, of such gravity that the Department should oppose Congressional consent to any such compacts even if they are constitutionally permissible. The history of the National Guard includes all too frequent instances of gubernatorial misuse of the Guard to suppress organized labor, to block enforcement of Federal law, and for other troubling purposes. Presidential control of and veto power over such use of combined militia forces should be maintained without exception as a check and balance.

This memorandum presents a preliminary treatment of the constitutional issues and precedents (principally dicta or inferential) relating to this issue. A more comprehensive analysis would take several months, and should include a search for historical precedents to determine if our thesis that such interstate use is historically unprecedented is valid. There is little or no sentiment by the states for interstate cooperation with the militia using force. The Federal government should not promote or acquiesce in such use of the militia without first considering exhaustively the constitutional, legal, and policy aspects. If consensus cannot be reached within the Department, consideration should be given to requesting an opinion from the Office of Legal Counsel, Department of Justice.

CONSTITUTION AND LAW

CONSTITUTION

ARTICLE I, SECTION 8, CLAUSE 15

"The Congress shall have Power ... To provide for calling forth the Militia to execute the laws of the Union, suppress insurrections, and repel invasions:"

ARTICLE I, SECTION 10, CLAUSE 1

"No State shall enter into any Treaty, Alliance, or Confederation ..."

ARTICLE I, SECTION 10, CLAUSE 3

"No State shall, without the Consent of Congress, ..., enter into any Agreement or Compact with another State ..."

ARTICLE II, SECTION 1.

"The executive Power shall be vested in a President of the United States of America."

ARTICLE II, SECTION 2.

"The President shall be Commander in Chief ... of the Militia of the several States when called into the actual Service of the United States; ..."

ARTICLE IV, SECTION 4

"The United States shall guarantee to every State in the Union a Republican Form of Government, and shall protect each of them against invasion, and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."

SUMMARY OF MGB-JL VIEW

It is the view of the Office of the Chief Counsel, National Guard Bureau, that these clauses of the constitution, together with the general framework of allocation of powers between the states and the Federal government, at least require congressional consent for any agreement ("Compact") for concerted action by their military forces for any purpose involving the use of force, and probably prohibit such agreements entirely as treaties, alliances or confederations between states, which are prohibited even with the consent of Congress. There are no direct judicial precedents bearing on the issue, and to the best of our knowledge no historical precedents for concerted military action by the states for law enforcement purposes. However, inferential support for the

NGB-JA position has been found in the records of adoption of the Articles of Confederation, in the records of the ratification of the Constitution, in dicta in various cases, in 32 U.S.C. 109, in Congressional reports, and in the cases concerning the invalidity of the Confederate States of America as a forbidden treaty, alliance or confederation.

It is also our view that permitting or acquiescing in heretofore unprecedented concerted military action by the states, at least in the absence of invasion by a foreign power, would present an incipient threat to the stability of the Union of such gravity that considerations of expediency for support of the Summer Olympics or interstate assistance in disaster and emergency relief should be disregarded. The National Guard can in our view adequately cooperate for these purposes without providing for or permitting the use of force by troops of one state in another state when not under Federal control, and Federal assistance can be promptly provided when required.

The NGB-JA view can be summarized as follows:

- The constitution prohibits concerted use of military force by the states, except perhaps in cases of actual invasion. The power to employ the combined militia of the several states was exclusively granted to the Federal government. When a state requires military aid from any source other than its own militia it must apply to the Federal government for assistance.

- Each state retains the power to use the militia to aid civil authorities for law enforcement within its own borders, but has no power to project military force outside those borders, except possibly in cases of invasion.

- Although the power to provide for calling the militia into Federal service rests with the Congress, this power can be delegated by them only to the President, and cannot be ceded or delegated to the states through consent to interstate compacts. The United States may not execute its responsibility to protect the states from domestic violence through delegation of the power to the states, or by consenting to the state allying militarily for this purpose.

- The prohibition against states entering into treaties, alliances and confederations applies to any agreement for concerted use of military force between states.

- Even if agreements for mutual military assistance in law enforcement can be construed as compacts and not as treaties, Congressional consent would be required, because such agreements would potentially infringe on Federal powers and enhance the powers of states by eliminating a potential Federal veto over and command and control of such interstate use that would exist in the absence

of ratification of such agreements by Congress. The judicial standard for Congressional consent for interstate compacts is potential for or tendency for infringement on Federal power, not actual infringement.

INTENT OF FRAMERS

In an extended debate on the various militia clauses of the Constitution in the Virginia ratifying convention, in which Patrick Henry and George Mason variously object to the Federal government having the power to call the militia into Federal service to enforce the laws, and Madison and others defend the need for this power, there is no suggestion that the states could instead call on each other for military assistance. It seems to be acknowledged by all parties to the debate that if that clause were accepted, it would be the only source of assistance for a state unable to deal with an insurrection or other domestic violence within its borders.

Note Madison: "state governments might do what they thought proper with the militia, when they were not in the actual service of the United States. They might make use of them to suppress insurrections, quell riots, &c., and call on the general government for the militia of any other state, to aid them as necessary."

Corbin: "He thought this section gave the states power to use their own militia, and call on congress for the militia of other states."

Marshall: "Will any state depend on its own exertions? The consequence of such dependance, and withholding this power from congress, will be, that state will fall after state, and be a sacrifice to the want of power in the general government. United we stand, divided we fall. Will you prevent the general government from drawing the militia of one state to another, when the consequence would be, that every state would depend on itself?" [Suggesting that the states cannot cooperate militarily even in the event of an invasion.]

Madison, again: "The power must be vested in Congress, or in the state governments; or there must be a division or concurrence...Where is this power to be deposited, then, unless in the general government, if it be dangerous to the public safety to give it exclusively to the states? ... with respect to suppressing insurrections, I say that those clauses which were mentioned by the honorable gentleman are compatible with a concurrence of the power ... this clause speaks of a particular state. It means that it shall be protected from invasion by other states. A republican government is to be guaranteed to each state, and they are to be protected from invasion from other states, as well as foreign powers; and, on application by the legislature or executive, as the case may be, the militia of the other states are to be called to suppress domestic insurrections. Does this bar the states from

calling forth their own militia? No; but it gives them a supplementary security to suppress domestic insurrections and domestic violence..."

Nicholas: "The first clause gives the general government power to call them [the militia] out when necessary. Does this take it away from the states? No. But it gives an additional security; for besides the power in the state to use their own militia [emphasis added], it will be the duty of the general government to aid them with the strength of the Union when called for."

Madison, again: "The state is in full possession of the power of using its own militia [emphasis added] to protect itself against domestic violence..."

In the course of over 60 pages of extended debate on these clauses in the Virginia ratifying convention, it is never once suggested that states could aid one another with military forces without the interposition of the Federal government.

On June 25, 1778, the Continental Congress rejected, by a vote of 8 states to 3, a proposed amendment that would have permitted a state to make war without the consent of Congress upon the requisition of another state actually invaded or threatened with an invasion. This clearly implies that states may not conjoin military forces without the consent of Congress even to aid a state actually invaded, but must apply to the federal government for assistance.

PROHIBITION ON TREATIES

One Supreme Court case (U.S. Steel v. Interstate Tax Commission, 434 U.S. 452) indicates that foreign affairs and military matters are subjects of treaty rather than compacts or agreements. If the compact is construed to be a treaty, it would be unconstitutional even if consented to by Congress.

The Supreme Court, in the Multistate Tax Commission case, discussed the distinctions between treaties, compacts and mere agreements. "Military alliances" are cited at footnote 12, 434 U.S. 462, as examples of treaties. The Court quotes Story to the effect that: "Treaties, alliances, and confederations ... generally connote military and political accords and are forbidden to the States. Compacts and agreements, on the other hand, embrace 'mere private rights of sovereignty; such as questions of boundary; interests in land situate in the territory of each other; and other internal regulations for the mutual comfort and convenience of States bordering on each other.'"

The Constitution authorizes Congress to provide for calling forth the militia to enforce the law. This could be interpreted to preclude permitting states to use militia interstate for law

enforcement, as an exclusively Federal power which cannot be delegated to states, but must be exercised by the President under his constitutional power as the Executive.

The worst case would be that any agreement between states for use of militia, even for disaster assistance or humanitarian relief not involving force, is a treaty, and thus prohibited. This possibility cannot be disregarded, but the risk can be minimized by prudent limitations on the use of the National Guard for Olympic support and interstate disaster and emergency assistance.

COMPACT CLAUSE

The U.S. Supreme Court has held in several cases that not all agreements between states require ratification by Congress. Only those that tend to increase the political power of states or encroach on or interfere with Federal authority need consent.

The House Judiciary Committee, in H. Rep. 82-1943, reporting favorably on S. 968, 82nd Congress, a bill to consent to a Mutual Military Aid Compact, concluded that the compact required the consent of Congress because it was not limited to aid only in times of invasion or imminent danger thereof, but also applied to aid not related to time of war and to emergencies not a direct result of war.

In no case since the Supreme Court established this standard has a challenged agreement between states been held by a Federal court to require ratification by Congress. However, the agreements considered by the Federal courts in cases involving challenges under this clause have not involved use of military force or the National Guard, and did not involve any identifiable impact on Federal authority. Furthermore a great number of compacts or agreements that might rise to the standard established by the courts have been submitted to Congress for consent, and thus the cases are few and in most cases obviously do not affect Federal authority.

It has been suggested that the states could enter into memoranda of understanding to lend each other assistance in law enforcement activity using their militia, and that such MOUs would not be compacts requiring the consent of Congress. It is clearly established that the form of an agreement is immaterial to the question of whether a particular arrangement is a treaty, compact, or mere agreement. Even a verbal agreement or mutual legislation could constitute a compact, or by inference, a prohibited treaty. If interstate assistance such as Puerto Rico offered the Virgin Islands during Hurricane Marilyn (loan of the Puerto Rico National Guard to the Virgin Islands to suppress looting), or the use of the National Guard of states other than Georgia to assist Georgia in providing security for the 1996 Olympics, is a prohibited military alliance, using the MOU form does not correct the infirmity.

Article I, section 8, clause 15 of the Constitution grants Congress the power to provide for calling forth the militia to enforce the law. This power has been delegated in part to the President by the enactment of Chapter 15 of title 10. That enactment is not necessarily the exercise of the full limit of this power. It is possible that Congress could expand the circumstances under which the President could employ the militia interstate for law enforcement. The constitutional power is concurrent with the power of the states to employ the militia for law enforcement within their own borders; and in fact in circumstances that fall short of a threat to the republican government of a state or of "domestic violence", the Federal government probably has no power over intrastate use of militia to enforce state and local law. Of course the Congress has power to employ the militia to enforce Federal law, as has been done in numerous instances. Prior to the adoption of the U.S. Constitution, the states presumably had the power to assist each other using the militia in law enforcement, but it appears that that power was wholly surrendered to the Federal Government by the Constitution. If in the alternative it can be viewed as a concurrent power, Chapter 15 may constitute Federal preemption, and Congressional ratification would be required to surrender in part that preemption.

Now that the SGA compact has been amended as recommended by NGB to preclude use of force, it arguably may not require ratification by Congress. However Congress has apparently indicated a view that compacts for civil defense (broadly defined to include civil emergencies) require consent by enacting 50 U.S.C. App. 2281, providing for a special ratification procedure for such compacts. The Congress has also implied that even interstate assistance in law enforcement by civil personnel requires Congressional consent, by enacting 4 U.S.C. 112. Library of Congress staff experts on compacts also believe disaster assistance compacts require consent by Congress.

STATUTORY AND JUDICIAL INDICATIONS

Section 109 of title 32, United States Code, provides in subsection (b) that "Nothing in this title limits the right of a State or Territory ... to use the National Guard or its defense forces authorized by subsection (c) within its borders in time of peace, or prevents it from organizing and maintaining police or constabulary." This provision was originally enacted as part of the National Defense Act of 1916, P.L. 64-85, and reflects what we believe has been until recently a universal understanding that states do not have the authority to employ their militia outside their own boundaries.

Further support for this view is found in one of the earliest cases on the militia, Houston v. Moore, 18 U.S. 1, at 54, in Story's dissent: "Why may not a state call forth its militia in aid of the United States, to execute the laws of the Union, suppress

insurrections, or repel invasions? It would seem fit that a State might do so, where the insurrection or invasion is within its own territory, and directed against its own existence or authority; and yet these are cases to which the power of Congress pointedly applies. And the execution of the laws of the Union within its territory may not be less vital to its rights and authority, than the suppression of a rebellion, or the repulse of an enemy."

Also see Story, Commentaries on the Constitution, 1833, at section 1398: "In other cases, as the protection of the union is confided to the national arm, and the national power, it is not fit, that any state should possess military means to overawe the union. Still, a state may be so situated, that it may become indispensable to possess military forces, to resist an expected invasion, or insurrection. The danger may be too imminent for delay, and under such circumstances, a state will have a right to raise troops for its own safety, even without the consent of congress. After war is once begun, there is no doubt that a state may, and indeed it ought to possess the power, to raise forces for its own defence; and its cooperation with the national forces may often be of great importance, to secure success and vigour in the operations of war." Note the implication that even in circumstances of war, a state is limited to protecting its own territory, and that the states may cooperate with the national forces, but not independently with each other.

See further *Dunn v. People*, 94 Ill. 130: "That a state may organize such portion of its militia as may be deemed necessary in the execution of its laws to aid in maintaining domestic tranquility within its borders is a proposition so self evident that it need not be examined at any great length...Unorganized, the militia would be of no practical aid in maintaining order and in protecting life and property within the limits of the state...In right of its sovereignty a state may employ its militia to preserve order within its borders, where the ordinary officers are unable, on account of the magnitude of the disturbance, or any sudden uprising, to accomplish the result."

EXISTING CONSENT TO COMPACTS FOR LAW ENFORCEMENT

In 4 U.S.C.112, originally enacted in 1935, Congress consents to interstate compacts for law enforcement. It could be argued that this provision permits the interstate use of the militia for law enforcement. DOD General counsel supports this view.

HGB-JA does not agree. The use of military force is fundamentally a different issue from the use of civil law enforcement assets. The legislative history of this provision (H.Rept. 73-1007, S. Sept. 73-1137) expressly refers to the "constabulary" of the states. Thus we do not believe use of the militia was within the intent of Congress in enacting that statute. We also believe such consent as to the militia would have been

unconstitutional. If the National Guard is construed to be serving as a posse comitatus rather than a truly military force when it assists civil law enforcement agencies, such assistance might be considered to fall within section 112. One law review article suggests (based on British legal precedents predating the U.S. Constitution) that any time military personnel, federal or militia, assist civil authorities in law enforcement they do so as members of the Posse Comitatus rather than as military forces. (Soldiers, Riots, and Revolution: The Law and History of Military Troops in Civil Disorders, David E. Engdahl, 57 Iowa Law Review 1, 1971). However, this view is not reflected in legal precedent in the U.S. It would also imply that Guard personnel engaged in such support are not subject to military discipline or military law, including the Codes of Military Justice, and do not operate as military units or forces.



DEPARTMENTS OF THE ARMY AND THE AIR FORCE

NATIONAL GUARD BUREAU
3300 ARMY PENTAGON
WASHINGTON, D.C. 20310-3100

Douglas Munro
Senior Policy Analyst
Southern Governors' Association
Hall of the States, 444 North Capitol Street, N.W.
Washington, D.C. 20001

7 SEP 1993

Dear Mr. Munro;

We have recently become aware of the development by the Southern Governors' Association of an Interstate Emergency Management Compact. This compact will fill a vital need in facilitating interstate cooperation in planning for and reacting to emergencies arising from natural disasters, civil disturbances and enemy attack. The need for clear authority and mechanisms for this sort of assistance was made evident during the recent floods in the midwest when units of the National Guard from other states assisted affected states in such activities as providing water purification capability in Iowa when water supplies were interrupted.

The Compact appears to be well designed and crafted, and broad enough in scope to encompass assistance by the National Guard of one state to another state in emergencies. The National Guard Bureau supports and applauds your efforts on this matter, and it is our hope that the Compact could be expanded to national scope to allow the widest possible sharing of the limited resources the states have for disaster relief.

We do have one concern regarding this compact and the several other similar compacts that have been entered into by various groups of states over the years, but with one exception have not been ratified by Congress. The compacts would apparently permit the use of military forces of one state in another state for direct law enforcement activities. We are not sure whether this is the intent of your compact or the other compacts, or merely an inadvertent effect of the broad language. An official Department of Defense position on this issue has not been established, but is under discussion. At least at the staff level in the Bureau the view is that only the President should be authorized to apply military force across state borders. Thus the compact should include a clause excluding from its scope the use of military forces across state lines for direct law enforcement activity. A draft clause for this purpose is enclosed.

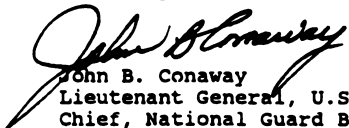
It is our view that the compact should permit the broadest possible range of humanitarian and other emergency services, including logistical, advisory, and other non-coercive assistance in law enforcement short of direct application of military force. The draft clause is intended to preserve the President's exclusive authority in this arena under Chapter 15 of title 10, United States Code, while permitting the states the greatest possible flexibility for other types of support. The reference to the Posse Comitatus Act (18 U.S.C. 1385) is intended to incorporate into the compact the body of legal precedents defining the scope of the prohibition on use of the Army to enforce the law, which would permit such activities as logistical and advisory support while precluding direct force. The restriction would not apply to use of civilian law enforcement personnel.

The suggested clause and the policy issue are still under review within the National Guard Bureau, the Department of the Army, and the Department of Defense. It appears likely that the Bureau would not support Congressional ratification of this or any similar compact unless it includes this or a similar clause. We would appreciate your views on the acceptability to the states of the enclosed clause and any suggestions for alternative language. We will keep you informed as the Departmental review progresses.

We are aware that most of the Southern Governors' Conference members have signed the compact. We regret the late stage at which this issue is being raised. It is our hope that it will be possible to amend the compact in a manner that will resolve this concern, obtain ratification in this modified form by the southern Governors and the U.S. Congress, and expand state participation to a national scope.

We look forward to working with you on this important initiative.

Sincerely,


John B. Conaway
Lieutenant General, U.S. Air Force
Chief, National Guard Bureau

*Thank you -
Good notes -
but we need
to do it right.*

PROPOSED EXCLUSIONARY LANGUAGE

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into Federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under section 1385 of title 18, United States Code.



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D.C. 20301-1600

September 27, 1993

MEMORANDUM FOR COL B. Farber, NGB Judge Advocate

SUBJECT: *Southern Regional Emergency Assistance Compact*

This is in response to the request in your memorandum of September 8th, subject as above, for an expression of our views on the legal standing of an interstate compact signed by 16 state governors of the Southern Governors Association for mutual cooperation and assistance in planning for and responding to natural disasters and civil disturbances. Included within the purview of this compact is a provision for cooperative law enforcement measures permitting the cross-border use of military forces in associated states that are the site of unlawful activities or combinations.

In evaluating the legal aspects of this compact you are said to have tentatively concluded that the mutual law enforcement activities contemplated by the compact in the form of the direct use of multi-state military forces in law enforcement operations would be inappropriate under our federal system. This position is said to be based on the premise that the interstate application of concerted military force by state forces in state status would violate the President's prerogative -- characterized in your memorandum as exclusive -- under the authority of chapter 15 of title 10, United States Code, to employ state forces in interstate law enforcement missions. In your memorandum you also propose modification of the Southern Governors Association compact by the inclusion therein of a restrictive clause, the exact terms of which are not specified, and submission of the modified compact to Congress for ratification.

There is nothing in any of the statutes of chapter 15 of title 10 that requires or even suggests exclusivity of authority in the President. This body of statutory law authorizes the President to take the law enforcement action referred to therein when he considers action to be necessary. It is true that sections 333 and 334 impose a conditional obligation on him to act under the circumstances cited therein. However, none of the statutes implies a prohibition against similar measures by local authorities.

Section 10 of article I of the Constitution specifies certain powers that are denied to the states. Clause 3 provides that "[n]o State shall, without the Consent of Congress, . . . , enter into any Agreement or Compact with another

State," Since the beginning of the twentieth century the interstate compact has been increasingly used, with the consent of Congress, as an instrument for state cooperation in dealing with common problems. F. Zimmerman and M. Wendell, *The Law and Use of Interstate Compacts* (Chicago, 1961). The use of this device for mutual law enforcement in general was expressly authorized by Congress in the Act of June 6, 1934, 48 Stat. 909 (1934), whereby consent was given in advance to interstate agreements for the control of crime. Section 1 of this measure reads as follows:

"[T]he consent of Congress is hereby given to any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts."

This statutory sanction was promptly followed by initiation of the Crime Compact of 1934, providing for the supervision of parolees and probationers, to which most of the states have agreed.

Further, the Tenth Amendment to the Constitution, which may be said to provide support for state compacts in general, reads as follows:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The broad general effect of this addition to the Constitution was summarized by Mr. Justice Stone in *United States v. Darby*, 312 U.S. 100 (1941) in the following passage.

"The amendment states but a truism that all is retained which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between the national and state governments as it had been established by the Constitution before the amendment or that its purpose was other than to allay fears that the new national government might seek to exercise powers not granted, and that the states might not be able to exercise fully their reserved powers." 312 U.S. at p.124.

As conceded by Mr. Justice Brandies in *Hamilton v. Kentucky Distilleries Co.*, 251 U.S. 146, (1919), the police power is one of the powers traditionally reserved to the states. But, this concession admitted, the Justice then continued, "it is none the less true that when the United States exerts any of the powers conferred upon it by the Constitution, no valid objection can be based upon the fact that such exercise may be attended by the same

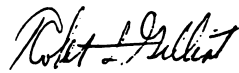
incidents which attend the exercise by a State of its police power, or that it may tend to accomplish a similar purpose." *Id.* at p. 156. When these two delineations of federal-state prerogatives with respect to exercise of the police power are considered together, it would seem that neither prerogative is exclusionary but that the power is enjoyed independently by both federal and state authorities. To express the same principle in somewhat different terms, neither the national power nor the state power is a limitation on the other in this area, at least not unless there is a conflict of interest.

Apart from the Tenth Amendment, a final comment is appropriate about the effect of section 10 of article I of the Constitution. As noted above, this provision by its terms seems to require the consent of Congress as a prerequisite for the conclusion of any interstate compact. However, this seemingly pervasive definitive terminology notwithstanding, the Supreme Court has limited the application of the restriction. In *Virginia v. Tennessee*, 148 U.S. 503 (1893), it was held that the unqualified prohibition of compacts and agreements between states without the consent of Congress does not apply to "minor" matters which do not tend to increase the political power of the contracting states or to encroach upon the supremacy of the United States. What, then, are the more exalted matters that come within the requirement for congressional consent? In the opinion of Mr. Justice Field such matters would include "treaties of a political character; such as treaties of alliance for purposes of peace and war; and treaties of confederation, in which the parties are leagued for mutual government, political cooperation, and the exercise of political sovereignty, and treaties of cession of sovereignty, or conferring internal political jurisdiction, or external political dependence, or general commercial privileges." *Id.* at p.519. Thus, under this interpretation, what is proscribed without prior congressional consent is any interstate compact that tends to enhance the political power of the states by encroaching upon the supremacy of the United States. Accordingly, the Supreme Court subsequently had no objection under this standard to an interstate compact dealing with various aspects of multistate taxation and compatibility of state tax systems. *United States Steel Corp. v. Multistate Tax Commission*, 434 U.S.C. 452 (1978).

In light of the Supreme Court's interpretation of section 10 of article I that substantially limits the scope of the congressional consent clause of that provision, and especially in light of the express consent of Congress under the Act of June 6, 1934, to interstate agreements for the control of crime, it would seem that this provision of the Constitution is not a bar to the legal validity of the compact of the Southern Governors Association for cooperation and assistance by the participating states for law enforcement purposes across state boundaries. Further, the resulting exercise by the participating states of their police powers through the subject compact appears to be supported by the Tenth Amendment.

In sum, it is our conclusion that neither chapter 15 of title 10 nor constitutional provisions prohibit consummation of the Southern Regional Emergency Management Assistance Compact unless implementation of that agreement is prejudicial in any given instance to the ability of the federal government to take action itself under the provisions of chapter 15. Under existing law the members of the compact and the federal government are empowered either separately or in concert to undertake law enforcement actions in the area of the states which are signatories of the compact. Therefore, formal approval by Congress of the Southern Governors Association compact does not seem to be necessary.

The package you submitted is returned herewith.



Robert L. Gilliat
Deputy General Counsel
(Personnel & Health Policy)

Attachments

SELECTED DOCUMENTS PROVIDED BY THE DEPARTMENT OF JUSTICE
AT THE REQUEST OF THE SUBCOMMITTEES

U.S. Department of Justice
Federal Bureau of Investigation

WACMUR:
MAJOR CASE #80
ASSAULT ON A FEDERAL OFFICER
BRIEFING FOR THE ATTORNEY GENERAL
APRIL 12, 1993



Criminal Investigative Division

UACD 003720

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WACO 003379

A

WACO 003380

WACMUR
MAJOR CASE 80
OO: SAN ANTONIO

BACKGROUND

VERNON HOWELL, aka David Koresh is the present leader and prophet of the organization known as the Branch Davidian, located at Mount Carmel, Texas. Branch Davidian, a splinter group of the Seventh-Day Adventist Church, was founded in the late 1950s by Benjamin Rhoden. At the time Rhoden founded the Branch, he moved his followers to a 77-acre ranch just outside of Waco, Texas. In 1978 Rhoden died leaving his wife Lois as the leader of the Branch until 1986. In 1986, Lois passed away and her son, George Rhoden and Vernon Howell became the co-leaders of the organization.

In November of 1987, Howell, and several of his followers who had split from the group, attempted to overtake the ranch by force. Rhoden and his followers attempted to defend the property. During a 45-minute shootout Rhoden was wounded. Howell was subsequently charged with attempted murder and was later acquitted. Rhoden was later sentenced to prison for an unrelated murder in Texas and is currently serving his sentence.

Based on source information and investigation that Howell and his followers had been obtaining unknown quantities of firearms, assorted machine gun conversion parts and chemicals which when assembled would be classified as a destructive device, Bureau of Alcohol, Tobacco, and Firearms (BATF) obtained a Federal arrest warrant for Howell and a search warrant for Mt. Carmel.

On the morning of 2/28/93, 80 BATF Special Agents and numerous local law enforcement officials attempted to effect the arrest of Howell and the search of his property. During the execution of the warrants, a gun battle ensued between BATF and members of the Branch Davidian. By 12:00 p.m. 2/28/93, four BATF agents had been killed and 16 wounded (all required various degrees of hospitalization). Six other ATF agents were injured but did not require hospitalization.

On the afternoon of 2/28/93, BATF requested assistance from the Federal Bureau of Investigation (FBI) Hostage Rescue Team (HRT). Assistant Director (AD) Larry A. Potts, Criminal Investigative Division (CID), FBI Headquarters (HQ), authorized HRT advance team to proceed to Waco, Texas along with Special

Agent in Charge (SAC) Jeffrey Jamar, San Antonio Division. It was further agreed between AD Potts and Associate BATF Director Dan Hartnett, that once HRT was fully deployed the FBI would assume complete operational control of the crisis to include tactical response and negotiations. BATF would maintain investigative jurisdiction over the Assault on a Federal Officer, per previous Memorandum of Understanding.

On 3/1/93, Under Secretary of Treasury Ronald Noble advised that he and Director Stephen Higgins, BATF, had agreed to turn over command and control of the crisis situation to the FBI. Concurrent with this, SAC Jamar and two other senior executives of the FBI, SACs Oklahoma City and New Orleans were on scene to facilitate the transition of command and control from the BATF.

WACO 003382

B

UACO 003383



STRATEGY

Acting Attorney General Stuart Gerson advised President Clinton of the details of the crisis in Waco, Texas, on the morning of 3/1/93. The President was also informed that the FBI was in charge of the crisis site and that it was the FBI's philosophy in addressing this situation to negotiate until it was resolved.

Prior to final deployment of FBI resources, the Rules of Engagement were agreed upon by AD Potts, SAC Jamar, and HRT Commander Richard Rogers. It was agreed that the standard rules of engagement would apply. Those being: FBI Deadly Force Policy remains in effect which states "Agents are not to use deadly force against any person except as necessary in self-defense or the defense of another, when they have reason to believe they or another are in danger of death or grievous bodily harm" All personnel being deployed were advised of these Rules of Engagement.

All tactical responses to this crisis scene are under the command and control of SAC Jamar who is assisted by the HRT Commander Richard Rogers. HRT's mission is to secure the surrender and arrest of all adult occupants of the compound while providing the maximum possible security for the children within the compound.

Two U. S. Army UH-1 helicopters piloted by FBI personnel and nine assorted Bureau fixed-wing aircraft are providing aerial surveillance, photographic coverage, and security over the compound. One U. S. Customs Service helicopter has also been deployed to assist FBI aerial requirements.

On 3/4/93, court authorized electronic and video surveillance of the Mt. Carmel compound was initiated. An extension was signed on 4/2/93.

URCO 003384

C

UACD 003385



WACMUR. MC 80 PERSONNEL AS OF 4/9/93

The total number of personnel presently committed to the Waco, Texas siege stands as follows:

As of 4/12/93	547
Anticipated on 4/15/93	640

FBI PERSONNEL:

EXECUTIVE (Special Agents in Charge)	6
OPERATIONS SUPPORT (Command Post)	21
NEGOTIATORS	9
HRT	67
SWAT	77
RAPID START	8
(Information Management Division Personnel used to maintain and assist in the management information developed during the course of the investigation)	
SPECIAL PHOTO	2
TECHNICAL OPERATIONS (Technically trained agents)	32
AIR OPERATIONS (Pilots for fixed wing and helo aircraft 24 hours per day)	30
TOTALS: Special Agents	210
Support	42
	252

* On 4/15/93, seven additional SWAT teams, totalling 93 additional agents, will be deployed in WACO. This will bring the total FBI commitment in Waco, Texas to 345.

WACO 003386

WACHUR. NC 80 PERSONNEL AS OF 4/9/93
OTHER FEDERAL LAW ENFORCEMENT

BATF		136
CUSTOMS		6
	TOTAL	142

WACMUR. MC 80 PERSONNEL AS OF 4/9/93
LOCAL AUTHORITIES

WACO POLICE DEPARTMENT

Lieutenant	01
Sergeants	03
Officers	01
Special Ops Unit	13
TOTAL	18

MCLENNAN COUNTY SHERIFFS OFFICE

Sheriff JACK HARWELL	01
Chief Deputy DAN WEYENBERG	01
LARRY LYNCH	01
Deputies on Patrol	10
Deputies at County Jail	04
TOTAL	17

TEXAS DEPARTMENT OF PUBLIC SAFETYRANGERS

Captain	01
Lieutenants	03
Sergeant Rangers	31

DPS PATROL

Captain	01
Lieutenants	02
Sergeants	06
Troopers	80
Intel/Officers	03
Uniform Communications Officers	04
TOTAL	131

WACO 003300

MILITARY PERSONNEL AND EQUIPMENT

Active Duty Personnel		15
Texas National Guard Personnel		13
Equipment		
Track Vehicles		
	<u>Model #</u>	<u>Quantity</u>
Bradley fighting vehicle	(OMZ)	9
Combat Engineer vehicles	(M728)	5
Tank Retrieval vehicle	(M88)	1
Abrams Tanks	(M1A1)	<u>2</u>
	TOTAL	17
Additional Military Equipment		
	<u>Equipment</u>	<u>Model #</u> <u>Quantity</u>
	Helicopters	UH-1 2
	Night Vision Goggles	PVF7B5 100
	Tents	GP Medium 4
	Generators	3KW 2
	Generators	15KW 1
	Cots	NA 66
	Sand Bags	NA 1,400
	Spotlights (portable)	NA 2
	Mine Detectors	PSS11 2
	Gas Masks	M17 34
	Vehicles	M151A2 2
	Search Lights	VSS-Xenon 2
		(6 million candlepower)

UNCO 003389

D

UACD 003390

WACMUR
POSITIVE POLICE ACTIONS
AS OF 4/9/93

<u>DATE</u>	<u>ACTION</u>	<u>RESPONSE OF BD</u>
2/28/93	Broadcast scriptural message, on KRLD so that children would be released 2 by 2.	14 children out
3/02/93	Played an hour-long tape recorded message by KORESH over national radio and television.	6 children out
3/04/93	DAVIDIANS are given a new telephone and a 150-foot cord per their demand.	2 children out
3/04/93	Allowed DAVIDIANS to move dead dogs away from the compound.	Moved dogs
3/05/93	A suture kit is sent in for KORESH's injured wrist.	1 child out
3/06/93	Request granted to obtain audio tape from vehicle outside compound.	Retrieved tape
3/07/93	DAVIDIANS are offered the removal of the Bradleys in exchange for the release of sect members.	None
3/08/93	Allow DAVIDIANS to bury PETER GENT's body.	None
3/08/93	Deliver 6 gallons of milk into compound per DAVIDIANS' demand.	None
3/09/93	Three released children are reunited with a parent, William Mabb.	None

3/09/93	Two video tapes of released children sent into compound.	None
Numerous dates	Videos of released children are sent into the compound to show the care the children are receiving.	None
3/12/93	Deliver 6 gallons of milk into compound per DAVIDIANS' demand.	2 adults out
3/12/93	Radio station KGBS AM 1090 contacted re broadcasting a message refuting an earlier broadcast as per the DAVIDIANS' demand.	None
3/12/93	Video tape sent in of SCHROEDER & son reuniting.	None
3/12/93	Put physicians on telephone to assist JUDY SCHNEIDER & others.	None
3/14/93 & 3/15/93	Sheriff HARWELL contacted compound by phone & also spoke to STEVE SCHNEIDER & WAYNE MARTIN personally.	None
Numerous dates	Compound advised of identities of attorneys and message from relatives.	None
3/16/93	5 audio cassettes of family members & a tape player delivered to compound.	None
3/19/93	Legal documents, copies of <u>Newsweek</u> , <u>Time</u> , <u>People</u> and audiotape delivered to compound.	2 adults out
Numerous dates	Return phone calls to compound by numerous children in addition to KATHY SCHROEDER, BRAD BRANCH, KEVIN WHITECLIFF, & SHELIA MARTIN.	None
Numerous dates	Medical attention for those released.	None

3/19/93	Bible placed in KEVIN WHITECLIFF's cell.	None
3/20/93	Turned off loudspeakers in honor of Sabbath.	None
3/21/93	Lowered loudspeakers volume during prayer session.	7 adults out
3/21/93	Female agents obtained for frisk of women who came out of compound.	None
3/22/93	A letter promising the Davidians access to: 1) DAVID's teachings while in custody and 2) the media via CBN's CRAIG SMITH, is delivered to the compound. The offer is conditioned upon the release of all Davidians.	None
3/28/93	Milk, cheese and crackers delivered to compound for the children.	None
3/28/93	Attorney DEGUERIN allowed a private telephone conversation with KORESH.	None
3/29/93	A face-to-face meeting between KORESH and his attorney DEGUERIN is allowed to take place on the compound property. A second telephone call is also allowed.	None
3/30/93	A second face-to-face meeting between KORESH and DEGUERIN is allowed to take place.	None
Numerous dates from 3/29/93 through 4/4/93 (see attached)	Lengthy face-to-face meetings between KORESH & SCHNEIDER and their respective attorneys DEGUERIN and ZIMMERMAN are allowed to take place.	None
4/3/93	The Davidian's Sabbath is respected with no contact initiated.	None

UACD 003393

4/7/93	This date marks the beginning of the Davidians 7-day Passover period. It is agreed that this period of time will be respected.	None
4/9/93	(1) One person allowed to exit compound and ignite 7 cans of incense in keeping with Davidians' Good Friday observations. (2) One person also allowed to deliver a letter from Koresh to law enforcement. (3) Agreed to dispense with noise from 3-4 pm again in deference to Good Friday.	None

WAFO 003394

E

UACD 003395

ATTORNEY FACE TO FACE CONTACTS

<u>DATE</u>	<u>TIME</u>	
3/29/93	12:05 P.M.	KORESH telephonic contact privately by Attorney RICHARD DEGUERIN
	01:29 P.M.	Another private telephone contact
	04:00 P.M.	DEGUERIN at compound door
3/30/93	10:07 A.M. till Noon	DEGUERIN at door
	02:00 P.M. till 6:00 P.M.	DEGUERIN inside
	03:18 P.M.	Attorney ZIMMERMAN telephonic contact privately to SCHNEIDER
3/31/93	09:51 A.M. till 12:12 P.M.	DEGUERIN in compound
	03:08 P.M. till 6:05 P.M.	DEGUERIN in compound
4/01/93	10:00 A.M. till 6:00 P.M.	DEGUERIN & ZIMMERMAN in compound
4/04/93	10:49 A.M. till 4:10 P.M.	DEGUERIN & ZIMMERMAN in compound

URCO 003396

F

UACD 003397



DEMANDS/STATUS
AS OF 4/9/93

	<u>DEMANDS</u>	<u>STATUS</u>
1.	2/28/93 - (14:20) First demand: that KRLD broadcast a message that BATF is holding their fire and will not attack further.	Granted 2/28/93, 16:15 and 16:45.
2.	2/28/93 - (18:10) Play recorded message of KORESH on KRLD and kids will be released two by two.	Granted 2/28/93, 19:38.
3.	3/02/93 - (02:34) SCOTT: Play tape on National T.V. and we will come out.	Granted 3/02/93, 13:32.
4.	3/02/93 - (04:55) RITA: Play tape during prime time and rest of women/children will come out.	Granted 3/02/93, 13:32.
5.	3/03/93 - (09:47) DAVID wants 150' cord.	Granted 3/04/93, 15:20.
6.	3/03/93 - (13:31) Allow DAVID to give a Bible study and MARK will come out.	Granted 3/03/93, 14:48.
7.	3/03/93 - (17:27) STEVE: Wants smelly dog removed	Granted 3/04/93, 15:38.
8.	3/04/93 - (23:29) DAVID: Requests suture kit for hand.	Granted 3/05/93, 12:59.
9.	3/05/93 - (7:43) DAVID wants to see kids with relatives and 6 gallons of milk.	Milk demand granted 3/08/93, 15:50. Kids with relatives 3/09/93, 15:50.
10.	3/05/93 - (17:53) STEVE: Wants PETER GENT's body removed.	Granted 3/08/93, 11:04.

- | | | |
|-----|---|--|
| 11. | 3/06/93 - (8:43)
STEVE requests a media line or they will not come out. | Davidians are advised that they will not be allowed a line to the media. |
| 12. | 3/06/93 - (9:02)
KATHY wants Bradleys off property. | Requested and refused on 3/07/93. This demand is still often repeated. |
| 13. | 3/06/93 - (9:11)
KATHY wants line to media. | This demand is often repeated, but refused. |
| 14. | 3/6/93 - (12:01)
DK wants Peter Gents body removed and buried on compound. | Granted 3/08/93, 11:04. |
| 15. | 3/06/93 - (16:35)
DK wants to talk to UCA and then he'll release MELISSA. | The demand to talk with UCA is often repeated, but DK is advised that UCA is unavailable. |
| 16. | 3/06/93 - (17:25)
STEVE: Demands that Bradleys be removed, 6 gallons of milk and body removed. | Milk demand granted 3/08/93, 15:50. Body buried 3/8/93, 11:04. |
| 17. | 3/06/93 - (22:43)
Repeated demand for additional phone line. | Denied |
| 18. | 3/07/93 - (12:51)
DAVID: You show me the 3rd Seal and I'll release the kids. | On 3/07/93, 14:50 C.P. attempts to "show" DAVID the 3rd Seal; at 15:52 DAVID says that we have failed and refuses to release anyone. |
| 19. | 3/07/93 - (15:50)
DAVID: You show me the 7 Seals and everyone will come out. | Denied. |

URCO 003399

- | | | |
|-----|---|--|
| 20. | 3/09/93 - (9:24)
DAVID: Turn the power on or I will not communicate | Granted 3/9/93,
10:25. |
| 21. | 3/11/93 - (22:19)
KATHY SCHROEDER: Demands "a couple of gallons of milk" to be delivered to the compound. | C.P. delivers six gallons of milk on 3/12/93 at 14:58. |
| 22. | 3/11/93 - (22:19)
KATHY SCHROEDER demands copies of <u>Newsweek</u> and <u>Time</u> magazines containing articles on DAVIDIANS. | Granted 3/19/93,
11:49. |
| 23. | 3/12/93 - (9:33)
KATHY SCHROEDER: Demands that she be allowed to call back into the compound after she leaves. | Numerous attempts have been made to contact the compound while KATHY SCHROEDER was at the command post with negative results (as of 3/12/93, 15:58). |
| 24. | 3/12/93 - (10:30)
STEVE SCHNEIDER: Demands that radio station KGBS AM 1090 be contacted and told to refute negative statements broadcast by the station against the DAVIDIANS. | Granted 3/12/93, radio station contacted, they advised that they would broadcast a message on 3/13/93. |
| 25. | 3/12/93 - (11:46)
STEVE SCHNEIDER: Demands a copy of the transcript from the Phil Donahue show that had SHERRY JEWELL as a guest. | Denied |
| 26. | 3/12/93 - (11:50)
STEVE SCHNEIDER: Demands that attorneys and/or the media be allowed to contact the DAVIDIANS. | Granted 3/28/93,
18:00. |

URCO 003400

- | | | |
|-----|--|---|
| 27. | 3/12/93 - (11:53)
STEVE SCHNEIDER: Through
DAVID, demands that radio
personality ENGLEMANN
(phonetic), be made the
DAVIDIANS' press
representative. | Denied |
| 28. | 3/16/93 - (1508)
STEVE SCHNEIDER: Demands a
copy of the search warrant
that BATF initially intended
to serve on 2/28/93 along
with other documentation. | Granted 3/19/93,
11:49. |
| 29. | 3/16/93 - (1936)
STEVE SCHNEIDER requests that
PHIL ARNOLD, Ph.D discuss the
book of Revelations with KORESH. | Tape by
Dr Arnold is
delivered to
compound on 3/18. |
| 30. | 3/23/93 - (15:40) STEVE SCHNEIDER:
Demands that compound members be
allowed to speak to released
LIVINGSTON FAGAN. | Denied |
| 31. | 3/26/93 - (15:40) RACHEL KORESH:
Requests to see the video of
LIVINGSTON FAGAN's CNN interview. | Denied |
| 32. | 3/27/93 - (14:23) STEVE SCHNEIDER:
Requests that a neutral negotiator
be introduced. | Atty's Deguerin
and Zimmerman
allowed into
compound on
several occasions. |
| 33. | 3/28/93 - (15:58) DAVID KORESH:
Requests 6 gallons of milk be
sent into the compound. | Granted 3/28/93 |
| 34. | 3/28/93 - (16:06) STEVE SCHNEIDER:
Requests antibiotics for DAVID
KORESH. | Denied |
| 35. | 4/9/93 - (18:00)
STEVE SCHNEIDER: Requests
permission to ignite 7 cans
of incense outside the compound | Granted 4/9/93 |

in keeping with Good Friday
observations.

36.

4/9/93 -
STEVE SCHNEIDER: Requested
permission to deliver a letter
from Koresh to "the commanders"
and asked that noise be dispensed
with from 3-4 pm in deference to
Good Friday.

Granted 4/9/93

URCO 003402

G

URCO 003403

PERSONS RELEASED

	<u>NAME</u>	<u>AGE</u>	<u>LATE</u>	<u>NATION</u>
1.	ANGELICA SONOBE	6	2/28	U.S.
2.	CRYSTAL SONOBE	3	2/28	U.S.
3.	RENAE FAGAN	6	2/28	U.K.
4.	NEHARAH FAGAN	4	2/28	U.K.
5.	TAMAREA WENDEL	5	3/1	U.S.
6.	LONDON WENDEL	4	3/1	U.S.
7.	JAUNESSA WENDEL	8	3/1	U.S.
8.	PATTEON WENDEL	5 MOS.	3/1	U.S.
9.	SCOTT MABB	11	3/1	U.S.
10.	CHRISTYN MABB	7	3/1	U.S.
11.	JACOB MABB	9	3/1	U.S.
12.	BRYAN SCHROEDER	3	3/1	U.S.
13.	JAMIE MARTIN (SEVERELY HANDICAPPED)	10	3/1	U.S.
14.	JOSHUA SYLVIA	7	3/1	U.S.
15.	NATALIE NOBEREGA	11	3/2	U.K.
16.	JOAN VAEGA	7	3/2	U.S.
17.	DANIEL MARTIN	6	3/2	U.S.
18.	KIMBERLY MARTIN	4	3/2	U.S.
19.	MARGARET LAWSON	75	3/2	U.S.
20.	CATHERINE MATTESON	77	3/2	U.S.
21.	MARK ANTHONY JONES	12	3/3	U.S.
22.	KEVIN JONES	11	3/4	U.S.
23.	HEATHER JONES	9	3/5	U.S.
24.	KATHRYN SCHROEDER	34	3/12	U.S.
25.	OLIVER GYARFAS	19	3/12	AUSTR
26.	BRAD BRANCH	34	3/19	U.S.
27.	KEVIN WHITECLIFF	31	3/19	U.S.
28.	VICTORINE WILME HOLLINGSWORTH	59	3/21	CANADA
29.	ANNETTE RICHARDS	64	3/21	U.S.
30.	RITA RIDDLE	35	3/21	CANADA
31.	GLADYS OTTMAN	67	3/21	U.S.
32.	SHELIA MARTIN	46	3/21	U.S.
33.	OPILIAH SANTOYA	62	3/21	U.S.
34.	JAMES LAUTER	70	3/21	U.S.
35.	LIVINGSTON FAGAN	33	3/23	U.K.
36.	JESSE AMEN	40	4/4	U.S.

URCO 003404

On 3/11/93, Koresh advised that 43 men, 47 women and 17 children remained in the compound. Since that date 5 men and 7 women have left the compound leaving the following estimated number of people still inside the compound at this time.

men	38
women	40
children	17
Total	95

Of the seventeen children remaining in the compound our estimates based on information provided to date of the ages are as follows:

- 1 - under one year of age
- 1 - one year old
- 3 - two years old
- 2 - four years old
- 1 - six years old
- 2 - eight years old
- 1 - ten year old
- 1 - eleven year old

12

There are believed to be five additional children whose ages cannot be accounted for.

WACO 003405

H

URCO 003406

PERSONS ENTERING THE COMPOUND

	<u>NAME</u>	<u>AGE</u>	<u>DATE</u>	<u>NATION</u>
1.	LOUIS ANTHONY ALANIZ	24	3/24/93	U.S.
2.	JESSE AMEN (Amen subsequently departed the compound on 4/4/93)	40	3/26/93	U.S.

WACO 003407

I

WACO 003408

POWER TO THE COMPOUND

<u>DATE/TIME</u>		<u>ON</u>	<u>OFF</u>
03/09/93	02:15 AM		X
03/09/93	10:28 AM	X	
03/10/93	02:20 AM		X
03/10/93	10:15 AM	X	
03/12/93	11:07 PM		X

J

UACD 003410

DEPLOYMENT OF WIRE BARRIER AROUND THE MT. CARMEL COMPOUND

The compound has been circled with concertina (razor wire) in order to improve the security of the crisis site. The deployment of this protective barrier is important for the following reasons:

1. Protection of FBI and other law enforcement personnel. The current perimeter encompasses an extremely large area of open land. If an attempt at flight is made by the subjects currently in the compound, they will have the ability to move over large distances before they can be physically encountered and detained by law enforcement personnel. The current perimeter provides for observation from various sniper positions and by air assets with Forward Looking Infra-Red (FLIR) capability. Where weather conditions deny us the ability to utilize aircraft to assist in observing the crisis site, our ability to intercept those who would attempt to flee the compound or to launch sorties against our positions would be diminished.
2. The wire barrier will also assist in preventing outsiders from gaining entrance to the crisis site.
3. The wire barrier would assist in the surrender process by channeling those who wish to surrender to a specific area where they can be placed under control.
4. In the event it is necessary to introduce chemical agents into the compound, it would be of tremendous assistance in channeling those who flee the gas or who voluntarily leave the crisis site into an area of control.
5. In the event that subjects attempt to come out en masse and to engage law enforcement in a firefight, the wire barrier would restrict their movements and offer a greater degree of control to law enforcement authorities.
6. The wire barrier would be helpful in the maintenance of the integrity of the crime scene once this crisis is resolved.

WACO 003411

K

UACD 003412

PROPOSED OPERATIONS PLAN

I. SITUATION

- A. **SUBJECT:** On Sunday, 2/28/93, Special Agents from the Bureau of Alcohol, Tobacco, and Firearms (ATF), United States Treasury Department, were attempting to serve a Federal search and arrest warrant on Vernon Wayne Howell, for violation of Federal Firearms Laws. Howell, 33 years old, who also uses the name David Koresh, is the leader of a group that call themselves the Branch Devidian. The majority of this group appear to reside at the Mount Carmel Center, a 77-acre compound near Waco, Texas.

As ATF Agents approached the compound, a protracted firefight ensued during which four ATF Agents were killed, and at least 16 Agents were wounded or injured. A subsequent confrontation, that appears to have been primarily on the perimeter, occurred later that day. On 3/3/93, the body of a Branch member was located by law enforcement personnel on the perimeter of the compound. On 3/6/93, via negotiators, a compound resident indicated they had located the body of another compound member near the main building. Both fatalities are believed to have been the result of the firefights that took place on 2/28/93. Koresh has indicated to negotiators that he was wounded as well. Information from various sources indicates there may have been additional injuries and possibly fatalities to other members.

Information indicates that there is an extensive weapons inventory inside the compound including .50 caliber sniper rifles, AR-15s (possibly 100) converted to automatic fire, handguns, improvised hand grenades, night vision equipment, large quantities of ammunition, chemicals that could be used to manufacture explosives, and possibly LAW rockets.

Negotiations have been ongoing since 2/28/93. Initially, most of the dialogue has been with Koresh, but with time the individual who is possibly his second in command, Steve Schneider, has also become a primary part of the negotiations from inside the compound. A total of 40 compound members have spoken with negotiators from inside the compound. Twenty-one children, nine women and six men have been released since 3/2/93, when it appeared that Koresh might end the stand-off. According to Koresh, the number of individuals, as of 4/5/93, that remain in the compound is 40 women, 39 men, and 17 children.

B. LAW ENFORCEMENT:

1. HRT with attachments	67
2. HRT medical	3 Doctors (1 - Pediatrician) 3 Paramedics 3 EMTs
3. FBI SWAT	77
4. ATF Tactical Personnel	60
5. State and Local Personnel	
6. Aviation Assets	3 UH1, 1-MD-530 5 Fixed Wing Aircraft

C. WEATHER:

Will be briefed on order

II. MISSION:

Secure the surrender/arrest of all adult occupants of the compound while providing the maximum possible security for the children within the compound.

On order, utilize two Combat Engineer Vehicles (CEVs) to deliver tear gas (CS) into White/Green section of the compound structure. Four Bradley Vehicles (BV) will be positioned around the compound ready to supplement the CEV in gas delivery, if needed. One of the four BV's will insert Ferret liquid tear gas rounds into the black covering of the new unoccupied construction on the green side immediately after the introduction of tear gas into the previously referenced white/green section of the compound structure. Simultaneously, advise occupants of the structure that gas is being inserted in order to force them out of their building, but that they are not being attacked and that no weapons should be shown or used, and that no one is to go into the tower section of the compound.

Demand, through the use of the loud speaker system and telephone, that all subjects leave the building unarmed and surrender to lawful authorities. Wait a period of time, which will depend on the subjects response to the initial gas delivery and subsequent negotiations if any are possible, and deliver additional tear gas utilizing a CEV into the Black/Red corner. Again, demand surrender by the occupants. Continue delivery of tear gas into different parts of the compound structure at regular intervals for 48 hours or until all subjects have exited compound and surrendered. After the third delivery of tear gas by the CEVs, all subsequent gas deliveries will utilize BVs shooting Ferret liquid tear gas rounds into the upper and lower windows as well as the use of CEV's.

If, during the CEV gas delivery operations, subjects are observed in the center tower which has been previously placed "off limits" to them, then Ferret liquid tear gas rounds will be delivered from the BVs by M-79s into the center tower. If during ANY tear gas delivery operations, subjects open fire with a weapon, then the FBI rules of engagement will apply and appropriate deadly force will be used. Additionally, tear gas will immediately be inserted into all windows of the compound utilizing the four BVs as well as the CEVs.

If all subjects fail to surrender after 48 hours of tear gas, then a CEV with a modified blade will commence a systematic opening up/disassembly of the building structure until all subjects are located.

III. CONCEPT OF THE OPERATION:

- A. Two CEVs will remove all fortifications, obstacles, and vehicles from the White side the day prior to the execution of the operation order. Place double rows of concertina wire on White side to complete wire around entire compound.

On order, two CEVs will enter the compound inside the concertina wire prior to sunrise. One CEV will penetrate the structure on the 1st floor, at the White/Green corner utilizing the boom and project tear gas via the Mark 5 delivery system secured to the boom. After delivery, the CEV will retreat from the structure and stand-by. The second CEV will stand by and upon retreat by the 1st CEV, will insert additional tear gas into the 2nd floor of the White/Green corner. Prior to the entry of the CEVs, the BVs will be engaged in routine spotlight maintenance. Upon delivery of the tear gas by the CEV, a BV on the Green side will deliver Ferret liquid tear gas rounds into the top of the black covering on the unfinished and unoccupied construction in order to deny access to this area. If firing commences from the Compound, the BVs will be prepared to deliver Ferret liquid tear gas rounds into all windows/openings in the compound structure.

If all subjects fail to exit the compound structure after 48 hours of tear gas, then, on order, a modified CEV will proceed to open up/disassemble the structure at the location where the structure was least gassed until all subjects are located.

If subjects are observed in the previously denied center tower, Ferret liquid tear gas will be immediately delivered from the BVs into the tower.

As subjects exit the compound, they will be directed by loud speakers to go to a large "Red Cross Flag" established at Rally Point in the vicinity of the EF Road and the compound road. This rally point will be fortified with the M-88 and the Hotel Team BV. All subjects will be moved to the "T" intersection for processing and decontamination.

On the ground, security positions will be established to prevent "runners" from escaping the crisis site.

B. SPECIFIC ASSIGNMENTS:

- Hotel Team -** Provide one driver and one Tank Commander (TC) to operate CEV #1 and one driver and one TC to operate the M-88. Mount the remainder of the team in BV #1.
- Golf Team -** Man the crew served weapons position at Sniper #1. Mount the remainder of the team in BV #2.
- Charlie Team -** Provide one driver and one TC to operate CEV #2. Mount the remainder of the team in BV #3.
- Echo Team -** Man the crew served weapons position at Sniper #2. Mount the remainder of the team in BV #4.
- Blue Snipers -** Snipers will occupy the Sniper #1 position and provide real time tactical intelligence, long range precision and suppressive fire to support an armored vehicle approach to the compound. (See attached Annex for details.)
- Gold Snipers -** Snipers will occupy the Sniper #2 and Sniper #3 positions and provide real time tactical intelligence, long range precision and suppressive fire to support an armored vehicle approach to the compound. (See attached annex for details.)

FBI SWAT Team ASSIGNMENTS:

- Denver -** Denver SWAT and San Antonio SWAT will maintain a position at the "T" intersection to accept the escorted prisoners from the crisis site. Denver and San Antonio will also be responsible for maintaining the integrity of the perimeter and ensuring no
- San Antonio**

unauthorized personnel move forward of their position.

Omaha - Omaha SWAT will be assigned to the FBI helicopter as a response force for potential fleeing subjects from the crisis site.

Mobile - Mobile SWAT will be assigned in support of the medical response and will be responsible for security of the medical personnel and wounded. Mobile will additionally provide a driver and T.C. for the Bradley vehicle assigned to the medical personnel.

Jackson - Jackson SWAT will be responsible for maintaining the integrity of the perimeter at the "Y" intersection and ensuring that no unauthorized personnel move forward of their position, and liaison with ATF representative at that location.

Miami - Miami SWAT will establish blocking positions along Double EE Ranch Road north of the crisis site.

Kansas City - Will establish blocking positions from the "T" intersection to ATF Checkpoint #3 utilizing Bradley Vehicles and Abrams for cover.

ATF - Provide outer perimeter coverage and blocking positions from checkpoint #2 on Old Mexia Road east to the power line and south along the power line to checkpoint #3.

DPS - Provide line of sight coverage from the intersection of Rt. 31 and 84 East to Frazier Road. South on Frazier Road to DPS check point #5.

C. SCHEME OF MANEUVER

1. CEV #1 - When directed, penetrate structure using CEV boom and deliver CS to the 1st floor Level, White/Green corner. Move away from structure and stand by.
2. CEV #2 - When directed, penetrate structure utilizing boom and deliver CS to the 2nd floor Level, White/Green corner. Move away from structure and stand-by at the Black/Red corner. Upon command, insert tear gas into Black/Red corner of structure.

3. M-88 - Standby for recovery operations, if necessary. Establish designated rally point.
4. EV #1 - On command establish a position in the vicinity of the red side. Deliver gas into the red windows when directed. In order Red D-1, C-3, B-3, B-4, C-1, C-2, B-1, B-2, A-3, A-4, A-1, A-2, A-5, A-6.
5. EV #2 - On command establish a position on the white side in coordination with the CEV when directed. Deliver gas into the white side, beginning with D-1, C-1, A-9 and A-11. Stand ready to direct exiting subjects to the processing location.
6. EV #3 - On command, establish a position on the green corner. Immediately following the CEV gas delivery, insert Ferret liquid tear gas into black covered construction project. When directed, deliver gas into the green side. In order D-1, C-1, B-2, B-1, C-2, C-3, B-3, B-4, A-10.
7. EV #4 - On command proceed to the vicinity of the black side. When directed deliver CS into the black side. In order B-1, D-1, C-1, B-2, A-16, A-15, A-13, A-12 through A-1.
8. EV #5 - On command establish the rally point in conjunction with M-88.
9. EV #6 - Establish blocking position at Miami SWAT position.
10. EV #7 - Establish blocking position between ATF Check Point and the "T".
11. Medical EV - Remain at the "T" intersection until re-directed.
12. EV #9 - Stand-by at "T" intersection as reaction EV with Denver SWAT.
13. Command Abrams - White side at the rally point with HRT Commander.

D. COORDINATING INSTRUCTIONS

1. Time of Departure: To be determined.
2. Organization of Movement: As previously briefed.
3. Rally Points: "T" intersection, "Y" intersection.

4. Rules of Engagement: FBI Deadly Force Policy remains in effect which states "Agents are not to use deadly force against any person except as necessary in self-defense or the defense of another, when they have reason to believe they or another are in danger of death or grievous bodily harm".
5. All units should be prepared to utilize smoke for masking movements if directed.
6. Medical Plan - See Medical Annex.
7. SWAT teams should be prepared to provide personnel for security to transport medical evacuees and assist with prisoner control.
8. Aviation.

IV. ADMINISTRATIVE AND LOGISTICS:

A. UNIFORM AND EQUIPMENT

HRT personnel - tactical gear, body armor (with plate), gas mask, Model 88s, CAR-15, ballistic helmets, saber radio, green flight suits, FBI armband on left arm. Specialty weapons per team leader discretion. Sniper personnel per Sniper Annex.

FBI SWAT - Same as above except weapons will be standard FBI SWAT issue and camouflage utilities.

B. PRISONER HANDLING

Subjects who exit the compound and surrender will be directed via loudspeaker to proceed to the designated Bradley vehicle. These individuals will then be escorted on foot by Bradley vehicle in a single file line to the area of the "T" intersection. At the "T" intersections FBI SWAT personnel, from a position of cover and concealment, will hold the subjects in front of the pre-positioned Bradley vehicles. In an orderly fashion, the subjects will be moved to a designated area behind the Bradley vehicles where FBI SWAT personnel will search the prisoners and turn them over to awaiting ATF personnel for handcuffing and transport. Subjects attempting to flee from the crisis site will be responded to by one orbiting FBI Huey helicopter with FBI SWAT personnel on-board, who will act as arrest teams. Transport of these subjects will be effected by helicopter back to a designated landing zone (LS) at the "T" intersection. All prisoners will be thoroughly searched and secured prior to transport on board the helicopter. The

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helicopter will maintain an orbit at a safe distance from potential hostile acts by subjects from within the compound. The FBI helicopter will move into position upon execution of the surrender initiative and will maintain their orbit until further directed by the HRT Commander.

- V. **COMMAND AND COMMUNICATION:**
- A. **COMMUNICATIONS PLAN**
 - B. **COMMAND LOCATION**
 - 1. SAC - Forward Command Post
 - 2. HRT Commander - Sniper 1
 - 3. BATF Command Element

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CS GAS DELIVERY METHODS (TEAR GAS)

- A. M79, grenade launcher uses a 40 mm liquid-filled ferret round which delivers 25 grams of CS liquid on impact. In Waco there are approximately 400 rounds of the 40mm liquid-filled gas ferret rounds available for HRT and SWAT use. These rounds when fired from 20 yards or less are capable of penetrating a hollow core door.
- B. M60 CEV with cylinder delivery system. One cylinder has 15 one-second bursts per charge. Each burst will extend out approximately 55 feet from the cylinder creating a fog or gas mist in the area. Each cylinder can be recharged 20 times. There are 6 cylinders on hand in Waco with enough raw materials to recharge all 6 cylinders 20 times each.

Tear Gas Decontamination Unit

Three (3) units on hand, two (2) belong to the military, one (1) belongs to the FBI. These units use a high volume of warm/hot water to wash off individuals that have been exposed to CS gas.

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SNIPER POSITIONS

SIERRA 1 (white side)
8 shooting positions
• 4 inside house
• 4 outside house

SIERRA 1A
Technical coverage
• 1 M60

SIERRA 2 (black side)
5 shooting positions
• 1 M60
• 1 SAW

SIERRA 3 (red side)
2 shooting positions
• 1 M79 position

SIERRA 4 & 5 (green side)
Observation positions only

The sierra positions will have at least one observer in each position to overlook each side of the compound. This will insure that snipers do not become fixated and do not see or detect a subject out of their field of view.

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SWAT TEAM LOCATIONS (4)

- A) 550-600 yards out on green side
- B) T intersection red side
- C) Y intersection, forward CP area
- D) Helicopter support

.308 cal sniper rifle
 7.62 mm
 velocity - 2640 fps
 grain - 168
 range - 1,000 yards

.50 cal
 velocity - 2,850-3,000 fps
 grain - 650 or 750 or 1,000
 range - 2,500 to 3,000 yards

The above listed ranges are effective ranges. The maximum range or the terminal velocity (range) of a particular round is dependant on many factors, some of which are, temperature, wind, projectile weight, projectile design and trajectory.

The below listed calibers have approximate ranges of:

9mm	1000 yds
223 (5.56)	1500 yds
7.62 (.308)	1500 yds
.50 cal	5000 yds

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MEDICAL ANNEX
INTEGRATED MEDICAL SUPPORT PLAN:
WACO, TEXAS

Great effort has been directed toward achieving a medical support plan which incorporates all elements directly involved in operations within the outer perimeter. For this operation, integration is critically important due to the potentially large number of casualties which could exceed the current medical capabilities of any single agency present. The anticipated transfer of custody of subjects between agencies requires a coordinated and consistent plan to allow efficient care of any casualties.

PERSONNEL

Minimum required staffing is 12 dedicated medical care providers. Actual medical staffing of the integrated medical support plan is variable but consists of the two HRT medical support teams (4 medical providers) and STAT Team personnel, (Alamo Area Narcotics Task Force) provided under contract to ATF. Nonmedical personnel included are drivers for three patient transport vehicles and military augmentees within the medical staging facility. One local ambulance with three local EMS personnel is maintained at the staging facility at all times.

LOCATIONS

HRT Medical is stationed in the first mobile home of the Forward TOC area and is marked "Medical Support Team." This facility is staffed 24 hours for medical control and health maintenance functions.

STAT Medical Team is located in the mobile home across the road from the Forward TOC area.

The Transfer Point is located at the T intersection where casualties are evaluated and initially treated during transfer from Bradley extraction vehicle to Suburban ambulance. This forward medical treatment site is staffed by one medical officer, one paramedic, and one flight medic.

Medical Staging area is located at the entrance to the Forward TOC area in the GP medium tentage.

Primary LZ is located on the road at the Medical Staging area, marked by a painted blue H on the road.

A hot LZ for immediate evacuation has been designated in the field to the east of the T intersection.

The Decon site is located in the depression northeast of the road block at the entrance of the forward TOC area. One GP medium tent is located at this site for water decon if necessary.

ASSETS

Bradley vehicle #3 with seats removed
 HRT Suburban ambulance
 San Antonio SWAT Suburban
 AANTF Suburban ambulance

ALS equipment including Lifepack 5 X 2
 AMT ambulance pre-deployed at Medical Staging Area
 3 military GP medium tents
 Medical treatment facility equipment

COMMUNICATIONS

HRT W-12 primary medical channel (repeated)
 HRT W-5 alternate medical channel (simplex)
 USUHS radio channel 1

CONCEPT OF OPERATIONS

1. DELIBERATE INTERVENTION

- All casualties will be extracted from the crisis site by Bradley vehicle (preferably #3, medically configured) to the T intersection.
- Security for subjects will be provided by ATF personnel at and beyond the T intersection on a one-to-one basis.
- Weapons, pyrotechnic devices, and hazardous items will be removed from LEO patients and secured by his team, agency, or any other LEO available.
- Subjects will be searched prior to medical evaluation.
- Casualties will be removed from the Bradley vehicle behind the sandbag wall (transfer point) and evaluated by on-site medical for triage and immediate treatment.
- Non-ambulatory patients will be placed on litters and MUST be secured with litter straps or tape before being moved.
- Casualties will be placed in Suburban ambulance vehicles and driven to the Medical Staging area accompanied by ATF security personnel and medical attendant.
- Upon arrival at the Medical Staging area, all casualties will be tagged with a numbered wrist band. Any available patient identification data will be recorded on a similarly numbered clinical notes form and entered into the patient log book.
- Patients will be moved into the Medical Staging area, stripped, evaluated, and treated. Treatment will be recorded on the clinical notes.
- Patient's clothing and personal effects will be placed in a plastic bag and labeled with the individual's number and name, if available. Subject's personal effects bag will be immediately given to the ATF agent providing security for that individual.
- When initial treatment is complete, patients will be moved to transport vehicles, either local (AMT) ground ambulance or Care Flight helicopter. Patients will be transferred to transport litters on the road or at the vehicle. Subjects will be escorted by ATF to security personnel. ATF will arrange for security at receiving hospitals.
- A transport officer will monitor the status of receiving hospitals and will designate to the pilot/driver the destination of the patient. Transport Officer must inform ATF representative and Department of Public Safety (DPS) of destinations.
- Transport will be requested by calling (817) 754-0355 for AMT ground vehicles or 1-800-442-6342 for Care Flight. Ambulances have radio contact with local receiving hospitals. Care Flight frequencies are Law

Enforcement 165.287 and Tactical frequency
462.675.

- Local hospitals for all injuries except major burns are:

Hillcrest Hospital 756-8611
3000 Herring
Waco, Texas
Lat 31 32.6 N / Long 97 10.2 W
20 minutes by ground, 5 minutes by air

(no regular pediatric care)
Providence Medical Center 751-4180
6901 Medical Parkway
Waco, Texas
Lat 31 30.7 N / Long 97 12.2 W
20 minutes by ground, 3 minutes by air

(if air evacuation available)
Scott and White Hospital 774-2222
2401 South 31st Street
Temple, Texas
Lat 31 04.4 N / Long 97 21.48 W
45 minutes by ground, 20 minutes by air

- Secondary hospitals

(primary for major burns)
Parkland Hospital (214) 590-8848
Dallas, Texas
Lat 32 48 N / Long 96 51 W
Contact Care Flight dispatch with patient information on FM 131.45
45 minutes by air

(for major pediatric trauma)
Cook Ft. Worth Children's Medical Center (817) 885-4093
801 7th Avenue
Ft. Worth, Texas
Lat 32 44.12 N / Long 97 20.55 W
50 minutes by air

- UH-1 Helicopters piloted by FBI personnel are available for emergency medical transport in the event local EMS transport is not immediately available. FBI helicopter will land and make aircraft available for evacuation when requested through HRT Main TOC.
- Two flight medics will be designated every 24 hours and will remain at the Medical Staging area for Medevac flights requiring medical attendants. One additional flight medic will be available at the T intersection.

2. IMMEDIATE AND SHORT WARNING RESPONSE

In the event of the development of casualties without warning, medical personnel will not be prepositioned. Supplementary evacuation assets and subject security agents will not be available. Since removal of casualties from the crisis site will be limited to the capacity of the extraction vehicle, the deliberate evacuation plan will be followed with available staff and assets while the full plan is implemented. Forward TOC will be requested to assist in mobilizing medical resources and attempting to provide interim assets for evacuation and subject security.

3. MASS SURRENDER

In the event of mass surrender, initial subject processing is planned for the T intersection. The Transfer Point medical staff will be increased to enable rapid evaluation of any subject referred to medical authority. Subjects in need of further hospital evaluation or treatment will be evacuated through the previously described process.

DECON PLAN:

In the event of the use of irritating gas, casualties may require decontamination prior to treatment and evacuation. Decontamination is of particular importance in casualties to be evacuated by helicopter. The use of large amounts of gas may result in residual contamination of uninjured personnel to the extent that decontamination may be necessary prior to processing. The determination of significant residual contamination will be made by medical control at the T intersection. Contaminated casualties will be transported to the Decon point. After processing casualties, any contaminated uninjured personnel can utilize the decontamination facility.

The primary means of decontamination is the removal of clothing. Residual agent may be retained in scalp hair and the axilla and groin area. This contamination may be removed by simple water washing if necessary. This process will be done in the Decon Tent. Contaminated clothing will be sealed in plastic bags and labeled.

ADDENDUM TO DECONTAMINATION PLAN

The following addendum to the Decontamination Plan is designed specifically to address the situation in which large numbers of CS-contaminated casualties are taken in to custody.

1. Subjects will be directed to walk from the compound to the T. They will be supervised by operators from the protective cover of the Bradleys. Elderly, infirm, and/or injured can be transported by Bradley, if necessary.
2. Subjects will be frisked by FBI SWAT and turned over to ATF agents. ATF agents will flexicuff prisoners and secure them in the T intersection area.
3. The Decontamination Area is located in the GP Medium tent positioned on the grass next to the Medical Tent. The Processing Area is another GP Medium located immediately adjacent to Decontamination Area. Prisoners will be transported via a rental truck (with ramp), or military 2 1/2 ton truck (backup), to the Decontamination Area in groups of ten. The subjects will be moved one at a time into the Processing Tent where they will be tagged and photographed. Near the exit of the Processing Tent, subjects will be uncuffed and permitted to strip completely. All personnel clothing and items will be bagged and tagged by ATF agents. Female agents will be available when appropriate.
4. Subjects will then be directed to the adjacent Decontamination Area. They will be sprayed with warm water from the "hot dog", allowed to soap up and then rinsed down with more warm water. They will be given a towel or sheet for drying and will be issued jail clothing by ATF agents.
5. After dressing, subjects will be escorted by ATF agents to waiting jail buses.
6. When all prisoners in the transport vehicle have entered the processing area, the truck will return to the T for another shuttle.
7. Decontamination will be done in the following order:
 - a. Wounded
 - b. Pre-adolescent children and accompanying adult, if needed
 - c. Women and adolescent girls
 - d. Men and adolescent boys

MEDICAL CARE PLAN FOR CHILDREN

The handling and care of any children released or removed from the compound is included in the Integrated Medical Support Plan. Specific procedures in the event of injury to children are summarized below.

Appropriate equipment and expert personnel have been assembled for the complete emergency care of pediatric patients of all ages within the compound.

Since preadolescent children present minimal security concerns, they can be immediately evacuated from the crisis site. Subjects will be extracted for initial evaluation and stabilization at the "T" intersection as soon as they become accessible to tactical personnel in Bradley vehicles. In the event of critical injuries and limited ground extraction capability, children would be evacuated with any LEO casualties on law enforcement aircraft. Facilities capable of receiving these casualties and providing pediatric trauma care have been identified and are designated in the evacuation plan.

Experience with the effects of CS on children including infants has been extensively investigated. Available reports indicate that, even in high concentrations or enclosed areas, long term complications from CS exposures is extremely rare. Children exposed to CS would be decontaminated first along with any accompanying adult caretaker/parent.

The possibility of mass poisoning presents a particularly difficult medical problem. Intensive treatments must be provided before lethal doses are metabolized. Specific antidotes for cyanide poisoning have been assembled at the Forward TOC area sufficient for all of the children and a large number of adult survivors.

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ESTIMATED COSTS OF INVESTIGATION

WACMUR (2/28/93 - 4/8/93)

PERSONNEL COSTS

	# of Personnel	Per Day	Days	Cost
AGENT				
Prior Period	2/28-4/1			\$2,597,791
Current Period				
FBIHQ	72	\$448	7	\$225,792
Field	118	\$359	7	<u>246,794</u>
Total	210			\$572,586

NON-AGENT

Prior Period	2/28-4/1			\$162,672
Current Period				
FBIHQ	15	\$154	7	\$16,170
Field	27	\$131	7	<u>24,759</u>
Total	42			\$40,929

Total estimated personnel costs \$3,373,978

EXTRAORDINARY COSTS

Per Diem	\$715,976
Equipment (Rental)	170,100
Transportation	52,050
Supplies	27,000
Overtime for non-Agents @ \$20/hr	132,480
Planes (Nightstalker on scene)	377,443
Helicopters (2) @ \$675/hr	111,398
Miscellaneous	<u>44,926</u>
Total estimated extraordinary costs	\$1,631,373

TOTAL ESTIMATED COSTS \$5,005,351

ESTIMATED COST EXTENDED THROUGH 4/15/93

PERSONNEL COSTS

Average cost per day	\$87,645 x 7 =	613,515
Personnel cost	2/28 to 4/8	<u>\$3,373,978</u>
Total personnel costs	2/28 to 4/15	\$3,987,493

EXTRAORDINARY COSTS

Per Diem	\$853,568
Equipment	180,000
Transportation	54,000
Supplies	28,000
Overtime	158,980

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Planes		452,930
Helicopters		133,776
Miscellaneous		<u>42,000</u>
Total estimated extraordinary costs		<u>\$1,910,754</u>
TOTAL ESTIMATED COSTS	2/28-4/15	\$5,898,247

The average cost per day for the WACMUR operation is \$128,429 with the average personnel and non personnel expenditures per day as follows:

personnel - \$87,645.00

non personnel - \$40,784

URCO 003437

LETTERS RECEIVED FROM KORESH AND
ANALYSIS OF LETTERS

On 4/9/93, David Koresh dictated a four page letter to fellow Branch Dividian member Judy Schneider that was then provided to the FBI at Waco, Texas. Copies of the letter were subsequently provided to Dr. Murray S. Miron, a psycholinguist, who has served as a consultant to the FBI in the past. A synopsis of Dr. Miron's comments follow.

Dr Miron believes that the communication "evidences all of the hallmarks of rampant, morbidly virulent paranoia", which provides Koresh with a shield of imagined invulnerability and unmitigated power. This condition could be chronic in form and would be revelational and charismatic to his followers

Dr Miron does not see any indication that Koresh intends to give up or that he is suicidal and he does see that Korash may be contemplating a counter assault. He further states that Koresh's pathology leaves him functional enough to plan effectively and to vie against his adversaries.

In summary, Dr Miron believes that Koresh is determined and has no intention of surrendering himself or his followers and that he is in fact waiting for an assault. He believes that the members of the sect have hardened themselves against the eventuality of a siege and are prepared for an attack from the "infidels" outside the compound.

The letter was also provided to Dr. Joseph Krofcheck, MD, PHD of Yarrow Associates and SSA Clinton R. Van Zandt, Training Division for review and analysis. Their assessment often parallels that of Dr Miron and indicates that Koresh is probability a functional, paranoid type psychotic. He is a "charismatic, manipulative person with a core delusional system that sees himself as his own form of the trinity consisting of God, Jesus Christ, and David Koresh".

They believe that Koresh is able to move in and out of his different personalities which enables him to deal with both reality and his delusion. He is a user of others and people are simply things for his pleasure, glory and purpose. However, even though he is delusional he is not "stupid".

Dr Krofcheck and SSA Van Zandt, believe that the threat level in the letter is clear but the immediacy of the threat level is not apparent. He may believe that he can last longer than the government can wait, he does not need to take any action. His promises to us and his attorneys are not based in truth or reality.

Koresh may be indicating that his snare is set for the authorities and he plans to catch us similarly unaware. He is willing to kill, to see his followers die, and to die himself.

WACO 003438

The threat posed by Koresh and followers include both a possible mass break-out or a massive explosion. Koresh's clock is running and he is fully capable of creating circumstances to bring the matter to a "magnificent end", in his mind, a conclusion that could take the lives of all of his followers and as many of the authorities as possible. Koresh will not come out under any conditions other than his own.

In summary, Krofcheck and Van Zandt are of the opinion that the threat level posed by Koresh is clear but his ultimate timetable is not. Further, they are firm in their belief that we have no clear ability to influence the exit of him and his followers from their compound short of tactical intervention.

A second letter received on 4/10/92 was submitted to Dr Miron for analysis. Dr. Miron indicates that except for the closing paragraphs, the letter is nothing more than a verbatim rendering of texts from the King James version of the bible. He is of the opinion that there is no content which suggests that Koresh is weakening in his resolve and to the contrary Koresh assumes that he will ultimately triumph and even that he can convert his adversary.

WACO 003439

Who are you fighting against?
 The law is mine, the truth is
 mine. Will you be acquitted in
 My judgment? Will you turn
 back the punishments of My
 hand? No!

Be it known unto you, O
 sons of men, My Christ died
 for man's breaking of My law
 (not just the Jews). But who
 will atone for your rejecting
 of My Spirit? I am your God
 and you will bow under My
 feet.

Do you know My seals?
 Do you dare call Me a liar?
 Look and see into My "right
 hand." I AM your life and
 your death. I AM the Spirit
 of the prophets and the Author
 of their testimonies. Look and
 see, you fools, you will not

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proceed much further.

I offer to you My Wisdom,
I offer to you My sealed
secrets. How dare you turn
away My invitations of mercy.
I know your sins and your
iniquities. None are hid from
me! When will you ever fear
and be wise? Your only saviour
is My Truth. My Truth is
the Seven Seals.

You're not rejecting a man
by fighting against David.
My servant no, for I have
given and revealed My Name
to him. Read Psalms 45. The
name Korah is My surname.
And all men are my sons and
the work of My hands.

Do you think you have power
to stop My will? I have.



to My prophets regarding "time
no longer." My "seven thunders"
are to be revealed (Revelation 10:7).
Is it your judgment that time
is not now?! Your judgment
will not stand. Read Psalm 2.
Do you want me to laugh at your
pending torments? Do you want
me to pull the heavens back and
show you My anger?! Why
not listen to your brother
David, and see if he witnesses
to the truth of My hand?

I am your God and I
love you for My mercies sake.
I see your evil and pride
and yet you fear me not.
Do not fear the fear of man -
Fear Me, for I have you in
my snare (Jeremiah 50:22-25;
Revelation 18).

I will surely show you the

- 4 -

meaning of Isaiah 18, unless
 you open your eyes and not
 your mouth. Has He and "the
 hour of My judgment," for it
 has come.

Learn from David My
 seals or, as you have said,
 here the consequences I fore-
 warn you, the Lake Waco area
 of Old Mount Carmel will be
 terribly shaken. The waters of
 the lake will be emptied through
 the broken dam. The heavens
 are calling you to judgment.

Please consider these tokens
 of great concern.

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Yahweh Forsh

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WACO 003443

REVELATION 19

"And after these things I heard a great voice of much people in heaven, saying, 'Alleluia! Salvation and glory and power, and power unto our God, who sits upon the throne, and who reigns forever and ever, as the judgments of the Lord: for he shall judge the great whore, which did corrupt the earth with her fornication, and hath drunken the blood of his servants at her hand.' And again they said, 'Alleluia! And they shall make glad in her, and shall say, 'Alleluia! And the four and twenty elders and the four beasts fell down and worshipped him that sat on the throne, saying, 'Blessed be thou, O Lord God, the true God, saying, 'Alleluia! And a voice came out of the throne, saying, 'Blessed be they that do his commandments, that they may have the right to the tree of life, and shall enter in by the gates into the city.'"

"And I heard as it were the voice of a great multitude, and as the voice of many waters, and as the voice of mighty thunders, saying, 'Alleluia: for the Lord God omnipotent reigneth; let us be glad and rejoice, and give honour to him: for the marriage of the Lamb is come, and his wife hath made herself ready. And to her was granted that she should be arrayed in fine linen.'"

clean and white, for the line linen is
the righteousness of saints.

And he said unto me, Write these things
which are called unto the
marriage supper of the Lamb: and he
said unto me, Write these things, for the time
is coming, and I will stand with
him, and I will worship him. And he said unto
me, See thou do it not: for I am thy
fellow servant, and of thy brethren that
have the testimony of Jesus: and the spirit
of prophecy.

And I saw heaven opened, and behold
a white horse: and he that sat upon
him was called Faithful and True,
and in righteousness he doth judge
and make war. His eyes were as
flames of fire, and in his hand were
many crowns: and he had a name
written, that no man knew, but he
himself. And he was clothed with a
vesture dipped in blood: and his
name is called The Word of God.
And the armies which were in heaven
followed him upon white horses,
clothed in fine linen, white and
clean. And out of his mouth goeth

I saw a sword that with it I should
 smite the nations: and he shall rule
 them with a rod of iron: and he shall tread
 the vineyards of the Gentiles: and wrath
 of Almighty God. And he hath on his
 breast, and on his thigh a name written
 'KING OF KINGS AND LORD OF LORDS.'

And I saw an angel standing in
 the sun: and he cried with a loud voice,
 saying to all the world that they should
 drink of the wine of the wrath of God.
 And he said unto them, "Come and
 assemble together unto the supper of
 the great God: that ye may eat the
 flesh of kings, and the flesh of captains,
 and the flesh of mighty men, and the
 flesh of horses, and of them that sit
 on them, and the flesh of all men, both
 free and bond, both small and great."

And I saw the sea, and the kings
 of the earth, and their armies gathered
 together to make war against him that
 sat on the horse, and against his army.
 And the sea was taken, and with them
 the false prophet that wrought miracles
 before him, with which he deceived
 them that had received the mark of the
 beast, and them that worshipped his
 image. These both were cast alive into

a lake of fire burning with limestone)
 and the summit was plain with
 the sword of Arm that sat upon the
 base which sword proceeded out of
 his mouth: and all the lands were
 filled with their flesh."

K. J. V.

PSALM 45

"In the chief Musician upon Shoshamin,
for the voice of -Korah, Maachil, Asaph
of -Lovers."

Solo "My heart is inditing a good matter: I
speak of the things which I have made
Cant touching the King: my tongue is the
pen N.P. ready written - This is the
Rev 511 that the children of men grace is poured
into the liver: therefore - God hath showed
thee (for) ever.

Chorist "Lift thy sword upon thy thigh: I
am not mighty, with thy glory and thy
Rev. 5. 12 14 majesty. And in thy majesty ride
preparately because of thine hand, which
and righteousness; and thy right hand
shall reach the terrible things. ^{Rev. 5. 12}
in, above in the front of the King's enemies;
which by the people thou under thee.

Thy arrow, O God, is fire, ever and
ever: the bow of thy strength is a right
bow: thou lovest righteousness, and
hatest wickedness: therefore (God) thy
(God) hath anointed thee with the oil
of gladness above thy fellows: all thy
garments smell of myrrour, and aloes, and
Cassia, out of the ivory palaces, where
by they have made thee glad, King.

URCO 003448

daughters) were among the honorable
 women: upon the right hand did
 stand the queen in gold of Cyprus
 and beside her daughter: and consider
 and incline thine ear: forget also thine
 own people, and thy father's house:
 So shall the king greatly desire thy beauty
 for thou art in thy land: and worship thou him.
 And the daughters of Tyre shall be there with
 a gift: even the rich among the people shall
 intreat thy favour.

The king's daughter is all glorious
 within: her clothing is of wrought gold.
 She shall be brought unto the king in
 a chariot of war: she shall be
 accompanied that bring her shall be
 brought unto the king with gladness and
 rejoicing shall this be brought: they shall
 enter into the king's palace.

Instead of thy father shall be
 thy children: when thou mayest make
 princes in all the earth: so will make
 thy name to be remembered in all
 generations: therefore shall the people
 praise thee for ever and ever.

K.T.V.

Your young men do not understand
 Your justice, your custom and your
 statutes - those in whom you have trusted,
 all have failed to show you the secret of
 Thy hand. I begin to do Thy strange
 work "I work you will not believe,
 though it is told you," Isaiah 28.

But Thy servant Moses has tried to warn
 you in his song: "See how that I sing. I
 am he and there is no one with me. I
 kill, and I make alive; I wound and I
 heal: neither is there any that can deliver
 out of my hand. For I lift up my hand
 to heaven, and say, I live for ever."
 Numbers 23:21-24. I have lifted
 up my hand, for Thy Word shall be
 heaven and earth. The sea will
 either give you or destroy you.

Then Thy servant Isaiah said: "Lo, now
 when thy hand is lifted up, they will see
 me: but they shall see, and be ashamed
 for their envy at the people: yea, the
 bliss of thine enemies shall devour them."
 Isaiah 26:11

Isaiah says of me: "Therefore, behold,
 I will raise up a sign for them, and know, I will."

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cause them to know mine hand and my
might, and they shall know that my
name is the Lord." Jeremiah 16:21

Then Micah says: "And the remnant
of Jacob shall be among the Gentiles in
the midst of many people as a lion among
the beasts of the forest as a young lion
among the flocks of sheep: when it
go through both treadeth down, and teareth
in pieces, and none can deliver. Thine
hand shall be lifted up over thine
adversaries, and all thine enemies shall
be cut off." Micah 5:8-9.

Then Habakkuk, "And his brightness
was as the light; he had horns coming out
of his hands: and there was the hiding
of his power." Habakkuk 3:4.

He I have horns coming out of My
hands? Is not the Book in My hand?
Is not this a revelation of My Son?
Is not My Word - My Son, the Lamb?
How many horns does the Lamb have?
If He has seven (Revelation 5), then you
know who is to teach you My Seven
Seals. I mean you, do not fear My
Lamb (Revelation 2) for out of His side
will come "Bright Beams" and there is the
hiding of His power.

Do you think it is a legislation
that raises his hand to heaven and
swears by Me, "that there should be
time no longer."

My hand made heaven, and
earth, My hand also shall bring it
to the end. Read Psalm 50 and
learn to be wise. Respect, submit
to the Lord and love him. I have
loved of My love him. I have
loved him more than all other
things. I have mercy and kindness
and you shall receive mercy and
kindness.

The Law says in the first
chapter - a law which considers it not
what it means. You have a chance
to learn My intention. Do not
find yourselves to be fighting
against Me.

"Therefore, my brethren, ye also
are become dead to the law by the
body of Christ; that ye should be
married to another, even to Christ
is raised from the dead, that we should
bring forth fruit unto God." Romans 7:4.

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UACD 003452

"And I saw when the Lamb opened
 one of the seals, and I heard, as it
 were, the noise of thunder, one of the
 four beasts saying, Come and see.
 And I saw, and behold a white
 horse; and he that sat on him
 had a bow; and a crown was given
 unto him: and he went forth
 conquering, and to conquer."
 Revelation 6:1-5.

Psalms 45

Revelation 19

Please listen, show mercy
 and learn of the marriage of the
 Lamb.

Why will you be lost?

כבוד ה' הוה

Yahweh Kevod

TO: Director, FBI
 ATTN: SSA D. Glasser, FBIHQ
 FROM: M. S. Miron
 RE: WACMUR

Official Use Only

This written communication bearing the signature of "Yahweh Koresh" evidences all of the hallmarks of rampant, morbidly virulent paranoia. Koresh speaks as the agent of God, the sort of "speaking in tongues" practiced by the Pentecostals. In such a state, he is experiencing the dissociative pathology which makes him oblivious to either reality or rationality. This multiple personality-like condition provides him with a shield of imagined invulnerability and unmitigated power. But unlike the mere personality disorder, Koresh's condition can be expected to be chronic in form. Such condition clearly would be revelational to his followers and charismatically overpowering.

Isaiah 45 references God's naming of Cyrus (Koresh in Hebrew), the mighty King of Babylon, and God's use of him as His right hand to crush His enemies. These verses coupled with those of Revelation's suggest that the mystery of God is given to Cyrus. All of Koresh's Biblical references speak to the overcoming of God's enemies and the destruction of Babylon's iniquities.

The content of this delusional communication patently implies that Koresh is preparing to do battle against his adversaries whom he casts as the Godless of Babylon. There is no indication that he intends to give up or that he is suicidal. If anything, the Biblical references suggest that he may be contemplating a counter assault which he views as protected by the shield of God.

-- WAFO 003454 -

The specific and paradoxically mundane reference to Lake Waco is disquieting in its implication for some sort of attempt to attack the dam. Certainly, if this communication were to be made public, there are many who might seek to make this "prophet's" prediction real. Curiously, and significantly, the mistaken spelling of "dam" as "damn" implies a mind-set of aggressiveness which couples flood with punishment. Indeed, Psalms 18, which Koresh juxtaposes associatively with the paragraph of specific forewarning, references floods. Jeremiah 50:22-25 speaks of having "laid a snare for Babylon" in which "the lord has opened his armory and brought forth the weapons of his indignation". Such reference certainly implies that Koresh has provided for "snares" against an assault on the compound.

The 50th day following Easter, the day of Pentecost, commemorates the descent of the Holy Spirit on the Apostles and is marked by the celebration of the feast of Shaboth. This is a highly significant day in millennial religions which believe in the imminent coming of the Messiah. Koresh, undoubtedly, would consider the day of Pentecost to be an important milestone in his self imposed struggle.

There are no indications of the loosening of associations or dysfunctionality of crippling psychosis. His pathology leaves him functional enough to plan effectively and to vie against his adversaries. His delusions appear to be limited to the self-aggrandizements of his chosen status as God's hand. Such focused delusions are common to the paranoid syndrome and differ from the broad dysfunctionality of the paranoid forms of schizophrenia.

The handwriting of this communication is strong and facile. There are no indications of the waning of strength which might indicate that his wounds have left Koresh incapacitated.

Significantly, there is no reference, either Biblical or secular, to the use of children as shields. The Biblical references cast the adversary as being powerful and mighty. Accordingly, it is not surprising that Koresh would seek some sign that God would assist in their destruction. Unfortunately, "the hour of judgment" which Koresh declares has come, is used by those of his beliefs only in the vague sense of imminence rather than immediate.

In my judgment, we are facing a determined, hardened adversary who has no intention of delivering himself or his followers into the hands of his adversaries. It is my belief that he is waiting for an assault. I have no knowledge of the conditions inside the compound which might predict the inevitable depletion of vital necessities. Groups of similar mentality, however, have traditionally prepared themselves, in survivalist fashion, against the eventuality of a siege. Isolation from the outside world is a necessity for the purveyance of any disordered doctrine. All of the members of this group, as in other cults, have been inoculated against an attack from the "infidels" outside their barricades. Such warnings are an essential ingredient to the group's cohesion and fealty to its leader. Koresh's communication does not resemble the suicidal sermon made by Jim Jones in the last hours of Jonestown. His is not the language of those at Massada or Jonestown. He intends to fight.

4/9/93

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WARCO 003456

TO: Director, FBI
 ATTN: D. Glasser
 FROM: M. S. Miron
 RE: WACMUR

This second, much longer communication, except for the closing paragraphs, is merely a verbatim rendering of texts from the King James version of the Bible.

The opening quotations from Revelation 19 and particularly Psalms 45 appear to be at the initiative of Koresh's concubine scribe. The text of Psalms 45 is a bride's love poem made to her royal husband. She speaks of being "as full of words as the speediest writer pouring out his (the king's, i.e. Koresh's) story". The poem champions the king's majesty, truth, humility(?), and justice in overcoming his enemies. Revelation 19, the marriage supper of the Lamb, speaks of the avenging of the murder of God's servants. These are the writings of the Apostle John speaking the words given to him by God in a vision. The reading aloud of Revelation is said to bestow a special blessing from the Lord. Significantly, the Book of Revelation is meant to be spoken.

Setting aside the Biblical interpretations, it appears that Koresh and his followers are celebrating Easter with special ceremonies involving the reading of the Revelations, a banquet, and even the likelihood of some sort of symbolic sexual joining. This text also references hearing what sounds like "the shouting of a large crowd, or like the waves of a hundred oceans crashing on the shore, or like the mighty rolling of great thunder"; a reference, perhaps, to the loud speaker noises played into the compound. There is more reference in this Revelation chapter to the mystery of the name written on the forehead of the champion riding upon his white horse who vanquishes his enemies. The Hebrew Yahveh is actually a nonsense syllable concealing the true name of G-D (even this name must not be spelled out). As in the earlier letter from Koresh, these references to the mystery of names is likely to be central to Koresh's special knowledge of the true name of God which he alone knows. Such knowledge was thought to endow the possessor with God-like powers.

At many points, the quoted texts depart from the punctuation and paragraphing of the King James version. Exclamation marks are frequently used in a style which our research has more closely associated with female authors, and is consistent with a woman writing from dictation. Paragraphs are joined where the King James text is divided. But, otherwise, the text is amazingly accurate. The divergences suggest that the texts are being quoted from memory, a feat not so improbable given Koresh's preoccupation with the Bible. It is not unlikely that this communication is the record of Koresh's sermon to his followers on this special Easter occasion. In support of that interpretation, the communication uses Biblical quotations which suggest that he alternates between a posture of humility and mystical powers which might be designed to better impress his followers.

All of the quoted texts consistently employ themes of the triumph of the righteous over their adversaries led by some special, chosen one. As in the earlier communication, there is no content which suggests that Koresh is weakening in his resolve. On the contrary, he assumes he will ultimately triumph and even that he can convert his adversary.

The closing plea for mercy is anomalous. It contrasts sharply with the belligerence of the Biblical texts. It is possible that this is an addendum added by the scribe and could imply a weakness which might be exploited.

In my opinion, there is little point in releasing this communication to the media. There is scant little which is not Biblically derivative. Unlike the first communication, the paranoid implications are concealed beneath scripture.

4/10/93

for official use only

WACO 003458

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April 10, 1993

TO: FBIHQ, SIOC, ATTN: Mike Kahoe & Jim Wright
FM: SSA Clinton R. Van Zandt
SUBJECT: WACHUR, MC - 80

On or about 4/9/93, DAVID KORESH dictated a four page letter to fellow Branch Davidian member JUDY SCHNEIDER that was subsequently provided to the FBI at Waco, Texas. The following represents a review and assessment of this letter by Dr. Joseph Krofcheck, MD, PHD of Yarrow Associates, and SSA Clinton R. Van Zandt, Training Division, National Center for the Analysis of Violent Crime (NCAVC).

Dr. Krofcheck is a psychiatrist who has provided threat assessments and negotiations support for many years to the FBI through the Nuclear Emergency Search Team (NEST). He has also consulted with the NCAVC on numerous projects and is currently a consultant working with the USAF and the CIA. The psychological terminology set forth in this assessment was provided by Dr. Krofcheck. SSA Van Zandt is currently the on-site Negotiations Coordinator for the WACHUR case.

Biblical References

In KORESH's letter, he makes reference to six Biblical references to include the following: Isaiah 45; Revelation 10:7; Psalms 2; Jeremiah 50: 22-25; Revelation 18, and Psalms 18.

Isaiah was a prophet, (as KORESH sometimes claims to be), who was martyred during the reign of Manasseh in 642 BC by being saved in two inside a hollow log (Hebrews 11:37). More about the person and work of Christ is found in the Book of Isaiah than in

any other book of the Old Testament. Chapter 45 talks about the greatness of God in His use of Cyrus (who KREESH has claimed to be). Cyrus was a temporal deliverer of God's people who served as an illustration of Jesus Christ. Cyrus is an anointed ruler who carried out God's purpose. On the night the Persians captured Babylon, some of the Persian men entered the city via the dry river bed and opened the gates to their armies from the inside of the city. Babylon was caught by surprise by this action and overcome.

Revelation 10:7 (note that KORESH's "authority" stems from his knowledge of Revelations) talks of the mystery of God. Truth concerning God himself which will not be revealed until His kingdom is established on earth.

Psalms has been referred to by the Old Testament Jews as "The Book of Praises." It was the hymnal for the Jewish people. Of the 150 Psalms written, 73 of them were thought to have been written by King David (who KORESH has claimed to be) and 12 by the sons of Korah. Psalm 2 is said to be a "Royal Psalm" because the theme is the Supreme King. In it King David reviles the resolve of world rulers to rebel against the Lord and His anointed King and also exhorts the world rulers to submit to the Son to avoid His wrath.

Jeremiah 50: 22-25. Jeremiah 50 discusses the prophecies against Babylon. Verses 22-25 (as in Isaiah 45) discusses the results of the surprise attack of the Persians against Babylon in 539 BC (by reference). Jeremiah 60:24 references (as in Isaiah

47:11) "a disaster (that) will come upon you and you will not know how to charm it away: and disaster will fall on you for which you cannot atone, and destruction about which you do not know will come on you suddenly." Verse 24 discusses a snare that had been set that caught them (Babylon) unaware/by surprise.

Revelation 18 again mentions Babylon and indicates, (with references to Isaiah 21:9 and Jeremiah 51-8), the fall and destruction of Babylon by fire in a single day.

Psalms 18 basically commemorates King David's overall deliverance from his enemies, again with a theme of explosion (verse 7) and fire (verse 8), and other references violence and coming out (verse 18). There is both a war/battle theme, and an escape and deliverance theme interwoven in this scriptural reference.

Assessment of KORESH based upon this Letter

KORESH is probably a functional, paranoid type psychotic. He appears in a superior mode to the people whom he has gathered around him. These people have a great commitment to him, they obviously believe in him, and they have committed their money, their lives, and their very souls to him.

KORESH is a charismatic, manipulative person with a core delusional system that sees himself as his own form of the trinity consisting of God, Jesus Christ, and DAVID KORESH, the prophet through whom God speaks. He is not a multiple or split personality, but his own different external manifestation of the same personage, the persons is the same for him. This is a kind

of fluid identity that KORESH moves through, and when he feels challenged, he smoothly moves from one identity to another to protect himself. KORESH will not let himself be "put down" by another person. He believes this is his world and he has no real intention to comply with the wishes, desires, or demands of anyone else. Expediency and manipulation are key to KORESH as is his psychotically organized self-identity as God, Jesus Christ, and the Prophet DAVID KORESH.

KORESH is slipping and sliding around with his identity. In this letter he is a prophet through whom God is talking, warning the authorities in this matter. In his last major paragraph in this letter he appears to take implied credit for the 4.2 earthquake felt in southern Texas on the date of this letter. He may also know that the dam on Lake Waco was constructed on a fault area. He has possibly incorporated this earthquake theme ("...terribly shaken...") into his concept of reality and used it as an example of his control and power, further evidence of his operational delusional nature. KORESH, through his own psychological self-deception, avoids the obvious, "If you are God, deal with us here and now."

KORESH appears to be able to move in and out of his ~~different~~ ^{personality} ~~personality~~ his "protective wrap" that lets him deal with both reality and his delusion. This psychological wrap allows him to adapt and posture when he finds it safe to do so. KORESH reads and interprets the Bible in his own unique way for his own means.

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KORESH is a user of others. People are simply things for his pleasure, glory and purpose. His followers, to include his "wives," the media, the lawyers, and the authorities surrounding KORESH's compound, are looked upon by him as possessions, resources, and pawns. They are not valued as equals or human beings of significance. His prophecy is the doom of the army of man (AIF, FBI and other agencies) against God and His anointed (KORESH). KORESH is delusional at times but not stupid. He uses those around him for his own means and all of our (the governments) good intentions go unnoticed by him.

Threat Assessment

KORESH's reference to "...for I have you in my snare...." as set forth in the second paragraph on page three of his letter, again makes reference to Jeremiah 50:24 which discusses a snare that caught Babylon unaware. KORESH may be indicating his snare is set for the authorities and he plans to catch us similarly unaware. He and his followers have had more than adequate time to prepare this snare for us which could include many things, to include the destruction by fire and explosion eluded to in the scriptural references provided by KORESH in this letter.

There are two time lines running in this case. KORESH's and the Governments. The first is measured by his KORESH and his followers ability to withstand confrontation, confinement and containment. Although they may have supplies, they can not hold out indefinitely.

The second time line is defined by his attitude toward the authorities, his "playing" with us. He may well be prepared to do what ever he has to do to fulfill his ultimate game plan. He may believe that he can last longer than the government can wait. Although he may take some positive action after his passover, he does not need take any action. His promises to us and his attorney are not based in any concept of truth or honesty. He establishes his own reality and sets his own rules.

The threat level in this letter is clear but the immediacy of the threat level is not apparent. KORESH (the prophet) is warning us prior to any action on his part. He is willing to kill, to see his followers die, and to die himself. In his fluid identity mix, the delusional Messiah God is stronger than the human reality of his trial, television talk shows, and any book deal. For KORESH to give up power and omnipotence would be analogous to a crack cocaine addict who gets a sexual-like high from crack, to give up his habit cold turkey and obtain a meaningful job and accept the responsibilities of society.

KORESH has a grandiose power scheme that is in direct conflict with the reality base of the world. Power and dominion are his, he manipulates people, he controls life and death.

The threat posed by KORESH and his followers include both a possible mass break-out in which his followers, men, women and young children, run from their compound in all directions at the same time. We could find ourselves confronting young women carrying a baby in one arm while firing a weapon from the other.

A major, massive explosion would be another threat posed as referenced in both his letter and in the scripture references provided by KORESH.

KORESH's clock is running and he is fully capable of creating the circumstances to bring this matter to "a magnificent" end, in his mind, a conclusion that could take the lives of all of his followers and as many of the authorities as possible. KORESH will not come out under any conditions other than his own. It is hard to believe that KORESH will come out voluntarily, abdicating his godhood for limited notoriety and time behind bars.

The government is the hostage in this situation. Notwithstanding the legal and moral responsibilities we have in this matter, we need to inform the public as to the threat posed by KORESH. We need to create an environment that allows us, in the American public's eyes, to both understand this threat and to support our actions in this matter. The American people should understand that some of KORESH's followers could be held against their will without our knowledge. That the health of the adult Davidians and the health and safety of the many young and innocent children is in question. That the potential for drastic action by the Davidians against themselves and the authorities is great. KORESH has indicated that he is upset over the media releases by the joint FBI/ATF news conferences, upset over how the public may perceive him and his followers. This level of

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concern by the authorities should be increased to expose KORESH to further public scrutiny.

We should consider additional ways to isolate KORESH from anyone and everything. Any outside intervention, any external stimulus simply creates new ideas and new strength for KORESH. We need to create as much sensory deprivation as possible for KORESH and his followers. This could include severing contact with his attorney, blocking, if possible, the am/fm radio reception of the compound and limiting contact with the negotiators. The use of a fence to surround the compound is another way to create a sense of confinement while at the same addressing the massive break-out consideration.

We know from the released Davidian children that there are "secrets" in the compound. These not only include KORESH's sexual contact with minor females, but also include the tunnels under the compound that the children were never allowed to enter. These could be used for anything from an escape area from a gas assault to part of KORESH's snare that could include explosives that radiate out from the compound. One does not need to be directly in the middle of a snare to be caught in it. We should consider, if not already done, the use of seismic instruments to chart or measure the tunnel system both under and possibly radiating away from the Davidian compound.

We can consider eliminating the water supply to the compound, but KORESH will surely use the young children as pawns

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to obtain water or to place the health of the children on the shoulders of the government.

The threat level posed by KORESH and his followers is clear. his ultimate timetable is not. It is also clear that we have no clear ability to influence the exit of him and his followers from their compound short of tactical intervention. KORESH may well have a tactical mindset, i.e., he may have both the motivation and the intent to commit some major violent action. What we do not know is his logistical capability to carry out such an act. The threat of the snare is also very clear and something is usually done, some bait used, to lure someone into a snare. We need insure that our reactions to any action on his part does not draw us into this snare where we, like the Babylonians, are caught unaware.

R

WACO 003468

**RIOT CONTROL AGENT, C.S.
INFORMATION OBTAINED FROM BRITISH AND U.S. STUDIES**

UNCO 003469

Effects of CS Exposure

- **British studies, over the course of a few years, and in "tens of thousands of military personnel" who have been exposed to CS in training, have been unable to determine any symptoms essentially different from those which have been determined in U.S. studies. These symptoms are as follows:**

Effects of CS Overexposure (Overexposure is defined as any exposure that brings on any of the effects listed here)

1. **Burning, pricking, peppery sensation in the eyes, nose, mouth, throat, and skin.**
2. **Lacrimation - excessive secretion of tears.**
3. **Rhinorrhea - excessive mucous secretion from the nose.**
4. **Salivation - produces excessive saliva.**
5. **Blepharospasm - uncontrollable winking caused by involuntary contraction of eyelid muscle.**
6. **Photophobia - abnormal intolerance of light (lasts less than one hour in 90% of subjects).**
7. **Tightness of the chest associated with gripping pain.**
8. **Breath holding - usually an attempt to defend against the effects - not a physical (involuntary) action.**
9. **Dyspnea - shortness of breath.**
10. **Coughing and sneezing.**
11. **Vesiculation - blistering, small (prolonged or repeated exposure).**

WACO 003470

12. Erythema - redness of the skins caused by chemical poisoning or sunburn (prolonged or repeated exposure).
13. First, and possibly second degree burns in sensitive people.
14. Congestion of the nose-wall of the pharynx (section of the digestive tract from the oral cavity to the larynx).

15. Feeling of suffocation.

- All of these effects occur immediately and will persist 5-20 minutes after removal from a contaminated atmosphere.
- Determination difficult due to differences in motivation and tolerance i.e. Variability in humans.

Children

- In a case in Northern Ireland, a baby (no age given) was found crying in a bedroom that had been exposed to CS. The child was gasping for breath, tears were streaming down his cheeks and he was very pale. Upon removal from the affected room, the child recovered quickly.
- The British found cases of babies exposed to CS, in sufficient quantities to distress them and to awaken them crying from their sleep. In all of these cases, upon being removed from the contaminated area, these babies all recovered rapidly. There are no reported cases requiring admission to hospitals, and no instances in which illness in previously healthy infants could be attributed to CS.

WACD 003471

- Contact with the U.S. Army Chemical Research and Development Center, Edgewood, Maryland, indicates that they know of no laboratory studies that have ever been conducted with CS that utilized children as subjects. This Army facility has data bases that contain virtually every study on CS that has been conducted by any government or private facility in the world.

Pregnancy

- The British have conducted studies on the effects of CS on the developing embryo. This study found that no interference with embryonic development has been demonstrated.
- Following the use of CS in Northern Ireland, there has been no increase in the number of abortions, still-births or congenital abnormalities.
- British studies conclude that there are no grounds for believing that inhalation of CS can cause malformation of an unborn fetus.
- Experimental evidence indicates that CS does not interfere with the course of pregnancy.

Elderly

- British found no evidence of any special susceptibility to CS associated with old age. Effects on the elderly were reported, but these were in regard to exacerbations of previous ill health.

- Human volunteers, of 50 years of age and upwards have been exposed to heavy concentrations of CS. The symptoms they experienced, and the time taken to recover from these, were no different than in young adults.

Miscellaneous

- Food and drink contaminated even by traces of CS is so repulsive to the taste that it could not be consumed inadvertently and, when it has been consumed voluntarily, no ill effects have followed.
- British evidence indicates that:
 - **Liver** ... With the concentrations possible in riot situations, it would be in the highest degree unlikely that CS would cause liver damage. Further, if by any chance it did, it would be temporary and clear up in 2-3 weeks. ("mild and transient")
 - In experimental exposure of human subjects, no significant changes in liver function were detected.
 - In the worst case of exposure in Northern Ireland, liver function gave normal results when tested ten months later.
- **Cancer** ... There is no evidence that CS acts as a carcinogen.
 - After CS exposure, no chromosome changes of any kind were found to develop in the cells of healthy volunteers or persons who had been exposed to CS during the riots in Northern Ireland.

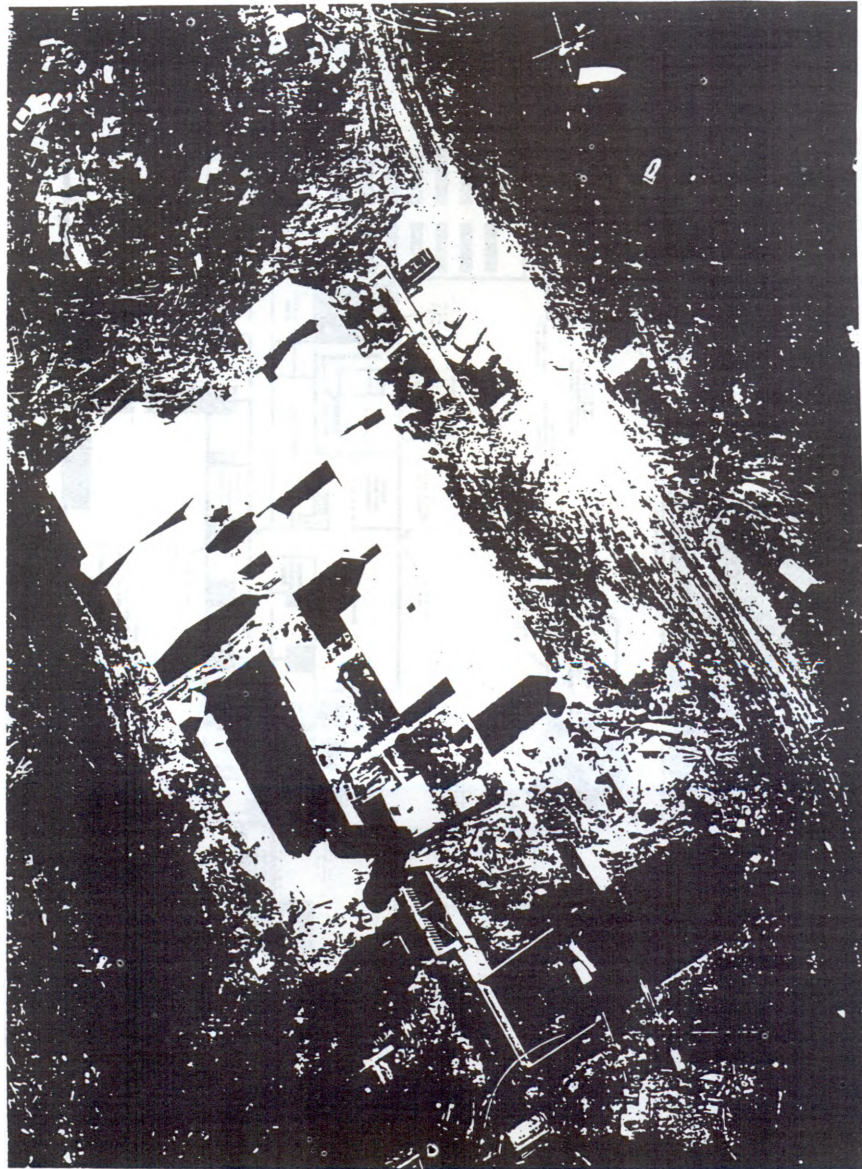
Lethality

- **LCt 50 is the concentration of any chemical substance that will kill 50% of any given population. (Concentration = mg/m³)**
 - **The smallest trace of CS that a man can detect is about 0.004 mg/m³.**
- **The concentration of CS that produces symptoms sufficiently unpleasant to cause people to leave an area is 0.5 mg/m³.**
- **The concentration that will deter trained troops is 10 mg/m³.**
- **The concentration that has been estimated to be lethal to man is 52,000 mg/min³. This concentration, in the opinion of researchers, can only be attained in ideal laboratory conditions. Any concentration at this level, in relation to operational considerations, are essentially artificial.**
- **Research has determined that a high concentration of CS for a short time is less toxic than a lower concentration for a long time.**

_ UACD 003474

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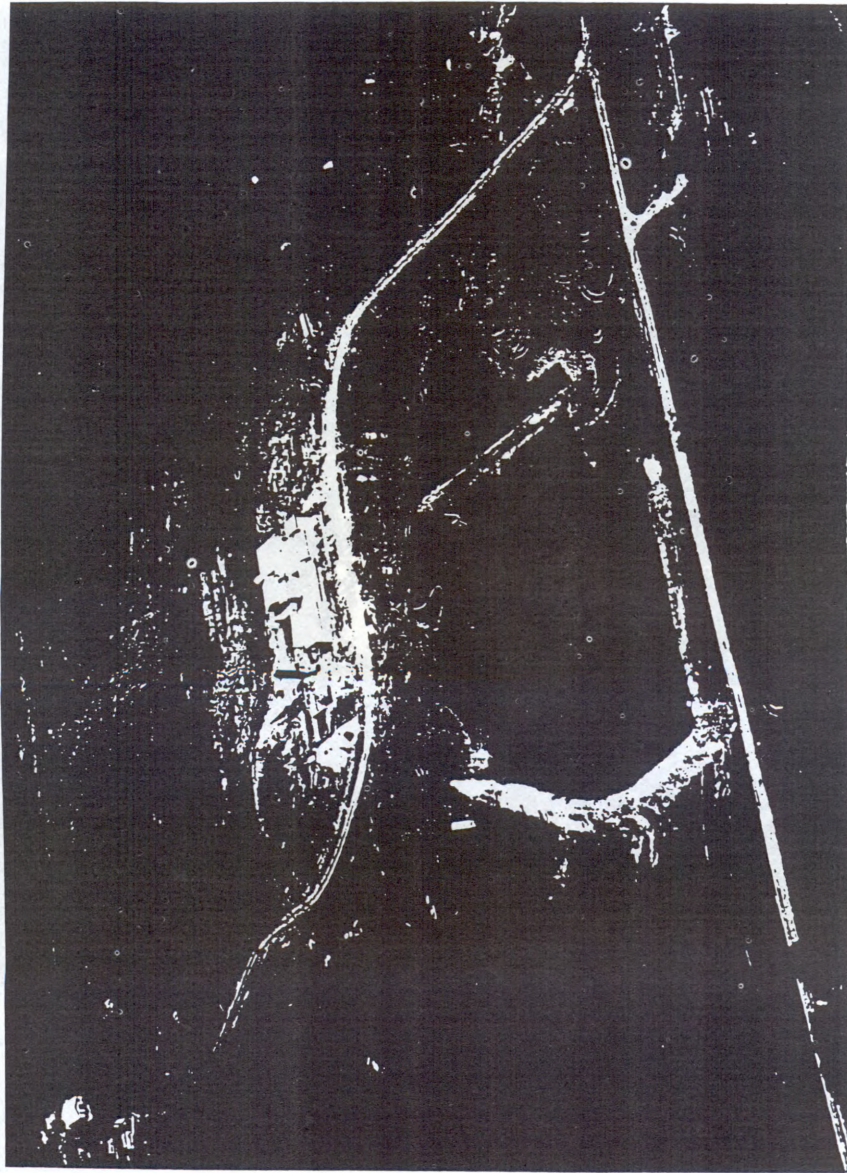
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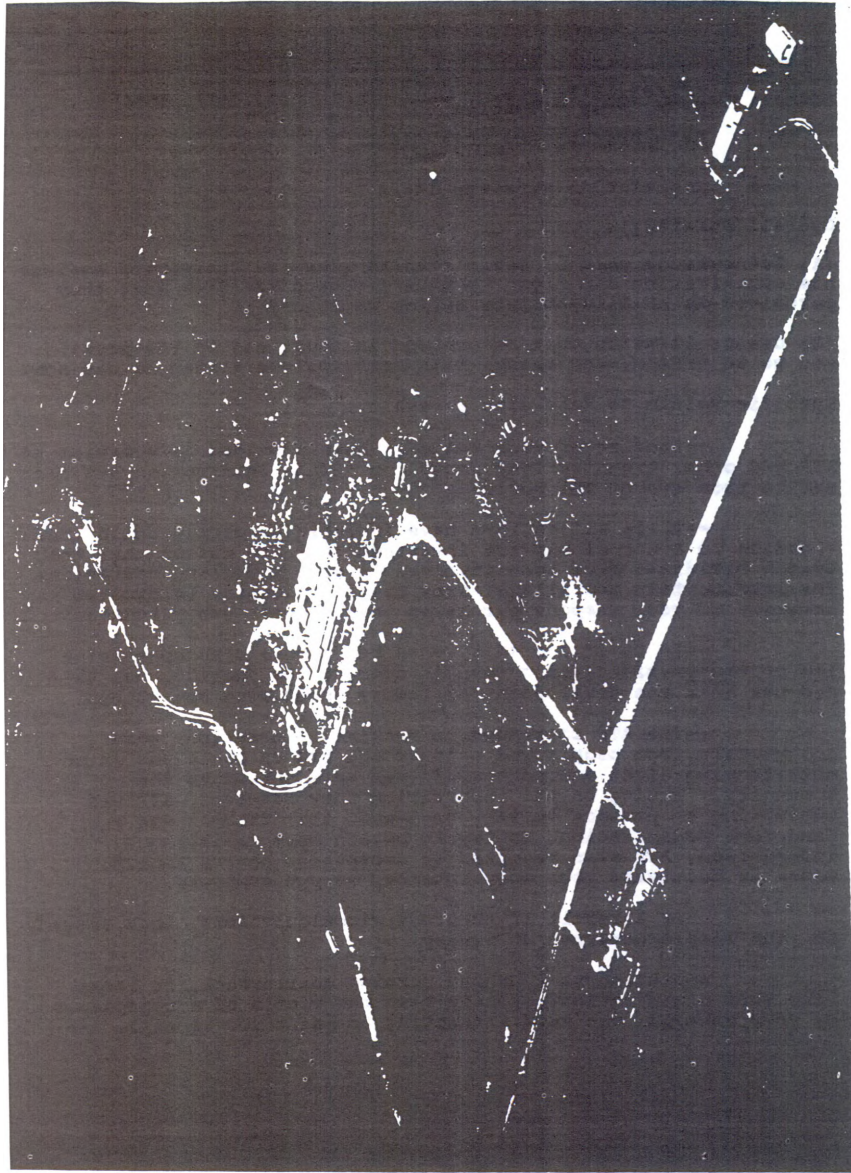
URCO 003477



URCO 003478



URCO 003479



WACO 003400

To : 3/3/93, 12:51 P.M.
SACs, Waco Situation

From : Pete Smerick and Park Dietz

Date 3/3/93

Subject: Negotiation Strategy Ideas

Overall Strategy:

- (1) Acknowledge part of David's world view re. conspiracy against his organization and right to defend themselves from what they perceived as an illegitimate attack on Sunday.
- (2) Create illusion that he can win in court and in the press, not go to prison, and emerge with more followers than he has now.

Specific Points to Make with Korash:

--Enemies of your religion have provided information to ATF and other organizations about you. This information has been fed in from around the world.

--These allegations have included suspected child abuse (leading to a social service investigation) and claims that the Branch Dividians have been involved in drug smuggling operations for drug cartels and illegal arms trading (leading to greater scrutiny of your weapons purchases than of most gun purchases).

--To David's credit, when he found a methamphetamine lab on the premises, he turned it over to the Sheriff, but this did not halt the development of rumors about drug operations.

--The ATF continued to receive information, some anonymously, from people who painted the Branch Dividians in an unflattering light and portrayed them as a threat to the community. Acting on the information they received, ATF was attempting to protect society from what they thought was a dangerous organization. To try to obtain more reliable information, ATF even resorted to deception, having Robert Gonzales cultivate your acquaintance, as you suspected.

--As a result of numerous miscalculations, this tragedy at your Temple occurred on Sunday.

--Sitting as a Monday morning quarterback, it looks like your organization may have been the victim of a conspiracy by your enemies, who were attempting to paint you as evil. ---

--David, we can understand why your people acted as they did Sunday morning because of your fervent beliefs in self defense, defense of your religious beliefs, defense of your family, and in the Word of Revelations.

--You must know that in their zeal to seize weapons from drug dealers, criminals, organized crime, and gangs, ATF always runs the risk of seizing weapons from people who are not criminals.

--David, mistakes have been made but you have an obligation to your God and your family to expose the conspiracy that has been perpetrated against you and your beliefs. You must come forward now to expose this conspiracy and to let both Christians and those who have not yet accepted God's Word know the truth.

--Others who have been in a similar situation have stood up against ATF, sometimes with the help of the Gun Owner's of America, the Second Amendment Foundation, or the friends of their churches, and victories have been won by _____

--You must emerge now to air your side of the story in the press and in court, as this is your opportunity to reach people the world over both to expose them to the conspiracy and to the knowledge God has given you.

--Taking your story and your message to the people will no doubt test your faith, but this is the only way your flock can grow. Even now, there are people responding to news reports by traveling to Waco to join you, but they cannot in this situation. Ask yourself, David, whether this is God's way of testing your resolve to spread His Word beyond the walls of your Temple.

Memorandum



To : 3/5/93
SAC's WAC MUR

Date 3/5/93

From : SA PETE SMERICK & SA MARK C. YOUNG
PSYCHOLOGICAL PROFILERS

Subject: NEGOTIATION STRATEGY CONSIDERATIONS

OVERALL STRATEGY

1. Insure safety of CHILDREN, who are truly victims, in this situation.
2. Facilitate the peaceful surrender of DAVID KORESH and his followers, from Branch Davidians Compound, Mt. Carmel, Texas.

BACKGROUND INFO

A psychological profile of DAVID KORESH by the Investigative Support Unit, FBI Academy, has revealed that KORESH possess significant characteristics associated with psychopaths; that is, he will generally act only in his self interest, rarely accepts blame for his actions, is manipulative, cunning, and has the ability of controlling the actions of others. He will display rapid flashes of anger, if provoked, and will act impulsively.

A generic psychological profile of past and current members of Branch Davidians reveal that many of his members possess low self esteem, are unable to act or think for themselves, and are easily manipulated by dominant individuals like KORESH. When faced with a crisis, they would be expected to follow the dictates of KORESH, not think for themselves, nor question his authority.

In 1986, DAVID KORESH established his temple in Mt. Carmel, outside of Waco, Texas. In 1987, KORESH and 7 of his followers were engaged in a gun battle with GEORGE RODEN of a rival religious faction. Since 1987, KORESH and his followers have become increasingly more paranoid, regarding his enemies, which includes the United States Government, and he has been stockpiling large quantities of arms and ammunition, for the inevitable battle between his church and his enemies. For years he has been brainwashing his followers for this battle, and on February 28, 1993, his prophesy came true.

As of March 5, 1993, KORESH is still able to convince his followers that the end is near and, as he predicted, their enemies will surround them and kill them.

In traditional hostage situations, a strategy which has been successful has been negotiations coupled with ever increasing tactical presence. In this situation however, it is believed this strategy, if carried to excess, could eventually be counter productive and could result in loss of life.

Every time his followers sense movement of tactical personnel, KORESH validates his prophetic warnings that an attack is forthcoming and they are going to have to defend themselves. According to his teachings, if they die defending their faith, they will be saved. As a result of their religious indoctrinations and fears, they will fight rather than surrender. Despite the heavy loss of life on both sides, their resolve to follow KORESH and die for his cause, has not been diminished.

It should be noted that more children have been released from this compound when tactical forces were maintained at a greater distance, than when they have been moved closer. If these forces continue to move closer to the compound, the increased paranoia of these people could result in their firing weapons, thus encouraging retaliation, leading to an escalation of violence.

These people do not have the ability of responding to logical arguments. Most of them are frightened pawns of DAVID KORESH and will listen to him.

RECOMMENDATIONS

Because of the tremendous fear felt by the majority of DAVID KORESH's followers, it is recommended there be a temporary de-escalation of the forward movement of tactical personnel. Instead, an effort must be made to reduce the influence KORESH has on the minds of his followers and convince them that a battle is not inevitable, and that KORESH's predictions are wrong.

In order to drive a wedge between DAVID KORESH and his women followers, we should consider offering to pull back, ONLY if they release more children.

Since these people fear law enforcement, offer them the opportunity of surrendering to a neutral party of their choosing accompanied by appropriate law enforcement personnel.

After the children are released, then traditional negotiation and tactical techniques can be employed, if necessary.

The profile assessments and recommendations set forth above have been reviewed and fully supported by the Negotiation Team.

Memorandum



To : SAC's WAC MUR (89B-SA-38851) (MC 80) Date 3/7/93

From : SSA PETER A. SMERICK & SA MARK C. YOUNG
PSYCHOLOGICAL PROFILERS

Subject: NEGOTIATION STRATEGY CONSIDERATION

The following ideas and suggestions are offered for consideration, in no particular order of preference:

1. FLOODLIGHTS AT NIGHT
2. NOISES, SIRENS, ETC.
3. LOUDSPEAKERS WITH IDEOLGY & BIBLICAL REFERENCES
DISCREDITING KORESH
4. CHEMICAL LIGHTS AROUND THE COMPOUND
5. FLARES AT NIGHT
6. AIRCRAFT FLY-OVERS
7. SCENT OF FOOD COOKING
8. ~~PERIODICALLY~~ ~~MILITARY ARMORED VEHICLES PERIODICALLY~~
PERIODICALLY, (OUT OF SIGHT OF THE COMPOUND)
9. HAVE ARMORED VEHICLES DRIVE BACK AND FORTH
PERIODICALLY
10. PULL ALL PERSONNEL BACK, THEN MOVE THEM FORWARD
AGAIN
11. SHUT OFF UTILITIES
12. JAM TELEVISION/RADIO RECEPTION
13. CONTAMINATE WATER SUPPLY, FOR TASTE ONLY, NOT TO
CAUSE ILLNESS
14. CONTINUE MOVING THE PERIMETER CLOSER TO THE
COMPOUND

15. VIDEO TAPE KORESH'S FORMER ATTORNEY TELLING KORESH HE CAN BEAT THE CHARGES, 'NOT GO TO JAIL, SPREAD HIS MESSAGE TO THE WORLD, & HAVE MOVIES MADE ABOUT HIM
16. DISCONTINUE NEGOTIATIONS FOR AWHILE
17. DURING NEWS CONFERENCES, DESCRIBE DAVID AS A MAN HIDING BEHIND INNOCENT CHILDREN
18. UTILIZE A THIRD PARTY NEGOTIATOR (SUCH AS MC CLENNAN COUNTY SHERIFF, JACK HARWELL, WHO HAS HAD A HISTORY WITH THESE SUBJECTS, INCLUDING THE ARREST OF KORESH, IN THE PAST)
19. TELL DAVID ALL NEGOTIATIONS ARE OFF AND A FENCE WILL BE BUILT AROUND HIS COMPOUND; COMPLETELY ISOLATING HIM FROM THE WORLD. ONLY MILK WILL BE SENT IN TO HIS CHILDREN. HIS MESSAGE WILL NOT GET OUT AND FOR ALL PRACTICAL PURPOSES, HE WILL BECOME A PRISONER, WITHOUT HIS DAY IN COURT.
20. CALL DAVID, TELL HIM FROM NOW ON HE WILL BE PORTRAYED ON THE NEWS MEDIA AS A COMMON CRIMINAL KNOWN AS VERNON HOWELL

We ~~are~~ certainly have a number of options to consider which could increase the stress and anxiety on DAVID KORESH and his followers. ~~Many of these options however, would also succeed in shutting down negotiations and convince KORESH and his followers that the end is near.~~

If trust between DAVID KORESH and negotiators is broken, ~~we are~~ then faced with the prospect of ~~eventually~~ taking physical action against the compound, to destroy it, thus forcing people out. ~~If the compound is attacked, in all probability, DAVID KORESH and his followers will fight back to the death, to defend their property and their faith, as they believe they did on February 28, 1993. If that occurs, there will have to be a HRT response and the possibility of a tremendous loss of life, both within the compound, and of Bureau personnel.~~

Commanders are thus faced with the prospect of defending their actions and justifying the taking of the lives of children, who are with their families in a "defensive position", defending their religion, regardless of how bizarre and cult-like we believe it is manifested.

If we physically attack the compound, and children are killed, (even by Davidians), we, in the FBI, will be placed in a difficult position. The news media, Congress, and the American people, (who are currently applauding our negotiating efforts), will ask questions:

Why couldn't you just wait them out?
 What threat did they pose to anyone, except themselves?
 Why did you cause children to be killed?

Attached to this report is a news article (one of many) relating to the actions of the Philadelphia Police Dept. against the "MOVE" sect, a "back to nature" cult, in 1985. Their house was deluged with over one million gallons of water, over 10,000 rounds were fired, during the initial assault, and a bomb was dropped on the roof of the house. As a result, eleven people, including 5 children, died.

The public outcry, against the tactics employed by the Philadelphia PD continues to this day.

It is imperative that the FBI learn from the mistakes made in Philadelphia.

RECOMMENDATIONS

1. We recommend a continued effort to negotiate the release of all persons inside the compound, with assistance of Sheriff JACK HARWELL. His participation is necessary because of MORESH's hatred and distrust of the Federal Government.

Memorandum



To : SAC'S WAC MUR (89B-SA-33851) (MC 80) Date 3/8/93

From : SSA PETER A. SMERICK & SA MARK C. YOUNG
NCAVC - CRIMINAL INVESTIGATIVE ANALYSIS (PROFILES)

Subject: NEGOTIATION STRATEGIES & CONSIDERATIONS

Re SSA FRED LANCELY, FBIHQ, SOARS Unit assessment of DAVID KORESH, 3/5/93.

One of the basic principals of psychological/behavioral profiling or Criminal Investigative Analysis, as we call it today, is the ability to "get into the mind" of the offender and "think" like him. We know that behavior is a reflection of personality and that many crime scenes reflect personality traits of that person.

Re communication focused predominately on the fact that DAVID KORESH is a psychopath (antisocial personality disorder), who is likely to manipulate and control others, will make decisions which are in his best interest and try to minimize his losses.

This assessment of KORESH depicts only a part of his possible mental disorders. It should not be overlooked that he is a religious fanatic with delusions of being JESUS CHRIST, and that he and his followers will die as a result of being attacked by his enemies.

To DAVID KORESH and his followers, Mt. Carmel is not only their home, but is symbolic of their belief. Since we believe DAVID KORESH knew that ATF was going to "attack" his compound, he had the option of surrendering or firing only warning shots. However, he chose to ambush the agents, as they entered the compound. He may have authorized this action to set into motion a chain of events which will verify, to his followers, that his interpretation of the scriptures, in particular, the seven seals discussed in Rev. 5:1 - 8:1, is correct; that the end is near.

To DAVID KORESH and his followers, Mt. Carmel is the equivalent of cathedral to Catholics, a synagogue to Jews, a mosque to Muslims, etc. In that vein, it should be anticipated that they will fight to defend this "sacred ground".

It has been speculated that KORESH's religious beliefs are nothing more than a con, in order to get power, money, women, etc., and that a strong show of force (tanks, APC's, weapons, etc.) will crumble that resolve, causing him to surrender. In fact, the opposite very well may also occur, whereby the presence of that show of force will draw DAVID KORESH and his followers closer together in the "bunker mentality", and they would rather die than surrender.

It is natural for law enforcement to feel frustrated at the pace of negotiations and the perceived attitude that DAVID KORESH is "pushing us around", and, "we are not going to take it anymore". The strong show of force response is to be expected from law enforcement personnel, who are action oriented. However, in this situation KORESH's arrogant, recalcitrant demeanor may be part of his scheme to manipulate law enforcement commanders, so as to provoke a confrontation, in fulfillment of his interpretation of the 7 seals. The first seal in KORESH's mind is symbolized by the "attack" by ATF on 2-28-93; the second seal is war and bloodshed; the third seal he interprets as famine (where he apparently, currently feels is his immediate situation); and the fourth seal is death. We are approaching this 4th seal and it would appear that we may unintentionally make his prophecy come true, if we take what he perceives to be hostile or aggressive action.

KORESH always talks about the "end", suggesting to his followers that "it is closer than you think". If KORESH dies before his followers, the women are to kill themselves and the children. If the women are unable, the men are to help them. KORESH teaches his followers that they must follow him to the "end", even if that means killing themselves. Persons thus far interviewed, have emphatically stated that his followers would not hesitate to die, in order to protect KORESH. This is further evidence of KORESH's psychopathic manipulation and control over his followers. KORESH realizes that in an environment outside of the compound, without his control over the followers, he would lose his status as the Messiah, thus a mass suicide ordered by KORESH cannot be discounted. His orders for a mass suicide would be his effort to maintain the ultimate control over his group, in the event of his death.

In traditional hostage negotiations with people who are psychopaths, the goal is to wrest control away from the individual and give him a face saving scenario, so he can surrender. With DAVID KORESH, however, perhaps one way to take control away from him is to do the OPPOSITE of what he is

expecting. Instead of moving towards him, we consider moving back. This may appear to be appeasement to his wishes, but in reality, it is taking power away from him. He has told his followers that an attack is imminent, and this will show them that he was wrong.

Secondly, lately the news media has been producing stories depicting people who are supporting KORESH's right to religious freedom (regardless of how strange), his right to bear arms, and his right to defend his property from illegal search and seizures. We could show him this material.

The bottom line is that we can always resort to tactical pressure, but it should be the absolute last option we should consider.

Memorandum



To : SAC's WAC MUR (89B-SA-33851) (MC 80) Date 3/9/93

From : SSA PETER A. SMERICK & SA MARK C. YOUNG
NCAVC - Criminal Investigative Analysis

Subject: NEGOTIATION STRATEGIES AND CONSIDERATIONS

Negotiations to date have met with limited success because of KORESH's psychopathic tendencies to control and manipulate his situation and our inability to develop a face saving scenario which would convince him to surrender.

Efforts should be made to break the spirit of DAVID KORESH and the control he exercises over his followers. It is time to consider other measures to wield control of the situation, such as:

1. Sporadic terminating and reinstating of utilities.
2. Unpredictable movement of equipment and manpower.
3. Downplay importance of KORESH in press conferences and emphasize others (SCHNEIDER & MARTIN).
4. Execute absolute control over the television and radio reception of the compound. (Very Important)
5. Deny negotiations with KORESH, until he is willing to discuss the issues.

By taking these non-offensive actions we would be demonstrating to KORESH that he is no longer in charge and that if wants his story told, he must surrender.

This would buy time, the most critical factor in successfully resolving hostage/barricade situations. The passage of time tends to physically and psychologically wear the subject down and makes him more willing to surrender.

FBI personnel should exercise extreme caution since KORESH has threatened violence if he perceives authorities are infringing on his property. Any aggressive action initiated by KORESH should be responded to in a manner consistent with protecting our personnel.

Any loss of life, as a result of hostile action initiated by KORESH would then be his responsibility.

The above is based on information available as of -9-93. The behavior of KORESH and his followers is subject to change as a result of circumstances within our control and beyond our control.

NEGOTIATION TEAM
STP:TECV PROGRESS

3/22/93

We are currently in the third day of the Mt. Carmel compound siege. Intensive negotiations have resulted in the departure of 34 individuals from the compound. The first 23 people departed between 2/28/93 and 3/5/93. A man and a woman departed on 3/12/93, two men on 3/15/93, and six women and one man on 3/21/93. At a rate of seven per day it would take an additional fourteen days to resolve this incident.

Despite encouraging comments from STEVE SCHNEIDER and DAVID KORESH regarding forthcoming departures, there is no clear indication that large numbers of individuals will depart shortly from the compound. SCHNEIDER and KORESH continue to indicate all will eventually come out, yet they resist all efforts by the negotiators to provide specific names, numbers, or time frames for such action.

It should be noted that the negotiation team believes the long term prospect for a peaceful resolution remains good. This belief is based on the low suicide potential of individuals within the compound, the lack of direct threats, substantive demands or deadlines, and the absence of further violence. However, the short term prospect for total resolution is not encouraging.

The attitude of both DAVID KORESH, STEVE SCHNEIDER and others during the course of negotiations has changed from a generally unrepentant, defiant position to one of verbal acquiescence and hesitant compliance. The siege is giving them an increased sense of isolation and hopelessness. During recent conversations with negotiators both KORESH and SCHNEIDER have stated a willingness on everyone's part to come out. The problem is the pace of surrender.

KORESH, while somewhat compliant, remains manipulative and continues to try to control this situation. Absent KORESH's medical deterioration it is our opinion that he will continue to stall as long as possible, conceding only what he absolutely must.

Despite the loneliness, isolation, insecurity and inadequacy the majority of the individuals in the compound remain both loyal to and dependent upon KORESH for direction.

These interrelated circumstances bring us to a point where we believe consideration should be given to implementing a strategy designed to incrementally escalate stress within the compound to bring this siege to an orderly and positive resolution. These include the following:

1. Establish a public address contact with the compound and make the following representations:

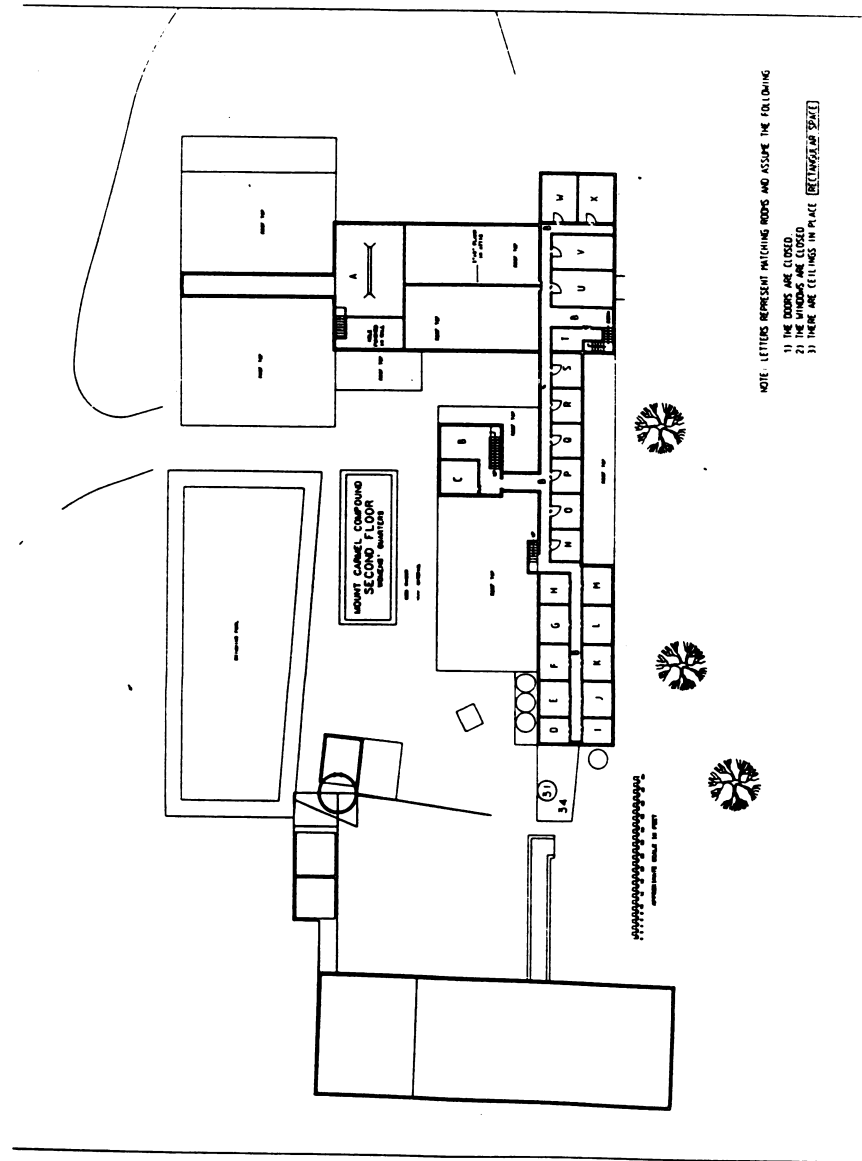
- A. Emphasize the FBI's continued desire to resolve this matter without violence.
- B. Enumerate all of the positive actions taken by the FBI to accommodate the concerns of all individuals remaining in the compound.
- C. Articulate the FBI's concerns that despite demonstrated patience and restraint, repeated offers to resolve this incident have fallen upon deaf ears.
- D. Indicate that after 23 days, the patience of the FBI is not endless and the time has come for all individuals to vacate the compound.
- E. While 34 individuals have departed to date, this progress has been insufficient to demonstrate their commitment to quickly resolve this matter.

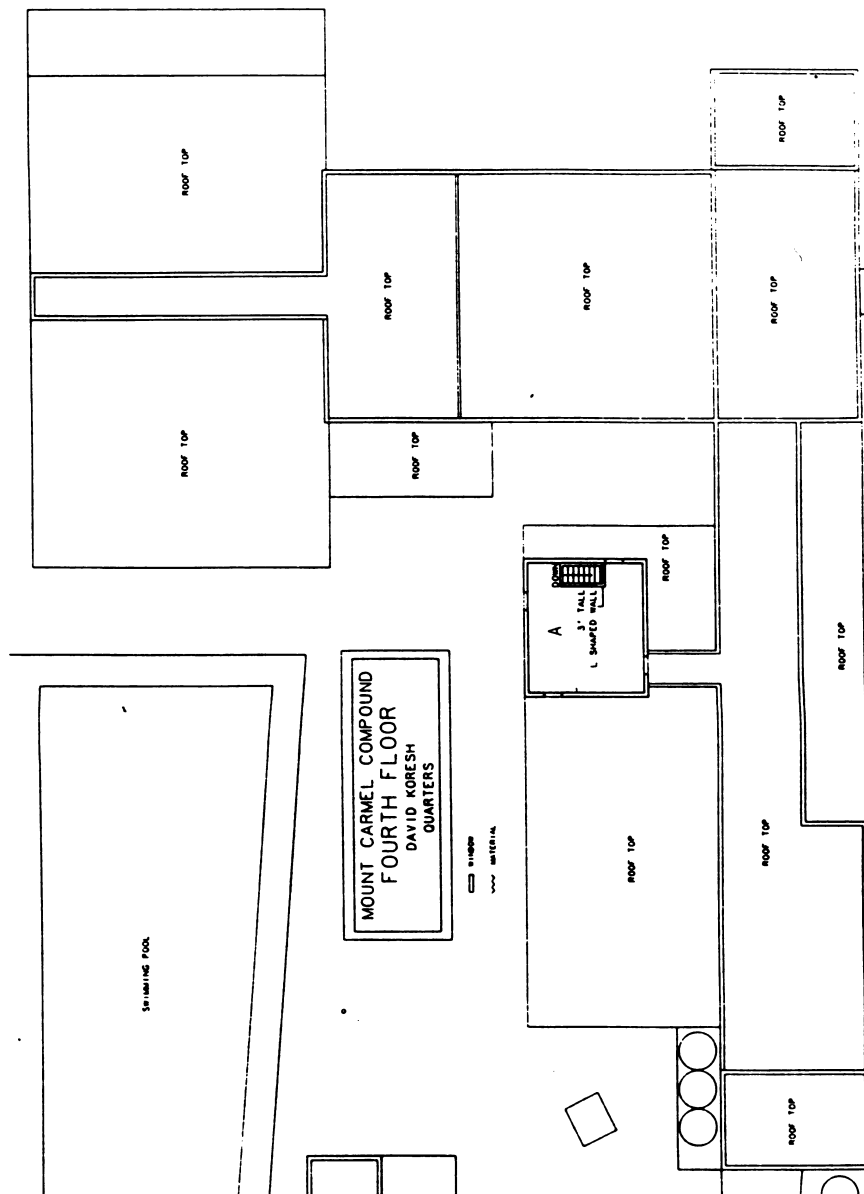
2. Therefore, all parties must vacate the compound by 10:00 a.m. Failure to comply will result in the immediate removal of all vehicles currently parked in the front of the compound. This action can be halted at any time by immediately communicating with the negotiators your willingness to commence departing the compound.

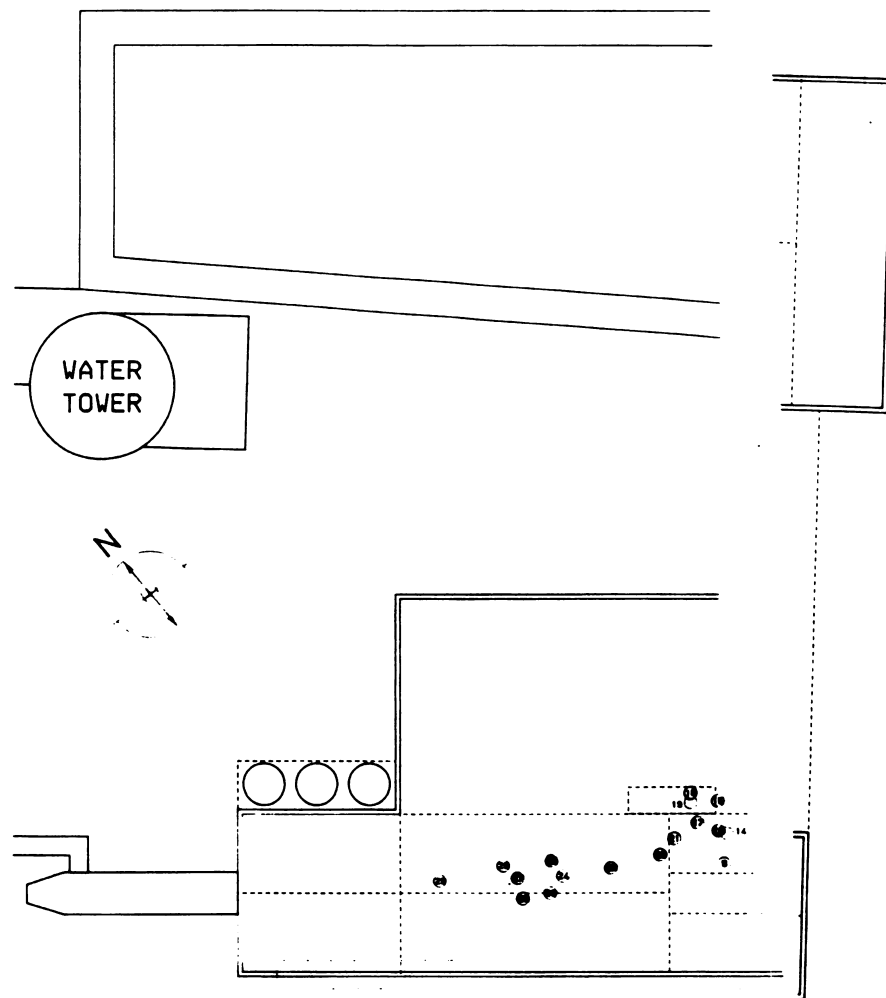
In the event the compound does not respond positively to the previous request, the following announcement is recommended:

3. Due to your failure to comply with the previous request, we will be forced to introduce tear gas as a non-lethal method of clearing the compound. After introduction of the tear gas, your safety will continue to be guaranteed as long as you exit without a weapon and comply with instructions. While the tear gas will cause extreme discomfort, including crying, sneezing, and coughing, it is not life threatening.

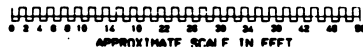
Again, at any time you can stop this action by immediately calling the negotiators and indicating your intentions to exit the compound without further delay.



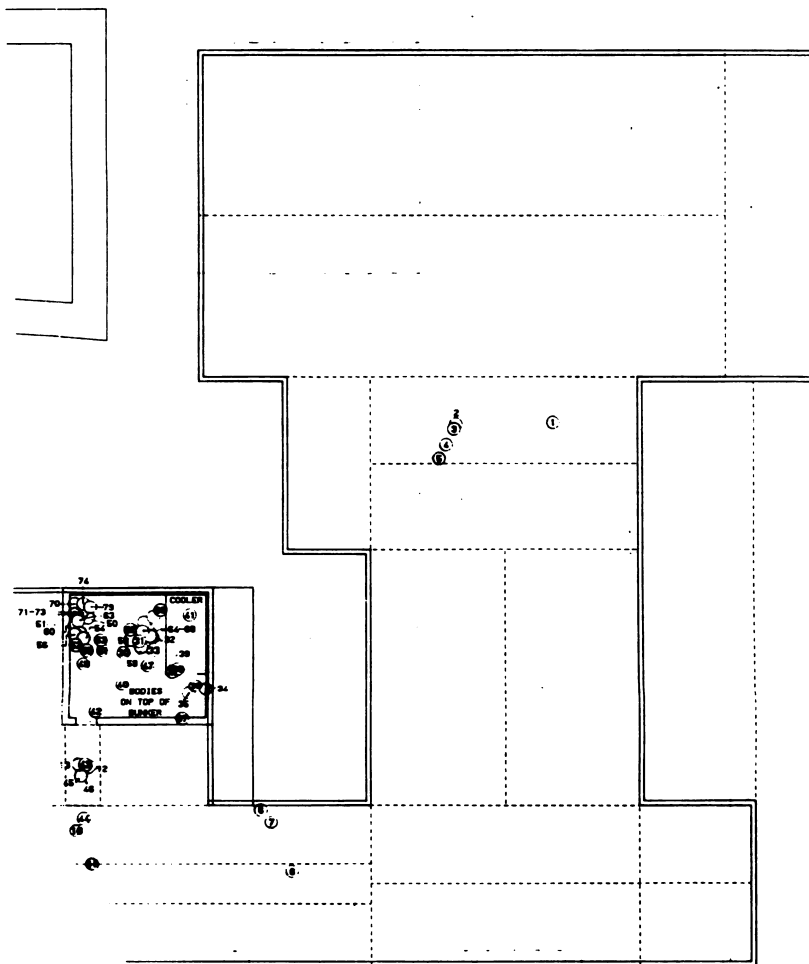




MC-DOE # = MOUNT CARMEL UNIDENTIFIED REMAINS
 LOCATION OF BODIES IS BASED ON THE CENTER OF MASS,
 AS DEFINED BY DR. N. PEERIANI/CHIEF MEDICAL EXAMINER,
 TARRANT COUNTY.



MALE



REPRESENTS
TANK HOLES

UPDATED 5/28/93
Produced by: Carl K. Adrian
Special Projects Section
Laboratory FBIHQ.
Washington, D.C.

(#) FEMALE (#) CHILD
(Under 18 Years of Age)

WACMUR MC #80
 DEMANDS/STATUS LISTING
 2/28/93 - 4/19/93

DEMANDS/STATUS
AS OF 4/19/93

<u>DEMANDS</u>	<u>STATUS</u>
1. 2/28/93 - (14:29) First demand: that KRLD broadcast a message that ATF is holding their fire and will not attack further.	Granted 2/28/93, 16:15 and 16:45.
2. 2/28/93 - (18:10) Play recorded message of KORESH on KRLD and kids will be released two by two.	Granted 2/28/93, 19:38.
3. 3/02/93 - (02:34) SCOTT SONOBE: Play KORESH'S tape on national T.V. and we will come out.	Granted 3/02/93, 13:32
4. 3/02/93 - (04:55) RITA RIDDLE: Play tape during prime time and the remaining women and children will exit.	Granted 3/02/93, 13:32
5. 3/03/93 - (09:47) KORESH wants 150' telephone cord.	Granted 3/04/93, 15:20.
6. 3/03/93 - (13:31) Allow KORESH to give a bible study and MARK JONES will come out.	Granted 3/03/93, 14:48.
7. 3/03/93 - (17:27) STEVE SCHNEIDER: Wants dead, smelly dog removed.	Granted 3/04/93, 15:38
8. 3/04/93 - (23:29) KORESH: Requests suture kit for hand.	Granted 3/05/93, 12:59.
9. 3/05/93 - (7:43) KORESH wants to see kids on video with relatives and 6 gallons of milk.	Milk demand granted 3/08/93, 15:50. Kids with relatives 3/09/93 15:50.
10. 3/05/93 - (17:53) STEVE SCHNEIDER: Wants PETER GENT'S body removed.	Granted 3/08/93, 11:04.
11. 3/06/93 - (8:43) STEVE requests a media line or they will not come out.	Denied

	<u>DEMANDS</u>	<u>STATUS</u>
12.	3/06/93 - (9:02) KATHY SCHROEDER wants Bradleys off property.	Denied
13.	3/06/93 - (9:11) KATHY wants line to media.	Denied
14.	3/06/93 - (12:01) KORESH wants GENT'S body removed	Granted 3/08/93 11:04.
15.	3/06/93 - (16:35) KORESH wants to talk to UCA and then he'll release MELISSA MORRISON	Denied
16.	3/06/93 - (17:25) STEVE SCHNEIDER Demands that Bradley's and body be removed and six gallons of milk delivered.	Milk demand granted 3/08/93, body buried 3/8/93, 11:04.
17.	3/06/93 - (22:43) Repeated demand for additional phone line.	Denied
18.	3/07/93 - (12:51) KORESH: You show me the 3rd Seal and I'll release the kids.	On 3/07/93, 14:50 C.P. attempts to "show" DAVID the 3rd Seal; at 15:50 DAVID says that we have failed and refuses to release anyone.
19.	3/07/93 - (15:50) DAVID: You show me the 7 Seals and everyone will come out.	Denied
20.	3/09/93 - (09:24) KORESH: "Turn the power on or I will not communicate."	Granted 3/09/93, 10:25.
21.	3/11/93 - (22:19) KATHY SCHROEDER: Demands "a couple of gallons of milk" to be delivered to the compound.	C.P. delivers six gallons of milk on 3/12/93 at 14:58.
22.	3/11/93 - (22:19) KATHY SCHROEDER demands copies of Newsweek and Time Magazines containing articles of DAVIDIANC.	Granted 3/19/93, 11:49.

	<u>DEMANDS</u>	<u>STATUS</u>
23.	3/12/93 - (09:33) KATHY SCHROEDER: Demands that she be allowed to call back into the compound after she leaves.	Granted 3/12/93 17:21.
24.	3/12/93 - (10:30) STEVE SCHNEIDER: Demands that radio station KGBS AM 1090 be contacted and told to refute negative statements broadcast by the station against the DAVIDIANS.	Granted 3/12/93, radio station contacted, they advised that they would broadcast a message on 3/13/93.
25.	3/12/93 - (11:46) STEVE SCHNEIDER: Demands a copy of the transcript from the Phil Donahue show that had KIRI JEWELL as a guest.	Denied
26.	3/12/93 - (11:50) STEVE SCHNEIDER: Demands that attorneys and/or the media be allowed to contact the DAVIDIANS.	Granted 3/28/93, 18:00.
27.	3/12/93 - (11:53) STEVE SCHNEIDER: Through DAVID, demands that radio personality ENGLEMANN (phonetic), be made the DAVIDIANS' press representative.	Denied
28.	3/16/93 - (1508) STEVE SCHNEIDER: Demands a copy of the search warrant that ATF initially intended to serve on 2/28/93 along with other documentation.	Granted 3/19/93, 11:49.
29.	3/16/93 - (19:36) STEVE SCHNEIDER requests that PHIL ARNOLD, Ph. D or other religious scholars discuss the book of Revelations with KORESH.	Denied
30.	3/23/93 - (15:40) STEVE SCHNEIDER: Demands that compound members be allowed to speak to released LIVINGSTON FAGAN.	Denied

	<u>DEMAND</u>	<u>STATUS</u>
31.	3/26/93 - (15:40) RACHEL KORESH: Requests to see the video of LIVINGSTON FAGAN's CNN interview.	Denied
32.	3/27/93 - (14:27) STEVE SCHNEIDER: Requests that a neutral negotiator be introduced.	Denied
33.	3/28/93 - (15:58, DAVID KORESH: Requests 6 gallons of milk be sent into the compound.	Granted:3/28/93
34.	3/28/93 - (16:06) STEVE SCHNEIDER: Requests antibiotics for DAVID KORESH.	Denied
35.	4/12/93-(19:29) STEVE SCHNEIDER: Requests a copy of a book about "KORESHIANS" that he heard about from negotiators.	Denied
36.	4/14/93-(14:00) STEVE SCHNEIDER: Requests a typewriter and/or typewriter ribbon be sent into compound.	Granted 4/18/93
37.	4/15/93-(15:01) JUDY SCHNEIDER: Requests that a Sharp word processor, ribbon cassettes, a print wheel, lift-off tape, battery typewriter, ribbon cartridge, 12 size D batteries and a battery operated lamp	Granted 4/18/93
38.	4/17/93-(15:23,15:29) DAVID KORESH: Requests typewriter and ribbons.	Granted 4/18/93
39.	4/17/93-(15:36) STEVE SCHNEIDER: Requests typewriter batteries.	Granted 4/18/93
40.	4/17/93-(15:44) JUDY SCHNEIDER: Requests IBM laptop computer.	Denied
41.	4/17/93-(15:45) STEVE SCHNEIDER: Demands a typewriter ribbon in return they will send out the first seal as written by KORESH.	Granted 4/18/93

PART 3.—MINORITY VIEWS OF THE MEMBERS OF THE SUB-COMMITTEE ON CRIME OF THE COMMITTEE ON THE JUDICIARY TOGETHER WITH SELECTED DOCUMENTS SUBMITTED BY THE DEPARTMENTS OF JUSTICE, DEFENSE, AND THE TREASURY

WACO Report: Dissenting Views

Introduction

On July 25, 1996, the Committee on Government Reform and Oversight approved and adopted a report prepared jointly with the Committee on the Judiciary entitled "Investigation Into the Activities of Federal Law Enforcement Agencies Toward the Branch Davidians." The democratic members of the Judiciary Committee were not consulted before that report was issued. As a result, these dissenting views are designed to supplement that report.

Now, as before the hearings, the minority finds that no new facts or evidence emerged as a result of the 10 days of hearings with testimony from over 90 witnesses. The report approved by the Committee on Government Reform and Oversight proves this basic point in that it agrees with the recommendations and positions taken by the Department of Justice and the Department of Treasury as a result of extensive investigations undertaken by those agencies following the 1993 tragedy in Waco, Texas.

The report lays responsibility for the deaths of the four federal law enforcement agents and the Branch Davidians firmly at the feet of David Koresh and the other Branch Davidians. The report also concludes both that the Branch Davidians intentionally set the fires that resulted in the destruction of the Branch Davidians' compound and that the Branch Davidians could have escaped from the burning compound had they chosen to do so.

Unfortunately, the report also includes factual inaccuracies and internal contradictions. For example, it states that "the question of who fired the first shot on February 28 cannot decisively be resolved ..." The United States Court of Appeals for the Fifth Circuit, in a decidedly non-partisan opinion, found that "the evidence does not permit any reasonable inference but that the Davidians fired the first shots that morning."¹ The Fifth Circuit further found that ATF's sending 70 agents to execute a search warrant did "not support an inference of unreasonable force" given that the ATF had information that the Davidians had amassed a large supply of weapons.²

Finally, the report unfairly criticizes former Secretary of the Treasury Lloyd Bentsen and Attorney General Janet Reno. The dissenting views clarify these issues and rebut many of the claims made by the majority.

¹United States v. Branch, No. 94-50437, 1996 U.S. App. LEXIS 19486 *25 (5th Cir. August 2, 1996).

²Id. At *38.

ROLE OF THE DEPARTMENT OF TREASURY

I. INTRODUCTION

On February 28, 1993, four agents of the Bureau of Alcohol, Tobacco and Firearms (ATF), Conway C. LeBleu, Todd W. McKeehan, Robert J. Williams and Steven D. Willis, were murdered while serving lawful warrants for the arrest of David Koresh, and for a search for suspected illegal firearms and explosives at the Branch Davidian compound near Waco, Texas. An additional 28 ATF agents were wounded or injured. After a 51-day siege conducted by the Federal Bureau of Investigation (FBI), and the fire set by the Branch Davidians that ended it, the Texas Rangers found 48 illegal machineguns, seven illegal explosives of various types, nine illegal silencers, and hundreds of thousands of rounds of ammunition in a search of the crime scene. A jury in Texas convicted eight of eleven Branch Davidians defendants of crimes relating to these firearms. Eight convicted defendants received sentences ranging from three to forty years, with seven of eight defendants serving sentences of forty years imprisonment.

In the wake of the tragic events of February 28, 1993, President Clinton promptly directed the Department of the Treasury to conduct a "vigorous and thorough" investigation of the events leading to the loss of law enforcement and civilian lives. In response, then Secretary Lloyd Bentsen directed then Assistant Secretary Ronald K. Noble to conduct a searching and candid review. He also appointed three independent reviewers of national prominence and the highest integrity--Pulitzer Prize winning journalist Edwin Guthman, former Watergate prosecutor Henry Ruth, and Los Angeles Police Chief Willie Williams. Their role was to provide independent guidance to the investigation, consider its findings, and assess the Treasury Department's final report. They received no payment for their services.

An investigative team of seventeen senior investigators from the Secret Service, the Customs Service, the IRS, and the Financial Crimes Enforcement Network was assembled. No ATF personnel took part in the Review, which was monitored by the Office of the Inspector General to ensure that it was thorough and unbiased.

Again to ensure independence, the Review team consulted with ten non-Treasury experts in tactical operations, firearms, and explosives. Like the independent reviewers, these ten experts served without pay. They were asked to

report their own views, not those of the Department of the Treasury. The reports of the independent experts were published as appendices to the Treasury Report. On September 30, 1993, Secretary Bentsen transmitted the final report to President Clinton.

The Treasury Report received wide-spread acclaim for its thoroughness and candor.² Following its issuance, three

¹"Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms Investigation of Vernon Wayne Howell also known as David Koresh," September 1993 [hereinafter Treasury Department Report].

²As Under Secretary Noble testified:

Treasury's Office of Inspector General determined that the report provides an accurate account of the events. Then Arizona Senator Dennis DeConcini found it thorough, impartial, and self-effacing. Representative Jim Lightfoot of Iowa characterized it as extensively detailed. The Washington Post said it was a thorough and candid account. The Los Angeles Times wrote, quote, "Despite all that went wrong with the raid by ATF on the Branch Davidian compound last February, the thorough and complete report released by the Treasury Department shows that much in its aftermath is going right." The New York Times called it brutally detailed. And just last week Time magazine stated, quote, "Perhaps the harshest critic of the ATF's raid was the bureau's own master, the Treasury Department. In the raid's aftermath, the Department launched an investigation by veteran outside reviewers, including Willie Williams, the Los Angeles police chief. The result was a 500-page indictment that pulled no punches, yet whose detail went largely unreported."

Investigation Into the Activities of Federal Law Enforcement Agencies Toward the Branch Davidians (Part 1): Hearings Before the Subcommittee on Crime of the House Committee on the Judiciary and the Subcommittee on National Security, International Affairs, and Criminal Justice of the House Committee on Government Reform and Oversight, 104th Cong., 1st Sess. 163 (1995) [hereinafter Hearings Part 1] at 817.

top ATF officials, including the Director, retired. Secretary Bentsen appointed John W. Magaw, the Director of the Secret Service, to be the new Director of ATF. Director Magaw implemented extensive reforms at ATF, particularly in the areas of command and control and training.

Almost two years later, the Committee on Government Reform and Oversight, Subcommittee on National Security, International Affairs and Criminal Justice, and the Committee on the Judiciary, Subcommittee on Crime, held 10 days of joint hearings on the events at the Branch Davidian Compound. At the time, many members questioned why the Subcommittees were devoting so much time and scarce legislative resources to rehashing events that had occurred so long previously, particularly where those events had already been subjected to exhaustive review.³

Nonetheless, the Department of the Treasury cooperated fully with the Majority staff. Within three business days of receiving the Subcommittee's June 8, 1995 request for massive amounts of sensitive personal privacy and law enforcement information, the Department met with the Majority staff to discuss production of the materials. In response, Treasury personnel began working days, nights, and weekends to gather and duplicate materials for production.

On June 25, 1995, the Department made its first production of non-sensitive materials. On June 30, 1995, based upon long-awaited assurances of Majority staff to maintain the confidentiality of certain highly sensitive information, the Department produced documents numbering in excess of 10,000 pages. Additional productions of sensitive material were made on July 7, July 11, and July 14. In total, the Subcommittees received sequentially numbered documents in excess of 25,000 pages. Included in the document production were the hundreds of reports of interviews conducted by the Treasury Review team. A key to these reports--cross-referencing the sequentially numbered pages to the names of interviewees--was provided to the Subcommittees as part of the production. Hundreds of photographs, videotapes, and other non-documentary evidence was also provided. Before, during, and after the Hearings, Treasury staff was made freely available to assist the Majority staff in responding to the Subcommittees' needs, and did in fact do so.

³Hearings Part 1 at 21, 23 (statement of Congressman John Conyers, Jr.).

Almost a year after the conclusion of those Hearings-- and almost three years after the events in question--the Majority has issued its Report.⁴ What is striking about the report is that it contains little or nothing of substance that is new, once again raising the question of why these hearings were held in the first place.

Moreover, the Majority Report contains so many errors and distortions, that the validity of its recommendations and the utility of its factual recitation are called sorely into question. The following is an attempt to set the record straight as to the major errors in the Majority Report. Given the constraints of time imposed on the Minority--and the failure of the Minority to provide a printed transcript of the Hearings--this effort can be by no means exhaustive.

If nothing else, the Hearings did confirm that Koresh was a "psychopathic criminal" who exploited people for his own benefit.⁵ We fully agree with the Majority's conclusion that, "But for the criminal conduct and aberrational behavior of David Koresh and other Branch Davidians, the tragedies that occurred in Waco would not have occurred. The ultimate responsibility for the deaths of the Davidians and the four federal law enforcement agents lies with Koresh."⁶

As the testimony at the Hearings demonstrated, Koresh had a calculated plan to attract the attention of and

⁴"Investigation into the Activities of Federal Law Enforcement Agencies Towards the Branch Davidians," Report by the Committee on Government Reform and Oversight, prepared in conjunction with the Committee on the Judiciary [hereinafter Majority Report].

⁵*Investigation Into the Activities of Federal Law Enforcement Agencies Toward the Branch Davidians (Part 2): Hearings Before the Subcommittee on Crime of the House Committee on the Judiciary and the Subcommittee on National Security, International Affairs, and Criminal Justice of the House Committee on Government Reform and Oversight, 104th Cong., 1st Sess. 163 (1995) [hereinafter Hearings Part 2] at 341 (testimony of Pete Smerik, former criminal investigative analyst with the National Center for the Analysis of Violent Crime at the FBI Academy in Quantico, Virginia).*

⁶Majority Report at 3.

provoke a response from law enforcement authorities.⁷ He conspired to engage in credit card fraud, knowing that it would be investigated.⁸ He was a child abuser, beating children with a wooden board, and spanking babies with a wooden paddle. He was a child molester, fathering children with underage girls. He knew someone would be coming to the Compound to investigate these activities. He openly amassed an arsenal weapons, far beyond anything necessary for self-defense.⁹ He knew--sooner or later--that some law enforcement agency was going to have to investigate these activities as well.¹⁰ He posed a grave danger to his followers and the community.

A. Child Abuse

On the issue of child abuse, the Subcommittees heard powerful and uncontradicted testimony from Kiri Jewell, a former Branch Davidian; Joyce Sparks, a social worker with the Texas Department of Child Protective Services; and Dr. Bruce Perry, an associate professor of psychiatry and behavioral sciences at Baylor Medical College.

Ms. Jewell testified that Koresh spanked eight month old babies with a wooden paddle. Koresh spanked her when she was eight because she said she was going on a diet. He used the big wooden board they used for adults, not the wooden spoon they called "little helper." The second time Koresh spanked Kiri, along with some other children, it involved the children getting candy from vending machines against his teachings; before spanking them that time, he bought an enormous amount of candy and made them eat it until they were sick.¹¹

Ms. Joyce testified that she was concerned about the sexual abuse and babies being spanked; children were telling her things she couldn't pursue because of her limited access to the Compound. Children were afraid to tell her about how poorly they were being treated. Koresh had admitted to her

⁷Hearings Part 2 at 340-341 (testimony of Pete Smerik).

⁸Hearings Part 2 at 341 (testimony of Pete Smerik).

⁹Hearings Part 2 at 341 (testimony of Pete Smerik).

¹⁰*Id.*

¹¹Hearings Part 1 at 147 (testimony of Kiri Jewell).

that he started disciplining children at about eight months old.¹²

Dr. Perry, who examined 21 children who made it out of the Compound, concluded that the children were inappropriately and excessively disciplined, physical discipline that was clearly abusive; there was a sense of willingness among the children to engage in an abstract suicide; two of the children had physical legions at the time they were released after the shoot-out which they eventually admitted resulted from being paddled with the helper.¹³

B. Child Molestation

As Ms. Jewell also testified, when she was 10, Koresh sexually assaulted her in a motel room. It was common for Koresh to sleep in a bed with women and children. Ms. Jewell didn't even think about it because the women and girls were all Koresh's wives, or would be, and many of the kids were his too. Iyesha Garvis became one of Koresh's wives when she was 14 and had a baby for him. After Ms. Garvis being pregnant, Ms. Jewell never saw her; she was kept hidden because she wasn't an adult.¹⁴

Sadly, Koresh's children--born to underage girls--became his "shields." According to FBI's behavioral expert Pete Smerik, Koresh "knew that if he came out of that particular Compound. . . .he was going to prison as an individual who was a child molester." In the opinion of Mr. Smerik, "[T]hat is one reason why under no circumstances, was David Koresh going to surrender and come out of that Compound alive."¹⁵

C. Danger to the Community and His Followers

Testimony at the Hearings revealed the grave danger posed by Koresh:

¹²Id. at 577, 578 (testimony of Joyce Sparks).

¹³Id. at 215 (testimony of Dr. Bruce Perry).

¹⁴Id. at 147 (testimony of Kiri Jewell).

¹⁵Hearings Part 2 at 340 (testimony of Pete Smerik).

David Jewell, Kiri Jewell's father, explained that Koresh was a man of "absolutely unparalleled evil intent." It was Koresh's plan to bring about any circumstances necessary that would start a war between he and his followers and the rest of the world. In speaking to current and former Davidians, Mr. Jewell heard about the wars they were going to be involved in that would cause literal "rivers of blood." He heard about friends being told that if they didn't come and join the group they would be killed.¹⁶

Koresh took steps to prepare his followers for mass suicide. It was accepted that the best way to shoot yourself if necessary in the battle with Babylon was to put the gun in your mouth, back to the soft spot above your throat before pulling the trigger.¹⁷

Local law enforcement contacted the ATF after complaints from compound neighbors about automatic gunfire and after contact from UPS about questionable shipments, including grenade casings and aluminum powder.¹⁸ Koresh also collected books on subjects such as land mines, their employment and destructive capabilities, and methods for explosive preparation.¹⁹

As the Hearings conclusively demonstrated, Koresh had in fact collected a massive arsenal of legal and illegal weapons. Ray Jahn, the Assistant United States Attorney who handled the Waco prosecutions, testified that after the fire the FBI found two AK-47 rifles converted into machine guns, one in Koresh's car and one in the ashes, both of which still fired.²⁰ James Cadigan, an FBI firearms expert, examined 297 firearms or remnants of firearms found in the search of the compound; there were 34 AR-15s, 61 M-16s, 61 AK-47s, various 12-gauge shotguns, and other assault rifles, including 2 Barretta .50-caliber semi-automatic rifles. In

¹⁶Hearings Part 1 of 191 (testimony of David Jewell).

¹⁷*Id.* at 150 (testimony of Kiri Jewell).

¹⁸*Id.* at 169-170 (testimony of Lieutenant Barber, McLennan County Sheriff's Office).

¹⁹*Id.* at 213 (testimony of Assistant United States Attorney Bill Johnston).

²⁰*Id.* at 115 (testimony of Assistant United States Attorney Ray Jahn).

the M-16 category, there were 22 firearms which Cadigan found to be modified to fire full auto and in the AK-47 category there were 20; in all, 48 of the 297 had been converted to automatic weapons.²¹

The evidence also shows that Koresh had ever intent of using these weapons in a murderous assault. Kathy Schroeder, a Branch Davidian, told the Texas Rangers in a statement that the Davidians discussed arming the mighty men and killing everyone in a McDonald's, then coming back to the Compound to wait for law enforcement to come after them, so that Koresh could have his Armageddon.²²

On February 28, 1993, when Koresh learned that ATF was on its way to the Compound, Koresh had several choices in front of him. He could have fled. He could have surrendered. He could have fired warning shots in the air, directing ATF to retreat. He chose none of those particular responses. Instead he lay in wait for the ATF agents to arrive at the Compound, and then he coldly and maliciously ambushed them, putting his psychopathic plan into effect.²³

II. THE ATF INVESTIGATION

ATF began its investigation of Koresh after receiving complaints from the McLennan County Sheriff's Department in May 1992. The Sheriff's Office was contacted by a United Parcel Service driver concerned about suspicious parcels, including inert grenade casings and a substantial quantity of black powder, that had been received by certain persons at the Branch Davidian compound. In addition, the residents of the compound were constructing what appeared to be a barracks-type cinder-block structure, had buried a school bus to serve as both a firing range and a bunker, and apparently were stockpiling arms and other weapons. A Deputy Sheriff, realizing that his office did not have the resources to investigate, asked ATF to do so.²⁴

²¹*Id.* at 752-53 (testimony of James Cadigan).

²²*Id.* at 482 (testimony of Special Agent William Buford).

²³Hearings Part 2 at 341 (testimony of Pate Smerik).

²⁴Hearings Part 1 at 170 (testimony of Lieutenant Barber); at 213 (testimony of Assistant United States Attorney Bill Johnston).

Before opening a formal investigative file, the ATF case agent debriefed local officials, interviewed gun dealers, and searched national firearms registries. When the ATF case agent learned of the delivery of grenade casings, black powder, and large shipments of firearms, he had more than sufficient reason to begin an investigation. As a result of the thorough and professional investigation conducted, the ATF case agent developed probable cause to believe that people inside the Branch Davidian compound were manufacturing illegal machine guns and explosive devices. Working with an Assistant United States Attorney, the ATF case agent sought and received from a Federal magistrate judge an arrest warrant for Koresh and a warrant to search the Branch Davidian compound.²⁵ At the criminal trial of the Branch Davidians, none of the defense lawyers challenged the validity of the ATF warrants.²⁶

A. Visiting the Compound Before the Raid

The Majority report concludes that ATF made a serious mistake in not accepting Koresh's offer to inspect Koresh's firearms at the Davidian compound to determine whether there were violations of the law.²⁷ It is absurd to suggest that such an inspection, made through a firearms dealer suspected of conspiring with Koresh, could have resolved Koresh's problems with the law and possibly have permitted ATF to terminate its criminal investigation.

First, the inspection would have been consensual, that is, Koresh could have limited the extent of the inspection in any manner he chose. There would have been no assurance that the inspecting agent would see and examine all evidence of crime at the compound. As ATF Special Agent Chojnacki testified, the ATF case agent knew that Ms. Sparks, who had been investigating child abuse charges, had been denied full access to the Compound. As Mr. Chojnacki stated, "I don't think any reasonable person would expect that he [Koresh] would show us those [fully automatic] firearms. He would show us the ones that hadn't been converted."²⁸ It is naive

²⁵Treasury Department Report at 17-35.

²⁶Hearings Part 1 at 172 (statement of Congressman Charles E. Schumer).

²⁷Majority Report at 13.

²⁸Hearings Part 1 at 469 (testimony of Special Agent Chojnacki).

to think that Koresh would have allowed an inspection of all his firearms and other weapons, particularly his illegal weapons.

Second, as Mr. Chojnacki explained, there was no reason to "tip" off Koresh to the fact that ATF was investigating him and not simply the firearms dealer.²⁹ ATF Special Agent Sarabyn testified that ATF considered approaching Koresh, but rejected the idea because, "We just thought it would put him in an offensive mood, and go back to having armed guards."³⁰ In the aftermath of the violence that occurred at the Compound, it is equally naive, if not irresponsible, for the Majority to suggest that a law enforcement officer could have safely made such an inspection. There is no reason to believe that Koresh's response to an inspection would have been any different than his violent response to ATF's attempted execution of the search warrant.

B. Adequacy of the Arrest and Search Warrants

To show that ATF's investigation was "haphazard," the report points to a December 1992 ATF conclusion that probable cause for a search warrant of the Compound was lacking, and criticizes ATF for reaching the opposite conclusion in February 1993, purportedly having developed no useful information in the interim period.³¹ The Majority Report acknowledges that some additional information was collected by ATF, but states that this information was too stale to be of any value.

The Majority report is wrong. The information collected by ATF between December 1992 and February 1993 added to the quantum of evidence needed to establish probable cause and--under well established case law--was not too stale to be considered. During this period, members of the Bund family, who were former Branch Davidians, advised the ATF case agent of having observed machineguns and hand grenades at the compound, as well as having seen Koresh fire a machine gun. Koresh was also heard to voice a desire to acquire additional machine guns. Also, David Block, another former Branch Davidian, advised the affiant that he had observed a metal lathe and milling machine on the Compound

²⁹Id. at 470 (testimony of Special Agent Chojnacki).

³⁰Id. at 263 (testimony of Special Agent Chuck Sarabyn).

³¹Majority Report at 11.

that another individual operated to make firearm parts. According to Block, this same individual was designing a machine gun at Koresh's request. Block also heard Koresh express an interest in making hand grenades and converting semiautomatic rifles into machine guns. All of this information was included in the affidavit for the warrant.

Although some of the information provided by these witnesses dated back to 1989, it was not "stale" for purposes of supporting a showing of probable cause in the affidavit. The Majority ignores the principle of law that, unlike drugs or other perishable commodities, information about the presence of firearms involved in an activity of a continuous nature does not grow stale for purposes of showing probable cause for a search warrant.³²

As the Majority report recognizes, the affidavit alleged sufficient evidence of violations of the law to support a finding of probable cause for a search of the Compound.³³ The affidavit supporting the warrant for the search of the Compound is replete with evidence supporting a finding of probable cause that the individuals inside were engaged in manufacturing illegal machineguns and explosive devices. At the criminal trial of the Branch Davidians, none of the defense lawyers challenged the validity of the ATF warrant.³⁴

While the Majority report concedes that the warrant "met the minimal standard of constitutional sufficiency," it criticizes the affidavit for alleged misstatements of fact

³²See United States v. Ellison, 793 F.2d 942 (8th Cir.), cert. den., 479 U.S. 937 (1986), where the court recognized the principal that continuous nature of illegal possession of firearms and the tendency of survivalists or paramilitary groups to retain their weapons for a long period of time minimizes the lapse of time between information in the affidavit and execution of the search warrant. See also, United States v. Maxim, 55 F.3d 394 (8th Cir. 1995), where the court applied the principle in Ellison to uphold a warrant based upon information four years old concerning the possession of firearms by the defendant, a survivalist.

³³Majority Report at 26.

³⁴Hearings Part 1 at 172 (statement of Congressman Charles E. Schumer).

and law.³⁵ The Majority's criticisms of the affidavit are largely an exercise in nitpicking isolated statements. For example, the affidavit is criticized for an erroneous legal citation. The magistrates and courts do not evaluate search warrant affidavits in this fashion, and mistakes of this nature are irrelevant in a determination of the sufficiency of a search warrant affidavit.³⁶ Rather, the courts examine the warrant to determine whether it meets the "totality of the circumstances" test governing whether a search warrant is supported by probable cause.³⁷

In its criticisms of the affidavit, the Majority report is flawed with respect to the facts. For example, it takes issue with statements in the affidavit and the Treasury Department Report that Koresh had received parts from which machineguns could be assembled, i.e., M-16 machinegun parts as contained in "CAR" and "E2" kits and receivers for AR-15 semiautomatic rifles.³⁸ According to the Majority, these components cannot be assembled into machineguns without "auto sears."³⁹ To the contrary, these items may be assembled into machineguns without the use of auto sears. While these machinegun components may lawfully be used to maintain lawfully registered machineguns, they are commonly used to convert semiautomatic rifles into machineguns.

The Majority also charges that the affidavit was misleading in that it referred to Shotgun News as a "clandestine" publication.⁴⁰ In fact, the affidavit states only that a witness "observed at the compound published magazines such as, the Shotgun News and other related clandestine magazines." Far from alleging that Shotgun News was a "clandestine" publication, the affidavit advised that it is a "published magazine" and that the compound contained other publications which were clandestine. Along this line Assistant United States Attorney Johnston testified that

³⁵Majority Report at 26, 27.

³⁶See United States v. Shipstead, 433 F.2d 1970 (9th Cir. 1970).

³⁷See Illinois v. Gates, 462 U.S. 213 (1983).

³⁸Treasury Department Report at 23, 24.

³⁹Majority Report at 27, 28.

⁴⁰Id. at 28.

books explaining how to make bombs and methods for explosive preparation were found on the compound.⁴¹

In the Majority Report, the allegations of mistakes of law and fact in the affidavit become "false statements" that the affiant, an ATF Special Agent, knew or should have known to be false.⁴² This charge is particularly startling because the Majority members did not question the affiant on the accuracy of his statements when he testified before the Subcommittees and he has been given no opportunity to answer these allegations. No facts have emerged that undermine the integrity of the core paragraphs of the ATF affidavit establishing probable cause and there is no evidence that ATF agents, including the affiant, knowingly made any false statements in procuring the warrants. The Majority acts irresponsibly in making such an unfounded charge, particularly when its own conclusions do not accurately reflect the law or the facts.

III. PLANNING AND APPROVAL OF THE RAID

A. Determining How to Serve the Warrants

The ATF had a variety of options in deciding how to serve the arrest and search warrants on Koresh. These options included surrounding the Compound and trying to convince Koresh that he should surrender, luring Koresh off the Davidian residence, arresting Koresh while he was off the Davidian property, or executing the warrant through dynamic entry. After consideration of each of these options, ATF chose to execute the warrants through a dynamic entry.

1. Considering a Siege

The first alternative, a siege, was under active consideration as a primary option until late January 1993, when it was rejected.⁴³ On January 25, 1993, agents learned from a former Davidian that the Compound contained a storehouse of food which, together with their internal source of well water, was sufficient to enable the Davidians

⁴¹Hearings Part 1 at 213 (testimony of Assistant United States Attorney Bill Johnston).

⁴²Majority Report at 29, 30.

⁴³Treasury Department Report at 53.

to resist surrendering for many months.⁴⁴ ATF planners believed that the logistics of sustaining a long-term siege would have been too difficult. Given the size of the Compound, such a siege would have required maintaining a vast perimeter, particularly considering the dangers presented by the long-range, powerful .50 caliber weapons ATF believed Koresh possessed. An extended siege would also have provided the Davidians with the opportunity to destroy evidence of their illegal activities and thus evade prosecution. At some point, public impatience with an extended siege might have resulted in a raid anyway, after the Davidians had had the further opportunity to fortify their positions. Koresh would respond to a siege by leading his followers in mass suicide.⁴⁵ The concerns which led to rejection of a siege as an option were validated by the later experience of the FBI.

2. Luring Koresh Off the Compound

Two plans to lure Koresh off the Compound proved unworkable. In late January or early February 1993, the ATF case agent requested the assistance of the Texas Child Protective Services office to lure Koresh off the Compound, but the supervisor declined on the ground that the office should not act as an agency of law enforcement.⁴⁶ Another attempt to find a pretext to get Koresh off the Compound by getting a local arrest warrant for child abuse failed when the youth in question was unwilling to testify.⁴⁷

3. Arresting Koresh Away from the Compound

As for arresting Koresh when he was away from the Compound, the Treasury Department Report concluded that ATF was not in a position to make an informed judgment on this question because of ATF's inadequate intelligence gathering system.⁴⁸ However, as the Treasury Review also concluded, based on the information ATF did have available, its reasoning that this was not a viable option made sense:

⁴⁴Id. at 45-46, and D-9.

⁴⁵Id. at 53 and 141.

⁴⁶Id. at 64.

⁴⁷Id.

⁴⁸Id. at 134.

• The search of a property like the Davidian Compound is a complex undertaking, involving many agents and resources and an incredible amount of planning. To coordinate the arrest of Koresh with such a search would have required predictability and Koresh's absences from the Compound were anything but predictable.

• Joyce Sparks, a social worker at Texas Child Protective Services, told the ATF case agent that she thought Koresh did not leave the Compound very often.⁴⁹

• Although the surveillance of the Compound, which began January 11, 1993, was not constant, the agents saw no evidence that Koresh left the Compound after that date.⁵⁰

• On February 17, 1993, Koresh told the ATF undercover agent Rodriguez that he did not often leave the Compound because the people in town did not like him.⁵¹

All reports that Koresh was seen off the Compound on numerous occasions before the planned raid were investigated by the Treasury Review team, which was able to document only isolated instances of trips off the Compound, most long before the time of the raid.⁵² Testimony at the Hearings also established that arresting Koresh off the Compound would not necessarily have lead to a peaceful conclusion.⁵³

⁴⁹Id. at 136.

⁵⁰Treasury Documents T001540, T001542, T000163, and T000392.

⁵¹Treasury Document T000394.

⁵²Treasury Department Report at 140.

⁵³For instance, Representative Brewster sought the opinion on ATF undercover agent Rodriguez on whether arresting Koresh away from the Compound would have lead to a different ending. Rodriguez responded,

Sir, you got to realize--you got to know these people. Their destiny was set way before ATF got there, way before the FBI got there. That's what they lived for. Their destiny was to die and then later come back as the chosen few by God and that was their destiny.

4. Use of a Dynamic Entry

Regardless of whether Koresh could have been arrested away from his followers, ATF still had to decide how it would execute the search warrant at the Compound. After ruling out a siege, ATF planners decided that a dynamic entry was the best option. The planners concluded that they could surprise Koresh and his followers, separate them from their weapons, avoid the risk of a protracted and costly standoff, and preserve evidence for later prosecution.⁵⁴

The Majority concludes that "ATF chose the dynamic entry raid, the most hazardous of the options, despite its recognition that a violent confrontation was predictable."⁵⁵ Contrary to this assertion, law enforcement experts have repeatedly recognized that dynamic entry represents one of the safest methods for executing a warrant when dealing with dangerous groups. At the Hearings, Wade Ishimoto, a retired Delta Force intelligence officer, who serves as a manager of Sandia National Laboratories, Albuquerque, New Mexico, testified unequivocally:

The dynamic entry has been proven time and time again in law enforcement use in this country and internationally to have a lesser lethality in terms of loss of life both on the part of the suspect as well as on law enforcement officials serving that warrant.⁵⁶

A tactical expert, Mr. Ishimoto also explained that the essential elements of the dynamic entry which reduce the likelihood of lethality are, "surprise and speed and proper massing of the number of forces to overwhelm the people and to basically intimidate them so they do not resist."⁵⁷

Furthermore, those independent tactical experts participating in the Treasury Review who offered an opinion on the efficacy ATF's dynamic entry plan, all agreed that the plan as conceived had a reasonable prospect of

Hearings Part 1 at 762.

⁵⁴Treasury Department Report at 142.

⁵⁵Majority Report at 30.

⁵⁶Hearings Part 1 at 303 (testimony of Wade Ishimoto).

⁵⁷*Id.* at 304.

succeeding, had the element of surprise not been lost.⁵⁸ Testimony at the Hearings confirms that ATF planners considered safety the paramount concern in choosing among various options.⁵⁹

The Majority also grievously errs when it concludes, without citing any evidence, that "management initiatives, promotional criteria, training, and a broad range of other cultural factors point to ATF's propensity to engage in aggressive law enforcement."⁶⁰ A recent audit report issued by the General Accounting Office (GAO) reached the exact opposite conclusion after a comprehensive study of use of force policy, training, and review at ATF, DEA and FBI. In its March 29, 1996 report, GAO concluded ATF's use of dynamic entries to execute high-risk warrants is generally comparable to FBI's and DEA's.⁶¹

The Majority incorrectly states that "one factor affecting ATF's decision to employ a dynamic entry was the impending release of a newspaper story about Koresh and the Davidians which revealed the federal law enforcement investigation then underway." Although planned publication of the newspaper series on Koresh and his followers caused ATF to move up the date of the dynamic entry from March 1, 1993, to February 28, 1993, the impending publication of the series did not cause ATF to choose dynamic entry over other options. ATF planners clearly had a reasonable basis for

⁵⁸Treasury Department Report at B-9, B-37, B-50, B-104, and B-131.

⁵⁹Mr. Hartnett, ATF's Associate Director for Law Enforcement during the planning period, testified that, "[W]e must have talked about safety 100 times." Hearings Part 1 at 271.

In addition, ATF Special Agent Jim Cavanaugh testified that ATF Special Agents brought to the Compound only nine millimeter firearms, which could not penetrate walls and accidentally hit children. "The beating we took was because we were trying not to have firearms that would go through the walls." Hearings Part 2 at 329.

⁶⁰Majority Report at 33.

⁶¹General Accounting Office, "Use of Force--ATF Policy, Training and Review Process Are Comparable to DEA's and FBI's" (March 1996).

believing that Koreah would be on guard after publication of the article and so testified.⁶²

B. Oversight by Main Treasury

The Majority Report is misleading in stating that "[T]estimony before the Subcommittees consistently depicted a Treasury Department that treated ATF as its lowest priority. Department officials repeatedly demonstrated a lack of interest in even major ATF actions, such as that of February 28, 1993. The Department maintained a culture that perceived law enforcement as, at best, a peripheral part of its mission, according the ATF correspondingly little attention."⁶³ The only evidence cited for this gross mischaracterization of the record is an exchange between Representative McCollum, co-chairman of the Subcommittees, and former Treasury Secretary Bentsen which confirmed, as noted in the Treasury Department Report, that Bentsen was out of the country on official business before the raid and had not been advised that it was to take place.⁶⁴

Contrary to the assertions put forth by the Majority, Secretary of the Treasury Lloyd Bentsen and Deputy Secretary of the Treasury Roger Altman acted entirely responsibly and properly in their oversight of the Department of the Treasury leading up to and following ATF's failed raid on the Branch Davidian compound. The Treasury Secretary and Deputy Secretary were responsible for the actions of over 165,000 people and numerous bureaus and offices. With such a large organization, it was impractical during their first month in office for the Deputy Secretary and Secretary of the Treasury both to discharge their varied duties and to receive individual briefings from bureau heads concerning all of their activities. Instead, during their first month in office both Secretary Bentsen and Deputy Secretary Altman relied on Treasury's existing organizational and operational structures--the same structures which had been used by previous Republican and Democratic Administrations.

⁶²Hearings Part 1 at 219-220 (testimony of Special Agent Earl Dunagan); 229-230 (testimony of former Special Agent Chuck Sarabyn); 541-542 (testimony of Stephen Higgins, former Director at the Bureau of Alcohol, Tobacco & Firearms).

⁶³Majority Report at 35.

⁶⁴Hearings Part 1 at 515 (testimony of Secretary Lloyd Bentsen).

In the enforcement area, this organizational structure included a chain of command from the law enforcement bureau head through the Assistant Secretary of the Treasury for Enforcement to the Deputy Secretary and then to the Secretary of the Treasury. This structure placed responsibility on the law enforcement bureau head for bringing significant matters to the attention of his or her immediate supervisor. It is simply unfair and inaccurate to describe as irresponsible the adoption by Secretary Bentsen and Deputy Secretary Altman of an organizational structure and operational approach that had been in place for years.

Under the structure that existed at that time, then ATF Director Steven Higgins' immediate supervisor was Deputy Assistant Secretary John Simpson, a career civil servant who had served at Treasury for many years. Mr. Simpson was carrying out the duties of the Assistant Secretary (Enforcement), pending the confirmation of an Assistant Secretary. Having been ATF's Director for approximately 11 years, Mr. Higgins was very familiar with the reporting process. He testified that during that 11 year period he had never sought prior approval from Main Treasury before conducting a raid.⁶⁵

Therefore, the suggestion in the Majority Report that a meeting between Secretary Bentsen, Deputy Secretary Altman and ATF Director Higgins would have led to earlier notification of ATF's planned raid of the Branch Davidian compound is pure speculation. In fact, as other testimony established, Director Higgins did not tell Mr. Simpson, his immediate supervisor in Treasury, of the planned raid until two days before its planned execution.⁶⁶ Nor did Mr. Higgins tell Ronald K. Noble, who had been identified as the person to be designated as the Assistant Secretary (Enforcement), although Mr. Higgins had an opportunity to do so when he met with Mr. Noble at a two-hour long meeting on ATF-related matters weeks before the planned raid.⁶⁷

For all of the above reasons, it is clear that even if Secretary Bentsen and Deputy Secretary Altman had met with ATF Director Higgins during their first month in office, he

⁶⁵Id. at 540 (testimony of former ATF Director Stephen Higgins).

⁶⁶Id. at 532 (testimony of Special Agent Christopher Cuyler).

⁶⁷Id. at 928 (testimony of Under Secretary Noble).

would not have advised them about ATF's investigation of David Koresh.

We note that during the Hearings, Chairman McCollum stated that he had "a criticism . . . not a huge thing" about the Secretary or Deputy Secretary not meeting with Director Higgins. Chairman McCollum asked Under Secretary Noble whether such a criticism was appropriate. After Noble explained to McCollum that he had personally met with ATF Director Higgins and that Higgins had failed to apprise him of the planned ATF raid, McCollum retreated from his criticism, thanking Noble for the explanation.⁶⁸ Under the circumstances, it is disingenuous for the Majority to raise this "criticism" anew.

IV. IMPROVEMENTS AT TREASURY AND ATF

Regarding Treasury Department oversight, the Treasury Report concluded that the oversight of the Waco operation was consistent with prior practice established by previous Administrations. However, the tragedy at Waco also demonstrated a serious deficiency in the way the Treasury Office of Enforcement supervised its bureaus and showed the need for the earliest possible notification of significant law enforcement actions such as the raid plan executed at Waco.

In August 1993, then Assistant Secretary Noble issued a directive requiring that the Office of Enforcement be informed of any significant operational matters that affect any of the bureaus' missions, including major, high-risk law enforcement operations. Mr. Noble also issued new, uniform guidelines for sensitive undercover operations. Treasury enforcement bureaus now have sensitive undercover operations reviewed by a multi-agency committee to ensure maximum planning and oversight. The multi-agency committee includes not only representatives from all Treasury enforcement bureaus, but also representatives from the Department of Justice's Criminal Division. This procedural safeguard is but one example of the increased oversight by Treasury officials of the most sensitive and dangerous law enforcement operations of the bureaus. Indeed, had the undercover guidelines been in place in 1992 and early 1993, the investigation of Koresh would have come under close scrutiny by a sizable group of agents and lawyers from a broad spectrum of enforcement agencies inside and outside the Department of the Treasury.

⁶⁸Id. at 927-928.

Since Waco, other steps to improve oversight have been taken. Regular meetings between the Under Secretary for Enforcement's office and the heads of each of the Treasury enforcement bureaus and key offices are held. The Treasury Enforcement Council (TEC), which consists of all the bureau heads, has been reactivated. There also are TEC working groups that focus on more specific subject matters.

Based on these reforms, an operation contemplated by any Treasury bureau of the scope and complexity of the Waco raid will come to the attention of a variety of law enforcement authorities as well as the Under Secretary's office well in advance of the planned action. The Majority report fails to note that Secretary Bentsen had just taken office in January 1993, that he had inherited a reporting structure from the previous Administration that permitted the raid to go forward without Main Treasury oversight, and that he immediately took steps to ensure that such a raid could never occur again without prior approval from a Presidential appointee.

V. RAID EXECUTION

A. The Ambush and Valor Under Fire

David Koresh knew 45 minutes before ATF agents arrived that ATF agents were coming to serve warrants at the compound. Rather than submitting to the search and arrest warrants, David Koresh armed himself and his followers, ambushed and fired upon the Federal law enforcement officers. As a result of David Koresh's and his followers' actions, ATF agents Conway C. LeBleu, Todd W. McKeahan, Robert J. Williams, and Steven D. Willis were murdered. In addition, 28 other ATF agents were wounded or injured. Had David Koresh not committed suicide, we may fairly surmise he would be in federal prison today, serving a prison sentence of at least forty years for firearms violations, and he would have been tried for murder along with his followers, and possibly for other crimes as well. The testimony of the ATF agents who survived the ambush is compelling:

• Just as ATF Agent William Buford was exiting the cattle trailer, gunfire erupted at the front of the building; it sounded as though it was coming from all the way across the front of the building; the first rounds he remembers hearing fired sounded like a .50-caliber weapon or a M-60 machine

gun; no doubt in his mind that the Davidians fired first.⁶⁹

• As Special Agent Buford testified, "It was definitely an ambush, a very well planned ambush, I believe. The firing was from--it appeared to me as though nearly every window along the front of the building. . . . It was a coordination and they were shooting through the windows, through the walls, everywhere. . . .in my military experience I had been caught in ambushes before. . . .but nothing in my background prepared me for what we encountered that morning."⁷⁰

• Almost immediately upon getting on the roof, Conway LeBleu, one of Buford's agents, was shot through the head and killed. After he was shot, the Davidians continued to shoot into his body even though it was obvious he was dead.⁷¹

• Special Agent Buford was shot three times in the upstairs room, fell off the roof trying to get down, and as he lay waiting for someone to get him medical assistance, the Davidians continued to shoot at him, striking him in the face.⁷²

• A number of ATF Special Agents were wounded when hand grenades were thrown from the compound; the SRT leader from the Dallas team received 44 separate shrapnel injuries when a hand grenade went off in his face.⁷³

• As the ATF Special Agents drove up, the Davidians opened fire; the gunfire came through the double white doors; it pushed the doors against their jams, out toward the agents. Two agents were shot there, Agent Petrilli was shot in the chest and Agent Ballesteros was shot in the finger. The

⁶⁹Id. at 414 (testimony of Special Agent William Buford).

⁷⁰Id. at 717, 775.

⁷¹Id. at 423.

⁷²Id.

⁷³Id. at 456.

Davidians' guns sounded like cannons. The ATF guns sounded like popguns.⁷⁴

In the face of David Koresh's murderous ambush, during which thousands and thousands of rounds were fired over 40 or 45 minutes,⁷⁵ "ATF agents were brave, they were loyal and disciplined. . . . They risked their own lives to save one another and to reduce the chance that innocent Davidians would be killed."⁷⁶

• After the ambush erupted, ATF Special Agent Cavanaugh called the Compound and urgently attempted to establish a cease fire. As Cavanaugh testified, "It was very difficult. And I'm sorry to get a little sad about it. But I had a radio mike in one ear, with an agent pleading for his life. And I had this guy on the phone who thought he was God. . . . And if I couldn't negotiate it, how was I going to get this guy out? And how many agents was I going to send to get him? How many people would die? . . . So I put all my energy into negotiating it, because if I didn't, this guy in my ear, my friend, was going to die."⁷⁷

• Special Agent Cavanaugh also managed to have all the wounded agents moved behind a giant school bus that was parked in the driveway. Then he got an ambulance into the Compound and evacuated all the wounded agents. Finally, he got the bodies of agents off the Compound roof. As Cavanaugh explained, "[A]ll the men who were wounded there, and also women--we had six women there too. And one got the medal of valor. But all the men who were wounded, we saved. The only agents who died were those who were killed immediately."⁷⁸

B. Who Shot First

⁷⁴Hearings Part 2 at 294 (testimony of Special Agent Jim Cavanaugh).

⁷⁵Id. at 363 (testimony of Special Agent Jim Cavanaugh).

⁷⁶Hearings Part I at 820 (testimony of Under Secretary Ronald K. Noble).

⁷⁷Hearings Part 2 at 302 (testimony of Special Agent Jim Cavanaugh).

⁷⁸Id. at 363-364.

The Majority reaches the astounding conclusion that there are still open questions about who shot first and whether shots were fired from the helicopters. There are no legitimate questions on these issues. The hearing record and all of the other reviews of the raid firmly establish that the Branch Davidians fired first and that no shots were fired from the helicopters.

All of the eye witness testimony is consistent -- the Branch Davidians fired first. There is no evidence to the contrary. Every surviving ATF agent has stated either to the Subcommittees or the Treasury review team that they did not fire their weapons before hearing gun shots. The National Guard helicopter pilots stated that their aircraft were hit as the ATF agents were exiting the cattle trucks, and journalists who witnessed the fire fight have stated that they believed the Branch Davidians fired first. As noted in the Majority report, the Texas Rangers captain who investigated the incident soon after it occurred testified before the Subcommittees, "the evidence was to me overwhelming in the trial that the Davidians fired first."⁷⁹

To counter this "overwhelming" evidence, the Majority cites only the testimony of a lawyer for some of the Branch Davidians who, of course, was nowhere near the Compound when the shots were fired.⁸⁰ Moreover, the lawyer flatly states his opinion and offers no evidence to support it.⁸¹ There is no such evidence and there is no open question. The Branch Davidians laid in wait, ambushed and killed or wounded Federal law enforcement officers.

Similarly, there is no evidence that shots were fired from the helicopters. Both the ATF agents and the National Guard personnel who were on board the helicopters stated that they did not fire their weapons.⁸² A video tape filmed on board one of the helicopters shows no shots being fired. Once again, the only thing the Majority cites to contradict this eyewitness testimony is the speculation of the Branch

⁷⁹Id. at 150 (testimony of Capt. David Byrnes, Texas Ranger).

⁸⁰Majority Report at 27.

⁸¹Hearings Part 2 at 24 (testimony of Dick DeGuerin).

⁸²Id. at 197 (testimony of Capt. David Byrnes); 821-822 (testimony of Special Agent Chojnacki); Treasury Documents T005723, T005730, T005731.

Davidians' lawyer.⁸³ Once again, he offers no support for his opinion. Even he conceded that a likely explanation for bullet holes in the roof of the Compound was the presence of ATF agents on the roof during the raid.⁸⁴ The Majority does not explain why it considers this question still to be "open." The evidence is conclusive; no shots were fired from the helicopters.

The Majority states that these hearings "were necessary to the long term credibility and viability of the federal law enforcement agencies."⁸⁵ By failing to reach the only conclusions supported by the evidence and continuing to feed the conspiracy theorists by finding that the question of who fired first remains open, the Majority has done a great disservice to the men and women of ATF who died or were wounded in the line of duty. The Majority's motives for so doing are to be questioned.

C. Loss of the Element of Surprise

The Majority Report attempts to criticize the findings of the Department of the Treasury with respect to the issue of the "element of surprise." For example, the Majority report states that the testimony of the witnesses at the Subcommittee hearings is not entirely consistent with the summary of events in the Treasury Department Report.⁸⁶ The Majority Report also appears to take issue with the Treasury Department's finding that "all key participants now agree that Rodriguez communicated, and they [the raid commanders] understood, that Koresh had said that ATF and the National Guard were coming."⁸⁷

The criticism is hollow because the Majority Report makes essentially the same findings as the Treasury Department Report--that undercover Agent Rodriguez told Mr. Sarabyn that Koresh had said that ATF and the National Guard were coming, that raid commanders Sarabyn and Chojnacki understood what Rodriguez had told Sarabyn, and that the raid commanders knew that Koresh was aware of the warrant

⁸³Majority Report at 28.

⁸⁴Hearings Part 2 at 27 (testimony of Jack Zimmerman).

⁸⁵Majority Report at 8.

⁸⁶Id. at 19.

⁸⁷Id. at 20.

operation. Both reports conclude that secrecy was an important element of the warrant operation and that the raid commanders failed to adequately assess the significance of the information provided by Agent Rodriguez.⁸⁸

D. Assessing Blame for the Failed Raid

The Majority also suggests that the Treasury Report attempts to shift blame entirely to ATF for the failure of the raid.⁸⁹ The Majority report mischaracterizes the Treasury Report. As Secretary Bentsen said in his transmittal letter to President Clinton, the purpose of the Treasury Review was not intended to cast blame but to provide "a vigorous and thorough" accounting of the events. The Treasury Report did just that; it provided a comprehensive review of the adequacy of ATF's procedures, policies and practices and whether they were followed during ATF's investigation of David Koresh. It also indicated deficiencies in the Department of the Treasury's Office of Enforcement's oversight of its law enforcement activities.⁹⁰ As Under Secretary Noble testified:

The report found that the raid commanders failed to appreciate the significance of the information provided by the undercover agent on the morning of the raid and the dangers of proceeding when surprise and the Davidians' conduct were not as planned. The report also stated that the flawed decision to go forward was not solely a question of individual responsibility on the part of the raid planners. It was also the result of serious deficiencies in the intelligence-gathering, processing structure, poor planning and personnel decisions and a general failure of ATF management to check the momentum of the operation as the circumstances demanded. Moreover, it found that ATF and Treasury bore responsibility for ATF's late notification on the 26th. Both ATF bore responsibility and Treasury bore responsibility.⁹¹

⁸⁸Compare Majority Report at 22 with Treasury Department Report at 165-175.

⁸⁹Majority Report at 21 and 22.

⁹⁰Treasury Department Report at 15, 180, and 182.

⁹¹Hearings Part 1 at 820 (testimony of Under Secretary Ronald K. Noble).

The majority report also errs in concluding that "Treasury Department officials, having approved the raid, failed to clearly and concisely communicate the conditions under which the raid was to be aborted."⁸² In fact the Treasury Report and hearing testimony makes it clear that it was understood that if the operation was compromised it should be cancelled. Both Higgins and Hartnett testified that secrecy of the raid was an element of the raid plan.⁸³ Further, Mr. Simpson testified that:

Mr. Higgins gave us assurances, one of which was that there was an informant inside the compound who would be able to let the team leaders know if anything had changed, and we understood from that that if there were any changes that jeopardized the success of the raid, it would be called off.⁸⁴

In turn Mr. Higgins testified that:

I told Mr. Hartnett to have the--to tell the people in Waco, Houston, not to go ahead with the raid--the orders we were operating under was that if the undercover officer saw anything unusual or out of the ordinary, don't go ahead with the raid.⁸⁵

Director Higgins never once questioned the clarity of his message from the Treasury Department.

In other testimony, Special Agent Phillip Chojnacki, the ATF Incident Commander, confirmed that the "element of surprise" was part of the raid plan, and that the dynamic entry should not have proceeded if the "element of surprise" had been lost.⁸⁶ Special Agent Aguilera also confirmed that

⁸²Majority Report at 29.

⁸³Hearings Part 1 at 536, 562-563 (testimony of former Director Stephen Higgins); and 763 (testimony of former Deputy Director for Enforcement Daniel Hartnett).

⁸⁴Id. at 562 (testimony of John Simpson, former Acting Assistant Secretary).

⁸⁵Id. at 563 (testimony of former Director Stephen Higgins).

⁸⁶Id. at 417-418, 426-427 (testimony of Special Agent Phillip Chojnacki).

maintaining the element of surprise was a prerequisite for the raid.⁹⁷

This was also the testimony of ATF's undercover agent, Robert Rodriguez.⁹⁸ Consistent with ATF's plan, Special Agent Rodriguez clearly communicated Koresh's awareness of an impending ATF law enforcement operation to his ATF field supervisors. Unfortunately, Mr. Rodriguez's supervisors did not heed his warning.

All six of the independent tactical operations experts who analyzed ATF's failed raid concluded that based on Mr. Rodriguez's information, these raid commanders should have called off the raid.

The Majority findings with respect to the planning for the raid were consistent with the Treasury Report findings which had already recognized that the plan was flawed. More specifically, both the ATF and the Department of the Treasury have recognized that there were problems with ATF's command and control structure in connection with the Waco operations. Further, ATF has taken steps to improve the ability of ATF managers to supervise effectively large-scale law enforcement operations; ATF has made significant changes to correct and improve its capabilities in the areas of tactical intelligence, contingencies, operational security, oversight and liaison in connection with the planning and execution of large-scale law enforcement operations.⁹⁹

⁹⁷"I do believe that the element of surprise was asked by Mr. Higgins. If the element of surprise was going to be lost, don't continue on the raid." *Id.* at 272 (testimony of ATF Special Agent Aguilera).

⁹⁸In an exchange between Representative Brewster and Special Agent Rodriguez, Mr. Rodriguez answered affirmatively when asked whether he expected the raid to be called off after the element of surprise had been lost. *Id.* at 761.

⁹⁹See Treasury Documents T026322-T026500 (ATF's major restructuring plan, approved by the Assistant Secretary (Management) and the Under Secretary (Enforcement), dated September 23, 1994); T026501-T026503 (Memorandum from the Assistant Secretary (Enforcement) to the Heads of Treasury Enforcement Bureaus (August 9, 1993), setting forth matters that must be brought to the attention of the Assistant Secretary (Enforcement)); T026563-T026572 (Lessons Learned and Actions Taken--A Summary: One Year After the Events

E. Training for the Raid

The Majority Report also faults ATF leadership for its failure to provide its tactical teams with an adequate time to train prior to the raid. That is, the Report states that "tactical teams trained together for only three days before the raid."¹⁰⁰ This criticism is without merit. ATF special response teams are fully trained in tactics. The three days of training did not require any training in basic techniques, but was time spent practicing the specific operation repetitiously--all teams worked together attempting to become more efficient with each repetition. Each of the special response team leaders created a written raid plan for their teams and these plans were given to all of the special response team members.¹⁰¹ Two experts stated that the training and rehearsal conducted over a 3-day period at Fort Hood was well planned, relevant to the tasks required, and prepared those involved for the assignments they were to perform.¹⁰²

Finally, the Majority's Report concludes that it was reasonable for ATF to have presumed that the Davidians might fire on them had they announced their intent to serve the warrants. The report finds that ATF agents executing the raid were not required to knock and announce their intention to serve the arrest and search warrant. However, the report fails to state that while ATF was not required to "knock and announce," the United States District Court for the Western District of Texas, Waco, ruled in a criminal case that ATF did announce the identity and purpose of the

Near Waco; issued by the Office of the Assistant Secretary (Enforcement) (February 28, 1994); T026573-T026599 (Memorandum from the Director of ATF to the Assistant Secretary (Enforcement) (February 24, 1994), setting forth additional information about corrective initiatives resulting from Waco experiences; Hearings, July 24, 1995, at p.m. session (Director Magaw's testimony about the reforms that have been instituted since Waco); and Summary of Issues and Corrective Actions Taken by the Bureau of Alcohol, Tobacco and Firearms as a Result of the Waco, Texas, Raid (October 1995) (copy appended).

¹⁰⁰Majority Report at 25.

¹⁰¹Hearings Part 1 at 412 (testimony of Special Agent William Buford), and Treasury Document T010608-T010620.

¹⁰²See Treasury Report B-61, B-62, B-131.

agents entering the compound, that the announcement was understood by Koresh who was standing at the door, and that entry was denied in the strongest terms possible -- gunfire.¹⁰³

VI. MILITARY INVOLVEMENT IN THE GOVERNMENT OPERATIONS AT WACO

A. The Existence of a Drug Nexus

Contrary to the Majority Report, ATF provided ample evidence of a drug nexus to satisfy military personnel that it was appropriate to provide support to ATF.¹⁰⁴ The record of the Hearings establishes that ATF uncovered information which indicated the possible existence of a methamphetamine laboratory (meth lab) at the Davidian compound. In December 1992, a former Branch Davidian reported to ATF that in 1988 there was a meth lab on the compound and that the meth lab might still be located inside the compound. This former member also reported that in 1989 Koresh stated that trafficking drugs was a way of raising money.¹⁰⁵ Subsequently, in 1992 after a National Guard overflight of the Compound, ATF was given an informal interpretation that the "hot spots" detected could be a meth lab.¹⁰⁶

Additionally, a criminal records check indicated that an associate of David Koresh had been arrested and convicted in 1992 on drug charges. This fact is mentioned in the warrant affidavit. Also, in 1992, a California company sent via United Parcel Service chemicals, glassware and instruments to the Compound.¹⁰⁷ These facts suggested a current meth lab operation and this information was provided to the military entities. Additional corroboration was the fact that in 1993 one of ATF's undercover agents had a conversation with Koresh who stated that the Compound would be a great place for a meth lab because it was in the open

¹⁰³See Court Order dated October 4, 1993, United States v. Brad Eugene Branch, et al. See also Hearings Part 1 at 776, 785-786 (testimony of Special Agents Roland Ballesteros and William Buford).

¹⁰⁴Treasury Report at 211-214.

¹⁰⁵Treasury Documents T008913-T008914 and T012245.

¹⁰⁶Treasury Document T000108.

¹⁰⁷Treasury Documents T002901-T002902.

and the wind blows all the time so no one could smell a lab.¹⁰⁸ There is no evidence that ATF misled the military entities.

Significantly, DEA subsequently obtained information corroborating the meth lab suspicions. A DEA report indicates that a confidential informant reported that two to three weeks prior to ATF's attempted execution of the warrants the informant was at the compound and saw a person named Vernon purchase 100 lbs. of a chemical which can be processed into a chemical which is a major component of methamphetamine. The informant stated he entered the Compound and the buried bus and saw a flask on a table with a chemical reaction occurring.¹⁰⁹

The military authorities determined that a sufficient drug nexus existed to justify military support on a non-reimbursable basis. General Pickler testified that:

[I]n talking with the people I talked to, and refreshing my own memory and having talked to them both currently active and retired, none of us had any reason to doubt the existence of a methamphetamine lab based on what we had been told and what we had seen at the meetings we attended.¹¹⁰

This testimony is supported by the internal review conducted by the Department of Defense. A report to the Commander, Forces Command, Joint Task Force Six, dated August 18, 1993, demonstrates conclusively that ATF did not mislead the military about the nature of the evidence concerning a drug nexus.¹¹¹ General Pickler also testified that ATF's request was reviewed and approved by Operation Alliance, an interagency body composed of all of the federal, local and state law enforcement agencies involved in the counter-drug war.¹¹² Further, Wade Ishimoto, a military expert at the

¹⁰⁸Treasury Document T001566.

¹⁰⁹Treasury Document T0018010.

¹¹⁰Hearings Part 1 at 369 (testimony of Maj. General John M. Pickler, former Commander, Joint Task Force Six).

¹¹¹Defense Department Document 549-552.

¹¹²Hearings Part 1 at 380 (testimony of Maj. General John M. Pickler).

Sandia National Laboratories who reviewed the Treasury Department Report and supporting documentation, testified he was "convinced" that ATF had not misled the military with regard to the nature of the evidence concerning a drug nexus.¹¹³

The Majority Report states that the drug nexus claim is refuted by the fact ATF failed to address the issue of an active methamphetamine laboratory in its raid planning.¹¹⁴ Again this statement is not supported by the record of the Hearings. Incident Commander Chojnacki and Agent Buford both testified that in planning for the raid they took into consideration the possibility that there would be a drug lab and had DEA agents standing by at the command post to come in if the lab was found.¹¹⁵ The plan was that after the building had been secured, explosives experts would go in to examine the building. After their search, dogs would be sent in. If a laboratory was encountered, the laboratory technicians from DEA would be called in.¹¹⁶ In fact, on the day of the raid four DEA employees, together with a drug lab vehicle, were at ATF's command post in Waco. Furthermore, the Texas Department of Public Safety had an employee on standby to handle the methamphetamine lab if it was found.¹¹⁷

The Majority Report states that the second piece of evidence refuting the drug nexus claim is that ATF agents involved in the raid were not trained or certified in methamphetamine operations.¹¹⁸ This point is meritless. Significantly, Special Agent Buford testified that ATF was

taking all precautions. Our agents have had the training. If they saw something that looked like

¹¹³Id. at 342 (testimony of Wade Ishimoto).

¹¹⁴Majority Report at 48.

¹¹⁵Hearings Part 1 at 446-447, 453-454 (testimony of Special Agents Phillip Chojnacki, William Buford, and Chuck Sarabny).

¹¹⁶Treasury Documents T005809-T005810.

¹¹⁷Treasury Documents T000108, T000386, and T002190-T002197.

¹¹⁸Majority Report at 48.

a meth lab, they know to isolate the area and secure it until the proper people can get there.¹¹⁹

Thus, contrary to the Majority's finding, ATF agents were instructed that DEA personnel with the proper training and certification had the responsibility of dismantling any clandestine lab.

Finally, the majority report twice makes the point that ATF's search warrant and supporting affidavit did not contain any information about suspected illegal drug activity.¹²⁰ The Assistant United States Attorney involved in the drafting of the affidavit for the warrant stated to investigators during the Treasury Department Review that while the meth lab material was not mentioned in the affidavit, it was common knowledge in his office that a lot of people in the compound were associated with drugs and that he knew about the possible existence of the meth lab.¹²¹ Not including the meth lab information in the affidavit and warrant is consistent with the fact that the primary focus of the investigation and warrants was firearms and explosives violations. From the beginning, this was a firearms and explosives case with a possible meth lab. ATF never represented it as anything other than that.

B. The Military Involvement was Appropriate

The Majority Report states that, "The Treasury Department Report dedicated only three and one-half of 220 pages of explaining the military involvement. . ."¹²² The primary focus of the Department of the Treasury's Waco Administrative Review was the actions of the Treasury Department's personnel involved in the investigation of David Koresh. Nevertheless, the National Guard and active duty military personnel, who assisted in this operation, were painstakingly personally interviewed by agents of the Waco Administrative Review. The amount of attention given to their role was appropriate.

¹¹⁹Hearings Part 1 at 454 (testimony of Special Agent William Buford).

¹²⁰Majority Report at 44 n.294 & 46 n.326.

¹²¹Treasury Document T000967.

¹²²Majority Report at 30.

Also, the Majority Report represents that by December 1992 (three months before the raid), ATF agents were requesting Close Quarters Combat/Close Quarters Battle (CQB) training by U.S. Army Special Forces soldiers for ATF agents.¹²³ The Treasury Review interviewed all of the ATF personnel, all of the Operational Alliance personnel, all of the Joint Task Force 6 personnel and all of the Special Forces personnel who had any connection with the preparation or execution of this operation. The Treasury Review also reviewed and catalogued all of the documentation that was available from these sources. There was no indication whatsoever that ATF requested CQB or similar training from Special Forces personnel. Apparently the Majority Report reached the same conclusion, stating that "no written documentation" is available on this extraordinary request by ATF for CQB training.¹²⁴ Additionally, the Majority Report states, "However, there again is no written documentation of ATF's request for this highly controversial training."¹²⁵ The Treasury Department is unaware of any witness that has asserted that ATF requested this training. Because there is absolutely no documentation to substantiate this allegation, the Majority Report's criticism is unwarranted.

Additionally, the Majority Report states, that, "After the requests for additional evidence of methamphetamine production, the military assistance was drastically restricted."¹²⁶ There does not appear to be any factual basis for the above sentence. The Treasury Review determined that Major Lindley had a concern for the scope of the extent to which the Special Forces personnel could assist in law enforcement without violating the Posse Comitatus Act. However, this was not predicated by an involvement with a suspected drug lab. Interviews with the ATF supervisors and Special Forces personnel indicated that ATF simply identified areas in which they hoped that active duty or National Guard personnel could assist them. When the Special Forces unit commander, Major Petree, consulted his legal advisor, Major Lindley, on this request, they

¹²³Majority Report at 35.

¹²⁴*Id.* at 36.

¹²⁵*Id.* at 38.

¹²⁶*Id.* at 40.

conformed their assistance to that which would clearly avoid any Posse Comitatus restrictions.¹²⁷

Based upon the foregoing and the hearing record in its entirety, it must be concluded that ATF properly received military support and reimbursement is unnecessary. There is no basis for the Majority Report's recommendation that the General Accounting Office conduct an audit of the military support provided to ATF or of the activities of Operation Alliance.

VII. Other Issues

A. Personnel Actions

The Majority Report also finds that Treasury and ATF did not sufficiently explain why the raid commanders, Agents Chojnacki and Sarabyn, were reinstated after being fired because of their actions at the time of the raid.¹²⁸ On the contrary, Under Secretary Noble and Director Magaw were very forthcoming about the reasons for this decision.

After the Treasury Department Report was issued, Secretary Bentsen announced that ATF Director Stephen Higgins had decided to immediately retire and that the Secretary had placed five ATF officials on administrative leave, including: Daniel Hartnett, the Associate Director for Law Enforcement; Daniel Conroy, the Deputy Associate Director for Law Enforcement; David Troy, the Chief of the Intelligence Division; Incident Commander Phillip Chojnacki; and Deputy Incident Commander Charles Sarabyn. Mr. Hartnett and Mr. Conroy subsequently retired rather than challenge the report's findings. Mr. Troy accepted a demotion. In addition, the two raid commanders, Mr. Sarabyn and Mr. Chojnacki, were fired because they refused to accept giving up their guns, badges, and ability to enforce Federal criminal law. Eventually they appealed their firing to the Merit Systems Protection Board (MSPB) and ultimately agreed to give up their guns, badges, and rank.¹²⁹

¹²⁷See Treasury Department Report at 211-216.

¹²⁸Majority Report at 28.

¹²⁹Hearings Part 1 at 822 (testimony of Under Secretary Ronald K. Noble); 522 (testimony of Secretary Lloyd M. Bentsen).

Director Magaw decided, based upon sound reasoning, to settle the raid commanders' MSPB appeals of their removals. ATF's primary goal in the disciplinary process was to ensure that these two employees would be removed from positions where they would be supervising special agents or involved in the exercise of law enforcement authorities. By settling these appeals, ATF avoided the risk that the MSPB would have mitigated the removal to a lesser penalty, which could have required the agency to return the individuals to positions with law enforcement authority. Mitigation was a real risk, given the nature of the errors in judgment, the institutional failures identified in the Treasury Report, and Mr. Chojnacki's and Mr. Sarabyn's many years of exemplary service to the agency without any prior disciplinary actions.¹³⁰

The negotiated settlements provided for the removal of both employees from their positions as Federal special agents, demotions in grade, and reassignment to non-agent positions. They are no longer in law enforcement positions; they no longer have arrest authority or the authority to carry a firearm. They do not supervise agents in the exercise of enforcement authorities. They provide valuable service to the agency which draws upon their many years of law enforcement experience.

B. Contact with Congress

The Majority Report inaccurately states that the Secretary of the Treasury tried to persuade Congressman Brewster not to ask questions that might embarrass the Administration. Rather, as Secretary Rubin explained, Congressman Brewster "simply misunderstood the call. I did ask him to seek the truth, like the rest of us, and not to join any effort to undermine law enforcement."¹³¹

¹³⁰Id. at 873-874 (statement of Director John W. Magaw).

¹³¹Linnet Myers, *Waco Witness: Agents Didn't Heed Warning*, Chicago Tribune, July 22, 1995 at 8.

Response to Majority Report Recommendations

Recommendation 1. Congress should conduct further oversight of the Bureau of Alcohol, Tobacco, and Firearms, the oversight of the agency provided by the Treasury Department, and whether jurisdiction over the agency should be transferred to the Department of Justice.

Response: Contrary to the suggestions of the Majority, Congress and Treasury already exercise comprehensive oversight of ATF. The events at Waco have already been the subject of exhaustive Congressional inquiry, including 8 days of hearings in the House and Senate in 1993, and 10 days of hearings in the House and Senate in 1995. In addition, Treasury has substantially increased its oversight of all its law enforcement bureaus following Waco.

Transferring ATF to the Department of Justice does not make sense. Treasury has a major role in Federal law enforcement, particularly the enforcement of revenue laws. Indeed, approximately one third of all Federal law enforcement agents work for Treasury. ATF's mission of revenue collections, regulation, and enforcement related to the alcohol tobacco, firearms, and explosives industries and products, all of which are the subject of various Federal excise taxes, fits neatly within Treasury's traditional responsibilities. Indeed, ATF collects over \$13 billion annually in revenue.

The merger of ATF with any other agency or department would only create a larger bureaucracy. Such a bureaucracy would not necessarily provide cost savings, nor would it inspire greater public confidence in Federal law enforcement. Specialization can increase productivity, ensuring that fewer agents work more cases. A smaller agency also allows for more personalized and responsive service to the regulated industries.

Proposals to move ATF to the Department of Justice for consolidation purposes have been rejected numerous times in the past. The Vice President's National Performance Review considered and rejected the proposal. The Carter Administration first proposed to transfer jurisdiction over firearms laws to the Justice Department. That proposal was rejected in large part because of concerns about placing total enforcement of the firearms laws in one agency. Enforcement of these laws is very sensitive, and a separation of investigative and prosecutorial functions in

separate agencies maintains important checks and balances in the system.

Historically, Treasury agencies, such as ATF, have combined regulatory and criminal enforcement functions to effectively fulfill their missions. It is this combination that allows Treasury agencies to develop sensitivities relating to the unpopular laws that regulate legitimate industries.

Recommendation 2. If the false statement in the affidavits filed in support of the search and arrest warrants were made with the knowledge of their falsity, criminal charges should be brought against the persons making the statements.

Response: Despite the repeated and intensive scrutiny of the search warrant affidavit, including that by the Subcommittees, no credible evidence has ever been produced to support a finding that the ATF Case Agent or any other ATF Special Agents knowingly made false statements in the affidavit. The Majority's recommendation of criminal prosecution is irresponsible.

Recommendation 3. Federal law enforcement agencies should verify the credibility and the timeliness of the information on which it relies in obtaining warrants to arrest or search the property of an American citizen.

Response: We agree, but the record here establishes that ATF did verify the information it relied upon. The search warrant for the Branch Davidian Compound was issued based upon a determination by the Federal magistrate judge and the Assistant United States Attorney that the information contained in the affidavit was credible and sufficiently current. As the Majority Report concedes, the affidavit alleged sufficient evidence of violations of the law to support a finding of probable cause for a search of the Compound.¹³² The affidavit supporting the warrant for the search of the compound is replete with evidence supporting a finding of probable cause that the individuals inside the Compound were engaged in manufacturing illegal machine guns and explosive devices. At the criminal trial of the Branch Davidians, none of the defense lawyers challenged the validity of the ATF warrant.¹³³ The Subcommittees also ignore the fact that the extensive evidence recovered from

¹³²Majority Report at 12, 14.

¹³³Hearings Part 1 at 172 (statement of Congressman Charles E. Schumer).

the Compound, and the criminal convictions of eight defendants, verified that the allegations in the search warrant affidavit were true.

Some of the evidence contained in the affidavit was provided by former Branch Davidians. Although these individuals may have disliked Koresh, as former Branch Davidians they were in a position to provide information about events at the Compound. Furthermore, the information they provided was consistent with other evidence obtained by the ATF case agent. Under well established case law, the information they provided could be considered by the magistrate. Unlike drugs or other perishable commodities, information about the presence of firearms involved in an activity of a continuous nature does not grow stale for purposes of showing probable cause for a search warrant.

Recommendation 4. The ATF should revise its National Response Plan to ensure that its best qualified agents are placed in command and control positions in all operations.

Response: Once again, the Majority is recommending actions that have already been taken. ATF has thoroughly revised the way it handles major investigations and operations to ensure that the best qualified agents are placed in command and control positions in all operations.

Recommendation 5. Senior officials at ATF headquarters should assert greater command and control over significant operations.

Response. Here, too, ATF already has made the changes recommended by the Majority. After the Treasury Review, ATF instituted substantial changes to ensure that both ATF senior officials as well as Department officials are directly involved in the planning and oversight of significant operations.

Recommendation 6. The ATF should be constrained from independently investigating drug-related crimes.

Response. This recommendation is unrealistic. ATF investigates violations of firearms laws. Firearms violations are often associated with violations of the drug laws. The Subcommittees produced no evidence that ATF has ever exceeded its jurisdiction by investigating drug law violations that were unconnected to violations of the laws that ATF enforces. Nevertheless, ATF coordinates closely with all other law enforcement organizations including the DEA, and they did so at Waco.

[7 & 8 are unrelated to Treasury.]

Recommendation 9. The General Accounting Office should audit the military assistance provided to the ATF and to the FBI in connection with their law enforcement activities toward the Branch Davidians.

Response: There is no need for an audit. The military support provided to ATF with respect to the Waco operations, particularly the medical training, proved invaluable and resulted in saving the lives of ATF agents. Reimbursement is unnecessary in this case because of the legitimate basis upon which military support was provided.

Recommendation 10. The General Accounting Office should investigate the activities of Operation Alliance in light of the Waco incident.

Response: This matter has already been the subject of such exhaustive review that a further investigation by GAO would be wasteful. Operation Alliance officials were advised as to what information ATF had on this matter and were not misled as to its nature. The officials were satisfied that the information they received created a sufficient drug nexus to forward a request to military authorities for support. Operation Alliance operated properly.

Recommendation 11. Federal law enforcement agencies should redesign their negotiation policies and training to avoid the influence of physical and emotional fatigue on the course of future negotiations.

Response: As a result of Waco, ATF has developed a hostage crisis negotiation school. The training consists of an 80 hour course on the art and science of hostage/crisis negotiations. The course has been given to a substantial number of ATF agents so that a sufficient number of individuals have been qualified for hostage crisis negotiations. It is worth noting that it was ATF who negotiated the cease fire at Waco and who negotiated the recovery of an ATF agent who had been shot six times and who lay wounded inside the compound. This same ATF agent negotiated the departure of several Branch Davidians from the compound immediately after the failed raid.

Recommendation 12. Federal law enforcement agencies should take steps to foster greater understanding of the target under investigation.

Response. ATF now seeks the outside expertise of trained professionals and organizations, including other Government agencies, to advise and assist ATF regarding tactical considerations where investigations involve criminal investigations or groups that fall outside the "normal" behavioral patterns.

Response to Majority Waco ReportI. Introduction ^{file of} ~~the~~ Department of Justice ~~PT~~
I introduction

This memorandum addresses the major subject areas of the Majority Report (the "Report") relevant to the Department of Justice and the FBI. This memorandum also briefly addresses the Majority Report's recommendations concerning the future status of the Bureau of Alcohol, Tobacco and Firearms (ATF), and the Report's recommendations regarding the extension of the Posse Comitatus Act to non-federalized National Guard elements.

The Report is a mixed bag. On the one hand, the text of the Report agrees completely with the Justice Department's position on several key issues -- that the Branch Davidians started the fire on April 19, 1993, not the FBI; that the Davidians had plenty of time to leave their Compound safely both before and after the fire started; and that the amount of tear gas the FBI used was far below the quantities that would have been required to cause injury or death to anyone inside the Branch Davidian Compound. Moreover, the Report correctly concludes that "[b]ut for the criminal conduct and aberrational behavior of David Koresh and the other Branch Davidians, the tragedies that occurred in Waco would not have occurred. The ultimate responsibility for the deaths of the Davidians and the four federal law enforcement agents lies with Koresh."

On the other hand, the Report suffers from five primary deficiencies. First, the "findings" it reaches generally are not supported by the record, nor are they even supported by the text of the Report itself. For example, while the text of the Report clearly states the Branch Davidians started the fire, the related "finding" inexplicably qualifies the text by stating, "[w]hile the evidence is not dispositive, the evidence . . . suggests that some of the Davidians set the fires"

Second, the Report is internally inconsistent and self-contradictory. For example, the Report criticizes the FBI for being "unwilling to engage in a novel approach" to negotiating with the Davidians, but then devotes several pages to discussing the FBI's "controversial" and "rare" decision to permit the lawyers for Koresh and Steve Schneider (Koresh's lieutenant) to enter the Compound during the standoff as a negotiating device.

Third, the Report omits key evidence from the hearings and the record. For example, the Report several times accuses the FBI of having "ignored" offers of outside expert assistance during the standoff. In fact, as lead FBI negotiator Byron Sage testified at the hearings, the FBI sought and received assistance from several outside experts.

Fourth, the Report continues to reflect an unfortunate eagerness to believe Koresh (and his lawyers), rather than the

federal law enforcement agents who confronted Koresh for 51 days. For example, the Report concludes, with no credible basis in the record, and with no mention of the contrary expert opinions of a Syracuse University psycholinguist and a psychiatrist, that Koresh planned to surrender after completing his "manuscript" on the Seven Seals. That the Report insists on crediting the meaningless promises of Koresh demonstrates nothing short of a continuing hostility to law enforcement.

Finally, the Report unfairly and one-sidedly recounts several of the "process" issues surrounding the hearings, including the document production and the dispute regarding the testing of firearms recovered from the Davidian Compound.

II. "Process" Issues

Before the hearings commenced, the Subcommittees served numerous document requests on the Justice Department, and engaged in other pre-hearing investigation. The Report accuses the Justice Department of dragging its feet on the document production during the pre-hearing phase. The Report also attacks the Justice Department for not permitting the Majority's experts to conduct tests on the firearms recovered from the Branch Davidian Compound. Both criticisms are unfounded.

First, the document production was conducted in good faith. The original document requests were extremely burdensome, and required the production of huge numbers of documents in a very short amount of time. As is common in such instances in any Administration, the Justice Department met with staffers from both Subcommittees to negotiate agreements concerning the pace and scope of the production. The purpose for seeking such agreements was to ensure the Subcommittees would receive the documents it needed most as early as possible. The Department of Justice complied with those agreements. Indeed, at the end of the hearings Chairman McCollum specifically commended the Justice Department for the manner in which it complied with the Subcommittees' document production requests.

Second, the Report criticizes the Justice Department for its refusal to allow Failure Analysis Associates, Inc. to test the firearms recovered from the Branch Davidian Compound. However, the Report fails to disclose the reasons behind the Department's refusal, and fails to disclose that the proposed testing would have yielded information of little or no evidentiary value. Shortly before the hearings began, the Justice Department was asked to arrange an inspection of the weapons and other physical evidence recovered from the Branch Davidian Compound. This inspection was immediately arranged at the Texas Rangers' Headquarters in Austin, Texas for both Majority and minority staff. In addition, at the request of the

Majority staff, the Department agreed to allow the "Subcommittees' firearms expert" to attend the inspection of the firearms.

When they arrived at Texas Rangers Headquarters, the Majority staff revealed for the first time that their "firearms expert" was employed by a private company known as "Failure Analysis Associates, Inc. ("FAA"), and that the "expert" wanted to x-ray each weapon. A Justice Department official who was present refused to allow such testing by a private party, unless it could be confirmed that FAA had some measure of expertise in the testing of firearms and that it had, in fact, been retained by the Subcommittees. The Majority staff admitted that FAA had no experience whatsoever in firearms testing, and that it had been retained and was being paid by a private party whose identity could not be revealed. Under these circumstances, the Justice Department official refused to allow the FAA employee to test the firearms.

According to the Majority staff, the purpose of the testing was to determine whether any of the weapons recovered were fully automatic. In an effort to provide the Subcommittees with conclusive evidence on this issue, the Justice Department produced the FBI firearms expert who had testified under oath at the federal criminal trial of the surviving Branch Davidians. This FBI official has been qualified as an expert in firearms in

literally hundreds of federal criminal trials. He testified at the Waco trial, and informed the Subcommittees there was absolutely no doubt that a significant number of the recovered weapons were fully automatic machine guns.

Additionally, the Justice Department, in a letter to Chairman Zeff dated July 11, 1995, agreed to conduct the same x-ray testing of the firearms as proposed by FAA, if the Subcommittees so requested. However, in the same letter the Department advised Chairman Zeff that the testing would be extremely expensive, cumbersome, difficult, and of little or no evidentiary value either to the Subcommittees or the public. No response to this letter was ever received, nor was any additional testing (x-ray or otherwise) ever requested.

III. Negotiations to End the Standoff

The 51-day standoff at the Branch Davidian Compound was unprecedented in the annals of American law enforcement. Never before had so many heavily armed individuals barricaded themselves in a fortified Compound, in a direct challenge to lawful federal warrants, and to duly authorized law enforcement officials. It was the FBI's obligation to attempt to resolve the standoff peacefully and to ensure that those responsible for the killings and firearm violations be taken into custody. In the

end, Koresh decided to immolate himself and all those inside rather than exit the Compound to face charges.

Neither the negotiators nor tactical personnel have suggested that the April 19 fire could have been avoided had their approach been followed to the exclusion of others. In the final analysis, it was Koresh's decision to destroy himself and his followers, and not a lack of coordination in law enforcement efforts, which caused the fiery end to the standoff.

Perhaps the most significant observation made by the experts regarding the Waco standoff is that after all was said and done, after all the analysis, investigations and hearings, nothing would have changed the outcome because the people who remained inside had no intention of leaving peacefully.

In retrospect, however, there could have been better communication and coordination between the officials responsible for tactical decisions and the negotiators at Waco. In an effort to improve coordination of and communication between negotiators and tactical command in the future, the Department of Justice has created the Critical Incident Response Group. As a part of this team, negotiators and tactical personnel train together to facilitate improved coordination of operations. For a more detailed discussion see "Part VIII -- FBI Changes After Waco."

The Majority's two main criticisms of the FBI's negotiation approach at Waco are that the FBI "ignored" outside advice, and that the FBI did not sufficiently appreciate the Davidians' religious mindset. Each of these criticisms is addressed in turn.

Outside Participants in the Negotiation Process

The Report concludes that the FBI did not allow others to participate in the negotiations. However, the text of the Report conflicts with that assertion by listing numerous outside participants whom the FBI brought into the negotiations, including Sheriff Jack Harwell and the attorneys for the Davidians. Indeed, the FBI's decision to permit the lawyers to enter the Compound in the middle of an existing barricade situation was characterized in the Report itself as "rare." This unprecedented decision clearly demonstrates the FBI was willing to accept help from outside parties and to utilize novel negotiating techniques.

The FBI also allowed direct contact between those Davidians who left the Compound and those who remained inside to give those inside confidence they would be treated well upon their departure. In addition, the FBI sent videos inside the Compound of the released children, to demonstrate the FBI's good

faith to those remaining inside the Compound, and to attempt to coax the parents of those children to leave the Compound.

Thus, the Report actually supports the view that the FBI did adopt several innovative negotiation strategies and techniques at Waco, all in an effort to achieve the peaceful surrender of the Davidians.

Understanding Davidian Religious Beliefs

The Report also concludes the FBI failed to do enough to educate itself about the Davidians' religious beliefs, and that it did not take those beliefs seriously. Once again, however, the text of the Report belies its assertions. The Report identifies and discusses several outside religious and behavioral experts who were consulted in an attempt to end the standoff. The FBI contacted numerous religious experts and theologians to provide expertise in interpreting Koresh's biblical references. Assistance was provided by Dr. Philip Arnold, Reunion Institute; Dr. Bill Austin, Chaplain, Baylor University; Jeriel Bingham, Vice President, Davidian Seventh Day Adventist Association; Reverend Trevor Delafield, Seventh Day Adventist Church; Dr. Robert Wallace and Dr. John Fredericks, Lighthouse Mission; Dr. Michael Haynes, Doctorate of Theology and Psychology; and Dr. Glenn Hilburn, Dean, Department of Religion, Baylor University. The Report itself notes the FBI's heavy

reliance on Dr. Hilburn's advice during the standoff. This is hardly consistent with the Report's repeated statements that the FBI "ignored" outside religious advice.

The FBI went to great lengths to understand the religious beliefs of the Branch Davidians. The negotiators engaged in dozens of hours of discussion about religion and the Bible as Koresh and others explained their religious beliefs in great detail. Chief negotiator Byron Sage described how negotiators wore out a number of Bibles during the standoff doing independent research in furtherance of efforts to resolve the situation without further loss of life.

In addition, the FBI honored Koresh's request to broadcast his biblical message on the radio. The FBI also agreed to the Branch Davidians' request during Passover to suspend negotiations until sundown each day.

In response to requests made by Schneider and Koresh, the FBI provided the Davidians with an audiotape made by Dr. Arnold, an expert on the Book of Revelations and the Seven Seals. The FBI also sent a letter into the Compound, drafted by Dr. Austin (Chaplain of Baylor University in Waco) requesting Koresh to end the standoff without violence and to come out and preach his message to the world.

The Report cites the testimony of Georgia Police Captain Frank McClure as evidence that the FBI avoids religious discussion in crisis situations. Captain McClure is a local police officer who does not speak for the FBI, but he is also a nationally recognized crisis negotiations expert. His testimony at the hearings illustrated the difficulty of using religion as a negotiating device. Captain McClure noted that during the Atlanta prison riots, where 1,400 Cuban inmates were holding 121 hostages, no progress was made when religious beliefs were discussed, but "[w]hen we talked about secular issues, we got people out."

The FBI's lead negotiator (Byron Sage), who had spent more time talking to Koresh and Schneider than anyone else during the standoff, testified that, ultimately, the input and advice from the biblical experts proved to be ineffective. FBI behavioral scientists counseled against attempting to challenge Koresh's theology, as this would only result in alienating him. Indeed, on the issue of interpreting the Seven Seals and the Bible, the FBI behavioral scientists opined that such consultations would have been useless because, in Koresh's theology, only he was capable of making such interpretations. FBI behavioral scientist Peter Smerick opined that even if the Pope had come to Waco, Koresh would have said that God told Koresh that only he was able to interpret the scriptures.

Unfortunately, the Report ignores not only the behavioral scientists, but also McClure's advice and takes the position that if the FBI had delved a little deeper into Koresh's mind or had consulted just one more expert, then undoubtedly Koresh and his followers would willingly have come out. Nothing in the record supports that view.

Other Experts

The FBI solicited and received input from various experts in many fields, including psychology, psychiatry, psycholinguistics, religion and theology, cult theory, threat assessment, negotiation techniques, and medicine. The FBI also received many unsolicited offers of assistance, and followed up on those that seemed to promise any reasonable chance of producing helpful information. The FBI maintained a catalog listing dozens of experts who were contacted for assistance.

The FBI did receive numerous unsolicited offers of advice and in most instances, when requested by the offeror, did send an agent to interview the offeror. If the information was determined not reliable or helpful, the FBI would politely decline the unsolicited advice or assistance. The FBI treated unsolicited information it received during the standoff as it would any other information received from the public -- it evaluated the advice for credibility and treated it accordingly.

The FBI considered all the information it received and made the best judgments it could. The FBI utilized information provided by its Behavioral Sciences Unit, and added to those opinions the advice of outside experts. However, it is important to realize that the advice received by the FBI was often conflicting.

The Report is also critical of the removal of ATF agent James Cavanaugh from the scene. While Cavanaugh appeared to establish a good rapport with Koresh, as noted by FBI behavioral scientist Park Dietz, it is important to remember the history of the confrontation. Cavanaugh had been involved in the ATF raid itself, and had worked non-stop for over 24 hours before the FBI relieved him. The FBI's expert, Dr. Park Dietz, believed Koresh was a pro-gun extremist who despised the ATF and would never negotiate in good faith with or surrender to that agency. Thus, the FBI incorporated into its negotiation strategy the theme that it was an entirely separate entity from the ATF.

The FBI negotiators, following the suggestions of behavioral experts, repeatedly stressed to Koresh that if he left the Compound, he would have every opportunity to spread his message to a worldwide audience, that he would be presumed innocent of any wrongdoing with respect to the ATF raid, and that the judicial process would provide him with an opportunity to tell his side of the conflict with the ATF. The fact that the

FBI patiently negotiated for the 51 days speaks volumes on the earnest attempt to apply the experts' advice in talking Koresh and the Davidians out of the Compound. Indeed, over 36 Davidian demands were documented over the course of the negotiations, most of which the FBI granted.

In evaluating the experts' advice, it is important to keep in mind that Koresh's behavior was unpredictable: he launched into sudden and unpredictable fits of rage, seemed to stare into space and experienced hallucinations. Dr. Roger Bell, a psychiatrist, noted that these symptoms would make it difficult to achieve continuity and stability in the negotiation process. In fact, Koresh displayed a variety of personality traits throughout the negotiations, ranging from friendly to angry, cooperative to confrontational, compliant to defiant, upbeat to morose, and pragmatic to delusional.

Although the experts were unable to agree on every aspect of the case, the FBI considered all the information it received and balanced the views of the various experts as to how to further the FBI's goals of achieving a peaceful end to the standoff with no further loss of life. Significantly, all the experts agreed that Koresh would not leave the Compound voluntarily. While the FBI may not have integrated the outside experts into the overall crisis management strategy as effectively as possible, it has since taken steps to ensure more

effective use of such experts. The impact of these changes was demonstrated by the peaceful resolution of the Freeman standoff.

Finally, there is no evidence supporting the Report's assertion that the FBI negotiators were adversely affected by "physical and emotional fatigue." In fact, the record reflects that as the standoff continued, the lengths of the negotiators' shifts were reduced. The negotiators continued their work as enthusiastically and effectively on Day 50 as they had on Day 1. They never gave up hope, they never stopped trying.

IV. The Purported "Surrender Plan"

Relying on the testimony of Richard DeGuerin and Jack Zimmerman, who were Koresh's and Schneider's lawyers, the Report one-sidedly argues that Koresh intended to surrender as of April 14, 1993. In so doing, the Report ignores both the context in which the "offer" was made, as well as the true facts surrounding the "offer." Moreover, the Report unreasonably adopts and advocates the views of Koresh's and Schneider's own advocates, DeGuerin and Zimmerman, while rejecting the evidence it received from far more independent and unbiased sources.

Throughout the standoff, Koresh repeatedly lied to the FBI about whether he would come out. On March 2, 1993, he promised to come out with his followers "immediately" upon the

broadcasting of his 58 minute audio tape over the radio. After the tape was broadcast, Koresh reneged on his promise, saying God had told him to wait. On March 19, Koresh promised to come out "in the next few days." Later that day, Koresh said "it could be as early as tomorrow evening . . . that's a promise, a guarantee." Several days later, Koresh promised the FBI, through his lawyers, that he would come out after Passover. When the FBI asked Koresh when that would be, Koresh told them to "figure it out for yourselves." On April 13, negotiators continued to try to maintain substantive conversations with Koresh, but he continued his oft-repeated position that God said to wait and that he was not coming out until God so instructed him.

On April 14, the FBI allowed Koresh and Schneider to speak with their attorneys. It was through Koresh's attorney that the FBI learned that Koresh had set a new precondition of writing a manuscript explaining the Seven Seals before he would come out of the Compound.

After all these broken promises, Koresh made yet another promise in his April 14 letter -- that he would come out after writing his interpretation of the Seven Seals. There is no basis in the record supporting the Majority's description of the April 14 letter as a "breakthrough." The only witnesses who described the letter in that manner were the lawyers for Koresh and Schneider, who obviously are not objective. But two

independent and objective experts did analyze Koresh's April 14 letter at the FBI's request (demonstrating the FBI did take the April 14 letter seriously). Dr. Murray Miron, a Professor of Psycholinguistics at Syracuse University, wrote in an April 15, 1993 memorandum that Koresh's April 14 "surrender offer" was a "ploy" designed to buy time. "Although Koresh declares that upon completion of the book he will surrender, th(e) reference to divine intervention presided over by an angel, may provide an additional condition allowing him further delay, as he has in the past." Dr. Miron concluded, "In sum, I do not believe there is in these writings any better, or at least certain, hope for an early end to the siege." Likewise, psychiatrist Joseph L. Krofchek reviewed Koresh's April 14 letter and concluded that Koresh had no real intention of surrendering. The Report conveniently ignores this critical information about Koresh's "surrender offer."

Even though Koresh's "surrender offer" had no credibility, the FBI still took it seriously. During the negotiations with Koresh from April 14-18, the FBI repeatedly asked Koresh and Schneider when the Davidians would surrender, but received no definite answer and no commitment to surrender. On April 16, there were eight conversations with four individuals for a total of 3.35 hours. Clearly, throughout the process, FBI officials never operated with "closed minds" but continued to hope for a non-violent end to the standoff and continued to

attempt to negotiate with Koresh in good faith. However, when the experts agreed that Koresh would not leave the Compound voluntarily, the FBI began to see the futility of continued attempts to negotiate a resolution with Koresh and his followers. The FBI asked repeatedly whether Koresh was, in fact writing his interpretation of the Seven Seals. As of April 18, Schneider admitted to the FBI that he had not even seen a draft of the First Seal, and that it might take a year for Koresh to finish.

The Majority Report states that a computer disc containing biblical writing "proves" that Koresh was in fact working on his interpretation of the Seven Seals, meaning that he in fact was going to surrender as "promised" in his April 14 letter. This statement is flawed in two respects. First, there is no evidence establishing when the information on the computer disc was written. That information could have been written weeks, months, or even years earlier. Given that there was no electricity inside the Compound after late March, and that there is no evidence the Davidians had a battery-powered computer, it is not logical to assume that the information contained on the computer disc was written in conjunction with the April 14 "surrender offer."

Second, even if Koresh in fact had been working on a written interpretation of the Seven Seals, that did not mean he intended to surrender. Dr. Miron noted that Koresh probably

would write something, knowing the authorities would read and analyze whatever he wrote, thereby giving Koresh more time to stall. "Significantly," Dr. Miron wrote, "Koresh does not mention any final completion date. He has allowed himself an infinite time for finishing his 'work.'"

The Report also criticizes the FBI for not communicating information about the purported surrender offer up the chain of command. This is contradicted by the documents and testimony in the record. FBI Headquarters received a copy of the April 14 letter on April 14, and immediately sent it to Dr. Miron at Syracuse University and to Dr. Krocchek for analysis. Both Associate Attorney General Hubbell and Attorney General Reno were aware of the April 14 letter, but for the reasons discussed above they believed, correctly, that there was nothing new or significant about the letter.

V. The Attorney General's Decision To End the Standoff

The Report harshly and unfairly criticizes the Attorney General's decision to approve the FBI's tear gas plan. Based on all the information available to her at the time, the Attorney General made a reasoned, principled judgment. The record reflects she considered every alternative very carefully; she asked tough, probing questions of the FBI and other senior Justice Department officials during the meetings at which the

plan was considered; she was not manipulated or misled during the decision-making process; and the reasons upon which she based her decision were entirely sound.

The Committee found the evidence established that the Branch Davidians intentionally started the fire, and that the FBI neither intentionally nor inadvertently contributed to the start of the fire. The actions of the Branch Davidians and not the decisions of the Attorney General led to the deaths. There was no basis for the Committee to conclude the Attorney General was or should have been aware of the likelihood of suicide.

A. Reasons for Approving the CS Gas Plan

The Attorney General has testified twice before Congress regarding the various factors she considered in approving the CS gas plan. Nevertheless, the Report describes the Attorney General's decision as "premature, wrong and highly irresponsible." The Majority bases this conclusion on its own 20-20 hindsight analysis of the factors the Attorney General considered at the time she made her decision. The record, however, demonstrates that each of those factors was valid. The HRT was facing increasing difficulty in maintaining perimeter security at the Compound, allowing individuals to sneak into the Compound; the negotiators and outside experts had concluded that Koresh was not coming out voluntarily; and intelligence sources

revealed that the Davidians had a plentiful food and water supply, and that the sanitary conditions were deteriorating inside the Compound. Furthermore, scientific evidence and expert advice revealed that the use of non-lethal CS gas was the only viable option left for the government.

Futility of Further Negotiations -- Contrary to the Majority's view, the evidence clearly established there was no chance that further negotiations would have succeeded in resolving the standoff peacefully. The FBI had negotiated with Koresh for over seven weeks, to no avail. Throughout the 51 days, the FBI had 117 conversations with David Koresh for a total of approximately 60 hours, and the FBI spoke to approximately 68 individuals inside the Compound for a total of almost 215 hours. Despite these efforts, the FBI was unable to secure the total surrender of the Compound's occupants either as a group or individually. Koresh released the last children in late March, and told the FBI no more children would be released. There simply was no basis to believe further negotiations would accomplish anything.

Hostage Rescue Team Fatigue -- On April 14, the Commander of the Hostage Rescue Team advised the Attorney General that his team had received sufficient breaks during the standoff that they were not too fatigued to perform at top capacity in any tactical operation. He added, however, that if the standoff

continued for an extended length of time, he would propose that the HRT stand down for rest and retraining. The Attorney General was further advised that factors in the deterioration of the HRT effectiveness due to the lengthy deployment included the need for HRT operators, including sniper observers, to watch for long hours through binoculars and rifle scopes in a very tense situation. Also, while the FBI snipers were observing the Branch Davidians, the Davidians likewise observed and followed the movements of the HRT.

Furthermore, the HRT's expertise in dealing with the powerful weapons inside the Compound, driving the armored vehicles, and maintaining the security of the perimeter was essential. Due to the difference in the training received by SWAT teams and the HRT as described more fully in Response 16, these necessary functions could not be fulfilled by SWAT teams.

Vulnerability of the Perimeter -- The FBI and other law enforcement agencies on the scene in Waco could not maintain the security perimeter indefinitely. There was a vast open area surrounding the Compound, and it was impossible to safely keep people from wandering in and out. Moreover, the Branch Davidian Compound itself was a heavily armed camp, with dangerous people inside who had already killed four law enforcement agents. The situation was difficult to control and the area was difficult to defend. In the FBI's view, there were extraordinary public

safety issues. Containment of the Branch Davidians in the building with walls or wire appeared infeasible. Some experts had raised the distinct possibility that Koresh might actually mount an offensive attack against the perimeter security, with Branch Davidians using children as shields. Finally, the FBI was concerned about the possible incursions of fringe groups intent on coming to Koresh's aid.

Deteriorating Sanitary Conditions -- FBI intelligence, including interviews with Davidians who had left the Compound, revealed the Compound had no toilet or plumbing facilities and that the occupants relieved themselves in buckets. Although prior to the standoff the buckets were emptied outside the Compound, during the standoff the human waste was being deposited in an underground area near the tunnels. This was the same area where the bodies of Davidians killed in the initial raid were buried.

Possibility of Child Abuse -- The Majority concedes that Koresh had physically and sexually abused some of the children. The Majority also acknowledges the March 26, 1993 opinion of Dr. Bruce Perry that Koresh had physically abused some of the children who had been released from the Compound, as well as the April 17, 1993 opinion of Dr. Park Dietz that Koresh would continue to make "sexual use of any minor children who remain inside." Nonetheless, the Majority states that because there was

no evidence of "immediate life-threatening harm" to the children, the Attorney General erred in approving a plan that exposed the children to greater danger. The Majority's reasoning is flawed.

The Attorney General appropriately considered the welfare of the children as one of the factors influencing her decision. The children were in an intolerable situation. They were trapped inside. Koresh would not let them leave. They were forced to live in an environment in which the adults were heavily armed, and had already engaged in one serious gunfight with federal agents. Koresh had beaten them and had sexually abused them, as the devastating testimony of Kiri Jewell demonstrated. To suggest, as the Majority does, that the Attorney General wrongly considered the welfare of the children in reaching her decision is indefensible.

Finally, there is no evidence the CS gas plan or the gas itself presented any particular risk to the children. The plan was the only possible way to save the children. All the scientific evidence (and the Majority's own calculations) indicate the quantities of CS used at Waco were harmless. The children who perished were the victims of Koresh, not the tear gas.

Possibility of Breakout Using Children as Shields -- As discussed above, the FBI was concerned about the possibility that

the Davidians might attempt to leave the Compound by attacking the agents and using the children as human shields, either during the deployment of tear gas or at any time during the standoff if the standoff were to continue. The Majority, again with the benefit of 20-20 hindsight, derides this concern as "unfounded." During the standoff, the FBI had to be prepared for anything. The Davidians were capable of anything, as they had demonstrated when they opened fire on the ATF agents on February 28, 1993.

B. Feasibility of the CS Gas Plan

The Majority criticizes the FBI's operational plan on two primary grounds: the plan did not consider the way a "reasonable Branch Davidian" would react; and the FBI should have known the contingency option (allowing the FBI to escalate the rate of gassing if the Davidians fired at them) was extremely likely to occur. Neither criticism has any merit.

First, the Majority states the FBI should have appreciated how the Davidians would feel about tear gas being deployed against them. According to the Majority, because the Davidians viewed their Compound as "sacred ground," the Davidians were merely defending themselves when they opened fire on the ATF on February 28, and when they opened fire on the FBI on April 19. The Majority then argues that "most people" would have viewed the FBI's tear gas plan as "an assault."

This line of reasoning betrays the Majority's bias against law enforcement. The true facts are as follows: the FBI first telephoned the Compound to say they were going to deploy tear gas. The Davidians responded by throwing their phone out the window and shooting at the FBI. Then, before any gas was deployed, the FBI began broadcasting an announcement to those inside indicating that tear gas was being deployed, that it was not an assault, and that those inside should come out. The FBI repeated that same announcement over and over again for the next six hours, but no one left until the fire started.

The strategy in inserting CS gas was to restrict the options of those inside the Compound and reduce their level of comfort. According to scientific studies reviewed by the FBI and Attorney General, exposure to CS gas would cause burning in the eyes, nose, mouth, throat, and skin; excessive secretion of tears; excessive mucous secretion from the nose; uncontrollable winking caused by involuntary contraction of eyelid muscles, and coughing and sneezing. More importantly, the studies showed full recovery, and no permanent effects, after removal from the affected area. These findings also applied to infants, pregnant women, and the elderly.

Thus, the FBI's plan was to make the Davidians' environment sufficiently unpleasant so that their only choices would be to come out or resume negotiating in good faith. There

was no evidence to indicate that the Davidians would respond otherwise to the insertion of CS gas.

Despite being advised by telephone and loudspeaker that the FBI was "placing tear gas in the building . . . this is not an assault . . . we are not entering the building . . . do not fire your weapons," the Davidians opened fire on the FBI vehicles inserting the gas. Although the Attorney General had authorized the FBI to utilize deadly force if the Davidians fired their weapons, the FBI showed remarkable restraint and did not fire a single round throughout the 51-day standoff.

Finally, although the behavioral science experts disagreed on whether suicide was a likely outcome of the standoff, the FBI negotiators directly confronted Koresh as to whether the Davidians contemplated a mass suicide. In addition to Koresh's emphatic denials, several Davidians who left the Compound told the FBI that there was no plan for mass suicide. Several relatives of Davidians also reported that, based on their knowledge of the cult, mass suicide would be inconsistent with the Davidians' religious beliefs.

Second, the Majority argues that since the FBI and the Attorney General expected the Davidians would shoot at the FBI, the contingency plan (allowing the FBI to escalate the rate of gassing) would take effect, thereby increasing the danger to

those inside. However, the Majority can cite no evidence demonstrating that the escalated gassing increased the danger to anyone inside. The Majority's own calculations establish that, even at the escalated rate, the amount of CS used was far below the concentrations that would have been required to present any risk of injury to anyone inside the Compound. The only thing that changed under the contingency plan was the pace of gas delivery, and this made no difference to the final outcome.

Finally, before approving the CS plan, the Attorney General received extensive briefings from military representatives and from Dr. Harry Salem, an expert on CS gas. Based on all the information made available to her, the Attorney General believed the gas was non-lethal and would not cause permanent harm to children, pregnant women and others. Further, the FBI and Attorney General agreed on the following with respect to insertion of the CS gas into the Compound:

a. If, during the insertion of the CS gas, the Davidians told the FBI to back off or they would harm the children, then the FBI should back off and continue to negotiate.

b. If a Davidian threatened a child, the FBI snipers were to shoot the threatening subject only if they had a clear shot; otherwise, the FBI was to back off and continue to negotiate.

c. The FBI would interview all those who left the Compound following the insertion of the CS gas regarding the condition and location of the children and other subjects still inside.

d. The mere presence of a child in plain view in a door or other opening would not require the FBI to cease the gas insertions. Instead, the gas should be injected at an alternate point, away from the child.

e. If mass suicides were indicated, then the FBI was to proceed with the emergency rescue plan.

This level of preparation and concern during the pre-approval process belies the Majority's finding that the plan was "irresponsible" or "reckless." No one has been able to point to any specific, articulable error the Attorney General or anyone else made during the pre-approval process. The Attorney General and her staff spent several days questioning every possible aspect of the FBI's plan, and searching for any possible alternative. The tragic end of the situation, caused completely by Koresh and his followers, does not mean the decision or the decision-making process was flawed. The Majority's desire to find a scapegoat does nothing to assist in the important and meaningful task of formulating policy for handling similar situations in the future.

VI. CS Gas

CS is a particulate (not a gas) which settles on the ground after it has been deployed. CS causes a variety of debilitating effects on exposed individuals, including extensive tearing and blinking of the eyes, coughing and sneezing, shortness of breath, a burning and pricking sensation on the skin, salivation and a runny nose. It also produces pain and tightness in the chest and feelings of suffocation without causing any physical conditions underlying those sensations.

The Report makes clear that the amount of CS used at Waco was far below the amounts that would have been required to cause any injury to any of the Branch Davidians. Even the Majority's "worst case" calculations (which assume that all the CS was simultaneously deployed into an enclosed, unventilated area) still produce concentration levels far below anything approaching harmful.

However, the Report, with absolutely no supporting evidence, speculates that some of the asphyxiation deaths inside the bunker may have been "proximately caused" by CS gas. There is nothing in any of the autopsy reports supporting that speculation. Moreover, there is no evidence in the record that any CS was delivered directly into the bunker. There is no evidence the FBI inserted CS into the bunker itself, or that the

CS inserted through the Compound walls otherwise reached the bunker. In fact, an independent fire investigation team reported that many of the rounds of CS gas did not penetrate the exterior of the building, and those that did enter were probably incapable of penetrating beyond the first room of entry. Thus, the most likely causes of the asphyxiation deaths were either smoke inhalation, oxygen deprivation (due to the intense heat of the fire), or suffocation (from mothers wrapping children in blankets in an attempt to protect them from the fire). Moreover, because there is no evidence of CS insertions into the bunker, the Majority's statements about possible dizziness or disorientation caused by hypothetical and artificially inflated methylene chloride levels should be dismissed as wild speculation.

The Attorney General asked many questions about CS before approving its use. In a briefing at FBI headquarters, Dr. Harry Salem was brought in to explain the results of several studies on the effects of CS gas on children, pregnant women and the elderly. The Attorney General, who was present at the briefing, described Dr. Salem as "careful and scientific." She recalled that although there had been no laboratory tests performed on children relative to the effects of the gas, anecdotal evidence was convincing that there would be no permanent injury.

The military personnel experienced in the effects of CS gas stated that the gas had been used at least annually on soldiers in the U.S. Army during training exercises. They also discussed properties of the gas including any pyrotechnic qualities. After discussing the nature of the gas and varied tolerance levels to be expected from the occupants, the meeting participants were prepared to wait two to three days for everyone to emerge. The action was viewed as a gradual, step-by-step process. Both the FBI Director and the Attorney General were very specific in determining the gas was non-lethal and would not cause permanent harm to children, pregnant women and others.

At the time the FBI made its recommendation to the Attorney General to deploy CS at Waco, information obtained from the extensive studies of CS and opinions of the world's leading experts on the subject did not suggest an unreasonable risk of harm to any individual inside the Compound. The low quantity of CS used and the adequate ventilation of the building minimized possible risk. The testimony at the Committee's hearings of the world's leading experts on the effects of CS gas confirmed this conclusion.

The testimony at the hearings did not support the Committee's findings concerning the use of CS by the FBI at Waco. There is no scientific evidence to show that the use of CS gas in enclosed spaces increased the chance of incapacitation of exposed

individuals. In fact, exposure levels which incapacitate have only been reached in laboratory conditions. According to the experts, the only way in which CS can cause suffocation is where such a large volume is inserted into a tightly enclosed area that it displaces all of the available oxygen.

In addition, there is no scientific evidence to suggest that CS has a different effect on young children, pregnant women, the elderly and those with respiratory conditions. A major British study of CS did not indicate that CS posed a higher risk to such individuals. There is also anecdotal evidence to show that CS does not pose an unreasonable risk of harm to such individuals.

However, the FBI does not oppose additional studies of CS. In fact, since 1986, the FBI has been involved in the DOJ's research for alternatives to the use of deadly force by police. This technology research has evolved into the current Less-Than-Lethal Weapons Research (LTLWR) Program. The SWAT Training Unit, now a component of CIRG, has participated in a number of research efforts during the past two years and has reestablished a working LTLWR Committee to review various avenues of research and development of LTLWR technology. The Committee attempts to keep abreast of both classified and unclassified research and development in this area through liaison with the military, national laboratories, federal law enforcement, private industry,

and other involved entities. Research encompasses the full spectrum of relevant technologies including mechanical/impact, electrical, chemical and biomedical.

The FBI is opposed to a ban under all circumstances of CS agent when children or other vulnerable individuals are present because under certain extraordinary circumstances the use of less than lethal measures may result in saving lives. The Director has some time ago approved a draft policy which requires a continuous monitoring of the latest scientific assessments of the effects of CS on children, elderly or disabled persons. Among other provisions, this policy will require a balancing of these risks with the tactical equities of the critical incident prior to deployment of CS agent. This policy, as well as a number of other procedures governing the use of chemical agents to resolve hostage/barricade scenarios, is being consolidated into a crisis management section of the FBI's investigative manuals in the near future.

VII. The Origins and Cause of the Fire

The Report discusses in some detail the evidence establishing that no actions by the FBI either caused or contributed to the fire. Specifically, in Findings 3 and 4, the Report conclusively states that federal law enforcement agents "did not intentionally set the fire" and "did not unintentionally

set the fire." Yet, inexplicably, in Finding 1 the Report also states that "the evidence is not dispositive" that the Branch Davidians inside the Compound set the fire. This finding totally contradicts the extensive evidence of Branch Davidian complicity as stated clearly within the body of the Report itself.

Even more disturbing is the Report's failure to mention the uncontroverted fact that listening devices placed inside the Compound pursuant to a court order captured the instructions of David Koresh and others to spread fuel and various accelerants all over the Compound prior to the outbreak of the fire.

The Majority's failure to include a discussion of the conclusive evidence presented by the court-ordered electronic surveillance, and its failure to state clearly, convincingly, and for the record that all the evidence overwhelmingly proves that the Branch Davidians started the fire renders this section of the Report misleading, incomplete and unsatisfactory, since it leaves room for the so-called conspiracy theorists to continue propounding their untruthful ideas.

VIII. FBI Changes Since Waco

The Report contains a number of recommendations concerning how the FBI and federal law enforcement agencies should handle crisis situations in the future. As discussed

below, the changes recommended in the Report have already been made by the FBI on its own, and are in full force in FBI field offices throughout the country. In fact, most if not all of these changes took effect long before these hearings, as a result of recommendations made by Deputy Attorney General Philip B. Heymann in October 1993 as part of the Department's internal review of Waco.

Utilizing the numbers in the Report, each recommendation and the FBI actions since Waco will be discussed in turn:

Recommendation 11: Federal law enforcement agencies should redesign their negotiation policies and training to avoid the influence of physical and emotional fatigue on the course of future negotiations.

Response: The FBI has designed its negotiating policies and training to insure that physical and emotional fatigue do not affect negotiations. The negotiated resolution of the Freeman standoff demonstrates that even when federal law enforcement agencies are involved in long, drawn out negotiations with unusually emotional subjects, emotional and physical demands need not stand in the way of a peaceful resolution. Specifically, since Waco, the FBI has enhanced the number of negotiators and tactical resources available to assist in crisis

resolution. This permits the rotation of negotiators and tactical response units in a way that diminishes the role that fatigue plays in the resolution of the crisis.

Since 1994, the FBI has made it a top priority to select and train crisis managers to serve as on-scene commanders during standoff situations. When the FBI's assistance is sought in dealing with crisis situations, such as standoffs, hostage-taking, or barricades, a core of trained SACs will be dispatched to enable staffing of a command post 24 hours a day and to prevent the fatigue of any individual SAC. This staffing policy served the FBI well throughout the lengthy period of negotiations with the Freeman. The FBI Director will designate the on-scene commander on a case-by-case basis. The designated commander may include high-ranking FBIHQ officials if the FBI Director believes, as he did in managing the standoff in Montana, that a particular person is best suited to oversee the crisis.

Recommendation 12: Federal law enforcement agencies should take steps to foster greater understanding of the target under investigation.

Response: The FBI recognizes the need to establish contacts with experts who may have particularized knowledge about the target under investigation as well as their philosophical, or other, orientation. The Critical Incident Response Group (CIRG)

is identifying and contacting experts in a variety of fields who may be called upon in the event of a crisis situation to provide information or negotiation assistance to peacefully resolve the crisis. In fact, this approach was successfully utilized in the recent non-confrontational resolution of the Freeman standoff. Religious, psychological and "philosophically aligned" experts were all employed to furnish additional information on the Freeman which ultimately aided the negotiation strategy and the peaceful resolution.

Additionally, in order to sensitize our own personnel, Director Freeh, numerous Special Agents in Charge, all FBI profilers, FBI Agent representatives from every division and FBI New Agents classes have received crisis management training, including behavioral science training. This effort is intended to alert our investigators to the need to consider external resources which may yield a greater understanding of the thinking and orientation of the target group. The CIRG continues to expand its capabilities in this area and intends to hire a futurist and a conflict resolution specialist to assist the analytical and negotiation processes.

Recommendation 13: Federal law enforcement agencies should implement changes in operational procedures and training to provide better leadership in future negotiations.

Response: In 1994, Director Freeh reorganized the FBI's crisis response resources into a single entity, the Critical Incident Response Group (CIRG), under the leadership of an FBI executive experienced in crisis management situations. The CIRG brings together under a unified command the tactical resources of the Hostage Rescue Team (HRT), an expanded complement of hostage negotiators and the FBI's behavioral scientists. In an effort designed to enhance leadership skills, the CIRG has trained many FBI Special Agents in Charge (SACs) in specialized crisis management skills. These SACs will assist in the resolution of any major hostage/barricade situation or other crisis requiring the services of the HRT. The Director will designate an on-scene commander on a case-by-case basis. Several of these specially trained SACs will be dispatched to the crisis to enable a SAC to staff the command post 24 hours a day. The Director has stated the FBI's policy in clear and unequivocal terms that negotiated settlements will be pursued whenever feasible.

In addition to the SACs, other senior FBI managers, in the field and at FBI Headquarters, including Director Freeh, have received crisis management training. Field exercises to test the effectiveness of this training have been employed with the Bureau of Prisons and with agencies involved with Olympics related responsibilities. This training has contributed to improved interagency awareness of the respective roles of federal agencies with crisis responsibilities and increased the leadership skills

of participating FBI managers. The CIRG has also held critical incident training sessions with Department of Justice officials, including the Attorney General and her senior staff, U. S. Attorneys, along with their counterpart FBI SAC, and is working with the Department of Justice in preparing a training package for those U.S. Attorneys who are a part of the Department of Justice Crisis Response Team.

Recommendation 14: Federal law enforcement agencies should revise policies and training to increase the willingness of their agents to consider the advice of outside experts.

Response: This issue is closely related to that presented by Recommendation #12. The CIRG has identified a variety of behavioral science experts available to assist in the FBI's assessment and understanding of groups which may present a high risk of confrontation during an arrest. Experts with knowledge in a variety of disciplines including psychology, sociology and religion have been identified and were successfully employed in the resolution of the Freeman standoff. These experts can be utilized to assist in crisis resolution either through direct negotiations or through an enhanced understanding of the philosophy of the target group. Additionally, these experts can identify others who might be able to contribute to the FBI's understanding of the group. FBI consultation with these experts is intended to identify potential areas of concern before a

crisis develops, as well as to provide immediate counsel in the event of a crisis situation.

An example of this ongoing effort involves liaison with the American Academy of Religion (AAR), which is assisting in the identification of specialists from their member scholars and researchers. AAR is an association of over 7,500 individuals with specialized knowledge on religious topics of all descriptions. AAR assists with "screening" potential specialists to insure neutral, objective advice in a crisis situation. An FBI negotiator attended AAR's annual conference and audited a panel dealing with apocalyptic-millennium groups. Tentative arrangements have been made for AAR to recommend specialists to address attendees at in-service training for CIRG personnel. AAR has also agreed to provide material of interest to crisis negotiators for publication in the Negotiators' Notes, a newsletter for FBI negotiators. The FBI also works with Dr. Phillip J. Arnold (a critic of the FBI's actions at Waco) of the Religion-Crisis Task Force (RCTF) and is in the process of hiring specialists to address issues unique to particular religious groups.

Recommendation 15: Federal law enforcement agencies should revise policies and training to encourage the acceptance of outside law enforcement assistance, where possible.

Response: The FBI has always sought to both assist and accept support from state and local law enforcement agencies. The FBI has redoubled these cooperative efforts since the Waco incident. On a daily basis, the FBI joins with state, local and other federal law enforcement agencies in situations that dictate a joint approach to tactical situations.

For example, during the Freeman standoff in Montana, the FBI worked hand-in-hand with the State of Montana, Department of Justice, Criminal Investigation Bureau. The Criminal Investigation Bureau oversees state and local law enforcement agencies in the State of Montana. The Criminal Investigation Bureau participated in every meeting and decision during the Freeman standoff and acted as the point of contact with the state and local law enforcement agencies with whom the FBI worked. The Criminal Investigation Bureau was provided dedicated office space and telephone lines within the FBI's Command Post in the Billings Resident Agency.

In addition to close coordination with state and local law enforcement, the FBI had access to literally hundreds of outside experts and sources, many of whom were contacted and provided invaluable assistance in successfully concluding the Freeman standoff. For example, the FBI involved Colorado State Senator Charles Duke in negotiations with the Freeman. Senator Duke was originally a Freeman sympathizer. After meeting with

the Freemen daily for a week, he was invaluable in ending the standoff by placing the onus on the Freemen to negotiate in a rational and logical manner. The FBI also called upon Montana State Representative Carl Ohs. Representative Ohs, a rancher by occupation, had a personal relationship with some of the Freemen and their families. Representative Ohs was present when the Freemen finally surrendered.

Another example of the FBI's willingness to accept support from other law enforcement agencies can be seen in the multi-agency effort the FBI has organized in response to its counterterrorism responsibilities for this summer's Olympic Games in Atlanta. In this role, the FBI has sought the assistance of many other federal agencies and virtually every law enforcement agency in the state of Georgia.

Due to the established danger within the Branch Davidian Compound the FBI felt the need to maintain effective command and control through utilization of its highly trained HRT. Since Waco, however, the FBI has strengthened its cooperative efforts with state, local, and other federal law enforcement agencies in situations which require a joint approach for resolution.

Recommendation 16: The FBI should expand the size of the Hostage Rescue Team.

Response: During the Branch Davidian siege, the HRT was composed of 46 agents. Today, the HRT has 89 members, including agents hired specifically to assist in monitoring the 1996 Summer Olympics. Once the Olympics are over, the FBI intends to select additional permanent HRT participants so that the HRT totals 94 agents. Thus, it is anticipated that, by the fall of 1996, the HRT will have increased (from the time of the Branch Davidian siege) more than 100%.

In addition, the FBI makes full use of its 853 SWAT team participants when the situation permits. However, as described below, based on the differences in the training that they receive, members of the HRT and participants in the FBI's SWAT Program cannot always be used interchangeably because of the specialized hostage rescue training, which is continually given to the HRT.

Of the 853 FBI Agents in the SWAT Program, 355 are assigned to nine enhanced teams and the remaining 498 are assigned to 47 non-enhanced teams. The nine enhanced teams conduct three days of training each month and are required to train one week per year with the HRT, while the non-enhanced teams undergo a minimum of two days of training each month. Thus, unlike members of the HRT, participation in the FBI SWAT Program is on a part-time basis. The training of the SWAT team members focuses generally on traditional law enforcement

techniques. These techniques emphasize slow, methodical tactics that are best suited for standard high-risk arrest and non-complex barricaded subject situations.

In contrast, hostage rescue tactics (in which the HRT trains daily) are characterized by rapid movement of personnel, close quarter surgical shooting and positive (explosive) breaching. These techniques are beyond the capabilities of the SWAT teams located throughout the country. The HRT is the only FBI--and civilian--entity that has the expertise to conduct explosive tactical entries. Due to the significant safety and training considerations involved, it is inadvisable to allow part-time regional or enhanced teams to use this potentially lethal technique. Nonetheless, the FBI will continue to use SWAT teams, where appropriate, to reduce critical incidents. The FBI will also use other federal, state and local resources to assist in the management of major events such as Olympic security.

IX. ATF Issues

The Report recommends consideration of a transfer of jurisdiction over the Bureau of Alcohol, Tobacco and Firearms (ATF) from the Treasury Department to the Justice Department. The Department of Justice believes that ATF has an important role in combatting violence in the United States, and to avoid any

potential disruption of this vital mission, ATF should remain as a component of the Treasury Department.

The Report also recommends that ATF be prevented from independently investigating drug-related crimes. The Department of Justice believes that a curtailment of ATF's independent jurisdiction is unwise and is not supported by the facts discussed in the Majority Report. Artificial constraints which unduly hamper the fight against illegal narcotics should be highly discouraged. However, should such a restriction be seriously considered, ATF should be directed to conduct joint investigations with either DEA or the FBI, since both those agencies share concurrent jurisdiction over violations of federal narcotics laws.

X. Posse Comitatus Issues

The Report recommends that "Congress should consider applying the Posse Comitatus Act to the National Guard with respect to situations where a federal law enforcement entity serves as the lead agency."

The Department of Justice opposes this unnecessary and counterproductive extension of the Posse Comitatus Act. This view is fully supported by all relevant case law. A number of federal courts have concluded that the National Guard is a state force, and, as such, is not subject to the Posse Comitatus Act, except when called into federal service. See United States v.

Benish, 5 F.3d 20, 25-26 (3d Cir. 1993) (use of national guardsmen to conduct physical surveillance and seize contraband); United States v. Kyllo, 809 F.Supp. 787, 793 (D. Or. 1992) (use of national guardsman to operate thermal imaging device), vacated and remanded on other grounds, 37 F.3d 526 (9th Cir. 1994). Rather, when in state militia status, the range of permissible activities are governed by the laws and constitution of the respective states.

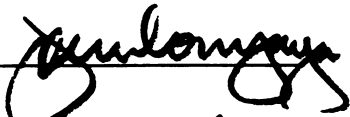
When "federalized," (i.e., called into service by the President pursuant to 10 U.S.C. §§ 331-33 to suppress domestic violence or insurrection against a state government or the authority of the United States), the use of the National Guard in law enforcement activities is governed by the Posse Comitatus Act.

As an aside, the Senate Judiciary Committee last year explored expanding existing provisions of Chapter 15 of Title 10, U.S.C. to allow greater use of the National Guard by state and local law enforcement for routine law enforcement activities. The Department of Justice agreed, for various practical and economic reasons, that such expansion was not necessary and should not be supported. Foremost of these considerations is adherence to the fundamental axiom of American democracy embodied in the Posse Comitatus Act that, except in emergency

circumstances, the military should not be called upon to execute the laws.

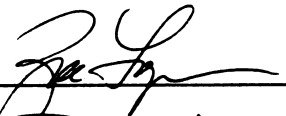
XI. Conclusion

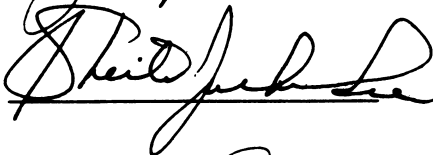
The Report is seriously flawed, makes unsupported findings and suggests certain unwise recommendations. Despite the Majority's claims, its Report furthers misconceptions and misunderstandings about Waco, as opposed to clarifying the record and providing the truth to the American people.


_____ John Conyers, Jr.


_____ Charles E. Schumer


_____ Robert C. Scott


_____ Zoe Lofgren


_____ Sheila Jackson Lee


_____ Melvin L. Watt

SHEILA JACKSON LEE
16th District, Texas
Congresswoman
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME
COMMITTEE ON SCIENCE
SUBCOMMITTEE ON SPACE AND AERONAUTICS
SUBCOMMITTEE ON BASIC RESEARCH
SUBCOMMITTEE ON ENERGY AND ENVIRONMENT
STEERING COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515

WASHINGTON OFFICE
1400 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
202-225-2970
DISTRICT OFFICE
1818 SOUTH BRIDGE STREET, SUITE 1100
THE GRAND "HUBBY" LOUISIANA FARMERS BUILDING
HOUSTON, TX 77002
713-660-6660

STATEMENT OF CONGRESSWOMAN SHEILA JACKSON LEE
TO BE INCLUDED IN THE DISSENTING VIEWS OF MEMBERS OF
THE HOUSE JUDICIARY COMMITTEE TO THE COMMITTEE
REPORT INVESTIGATING ACTIVITIES OF FEDERAL LAW
ENFORCEMENT AGENCIES TOWARD THE BRANCH DAVIDIANS

September 6, 1996

In the aftermath of the various incidents in Waco, Texas between the federal government and the Branch Davidians, news reports indicated that the Branch Davidians' philosophy was identical to the religious philosophy of the Seventh-Day Adventist Church. During the hearings held by the House Government Reform Committee and the House Judiciary Committee, it appeared some witnesses also suggested that the philosophies of the Seventh-Day Adventist Church and the Branch Davidians were the same. I believe that it is important for the WACO committee report to reflect the fact that the Branch Davidians' philosophy was different from the religious tenets of the Seventh-Day Adventist Church.

During the hearings, particular attention was focused on David Koresh's interpretation of the last days and his interpretation of the seven seals in the Book of Revelations in the Bible as the Federal Bureau of Investigation engaged in negotiations with him to resolve the standoff. While the predecessor groups of the Branch Davidians were breakaway

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splinter groups from the Seventh-Day Adventist Church and David Koresh, the leader of the Branch Davidians, had been "disfellowshipped" from a Seventh-Day Adventist Church in 1981, their views were different from the teachings of the Seventh-Day Adventist Church on most issues including the interpretation of the last days of human existence (i.e., the apocalypse and the return of Jesus Christ to the world).

The Waco incident certainly reaffirms the need for federal law enforcement officials to work closely with religious scholars when attempting to resolve standoffs and shootouts involving religious groups. The government's understanding of a group's religious philosophy will, in many instances, be the critical difference in saving lives and preserving peace.

Shirley Jankovic

MEMORANDUM OF INTERVIEW

PAGE: 2

FILE TITLE: [REDACTED]	DATE: June 13, 1995
INTERVIEWING AGENT: THOMAS R. SMITH	WACO ADMINISTRATIVE REVIEW

fit the profile of a college student. Although he did not want to participate in the u/c operation, he felt that it was an honor to be selected.

4. On Monday, 1/4/93, S/A [REDACTED] attended a meeting in Austin, Texas which was set up by the ATF RAC, [REDACTED]. An initial briefing of the undercover operation took place at that time. Prior to that meeting, S/A [REDACTED] had no knowledge or information concerning the Branch Davidian/David Koresh investigation.
5. According to S/A [REDACTED], there were eight special agents assigned to the undercover detail and they were identified as follows: Special Agents [REDACTED] Robert Rodriguez and [REDACTED]. All agents were at the GS-12 grade level.
6. S/A [REDACTED] stated that the briefing on January 4th, which was given by RAC [REDACTED] and the case agent, Davy Aguilar, was well done and included a psychological profile of David Koresh. Also provided at the meeting on 1/4/93, were aerial photos of the compound and a list of cult members with their criminal records and photographs.
7. On Tuesday, 1/5/93, the undercover agents were driven past the compound for the first time. The undercover agents were also provided with a Texas drivers license, with their assumed name, and a school (college) identification card.
8. An apartment, also known as a "safe house", was obtained by the RAC Austin office for use by the u/c agents. This apartment, located in the Waco area, was used by the u/c agents as a place to relax and write reports.
9. On Monday, 1/11/93, the agents moved into the u/c house across from the compound. It should be noted that when the u/c agents were in the process of moving into the u/c house, David Jones, the postman, who was also a cult member and used for intelligence gathering, visited the u/c agents. According to S/A [REDACTED] there was no doubt that Jones was attempting to obtain background information from them. S/A [REDACTED] felt certain they were not compromised by Jones' visit.
10. Initially, the u/c agents were divided into two teams or shifts and scheduled a twenty four (24) hour surveillance of the compound from the u/c house. There schedules were established to work two days on duty and the third day as a day off.
11. Initially, the mission of the u/c agents was to conduct surveillance of the compound in-order to obtain tactical intelligence for the raid. Specifically, the u/c agents were directed by he Austin ATF RAC [REDACTED].

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MEMORANDUM OF INTERVIEW

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FILE TITLE: [REDACTED]	DATE: June 13, 1995
INTERVIEWING AGENT: THOMAS R. SMITH	WACO ADMINISTRATIVE REVIEW

16. During the end of January or early February, [REDACTED] the neighbor who resided next to the u/c house and who thought they (u/c agents) were students, said Koresh had one of his contacts check the license plates on the their vehicles. Koresh determined hat there were no liens on their vehicles. As a result of these checks, Koresh came to the conclusion that they (the u/c agents) were FBI agents because he felt that college students should have had liens on their vehicles. Following the information provided to them by [REDACTED] S/A [REDACTED] felt that the cult intentionally avoided contact with the u/c agents. However, S/A [REDACTED] stated that, it was his opinion, the cover of the u/c agents was not compromised.
17. S/A [REDACTED] stated that at no time did anyone from the undercover house observe Koresh leave the compound. He stated that the u/c agents attempted to infiltrate the compound by engaging cult members in general conversation when they jogged in front of the compound. Other attempted scenarios by the u/c agents included pretending one of their vehicles was disabled or discussing an interest in the bible during conversations with cult members. However, it wasn't until Robert Rodriguez fired an AR15 behind the u/c house that cult members inviting him to their firing range on the compound.
18. S/A Rodriguez subsequently went to the compound sometime during the end of January or early February and he demonstrated shooting of his AR15. Rodriguez began to develop a relationship with Koresh at that point.
19. S/A [REDACTED] stated that when the case agent, Davy Aguilera, was in California, his government vehicle was broken into and the Branch Davidian case file and his service revolver were stolen. The next day, the case file was recovered in a trash compactor. According to S/A [REDACTED] none of the undercover agents were advised that the case file was stolen which concerned all of them. Approximately two or three weeks after the theft in California, S/A [REDACTED] learned of the occurrence during a general conversation with a co-worker.
20. S/A [REDACTED] stated that after tha u/c operation began, there was no feedback to the u/c agents on intelligence information forwarded to the case agent or management. The information developed by the undercover agents was usually documented by S/A [REDACTED] and forwarded to the RAC, [REDACTED] and/or the case agent, Davy Aguilera. Sometime during the beginning of February, S/A [REDACTED] a GS-13 agent from the RAC Austin office, was assigned to coordinate the activities of the u/c agents. According to S/A [REDACTED], the conditions improved at that point.
21. S/A [REDACTED] stated that there were may disagreements and arguments between the undercover agents during the first month of the u/c

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MEMORANDUM OF INTERVIEW

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FILE TITLE: [REDACTED]	DATE: June 13, 1995
INTERVIEWING AGENT: SUSAN G. ROWLEY	MACO ADMINISTRATIVE REVIEW

There were no photos taken before [REDACTED] went on leave because the weather had been bad.

In January 1993, he helped [REDACTED] set up the Command Post at TSTC. [REDACTED] and [REDACTED] set up the repeater and antenna for the radio base station. [REDACTED] then helped test the range of the radio by driving all the routes around the compound area and the communications in DES mode were good. After the test, [REDACTED] raised the antenna for extra coverage.

On Monday, 01/11/93, [REDACTED] moved into the undercover house after meeting with the other seven agents and some of the technical people at the CP.

[REDACTED] They loaded some equipment into their cars and all 11 went to the Undercover House. Jones the mailman came over to the house almost as soon as they unloaded the cars and they felt like Jones was fishing for information. [REDACTED] the next door neighbor came over later. Their cover story was that they were students going to TSTI. They had gotten student identification cards through the Chief of Police at TSTI. [REDACTED] does not know who made those arrangements. They also had matching undercover driver's licenses.

His understanding of their duties was to find out the normal routines and movements of the compound. [REDACTED] said that there was a lot of movement in and out of the compound. David Jones, the mailman, and Wayne Martin, the attorney, seemed to come and go a lot. [REDACTED] never saw Koresh or the black Camaro leave the compound while he was at the undercover house. Koresh told Roderiguez sometime later that he was afraid to leave the compound because the people in town didn't like him. [REDACTED] watched the women and children take out 5 pound buckets filled with something and dump the contents. They did not find out later that the buckets were filled with human waste products until after the raid. He stated that the men seemed to work in the construction pit area from morning till night every day. [REDACTED] felt that the equipment provided for the undercover house was not very good and he said they never heard anything on the scanner.

[REDACTED] thought that the 24 hour surveillance lasted for approximately a month, but then thought about it and said it probably was no longer than 2 weeks. While on the 24 hour surveillance, his team included [REDACTED]

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MEMORANDUM OF INTERVIEW

PAGE: 4

FILE TITLE: ██████████	DATE: June 13, 1995
INTERVIEWING AGENT: SUSAN G. ROWLEY	WACO ADMINISTRATIVE REVIEW

cameras, we asked if they were able to read license tags through the use of binoculars. ██████████ stated that the binoculars they had were not powerful enough to read the license tags on the vehicles.

Sometime around 02/01/93, when the situation changed its focus from a surveillance operation to an undercover operation, the equipment was all placed in the closet. This was done for the security of ██████████ who by this time, had made contact with Vernon Howell/David Koresh and had been inside the compound.

ROUTINE AT THE COMPOUND

██████████ felt that there was some routine at the compound which consisted of the women coming out of the compound with the buckets and the handicapped child being picked up and dropped off by a school bus. In addition, Kendricks would leave in his pickup truck to go to the MagBag every day and Wayne Martin would leave the compound at 8AM every day. We asked how he knew that it was Martin who was leaving if they hadn't gotten license tags, and he stated that they had been told that there was a black attorney living in the compound and this person who left was black and usually wore a suit, so they assumed it was Martin. They also observed a male believed to be a guard who slept in a white van right in front of the compound. ██████████ said they hardly ever saw the children outside and he thought that was unusual because children almost always love to play outside. They never observed Koresh jogging around the area. They also observed men playing football. Saturdays were quiet because that was their day of worship. ██████████ stated that when it was rainy and cold, most of the people would stay inside. If the weather was nice, the men would work outside in the construction pit area and by 10AM, most of the men would be outside. ██████████ said that he saw the black Camaro leave twice, but did not know that the car belonged to Howell and they had never been told to follow any cars. He stated that he had seen motorcycles on two occasions.

SURVEILLANCE LOGS/REPORTS

██████████ stated that during the 24 hour surveillance period, it was the responsibility of the individual agents to maintain the surveillance logs and ██████████ would be responsible for the report and getting them to Aguilera. This procedure only lasted a short period of time and then Dale Littleton was appointed to act as the intermediary between the undercover agents and the Austin/Houston offices. ██████████ stated that ██████████ came to Waco on the average of once a week and picked up the logs and/or reports. He said that Littleton told them about the tactical planning, but didn't do much more than that. ██████████ stated that the undercover agents had no input into the tactical planning. After the operation changed from surveillance to

000392

MEMORANDUM OF INTERVIEW

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FILE TITLE: [REDACTED]	DATE: June 13, 1995
INTERVIEWING AGENT: SUSAN G. ROWLEY	WACO ADMINISTRATIVE REVIEW

shooting. [REDACTED] came out of the neighboring house and asked him not to shoot so close to their house.

On Tuesday, 2/2/93, [REDACTED] drove to the compound and asked for Howell/Koresh. He was told that "David" was sick and that he would have to return at a later date.

On Friday, 2/5/93, [REDACTED] drove to the compound and was invited to his first "Bible study". Prior to driving to the compound, he arranged with [REDACTED] to come and get him if he was in the compound for more than 2 hours. At the end of 2 hours, the Bible study was still going on and [REDACTED] came into the compound and said that he was looking for [REDACTED] (undercover name) because they had a luncheon appointment. [REDACTED] stated that he was very happy to be rescued from what was a very intense (one on one) Bible study. [REDACTED] was given a Bible by David and also was given some homework to read in the Bible. [REDACTED] thought a lot about what David had preached to him and was worried, because so much of what David said made sense. At one point in the night, [REDACTED] asked him what he was doing. [REDACTED] had just been laying in bed with the lights out, but was still thinking about the Bible study earlier that day. [REDACTED] tried to keep him on track and kept telling him to remember why they were there. [REDACTED] felt very threatened by David and his Bible study and was not anxious to return to the compound. In fact, [REDACTED] said that he was always uncomfortable going into the compound and he said that he never got any instructions about whether he should wear a body wire. [REDACTED] stated that every time he made contact or went inside the compound, he would telephone [REDACTED] and write a narrative of the activity.

The undercover agents then began to receive pressure to shoot with the members of the compound. He believes that the pressure was coming from Sarabyn.

On Wednesday, 2/17/93, [REDACTED] again entered the compound and attended a Bible study, this time in the Chapel. Howell/Koresh told him that he did not leave the compound very often because the people in town did not like him. [REDACTED] was given the telephone number for the compound and asked to return the following day. On Thursday, 2/18/93, [REDACTED] went to the compound for 3 hours of Bible study and made arrangements to shoot with Howell/Koresh the following day.

On Friday, 2/19/93, [REDACTED] went to the compound with their firearms to shoot. Howell/Koresh examined their weapons carefully and told [REDACTED] that he had seen him shoot one of those weapons. Howell stated that he had seen [REDACTED] through binoculars. They shot in an open area in the back of the compound. To get to the rear of the compound, Howell took them through the compound halls and kitchen. Howell provided ammunition for them to shoot and brought some of his firearms outside. None of those

000394

April 20, 1993

On the morning of February 28, 1993, I was pilot in command of a UH-60L helicopter assigned the task to act as a diversion while ATF personnel approached the Mount Carmel compound outside of Waco, Texas.

At approximately 0945 we approached the compound from the Northeast following two OH-58 helicopters. We began to receive gunfire on the approach but at no time returned the fire.

My helicopter was not armed nor did any of the crewmembers carry weapons. The ATF agents we were transporting carried side arms but at no time did they discharge said weapons while on board the aircraft.

The aircraft, SW 91-26319, carried external fuel pods and flew with all doors closed making it impossible to discharge weapons from the passenger compartment.

I submit that these statements are true and correct.


CW4, AGTX-CD

005723

SWORN STATEMENT			
For use of this form, see AR 190-43; the proposing agency is Office of The Deputy Chief of Staff for Personnel.			
LOCATION AAASF [REDACTED] TX 78723	DATE 20 APR 93	TIME 1530	FILE NUMBER
LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED]	SOCIAL SECURITY NUMBER [REDACTED]	GRADE/STATUS W3	
ORGANIZATION OR ADDRESS HHC, AVN BDE [REDACTED]		AUSTIN, TX 78723	
I, [REDACTED], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:			
ON FEB 28, 1993 AT APPROX. 0945 I WAS FLYING AN OH-58 (70-15246) AS PILOT IN COMMAND WHILE SUPPORTING ATF DURING OPERATION "TROJAN HORSE". OUR MISSION WAS TO CREATE A DIVERSION TO ENABLE ATF AGENTS TO SERVE A WARRANT AT A LOCATION APPROX. 8 MILES SOUTHEAST OF WACO, TX.			
WE APPROACHED THE LOCATION FROM THE NORTH AND WHEN WE WERE APPROX. 300 METERS FROM THE TARGET, WE RECEIVED SMALL ARMS FIRE SUSTAINING A HIT IN THE TAIL OF THE AIRCRAFT. THE TWO OTHER AIRCRAFT IN THE FLIGHT ALSO RECEIVED GUNFIRE DAMAGE FROM THE TARGET LOCATION. ALL AIRCRAFT IMMEDIATELY TURNED AWAY FROM THE SOURCE OF FIRE AND FLEW NORTH.			
THERE WERE NO WEAPONS ON BOARD MY AIRCRAFT AND THERE WAS NO WEAPONS FIRE FROM ANY OF THE AIRCRAFT IN THE FLIGHT.			
----- / Nothing Follows / -----			
EXHIBIT	[REDACTED]	STATEMENT	PAGE 1 OF 1 PAGES
ADDITIONAL PAGES MUST CONTAIN THE WORDS "STATEMENT OF [REDACTED] TAKEN AT [REDACTED] DATED [REDACTED] CONTINUED." THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE [REDACTED] OF [REDACTED] PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.			
DA FORM 2823 JUL 72 SUPERSEDES DA FORM 888, 1 JAN 66, WHICH WILL BE USED.			

005730



ASSISTANT SECRETARY

DEPARTMENT OF THE TREASURY
WASHINGTON

August 9, 1993

MEMORANDUM FOR: BRIAN BRUH
DIRECTOR, FINANCIAL ENFORCEMENT CRIMES
NETWORK (FINCEN)

STEPHEN E. HIGGINS
DIRECTOR
ALCOHOL, TOBACCO & FIREARMS

JOHN W. MAGAW
DIRECTOR
U.S. SECRET SERVICE

DONALD K. VOGEL
ASSISTANT COMMISSIONER
(CRIMINAL INVESTIGATION)
INTERNAL REVENUE SERVICE

GEORGE WEISE
COMMISSIONER
U.S. CUSTOMS SERVICE

CHARLES F. RINKEVICH
DIRECTOR, FEDERAL LAW ENFORCEMENT
TRAINING CENTER

FROM: RONALD K. NOBLE *RKN*
ASSISTANT SECRETARY (ENFORCEMENT)

SUBJECT: MATTERS REQUIRING MY OFFICE'S ATTENTION

This memorandum provides general guidelines on those matters upon which I need to be informed. This is especially important if I am effectively to serve the Secretary and his staff. In most cases, the decision regarding the manner in which these items are to be communicated will rely on the judgment and discretion of the Bureau heads. In addition, the liaison officers will play a key role in identifying matters occurring in your Bureau which should be brought to my attention. This memorandum supersedes Assistant Secretary Nunez instructions of March 28, 1990. In general, I would like to be apprised of the following:

109970

1. Significant, non-routine contacts (including meetings and telephone calls) with the following organizations: The Executive Office of the President, including the Office of Management and Budget and ONDCP; other Departments, Offices and Agencies, if contacts are at the Assistant Secretary level or higher; Congressional Committee or Subcommittee Chairman and ranking minority members; and foreign missions at the level of Deputy Chief of Mission or higher and foreign agencies at the level of Deputy Director or above. These non-routine contacts might include policy matters or significant operational issues. With the exception of the U.S. Secret Service, I would expect no initiated contacts with the White House, the National Security Council or the U.S. Trade Representative without prior notification of my office.
2. Significant cases, events or incidents involving personnel to include sexual harassment claims, alleged violations of equal opportunity laws and regulations, unique integrity problems, serious employee injury or loss of life, etc., in accordance with privacy and confidentiality guidelines and considerations.
3. Recent, current or upcoming media coverage highlighting the activities of Treasury or its Bureaus.
4. Significant new policies, programs or initiatives that may be announced or major changes or adjustments to a Bureau's mission.
5. Non-routine budget issues that could have an important impact on the Bureau's budget requests, funding levels or ability to carry out its missions.
6. Any significant operational matters that affect any of the Bureau's missions including major high risk law enforcement operations.
7. Major studies and reorganizations to be undertaken by the Bureau including their purpose and expected results.
8. Attendance at national conferences and any senior management conferences held outside of Washington D. C.
9. Significant litigation that could result in adverse press coverage, major outlays of funds or adjustments in a Bureau's missions.
10. Recommendations for the selection of all SES positions and major field office appointments.

026509

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The above information may be reported by the Bureau head or his/ her staff by whatever means is appropriate. This may include personal meetings, telephone calls to me or my senior staff, informal notes, etc., depending upon the exigencies of the information and the situation. See my memorandum of August 6, 1993 regarding forms and priority of communications within Treasury enforcement.

I wish to stress again that these are only guidelines. There is no substitute for good judgment, and as we work together we will gain an improved understanding of those matters that are sufficiently significant and important to deserve our joint attention. This will allow us to make adjustments to these guidelines and our management processes. Please ensure that these guidelines are disseminated throughout the Bureau so that the information we receive is accurate and timely.

Thank you for your personal attention to this matter.

026502



ASSISTANT SECRETARY

DEPARTMENT OF THE TREASURY
WASHINGTON

LESSONS LEARNED -- ACTIONS TAKEN

A Summary: One Year After the Events Near Waco

February 28, 1994

026563

Introduction

As we look back one year after ATF's tragic experience near Waco, Texas, the Department of the Treasury's Office of Assistant Secretary (Enforcement) determined that it would be appropriate to take stock of both the lessons learned from that experience and the actions taken since the Waco Report was issued on September 30, 1993. The following summary represents its overview of significant lessons learned and actions taken.

In addition, the Bureau of Alcohol, Tobacco and Firearms (ATF) has prepared a more detailed report of lessons learned and actions taken by ATF -- which will serve as a blueprint for ATF's continuing efforts to build upon the lessons learned from the Waco experience. Because of the sensitive nature of that report, and its discussion of law enforcement techniques, it is not being made public -- although certain appropriate portions of it are quoted here.

Although no inquiry and no reforms can bring back any of the lives lost near Waco, it is Treasury Law Enforcement's goal that the review and its resulting changes will prevent the recurrence of such a tragedy in the future.

The Waco Administrative Review

One of the most powerful lessons learned from the Waco tragedy is that Government can, when properly directed and motivated, investigate its own conduct objectively and fairly. In accordance with the President's directive to conduct a "vigorous and thorough" review of the events leading to the loss of law enforcement and civilian lives, Secretary Bentsen established the Waco Review, a team of agents and attorneys drawn from outside the Department of the Treasury and inside Treasury law enforcement's ranks (excluding ATF). The Review Team was guided and supervised by three prominent independent reviewers, Los Angeles Chief of Police Willie Williams, former chief Watergate prosecutor Henry Ruth and Pulitzer Prize winning journalist Edwin Guthman, and led by Assistant Secretary (Enforcement) Ronald K. Noble. Noble promised that the Review would "leave no stone unturned." The Review delivered on his promise.

As Secretary Bentsen said after the Review's Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco and Firearms Investigation of Vernon Wayne Howell, also known as "David Koresh," (the "Report") was released:

The Review gave me the truth and a full accounting of the facts, good and bad. That enabled me to tell

the American people what really happened near Waco. The Review became a model for internal investigations. It showed government can investigate itself -- do it right -- and do it quickly.

The American public hailed the Report for its fairness and thoroughness. Representative Gordon Lightfoot emphasized that the Report "reflects the hard work and dedication of many individuals." According to Senator Dennis DeConcini, the Report was "thorough, impartial and self-effacing." Representative Steny Hoyer called the report "comprehensive," the *Los Angeles Times* called it a "courageous, candid evaluation" and the *Sacramento Bee* proclaimed "no punches have been pulled."

The objective, fair, searching and thorough review conducted by the Waco Review identified and discussed in a systematic manner the weaknesses that needed to be addressed. The Report, released on September 30, 1993, after a five month investigation, set forth a roadmap for Treasury and ATF to follow to strengthen the agency.

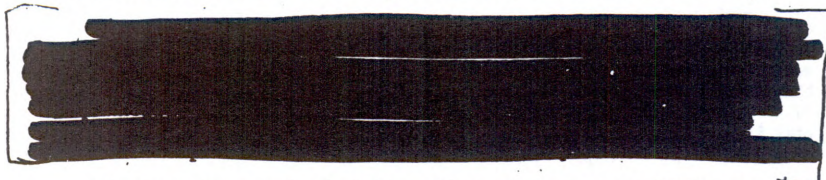
Moreover, a significant added benefit to staffing the Review with agents drawn from all of Treasury's law enforcement bureaus, (Customs, Secret Service, IRS, FLETC and FinCEN), is that each of those agents brought back to their respective bureaus three important messages: 1) Treasury law enforcement's bureaus can work together cooperatively and successfully as a team to produce a comprehensive and honest product; 2) Some things went wrong near Waco and 3) How to avoid such occurrences in the future. In a sense, these agents, upon the Review's completion became ambassadors for the Review -- teaching their fellow agents about the lessons they had learned through the review process.

The Report as a Tool for Learning

The Review's Report, unlike many government reports, has not simply been gathering dust since its issuance. To the contrary, it is very much a living document. One of incoming ATF Director John Magaw's first directives was to make the Report mandatory reading for all ATF agents -- from those on the line all the way up through the agency's command. In so doing, Director Magaw made significant strides in educating ATF's agents about the errors made near Waco and how to avoid them in the future. As one ATF agent was quoted shortly after the Report was released, "the Report could spur the reinventing of a better Bureau." In addition, both at the Federal Law Enforcement Training Center ("FLETC") and in law enforcement training courses across the nation, the Report is used as a teaching device.

Personnel Actions

One lesson learned from Waco was that ATF needed better leadership -- most importantly, in light of the Report's findings, the Bureau needed experienced leadership with unquestionable integrity. Upon receiving the Report, Secretary Bentsen took swift action to provide ATF with new leadership.



The Secretary selected John Magaw to serve as ATF's new Director. Magaw, who was previously the Director of the Secret Service, brought a wealth of law enforcement experience to the Bureau as well as a reputation for integrity. The Secretary and Magaw, who recognized that Higgins had not been kept properly informed by his subordinates, acted to tighten the lines of authority at ATF and to insure that the Director was kept properly informed. First, they restructured the composition of ATF's command by creating a "Deputy Director" position; second they filled that slot with Daniel Black, a veteran of over 25 years in federal law enforcement. In addition, Secretary Bentsen placed ATF's law enforcement operation in the capable hands of Charles Thomson, a career ATF agent who previously headed ATF's New York office and led its successful investigation of the World Trade Center bombing. Magaw also replaced Chojnacki and Sarabyn, the field commanders who had led the failed raid, and lied afterwards, with top notch agents.

In so doing, Secretary Bentsen provided ATF with a new leadership team, both in the field and at headquarters -- a team committed to change and to improving the agency's performance after Waco. Moreover, Secretary Bentsen sent a powerful message to all Treasury law enforcement that honesty must be guarded.

During the five months since the release of the Report and Secretary Bentsen's personnel actions, both ATF and Treasury have taken significant additional actions.

Rebuilding Morale -- Trust in Leadership

After Waco, Assistant Secretary Noble, Director Magaw and ATF's other new leaders undertook an intense effort to rebuild the Bureau's morale and its trust in ATF leadership. To show their commitment to this rebuilding effort, these leaders visited on multiple occasions Dallas, Houston and New Orleans, the

offices which contributed agents to Waco, and which bore the brunt of the casualties. During those trips, agents and employees were given the opportunity to ask any questions they wished. All questions were answered.

Improved Communication between Treasury and the Agencies

One of the key problems identified by the Report was that the Office of Enforcement received less than 48 hours advance notice of the Waco plan, despite the fact that ATF was about to embark on the biggest and most unusual raid in its history. As the Report stressed, this lack of adequate notice was the product of a pattern of inadequate oversight by the Office of Enforcement and insufficient communication between that office and the bureaus it is charged with supervising.

Accordingly, Assistant Secretary Noble has taken definitive action to improve oversight and increase communication with the bureaus. He has sought to achieve a reasonable balance between providing the bureaus with flexibility, yet maintaining sufficient accountability. Shortly after Waco, Noble instituted several regular forums for communication between the bureaus and the Office of Enforcement -- none of which had existed before his tenure. First, the bureau chiefs now meet once a week with Noble to review significant issues. Second, each of the bureau chiefs meets individually with Noble on a monthly basis to review their respective bureau's operations. Third, Noble has enhanced greatly the level of informal communication between his office and the bureaus -- in large part because he has strengthened and better organized the Office of Enforcement. In so doing, he has increased the points of contact for the bureaus. Fourth, Noble has established a Treasury Law Enforcement Council, consisting of the Directors of ATF, Secret Service and FLETC, the Commissioner of Customs and the Assistant Commissioner for the Criminal Investigative Division of IRS. The formation of this Council ensures that all Treasury law enforcement is part of a team. Finally, in August 1993, Noble sent a directive to all the bureaus outlining those matters which require meaningful advance notice for the Office of the Assistant Secretary (Enforcement). Among those matters are any involving "non-traditional groups and guns" of the sort encountered near Waco.

In addition, both ATF and the other bureaus are in the process of training personnel in the field to better identify sensitive matters that require early involvement of headquarters. Taken together with the experience and judgment of ATF's new leadership, these actions go a long way toward preventing a repeat of the inadequate notice given by ATF to the Office of Enforcement before the Waco raid.

Awareness that Certain Missions Require Additional Resources

One of the strongest criticisms of ATF, both in the Report and in the media, was that the Bureau failed to recognize that the mission they were undertaking near Waco required assistance and resources from outside the agency. ATF has recognized and taken action to address this problem at two levels.

First, with respect to those occasions when the Bureau confronts non-traditional adversaries such as Koresh and the Branch Davidians, particularly when the situation involves groups of people possessing large amounts of weapons, ATF has taken comprehensive measures to insure that agents recognize the need for outside assistance and that outside experts are consulted in a timely manner:

*ATF has established criteria for ATF agents to use to determine if an investigation calls for outside experts;

*ATF is training their field agents to recognize those situations which require outside experts;

*ATF has established a reporting structure to insure that headquarters learns promptly when an investigation involves groups or organizations which require seeking outside assistance; and

*ATF is developing a resource library and network of contacts of credible experts both in the tactical and the behavioral science fields. This information will be shared with the Department of Justice. As part of that effort, ATF is in the process of establishing a working relationship with a major American university and also will consult with other federal agencies.

Second, on those occasions when ATF seeks to undertake an operation of the scale similar to that mounted near Waco, ATF has recognized that it cannot and should not go it alone. As their report states:

The first lesson we learned is that an agency of ATF's size cannot independently carry out every conceivable operation that might be encountered... [P]rior to Waco we did not have a formal plan for other Federal agencies to become involved where an operation was larger or more complex than ATF was equipped to handle. Waco has taught us that we must be prepared to seek help and assistance from other agencies when necessary.

Both ATF and Treasury have taken action to insure that ATF has the resources it needs to conduct such operations. ATF has developed formal plans for seeking assistance from other agencies

under appropriate circumstances. Treasury's Office of the Assistant Secretary (Enforcement) is conducting an evaluation of whether Treasury law enforcement needs a "Treasury National Response Team" or similar such entity to conduct large scale operations or specialized activities such as those attempted near Waco. Such a Team would focus on situations currently handled by ATF's Special Response Teams (SRTs) and would not specialize in hostage rescue missions that are presently handled by the Federal Bureau of Investigation's Hostage Rescue Team (FBI HRT).

The Department of the Treasury and the Department of Justice formally recognized and agreed that any future Treasury law enforcement action of the nature undertaken near Waco requires timely notification of the Department of Justice -- either through the U.S. Attorney's Office responsible for the investigation, as was done with the Waco investigation, or through communication in Washington, D.C. at the departmental level -- preferably both. In addition, the Assistant Secretary (Enforcement) and the Deputy Attorney General have instituted bi-weekly meetings.

Waco Confirmed ATF's Powerful Investigative Capabilities

The Report concluded that ATF's investigation of Koresh and the Branch Davidians, which posed difficult investigatory challenges for the Bureau, was both properly initiated and developed sufficient evidence to support the issuance of search and arrest warrants. The Report, in fact, commended ATF both for its willingness to take on an investigation which involved a cult possessing an enormous arsenal of weapons, including dozens of machineguns and a large cache of grenades and for the evidence generated by its investigators.

ATF is building upon its investigative capabilities and reputation. In the past year, ATF has made thousands of arrests and executed numerous search warrants without incident. Moreover, not only was ATF instrumental in the successful investigation of the World Trade Center bombing, but its actions with regard to the series of bombings in upstate New York a few months ago demonstrated the Bureau's expertise in firearms investigations and quickly solved a case with national implications.

ATF Has Addressed Its Significant Operational Weaknesses

The Report determined that ATF had significant weaknesses in its tactical planning capabilities, including its intelligence operation, its operational security, its command and control during the raid and its ability to handle scrutiny after the raid failed. ATF is making progress with respect to each of these

areas.

ATF Has Improved Its Tactical Planning and Intelligence Operations

ATF's tactical planning effort in the Waco operation was seriously flawed. First, ATF failed to consider adequately all available options before it chose to raid the Compound. Specifically, the tactical planners prematurely abandoned efforts to lure Koresh away from the Compound. Moreover, because of weaknesses in their intelligence operation and planning process, ATF's tactical planners and raid commanders failed to reach a common understanding of their plan's key assumptions. And they were mistaken about key facts -- especially their flawed belief that the men and the weapons would be separated at the time of the raid. ATF has acted to improve both its intelligence operations and its tactical planning capabilities.

With respect to its intelligence operation, ATF has taken steps to develop the tactical intelligence structure that the Bureau was lacking before Waco. That structure includes an intelligence program manager in headquarters, an intelligence officer in each of ATF's 24 field offices and an "Intelligence Response Team" of specialists to support major investigations. The intelligence specialists will work to make sure tactical planners seek appropriate intelligence from agents in the field and that the intelligence gathering process insures accurate and timely intelligence. In addition, although the undercover agent in the Waco investigation did an excellent job, to insure that undercover agents receive the support they need, and to improve communication between tactical planners and undercover agents, ATF has instituted a program of pairing each long-term undercover agent with a trained "control agent" who will regularly debrief them.

ATF has also overhauled its process for selecting both tactical planners and raid commanders. At Waco, they were chosen based on their rank and geographical proximity to the site of the investigation. In the future, ATF will select the planners and the commanders based on their training and expertise. To prepare them for situations like Waco, potential commanders and planners, as well as key headquarters leaders, are also receiving crisis management training from the International Association of Chiefs of Police (IACP). Moreover, to insure that tactical planners adequately consider the full range of options, ATF agents are receiving additional training in non-dynamic entry techniques -- including containment callouts, sieges and the use of "lure techniques" to arrest suspects away from their premises.

ATF Has Taken Measures to Enhance Operational Security

The Report identified a number of lapses in operational security -- several of which could have led to Koresh being tipped. Among other things, advance notice of the raid was provided to a private ambulance service and movements by ATF agents on the day of the raid could have been detected. ATF is developing a full fledged operational security policy. The heart of ATF's policy will entail the identification of an "operational security supervisor" for each major operation who will have responsibility to maintain operational security and to review all tactical plans for that purpose. In addition, ATF has implemented an operational security training program to increase all potential field commanders' awareness of ways in which investigations can be compromised. Furthermore, ATF has expanded its capacity to provide medical support for large operations -- and thereby obviate the need to rely on outside services. ATF is also increasing the level of security it maintains regarding radio communications.

ATF Has Taken Steps to Improve Raid Execution

During the Waco operation, one of the key commanders was in a helicopter and the other was pinned down in front of the Compound. The commanders were not clear about who had authority to abort the raid. To improve command and control during raids, ATF's potential raid commanders are now receiving intensive command and control training from the Army's Special Forces and other sources. As part of the military training, ATF agents will be taught Tactical Operations Center (TOC) functions, stress/crisis management and decisionmaking. In addition, ATF has developed a close working relationship with the tactical experts who served with the Waco Review. Among others, ATF has relied on John Kolman, a former commander with the Los Angeles SWAT team, for expert advice on tactical planning and command and control during raids. Kolman is helping ATF develop its curriculum for advanced training for SRT members.

One lesson learned from Waco that can be built upon is that ATF agents can count on each other under fire. All ATF agents involved in the shootout not only acted bravely to help their fellow agents, but they exhibited remarkable discipline when returning fire -- only aiming at armed Branch Davidians. As Director Magaw recently stated, "Waco confirmed that our ATF men and women are capable of individual and collective heroic actions under the most intense firefighting conditions ever experienced in modern law enforcement history."

Post Raid Conduct

After the failed raid, certain ATF officials misled their superiors and the American public. They badly mishandled media relations. Part of the failure was attributable to reliance on line agents who had participated in the exhausting raid to speak to the media. In addition, institutional pressure to protect ATF was partly responsible for ATF's post-raid efforts to claim falsely that the raid commanders did not know they had lost the element of surprise. ATF has established a new policy to promote objectivity and composure in media relations which requires the agent assigned to communicate with the media not to have any other operational responsibilities during crises. Most importantly, ATF's new leadership has emphasized the value they place on truth and integrity -- both when dealing with fellow agents and the media.

Conclusion

Treasury and ATF are building on the lessons learned from the Waco experience to minimize the likelihood that such a tragedy will occur in the future.



DEPARTMENT OF THE TREASURY

**THE BUREAU OF
ALCOHOL, TOBACCO AND FIREARMS**

**Summary of Issues and
Corrective Actions Taken
by the Bureau of Alcohol,
Tobacco and Firearms as
a Result of the Waco, Texas
Raid.**

October 1995

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**A SUMMARY OF ISSUES AND CORRECTIVE ACTIONS
TAKEN BY THE BUREAU OF ALCOHOL,
TOBACCO AND FIREARMS
THROUGH OCTOBER 1995
AS A RESULT OF THE WACO, TEXAS RAID ON
FEBRUARY 28, 1993**

INTRODUCTION

The tragic events surrounding ATF's raid on the Branch Davidian Compound near Waco, Texas, on February 28, 1993, profoundly affected this agency. We mourned the loss of four agents, we cared for our injured, and we honored the bravery of all who participated in the raid. The final step in achieving closure to Waco is to learn from the experience and emerge better prepared to execute our law enforcement responsibilities in the future. To this end, we engaged in a careful self-assessment of what went wrong and why. We considered the views of our own personnel at every level of the organization, we studied the Treasury Review, and we have examined the comments of tactical operation experts.

OVERVIEW

The following report addresses the major problems identified in connection with the Waco raid and describes the corrective actions we have or will be undertaking to ensure that our tragedy of Waco is never repeated. We have attempted to carefully define the problem and offer solutions that are realistic and effective. Some lessons are specific to large-scale operations involving cults, and others apply equally to even smaller operations against the more standard criminal element. Before we address the Waco raid specifically, we will offer in a more general nature the lessons learned from Waco.

The first lesson we learned is that an agency of ATF's size cannot necessarily carry out alone every conceivable tactical operation we might encounter. Until now, the assumption in our National Response Plan was that certain operations were larger or more complex than one division could handle, and assistance from other divisions would be necessary. However, prior to Waco, we did not have a formal plan for involving other Federal agencies when an operation might be larger or more complex than ATF is equipped to handle. Waco taught us that we must be prepared to seek help and assistance from other agencies when necessary.

In addition, the Waco experience taught us a number of valuable lessons on the planning, execution, and postraid aspects of an enforcement operation.

PLANNING

- Raid planners must have accurate and timely intelligence.
- Raid planners must have training in a wide range of tactical options.
- Raid plans must contain carefully constructed contingency plans so that the momentum of going forward does not take control over rational decision making.
- Raid commanders must be chosen based on their ability to handle the type of operation involved and not simply on the basis of territory jurisdiction.

EXECUTION

- Raid commanders must receive accurate and timely intelligence.
- Raid commanders must have clearly defined duties and responsibilities.
- The incident commander must be located at the command post where he/she can have access to all relevant intelligence and operational developments.
- There is a need for greater attention to operational security.

POSTRAID

- In crisis situations, agents who are emotionally involved and exhausted should not be left to handle media relations.
- ATF personnel, at all times, must be prepared to tell the truth and admit mistakes. If misstatements are made, correct them as quickly as possible.

The corrective actions described in this report address specific failures identified in connection with the Waco raid, but these actions will also ensure that we operate in accordance with the more general principles described above.

FINDINGS AND CORRECTIVE ACTIONS

I. SACs/ASACs WITH LIMITED SPECIALIZED TACTICAL EXPERIENCE/TRAINING WERE INAPPROPRIATELY USED TO OVERSEE LARGE-SCALE ENFORCEMENT OPERATIONS.

DISCUSSION:

ATF's National Response Plan, ATF O 3350.10, dated February 18, 1993,¹ was the subject of significant discussion in the Treasury review. In subsequent conversations with John Kolman, who served as a tactical consultant for the review team, it was learned that the directive was perceived as an effective deployment plan, but it was flawed in certain critical areas. The most significant deficiency required the special agent in charge (SAC) in the geographic area wherein the major operation was occurring to be assigned as "Incident Commander," with no consideration given as to that individual's background or experience. Similarly, assistant special agents in charge (ASACs) who serve as "Tactical Coordinators" must have specialized training and experience to serve in this critical role. Accordingly, certain modifications were required.

CORRECTIVE ACTIONS:

A. Rewrite National Response Plan to Correct Deficiencies

ATF's National Response Plan is an activation protocol for critical incident management to effectively respond to an incident of national proportion in a timely fashion, jointly or independently of any other law enforcement agency. Its objectives are to preserve life, to ensure the coordinated response and rapid

¹ National Response Plan, ATF O 3350.10, dated February 18, 1993; Bates Stamp Number 06719-06740.

deployment of ATF manpower and resources to a known or anticipated critical incident when the situation exceeds the capabilities and/or resources of one field division, and to enforce the laws over which ATF has jurisdiction. This plan is currently under revision concerning the Bureau's Special Response Team (SRT) restructuring.² ATF has determined it can be better served by reducing the SRTs from 24 divisional teams to 5 regional teams. With the implementation of the regional teams, a revision in the current National Response Plan was needed as it applies to a tactical response by ATF. The "Incident Commander" and "Tactical Coordinator" positions in the plan have been redefined, and high criteria have been established for individuals selected for these positions. From our Waco experience, it is clear that the individuals selected to fill these key positions must be significantly detached from the investigation so that they can be objective in their decision making. In addition, areas such as operational security and intelligence functions have been addressed.

B. Provide Command and Control Training

In drawing from our Waco operation, we learned that serious mistakes were made in our command and control structure. More specifically, not all high-level personnel had a clear understanding as to who had the authority to abort the raid, and indeed, certain individuals who did were in helicopters and not readily accessible to tactical leaders. To correct this deficiency, policy changes, as well as training, were required. ATF contacted the U.S. Army Training and Doctrine Command regarding its need for command post training. This training includes Tactical Operations Center functions, stress/crisis management, media relations, and decision making. ATF developed a list of 35 individuals to receive this training.

² Draft revision of the National Response Plan; Bates Stamp Number 026630-026651.

They comprise ATF's Crisis Incident Management Response Team (CIMRT).³ These individuals consist of top Headquarters management personnel, SACs and ASACs, firstline supervisors, and a select group of special agents who will act as advisors to the aforementioned and who will become ATF's future leaders.

ATF's CIMRT members attended this training in September 1994. Several CIMRT members also received training from the Los Angeles Police and Sheriff's Departments in handling critical incidents.

Future training will include attendance at the aforementioned school by other members of the CIMRT program. The Special Operations Division (SOD) is also planning a joint venture with the International Association of Chiefs of Police (IACP) for FY 96. This training operation will involve the activation of multiple SRTs with the utilization of the CIMRT under ATF's National Response Plan. Also contained in this training will be ATF's Enforcement Operations Center (EOC) at Bureau Headquarters. This exercise will require the coordination of all facets of a national incident from the field to Bureau Headquarters much like what was involved in ATF's response to the bombing of the Oklahoma City Federal building.

The CIMRT was recently activated during the Oklahoma City bombing, which occurred on April 19, 1995. CIMRT was used to run the Enforcement Operations Center (EOC) located in Headquarters and the on-scene command located in Oklahoma City. This lasted for over 2 weeks until the situation was downgraded from search and rescue to investigative.

The CIMRT program is constantly being updated due to the changes taking place inside ATF management in order to achieve higher goals for its employees. During FY 95, ATF sent first line supervisors, senior managers, public information

³ ATF's Crisis Incident Management Response Team (CIMRT) Chart; Bates Stamp Number 026652.

officers, and National Response Team (NRT)/SRT team leaders to crisis management schools given by the U.S. Army and IACP. With the recent personnel moves made by ATF with respect to its executive staff, additional responsibilities will be changed on the CIMRT roster.

C. Provide Crisis Management Training To Key Personnel

ATF implemented training programs and plans for eliminating this deficiency. In September 1993, ATF provided crisis management training to each SRT supervisor and team leader. This training was provided by the IACP. The IACP also provided training to all ATF SACs in March 1994 and to the Director's Headquarters staff in late 1994.⁴ This training continued in FY 95 with one class taking place. There are two classes scheduled for FY 96. To date, 154 ATF employees have been trained in this area. Course attendees in the past have included senior and firstline supervisors; however, five public information officers were added to the list of attendees during a session held in September 1995. Two crisis management classes will be held in FY 96 with a total of 48 students scheduled to attend.

ATF's CIMRT members attended this training in September 1994. Several CIMRT members also received training from the Los Angeles Police and Sheriff's Departments in handling critical incidents.

Future training will include attendance at the aforementioned school by other members of the CIMRT program. SOD is also planning a joint venture with the IACP for FY 96 in this area.

⁴ Training Manual provided by the International Association of Chiefs of Police to ATF trainees on the subject of "Advanced Tactical and Leadership Management." Bates Stamp Number 027252-027452.

D. Recognition of Need for Outside Expertise

Our experience at Waco clearly taught us that the mind set of some criminal organizations and groups falls outside the "normal" behavioral patterns of suspects routinely encountered by law enforcement personnel. For those occasions, it is essential that we identify any unique behavioral patterns and determine if we should seek outside expertise of trained professionals (e.g., cult experts, psychologists, behavioral science personnel, etc.) who could provide analytical advice and opinions for tactical considerations.

ATF realizes the need to seek outside expertise at all levels. We have looked to outside experts from the Treasury Review Committee and the IACP in the development and formulation of both our National Response Plan and our new Advanced SRT Training. We have also looked to outside experts at the State and local level. ATF is constantly contacting individuals involved in all aspects of the tactical arena. We are now instituting a program with the National Tactical Officers Association (NTOA) to link us directly with its data base. This data base will allow us access to a library index of tactical articles and information published by the NTOA, a case law index of legal bulletins concerning tactical operations, a policy index concerning tactical policies and procedures, an operational analysis index that lists analyses of tactical operations from across the country, and a training resource conference that provides a listing of NTOA training materials.

Since 1986, ATF has maintained a joint program with the Federal Bureau of Investigation (FBI) at the Arson and Bombing Investigative Services Subunit (ABIS) of the National Center for the Analysis of Violent Crime. ATF agents assigned to ABIS are trained in the techniques of preparing analyses on serial arsonists and bombers to assist law enforcement in identifying possible suspects based on characteristics particular to incidents.

The concepts employed in these analyses are also applied by ATF to other areas such as on-site crime scene assessments, suspect interviewing techniques, and investigative strategies as they relate to criminal organizations and groups operating outside normal behavior patterns.

ATF has begun an initiative with the U.S. Customs Service (USCS) involving enhanced coordination and cooperation between the two bureaus. Plans are currently being formalized for the sharing of resources, instructors, and information in the area of tactical operations. Several initiatives already underway include:

1. Recognizing that communication is a vital component of any successful endeavor, ATF and the USCS are developing an operational tactical glossary of terms and are standardizing tactical hand signals. This will provide a foundation for effective communication between the two bureaus in all aspects of tactical operations.
2. ATF has assisted the USCS in the procurement of tactical body bunkers. ATF has also provided the USCS with training in the effective use of body bunkers.
3. ATF and the USCS are adopting the same numbering system for identifying buildings during tactical operations.
4. Both bureaus are sharing tactical instructors.
 - a. ATF provided an instructor to the USCS during its Confrontational Safety Awareness programs. This training is provided to teach winning tactics and techniques to individual agents.
 - b. USCS aviation personnel are serving as assistant instructors at ATF's SRT schools.
 - c. The USCS Warrant Entry and Tactical Program Manager attended an ATF SRT basic school as an observer and also assisted ATF with the development of its advanced SRT school.

- d. ATF's SRT Program Manager at Fort McClellan will attend the next USCS tactical school in September as an observer and assistant instructor.

Both bureaus agree that agency-specific needs dictate that advanced tactical training be conducted by each individual agency. However, both recognize that continuing the new enhanced level of cooperation and coordination will ensure the best training for the agencies and even greater success in future joint operations.

Additionally, ATF's Intelligence Division has initiated ongoing intelligence information-sharing meetings that have proven to be useful among all Treasury law enforcement agencies. In this regard, ATF hosted a conference on violent antigovernment groups on July 10, 1995. The U.S. Secret Service hosted a followup meeting on September 27, 1995, to share current domestic intelligence information.

ATF has also had several informal information sharing meetings with representatives of the FBI, primarily concerning violent antigovernment groups. Additionally, ATF field offices routinely contact their FBI counterparts concerning open investigations of violent antigovernment groups.

ATF is currently involved in several pilot programs that promote rapid interagency communications among law enforcement agencies in regard to their ongoing operations. This promotes immediate safety of law enforcement personnel in terms of preventing unintentional operational conflicts. One such program occurring in the Washington/Baltimore HIDTA region is called the Deconfliction Event Information System (DEIS). This program, currently voluntary, allows law enforcement agencies to report any of their anticipated investigatory activity in a particular area to a central HIDTA Watch Center. The DEIS system will allow the querying agency to determine if another agency is conducting an investigation or operation in the same area or on the same individual.

Another ATF initiative is the ATF Gun Hotline. The hotline allows a forum for telephone information on gangs, drugs, and guns to be received. This system is currently in use, by ATF, throughout the United States. Any information that does not directly relate to ATF's jurisdictional purview is immediately given to the appropriate law enforcement agency. In New Orleans, a pilot computer program, called SIUSS, is being tested. The system would allow intelligence data to be rapidly organized for dissemination.

II. THERE WAS A FAILURE OF THE TACTICAL INTELLIGENCE PROCESS TO ENSURE THAT TACTICAL PLANNERS WERE PROVIDED CURRENT AND ACCURATELY EVALUATED INFORMATION.

DISCUSSION:

Although tactical intelligence was generated at various times and locations, no structure was in place that would allow for the flow of information into a central location where intelligence would be analyzed and disseminated to the appropriate individuals.

Had a structure been in place to bring together all available information and make it immediately accessible, the decision makers would have processed sufficient information to abort the raid rather than proceed based on fragmented, inaccurate, and/or misleading information.

CORRECTIVE ACTIONS:

A. Development of a Tactical Intelligence Structure

ATF has developed a program to ensure interface of tactical intelligence with the planning process of the raid by the raid management team (incident commander, case agent, SRT team leaders, etc.). The program, as outlined in the "Intelligence Program Review," dated January 1994,⁵ resulted in the following:

⁵ ATF's Intelligence Program Review dated January 1994; Bates Stamp Number 026504-026529.

- A Program Manager (Major Investigations) position was created in the Tactical Intelligence Branch. This position was selected and became effective on May 29, 1994.
- A field division intelligence officer position has been established in each of the 24 field divisions. The duties of the intelligence officer include the gathering, analysis, and dissemination of intelligence information that affects the field division's area of responsibility and/or which has national ramifications.
- An Intelligence Response Unit (IRU) was assembled and will be available to support major investigations. The unit will consist of a Headquarters Intelligence Division special agent or the Program Manager (Major Investigations), Headquarters intelligence research specialist (IRS), field division intelligence officer, field division IRS, and SRT intelligence officer.

The Program Manager,⁶ Major Investigations, will

Monitor, evaluate, and serve as a conduit for daily intelligence information that is sent through the field division intelligence officers nationwide.

Disseminate intelligence information to the appropriate Intelligence Division IRS for analysis.

Disseminate intelligence information back to the field divisions through the intelligence officer.

Conduct daily intelligence briefings with the Chief, Intelligence Division.

Ensure training of intelligence officers (to include formalized training and handbook).

⁶ ATF's Intelligence Officer Training manual produced in 1994; Bates Stamp Number 026973-027251.

Maintain control of Intelligence Response Teams.
This position has been in place since May 28, 1994.

The field division intelligence officer⁷ (IO) will

Collect, evaluate, and prepare preliminary analysis of intelligence information for the field division.

Write intelligence reports and timely disseminate these reports to the Intelligence Division through the Program Manager, Major Investigations, and when appropriate, to the field division special agents.

Assist the field division SAC and Headquarters Intelligence Division with the identification of intelligence targets for the field division.

Serve as liaison with other law enforcement intelligence units.

Conduct intelligence, from case initiation, for all major investigations that affect the field division.

The SRT IO will

Be selected from each SRT team and trained in tactical intelligence techniques.

Coordinate all SRT-related tactical intelligence.

Be a member of the IRU and assume responsibility for disseminating SRT-related tactical intelligence information to other team members.

⁷ Memorandum dated April 20, 1994 Intelligence Officer Position; Bates Stamp Number 026536-026539. Also Intelligence Officer position description dated April 23, 1994, Bates Stamp Number 026540-026544.

The IRU¹ will

Monitor, coordinate, and serve as a point of contact for all intelligence information pertaining to major investigations.

Provide all analytical intelligence assistance for a major investigation.

Be responsible for the timely dissemination of information to the management team and Headquarters management.

B. Assigning of Specific Responsibilities

To ensure effective interface during major investigations, the following will be adhered to:

1. The Program Manager, Major Investigations, will have oversight of all intelligence operations for the investigation. This will include surveillance, debriefing of informants and undercover special agents, intelligence data bases, intelligence gathered from other sources, etc. The program manager will be supported by the IRU.
2. The program manager and IRU will disseminate all available intelligence information in an accurate, timely manner to the raid management team and Headquarters management.
3. When it is not necessary for the program manager to be present at the scene, the field division intelligence officer will assume responsibility for the coordination of all intelligence matters. The program manager will continue to monitor these investigations and give timely briefings to the Chief, Intelligence Division and Headquarters management.

¹ ATF description of the Intelligence Response Unit dated March 16, 1994; Bates Stamp Number 026916. Also ATF's "Activation Plans for ATF's Intelligence Response Unit"; Bates Stamp Number 026917-026923.

4. In the case of an investigation involving several field divisions, multiple intelligence officers and field IRSS will be on the IRU.
- C. Improved in-house Intelligence Support to ATF Field Divisions
 1. An annual training program for field IOs has been developed and implemented. A 2-week IO Training Course was initiated in September 1994. An IO Conference was held in July 1995.⁹
 2. Intelligence checklist on ATF's Local Area Network (LANS) computer system was created and implemented. The intelligence checklist was designed to assist special agents concerning all of the intelligence resources that are available, and it provides them with a document with which to track these resources.¹⁰
 3. Intelligence News was created and implemented on the LANS. This forum allows time-sensitive intelligence information to be made available to all special agents on a daily basis.
 4. Enhanced intelligence sharing with other agencies is accomplished on specific cases and regular intelligence information sharing meetings.
 5. The Intelligence Division expended the number of intelligence publications produced. Nine bound intelligence publications were produced in FY 95, six of which were first-time publications. They included the following:
 - a. Violent White Supremacist Gangs
 - b. Militia Overview

⁹ Intelligence Officer Training manual produced in 1994; Bates Stamps Number 026973-027251.

¹⁰ ATF Intelligence Program Review, dated January 1994; Bates Stamp Number 026526-026529.

- c. Russian OC
- d. Destructive Sects and Cult-Type Groups
- e. Information Security on secure documents
- f. Operation Security Lessons Learned

Bound publications were up over 40 percent from FY 94 to FY 95 and distribution to State and local law enforcement agencies also surpassed the previous year. Three additional publications are in the process of being printed:

- International Traffic in Arms (ITAR) Publication
- Militia Update
- Hells Angels World Run

- 6. There is now a greater involvement of the Intelligence Division in foreign field offices.

The International Enforcement Branch (IEB) was transferred into the Intelligence Division where it is more appropriately located.

Expanding the responsibilities of IEB has been enacted, realigning all of our foreign field offices under the Intelligence Division.

On-site reviews of the operations of intelligence division employees assigned outside of ATF Headquarters including Lyon, France; Ottawa, Canada; Bogota, Colombia; Mexico City, Mexico; El Paso, Texas; and Johnstown, Pennsylvania.

- 7. Increase collection and dissemination of intelligence information with Regulatory Enforcement.
 - a. Assigned a Regulatory inspector to the Tactical Intelligence Branch on August 21, 1995. This is the second inspector who has been assigned to the division.
-

- b. Developed a joint Regulatory/Criminal Enforcement Alcohol/Tobacco Training Program in mid-1995. A conference was held from September 11 to 15, 1995, in order to accumulate data and share information to be used in this new initiative. The conference was attended by 60 people, including special agents, Regulatory field inspectors, Chief Counsel, and management. Presenters at this conference included the Royal Canadian Mounted Police, staff from the Department of Justice, and two assistant U.S. attorneys.
 - c. Developed joint alcohol/tobacco training course.
 - d. Enrolled a Regulatory inspector into IO Training.
 - e. Established monthly meetings with Regulatory Enforcement Branch level personnel.
 - f. The Chief, Intelligence Division began periodically attending Regulatory Enforcement DAD(RE)/Division level staff meetings in July 1995.
 - g. In March 1995, began routinely providing Regulatory personnel intelligence briefs.
8. During FY 95, 10 Advanced Serial Case Management (ASCME) requests for assistance were conducted. The ASCME computer software program assists special agents with analytical and intelligence support in the event of major case incidents.
9. An ATF ASCME training course¹¹ has been developed to meet the demands on this program while at the same time decreasing training costs by eliminating contractor training. In

¹¹ ATF's "Advance Serial Case Management System manual produced in 1995; Bates Stamp Number 026817-026904.

September 1995, this course was presented at the Federal Law Enforcement Training Center to 26 employees. Course participants included intelligence analysts, investigative assistants, intelligence clerks, and special agents. In addition, appropriate portions of this course will be taught during the explosives segment of NRT to special agents.

10. An increase in on-site case specific support has been provided to field divisions on several occasions. This includes on-site support to the Nashville, San Francisco, Los Angeles, New Orleans, and Dallas Field Divisions.
 11. Both toll analysis and link analysis requests were up in FY 95.
 12. The IRU was created to assist special agents in intelligence matters on major investigations.
 13. One fulltime Headquarters IRS was assigned to work asset forfeiture/major cases.
 14. A threat data base to track and analyze the increasing number of threats received by Bureau personnel has been developed.
 15. Intelligence News on our LANS published over 150 articles in FY 95. Also, retrieval capabilities through word search were added in FY 95.
 16. Over 20 intelligence briefs were sent to both Criminal Enforcement and Regulatory Enforcement during the past 6 months.
 17. The Intelligence Division has routinely coordinated with Training and Professional Development personnel on course development and foreign training issues.
- D. Better intelligence coordination between SRTs and Investigating Agents

Intelligence officer positions were created in the SRTs. This position assists the SRT with time-sensitive tactical intelligence information.

- E. Implement an audit program to continually ensure proper utilization of the existing field division IRAs and IOs**

III. LACK OF OPERATIONAL SECURITY.

DISCUSSION:

The Waco report has identified several operational security deficiencies in the preparation and execution of the raid at the Branch Davidian Compound.

The Waco report particularly identified the following flaws in the operational security:

1. Advance notice was given to an ambulance service during final preraid preparations, which resulted in the raid being compromised.
2. Mass movement of ATF vehicles and personnel from Fort Hood to Waco occurred on Sunday morning, February 28, 1993.
3. Communications concerning the pending operation took place with the Waco Tribune.
4. An agent was not assigned to oversee operational security.
5. Nonsecured cellular telephone communications and radio traffic in the clear (nonsecured) mode was occurring prior to, during, and following the attempt to execute the raid.

CORRECTIVE ACTIONS:

A. Develop Policy

ATF has developed an operational security policy that supplements the National Response Plan. This plan identifies a special agent as the operational security supervisor of large operations. This supervisor will be solely responsible for all operational security in support of the mission and will have the authority, through the commanders involved in the operation, to remove persons who do not adhere to security policies. The supervisor will also be involved in developing and overseeing the plans of the operation in an effort to ensure operational security in all facets of the mission.

B. Provide Training

ATF is in the process of implementing several changes in training programs in an effort to develop a more comprehensive awareness of operational security for all special agents. We have received training in operational security from the National Security Agency and the U.S. Secret Service.

ATF has implemented operational security training¹² in a crisis management course for all SACs and ASACs.¹³ This course has been designed by the IACP. It will heighten all potential field commanders' awareness of our need to be ever mindful of such pitfalls that could compromise an investigation.

C. Expand In-House Capabilities

On September 17, 1995, a new position of Program Manager, Operations Security, was filled in ATF Headquarters and is assigned to the Deputy Associate Director Criminal Enforcement (Programs). The incumbent will develop policies and programs on a national level to enhance operational security within ATF.

ATF has also expanded its in-house capabilities to provide medical support with operational security. It has entered into a memorandum of understanding (MOU) with the Uniformed Services University of the Health Sciences Casualty Care Research Center which will provide ATF with medical support teams for specific law enforcement operations.¹⁴ Further details of this program are emphasized in finding "V" of this report.

¹² Operational Security Lessons Learned, dated June 15, 1995; Bates Stamp Number 026714-026733.

¹³ Investigative Operational Security Course Outline; Bates Stamp Number 026747-026750. Also ATF B 8800.1, Disposing of Sensitive but Unclassified Information; Bates Stamp Number 26751.

¹⁴ Memorandum of Understanding between ATF and The Uniformed Services University of the Health Sciences; Bates Stamp Number 026963-026965. Also ATF's Emergency Medical Program Position Paper; Bates Stamp Number 026752-026754.

ATF is in the process of developing a higher level of security regarding radio communications. On each operation, ATF will examine the operational security of radio communications, in particular, use of the digital encryption privacy mode for all members of the operation. The digital encryption privacy mode prohibits the interception of communications by subjects, news media, or the general public. On special operations, ATF would also consider providing Bureau communications to any assisting State and local law enforcement. This would enable ATF to become self-reliant and would eliminate the need to use additional outside law enforcement communications. ATF is planning to utilize an updated communication system that will enable each radio to receive a secure digital encryption code change over the radio frequency.

In this way, ATF will be able to make secure code changes to all radios simultaneously during an operation without having to change each radio code manually.

Additional secure communication measures are provided for under ATF's regional SRT concept. Portable cellular secure telephone units (STU) and STU facsimile machines will be used to enhance operational security. Operations plans and other sensitive documents will be sent via STU facsimile to prevent unauthorized interception. Utilization of cellular STU telephones will ensure that voice communications will not be compromised.

IV. ATF'S POLICY WAS INADEQUATE IN DEALING WITH THE MEDIA.

DISCUSSION:

The Waco review pointed out several areas where ATF performed poorly in its interaction with the news media. This experience has enabled us to identify our weaknesses so that we may improve our performance in future crisis situations.

CORRECTIVE ACTIONS:

A. Proper Public Information Officer Selection

In crisis situations, maintaining command and control is critical, but just as critical is the need to communicate quickly and effectively with the media and the public.

A tremendous burden is placed on personnel who are emotionally and physically involved in the situation. As soon as it is practical, personnel who are not involved in the command and control of the operation should assume responsibility for interacting with the media on a routine basis.

In future crisis situations, personnel assigned to the operation, in order to provide the public and the media with initial information, should not be given other operational assignments during the crisis situation.

B. Quality Control and Accountability

A law enforcement crisis will generate national and international media attention. Command and control of the public information process will transfer to the Director and Deputy Director through the Assistant Director (Liaison and Public Information). This will ensure the timeliness of information being forwarded (not in competition with vital operational decisions) and appropriate coordination of information.

When misstatements are made or contradictory statements are reported, every effort will be made to determine the facts and correct the inaccuracies.

The field public information officers and Headquarters public information managers are included in the agency's Crisis Management Training Course for senior managers and incident commanders.

Those responsible for public communications during a crisis will actively participate in planning sessions both prior to and during the crisis. This is essential to providing accurate information and to preventing the mishandling of sensitive information that could impair operational plans.

C. Media Response Team

The Office of Public Information has been working with the Enforcement Directorate on developing a Media Response Team concept. The Media Response Team will be comprised of senior special agents with extensive experience as public information officers in national incidents. They will coordinate the activities of media response teams and provide on-site public information oversight

and coordination with the Headquarters Office of Public Information. For example, in the Oklahoma City bombing, two public information officers were included in the response, and they shared office space with the incident commanders.

D. Crisis Communications Policy

Personnel from the Office of Public Information have met with representatives from BP Oil and Pepsico to discuss how they handle crisis management at their companies. Field public information officers have also obtained crisis management plans from many companies for staff review. In addition, we are also receiving proposals from companies that may assist the Bureau with training in crisis management/communication.

ATF's EOC has also developed a detailed, four-level notification and coordination protocol for major incidents.¹⁵ It provides for a procedure in which all ATF senior managers can be immediately notified and brought together to appropriately respond to major incidents.

There are several categories of callouts, most of which include contacting either the Assistant Director, Liaison and Public Information, or the Chief, Office of Public Information.

E. Public Information Officer Conferences

The first national Public Information Officer Conference was held in 1993, and focused on post-Waco improvements to our public information program. In June 1995, a training conference for the public information officers nationwide focused on crisis management. Speakers for the course included Lieutenant Robert O'Toole of the Boston Police Department Office of Public Information, and Ms. Lee Hancock, Lead Reporter with the Dallas

¹⁵ ATF's New Notification Procedures for Bureau Officials released in the memorandum of April 10, 1995, and addressed in the briefing paper dated February 17, 1995; Bates Stamp Number 026966-026972.

Morning News. Lieutenant O'Toole spoke regarding the public information officer's role in crisis management. Ms. Hancock spoke on the reporters perspective of the Waco and Oklahoma City incidents.

F. Restructuring

As a result of ATF's restructuring, the functions of ATF's public affairs and congressional affairs offices have been divided between one executive office and one directorate. The Liaison and Public Information Directorate now includes both the public information and liaison functions and is the clearinghouse for all information disseminated to the press and the public. This office coordinates closely with both the Public Affairs and Enforcement Offices at the Treasury Department. ATF's Executive Assistant, Legislative Affairs oversees all congressional matters for the agency in coordination with both the Legislative Affairs and Enforcement Offices at the Treasury Department.

V. ATF'S SRT CAPABILITIES WERE TOO LIMITED.

DISCUSSION:

Although the departmental review praised the discipline and heroic acts of ATF/SRT personnel, it also pointed out a need to expand the capabilities of the SRT. More specifically, the review correctly concluded that the teams should be better equipped and provided with more specialized training.¹⁶

CORRECTIVE ACTIONS:

The implementation of the Regional SRT Program will greatly enhance ATF's tactical capabilities. The teams will consist of 30 special agents; team positions will include a fulltime SRT team leader, four assistant team leaders, a Forward Observer team, two tactical intelligence agents, and a

¹⁶ Draft ATF O 3210.9A, Guidelines for the Use of Field Division Special Response Teams; Bates Stamp Number 026653-026713.

crisis negotiation coordinator. The regional team concept reduces the number of agents currently in the program but improves the overall quality of the teams. The regional teams will receive advanced training in all areas of tactical operations. In addition, these teams will be under the direction of the SAC of the Tactical Response Branch (TRB). This direct line of authority will lead to more effective management of training, operations, and resources.

The TRB has developed "The Operational Risk Assessment"¹⁷ designed to identify critical elements that effect high-risk tactical operations in an effort to increase the safety to all agents, other law enforcement officers, suspects, and the public involved in tactical operations. The operational risk assessment is divided into four major categories to include the type of enforcement activity, the criminal history of the suspect/associate, the weapons possessed by the suspect/associate, and the location of the suspect/associate. Each major category is divided into subcategories. Each subcategory is assessed a numerical value. The numerical sum of all the categories is the starting point for development of the operational plan. Based on the information gathered from the operational risk assessment, planners will have at their disposal critical intelligence information needed to develop an operational plan. On a case-by-case basis, the tactical options considered may include use of rouses to lure out the suspect/associates and give law enforcement the advantage, the use of crisis negotiators to negotiate the crisis to a peaceful solution, waiting the suspect out, and as a last resort making a static entry. Given the choice, the first tactical option will be luring the individual out which will reduce the risks to the public and agents and ensure a safe peaceful resolution to the situation. ATF managers and in particular, SRT team supervisors, are firmly committed to the principle that a dynamic type entry is the last resort for any enforcement activity, and only to be used when all other options have been exhausted.

¹⁷ Draft Operational Risk Assessment; Bates Stamp Number 026628-026629.

The implementation of the ATF operational plan was necessitated by the increase in violence encountered by agents during the execution of search warrants, arrest warrants, and undercover operations. The operation plan is designed to identify parameters of enforcement operations in an effort to increase the level of preparation and safety of all agents.

The ATF operation plan will be prepared during the planning process of all search warrants, arrest warrants, and undercover operations where ATF is the responsible agency for any one of the above enforcement activities. The use of a well written operations plan in concert with a thorough briefing substantially enhances the safety of the agents, public, and suspects.

A. Develop Better Contingency Plans/Perimeter¹⁸

The SRT training developed after the Waco investigation at Fort McClellan, Alabama, includes several small-scale tactical problems and one large-scale tactical problem. These will require the teams involved to plan for perimeter security and support. A contingency plan will also be required to support the primary raid plan. This contingency plan must be incorporated into every phase of the raid plan from method of arrival through securing the scene.

B. Develop Interface Between SRTs and Forward Observer Teams

Forward observer teams were invaluable at Waco but could have been used more effectively. These teams should have been involved in formulating the tactical plan and deployed strategically in order to provide 360-degree coverage of the compound. Furthermore, although this was a new program with ATF, the forward observer training needed to be formalized and expanded so that intelligence gathering techniques, as well as shooting skills, could be emphasized.

¹⁸ ATF Special Response Team Forward Observer Training; Bates Number 07010-07272.

In order to improve this program, ATF's training in this area has been greatly modified. Our first extended SRT training was held in October 1993. It included classroom instruction, as well as practical exercises in the integration of the forward observers into the SRT program.

C. Develop Hostage Negotiation Capabilities

At present, the TRB, in conjunction with the Houston Police Department, has developed a Hostage/Crisis Negotiations School for agents in each field division who are selected by their SAC to attend a basic course in this discipline. The training consists of an 80-hour course on the art and science of hostage/ crisis negotiations. The first training course for 24 special agents was completed on September 29, 1995.

D. Pursue Title III Application

ATF currently has Title III authority for use in the investigation of specific firearms and explosives violations. ATF has incorporated a course on the emergency application for Title III interception into its 2-week Hostage/Crisis Negotiations School. ATF will also incorporate this same course into the next advanced SRT school.

Under current status, no specific Title III authority exists for ATF to gather criminal intelligence for the express purpose of agent safety. However, the possibility does exist that during the course of conducting a routine and lawfully obtained Title III intercept, information may be acquired which could be utilized to avoid a possible crisis situation.

E. Weapons/Special Equipment Selection and Training

Much discussion has been generated regarding the types of weapons carried by ATF agents at Waco. Because the plan called for the quick entry into a thin-walled structure that contained both women and children, only a limited number of AR-15 rifles were requested by SRT team leaders to complement the MP-5 tactical carbines carried by other agents.

Once the firefight occurred, some agents recognized that their supply of ammunition was limited, as others expressed concern over the lack of AR-15 rifles that had been made available.

Suffice to say, hindsight clearly reflects that there was insufficient weaponry, ammunition, and tactical capabilities (e.g., smoke, tear gas, etc.) to successfully overcome such an unprecedented attack. However, our need to constantly review our weaponry, policies, and equipment is a valid issue.

Currently, all ATF agents are armed with Sig Sauer .9mm semiautomatic pistols. In addition, auxiliary firearms, tactical carbines, shotguns, and Colt AR-15 rifles are issued and/or available to all agents. Members of the forward observer teams are issued .308-caliber Remington sniper rifles. Agents must qualify quarterly with their issued weapons (with the exception of members of the forward observer teams who qualify on a monthly basis).

Furthermore, SRTs have specialized training and capabilities in the following areas:

- **Diversionsary Devices** - All field division SRTs are qualified to use diversionsary devices (tactical equipment designed to create a noise distraction in order to give additional time advantage to law enforcement personnel when executing some high-risk warrants).
- **Tear Gas** - This training has now been incorporated on a limited scale into the SRT training at Fort McClellan.

F. Improved Command Post Management

The need for improved command post operational management became apparent following the Waco operation. A need was recognized to train SAC/ASAC personnel on how to set up a functional command post. This training has been incorporated into the crisis management training and is provided to ATF management and SRT team leaders by the IACP.

G. Enhance Technology

ATF's SOD conducts ongoing research to continually improve the technology and tactics used by the SRTs. As a result of this effort, all ATF field agents have been issued new level III body armor. SOD has acquired Simrad night vision equipment for use by SRT forward observers. SOD's Air Operations Branch currently has seven OV-10 aircraft which are equipped with a forward looking infra-red system (FLIR). The FLIR is an advanced thermal imaging system which can be used in conjunction with SRTs for surveillance in condition of low visibility or darkness.

H. Teach Nondynamic Entry Techniques

A large number of ATF high-risk warrants involve narcotics. One of the goals of the SRT in these cases is to "dynamically" secure the premises before suspects have an opportunity to destroy the evidence or to resist the agents in any manner. This type of entry is common with most Special Weapons and Tactics (SWAT) teams, especially those that serve drug warrants. This is the most common technique used by SRTs, and training in this area is extensive at Fort McClellan during the SRT basic school.

Some teams, including the Los Angeles SWAT, are hesitant to use dynamic entries when there is no evidence on the premises that can be easily destroyed. They prefer to surround the premises and, from covered positions, call the subjects out. Even though this technique has some negative aspects (subjects can refuse to come out, neighborhood has to be evacuated, etc.), it has enough merit for our SRTs to always consider using this as the first option when planning tactical operations.

The SRT basic course curriculum has been revised to include instruction of some on the techniques needed to conduct siege operations. The development of the hostage negotiation program will further provide the teams with the resources needed to make this option more viable. The new basic school will also emphasize that dynamic entries are the last option, and containment callouts should be considered whenever possible.

In May 1994, ATF invited select members of our SRT instructor cadre, experts from the IACP, and members of the USCS Warrant Entry Team training cadre to Fort McClellan to assist in the development of our Advanced SRT Training. As a carryover from our Basic SRT Training, areas such as operational planning, contingency planning, and interfacing between SRTs and forward observers will continue in our advanced school.

I. Expand Medic Program

In August 1993, ATF conducted a Pre-hospital Trauma Life Support course for 52 special agents and Bureau Headquarters personnel. Two agents from each field division and the ATF National Academy attended. The training was held at Fort Bragg and was given by U.S. Army Special Forces medics.

In addition to the above, a MOU has been established between ATF and the Uniformed Services University of the Health Sciences (USU) Casualty Care Research Center, a Department of Defense agency that employs a multitude of combat trained physicians, nurses, and paramedics who continually support law enforcement agencies throughout the country. This MOU encompasses training a select number of ATF agents as national register emergency medical technicians (EMTs), and as advanced tactical emergency medical technicians, who are capable of functioning in extremely volatile law enforcement situations.

In addition to training under the aforementioned MOU, the USU will also provide medical consultation services to ATF, as well as advanced medical support (e.g., doctors, nurses, paramedics) for out agents in dangerous situations.

Working in close conjunction with the USU, the TRB proposes to train two or three agents per field division as national register EMTs. This proposal has already been initiated with the participation of 24 agents in a 3-week intensive National Emergency Medical Technician School. This school was sponsored by the USU and supported by ATF's SOD and the Training and Professional Development

directorates in July 1995. Another basic national EMT school is already scheduled for January 1996, in addition to an advanced Tactical Emergency Medical Technician School, which is scheduled in August 1996. This school will include the attendance of all ATF EMT certified agents who have previously attended the Basic National Register EMT class in July 1995, as well as the agents scheduled for the January 1996 school.

Once trained and certified, the agent EMTs will be able to support all tactical situations in the field whether SRT-related or not. This would include undercover operations, NRT operations, and any other potentially dangerous law enforcement operations encountered by ATF. This ability alone will add an important level of agent safety.

In addition, these SRT EMTs will be capable of training all agents in first aid/first responder techniques as well as cardiopulmonary resuscitation. Because of the in-house nature of this training, the emergency medical knowledge obtained by each agent in the field will remain up-to-date and very cost effective.

VI. LACK OF UNDERCOVER CONTROLS (TO INCLUDE FIXED SURVEILLANCE OPERATIONS).

DISCUSSION:

The undercover operation lacked a control agent to debrief the undercover agent and transmit the information developed by the undercover agent to the incident commander/management team.

CORRECTIVE ACTIONS:

A. Policy Development

As investigations become more complex and extensive, coordination and direction of all facets of the investigation may well exceed the capabilities of the case agent.

ATF's Tactical Intelligence Branch, Intelligence Division, has developed a formal policy and training program to address this issue. ATF Brief 3220.2, entitled, "Oversight and Control of Undercover and Surveillance Operations," was

adopted on August 22, 1994, and is currently in place.¹⁹

According to the brief, at the discretion of the SAC, the field division IO may be used to assist the case agent in large investigations to ensure that undercover and surveillance activities are properly conducted and that the information required from these activities is properly collected, documented, and evaluated. During these investigations, the IO should also ensure that the information is disseminated to those requiring it in a timely and accurate manner. The IO is not part of the supervisory chain of command and operates under the direction and control of the supervisor responsible for the investigation he/she is assisting on.

B. RESPONSIBILITIES

When the SAC designates the IO to assist during a long-term and/or large-scale undercover operation, the IO will ensure that the responsibilities of the undercover and surveillance agent(s) are clearly defined and adhered to and that the following is accomplished:

1. Debriefing of the undercover agent(s) as soon as possible after an undercover contact and dissemination of developed information to appropriate individuals in a timely manner.
2. Maintenance of an accurate undercover activity log.
3. Timely preparation of written reports of contacts by undercover agents.
4. Proper and accurate maintenance of a surveillance log.

¹⁹ ATF B 3220.2 Oversight and Control of Undercover and Surveillance Operations dated August 22, 1994; Bates Stamp Number 026534-026535. Also memorandum dated February 22, 1995, Guidelines for Sensitive Undercover Operations; Bates Stamp Number 026799-026813.

5. Proper handling, storage, and duplication of surveillance evidence (e.g., photographs, videos, audio recordings). Ensure timely dissemination of this evidence to appropriate individuals.
6. Ensure that proper equipment is utilized in intelligence gathering operations.
7. Implementation and adherence of proper communications and operational security procedures.
8. Ensure that the raid management team must have the most up-to-date and complete intelligence information available to use in their raid planning.

ATF has made significant strides to enhance the Bureau's undercover operations. Recently, SOD developed a uniform operational plan.²⁰ This operational plan provides several essential guidelines, while stressing the safety of agents, violators, and the general public. ATF is also establishing guidelines for sensitive undercover operations and subsequent review by the newly formed undercover review committee (URC). The URC is comprised of upper level supervisory personnel who will be responsible for reviewing and approving all sensitive undercover operations. These sensitive guidelines require the ultimate approval and consultation of the Associate Director (Enforcement).

ATF has implemented ATF 3210.9, Development of Sensitive Undercover Guidelines, which outlines the duties of the Undercover Review Committee and the manner in which they examine and approve sensitive undercover operations.²¹

²⁰ ATF B 3210.8, Implementation of ATF Operational Plan, dated January 27, 1995; Bates Stamp Number 026601-026611.

²¹ ATF B 3210.9, Development of Sensitive Undercover Guidelines and Undercover Review Committee dated May 5, 1995; Bates Stamp Number 026612-026627.

VII. ATF HEADQUARTER'S RESTRUCTURE

In order for the changes made at ATF after Waco to truly make a difference, the Director determined that ATF needed to completely revamp the way it does business on a broader scale. He determined that ATF needed to improve its organizational structure.²²

Director Magaw completed the restructuring of his Headquarters staff in October 1994. He believed that the successful future of ATF was dependent upon a well-trained, professional work force, and to this end, he elevated the training function to an executive level position, and created the Training and Professional Development directorate. Furthermore, in the face of constant demands to do more with less, he created a Science and Information Technology directorate to ensure that ATF would keep pace with science and technology developments that can improve our effectiveness. On science and technology issues, ATF now coordinates with other Treasury agencies through the Treasury Enforcement Council. He also strengthened the internal review processes to provide for a strong, well-staffed inspection unit to conduct both operational reviews and internal investigations.

Additionally, Director Magaw established the Office of the Ombudsman to provide all levels of the Bureau direct access to the Office of the Director.

²² Approved Restructuring Proposal, September 1994; Bates Stamp Number 26322-26500.

CONCLUSION

No law enforcement operation is risk free, and not all mistakes can be eliminated by systemic changes. The human factor of making difficult decisions under stressful circumstances is inherent in law enforcement operations. The existing ATF systems and the quality of people involved have, in fact, established a remarkable track record of success in carrying out our mission. What we have learned from Waco, however, is that despite these successes, there are a number of areas where we were deficient. The events of Waco taught us painful but important lessons that cause us to improve our ability to safely and effectively carry out a mission that brings us into contact with some of the most violent and dangerous criminals in America.

REFERENCES

- ¹ National Response Plan, ATF O 3350.10, dated February 18, 1993; Bates Stamp Number 06719-06740.
 - ² Draft Revision of the National Response Plan; Bates Stamp Number 026630-026651.
 - ³ ATF's Crisis Incident Management Response Team (CIRMT) Chart; Bates Stamp Nuber 026652.
 - ⁴ Training Manual provided by the International Association of Chiefs of Police to ATF trainees on the subject of "Advanced Tactical and Leadership Management." Bates Stamp Number 027252-027452.
 - ⁵ ATF's Intelligence Program Review dated January 1994; Bates Stamp Number 026504-026529.
 - ⁶ ATF's Intelligence Officer Training Manual produced in 1994; Bates Stamp Number 026973-027251.
 - ⁷ Memorandum dated April 20, 1994, Intelligence Officer Position; Bates Stamp Number 026536-026539. Also Intelligence Officer Position Description dated April 23, 1994; Bates Stamp Number 026540-026544.
 - ⁸ ATF Description of the Intelligence Response Unit dated March 16, 1994; Bates Stamp Number 026916. Also ATF's "Activation Plans for ATF's Intelligence Response Unit"; Bates Stamp Number 026917-026923.
 - ⁹ Intelligence Officer Training Manual Produced in 1994; Bates Stamp Number 026973-027251.
 - ¹⁰ ATF Intelligence Program Review, dated January 1994; Bates Stamp Number 026526-026529.
 - ¹¹ ATF's "Advance Serial Case Management System Manual produced in 1995; Bates Stamp Number 026817-026904.
 - ¹² Operational Security Lessons Learned, dated June 15, 1995; Bates Stamp Number 026714-026733.
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¹³ Investigative Operational Security Course Outline; Bates Stamp Number 026747-026750. Also ATF B 8800.1, Disposing of Sensitive But Unclassified Information; Bates Stamp Number 026751.

¹⁴ Memorandum of Understanding between ATF and The Uniformed Services University of the Health Sciences; Bates Stamp Number 026963-026965. Also ATF's Emergency Medical Program Position Paper; Bates Stamp Number 026752-026754.

¹⁵ ATF's New Notification Procedures for Bureau Officials released in the memorandum of April 10, 1995 and addressed in the briefing paper dated February 17, 1995; Bates Stamp Number 026966-026972.

¹⁶ Draft ATF O 3210.9A, Guidelines for the Use of Field Division Special Response Teams; Bates Stamp Number 026653-026713.

¹⁷ Draft Operational Risk Assessment; Bates Stamp Number 026628-026629.

¹⁸ ATF Special Response Team Forward Observer Training; Bates Stamp Number 07010-07272.

¹⁹ ATF B 3220.2, Oversight and Control of Undercover and Surveillance Operations dated August 22, 1994; Bates Stamp Number 026534-026535. Also memorandum dated February 22, 1995, Guidelines for Sensitive Undercover Operations; Bates Stamp Number 026799-026813.

²⁰ ATF B 3210.8, Implementation of ATF B Operational Plan, dated January 27, 1995; Bates Stamp Number 026601-026611.

²¹ ATF B 3210.9, Development of Sensitive Undercover Guidelines and Undercover Review Committee dated May 5, 1995; Bates Stamp Number 026612-026627.

²² Approved Restructuring Proposal, September 1994; Bates Stamp Number 26322-26500.

HOUSTON SRT

TEAM "A"

TEAM "B"

A/B team would form up in vehicle in a single file, alternating A/B team members. Upon entering premise A team members would leap frog down the left side of hall clearing rooms. Members from team B would leap frog down the right side of the hall clearing rooms, breaking off bunker team #3 to clear the kitchen/dining area. Any stairways encountered would be held and communicated with DALLAS SRT. Houston and Dallas SRT, would make a decision as to clearing the stairways. Upon clearing the first floor hallway/structure and finding the trap door, team A/B would enter and clear the tunnel.

All communication/clearances between teams will be coordinated by [REDACTED]. Any use of diversionary devices would be advised by [REDACTED] prior to using the devices.

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TEAM A/ LEFT SIDE OF FIRST FLOOR

BUNKER #1 [REDACTED] BUNKER
[REDACTED] FLASHBANGS/SHOOTER
[REDACTED] -MP5

BUNKER #2 [REDACTED] BUNKER
[REDACTED] MP5
[REDACTED] SHOOTER

BUNKER #3 [REDACTED]
[REDACTED] -MP5
[REDACTED] -MP5

TEAM B/RIGHT SIDE OF FIRST FLOOR

BUNKER #1 [REDACTED] BUNKER
[REDACTED] -FLASHBANGS/SHOOTER

BUNKER #2 [REDACTED] BUNKER
[REDACTED] FLASHBANGS/SHOOTER

BUNKER #3 [REDACTED] BUNKER
[REDACTED] SHOOTER
[REDACTED] -MP5

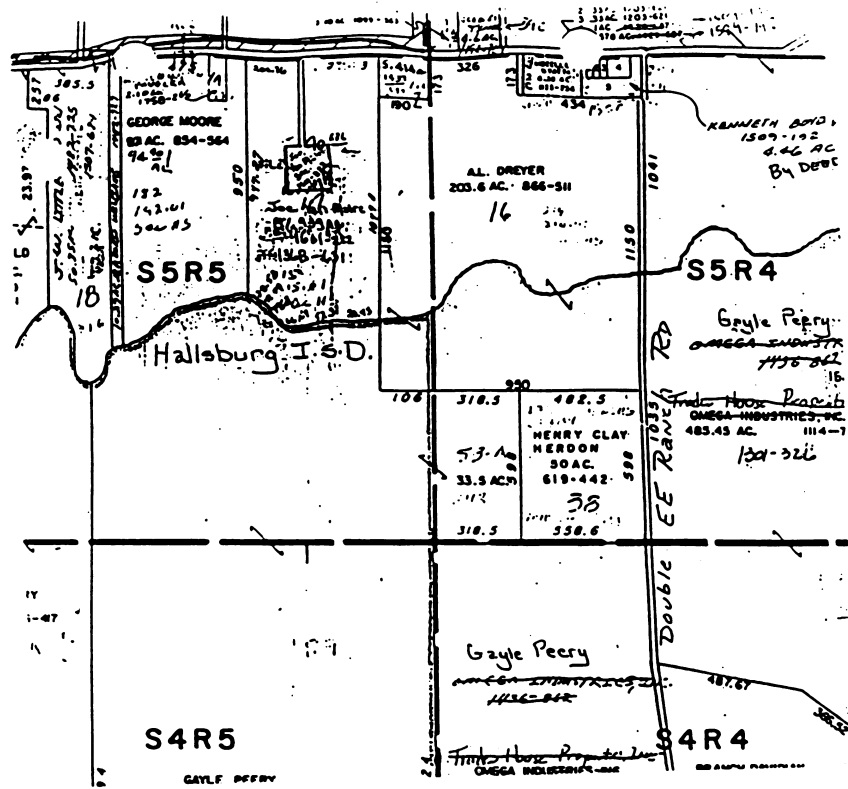
TUNNEL RATS- [REDACTED] FLASHBANGS
[REDACTED] MP5
[REDACTED] BUNKER

00010609

PERIMETER AGENTS



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00010611

BRANCH DAVIDSON - Waco, Texas

ROADBLOCKS:

Three roadblocks will be necessary once the operation is initiated. One will be placed on the first road south of the EE Ranch house on Elk Road. One will be placed about one mile north of EE Ranch Road on the Elk Road. One will be placed at the west end of EE Ranch Road at the "T" with the next road west. These will be manned 24 hours a day in 12 hour shifts.

Two Special Agents should man each roadblock along with at least one marked police unit. No one except persons living within the roadblocks or with legitimate business will be allowed to pass and they will be escorted to their destination. All persons living within these roadblocks will be asked to leave during the operation, however they cannot be required to leave unless they pose a threat to the operation.

FAA ASSISTANCE:

FAA will see to it that all air traffic will be prohibited from entering any air space within 5 miles of the compound. The only exception will be aircraft assigned to assist in the operation.

FORWARD OBSERVERS:

Six teams of Forward Observers will be needed for the operation. They will work in 12 hour shifts with three teams on duty at a time. They will be put into location prior to notification of occupants that a search warrant is to be executed. FO Team #1 will take up an observation point on the pond dam southwest of the camp and will cover sides 1 & 2. FO Team #2 will take a location on the high ground directly behind (north) of the tower. This team will need good camouflage and a minimum of six sandbags. They will cover side #3, the rear, of the camp. FO Team #3 will take up an observation point behind the block house southeast of the camp. They will cover sides #1 & #4.

GENERAL RAID PLAN:

If possible a ruse of some sort will be used to lure Vernon Howell and as many leaders from the camp as possible prior to the execution of the warrant.

At this time the search warrant will be executed using Non-SRT Special Agents on "Mag Bag". This location could be used for the operation as it is said to have a radio to contact the main camp.

00010612

A phone call will then be made to the camp and inform them of the warrant and that Howell is being detained. If Howell agrees and cooperates he will be allowed to make the call to the camp and enlist their cooperation. Prior to the call being made, SRT #1 will take a position in the barn owned by EE Ranch located northeast of the camp. At the same time that the call is being made, SRT Team #1 will move out of the barn and secure the building on the northeast corner of the property. This appears to be some sort of warehouse or work shop and does not appear to have anyone living in it. Once this building is secured it may be used as a Forward Command Post (FCP).

Half of SRT #1 will then move and take up a location with FO Team #1 at the pond dam.

SRT #2 will then move to join FO Team #2. It will be necessary for this team to take with them sufficient sandbags to set up a secure fighting position. If possible a Customs Blackhawk helicopter and/or an Armored Personnel Carrier (APC) will be used to insert this team. Due to large quantity of sandbags that will be necessary to build this position they will need to be transported to the location using some sort of vehicle. Once this position is set up, half of this team will move to a position below the pond dam located northwest of the compound.

SRT #3 will then move to join FO Team #3. This team will also be transported by helicopter and/or APC.

Each SRT should take with them two military field phones. Once a command post is established these teams will be connected to each other and to the command post by field phone. When these teams are in place the wire for the field phones will be laid connecting all the SRT positions to the FCP.

Once these positions are established these teams can then be split and work in 12 hour shifts.

00010613

NEW ORLEANS SRT RAID PLAN: Mt. CARMEL, TEXAS

SRT Personnel:

[REDACTED]

Forward Observers:

[REDACTED]

Other New Orleans Personnel:

[REDACTED]

Entry to main building:

The New Orleans SRT will be the first team through the door having the responsibility for clearing the Church area, rooms to the immediate right of front door, Vernon Howell's quarters, and the warehouse at the rear of the compound.

A team of four agents; [REDACTED] and [REDACTED] will lead the NO team and will go directly to the stairway on the stage of the church leading up to Vernon Howell's room.

A team of three agents; [REDACTED] will enter the building and clear any rooms to the immediate right of the front door.

A team of four agents will move to side 4 of the building with a ladder. Three agents; [REDACTED] will use the ladder to gain access to the roof adjacent to Howell's quarters and will take up positions at the two windows. [REDACTED] will be prepared to break the north window and cover the room. [REDACTED] will cover the south window. [REDACTED] will also be prepared to deploy a diversionary devise. The fourth agent; [REDACTED] will cover the door leading into the warehouse.

00010614

Once the team of [REDACTED] have cleared their rooms [REDACTED] will go back out the front door and assist Bonaventure where they will make limited penetration through the warehouse door and hold/cover.

Once [REDACTED] are in place they will communicate and [REDACTED] will give the go ahead for [REDACTED] team to go up the stairs and clear the room. If needed a diversionary devise will be deployed by [REDACTED] [REDACTED] team will move upon the detonation of the devise.

After the room(s) are cleared [REDACTED] will cover down the hall leading to the warehouse. The remainder of the team will move out through the front door and will link up with the outside team. [REDACTED] team will get off the roof. They will then make entry into the warehouse and clear it.

Once the warehouse is cleared [REDACTED] will move around the rear of the building and go the machine shop located just west of Howell's quarters and will clear that room.

00010615

DALLAS TACTICAL PLAN

THE DALLAS SRT AREA OF RESPONSIBILITY
WILL BE - ENTRY THRU THE FRONT DOOR
TURN LEFT AND ASCEND STAIRCASE
TO SECOND FLOOR -

① A THREE MAN TEAM WILL THEN
CLEAR LANDING AND TOWER #1

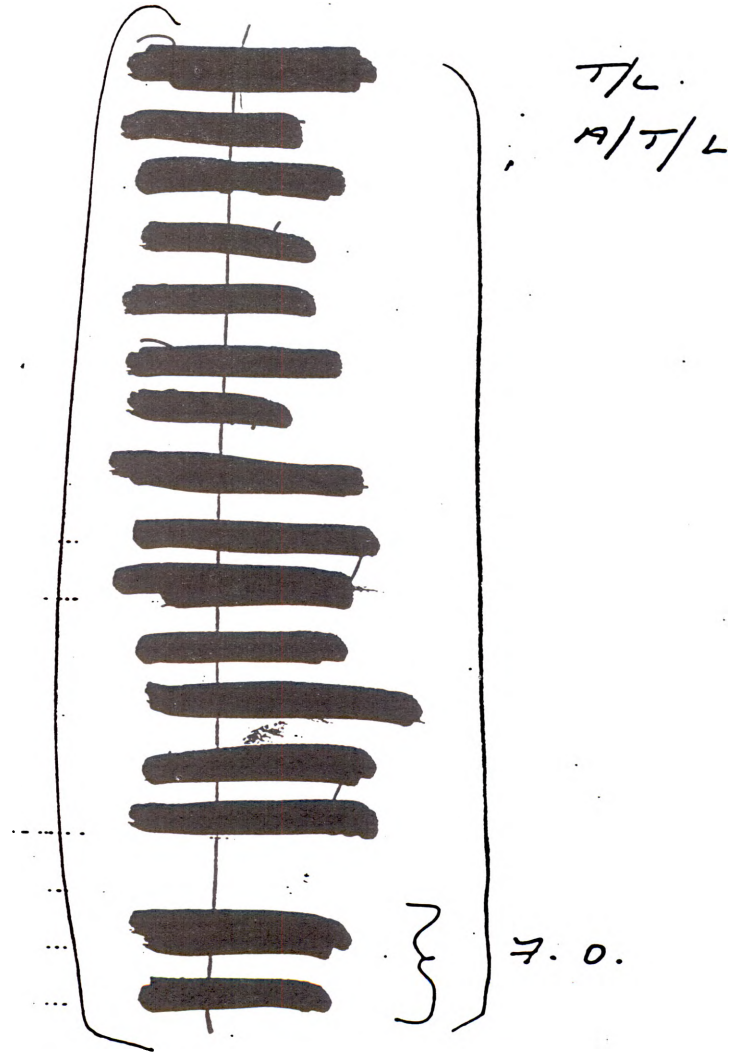
② A SIX MAN TEAM WILL CLEAR
DOWN THE HALLWAY UP TO
TOWER #2 THEN A 5 MAN
TEAM WILL CLEAR TOWER #2

③ THE SIX MAN TEAM WILL THEN
CONTINUE TO CLEAR OR HOLD
DEPENDING ON CIRCUMSTANCES
AND WILL THEN CLEAR REMAINING
HALL AND TOWER #3.

NOTE - ① DETAINERS WILL BE SENT
TOWARDS TOWER #1 AND PASSED
DOWN STAIRCASE TO SUPPORT
PERSONNEL.

00010616 ② ALL DOWNWARD STAIRCASES WILL
BE HELD AND CLEARED IN
COORDINATION WITH HOUSTON/NOVOR

DALLAS SRT



00010617

DALLAS SUPPORT

- | | | |
|------|------------|-----------------------------|
| 1. | [REDACTED] | } SRT Trained - Not certfic |
| 2. | [REDACTED] | |
| 3. | [REDACTED] | |
| 4. | [REDACTED] | |
| 5. | [REDACTED] | - EMT |
| 6. | [REDACTED] | - Driver |
| 7. | [REDACTED] | |
| 8. | [REDACTED] | |
| 9. | [REDACTED] | - Female |
| 10. | [REDACTED] | - Female |
| 11. | [REDACTED] | |
| 12. | [REDACTED] | |
| ALT. | | |
| 1. | [REDACTED] | |
| 2. | [REDACTED] | - Female |

00010618

OUTSIDE COVER RAID PLAN - MT. CARMEL, TEXAS

The outside cover team will consist of twenty Special Agents. The Team Leader will be SA [REDACTED]

This team will approach the property in the two cattle trailers and will work as agent teams.

Team # 1 will be the two drivers of the truck carrying the SRTs. They will cover the front of the building from a position of cover at their respective vehicles. These agents should be armed with AR15 rifles.

Team # 2 will consist of two agents (one a female) who will proceed to the small camper trailer located on the east side of the building. (Intelligence is that there is one older woman only living in this trailer). They will clear this trailer and secure anyone encountered. They will then act as security for side 4 (east) of the main building.

Team # 3 will consist of two agents who will proceed to a white van usually parked on the back side of the parking lot directly in front of the building. They will clear this vehicle. Occasionally Steve Schnieder sleeps in this vehicle. After this van is cleared this team will continue to clear the other vehicles parked in front of the building.

Team # 4 will consist of two agents armed with AR15 rifles who will move to a chicken coop located at the northwest corner of the property. They will cover side 2 and 3 from that location.

Team # 5 will consist of two agents armed with AR15 rifles who will move to the far north end of a dirt pile located on the northeast corner of the property. They will be responsible for covering side 3 (rear) of the building.

Team # 6 will consist of six agents who will go immediately to the construction area on the west side of the building. Their responsibility will be to secure anyone who is working in the excavation site or in that general area.

Team # 7 will consist of four agents who will accompany the Forward Observer Team that will be setting up on the far northwest corner of the property. This FO team and Team # 7 will remain in a barn located off the property until given a pre-arranged signal to move up to the building located on that corner. (This is //

00010619

believed to be a storage area or possible an area used to work on cars and is not normally occupied). This team will clear the building and then proceed down the road to the main compound clearing any vehicles along the way. Team # 7 will not travel to the location in the cattle trailers but will move with the FO Team to that location. A 4-wheel drive vehicle may want to be used to move down the road once the building is secured and the cattle trailers have arrived on the compound.

00010620

FACSIMILE COVER PAGE

To: Davey Aguilera
From: MARC BREULT
Date: 17:15 EST 16-Dec-92
Subject: Some deails, more coming later

Transmitting 6 pages in addition to this cover page.

Delivered by CompuServe Mail [REDACTED]

00008912

Mr. Aguilera

My profile document is still in the making. Here, I thought I would write down a few facts and observations concerning some of Vernon's key people, his structure, and some important background materials. I am sorry that birth dates and SS#'s are rare but I will do the best that I can.

VERNON TALKS TO REPORTER ABOUT GUNS:

In January of 1992, Australian reporter Martin King travelled to Mount Carmel to interview Vernon. This is a fragment of that report.

MARTIN: Do you have guns?

VERNON: Yeah we have some.

MARTIN: Following months of negotiations, we were finally granted an audience with Vernon Howell, or, as he now prefers to be called, David Koresh. But our interview got off to a touchy start when guns were mentioned.

VERNON: [vehemently] They come in here with a gun and they start shooting at us, what would you do? Tell me. Be realistic. This is America. This is not Australia, this is not Europe. This is not where a country over-throws a bunch of people takes away there weapons, so that the people cannot argue any issues!!

DRUGS:

Vernon took possession of Mount Carmel some time in April of 1988 (give or take one month max). I was not present when that happened. Later, however, Vernon told me this story.

When they entered the property, according to Vernon, they discovered two things relating to drugs. The first was amphetamine manufacturing facilities, which Vernon called an amphetamine still. The second was a number of documents containing recipes and instructions regarding the manufacturing of amphetamines. The previous occupant of the property was, of course George Roden. But George allowed others to stay on the property and pay rent. Among these was one [redacted] who later went to prison for robbery and was considered quite dangerous by the Waco authorities. It was also rumored that he was into drugs.

Upon finding these materials, according to Vernon, Vernon informed the Sheriff's Department and turned over both the facilities and the recipes to the Sheriff.

00008913

CompuServe Mail [redacted]

As I said, I was not present when that occurred. However, two interesting factors developed. After hearing this story from Vernon (about June, '88), I figured that this evidence would lead to the conviction of one of the previous occupants of the land. However, to my knowledge, no one was even prosecuted.

[REDACTED] (Australian), told me later (after we had both left the cult), that she was there when the Sheriff's Department visited Mount Carmel. She saw them interviewing Vernon. At no time did she see Vernon hand over any material or facilities to them.

From the Summer of 1988 to the time I left, there was one building on Mount Carmel which was off limits to all, save Vernon. This was Lois Roden's old house. Vernon's excuse was that it had important Branch literature which he did not want disturbed (a poor excuse). In the Spring of 1990, however, that building burned down to the ground.

One night, in 1989, when talking to a few of us (I'm the only ex-member who was there), Vernon was talking about trafficking drugs as a way of raising money. He seemed very interested in getting money through this means.

THE ANARCHIST'S COOK BOOK:

Vernon's lawyer/member Wayne Martin, shortly before my departure, expressed a great deal of interest in the book known as THE ANARCHIST'S COOKBOOK. He thought it could be very useful to them.

One of the very first things I did after leaving was try to obtain this book (which I understand is not something you get from your average book store). At that time, I felt that Vernon might try to silence me and I wanted to see what kind of things that book would give him access to.

It was not difficult for me to get a look at the book here in Australia. In case you are not aware, this book contains quite a lot of information on how to make explosives, poisons and just about anything destructive. I understand the book has been banned in the United States (although I could be wrong). My worry is that if it was so easy for me to access, how much easier will it be for Vernon to access, with all the money he has.

VERNON'S HIERARCHY

Vernon's group is highly structured. Basically, he is the absolute ruler. Under him comes Wayne Martin (his adviser). Equal with Wayne is Steve Schneider, who is the high priest. Under them are the Mighty men and the harem. The mighty men, however, are under Vernon's command, not Steve. (I don't have the tools to draw it out for you). I

00008914

CompuServe Mail

[REDACTED]

[REDACTED]

[REDACTED]

On December 16, 1992, Agent Aguilera received from Marc Breault, via fax, information concerning the possible existence of an illegal methamphetamine manufacturing facility on the compound. Breault stated that in April of 1988, when Howell took possession of the compound located in Waco, Texas, that according to Howell, when they entered the property, Howell discovered two things relating to drugs. That the first was a methamphetamine manufacturing facility, which Howell called an amphetamine still. That the second was a number of documents containing recipes and instructions regarding the manufacturing of methamphetamine. That the previous occupant of the property was George Roden, but that George allowed others to stay on the property and pay rent. That among these people who lived and paid rent on the property was one [REDACTED] who later was convicted for robbery and sentence to prison. That it was also rumored, that Harvey was trafficking in narcotics. That upon finding these materials, according to Howell, Howell informed the Waco Sheriff's Department and turned over both the facility and the recipes to the Sheriff's Office. That [REDACTED] (An Australian Citizen) (no longer an active cult member) told him (Breault), that she was there when the Sheriff's Department visited the Compound. That she saw the Sheriff's Department interviewing Howell and at no time, did she see Howell hand over any materials or facilities to the Sheriff's Department.

IT HAS BEEN CORROBORATED WITH DAVID JEWELL THAT DURING THE CHILD CUSTODY BATTLE IN MICH., THE TOPIC OF THE EXISTING METH LAB SURFACED IN TESTIMONY.

IT HAS ALSO BEEN CORROBORATED THROUGH THE McLENNAN COUNTY S.O., WACO, TX., THAT HOWELL DID NOT, NOR HAS HE OR ANY OTHER BRANCH MEMBER EVEN TURN OVER ANY ^{METH} MATERIALS / FACILITIES.

00012245

MEMORANDUM OF INTERVIEW

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FILE TITLE: ██████████.RKT	DATE: June 13, 1995
INTERVIEWING AGENT: ROBERT K. TEVENS	WACO ADMINISTRATIVE REVIEW

Administration (DEA) Special Agents ██████████ and ██████████, Austin, Texas at the Command Post. Agent ██████████ tells him that, upon the execution of the search warrant, he and Agent ██████████ are to perform the clean up of the suspected methamphetamine laboratory. He also meets with an Immigration and Naturalization (INS) agent, who reportedly films the execution of the warrant.

Although SRA ██████████ cannot recall a specific time, SAC Ted Royster, Special Agent Davy Aguilera and two other unidentified ATF agents board the UH-60 Blackhawk and lift off from the TSTI Command Post in route to the hover area, aka race track. While airborne, SRA ██████████ hears an ATF radio transmission from the ground, possibly Agent ██████████, who says something to the effect that, "...we need to go in..." or "...we need to go in now, they moved it up...". With that statement, the helicopters move toward the compound.

A few minutes later, SRA ██████████'s aircraft receives gunfire from a ridge behind the Branch Davidian compound, not the compound itself. Sometime later that day when SRA ██████████ is able to return to the Command Post and assisted ATF in its additional requests for military support.

SUMMARY:

SRA ██████████ was under the direct and explicit supervision of Texas State Interagency Coordinator William R. Enney, Lieutenant Susan M. Justice, and LTC William G. Pettit, Jr. SRA ██████████ advised that he offered his personal opinions to ATF officials regarding the National Guard's aerial reconnaissance photographs of the Branch Davidian compound. LTC Pettit, Mr. Enney, and Lieutenant Justice have all maintained that, although the National Guard may comment about graph location on a map, it does not offer to law enforcement entities an official opinion on the results of Thermal Imaging System (TIS) or Infra Red photographs. This is traditionally not done, due to the inherent nature of numerous possible causes for "hot spots", such as a furnace or an oven. SRA ██████████ said that he offered his opinion about the existence of pipes sticking out of the compound pool area as a possible vent for a methamphetamine lab. He also told ATF personnel that the hot spot could possible be the result of a methamphetamine lab.

00108

DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS		PAGE 3
REPORT OF INVESTIGATION - CONTINUATION SHEET (Law Enforcement)		OF 4 PAGES
NAME OF INVESTIGATOR	INVESTIGATION NO.	
JWELL, Vernon Wayne et.al...	53110-92-1069-X	
DETAILS (Continued)		
Shipped from: Olympic Arms Inc. 624 Old Pacific Hwy., S.E. Olympia, Washington (206) 456-3471		
The following items were shipped to: "The Mag Bag" ATTN: Mike Schrodder Route 7, Box 555, Waco, Texas, 76705		
Shipped on 3/26/92: Fifteen (15) barrel unit and upper receiver, assembled and test-fired.		
Shipped on 3/30/92: Five (5) barrel unit and upper receiver, assembled and test-fired, with Five (5) flash suppressors.		
Special Agent Aguilera subsequently asked Inspector Souza if he came across any invoices and or purchases made by Henry S. McMahon Jr., an FFL in Hewitt, Texas. Inspector ██████ stated that he did come across an invoice with McMahon's name, reflecting the purchase of fifteen (15), AR- 15 lower receivers with the following serial numbers:		
Shipped on 3/25/92: Fifteen (15), AR-15 lower receivers with the following serial numbers: T7720 - T7706 - T7525 - T7681 - T7704 - T7605 - T7665 - T7702 - T7601 - T7505 - T7541 - T7692 - T7709 - T7724 - T7703.		
On June 30, 1992, Special Agent Aguilera learned that the "Mag Bag" Corporation, Waco, Texas, had received the following additional items from the following companies:		
Shipped from: Tipco Inc. P.O. Box 646 Sayre, Ga.		
Shipped on 6/16/92: 1) Two (2), 37mm flare launchers.		
Shipped from: Sarco Inc. Union Street Stirling, N.J. (908) 647-3800		
Shipped on 6/18/92: 1) Three (3) M-16 "A" Kits. 2) Two (2) M-261 rifle conversion kits. 3) Four (4) M-203 handguards.		
Shipped from: Unknown company name 13814 Inglewood, Ave. Hawthorne, Calif.		

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DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS		PAGE <u>4</u>
REPORT OF INVESTIGATION - CONTINUATION SHEET (Law Enforcement)		OF <u>4</u> PAGES
TITLE OF INVESTIGATION	INVESTIGATION NO.	
JWELL, Vernon Wayne et.al...	53110-92-1069-X	
DETAILS (Continued)		
Shipped on 6/18/92: Chemicals, instruments and glassware.		
Shipped from: Nesard Gun Parts Co. 27 W. 990 Industrial Rd. Barrington, Ill. (708) 381-7629		
Shipped on 6/19/92: 1) One M-76 grenade launcher.		
From correspondence addressed to Route 7, Box 471-B, Waco, Texas, the following names have been obtained and identified as people residing on the compound:		
Margaret Lawson	Greg A. Summers	
Shelia J. Martin	Catherine Mattern	
Trudy Meyers	Judy Schnider	
R. Koresh	Julie Martinez	
Karen Doyle	Jim Riddle	
Perry Jones	Woodrow W. Kindrick	
Novette Hipsman	Michael D. Schroeder	
Douglas Wayne Martin	Kathryn Schroeder	
Jennifer Androde	Ruth Riddle	
Mary B. Jones	Mark H. Wendel	
Pablo Cohen	Vernon W. Howell, AKA: David Koresh	
James Lawten	Mike Edwards	
Lorraine J. Sylvia	Scott Sonobe	
Raymond Friesen	Julie Friesen	
Paul Fatta	Miss S. C. Murray	
Concepcion Acuna	Graeme Craddock	
David Thibodeau	Donald E. Bunds	
A collateral request to Firearms Tech will be initiated, upon receiving additional invoices from UPS, Waco, Texas, to determine if in fact these parts could be used to manufacture machineguns.		
On June 30, 1992, Special Agent Aguilera initiated a referral to ATF Compliance Supervisor, Dallas, Texas, to conduct an audit on Henry S. McMahon Jr., and FFL dba: Hewitt Hand Guns, 909 Rosedale, Hewitt, Texas.		
This investigation will be conducted by both Special Agent Davy Aguilera and Larry E. Sparks, RAC, Austin, Texas, who will assume undercover capacity, as warranted. Additionally, Special Agent Wayne Appelt will assist as needed, per RAC direction.		
Investigation Continues.....		

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MEMORANDUM OF INTERVIEW

PAGE: 3

FILE TITLE: [REDACTED]	DATE: June 13, 1995
INTERVIEWING AGENT: KENNETH L. BUCK	WACO ADMINISTRATIVE REVIEW

11. [REDACTED] stated he did receive information about the cars Koresh drove. He stated several were registered to Koresh. He also saw pictures of Koresh before starting the assignment.
12. [REDACTED] left the surveillance assignment around 02/15/93 in order to prepare for the warrant.
13. [REDACTED] estimated there were 25 children in the compound with 25 to 30 women and 25 to 30 men.
14. [REDACTED] stated the U/C house was equipped with a radio scanner, which he did not know how to use, two 35mm cameras, video camera and night vision equipment, which was not powerful enough. The Technical Operations Officers were O.K., but didn't want to stick around long.
15. [REDACTED] does not know of any compound people coming into the U/C house. He said the house was clean and all equipment was kept in one room with a dead bolt lock.
16. [REDACTED] stated the undercover agents were in Waco the week prior to moving into the U/C house and stayed at hotels in Waco under their real names. [REDACTED] stayed at the Hilton.
17. [REDACTED] did not hear a radio conversation between Cavanaugh and Chojnacki concerning whether or not they should execute the warrant.
18. [REDACTED] stated information about Koresh locking up the weapons and that only he had access to the weapons probably came from the undercover agents. He did not know how the information was obtained, but he recalled being given that information by someone in the U/C house.
19. [REDACTED] does not know how information secured by the undercover agents made its way to the raid planners other than the meeting with Sarabyn and his statement regarding fighting with the compound members which he made at Fort Hood.
20. [REDACTED] stated the Austin people were responsible for taking care of all the paperwork.
21. [REDACTED] stated that he heard there was some controversy over the drug connection at the compound. He stated he had identified a drug connection at the compound. He stated the first time [REDACTED] and Rodriguez met Koresh, Koresh talked about how the Sheriff hated him, about machine guns, about watching out for the ATF, the shootout with Roden and about the allegation that there had been a meth lab at the compound. He stated Koresh told them the compound would be a great place for a meth lab because its in the open and the wind blows all the

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MEMORANDUM OF INTERVIEW

PAGE: 4

FILE TITLE: [REDACTED]	DATE: June 13, 1995
INTERVIEWING AGENT: KENNETH L. BUCK	WACO ADMINISTRATIVE REVIEW

time so no one could smell a lab. [REDACTED] stated Koresh volunteered the story about the machine guns and the meth lab and since ATF thought he was lying about the guns [REDACTED] felt Koresh might have a meth lab on the compound.

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MEMORANDUM OF INTERVIEW

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FILE TITLE: INTERVIEWING AGENT: ROBERT COCKRELL	DATE: July 8, 1993 WACO ADMINISTRATIVE REVIEW
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SAC [REDACTED] stated that he was not certain of all the items that the National Guard supplied, but that S/A [REDACTED] was the focal point for National Guard supplies. SAC [REDACTED] did know that the National Guard supplied helicopters and crews, tents, a water buffalo and truck and that they videotaped the raid training.

SAC [REDACTED] stated that ATF asked for Bradley vehicles. He stated that DoD gave the vehicles to the National Guard, who in turn gave them to BATF. Initially, ATF got eight, and then two more. SAC [REDACTED] stated that ATF also got 8 - 10 4wd Blazers from the National Guard for stationary observation posts.

SAC [REDACTED] stated that there was never a problem with getting equipment from the National Guard. SAC [REDACTED] stated that S/A [REDACTED] has a list of all the equipment that either the National Guard or the Army provided.

SAC [REDACTED] stated that the National Guard was not present at the meetings concerning this raid, other than to be in Ft. Hood (helicopters and crew). SAC [REDACTED] stated that the National Guard was in Waco on Saturday evening for the briefing there.

Methamphetamine Laboratory

SAC [REDACTED] was questioned concerning the alleged methamphetamine laboratory. He stated that he did not know where the laboratory might have been located in the compound. SAC [REDACTED] did state that in his mind, there was the possibility that there might be equipment for a methamphetamine laboratory in the compound. SAC [REDACTED] stated that he did not believe that the cult members were cooking methamphetamine in the compound. SAC [REDACTED] did state that if the cult members had the proper chemicals, they could have made methamphetamine.

SAC [REDACTED] was questioned concerning the use of diversion devices (flash/bangs) if there was the possibility of a methamphetamine laboratory in the compound. SAC [REDACTED] stated that the diversion devices were only to be used by the teams that had been trained with them, and that there was a written plan that had to be followed when using diversion devices. Also, the diversion devices would only be used in certain areas (bedrooms, front of house) of the compound. Since SAC [REDACTED] had stated that there were written instructions that had to be carried out if diversion devices were used, he was asked if the possibility of a methamphetamine laboratory was mentioned in the memorandum. After reading the memorandum, SAC [REDACTED] stated that there was no mention of a methamphetamine laboratory in the request for use of diversion devices.

SAC [REDACTED] stated that there was a DEA supervisor at the site of the raid. The plan was that after the building had been secured, explosives experts

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MEMORANDUM OF INTERVIEW

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FILE TITLE: INTERVIEWING AGENT: ROBERT COCKERELL	DATE: July 8, 1993 WACO ADMINISTRATIVE REVIEW
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would go in to examine the building. After their search, dogs would be sent in. If a laboratory was encountered, the laboratory technicians from DEA would be called in.

Communications

On the date of the raid, there were two radio technicians available. SCHLIDER and the Special Forces personnel set up the plan for the radio net. SAC [redacted] stated that he thinks that [redacted] brought up the fact that normally radio transmissions on the channel which sniper teams use are taped during raids. SAC [redacted] stated that he thought that that was a good idea and told SCHLIDER to tape the forward observers. Taping was accomplished through the communications van. The communications van did not have the capability to tape radio transmissions. Only channel # 4 was recorded.

SAC [redacted] stated that the National Guard helicopters had the Treasury frequencies, and while in the helicopter, SAC [redacted] had four channels available to him. SAC [redacted] stated that he did not know if the helicopter radio traffic was in DES or clear mode.

In the command post, at the time of the raid, was the National Guard with communications capability, the McClendon County Sheriff's Office with communications capability and ATF. The DPS did not put anyone in the command post.

Undercover House

Acting Austin RAC, [redacted] was in charge of the undercover house. The undercover house started with a 24 hour surveillance. After two weeks to a month, the 12 midnight to 6:00 a.m. shift was eliminated. During the last week of the operation, the SRT members who were working as undercover agents were released from undercover duty at the undercover house. According to SAC [redacted] because there was nothing to keep the undercover agents at the house during spring break, their story began breaking down. SAC [redacted] stated that he did not know that [redacted] had previously lived in the undercover house.

SAC [redacted] stated that he thought that all the undercover agents were volunteers. To the best of his knowledge, SAC [redacted] stated that there were no GS-13 grades or above who volunteered for the undercover house.

SAC [redacted] stated that there was an agent at TSTC as a support/contact agent for the undercover agents. There was also a "safe" house for the undercover agents to use while not at the undercover house. SAC [redacted] stated he did not know where the house was, only that ATF still had it and were paying \$285/month for it.

005810

MEMORANDUM OF INTERVIEW

PAGE: 2

FILE TITLE: [REDACTED]	DATE: June 13, 1995
INTERVIEWING AGENT: ROBERT K. TEVENS	WACO ADMINISTRATIVE REVIEW

Operation Alliance. A brief overview of Operation Alliance is also included in the Report of Interview of Agent [REDACTED]

REQUEST FOR MILITARY SUPPORT OF THE VERNON WAYNE HOWELL INVESTIGATION:

Agent [REDACTED] maintained that, he never questioned the validity of the drug nexus in the Howell investigation because he understood the primary thrust was the suspected Gun Control Act violations.

CHRONOLOGY OF EVENTS:

On Tuesday, February 2, 1993, Agent [REDACTED] attended the briefing during which ATF Special Agent [REDACTED] provided details about the Howell investigation to the Operation Alliance Joint Command Group in El Paso, Texas. Agent [REDACTED] provided an update of the suspected methamphetamine laboratory at the Branch Davidian compound, which had received deliveries of chemical precursors for the manufacture of methamphetamine. Agent [REDACTED] recalled that Agent [REDACTED] had displayed a list of names of the precursor chemicals to the group. Similar to the opinion of Senior Special Agent [REDACTED], Operation Alliance Coordinator for ATF, during his interview with the Waco Review Team (WRT), Agent [REDACTED] opined that chemicals used in the manufacture of methamphetamine could also be used in the manufacture of explosives. Additionally, Agent [REDACTED] understood that the alleged laboratory was for the production of methamphetamine for the exclusive consumption of the Branch Davidians on their compound and not for sale off the premises.

Upon the approval of military support of the Howell investigation by the Joint Command Group, Agent [REDACTED] offered the assistance of a DEA Clandestine Certified Laboratory Team. Although Agent [REDACTED] initially declined the request, Agent [REDACTED] provided Agent [REDACTED] with the telephone number of Resident Agent in Charge (RAC) [REDACTED], DEA/Austin, Texas. This was the extent of Agent [REDACTED]'s participation in the Howell investigation prior to the raid on February 28, 1993.

On Monday, March 1, 1993, Agent [REDACTED] learned of the failed raid and immediately telephoned RAC [REDACTED] to ascertain the involvement, if any, of DEA. RAC [REDACTED] informed Agent [REDACTED] that DEA Group Supervisor [REDACTED] and DEA Special Agent [REDACTED] of the DEA Austin office, were on site with a DEA clandestine laboratory truck at the Texas State Technical Institute ATF Command Post on Sunday, February 28, 1993. He added that two additional Clandestine Laboratory Certified DEA agents, [REDACTED] were on stand-by in Waco.

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WACO ADMINISTRATIVE REVIEW

PAGE: 1
Date: June 13, 1995

MEMORANDUM OF INTERVIEW

FILE TITLE: [REDACTED] WITNESS: [REDACTED] TITLE: DEA DATE OF INTERVIEW: JUNE 15, 1993 INTERVIEWING AGENTS: SUSAN G. ROWLEY	THIS REPORT IS THE PROPERTY OF THE DEPARTMENT OF THE TREASURY, WACO ADMINISTRATIVE REVIEW. NEITHER IT NOR ITS CONTENTS MAY BE DISSEMINATED OUTSIDE THE TREASURY DEPARTMENT
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Witness: [REDACTED]

Date of interview or action: June 15, 1993Report prepared by: Susan G. RowleyContact Address: Drug Enforcement Administration
Austin, Texas

Contact Phone Number: [REDACTED]

[REDACTED] is a Group Supervisor with DEA/Austin. [REDACTED] has two task groups under his supervision. One of these task groups is in Austin and the other group is in Waco. He divides his time between Austin and Waco and was in Waco when I spoke with him.

[REDACTED] stated that he and the following DEA agents were present at the Command Post area at TSTC at approximately 9:30AM, Sunday, 02/28/93:

[REDACTED] (Waco Office)
 [REDACTED] (Waco Office)
 [REDACTED] (Austin Office)

[REDACTED] had also made arrangements for some DPS personnel including a chemist to be present. [REDACTED] will supply the names of the DPS personnel present at a later date over the phone. He could not remember their names off the top of his head.

When [REDACTED] was first informed by ATF of the information about a meth lab possibly being present at the compound, he stated that he was able to partially confirm this information. DEA had a confidential informant who had actually visited the compound and had seen the lab. [REDACTED] also said that in addition to providing this information to ATF, he also gave it to a Lieutenant in the Texas Rangers. [REDACTED] will supply the name of the Lt. in the Rangers at a later time. [REDACTED] stated that he would check that information to ascertain when the informant was inside the compound and volunteered to allow us to interview the informant.

I asked [REDACTED] whether he had any discussions with ATF about the volatility of the chemicals which would be in a meth lab and any precautions which should be used. [REDACTED] said that DEA and ATF constantly work

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MEMORANDUM OF INTERVIEW

PAGE: 2

FILE TITLE: [REDACTED]
INTERVIEWING AGENT: SUSAN G. ROWLEYDATE: June 11, 1995
WACO ADMINISTRATIVE REVIEW

together in the Austin area and have done joint raids on many labs. [REDACTED] feels that everyone in the Austin ATF office is aware of the precautions used in conducting a raid against an area which may house a meth lab and to further discuss those precautions would be a waste of time.

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MEMORANDUM OF INTERVIEW

PAGE: 3

FILE TITLE: ██████████	DATE: June 13, 1995
INTERVIEWING AGENT: SUSAN G. ROWLEY	WACO ADMINISTRATIVE REVIEW

Investigative notes:

Related investigatory material:

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WACO ADMINISTRATIVE REVIEW

PAGE: 1

MEMORANDUM OF INTERVIEW

Date: June 13, 1995

FILE TITLE: [REDACTED] WITNESS: [REDACTED] TITLE: GROUP SUPERVISOR/DEA DATE OF INTERVIEW: July 8, 1993 INTERVIEWING AGENTS: SUSAN G. ROWLEY	THIS REPORT IS THE PROPERTY OF THE DEPARTMENT OF THE TREASURY, WACO ADMINISTRATIVE REVIEW. NEITHER IT NOR ITS CONTENTS MAY BE DISSEMINATED OUTSIDE THE TREASURY DEPARTMENT
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Witness: [REDACTED]

Date of interview or action: July 8, 1993Report prepared by: Susan G. RowleyContact Address: Drug Enforcement Administration
Austin, Texas

Contact Phone Number: [REDACTED]

As a follow up to the initial interview, [REDACTED] supplied the name of Lt. Pierson as the Lieutenant in the Texas Rangers who he had told about the independent information on the meth lab in the compound. This information had been received from a confidential informant within 2-3 weeks of the ATF raid. The information was not old information about the time when Roden had been in control of the compound, but was fresh information about the Howell/Koresh period of time. [REDACTED] stated that he would make the informant available for interview if the Treasury Review Team wanted to interview him/her. [REDACTED] stated that he also gave this information to ATF and he believes that [REDACTED] was the one he spoke with.

In checking to ascertain which DPS lab persons were present at the CP that morning, he found out that [REDACTED] one of the DPS chemists, had been placed on standby, but had not actually been at the Command Post that morning. There were other DPS narcotics personnel present who had been invited by [REDACTED], one of the members of the DEA Waco task group. Dunkley had been requested by [REDACTED] to invite the DPS personnel and lab personnel.

[REDACTED]

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MEMORANDUM OF INTERVIEW

PAGE: 2

FILE TITLE: ██████████	DATE: June 13, 1995
INTERVIEWING AGENT: SUSAN G. ROWLEY	WACO ADMINISTRATIVE REVIEW

Investigative notes:

Related investigatory material:

002194

WACO ADMINISTRATIVE REVIEW

PAGE: 1

MEMORANDUM OF INTERVIEW

Date: June 13, 1995

FILE TITLE: [REDACTED] WITNESS: [REDACTED] TITLE: GROUP SUPERVISOR/DEA DATE OF INTERVIEW: AUGUST 24, 1993 INTERVIEWING AGENTS: SUSAN G. ROWLEY	THIS REPORT IS THE PROPERTY OF THE DEPARTMENT OF THE TREASURY, WACO ADMINISTRATIVE REVIEW. NEITHER IT NOR ITS CONTENTS MAY BE DISSEMINATED OUTSIDE THE TREASURY DEPARTMENT
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Witness: [REDACTED]

Date of interview or action: August 24, 1993Report prepared by: Susan G. RowleyContact Address: Drug Enforcement Administration
Austin, Texas

Contact Phone Number: [REDACTED]

A DEA report (DEA 6) was received from [REDACTED] concerning the debriefing of a confidential informant who had given information which confirmed the information about the existence of a methamphetamine laboratory on the compound. As a result of a review of the DEA report by SSA Callahan, a question was raised about the timing of the information received by DEA from this informant. The report was dated in June 1993, which would have been after the fire at the compound.

I telephoned [REDACTED] and asked him when DEA had first received the information from the informant about the meth lab. [REDACTED] stated that the information may have actually been received prior to the date of the report, but would not have been before the raid on Sunday, 2/28/93. [REDACTED] stated that he had given me this information because he felt it would be important for ATF to have corroborating information of the meth lab from a separate source, even though the information was not received until after the raid and subsequent fire.

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MEMORANDUM OF INTERVIEW

PAGE: 2

FILE TITLE: ██████████	DATE: June 13, 1995
INTERVIEWING AGENT: SUSAN G. ROWLEY	MACO ADMINISTRATIVE REVIEW

Investigative notes:

Related investigatory material:

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WACO ADMINISTRATIVE REVIEW

PAGE: 1

MEMORANDUM OF INTERVIEW

Date: June 13, 1995

FILE TITLE: ██████████ SGR WITNESS: ██████████ TITLE: DEA GROUP SUPERVISOR DATE OF INTERVIEW: SEPTEMBER 13, 1993 INTERVIEWING AGENTS: SUSAN G. ROWLEY	THIS REPORT IS THE PROPERTY OF THE DEPARTMENT OF THE TREASURY, WACO ADMINISTRATIVE REVIEW. NEITHER IT NOR ITS CONTENTS MAY BE DISSEMINATED OUTSIDE THE TREASURY DEPARTMENT
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Witness: ██████████

Date of interview or action: September 13, 1993Report prepared by: Susan G. RowleyContact Address: DEA/Austin, Texas

Contact Phone Number: ██████████

On Monday, 08/13/93, Group Supervisor ██████████ telephoned the Waco Review Team and left a message with SSA Dick Suekawa for SSA Susan Rowley. The message stated that the chemical potassium phenyl although not directly utilized in the manufacture of methamphetamine can, if processed be used. ██████████ stated that potassium phenyl can be converted into the chemical phenyl acetic (phonetic spelling) acid which is a major component of methamphetamine. ██████████ stated that the chemical phenyl acetic acid is monitored by drug enforcement agencies and when a supplier gets an order for this compound, the supplier will notify authorities (supply house canvas) and the purchaser will be monitored. Because of these known monitoring procedures, methamphetamine manufacturers will buy potassium phenyl and convert it to phenyl acetic acid in order to avoid coming to the attention of the authorities. ██████████

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PART 4.—STATEMENTS OMITTED FROM THE TRANSCRIPT
OF THE JOINT HEARINGS HELD BEFORE THE SUB-
COMMITTEE ON CRIME OF THE COMMITTEE ON THE JU-
DICIARY AND THE SUBCOMMITTEE ON NATIONAL SECU-
RITY, INTERNATIONAL AFFAIRS, AND CRIMINAL JUSTICE
OF THE COMMITTEE ON GOVERNMENT REFORM AND
OVERSIGHT

Joyce Sparks
P. O. Box 27653
Austin, TX 78755-2653
(512) 5024986

OPENING STATEMENT OF JOYCE SPARKS

Friday, July 21, 1995

**To the Honorable Chairmen and Members of the Subcommittee on Crime of
the Committee on the Judiciary and the Subcommittee on National Security,
International Affairs and Criminal Justice of the Committee on Government
Reform and Oversight of the House of Representatives of the Congress of the
United States:**

I appear before you today responding to the Subpoena to Testify and Subpoena duces tecum for records, duly issued by authority of the House of Representatives of the Congress of the United States of America on the 13th day of July, 1995. My appearance, and the testimony I will give, is in my capacity as a private citizen and a sixteen year advocate for children. I do not speak for my employer, the Texas Department of Protective and Regulatory Services, Children's Protective Services, or the State of Texas. My views and observations which I will be testifying to regarding this matter, will be strictly my own, and reflect no official opinion or position of the agency or the State of Texas

OPENING

I have worked in the field of children and family services for over 16 years and have worked in Child Protective Services for the Texas state government for 13 years. In 1992, I was an

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Investigations Supervisor for child abuse and neglect. My involvement with federal agents and Branch Davidians began in February, 1992, when I received a referral alleging a history of child abuse by David Koresh.

I worked for months to protect those children then watched as they burned to death in the flames of the compound. This has been a personal tragedy for me. Four BATF agents died. Children I have held in my arms are dead. Nothing can ever erase those visions from my memory. There has been much discussion over the past two years about a search for the truth of what happened in Waco. Because of the complicated dynamics in this case it is difficult to understand what happened by looking only at the broad scope. In many instances people have taken the pieces of information that they have, filled in the blanks with speculation, and crafted the pieces of the story to fit their own agendas.

Every agency makes mistakes. But we can survive our mistakes if we confront them directly. Many mistakes were made in the Waco tragedy. Instead of accounting, there was damage control. Good and caring people can live with mistakes but they cannot live with damage control. There were many dynamics that contributed to the end result at Mount Carmel: Selective listening, an inability to disseminate information accurately, lack of open communication, and in some cases attitudes of individuals who felt they were accountable to no one.

THE INVESTIGATION AND THE ISSUE OF CHILD ABUSE/NEGLECT

My investigation of the Branch Davidians, and specifically David Koresh a/k/a Vernon Howell, began in February, 1992 and lasted approximately 2 1/2 months. Our initial entry in to the compound was compromised by local law enforcement. As a result, we were only allowed to actually examine three children and we were repeatedly interrupted as we interviewed the oldest

child. On our second visit to the compound, parents objected to investigators conducting private interviews with the children and we interviewed children in pairs or groups with older children sometimes monitoring the responses of the younger children. The physical setting showed overall physical neglect. There was no running water or indoor plumbing. There were dangerous tools within reach of small children. Electrical wires were hanging down and boards standing that fell over as we passed by. They were using propane tanks inside the building in narrow hallways to fuel heaters.

In interviewing the children, some statements indicated that withholding food was sometimes used as punishment and that sometimes babies were spanked. During the investigation David Koresh spoke openly about the guns at the compound and about the military training provided to his followers.

During a discussion related to the possibility of drug use at the compound, David explained to me that the previous "prophet" had been involved in drugs and there was a drug lab then, but his followers were not involved. He went on to explain to me that he had given information, pictures, and drug evidence to the McLennan County Sheriffs Department but nothing ever came of it. In a separate interview with another Davidian member, we were given similar information. I contacted the Sheriffs Department and they confirmed they had received drug evidence from David Koresh. Although efforts were made by the residents of the compound to correct the home environment, water and sewer problems continued to exist when I was instructed to close the case.

Although the agency case was officially closed in June 1992, I continued to have conversations with David Koresh. The apocalyptic nature of his prophecy, statements made by the children, and the fact that we were unable to conduct an uncontaminated investigation were of great concern to me. I thought if I could understand his beliefs more fully it would alleviate my serious concerns for the safety of the children or provide sufficient information to appropriately intervene.

Significant information from those conversations was passed on to FBI and ATF agents.

In February, 1993, I was contacted by the ATF in regard to sexual abuse allegations regarding a girl who had lived in the compound. On February 22, 1993, I was requested to conduct a courtesy interview with the child, Keri Jewel, at the District Attorney's office. The child was nervous but she answered questions related to the sexual abuse and her story was believable. At the end of the interview, however, she declined to testify. The information from that interview was provided to ATF agent Davy Aguilera.

THE RAID

I was aware that the ATF was planning some kind of intervention into Branch Davidian situation. I was never advised of the exact type of action they planned to take. When my opinions were sought prior to the raid related to the execution of a search and arrest warrant, I warned that the Davidians believed that David Koresh was the Lamb of God and that they would protect him. My statement was specifically, "They will get their guns and kill you." The raid on the Branch Davidian compound was a fatal mistake. I was stunned as I watched the television reports of the ladders going up on the sides of the building. I knew at that moment children were going to die. My conversations with David Koresh made it clear to me that this would be construed by him as the first step in the fulfillment of his apocalyptic prophesy. I had some hope when the first children were being released, that there might be a more peaceful resolution to the situation than I expected. However, as I realized that none of the children he was sending out were his biological children, I was convinced that his teachings would be fulfilled

THE FIRE

In many of my conversations with David Koresh, he insisted that I could not separate him from his beliefs. He told me that if I wanted to understand him I had to understand his beliefs. I realized his commitment to his belief that he was the Lamb of God. I took time to understand his beliefs and how they manifested in his actions. Unfortunately, my attempts to convince federal agents of that fact were unsuccessful. The fire was inevitable. Once the prophecy was set in motion by the initial raid it would have been contradictory to his teachings to surrender to those he called Babylon. His teachings were consistent in regard to the war that would come when he was revealed. He always stated there would be an explosion and blood and fire at the end. All the saints would die after the enemy surrounded the camp. It was in one of these discussions that he made the statement that the LA Riots would look like a picnic compared to the time when he was "revealed."

At one point in the weeks before the final fire I was contacted from the command post and asked to participate in a plan that involved CS gas. I discussed with the agent the ramifications of such a plan on the children and on my staff. I was told there would be on sight showers and medical personnel to assist on the site. My staff collected a change of clothes for each child when received at the compound. I was told I would meet with the medical team that evening. At approximately 5:30 PM, I received another telephone call from the command post telling me to forget the whole thing "don't even think about it." My staff and I assumed the plan was perceived as too dangerous. We received no prior notice from the command post before the plan was implemented that resulted in the final fire.

CONCLUSION

From the initial child abuse investigation to the congressional hearings of today, the complexity of the dynamics of this situation make it difficult for those who are not directly involved to know what questions to ask. It is my sincere hope that these congressional hearings will bring closure for me personally and for our country. We must address what has happened here, learn from it, and move forward.

JOYCE SPARKS
P. O. Box 27653
Austin, TX 78755-2653

July 25, 1995

Honorable Henry J. Hyde, United States Representative
Congress of the United States
2110 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Hyde:

I appreciate the courtesy extended to me by the Waco joint subcommittee last Friday when I personally testified before you. We were told that we could submit additional written testimony and that it would be included in the record.

Please note the attached eight page supplemental statement that I am forwarding to the Chief Clerk for inclusion in the record. In this document I address.

(1) The Element of Surprise, which truly never existed, and the very shaky hypotheses that the only "tip" David Koresh received was via a Postal Worker who had been intercepted by a news man. That story has never had the ring of truth to anyone who lived in, and understood, Waco, Texas.

(2) The CS Gas and The Final Fire, covering the plans that had been implemented for the children in the original gas plan, but which were never implemented when the actual CS gassing took place.

(3) The Biblical Teachings of David Koresh, expanding the point that listening to Koresh did not mean acceptance of Koresh, and that his teachings do not justify anything, but they do provide a base understanding of what happened and why.

(4) The Deaths of Federal Agents, again stating there was no justification whatsoever for the deaths at the hands of the Branch Davidians, but questioning the culpability of those in charge who sent these men into what was a certain death trap to start with.

HON. HENRY J. HYDE, 07-25-95, Page Two:

(5) Attitudes of Arrogance and Concern for the Children, again exploring those attitudes of selective listening and personal agendas that led to bad decision making as events unfolded.

(6) The Aftermath of Waco, detailing my personal questions and concerns that have gone unanswered to this day. Attached is a letter I wrote to Attorney General Janet Reno in 1993 after the fire. The letter was never answered, and my concerns never addressed. I hope you will review this letter and elicit a response from General Reno when she testifies before you.

Again I appreciate the opportunity to be heard by the Congress, and truly hope that from all of this we can get those answers that have eluded all of us for so long. It is time we learn whatever lessons there are to be learned from this tragedy, and then move on secure in the knowledge the mistakes of Waco will not be repeated again.

Respectfully submitted,


Joyce Sparks

Joyce Sparks
P. O. Box 27653
Austin, TX 78755-2653
(512) 502-8986

SUPPLEMENTAL STATEMENT OF JOYCE SPARKS

Tuesday, July 25, 1995

To the Honorable Chairmen and Members of the Subcommittee on Crime of the Committee on the Judiciary and the Subcommittee on National Security, International Affairs and Criminal Justice of the Committee on Government Reform and Oversight of the House of Representatives of the Congress of the United States:

HAVING HERETOFORE ON FRIDAY, JULY 21, 1995, BEEN DULY SWORN IN PERSON BEFORE THIS JOINT SUBCOMMITTEE, I DO NOW SUBMIT THE FOLLOWING CLARIFICATIONS, EXPANSION AND ADDENDUM TO THE SWORN TESTIMONY PERSONALLY GIVEN:

THE ELEMENT OF SURPRISE

The entire dialogue related to the critical "element of surprise" continues to amaze me. In my opinion, there was absolutely no chance that this raid could have been executed successfully if the agents were depending on a surprise attack. One must understand the dynamics of the city of Waco, a small town where people are related or have long time friendships with many other people. Information of this kind spreads quickly. David Koresb had people in the community who had access to information being discussed. Remember that Mr. Martin was an attorney in Waco and David Jones was a Federal Postal officer. They both had relationships within the community. I was never told of the exact raid plan or date by the ATF agents. I learned it at the District Attorney's office. I expressed serious concerns to ATF and FBI agents prior to the raid in regard to the connection between the Sheriff's Department and the Branch Davidian

Page 1

Compound. The Sheriff's Department had jeopardized my own investigation and I had sufficient reason to believe that information was being passed to the Davidians. I was amazed and angered when a ATF agent came to my office for a meeting accompanied by Lt. Gene Barber of the McLennan County Sheriff's Department. I confronted Lt. Barber who actually admitted "there was a leak" in his office. Perhaps the reports that David Koresh was "tipped off" about the raid did come in the final hour before the raid. The question then must be asked as to why, with an operation of this magnitude, the area around the compound was not secured. No one has ever bothered to question why a Postal worker (David Jones) was speeding toward the compound in a U. S. Postal vehicle on a Sunday morning when he was supposedly intercepted by the press. Quite obviously he was not delivering mail on Sunday. On the tape which I turned over to you in response to your subpoena you will hear David Koresh explain that David Jones works with the Sheriff's Department as an informant. In the case file which I also turned over to you in response to your subpoena, you will find entries of interviews where this questionable relationship with the Sheriff's Office is discussed.

THE CS GAS AND THE FINAL FIRE

I want to clarify my statement related to the plan for use of the CS gas prior to the raid. This incident has always left a haunting question in my mind. My discussion with the ATF agent at the command post in the later part of March, involved many questions about the impact of the gas on the children and on my staff. I expressed concern for the children and wanted to be sure that any child needing medical attention would have it immediately. We discussed the arrangements of on-site showers, medical treatment and my own staff emergency team to receive the children. I was concerned but comforted that specific arrangements were being made to address my concerns. When I was later contacted and told to forget the whole thing..."don't even think about it." I admit that I was relieved. Many days passed after that plan was discussed. I believed the plan to use CS gas had been aborted. The significance of all this is not evident

unless you are aware that I was not contacted on April 19th, before the CS assault was implemented. There was no "stand by" request for my emergency team to receive children, there was no talk of showers or medical staff to provide all those aspects of assistance to the survivors. I was told nothing. If these plans were not in place could it be because they did not expect children to survive the fire? I have stated that I do not believe this would have ended in any peaceful way and I stand by that statement. However, if the FBI truly did believe children would survive, what were there plans for receiving the children? Why was I not contacted? In an interview with the Department of Justice investigators after the fire I posed this question to them, and I received a rather perplexing response. I was told that it was a matter of "secrecy". They didn't want anyone to learn of the plan until it was implemented. Along with the rest of the world, I first learned of the tanks moving in to the compound as I watched it on television. Calls were coming to me from family members of those inside asking me what was going on and inquiring about the children. I suspect the element of secrecy was not an issue at that point but I was still not contacted. I attempted to reach the negotiators by phone and no one answered. I finally reached an ATF agent at the command post. I asked if I should put together an emergency team. He was clearly distressed and his response was, "Joyce, I only hope some children come out." I sat with my staff in a small room and, on a very small black and white screen, I watched those children burn. There were tears in that room but no words were spoken. We waited for a call to assist surviving children. It was a call that never came. Approximately one week before the final fire, in my frustration, I gave a written document to the FBI stating exactly what I believed was about to happen. You received that entire document under subpoena and I have attached relevant excerpts to this statement.

THE BIBLICAL TEACHINGS OF DAVID KORESH

My testimony related to the teachings of David Koresh in no way reflects my personal religious beliefs or my own interpretation of scripture. I was raised in a Christian family where reading

the bible was seen as important. My religious interest led me to attend college religion classes in old and new testament and world religions. I believe my ability to engage in intellectual spiritual dialogue with David Koresh was one of the factors that kept our communication open. The other factor, and perhaps most important, is my strong commitment to my own Christian faith. There is nothing David Koresh could have ever said to me that would shake my own spiritual truths. That fact made it possible for me to listen to his teachings in order to understand his actions, not to justify those actions. The FBI referred to his teachings as "Bible babble". They seemed to have a need to challenge his beliefs and discount his interpretation of the scriptures. In my opinion, that is exactly what got in the way of any objective analysis of what he intended to do. When you read my attachments from the document submitted under subpoena, it becomes crystal clear how the FBI played directly into David's prophecy on April 19th. It is frankly too uncanny to be coincidence. Jeff Jamar verified to the press he had the report and was familiar with it.

THE DEATHS OF FEDERAL AGENTS

There is absolutely no justification for the deaths of the four federal agents. That was my response to Congressman Taylor's question to me and I stand by it. There are two parts to that statement however. First, I certainly do not believe the Davidians had any right to shoot law enforcement agents. They clearly knew who was in those trailers surrounding the compound and I do not believe anyone has questioned that fact. There is no excuse, religious or other wise, that justifies their actions. Second, in my opinion, with the information made available to the ATF during the initial investigation and planning for this operation, I believe the plan to attempt a dynamic entry of the Davidian compound was doomed to failure. Whoever gave the order for those men to charge into a certain death, must share the blame with the Davidians who actually fired the shots. I was at the command post and in the darkness of the field outside the compound the night of February 28th after the initial assault. I do not believe the agents

understood what they were dealing with and I believe they deserved more from the ATF leadership that led four men, predictably, to their deaths. We should not condemn an agency for the mistakes of individuals, but we must hold those individuals responsible.

ATTITUDES OF ARROGANCE AND CONCERN FOR THE CHILDREN

My role in this situation from the beginning was to protect the children. I believe an intervention was needed, it is the method that was fatally flawed. There has been much discussion regarding concern for children. I knew those children, I knew David Koresh, and I had an understanding of the complex dynamics involved in this situation. It is clear that agents listened to me in regard to much of the information I provided. They used my statements in the affidavits for the probable cause warrants. Unfortunately, they practiced "selective listening" and the most critical factor of all was ignored. I firmly believe that the agents I talked with cared about those children. I don't know if there were other agendas, but they did care about the children. I was confronted with obstacle after obstacle from beginning to end in this tragedy and ATF agents were the only ones who, I thought, understood the seriousness of the situation and were actually willing to do something. ATF made a mistake. Have we learned anything else from all this? There are surely feelings of frustration that could be voiced by employees of every agency involved. The following will give you some indication of those attitudes of arrogance I referred to earlier:

1. I questioned decisions within my own agency (appropriately through channels).

Retaliation for those questions came in many ways but the most memorable was when I was maliciously not allowed to attend the memorial service for the dead children.

2. I questioned the McLennan County Sheriff's connection with the Davidians. I was

concerned that they had jeopardized my own investigation and I believed the children were at risk. I spoke with Sheriff Harwell personally and he told me that "What ever those people are doing, as long as they are doing it inside the compound, it is none of your business." I was subsequently ordered by the Sheriff and by my supervisor, without explanation, to close the

case. After I continued to pursue conversations with David Koresh, the Sheriff's Department apparently involved the ATF. It has never made sense to me that the Sheriff's Department for so many years maintained a close relationship with David Koresh and the Branch Davidians, even ordering me to close my investigation of them, but then turned around and decided when I refused to back off, that the Davidians all at once were dangerous, and then called in the ATF. The Sheriff's adamant instruction to me to stay away from the compound was certainly not out of concern for my safety, or protection for the children. It is my belief that he had something to protect not at all related to anyone's safety.

3. I questioned the methods used by the Texas Rangers in interviewing one of the children released from the compound. My staff was not given access to that child for at least four hours. By the time I got contact with the child at the command post he was angry and told me we were all liars. He said they had lied to him and tried to trick him. In a meeting with the Rangers the following day, I urged collaboration between law enforcement agencies to ensure that children were not further traumatized by this situation. They agreed but I was later told by my supervisor that law enforcement was in charge and they would use their own methods to do their investigation. Immediately after this meeting, I was replaced as the liaison to the Rangers with a "male" from my agency who knew nothing about the case, but I was told that he did "have an understanding of law enforcement."

4. When the FBI took charge of the situation...they were definitely in charge. Tempers were on edge, people were frustrated and tired. I tried to provide information as I realized they were interested in particular aspects of the case. I generally initiated that contact. On several occasions I called the negotiators and it would take several minutes to explain again who I was. During one conversation with an FBI agent, I urged them not to allow Koresh to provoke them to take aggressive action toward the compound. I expressed concern for Federal Agents safety due to the blood, fire and explosion prophesy. The response I received was simply, "We will not be provoked!" When you read the attachment, you will see how very well they followed David

Koresh's prophecy.

Again, I believe those agents I worked with initially cared about the children. However, once the bureaucracy came into play, as I think you can see by my experiences, I saw little evidence of that in the actions that were taken. If the primary focus of all this is that David Koresh was a monster and we must save the children.....why did we act in ways that led to their inevitable death? As I stated to you in my oral testimony, I find little reason for pride that our law enforcement people recovered some illegal weapons. All it cost us was about a hundred lives.

THE AFTERMATH OF WACO

As I write these words, I feel the same anger and frustration I felt two years ago. I did everything I knew how to do to protect those children and it was not enough. I had the best and the brightest on my staff and even though we met barriers all around us we persisted. Because of the error in the date of the ATF interview with me in the warrant material, I read accounts in the press, in news magazines and in television interviews of how Child Protective staff were incompetent and negligent in their investigation. Our written documents clarified those inaccuracies but no one saw them. No one came to our defense.....not even our own agency. It's easy to criticize when you don't have all the answers, but for me the answers never came. I wrote to Attorney General Janet Reno to get answers instead of damage control, but there was no response. A copy of my letter to her is attached, and I hope you can get the answers I have been seeking in vain for two years. I spent hours with Treasury and Justice Department investigators trying to explain my involvement and the questions I felt needed answers. I received a copy of the Treasury report and I admit I have not read it all. When I realized that there were inaccuracies, I finally just gave up on all of it. At least they did give me a copy of their report. Justice Department promised many times but never delivered. I tried to put it behind me and get on with my life. These hearings have brought all the emotions back to the surface. I remember my first trip to Washington a few years ago. I stood in front of our Capital and felt such pride.

On my visit last week to testify, I had a different experience. As I stood there I felt an incredible sadness and disillusionment. People I trusted and systems I believed in I now call into question. That is my own personal tragedy. I resent the statements made by some who feel that questioning what happened in Waco somehow means you do not support our government. I love my country, but if we allow government agencies to act in irresponsible ways without demanding accountability, we lose the very premise of the beliefs that our country is founded on.

I am grateful to those members of the Committee who initiated these hearings in an honest search of the truth of what happened. For others who are following their own agendas, I would suggest that pointing blame for political purposes in this matter will not help us move past where we already stand. There are those who will try to minimize or discount my role in all this. I would however remind you that the information I provided was accurate and the events I predicted were realized.

Jayce Santos
7-25-95

ATTACHMENT #1

From page ii, *The Mind of David Koresh*, submitted to both majority and minority staff to the joint Subcommittee on Crime of the Committee of the Judiciary and the Subcommittee on National Security, International Affairs and Criminal Justice of the Committee on Government Reform and Oversight of the House of Representatives of the Congress of the United States by Joyce Sparks on Friday, July 21, 1995, pursuant to a Congressional Subpoena duces tecum issued on the 13th day of July, 1995.

"1. We are experiencing one of twelve tribulations foretold in the Apocryphal writings of Baruch, which shall have a duration of seven weeks, after which an angel of the Lord will reveal the next step to David Koresh. The seven weeks will be completed Sunday, April 18th."

From page 4, *The Mind of David Koresh*:

"Biblical scholars have been solicited to provide feedback as to the scriptures quoted by Mr. Koresh, and some have even sought to dispute with him on the meaning of these prophetic and apocalyptic writings. This endeavor is doomed to failure for three distinct reasons: (1) To be a biblical scholar, per se, one must first be deeply immersed in the scriptural scholarship which entails academic discipline and structured thinking. You would also assume, (2) to dedicate one's life to biblical scholarship, one must have deep theological roots and a belief system. Both of these considerations, rather than helping understand David Koresh, would serve as impediments to understanding because David follows no academic discipline in biblical studies, nor does he share the theological roots and belief system held by biblical scholars. The result is like having a dogmatic Chinese Communist advocate, who only speaks Chinese, trying to have a meaningful dialogue and evaluation of an American Capitalist advocate who only speaks English. Neither can ever begin to understand where the other is truly coming from, nor do they even communicate in the same language. Finally, (3) David truly believes he wrote "the book". How does one argue with the author over what he meant when he wrote something? He is, after all, the final authority."

From page 21, *The Mind of David Koresh*:

"Zechariah 10:5 holds marching orders for these people as the standoff continues: "And they shall be mighty men, which tread down their enemies in the mire of the streets in the battle: and they shall fight, because the Lord is with them, and the riders on horses shall be confounded."

From page 36, *The Mind of David Koresh*:

"David has told the world that we are on the fifth seal. Before we can move to the next seal - - the sixth seal - - it is necessary that "Their fellow servants also and their brethren, that should be killed as they were, should be fulfilled." Witness Mount Carmel today. Quite simply, the Branch Davidians must be killed now to progress to the sixth seal. This is David's prophecy, this is David's game plan, and now the outcome awaits the final assault by the forces of Babylon, Law Enforcement, to fulfill this prophecy."

From Page 39, *The Mind of David Koresh*:

"1. The standoff, as it now exists, will end after Sunday, April 18th, which will complete the seven week cycle for tribulations. At the completion of that cycle an angel of the Lord is to give an analysis of the situation, and tell David what to do. It must be a fiery ending, and David and a number of his followers must die."

"2. Whether it be on the Sunday marking the beginning of the eighth week, or a day or two later, there will be some aggressive action by the Federal law enforcement officials. Suicide is not written in the book. David and his followers must be slain. That means something must be set up, even if the final conflagration is caused internally, it must be because of some act of the law enforcement officials.

3. I see no conceivable scenario for a peaceful resolution of this situation. Nothing that David has ever preached, and nothing in the scriptures we have just reviewed, contains any scenario for a peaceful resolution.

JOYCE SPARKS**P. O. Box 23263
Waco, Texas 76702****ATTACHMENT #2**

May 12, 1993

**Honorable Janet Reno, Attorney General
United States Department of Justice
Tenth and Constitution Avenue
Washington, DC 20530****PERSONAL ATTENTION****In Re: The Mount Carmel Tragedy at Waco, Texas**

Dear General Reno:

I watched the Judiciary hearings and my heart went out to you as you answered the difficult questions related to the decisions you made concerning the situation here in Waco. As a Child Protective Services Investigation Supervisor, I know there are never any easy answers to the issues and dynamics of child abuse. In our imperfect world, people are constantly searching for absolutes. In the case of child abuse there are many diverse factors and interpretations that must be considered. When we set out to protect children, all we can ultimately do is evaluate all the information available to us and then take responsibility for the decisions we make.

I have personally sat in court hearings with attorneys who have not educated themselves on the issue and listened as they argued furiously to put a child back into an untenable situation. It is never easy to remove a child from their parent, but sometimes it is necessary. Thankfully we have a court system that puts some checks and balances on both the child protective services staff as well as on the parents. While there are certainly times I don't agree with the attorneys involved, I fully recognize the need for their participation.

The Mount Carmel issue has been one of the most distressing experiences of my life. For well over a year I did everything in my control to protect those children and then watched powerlessly as children I had held in my arms were engulfed in the flames that burned them to death. I have tried to assimilate all the bits and pieces of this tragedy and my questions as to how it occurred are still unanswered.

HONORABLE JANET REBO, ATTORNEY GENERAL, 5-12-93, Page Two:

I worked diligently with the FBI, ATF, and state and local law enforcement and intelligence agents in the months prior to the raid sharing my investigative information and informing them of my on-going conversations with David Koresh. I was very straight forward with them regarding my belief that if they tried to execute a search and arrest warrant at the compound they would be met with deadly fire. "They will get their guns and they will kill you." I made that statement time and time again. I do not know how I could have been more direct. *Selective listening* seems to have been the problem here. While agents were eager to obtain the intelligence information I provided regarding the residents, the floor plan, the firearms and my concerns related to the abuse of the children, they did not listen to the most important factor in this entire operation. David Koresh was absolutely committed to the idea that he was in fact the Lamb of God. In reflection, it should be evident to everyone that this was the case as he carried out his self-proclaimed position and set about making his own prophecies self-fulfilling.

Like you, I am saddened and angry that courageous ATF agents lost their lives in an effort to protect citizens of our country. There is absolutely no way their deaths can be justified by anyone. I personally believe, however, that the *selective listening* practiced by law enforcement agencies contributed to the deaths of those four agents.

It is an unfortunate fact that there were educated adults present at that compound who chose to follow David Koresh's apocalyptic teachings and who ultimately gave their lives for him. I am personally not willing however, to dismiss, as *unfortunate*, the deaths of the innocent children who were at the mercy of their own parents. Parents who were committed to David Koresh's vision of *blood and fire* at the end.

Children I have held in my arms are dead and instead of dealing with the flaws in our systems that contributed to their deaths, our bureaucratic systems are rushing about defending their positions and worrying about DAMAGE CONTROL.

I am strongly committed to the belief that as a society we had better begin to be concerned about the damage being done to our children before it is too late. I know that there are many caring, dedicated professionals who make great efforts every day to protect and care for the children of this country. Unfortunately, many of them work for bureaucratic systems that are unresponsive and that have lost sight of the very purpose for which they were created. Preserving the bureaucracy is frequently synonymous with sacrificing the individuals within it.

The past thirteen years of my life have been dedicated to providing

HONORABLE JANET REMO, ATTORNEY GENERAL, 5-12-93, Page Three:

services to children and families. I came to the Texas Child Protective Services agency almost six years ago. There are many people outside the agency who criticize and demand change. In fact, I was one of those people. I was challenged to join the agency and to effect change from the inside. CPS is the agency in Texas that has the most impact on the state's children. I have struggled to make a difference here. The flaws in the system were magnified during the Mount Carmel situation and I am currently faced with the realization that truth, integrity, and a desire to change any bureaucratic system is a rare commodity. The State legislature gives great verbiage to the importance of children in our society, but when it comes down to providing adequate funding for programs and staff, Texas ranks among the lowest.

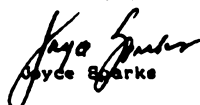
The tragedy at Mount Carmel has had a profound affect on me. It has helped me to focus more clearly on my goal to promote resources and programs for children and their families. I continue to try to accept what has happened and get on with the work I must do. However, I am plagued with helpless thoughts of "what more could I have done?" Should I have been more aggressive in pushing acknowledgment and recognition of the facts I knew with the FBI and ATF?

I certainly would like to know how this happened. How was the information they received processed? Both ATF and FBI Agents told me personally that I had provided the best intelligence that they had. They were hollow words, however, considering no one paid any attention to my very clear and specific warnings about the information leaks and the strong convictions of David Koresh that guaranteed the outcome we experienced on April 19th.

At this point, I am discouraged, disillusioned and angry as I live through this lesson called *DAMAGE CONTROL*. The faces of seventeen children constantly intrude into my thoughts and I ask that ever present question.... *WHY?*

I suspect this will be only one of many letters you receive related to the Mount Carmel incident. I realize that you are busy and there are numerous issues on your agenda that require your time and attention. In spite of that, I feel compelled to write this. As futile and idealistic as it might seem, I still have the nagging belief that "Somebody ought to do something about this". I haven't decided yet what that *something* is, but perhaps just putting my thoughts in this letter to you will help clarify it for me.

Sincerely yours,


Joyce Sparks

PART 5.—OTHER MATERIALS RECEIVED FROM THE
AGENCIES INVOLVED IN THE INVESTIGATION

FBI CRISIS MANAGEMENT REFORMS SINCE THE HOUSE WACO HEARINGS

- **Rules of Engagement**---Discontinued. Only the standard deadly force policy, which permits the use of deadly force only in the face of imminent death or serious physical injury to the Agent or another person, will be used in crisis situations.
- **Critical Incident Response Group**---The FBI's crisis response structure has been formed into a single entity under the leadership of an FBI executive experienced in crisis management. Negotiators and tactical personnel are on equal footing. Leadership and responsibility have been fixed to specific individuals, including the FBI Director.
- **Hostage Rescue Team Deployment**---The Hostage Rescue Team will not be deployed without an independent assessment by the FBI of the threat and need. The FBI Director must be personally satisfied that it is necessary and appropriate.
- **Hostage Negotiators**---FBI hostage negotiators have been given a status equal to tactical personnel and negotiators will always deploy with the Hostage Rescue Team. The number of FBI hostage negotiators has been increased.
- **Crisis Management Training**---The Director, Deputy Director, and Special Agents in Charge of FBI field offices have received specialized crisis management training. No longer is the command of an incident determined merely by the location of the crisis. Only specially trained Special Agents in Charge will be placed in field command of a crisis.
- **Shooting Incident Review**---Responsibility for investigating all shooting incidents involving FBI Agents has been removed from the FBI's Criminal Investigative Division and placed with the FBI's Inspection Division. The results of the investigation are now reviewed by a newly reconstituted group of FBI and Department of Justice officials.
- **SWAT Training and Equipment**---Responsibility for training and equipping FBI SWAT teams now belongs to the Critical Incident Response Group. SWAT training and equipment has been enhanced so that all FBI SWAT teams are compatible with and can supplement the Hostage Rescue Team.
- **FBI Laboratory**---Specialized teams of experts in the fields of identification, recovery, and preservation of evidence have been created.
- **Outside Experts on Crisis Management**---Through universities and other sources, a network of outside experts on crisis management and other disciplines has been established to aid the FBI in understanding and responding to unique crisis and hostage situations.



U.S. Department of Justice
Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

October 31, 1995

Honorable Bill McCollum
Chairman
Subcommittee on Crime
Committee on The Judiciary
House of Representatives
Washington, D.C.

Dear Mr. Chairman:

During recent testimony before the Senate, about Ruby Ridge, I was asked about the playing of chants or other types of tapes such as I understand were played over the loud speakers at Waco. I know this was an issue that was discussed during your hearings into the Waco incident.

As I indicated at the Senate hearing, tactics that have no legitimate basis as either part of a sound negotiation strategy or part of a well planned tactical solution are not going to be part of this FBI. I will not allow the FBI at any future crisis to resort to tapes or anything else that has no legitimate, professionally accepted basis as a sound negotiation strategy.

I wanted to bring this to your attention as you consider the issue and draft a report. I also have enclosed Office of Investigative Agency Policies Resolutions 12, 13 and 14, which I understand have already been supplied to the Committee. I ask that they be made part of the record. Resolution 12 is particularly relevant to some of the issues that arose regarding the Waco incident.

Sincerely yours,

Louis J. Freeh
Director

Enclosures (3)

1 - Honorable Charles E. Schumer - Enclosures (3)
Subcommittee on Crime
Committee on the Judiciary
House of Representatives
Washington, D.C.



U. S. Department of Justice
Office of Investigative Agency Policies

Washington, D.C. 20530

RESOLUTION 12

Pursuant to the Attorney General's Order Number 1814-93, dated November 18, 1993, and in my capacity as Director of Investigative Agency Policies, I hereby issue the following resolution concerning use of the Federal Bureau of Investigation's crisis management resources in the field, such as Special Weapons and Tactics Teams ("SWAT"), as well as components of the Critical Incident Response Group ("CIRG"), including the Hostage Rescue Team ("HRT").

Background

As a consequence of increasingly violent criminal behavior, there is a growing demand upon American law enforcement agencies to deploy specialized resources to prevent and resolve crisis situations. It is imperative that these crisis situations are managed safely, effectively, and cooperatively among Department of Justice ("DOJ") law enforcement agencies.

The Federal Bureau of Investigation ("FBI"), United States Marshals Service ("USMS"), and Immigration and Naturalization Service ("INS") have developed specialized means to address crisis situations. This Resolution is designed to avoid duplication of efforts among those agencies, as well as the Drug Enforcement Administration ("DEA"), while promoting safety, effectiveness, and cooperation.

I established CIRG in 1994 in order for the FBI to respond to crises in a fully integrated manner. Among other things, CIRG joins crisis negotiators and the HRT on the same level under a unified FBI command.

In addition to CIRG's assets, there are FBI SWAT Teams available at the 56 FBI Field Offices nationwide. Nine of those teams are Enhanced District FBI SWAT Teams, which have enhanced tactical equipment, capabilities and training. Additionally, each of the 56 FBI Field Offices employs crisis negotiators, crisis managers, and technical support, to form an integrated crisis management team.

The USMS Special Operations Group ("SOG") is a specially trained and equipped unit deployed in high-risk law enforcement situations. SOG's primary mission is to support Districts and

Headquarters Operational Divisions. Additionally, SOG tactically supports USMS initiatives during national emergencies, civil disorders, natural disasters, and as ordered by the Attorney General.

INS deploys the Border Patrol Tactical Unit ("BORTAC") and Inspections Response Teams to conduct special operations and resolve potentially threatening immigration situations. They are deployed along the United States borders, at ports of entry, in detention facilities, and in the United States interior, in order to reduce the risk of loss of life or serious injury to victims, innocent third parties, and INS officials.

The FBI provides crisis management resources to the other DOJ agencies upon request, if available. Thus, where (1) in the opinion of the DEA, USMS or INS field commander,¹ the degree of threat requires and allows for preplanning before initiating any action, or (2) the FBI has resources which, in the opinion of the DEA, USMS or INS field commander, are necessary to successfully conduct the mission, the DEA, USMS or INS will consult and coordinate with the FBI prior to any enforcement action.

At the request of the Attorney General, the Office of Investigative Agency Policies ("OIAP") has addressed crisis response within DOJ. This Resolution is the product of consensus recommendations of the OIAP Executive Advisory Board ("EAB").

Discussion

According to the terms of the Order creating the OIAP, I have been authorized, "in the areas of overlapping jurisdiction of the criminal investigative agencies," to:

(1) Take all steps necessary to improve coordination among the criminal investigative agencies of the Department [of Justice], both within the United States and abroad; (2) Assure, to the extent appropriate, consistent operational guidelines for the criminal investigative agencies of the Department [of Justice]; [and] ... (11) Perform such other functions as may be necessary for the effective policy-level coordination of criminal investigations by the criminal investigative agencies of the Department [of Justice], particularly with respect to drug trafficking, fugitive apprehension, violence, and related areas, and for the elimination of

¹This term is defined below.

waste and duplication in these functions ...

Order Number 1814-93, Section (b).

I. Definitions

As used herein:

A. "field commander" refers to:

(i) an FBI Special Agent in Charge ("SAC"), or his/her designee;

(ii) a DEA SAC, or his/her designee;

(iii) a United States Marshal, a Chief Deputy United States Marshal, or a United States Marshals Headquarters representative designated by the Director or Deputy Director of the USMS, or his/her designee; and

(iv) an "Authorized Official," i.e. an INS District Director or Chief Patrol Agent, or his/her designee.

B. "counterpart field commanders" refers to an FBI SAC, or his/her designee, and either:

(i) a DEA SAC, or his/her designee;

(ii) a United States Marshal, or his/her designee; or

(iii) an INS District Director or Chief Patrol Agent, or his/her designee.

C. "Headquarters Official" refers to the FBI's Assistant Director, Criminal Investigative Division, DEA's Chief of Operations, the USMS Director or Deputy Director, and the INS Executive Associate Commissioner for Field Operations.

D. "Tactical Commander" is the Assistant Special Agent in Charge of HRT, the FBI Field Office SWAT Senior Team Leader, or their designees.

II. Implementation of Request for FBI Crisis Management Resources

A. DEA, USMS and INS field commanders will consult and coordinate with their counterpart FBI field commander prior to any law enforcement action where (1) in the opinion of the DEA, USMS or INS field commander, the degree of threat requires and allows for preplanning before initiating any action, or (2) the FBI has resources which, in the opinion of the DEA, USMS or INS field commander, are necessary to successfully conduct the mission.

B. DEA, USMS and INS field commanders will coordinate with their counterpart FBI field commander to determine the availability of FBI crisis management resources for deployment at the field level for crisis resolution in:

(i) DEA, USMS or INS operations if, in the opinion of the DEA, USMS or INS field commander, it is anticipated that an incident may require the utilization of FBI resources;

(ii) joint DEA-FBI operations;

(iii) joint USMS-FBI operations; or

(iv) joint INS-FBI operations.

C. Under routine circumstances, the DEA, USMS or INS field commander is the overall incident commander. Regular consultation with FBI senior officials on-site, or their designees, as well as incident subject matter experts, will occur throughout the duration of the incident.

D. In the event a tactical resolution of an incident utilizing FBI tactical resources becomes necessary, the FBI field commander will become the operations commander and assume tactical control.

E. In the event that counterpart field commanders agree on the need to deploy FBI field crisis management resources, the FBI field commander may deploy such resources upon receiving any necessary approval from FBI Headquarters.

F. In the event that a DEA, USMS or INS field commander wishes to request FBI resources from the FBI's CIRG, upon receiving any necessary approval from that field commander's Headquarters, the field commander may then make such a request of his/her counterpart FBI field commander. Upon reviewing the appropriateness and necessity of this request, the FBI field commander shall contact the FBI's Headquarters Official.

G. Once the FBI's Headquarters Official has approved of a request for deployment of CIRG resources, the requesting Headquarters Official shall advise his/her subordinate field commander of that approval. The FBI SAC of CIRG will thereafter coordinate directly with the requesting field commander as to the type of deployment of CIRG resources.

III. Command, Control, and Coordination

A. In the event an FBI tactical resolution of an incident becomes necessary, all personnel will be briefed on DOJ's Deadly Force Policy.

B. The Tactical Commander will designate the use of appropriate and necessary tactical resources in concert with the relevant field commanders.

C. The FBI field commander, in consultation with the other field commanders, may initiate an emergency assault should there be imminent threat of life or serious injury to hostages or law enforcement personnel. In all other circumstances, no planned tactical resolution will be initiated without prior specific approval from FBI Headquarters.

D. Agencies' Headquarters command centers will establish a direct link throughout the duration of the incident to exchange information and to address issues of mutual concern as they arise.

E. The FBI field commander will conduct additional criminal investigations following the resolution of the incident, including crime scene investigation, if appropriate. Debriefings are required of all officials involved, will be made as soon as possible after resolution of the incident, and shall be coordinated with the FBI field commander. This requirement does not supersede other agency policy regarding post shooting incident interviews and investigation.

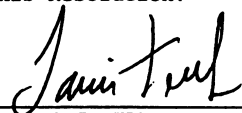
IV. Miscellaneous

This document does not create or confer any right or benefit on any person, public or private. Nothing in this document, its attachments, or associated documents is intended to restrict authority as provided by law, statute, or regulation.

Conclusion

As I noted above, this Resolution is the product of consensus recommendations of the EAB. Further, I am advised that no OIAP member agency will appeal this Resolution.

Dated: September 20, 1995
Washington, D.C.



LOUIS J. FREEH
Director of Investigative
Agency Policies



U. S. Department of Justice

Office of Investigative Agency Policies

Washington, D.C. 20530

RESOLUTION 13

Pursuant to the Attorney General's Order Number 1814-93, dated November 18, 1993, and in my capacity as Director of Investigative Agency Policies, I hereby issue the following resolution concerning the conduct of post-shooting incident reviews.

Background

The Attorney General requested that the Office of Investigative Agency Policies ("OIAP") consider the means by which Department of Justice ("DOJ") investigative agencies conduct post-shooting incident reviews. I referred this matter to the Firearms and Ammunition Working Group ("FAWG")¹ for consideration. This Resolution is the product of the FAWG's efforts and has been approved by the OIAP Executive Advisory Board ("EAB").

Discussion

According to the terms of the Order creating the OIAP, I have been authorized, "in the areas of overlapping jurisdiction of the criminal investigative agencies," to:

- (1) Take all steps necessary to improve coordination among the criminal investigative agencies of the Department [of Justice], both within the United States and abroad;
- (2) Assure, to the extent appropriate, consistent operational guidelines for the criminal investigative agencies of the Department [of Justice];
- (9) Provide advice to the Attorney General and the Deputy Attorney General on all investigative policies, procedures and activities that warrant uniform treatment or coordination among the criminal investigative agencies of the Department; [and] ...
- (11) Perform such other functions as may be necessary for the effective policy-level coordination of criminal investigations by the

¹The FAWG was created on September 14, 1994, pursuant to OIAP Resolution 8.

criminal investigative agencies of the Department [of Justice], particularly with respect to drug trafficking, fugitive apprehension, violence, and related areas, and for the elimination of waste and duplication in these functions ...

Order Number 1814-93, Section (b).


Attached to this Resolution as Exhibit A is the proposed policy and accompanying commentary concerning the conduct of post-shooting incident reviews. I believe that this policy and commentary set forth appropriate general guidance to the agencies. Furthermore, that general guidance is balanced with appropriate deference to the specific needs of the agencies.

This Resolution does not create or confer any right or benefit on any person, public or private. Nothing in it, its attachments, or associated documents is intended to restrict authority as provided by law, statute, or regulation.

Conclusion

As I noted above, this Resolution has been approved by the EAB. Further, I have been advised that no OIAP member agency will appeal this Resolution.

Dated: September 20, 1995
Washington, D.C.



LOUIS J. FREEH
Director of Investigative
Agency Policies

**Policy Statement
on Reporting and Review of Shooting Incidents**

1. **Reporting Requirement.** Every shooting incident by a Department of Justice ("DOJ") employee must be reported, documented, and investigated. An exception to this requirement would be weapons harmlessly discharged in a training or recreational environment. Questions regarding the need to report the discharge of a weapon should be resolved by contacting a designated component Headquarters Senior Manager for guidance.
2. **Shooting Inquiry.** The circumstances surrounding the shooting incident will dictate the nature of the report(s) submitted and the level of investigation and review to which the incident is subjected. In all cases, component Senior Management must take prompt and appropriate measures to ensure, to the greatest extent possible, that DOJ shooting inquiries are thorough and objective.
3. **Investigative Discretion.** The decision whether a shooting inquiry will be conducted by investigators assigned to the field office where the incident occurred or by investigators assigned to a component Headquarters Office of Inspection or other Headquarters element, will be made by designated component Headquarters Senior Management following consultation with field office Senior Management.
4. **Shooting Investigation Team ("SIT").** The SIT, regardless of origin, will be comprised of sufficient qualified personnel to ensure that a logical, thorough, objective, and factual inquiry is conducted and documented. The results of this inquiry should be memorialized in a comprehensive report appropriate for the type of shooting being investigated.
5. **Shooting Incident Review.** All shooting incident documentation, including investigative reports, will be reviewed by an independent review committee designated by each component. The purpose of this committee is:
 - a. to act as an objective administrative "check and balance" for the reporting and investigative process;
 - b. to determine the reasonableness of the application of deadly force, in accord with the DOJ Deadly Force Policy and the law; and,
 - c. to provide component Senior Management with appropriate analyses, observations, and recommendations concerning operational, training, and other relevant issues, including the need for referral for further

administrative or disciplinary review, if deemed necessary.

6. **Policy Guidelines.** At a minimum, component shooting incident policies shall include, but not be limited to, the following:
 - a. a clear definition of what constitutes a reportable shooting incident;
 - b. instructions regarding the content of the initial report that a shooting incident has occurred;
 - c. instructions regarding to whom, by what means (e.g. telephone, teletype, written communication, etc.), and within what time parameters shooting incidents are initially reported;
 - d. instructions regarding the content and format of all documents, including investigative or administrative reports, relating to the shooting incident inquiry;
 - e. instructions regarding deadlines for submitting the results of shooting incident inquiries;
 - f. instructions regarding the composition of Shooting Investigation Teams and Shooting Incident Review Committees;
 - g. instructions regarding the timely reporting of planning, judgment, oversight, training, safety, or other relevant "lessons learned" that were disclosed during the shooting incident inquiry and which may compromise operations or the safety of component personnel;
 - h. instructions regarding measures to be taken, particularly during the investigation of operationally or otherwise sensitive shooting incidents, to ensure that DOJ shooting incident inquiries are thorough, factual, and objective;
 - i. instructions encouraging the recognition and accommodation, as appropriate under the circumstances, of multiple interests and jurisdictions following a shooting incident; and,
 - j. instructions regarding the need to complete the shooting incident review process expeditiously, to include documenting circumstances which may delay reporting, e.g. awaiting results of laboratory analyses.
7. **Lessons Learned.** Operational, safety, training or other relevant issues disclosed during the investigative or review process should be promptly communicated to component

employees, and must be incorporated in policy manuals and training curriculae, as appropriate.

8. **Rights of Third Parties.** Nothing in this policy and the attached commentary is intended to create or does create an enforceable legal right or private right of action.

**Commentary Regarding the Shooting Incident Reporting
and Review Process**

I. Introduction

The Department of Justice ("DOJ") hereby establishes a uniform policy with respect to the reporting and review of shooting incidents. The policy and this commentary provide practical guidance for DOJ law enforcement component officials tasked with reporting, documenting, investigating, and reviewing reports detailing the discharge of firearms during the conduct of official business. The policy is intended to ensure that (1) shooting incidents are investigated and reviewed commensurate with the type of incident involved, and (2) documented in a manner which is thorough, factual, and objective.

This policy is the product of discussions among DOJ's law enforcement components and the advice of their respective offices of legal counsel. As a matter of principle, this document does not attempt to dictate how individual components implement the policy nor encroach upon the prerogatives of their Senior Management, but rather establishes guidelines for the reporting, investigation, documentation, and review of shooting incidents.

II. Definitions

For the purposes of this policy, a "**shooting incident**" means:

- (1) The intentional or unintentional discharge of a firearm by a DOJ law enforcement employee, on or off duty, under circumstances which warrant official notice or review.

Weapons harmlessly discharged in connection with training or recreation are not included in this definition and, except as noted below, need not be reported.

- (2) The discharge of a firearm by anyone during the course of DOJ-related official business. If a shooting incident occurs during a DOJ joint or task force investigation and DOJ personnel are either not present or not directly involved, component Senior Management may exercise discretion regarding the levels of investigation and review to which such shooting incidents are subjected, and may defer subsequent investigations to local authorities.
- (3) The discharge of a firearm in defense against vicious animals.

- (4) The discharge of a firearm resulting in self-inflicted injuries or injuries to another person.
- (5) The discharge of a firearm by a DOJ employee resulting in an investigation by any law enforcement agency.

Reporting Requirement - the necessity for promptly advising a designated component Headquarters Senior Manager that a shooting incident has occurred.

Shooting inquiry - the investigative process which must follow any shooting incident, except as noted in Paragraph (1) in the statement of policy.

Shooting incident review - the post investigation administrative process conducted by an independent review committee designated by each component.

III. Initial Reporting

The initial report is intended to promptly (1) document the shooting incident and (2) involve a designated Senior Manager in appropriate oversight of the decisional and investigative process. The initial report must contain sufficient information to allow Senior Managers to make informed judgments regarding the necessity, type, and complexity of subsequent inquiries.

Field office and Headquarters Senior Management will ensure that initial relevant details regarding the incident are documented and will establish by whom and to what extent the incident will be investigated.

IV. Shooting Incident Inquiries Generally

Shooting incident inquiries should be conducted with due regard for the physical, mental, and emotional well-being of involved employees, their families, co-workers, and other persons, including victims and witnesses. The purpose of the investigative, reporting, and review process is to provide Senior Management with a factual basis for evaluating operational activities; assessing the reasonableness of the conduct; and, determining the effectiveness of training, planning, judgment, and other factors, which may compromise operations or the safety of employees.

The circumstances surrounding the shooting incident will dictate the complexity of the investigation conducted, the nature of the report(s) submitted, and the level of review to which the incident is subjected. These decisions will be made by a designated component Headquarters Senior Manager following consultation with field office Senior Management. It is essential that sufficient oversight of this critical process be

exercised to ensure that: (a) a thorough, factual, and objective investigation is conducted; (b) the results of the inquiry are memorialized in a comprehensive report appropriate for the type of incident being investigated; and (c) that potential conflicts of interest are avoided, including even the appearance of conflict of interest or impropriety.

Inquiries should be conducted to achieve, at a minimum, the following objectives:

- (1) A thorough, factual, and objective investigation;
- (2) Levels of investigative complexity and review appropriate for the type of incident involved;
- (3) A thoroughly documented report which is appropriate for the type of incident involved and includes all relevant information necessary for accurate and objective analysis;
- (4) Objective Senior Management oversight of the investigative and review process;
- (5) Prompt reporting of identified planning, judgment, oversight, training or other relevant issues which may compromise operations or the safety of persons involved;
- (6) Appropriate, timely recommendations to Senior Management regarding operational, training, safety, or other issues including, if necessary, referral to appropriate entities for further administrative or disciplinary review;
- (7) Prompt follow-up on findings and recommendations including appropriate policy or manual changes; and,
- (8) The ability to conduct meaningful shooting data and trend analyses.

The shooting incident review is intended to act as a "check and balance" for the investigative process and to provide appropriate objective analyses, observations, and recommendations to the component's Senior Management.

V. Compliance with Policy Guidelines

Within ninety (90) days, DOJ law enforcement components shall modify existing shooting incident review policies as necessary to accord with this general policy.



U. S. Department of Justice
Office of Investigative Agency Policies

Washington, D.C. 20530

RESOLUTION 14

Pursuant to the Attorney General's Order Number 1814-93, dated November 18, 1993, and in my capacity as Director of Investigative Agency Policies, I hereby issue the following resolution concerning the use of deadly force.

Background

The Supreme Court has addressed the constitutional restrictions on the use of deadly force. In view of those precedents, the investigative agencies of the Department of Justice ("DOJ") have, over the years, adopted policies to govern their employees' use of deadly force. To date, however, those policies have not been standardized. The Attorney General requested that the Office of Investigative Agency Policies ("OIAP") consider whether there should be a uniform DOJ deadly force policy and, if so, to draft it for her consideration.

Attached to this Resolution is a uniform deadly force policy and accompanying commentaries. Attachment A sets forth the uniform deadly force policy. Attachment B sets forth the commentaries governing the use of deadly force in non-custodial and custodial situations.

The deadly force policy and commentaries have resulted from many months of discussion, negotiation, and analysis among personnel from: the Federal Bureau of Investigation; the Drug Enforcement Administration; the United States Marshal Service; the Immigration and Naturalization Service; the Bureau of Prisons; the Office of the Inspector General; and, DOJ's Criminal Division, Office of Legal Counsel, and Civil Rights Division.

Discussion

According to the terms of the Order creating the OIAP, I have been authorized, "in the areas of overlapping jurisdiction of the criminal investigative agencies," to:

[a]ssure, to the extent appropriate, consistent operational guidelines for the criminal investigative agencies of the Department [of Justice]; [and] ... [p]rovide advice to the Attorney General and the Deputy

Attorney General on all investigative policies, procedures and activities that warrant uniform treatment or coordination ...

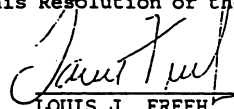
Order Number 1814-93, Sections (b) (2) and (9).

I am satisfied that this policy and the commentaries uphold the sanctity of human life and provide clear direction to law enforcement officials who, in the face of extraordinary danger, must resort to the use of deadly force. I have reviewed them with members of the OIAP Executive Advisory Board ("EAB") and there are no objections to them.

Conclusion

As I noted above, this Resolution and attachments have been approved by the EAB. Further, I have been advised that no OIAP member agency will appeal this Resolution or the attachments.

Dated: October 16, 1995
Washington, D.C.



LOUIS J. FREEH
Director of Investigative
Agency Policies

POLICY STATEMENTUSE OF DEADLY FORCE

I. Permissible Uses. Law enforcement officers and correctional officers of the Department of Justice may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.

A. Fleeing felons. Deadly force may be used to prevent the escape of a fleeing subject if there is probable cause to believe: (1) the subject has committed a felony involving the infliction or threatened infliction of serious physical injury or death, and (2) the escape of the subject would pose an imminent danger of death or serious physical injury to the officer or to another person.

B. Escaping prisoners. 1. Unless force other than deadly force appears to be sufficient, deadly force may be used to prevent the escape of a prisoner committed to the custody of the Attorney General or the Bureau of Prisons

a. if the prisoner is escaping from a secure institution or is escaping while in transit to or from a secure institution; or

b. if the prisoner is otherwise effecting his or her escape in a manner that poses an imminent danger to the safety of other prisoners, staff, or the public (such as by attempting to ignite explosives).

2. The use of deadly force is not permitted if the subject is in a non-secure facility or a facility under the control of the Immigration and Naturalization Service, and (a) has not used or threatened the use of force likely to cause serious physical injury in his or her escape attempt, and (b) has not otherwise manifested an imminent threat of death or serious physical injury to the officer or community.

3. The use of deadly force is not permitted if the subject is in transit to or from a non-secure facility and is not accompanied by persons who are in transit to or from a secure facility and the subject (a) has not used or threatened the use of force likely to cause serious physical injury in his or her escape attempt, and (b) has not otherwise manifested an imminent threat of death or serious physical injury to the officer or community.

4. After an escape from the facility or vehicle and its immediate environs has been effected, officers attempting to apprehend the escaped prisoner may not use deadly force unless such force would otherwise be authorized in accordance with this policy.

C. Prison Unrest. Deadly force may be used to maintain or restore control of a prison or correctional institution when the officer reasonably believes that the intended subject of the deadly force is participating in a disturbance in a manner that threatens the safety of other inmates, prison staff, or other persons. The use of deadly force would be unreasonable and thus not permitted to quell a disturbance when force other than deadly force reasonably appears sufficient.

II. Non-Deadly Force. If other force than deadly force reasonably appears to be sufficient to accomplish an arrest or otherwise accomplish the law enforcement purpose, deadly force is not necessary.

III. Verbal Warning. If feasible and if to do so would not increase the danger to the officer or others, a verbal warning to submit to the authority of the officer shall be given prior to the use of deadly force.

IV. Warning Shots. Warning shots are not permitted outside of the prison context. In the prison context, warning shots may be fired within or in the immediate environs of a secure facility if there is no apparent danger to innocent persons: (A) if reasonably necessary to deter or prevent the subject from escaping from a secure facility; or (B) if reasonably necessary to deter or prevent the subject's use of deadly force or force likely to cause grievous bodily harm.

V. Vehicles.

A. Weapons may not be fired solely to disable moving vehicles.

B. Weapons may be fired at the driver or other occupant of a moving motor vehicle only when:

1. The officer has a reasonable belief that the subject poses an imminent danger of death or serious physical injury to the officer or another; and

2. The public safety benefits of using such force outweigh the risks to the safety of the officer or other persons.

VI. Vicious Animals. Deadly force may be directed against dogs or other vicious animals when necessary in self-defense or defense of others.

VII. Rights of Third Parties. Nothing in this policy and the attached commentary is intended to create or does create an enforceable legal right or private right of action.

Commentary Regarding the Use of Deadly Force
in Non-Custodial Situations

I. Introduction

The Department of Justice hereby establishes a uniform policy with respect to the use of deadly force in both custodial and non-custodial situations. This commentary does not address the use of deadly force upon subjects relinquished to persons or facilities responsible for detention or incarceration. All other uses of deadly force are addressed in this commentary. The policy and this commentary provide practical guidance for officers who must make grave decisions regarding the use of deadly force under the most trying of circumstances. The policy also is intended to maintain uniformity among the various Departmental components and to achieve uniform standards and training with respect to the use of deadly force. Although each component may still develop and conduct its own training on deadly force, the policy governs the use of deadly force under all circumstances.

The policy is the product of discussion among the various law enforcement agencies whose personnel are called upon to make decisions regarding the use of deadly force, of review of the current policies governing the use of force, and of advice of legal counsel from various Department components, including those charged with law enforcement, defense of civil actions filed against the government, enforcement of civil rights, and provision of constitutional advice. In developing the policy, it became apparent that decisional law provides only limited guidance regarding the use of deadly force.¹ In addition, as a matter of principle, the Department deliberately did not formulate this policy to authorize force up to constitutional or other legal limits.²

¹ Many issues addressed in the policy and this memorandum have never been addressed in reported decisions or the law remains unresolved. Courts would step outside their proper role if they formulated detailed policies with respect to the procedures governing deadly force; in contrast, the Department has the discretion to determine what the policy should be and to provide guidance to its employees with regard to these solemn issues. Cases arise in procedural postures--typically civil tort or civil rights actions, or motions to dismiss or overturn criminal charges or convictions--in which a wrongful act on the part of the government may not lead to recovery or sanctions. As a result, the court often does not reach the question of whether the use of force was wrongful.

² The leading Fourth Amendment cases in this area are Tennessee v. Garner, 471 U.S. 1 (1985) and Graham v. Connor, 490 U.S. 335 (1989).

II. Definitions

Deadly force is the use of any force that is likely to cause death or serious physical injury. When an officer of the Department uses such force in non-custodial situations, it may only be done consistent with this policy. Force that is not likely to cause death or serious physical injury, but unexpectedly results in such harm or death, is not governed by this policy.

Probable cause, reason to believe or a reasonable belief, for purposes of this policy, means facts and circumstances, including the reasonable inferences drawn therefrom, known to the officer at the time of the use of deadly force, that would cause a reasonable officer to conclude that the point at issue is probably true. The reasonableness of a belief or decision must be viewed from the perspective of the officer on the scene, who may often be forced to make split-second decisions in circumstances that are tense, unpredictable, and rapidly evolving. Reasonableness is not to be viewed from the calm vantage point of hindsight.

III. Principles on Use of Deadly Force

The Department of Justice recognizes and respects the integrity and paramount value of all human life. Consistent with that primary value, but beyond the scope of the principles articulated here, is the Department's full commitment to take all reasonable steps to prevent the need to use deadly force, as reflected in Departmental training and procedures. Yet even the best prevention policies are on occasion insufficient, as when an officer serving a warrant or conducting surveillance is confronted with a threat to his or her life. With respect to these situations and in keeping with the value of protecting all human life, the touchstone of the Department's policy regarding the use of deadly force is necessity. Use of deadly force must be objectively reasonable under all the circumstances known to the officer at the time.

The necessity to use deadly force arises when all other available means of preventing imminent and grave danger to officers or other persons have failed or would be likely to fail. Thus, employing deadly force is permissible when there is no safe alternative to using such force, and without it the officer or others would face imminent and grave danger. An officer is not required to place him or herself, another officer, a suspect, or the public in unreasonable danger of death or serious physical injury before using deadly force.

Determining whether deadly force is necessary may involve instantaneous decisions that encompass many factors, such as the likelihood that the subject will use deadly force on the

officer or others if such force is not used by the officer; the officer's knowledge that the subject will likely acquiesce in arrest or recapture if the officer uses lesser force or no force at all; the capabilities of the subject; the subject's access to cover and weapons; the presence of other persons who may be at risk if force is or is not used; and the nature and the severity of the subject's criminal conduct or the danger posed.

Deadly force should never be used upon mere suspicion that a crime, no matter how serious, was committed, or simply upon the officer's determination that probable cause would support the arrest of the person being pursued or arrested for the commission of a crime. Deadly force may be used to prevent the escape of a fleeing subject if there is probable cause to believe: (1) the subject has committed a felony involving the infliction or threatened infliction of serious physical injury or death, and (2) the escape of the subject would pose an imminent danger of death or serious physical injury to the officer or to another person.

As used in this policy, "imminent" has a broader meaning than "immediate" or "instantaneous." The concept of "imminent" should be understood to be elastic, that is, involving a period of time dependent on the circumstances, rather than the fixed point of time implicit in the concept of "immediate" or "instantaneous." Thus, a subject may pose an imminent danger even if he or she is not at that very moment pointing a weapon at the officer if, for example, he or she has a weapon within reach or is running for cover carrying a weapon or running to a place where the officer has reason to believe a weapon is available.

IV. Lesser Means

Intermediate force. If force lesser than deadly force could reasonably be expected to accomplish the same end, such as the arrest of a dangerous fleeing subject, without unreasonably increasing the danger to the officer or to others, then it must be used. Deadly force is not permissible in such circumstances, although the reasonableness of the officer's understanding at the time deadly force was used shall be the benchmark for assessing applications of this policy.

Verbal warnings. Before using deadly force, if feasible, officers will audibly command the subject to submit to their authority. Implicit in this requirement is the concept that officers will give the subject an opportunity to submit to such command unless danger is increased thereby. However, if giving such a command would itself pose a risk of death or serious bodily harm to the officer or others, it need not be given.

Warning shots and shooting to disable. Warning shots are not authorized. Discharge of a firearm is usually considered to be permissible only under the same circumstances when deadly force may be used--that is, only when necessary to prevent loss of life or serious physical injury. Warning shots themselves may pose dangers to the officer or others.

Attempts to shoot to wound or to injure are unrealistic and, because of high miss rates and poor stopping effectiveness, can prove dangerous for the officer and others. Therefore, shooting merely to disable is strongly discouraged.

Motor vehicles and their occupants. Experience has demonstrated that the use of firearms to disable moving vehicles is either unsuccessful or results in an uncontrolled risk to the safety of officers or others. Shooting to disable a moving motor vehicle is forbidden.

An officer who has reason to believe that a driver or occupant poses an imminent danger of death or serious physical injury to the officer or others may fire at the driver or an occupant only when such shots are necessary to avoid death or serious physical injury to the officer or another, and only if the public safety benefits of using such force reasonably appear to outweigh any risks to the officer or the public, such as from a crash, ricocheting bullets, or return fire from the subject or another person in the vehicle.

Except in rare circumstances, the danger permitting the officer to use deadly force must be by means other than the vehicle.

V. Miscellaneous

Deadly force may be directed against dogs or other vicious animals when necessary in self-defense or defense of others.

Nothing in this policy and the attached commentary is intended to create or does create an enforceable legal right or private right of action.

Commentary Regarding the Use of Deadly Force
in Custodial Situations

I. Introduction

The Department of Justice hereby establishes a uniform policy with respect to the use of deadly force in both custodial and non-custodial situations. This commentary addresses the use of deadly force in custodial situations including conditions of prison unrest and when a subject is escaping custody. The policy and this commentary provide practical guidance for officers who must make grave decisions regarding the use of deadly force under the most trying of circumstances. The policy also is intended to achieve uniformity among the various Departmental components, which previously had established their own standards for the use of deadly force. Although each component may still develop and conduct its own training on deadly force, the policy governs the use of deadly force within any facility dedicated to the incarceration of persons or by any officer who is responsible for the transporting or custody of persons incarcerated or to be incarcerated. Those portions of the policy which address custodial or prison situations specifically, do not apply to officers who are merely detaining an arrestee or transporting an arrestee from the place of arrest; nor do these portions of the policy apply to the transporting of an arrestee to a facility dedicated to incarceration. In addition, the Immigration and Naturalization Service (INS) officers, in INS controlled facilities, are not authorized to use deadly force except in self-defense or defense of others.

The policy is the product of discussion among the various law enforcement agencies whose personnel are called upon to make decisions regarding the use of deadly force, of review of the current policies governing the use of force, and of advice of legal counsel from various Department components, including those charged with law enforcement, defense of civil actions filed against the government, enforcement of civil rights, and provision of constitutional advice. In developing the policy, it became apparent that decisional law provides only limited guidance regarding the use of deadly force.¹ In addition, as a

¹ Many issues addressed in the policy and this memorandum have never been addressed in reported decisions or the law remains unresolved. Courts would step outside their proper role if they formulated detailed policies with respect to the procedures governing deadly force in arrests, prison riots, and escapes; in contrast, the Department has the discretion to determine what the policy should be and to provide guidance to its employees with regard to these solemn issues. Cases arise in procedural postures-- typically civil tort or civil rights actions, or motions to dismiss or overturn criminal charges or convictions--in which a wrongful act on the part of the government may not lead to recovery or sanctions. As a result,

matter of principle, the Department deliberately did not formulate this policy to authorize force up to constitutional or other legal limits.²

II. Definitions

Deadly force is any force that is likely to cause death or serious physical injury. When an officer of the Department uses such force, it may only be done consistent with this policy. Force that is not intended to cause death or serious physical injury, but unexpectedly results in such injury or death, is not governed by this policy.

Escape for the purposes of this policy encompasses the concept of immediacy of an attempt to leave custody. A person in custody is escaping from a facility or vehicle when he or she is attempting to escape and is still within the facility's immediate environs. Hence the concept of escape is different under this policy than under 18 U.S.C. § 751 and 28 U.S.C. § 1826(c), which provide that escapes are continuing offenses.

Probable cause, reason to believe or a reasonable belief, for purposes of this policy, means facts and circumstances, including the reasonable inferences drawn therefrom, known to the officer at the time of the use of deadly force, that would cause a reasonable officer to conclude that the point at issue is probably true. The reasonableness of a belief or decision must be viewed from the perspective of the officer on the scene, who may often be forced to make split-second decisions in circumstances that are tense, unpredictable, and rapidly

the court often does not reach the question of whether the use of force was wrongful. Relatedly, the judicial deference paid to decisions of correctional officials in use-of-force situations, coupled with immunity doctrines, may at least as a theoretical matter result in upholding (or at least failing to sanction) conduct that might not have been undertaken as a matter of policy.

² The leading Eighth Amendment case, arising in the context of force used during prison unrest, is Whitley v. Albers, 475 U.S. 312 (1986). The courts have not fully resolved the demarcations among the Fourth Amendment, the Fifth Amendment's due process clause, and the Eighth Amendment in limiting the use of force following an arrest. See, e.g., Graham v. Connor, 490 U.S. 386 (1989); Albright v. Oliver, 114 S. Ct. 1340 (1994) (arrest without probable cause, no force involved); Brothers v. Klevenhagen, 28 F.3d 452 (5th Cir.), cert. denied, 115 S. Ct. 639 (1994) (analyzing shooting of detainees under Fourteenth Amendment due process); Wright v. Whiddon, 951 F.2d 297 (11th Cir. 1992).

evolving. Reasonableness is not to be viewed from the calm vantage point of hindsight.

III. Deadly Force Generally

The Department of Justice recognizes and respects the integrity and paramount value of all human life. Consistent with that primary value, but beyond the scope of the principles articulated here, is the Department's full commitment to take all reasonable steps to prevent the need to use deadly force as reflected in Departmental training and procedures. Yet even the best prevention policies are on occasion insufficient, as when a serious prison disturbance occurs, or when a prisoner confined to a secure facility attempts to escape from custody. With respect to these situations and in keeping with the value of protecting all human life, the touchstone of the Department's policy regarding the use of deadly force is necessity. Use of deadly force must be objectively reasonable under all the circumstances known to the officer at the time, including the nature and the severity of prison disturbance, whether officers at the facility carry firearms, the use or threat of use of force upon the officer or others in any escape attempt, and the escapee's response to any warning.

The necessity to use deadly force arises when all other available means of preventing imminent and grave danger to officers or other persons have failed or would be likely to fail. Thus, employing deadly force is permissible when there is no safe alternative to using such force, and without it the officer or others would face imminent and grave danger. An officer is not required unreasonably to place his or her life, that of another officer, another prisoner or suspect, or the public in danger of death or serious injury before using deadly force. Persons who have been determined to require confinement in a secure facility ordinarily pose such a danger when attempting to escape.

IV. Prison Control

No force, deadly or non-deadly, may be used wantonly, maliciously or sadistically by prison officials against prisoners. Force may never be used solely for the purpose of causing harm. Deadly force may be used in maintaining or regaining control of a prison, correctional institution, or any portion or facility of such an institution, in the event of a mutiny, rebellion, riot, or disturbance that threatens the safety of inmates, prison staff, or other persons. Deadly force may be used only when it is necessary and the officer reasonably believes that the subject is him or herself participating in a disturbance. Participation for these purposes is more than simply being in the area where others are visibly creating the disturbance, particularly if the subject has had no opportunity to exit that area. On the other hand, in considering the use of

deadly force in the exigent circumstances of a prison disturbance, an officer need not ascertain who is instigating or leading the disturbance before finding that someone is sufficiently participating in the disturbance. The reasonableness of an officer's determination to use deadly force may turn on the officer's vantage point and assignment. Deadly force may also be used when a single prisoner presents an imminent danger of serious physical injury to another person or persons.

V. Escapes

The Department's responsibility to protect the public is at its zenith when the Department, performing its custodial function, determines that a prisoner is to be confined in a secure facility. Acting in that capacity, the Department's obligation to ensure that prisoner's continued custody entails strict procedures including the threat of the use of deadly force should such a prisoner attempt to escape. Correctional officials may display firearms at federal correctional institutions to deter the escape of such prisoners. Officers may presume that a prisoner attempting an escape from a secure institution, as defined by the Bureau of Prisons, would pose an imminent danger of death or serious physical injury to members of the public if permitted to consummate the escape. Similarly, the use of deadly force is governed by the same principles in the case of prisoners in transit. If the prisoner is in transit to or from a secure facility, deadly force ordinarily would be necessary if no other means were reasonably likely to stop the escape from being consummated. A person attempting an escape is considered to be attempting an escape from a secure institution or in transit to or from it when the limits of such secure confinement have been specially extended, as, for instance, when the subject has been transferred to a hospital or permitted to attend a funeral under armed escort.

The presumption that those attempting to escape from secure facilities pose an imminent danger (and are thus subject to the use of deadly force) runs in the other direction if the facility is non-secure. A determination has already been made that, in non-secure facilities, persons would not pose an imminent danger to the public if the person escaped. Accordingly, and in the absence of other factors demonstrating an imminent threat, it would be unreasonable to use deadly force to prevent escapes of persons from non-secure facilities or to prevent escapes of persons in transit to or from a non-secure facility unless accompanied by persons going from or to a secure facility. Examples of factors demonstrating an imminent threat include the circumstances where the prisoner has become armed or has used or threatened to use force likely to cause serious physical injury. In making the "imminent threat" determination, it should be recognized that "imminent" has a broader meaning

than "immediate" or "instantaneous." The concept of "imminent" should be understood to be elastic, that is, involving a period of time dependent on the circumstances, rather than the fixed point of time implicit in the concept of "immediate" or "instantaneous." Thus, for example, a prisoner may pose an imminent threat, even if he or she is not at that very moment in possession of a weapon, if he or she is running to a place where the officer has reason to believe a weapon is available.

Once an escape is no longer in progress, but has been accomplished, that is, once the subject is no longer in the immediate environs of the facility, officers must attempt to effect a rearrest of the subject. In such cases, the policy pertaining to escaping prisoners is no longer applicable. Deadly force would then be authorized only consistent with the policy governing the use of such force in circumstances other than those of escaping prisoners.

VI. Destruction of Property

In accord with the policy permitting the necessary use of deadly force to maintain control of prisons and correctional institutions and to stop attempted escapes, deadly force may be used when someone is destroying or attempting to destroy property, if the loss of or damage to the property could contribute directly to an escape or attempted escape, serious physical injury, or death. Examples of this type of situation include using explosives in order to effect an escape from prison or attempting to disable a fire truck during a fire within an institution. If the destruction of property does not reasonably appear to be likely to so contribute to an escape, serious physical injury, or death, using deadly force would probably be unreasonable and thus forbidden.

VI. Lesser Means

Verbal warnings. The Department of Justice requires that before using deadly force, if feasible, officers will audibly command the subject to submit to their authority. Implicit in this requirement is the concept that officers will give the subject an opportunity to submit to such command unless the danger is increased thereby. However, if giving such a command would itself pose a risk of death or grievous bodily harm to the officer or others, it need not be given.

Warning shots. Within or from the immediate environs of a secure facility, warning shots may be fired as an intermediate measure at the discretion of the officer if verbal warnings are no avail. If the officer determines that the firing of a warning shot is a necessary step to deterring or preventing an escape or preventing the loss of life or the infliction of serious physical injury, the officer may fire

warning shots only if he or she can do so safely; that is, there is no apparent danger of injury to an innocent person.

VII. Limitation

Nothing in the policy and this commentary is intended to create or does create an enforceable legal right or private right of action.

CRITICAL INCIDENT RESPONSE GROUP

In April 1994, Director Louis J. Freeh created the Critical Incident Response Group, a new program to deal more effectively with hostage-taking and barricade incidents. CIRG is headed by a Special Agent in Charge and based at the FBI Academy in Quantico, Virginia.

The program, which was developed in consultation with Attorney General Janet Reno in the aftermath of the incident at Waco, Texas, represents a broader range of law enforcement tools to both solve and resolve deadly, complex emergencies and crimes.

The CIRG program includes:

- * The Attorney General, other Justice officials, and Freeh have taken crisis training at the FBI Academy. Freeh will personally direct FBI operations in future emergencies.

- * A restructuring of crisis response resources that brings negotiators and behavioral science experts on equal footing with the Hostage Rescue Team and other tactical units.

- * The Hostage Rescue Team, a highly-skilled unit dealing with crisis situations, will expand its complement to 91 members, up from 52 at the time of the Waco incident. Additionally, nine SWAT FBI teams from around the nation, totalling 355 Agents, are undergoing intensive training with the HRT and will support the HRT in any crisis anywhere in the nation.

- * Forty-two Special Agents in Charge and other managers from field divisions nationwide have received special training in crisis management, will be available for assignment to future emergency situations. This management system was successfully implemented in Oklahoma City, in the wake of the bombing there.

- * Finally, a newly-created unit, to deal with child kidnappers and serial killers, will be part of CIRG.

9/95



U.S. Department of Justice
Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

August 21, 1996

Honorable Bill McCollum
Chairman
Subcommittee on Crime
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

After the tragedy at Waco in 1993, there were several internal assessments and reviews undertaken by the FBI, including an evaluation of its crisis response functions. After my appointment as Director, I ordered the adoption of a number of the recommendations from that appraisal, including the creation of the Critical Incident Response Group (CIRG) at Quantico. The CIRG was part of our new approach to crisis situations, and was an integral asset in our recent successful resolution of the "Freemen" case in Montana.

One of the deficiencies identified during the post-Waco review process was the lack of statistical and empirical data available to the FBI, or law enforcement in general, that could aid in negotiations during a crisis. To address this problem, and with the full and strong support of the Attorney General, the FBI has established the Hostage Barricade System (HOBAS). HOBAS, which will be managed by the CIRG, is a multifaceted project. HOBAS will contain a database with historical and statistical data on hostage/barricade situations worldwide.

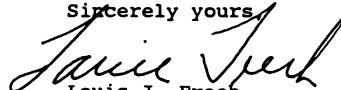
HOBAS will manage volumes of information, that contains the characteristics of crises, the methods employed to achieve resolution, the results, the problems, etc. This database will assist in establishing a profile of the subject(s), and provide an FBI-approved strategy for dealing with the subject(s). To populate the database, all FBI offices have been tasked to contact law enforcement organizations in their jurisdictions, and report incidents that have occurred over the past three years. In a later phase, FBI Legal Attaches will collect similar information from their host-country counterparts in order to have a global body of research data.

Honorable Bill McCollum

Additionally, HOBAS software is being developed which will allow all FBI field negotiators to conduct subject profiles contemporaneously with an evolving crisis situation. This is expected to be in place by the end of September. Once this system is operational, training seminars will be scheduled to familiarize field personnel with HOBAS.

As I said in my statement announcing the creation of the CIRG, law enforcement must constantly try to do the best possible job in life-and-death situations. I am sure you will agree that the HOBAS is another step in that direction.

Sincerely yours,



Louis J. Freeh
Director

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