United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, FIRST SESSION

Vol. 141 WASHINGTON, FRIDAY, MAY 26, 1995 No. 89

House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, June 6, 1995, at 12 noon.

Senate

FRIDAY, MAY 26, 1995

(Legislative day of Monday, May 15, 1995)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Lord God, Sovereign of our Nation, You led our forefathers to declare in our Constitution that the function of government is to establish justice, promote the general welfare, and secure the blessings of liberty for our people. We are here in this Senate to preserve our people's right to life, liberty, and the pursuit of happiness. Today, we continue the discussion of the growing problem of violence and terrorism in our land that threatens these very blessings. The spirit of fear is rampant as a result of those who perpetrate acts of violence. Empower the Senators as they take incisive action to establish stronger laws to combat the illusive and dangerous forces of organized terrorism. Help them to strengthen the methods of investigation, apprehension, and punishment of those who willfully cause suffering through treasonous acts of terrorism against the Government.

Today, as we move forward to act decisively on this antiterrorism legislation, we all praise You that You do not allow the violent to triumph. In Your holy name. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. SPECTER. Mr. President, on behalf of Senator DOLE, I wish to announce that the leader time has been reserved and the Senate will immediately resume consideration of S. 735, the antiterrorism bill, and to tell all Senators, in accordance with the majority leader's request, that rollcall votes are anticipated today on or in relation to amendments to the antiterrorism bill.

COMPREHENSIVE TERRORISM PREVENTION ACT

The PRESIDENT pro tempore. The clerk will report the pending business.

The legislative clerk read as follows:

A bill (S. 735) to prevent and punish acts of terrorism, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Hatch amendment No. 1199, in the nature of a substitute.

Mr. SPECTER addressed the Chair.

The PRESIDENT pro tempore. The distinguished Senator from Pennsylvania.

Mr. SPECTER. I thank the distinguished President pro tempore.

Mr. President, I have sought recognition this morning to comment on the pending legislation, which is obviously a bill of tremendous importance in light of the recent bombing of the Federal building in Oklahoma City on April 19 and before that the bombing of the World Trade Center some 2 years ago.

Terrorism has been an enormous problem internationally for decades, and now terrorism has struck on the shores and in the heartland of the United States. In considering legislation to deal with this very critical problem, Mr. President, we should ever be mindful that an appropriate balance has to be struck between public safety and the constitutional rights of the citizens under the Bill of Rights which has served our country so well since its adoption in 1791.

The pending legislation has appended to it the habeas corpus reform bill which has been introduced by the distinguished chairman of the committee, Senator HATCH, and myself under the caption of the Specter-Hatch bill, S. 623, and it is legislation which is long overdue to make the death penalty a meaningful deterrent.

Last year, with the passage of the crime bill, Federal legislation was enacted which provides for the death penalty for those responsible for the bombing of the Federal building in Oklahoma City. The addition to this legislation of habeas corpus reform is important because some cases have been pending for as long as 20 years. Such delays really makes a virtual nullity of the death penalty because, in order to be an effective deterrent, the punishment must be swift and the punishment must be certain. In most of the

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Printed on recycled paper containing 100% post consumer waste

cases where these long delays have eventuated, the prosecutions characteristically arise in the State courts and go through with the judgment of sentence of death ultimately affirmed by the highest State court and then habeas corpus proceedings in the Federal court.

The conduct in Oklahoma City, the bombing of the building and the murder of the innocent children, women, and men, is prosecutable under both Federal and State laws, and there is a slightly different habeas corpus procedure with respect to cases that originate under Federal jurisdiction. The Specter-Hatch language addresses both types of cases, and I think it is very, very important to have it contained in this bill.

There are other measures in the pending legislation, Mr. President, which I think require our very calm and deliberate consideration, such as the provision which provides for secret proceedings to deport alien terrorists. While deportation proceedings are characteristically described as a civil proceeding, under the due process clause of law has been held to apply, and the due process clause of the 14th amendment characteristically incorporates most of the specific provisions of the Bill of Rights including the right of confrontation.

I have grave reservations that any kind of a secret proceeding can pass constitutional muster. It is my thought that we may be able to solve the problem by deporting people suspected of being terrorists or known terrorists because they are in this country illegally. We all know that there are many aliens in the United States illegally, but there are not sufficient resources to deport all of them. It would be entirely possible for us to seek to deport aliens who are here illegally where there was cause to believe that they are terrorists but to deport them not through secret proceedings because they are terrorists but because they are in the United States illegally.

Toward that end, I think we can abbreviate the procedures for deportation, including limiting appellate review. I think it is entirely possible to have, constitutionally, a definite period of preventive detention, and if there are defenses such as asylum, they can be litigated in relatively short order so that deportation of illegal aliens may be achieved without a conflict with the constitutional right of confrontation.

Similarly, Mr. President, I am concerned—and I have expressed this before in the hearings held in the terrorism subcommittee of the Judiciary Committee, which I chair—about the provisions which would enable the Attorney General of the United States to classify an organization as engaged in terrorist activities and then deprive that organization of rights which are characteristically protected under the first amendment's freedom of association. While the bill provides for de novo review by the court, here again there are provisions for secret proceedings which I believe may run afoul of the U.S. Constitution.

With respect to any wiretapping provisions which may be added to the bill, I think they will require our very, very close scrutiny to be sure we are preserving the constitutionally protected rights of those who are subject to the wiretapping.

Mr. President, I will also take this opportunity to make some comments on the incidents at Ruby Ridge, ID, and Waco. With the Senate being fully occupied for the last several days on the budget, I did not have an opportunity to do so before, but it fits right in at this juncture, and I shall be relatively brief in summarizing some of the preliminary findings which I have come to.

As the CONGRESSIONAL RECORD will show—and my distinguished colleague, the chairman of the Judiciary Committee, is in the Chamber—it has been my view that we ought to hold hearings on Waco and Ruby Ridge promptly. And by that I mean on or before August 4. I am well aware of the consideration of not impeding the Federal Bureau of Investigation's inquiries into Oklahoma City. But as I said some time ago, in conversations with the Director of the FBI, he thought that a period by mid-August, 8 to 10 weeks from the time of our conversation as I reported it on the Senate floor, would allow ample time for the FBI to complete its Oklahoma City investigation without having any problems created by a Senate inquiry of the full Judiciary Committee.

But in the absence of that full inquiry and in the absence of the setting of a date, I had said that I was going to make a preliminary inquiry myself. I did have occasion to report very briefly on these matters last week, but I want to comment a little more extensively this morning on my preliminary findings.

With respect to the incident at Ruby Ridge, ID, which came to a head back on August 21, 1992, I have had occasion to talk to a number of the people who have knowledge of that matter, including FBI Director Louis Freeh; FBI Deputy Director Larry Potts; the Director of the Bureau of Alcohol, Tobacco and Firearms, John Magaw; Jerry Spence, the attorney for Mr. Weaver; Mr. Weaver, whom I talked to when I was in Des Moines earlier this month in the presence of his attorney, Michael Mooma, Esq. I have also talked to Randy Day, Esq., the Boundary County attorney in Idaho who was considering possible State prosecutions arising out of that incident. During the course of my conversations with Mr. Weaver, his daughters Sarah, Rachel, and Alicia, ages 19, 13, and 3, were also present.

One of the critical aspects of the matter involving Mr. Weaver concerns the issue as to how the entire incident arose. In my meeting with Mr. Weaver, he described the incident as starting out when an undercover agent associated, as Mr. Weaver thought, with the Bureau of Alcohol, Tobacco and Firearms, came to purchase sawed-off shotguns from Mr. Weaver. As Mr. Weaver himself recounted the incident, he did provide two sawed-off shotguns to the ATF undercover agent.

In my later conversations with the Director of the Alcohol, Tobacco and Firearms unit, John Magaw, he said that, during the course of the trial, there was an acquittal of Mr. Weaver on grounds of entrapment. Mr. Magaw described it as borderline entrapment, but it raises a fundamental question as to the appropriate course of conduct of the Bureau of Alcohol, Tobacco and Firearms on initiating such a matter through an undercover agent, a confidential informant, where the incident has all the preliminary earmarks of entrapment. And that, in fact, was the conclusion of the court, and that is the concession made by the director of the Alcohol, Tobacco and Firearms unit.

Mr. President, a more critical aspect of what happened at Ruby Ridge, ID, of the tragedy which occurred there—including the killing of a deputy U.S. marshal, the killing of Mr. Weaver's son, Sam Weaver, the killing of Mr. Weaver's wife, Vicky—is the issue of the change in the FBI's rules of engagement from the standard shooting policy. On that issue, there is a direct conflict between representations made by Mr. Eugene F. Glenn, who is now the special agent in charge at the Salt Lake City office of the FBI and Deputy Director Larry Potts of the FBI.

In my conversation with Mr. Potts on May 17 of this year, Mr. Potts advised me that there were never any changes in the rules of engagement and that he, Mr. Potts, had no authorization to change the deadly force policy.

We do know, in the course of the incidents there, that Mrs. Weaver was killed by the bullet of an FBI sharpshooter. The contention has been made by officials of the Federal Bureau of Investigation that that was a matter which was necessary to defend other agents who were involved in the effort to take Mr. Weaver into custody.

There is a very significant question as to the circumstances of that shooting with respect to a Bureau representation that Mrs. Weaver was shot through a door, which raises the inference and suggestion that the shooter might not have been able to see Mrs. Weaver, contrasted with the representation of others that the door had a glass pane so that, in fact, the shooter may have been able to see Mrs. Weaver. That is not ascertainable based upon what I know of the facts, because there is a possibility of glare, there is a possibility of some obstruction of vision even with a pane of glass, but that is certainly something which requires inquiry.

Focusing in specifically on the conflict or at least apparent conflict between Mr. Potts and Mr. Glenn—as I have said, Deputy Director Potts told me that there were never any changes

in the rules of engagement and that he had no authorization to change the deadly force policy of the FBI.

In a letter from Special Agent Glenn to Michael A. Shaheen, the Director of the Office of Professional Responsibility at the Department of Justice, seeking an investigation into what occurred, Mr. Glenn refers specifically to adjustments to the Bureau's standard shooting policy at Ruby Ridge, and he attributes those to Deputy Director Potts.

This statement appears at page 6 of the letter from Mr. Glenn to Mr. Shaheen:

On August 22, 1992, then Assistant Director Potts advised during a telephonic conversation with SAC

That means special agent in charge Glenn.

that he had approved the rules of engagement, and he articulated his reasons for his adjustments to the Bureau's standard shooting policy. During the ten days of the Ruby Ridge stand-off, there were several occasions when SAC Glenn and AD Potts telephonically communicated with one another, and during these conversations they mutually agreed that the rules of engagement should continue to exist. On Wednesday, August 26, 1992, AD Potts approved the FBI returning to the standard shooting policy. This is reflected in the SIOC Log, page 13, item 7.

Then it follows to have the specification as to what occurred there.

When Mr. Glenn requested this special investigation, he draws this conclusion at page 1 of the letter:

* * * investigative deficiencies reveal a purpose to create scapegoats and false impressions, rather than uncovering or reinforcing the reality of what happened at Ruby Ridge.

Mr. President, I ask unanimous consent that the full text of this letter from Mr. GLENN to Mr. Shaheen be printed at the conclusion of my statement.

The PRESIDING OFFICER (Mr. BROWN). Without objection, it is so ordered.

(See exhibit 1.)

Mr. SPECTER. Mr. President, I shall abbreviate these comments because we are in the middle of the consideration of the broader terrorism bill, but these comments are directly relevant to this bill. I know, however, that others are waiting to speak. While I will have more to say about this at a later time, I will condense these comments at this time.

Relating to the incident at Ruby Ridge, there are questions which have already been raised by many as to why Mr. Potts was made the Deputy Director of the FBI while this matter was pending and certainly before there was a congressional inquiry by the U.S. Senate or the House of Representatives. Those are among my reasons for thinking that a congressional inquiry into Ruby Ridge should have been held a long time ago, but at least ought to be held as promptly as possible.

Mr. President, turning for a few moments to the incident at Waco, TX, which reached its conclusion on April 19, 1993, let me say at the outset as emphatically as I can that whatever happened at Waco, TX, whatever happened at Ruby Ridge, ID, there is absolutely no justification for what happened at the Oklahoma City bombing on April 19 of this year.

But I do believe that it is more than coincidence that the incident at Waco occurred on April 19 and the incident at Oklahoma City occurred on the same day 2 years later. I believe it is vital in our democracy that accountability be present at the highest levels of our Government. It has always been my view that there should be a Senate inquiry on Waco, and I expressed that view back in the middle of the summer of 1993 shortly after the Waco incident occurred. My comments were corroborated on the floor of the Senate by the then-chairman, Senator BIDEN, who confirmed that I had been pressing for an inquiry into Waco at that time.

We live in the greatest democracy in the history of the world, but we have to remember, especially those of us in Washington, DC, and within the beltway, that we govern by the consent of the governed and that the right of the Government to govern depends upon the Government's recognizing the rights of individual citizens.

There is no mere coincidence between the existence of the Bill of Rights and the stability of the American Government. The items in the Bill of Rights have to be very, very carefully safeguarded in every respect. It is a fundamental constitutional duty of the Congress to have oversight. That oversight has not been held with respect either to Waco or to Ruby Ridge, and I believe that these matters are directly related to the pending legislation which we are considering.

In just a few minutes, I think the briefest way to set some of the questions on the record which require answering by our congressional hearing would be to refer to the report and recommendations filed by Prof. Alan Stone of Harvard with other recommendations submitted to the then-Deputy Attorney General of the United States, Philip Heymann.

Professor Stone was one of a group of panelists who was requested by the FBI to prepare a forward-looking report suggesting possible changes in Federal law enforcement in light of what happened at Waco. These are a few of the comments from Professor Stone.

At page 1 of his report, he says:

. . . Neither the official investigation nor the Dennis evaluation has provided a clear and probing account of the FBI tactics during the stand-off and their possible relationship to the tragic outcome at Waco.

Then going on a few sentences later:

I have concluded that the FBI command failed to give adequate consideration to their own behavioral science and negotiation experts. They also failed to make use of the agency's own prior successful experience in similar circumstances. They embarked on a misguided and punishing law enforcement strategy that contributed to the tragic ending at Waco.

As a physician, I have concluded that there are serious unanswered questions about the basis for the decision to deploy toxic CS gas in a closed space where there were 25 children, many of them toddlers and infants.

Skipping ahead to page 24, Professor Stone goes on to say:

One might think that the highest priority after a tragedy like Waco would be for everyone involved to consider what went wrong and what would they now do differently. I must confess that it has been a frustrating and disappointing experience to discover that the Justice Department's investigation has produced so little in this regard.

Moving ahead now to page 30 briefly:

The FBI needs a better knowledge base about the medical consequences of CS gas.

It is my opinion that the AG—

The Attorney General.

—was not properly informed of the risks to infants and small children posed by CS gas.

Continuing a few sentences later:

The FBI, the Justice Department, and all of law enforcement that uses CS gas ought to have as clear an understanding of its medical consequences as possible.

Then on his final page, page 31, under a caption ''Final Word,'' there is this statement:

There is a view within the FBI and in the official reports that suggests the tragedy was unavoidable. This report is a dissenting opinion from that view.

Then a final sentence:

It is my considered opinion that the failings of the FBI at Waco involved no intentional misconduct.

Mr. President, in order to save time, I ask unanimous consent that the full text of this report by Professor Stone be printed at the end of my statement this morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. SPECTER. Mr. President, on the citations which I refer to and in the full text of what Professor Stone has raised, which will be apparent to those who will see it in the CONGRESSIONAL RECORD, there are many unanswered questions as to what happened at Waco, just as there are many unanswered questions as to what happened at Ruby Ridge. It is my hope that we will have a Senate inquiry just as promptly as possible.

I think it is vital that there be accountability at the highest levels of Government and that the public will be assured that the Congress will fully carry out its responsibilities for oversight under our constitutional responsibility.

Yesterday, we had scheduled a hearing involving the militia movement in the subcommittee of Judiciary which I chair. That hearing, regrettably, had to be postponed because we were voting continuously all day long. But yesterday afternoon, I put into the RECORD the prepared statements of some witnesses that came from the militia movement. In brief conversation I had with those individuals, they expressed their concern about what the Government had done and their gratification

that at least the subcommittee was making an inquiry into what had gone on. If we discharge our duties, Mr. President, we can provide a safety valve to let the citizens of America know that their constitutional rights are being respected and that there will be congressional oversight no matter where the blame may lie at the highest level of the Federal Government, if there is any blame.

I do not prejudge what went on at Ruby Ridge or at Waco, but I am absolutely convinced that there are many, very, very serious questions as to the governmental action at Ruby Ridge and Waco, and I am convinced that the safety valve and venting possible through a Senate full inquiry is very vital as we consider these problems of terrorism and move ahead to provide better protection to the American people from domestic terrorism and at the same time guarantee that the constitutional rights are preserved.

I thank the Chair.

EXHIBIT 1

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Salt Lake City, UT, May 3, 1995.

MICHAEL E. SHAHEEN,
Office of Professional Responsibility,
U.S. Department of Justice,
Washington, DC.

DEAR MR. SHAHEEN: The purpose of this letter is to request the Office of Professional Responsibility (OPR) conduct an investigation into the conduct of FBI Associate Special Agent in Charge (A–SAC) Charles Mathews, III and possibly others during the period A–SAC Mathews served on special assignment in Washington, D.C. from October through December, 1994, preparing the Administrative Summary Report regarding the conduct of FBI personnel involved in the Ruby Ridge matter.

As a key participant in the events of Ruby Ridge, I believe I was not adequately or fully interviewed, yet the investigative report was relied upon in proposing discipline against me and other FBI Agents. As is explained below, this and other investigative deficiencies reveal a purpose to create scapegoats and false impressions, rather than uncovering or reinforcing the reality of what happened at Ruby Ridge.

A–SAC Mathews was provided with the 1994 Ruby Ridge report of Department of Justice (DOJ) Attorney Barbara Berman, along with sixteen issues raised by the DOJ during their review of the Berman Report. These issues concern alleged misconduct by FBI employees. His assignment as preparer of the Administrative Summary Report was: evaluate existing documentation contained in the Berman report for evidence of misconduct, review additional documentation within the FBI that was not a part of the Berman report, and conduct or have conducted appropriate investigation to either substantiate or refute each allegation.

INVESTIGATIVE PROCEDURAL REQUIREMENTS

As is clearly documented in subsequent portions of this letter, A–SAC Mathews conducted his administrative review with little regard to FBI policy and procedure, and as such his Administrative Summary Report is critically flawed.

For example, A–SAC Mathews did not follow the FBI Manual Of Administrative Operations and Procedures (MAOP) as it pertains to interviews of employees under criminal or administrative inquiry. Section 13–4 of the MAOP is particularly relevant as follows:

''13–4 Interviews of Employees Involved

''(1) Interviews of employees involved in allegations of criminality or serious misconduct should be conducted at the earliest logical time and in a forthright manner. There should be no evasiveness on the part of the Bureau official conducting the interview.

''(2) The employee should be fully and specifically advised of the allegations which have been made against him/her in order that he/she may have an opportunity to fully answer and respond to them. . . .

''(3) Such interviews must be complete and thorough with all pertinent information obtained and recorded so that all phases of the allegations may be resolved. . . .

''(4) The inquiry shall not be complete until the specific allegations that may justify disciplinary action are made known to the employee who may be disciplined and the employee is afforded reasonable time to answer the specific allegations. The employee's answers, explanations, defenses, etc., should be recorded in the form of a signed, sworn statement which should specifically include the allegations made against the employee in an introductory paragraph. The statement is to be prepared following an in-depth interview of the employee by the division head or designated supervisory representative. The employee is not merely to be asked to give a written response to the allegations, but is to be interviewed in an interrogatory fashion, and a signed, sworn statement prepared from the results by the interviewing official. . . .''

MATHEWS ACTIONS

I have enclosed and request your review of the following: (1) the form ''Warning and Assurance to Employee Required to Provide Information'' (FD–645) which states, ''This inquiry pertains to Allegations of misconduct relating to the Rules of Engagement established for the Ruby Ridge critical incident and whether the FBI fully and adequately participated in the investigation/prosecution of Weaver/Harris,'' and (2) the compelled signed statement of Eugene F. Glenn dated December 8, 1994, provided by A–SAC Mathews and Supervisory Special Agent (SSA) Jerry R. Donahoe, in which paragraph two reads, ''I have been informed that this inquiry pertains to allegations of misconduct relating to the Rules of Engagement (ROE) established for the Ruby Ridge critical incident and whether the FBI fully and adequately participated in the investigation/prosecution of Weaver/Harris.''

It should be noted that my ten-page signed statement dated December 8, 1994, details liaison issues concerning the FBI, Salt Lake City and the United States Attorney's (USA's) Office, Boise, Idaho, for a period of time prior to the Ruby Ridge incident and extending through the Harris/Weaver trial. No questions were asked regarding ''rules of engagement.'' Specifically, I was not asked why I had allegedly approved the rules of engagement or more basically who had approved the rules of engagement. I was never informed that I faced possible disciplinary action for my alleged approval of the rules of engagement. And although contrary to the printed purpose of the inquiry as set forth on the FD–645, supra, A–SAC Mathews stated during the beginning of this interview, ''The rules of engagement are considered unconstitutional; therefore, there is no need to further discuss them.'' This is clearly in conflict with the MAOP citation 13–4(2)&(4) above.

DEPARTMENT OF JUSTICE REPORT

I direct your attention to an excerpt from an article that appeared in ''Legal Times,'' on March 6, 1995, captioned, ''DOJ Report May halt FBI Official's Rise.'' This article is based on a review of the DOJ Ruby Ridge report prepared by Barbara Berman. Apparently this report was leaked to the media during late February, 1995. The ''Legal Times'' article states:

''In the Reno inquiry, Potts had told investigators that he never approved the final rules of engagement, the guidelines governing a particular operation. Reno has refused to release the 542-page report, saying that she would wait until the local district attorney in Boundary County, Idaho, completes an investigation into whether agents should be charged with murder.

''But according to testimony contained in the report, which was obtained by Legal Times, Potts did approve the shoot-on-sight rule.

''The task force found that FBI operatives on the ground in Idaho faxed an operational plan, including the proposed rules of engagement, to headquarters for approval by Potts and his then deputy, Danny Coulson. But according to Freeh, Coulson had questions about other facets of the operation discussed and did not notice, let alone read, the rules of engagement. Potts, who had been working on the matter for 36 straight hours, was not on duty at the time and, hence, did not see the written rules.

''But Eugene Glenn, the on-site commander of the FBI operation, says in a January 1994 declaration that he believes he had already obtained Potts' approval by telephone before the shooting.

''The Reno task force also seemed to give credence to Glenn's account. '(I)t is inconceivable to us that FBI Headquarters remained ignorant of the exact wording of the Rules of Engagement during the entire period,' the report says.

''But FBI officials dispute Glenn's account and criticize the Justice Department's report as flawed.

'' 'When you piece together the evidence as best as possible after the fact, we reached our best judgment, and that's reflected in the discipline that the director announced or proposed,' says FBI General Counsel Howard Shapiro, who was directly involved in the FBI's inquiry.

''Freeh and Potts both declined comment.

'' 'I can't speak for the director personally,' Shapiro says, 'but a lot turned on the fact that Potts had not approved the final form of the rules of engagement, which are admittedly problematic. Had we found otherwise, it surely would have been grounds for further sanction,' the general counsel adds.

''Shapiro declined to elaborate, saying that the FBI's conclusions about what happened are based on information that Reno has said the bureau must not release pending the outcome of the local investigation.''

I have never been interviewed/interrogated regarding the rules of engagement. I was not made aware of the charge that I had approved the rules of engagement. Additionally, HRT Commander Dick Rogers, SAC Bill Gore, and SAC Robin Montgomery were not interviewed/interrogated regarding the rules of engagement during A-SAC Mathews' preparation of the Administrative Summary Report.

FBIHQ APPROVAL OF RULES OF ENGAGEMENT

I had been interviewed previously on two occasions: during September, 1992 as part of the Shooting Incident Report, and again on January 12, 1994, as part of the Berman DOJ inquiry. It is specifically detailed in the Shooting Incident Report that the rules of engagement were approved at FBI Headquarters. I call your attention to the following pages: Administrative Section, Cover Page #, Paragraph 1; Report Synopsis, Page 2, Lines 3 through 7; the body of the report, Page 3, Paragraph 2; Dick Rogers signed statement, Page 2, Paragraph 2 through Page 3, Paragraph 2; and signed statement of Eugene F. Glenn, Page 5, Paragraph 2 through

Page 6, Paragraph 1; and also to then Assistant Director Potts' signed statement where he articulates as part of this report that he approved the rules of engagement. The DOJ inquiry covered a broad period of time and touched only briefly on rules of engagement. Questioning concerning who approved the rules of engagement was not addressed in detail by interviewing officials during the preparation of my signed statement. Questions concerning who approved the rules of engagement did not appear to be a critical issue to be developed at the time of the Berman report.

It should be noted that on September 30, 1992, the date of the Shooting Report, there was no discussion regarding who approved the rules of engagement. The report simply states that the rules of engagement were approved at FBI Headquarters. It is also noted that the Shooting Review Committee Report, dated November 9, 1992, once again concurred that FBI Headquarters approved the rules of engagement. According to the ''Legal Times'' article dated March 6, 1995, the DOJ findings were, ''(I)t is inconceivable to us that FBI Headquarters remained ignorant of the exact wording of the Rules of Engagement during the entire period.''

There was no indication that the rules of engagement presented to field command at Ruby Ridge on Saturday, August 22, 1992, differed in any way from the rules of engagement Larry Potts advised he approved during his signed, sworn statement taken during the creation of the Shooting Review Report. It was only after the interviewing began that pertained to the DOJ inquiry headed up by Barbara Berman (over one year after the incident) that statements began to waiver with regard to responsibility for approval of the rules of engagement.

In the absence of approved and recognized investigative methods and techniques, A–SAC Mathews managed to take a quantum leap from the factual basis documented in three previous reports to a position of placing the blame for approval of the rules of engagement on SAC Eugene F. Glenn. It should be noted that this remarkable conclusionary quantum leap by A–SAC Mathews was accomplished without the benefit of any additional pertinent interviews of the logical parties who were aware of the rules of engagement approval process.

With regard to then Assistant Director Potts, his signed statement taken on September 24, 1992, (a part of the Shooting Review Report), advised that he jointly prepared the rules of engagement with HRT Commander Dick Rogers while Rogers was flying from Washington, D.C. to Northern Idaho to carry out his assigned task as HRT Commander on-scene during Ruby Ridge. On Saturday morning, August 22, 1992, HRT Commander Rogers presented SACs Glenn and Gore with the OPS Plan that included the rules of engagement; he advised how these rules had been prepared during the flight from Washington, D.C. to Northern Idaho and that then Assistant Director Potts was involved in the preparation of these rules of engagement and that Potts had approved them. On August 22, 1992, then Assistant Director Potts advised during a telephonic conversation with SAC Glenn that he had approved the rules of engagement, and he articulated his reasons for these adjustments to the Bureau's standard shooting policy. During the ten days of the Ruby Ridge stand-off there were several occasions when SAC Glenn and AD Potts telephonically communicated with one another, and during these conversations they mutually agreed that the rules of engagement should continue to exist. On Wednesday, August 26, 1992, AD Potts approved the FBI returning to the standard shooting policy. This is reflected in the SIOC Log, page 31, item 7, as follows: ''7) AD Potts and SAC Glenn agreed effective 1:00 p.m. EDT, 8/26/92, that the rules of engagement have changed and that they are now that we should fire only in accordance with current FBI shooting policy. . . .''

FBIHQ OVERSIGHT OF CRISIS SITUATIONS

During the January 6, 1995, press conference given by Director Freeh concerning discipline of FBI Agents involved in Ruby Ridge, the Director stated that Deputy Assistant Director (DAD) Coulson had not read the rules of engagement. If this, in fact, were true, I do not understand how such a dereliction could be accepted from an individual whose sole purpose for being in SIOC during this crisis was to be in command of FBI operations at Ruby Ridge. It is a long-standing FBI procedure that any time SIOC is in operation, all investigative plans, operations plans, and tactical initiatives are approved by the individual in charge of SIOC. This point can be testified to by any SAC present or former who has ever served during a crisis with SIOC in operation. Additionally, it can be testified to by any local, state, or county law enforcement officer who has worked jointly with the FBI during a crisis incident with SIOC in operation. I have had several local and state officers come forward who will testify that they witnessed this above-described procedure during the Singer-Swapp crisis in Utah in 1988. Additionally, officials of the U.S. Marshal's Service (USMS) were present at Ruby Ridge in 1992 and witnessed the procedure when the operations plan, which on page two contained the rules of engagement, was sent via facsimile to FBI Headquarters on Saturday, August 22, 1992, at 12:15 PM PST, and to the USMS Headquarters simultaneously. At 12:30 PM, PST, the USMS Headquarters responded they had no objections to the operations plan. Bureau approval was not obtained for the operations plan until the negotiation annex was faxed back to FBI Headquarters. At that time DAD Coulson advised he approved the operations plan.

DAD Coulson relieved AD Potts on Saturday, August 22, 1992. It is reasonable to assume that AD Potts fully briefed DAD Coulson regarding the activities surrounding the Ruby Ridge matter, including rules of engagement, prior to turning over command responsibilities to him. I call your attention to the SIOC Log, page 8, time 18:04, which reads as follows: ''DAD Coulson sent a facsimile to SAC Glenn re questions regarding the Operations Plan submitted by SAC Salt Lake. 1. No mention is made of Sniper Observer deployment as of 5:30 p.m. EST—(2:30 PST) 2. What intelligence has been gathered from the crisis point? 3. There is no mention of a Negotiation Strategy to secure release of individuals at the crisis point. 4. There is no mention of any attempt to negotiate at all. 5. SAC Salt Lake is requested to consider negotiation strategy and advise FBIHQ. FBIHQ is not prepared to approve the plan as submitted at this time.''

FBIHQ ACTIONS ON OPERATIONS PLAN

When DAD Coulson received the operations plan on Saturday, August 22, 1992, he telephonically advised SAC Glenn he could not approve the operations plan because it contained nothing about negotiation strategy. DAD Coulson and SAC Glenn had a lengthy telephone conversation concerning the points 1 through 5 set forth in the previous paragraph. Item 1 which deals with sniper observer deployment was discussed at length. It should be noted there were over 200 members of HRT, FBI SWAT team members, and other tactical and investigative units who were all held in camp and were not deployed, including sniper observers, until after DAD Coulson had received the crisis negotiation annex to the operations plan and at that time the field command was free to move sniper observer teams into forward positions. The sniper log verifies that snipers were in position at 5:07 PM, Pacific Daylight Time (8:07 PM, Eastern Daylight Time), which is after DAD Coulson had approved the operations plan containing the rules of engagement. There is no logic to the assumption that FBI leadership responsible for field command at Ruby Ridge would fax the operations plan containing the rules of engagement to FBI Headquarters and USMS Headquarters (receiving approval from the latter) and then deploy FBI resources prior to receiving approval from SIOC, FBI Headquarters. Is it logical to conclude that the two FBI SACs and the FBI HRT Commander on the scene would have mutually concurred to deploy FBI resources absent prior SIOC approval?

The question must asked how did DAD Coulson avoid reviewing the rules of engagement which are located on page 2 of the Operation Plan inasmuch as he obviously had reviewed the Operations Plan to come up with the questions as set forth in the SIOC Log, supra.

Page 8 of the SIOC Log at 18;30 reads as follows: ''SAC Glenn advised DAD Coulson that Portland SWAT team had contact with who they believe was subject approximately ¼ mile 'up canyon' from home. He used profanity and told them to get off property. SAC was reminded of rules of engagement and to treat subject as threat if confronted outside home. SAC is working on negotiation plan.''

It is noted that DAD Coulson's reminder to SAC Glenn regarding how to handle Weaver if confronted outside his home is in keeping with the rules of engagement that appeared in the Operations Plan and is not in keeping with the standard Bureau shooting policy.

Additionally, there exist two witnesses—one an individual who had a high-level position in SIOC during the operation who advised it was common knowledge that FBI Headquarters approved the rules of engagement; and the second witness is a Bureau Supervisor who served in SIOC on Saturday with DAD Coulson and overheard him discussing the rules of engagement with Bureau Supervisor Tony Betz.

CONFLICTS ON RULES OF ENGAGEMENT APPROVAL

I am aware that there exist conflicting statements regarding approval of the rules of engagement. Had A–SAC Mathews conducted his administrative review with the ethical standards and integrity normally associated with any FBI Agent, each of the individuals involved (Potts, Coulson, Rogers, Glenn, Gore, and Montgomery) would have been interrogated to resolve any conflicts that appear in their statements regarding rules of engagement. Had interrogation not resolved these conflicts, polygraph examinations should have been mandated as the next logical step. This type of in-depth investigation should have been mandated by A–SAC Mathews prior to any conclusions being drawn concerning who approved the rules of engagement.

DEFICIENCIES ON U.S. ATTORNEY LIAISON CONCLUSIONS

Instead of being interrogated concerning charges placed against me, I was afforded a telephonic ''soft'' fact-finding chronology-type review interview concerning liaison with the USA's Office in Boise, Idaho. I was never confronted with the allegations made by former U.S. Attorney Maurice Ellsworth and/or others. Individuals I suggested to A–SAC Mathews that should be contacted to provide additional insight regarding liaison problems that existed with the USA's Office in Boise under Ellsworth's leadership were

not contacted, and the current U.S. Attorney in Boise and former Acting U.S. Attorney for the District of Idaho were never contacted to verify the current excellent liaison that exists between the FBI and USA's Office in Boise. It should be noted that U.S. Attorney for the District of Idaho Betty Richardson and former Acting U.S. Attorney Pat Malloy of that office wrote unsolicited letters to both Attorney General Janet Reno and FBI Director Louis J. Freeh describing the current high quality of liaison that exists between the FBI and the USA's Office in Idaho. It is important to note that according to the DOJ report leaked to the media concerning the Ruby Ridge matter. the criticism leveled in the DOJ investigation focused on liaison discrepancies by Headquarters Units of the FBI and their interaction with the USA's Office in Boise, Idaho. Yet, the Mathews report turned the responsibility for deficiencies in liaison with the USA's Office in Boise, Idaho, to the Salt Lake City Field Division without conducting logical investigative steps and without advising those to be charged with these derelictions of the specific allegations they would be facing.

DEFICIENCIES IN MATHEWS REPORT

I have not yet been given access to the Mathews Administrative Summary Report; however, I am aware of other areas that were covered within the scope of this inquiry where A–SAC Mathews: (1) failed to develop/gather all evidence regarding liaison between the FBI, Salt Lake City and the USA's Office in Boise; (2) demonstrated unethical conduct by selectively choosing FBI Field Agents for discipline and omitting others involved jointly with those selected for discipline; (3) selectively choosing ASAC Thomas Miller and SAC Michael Kahoe for discipline regarding the Shooting Review Report for ''inaccurately and incompletely analyzing the report'' while omitting discipline of others who had to have reviewed the report (then Chief Inspector of the Inspection Division, then Assistant Director of the Inspection Division, then Deputy Assistant Director Danny Coulson, CID; then Assistant Director Larry Potts, CID), all of whom had to have read, analyzed, and approved this Shooting Report prior to it being sent to then Deputy Director Doug Gow; (4) and finally, other FBI Agents were interviewed by A–SAC Mathews and were subsequently censured, yet were not advised they were the subjects of an administrative inquiry nor were they given the standard waiver form to sign (FD–645).

A–SAC Mathews, a close associate of then DAD Danny Coulson, served as Coulson's ASAC in the Portland Office of the FBI when Coulson was SAC from August 24, 1988, to December 29, 1991. The only logical conclusion that can be drawn to explain the deception and lack of completeness in this investigation is that A–SAC Mathews' relationship with Coulson caused him to avoid the development of the necessary facts, and caused him to cover up facts germane to the central issues. It is beyond conceivability that any FBI Agent with 25 years of experience could have inadvertently presented such an incomplete, inaccurate document as the Administrative Summary Report prepared by A–SAC Mathews. Had A–SAC Mathews demonstrated the ethical standards normally associated with someone in the FBI of his position, he would have recused himself from this assignment because of an obvious conflict of interest.

STATUS OF PROPOSED DISCIPLINARY ACTION

More than 115 days have passed since I was publicly castigated by Director Freeh during his infamous January 6, 1995, national press conference. To date I have not been given copies of the Administrative Summary Report prepared by A-SAC Mathews, the Department of Justice Report concerning Ruby Ridge prepared in 1994 by Barbara Berman (leaked to the media in February, 1995), the FBI report concerning the Ruby Ridge matter prepared by then Inspector Robert E. Walsh in 1994 (which report parallels the Berman report but presents findings that differ), and other internal documents I have gone on record requesting under the provisions of FOIPA.

Since January 6, 1995, the FBI in concert with the DOJ has moved forward to have affirmed the correctness of the discipline handed out to then Assistant Director Potts, and on May 2, 1995, finalized his promotion to Deputy Director of the FBI.

This action was taken while my appeal sits unaddressed in the office of Deputy Attorney General Jamie Gorelick. The DOJ, aware that there are unresolved issues concerning responsibility for authorization of the rules of engagement at Ruby Ridge, chose to ignore the opportunity to hear from SAC Glenn and instead took a course of action which further exasperates an already flawed Administrative Review Process.

CONCLUSION

I request that a thorough OPR inquiry be initiated. There are numerous administrative guidelines and procedures that have been violated, and it is conceivable that federal statutes have been violated. The lack of professionalism demonstrated in the handling of the Administrative Summary Report in connection with the Ruby Ridge matter casts a dark cloud over the integrity of the FBI and the DOJ.

I would welcome the opportunity to be interrogated regarding this matter, and would likewise welcome the opportunity to submit to a polygraph examination afforded to me by a professional, nationally-recognized operator with a total independent bearing in this matter.

This letter has not been referred directly to OPR, Inspection Division, FBI Headquarters, since it would create a conflict of interest for Assistant Director Gore, who was present and intricately involved in discussions involving the Operations Plan (including rules of engagement) utilized during the Ruby Ridge crisis in Idaho.

Respectfully yours,

EUGENE F. GLENN,
Special Agent in Charge,
Salt Lake City Division.

EXHIBIT 2

REPORT AND RECOMMENDATIONS CONCERNING THE HANDLING OF INCIDENTS SUCH AS THE BRANCH DAVIDIAN STANDOFF IN WACO, TX

(Submitted to Deputy Attorney General Philip Heymann, by Panelist Alan A. Stone, M.D., Touroff-Glueck Professor of Psychiatry and Law, Faculty of Law and Faculty of Medicine, Harvard University, November 10, 1993)

I. PREAMBLE

The Justice Department's official investigation published on October 8th together with other information made available to the panelists present convincing evidence that David Koresh ordered his followers to set the fire in which they perished. However, neither the official investigation nor the Dennis evaluation has provided a clear and probing account of the FBI tactics during the stand-off and their possible relationship to the tragic outcome at Waco. This report therefore contains an account based on my own further review and interpretation of the facts.

I have concluded that the FBI command failed to give adequate consideration to their own behavioral science and negotiation experts. They also failed to make use of the Agency's own prior successful experience in similar circumstances. They embarked on a misguided and punishing law enforcement strategy that contributed to the tragic ending at Waco.

As a physician, I have concluded that there are serious unanswered questions about the basis for the decision to deploy toxic C.S. gas in a closed space where there were 25 children, many of them toddlers and infants.

This report makes several recommendations, first among them is that further inquiry will be necessary to resolve the many unanswered questions. Even with that major caveat, I believe the Deputy Attorney General's suggestions for forward looking changes are excellent and endorse them. This report makes further specific recommendations for change building on his proposal.

II. INTRODUCTION

A: Explanation for the delay in the submission of this report

This past summer, the Justice and Treasury Departments appointed a group of panelists, each of whom was to prepare a forward-looking report suggesting possible changes in federal law enforcement in light of Waco. For reasons set forth below, I decided that before submitting a report based on my particular professional expertise, it was necessary to have a complete understanding of the factual investigation by the Justice Department. Having now had the opportunity to read and study that report and the Dennis Evaluation, I concluded that I did not yet have the kind of clear and probing view of events that is a necessary prerequisite for making suggestions for constructive change. Deputy Attorney General (DAG) Philip Heymann therefore made it possible for me to pursue every further question I had with those directly responsible for the Justice Department's factual investigation and with the FBI agents whose participation at Waco was relevant to my inquiry. Their cooperation allowed me to obtain the information necessary for this report.

The Justice Department has sifted through a mountain of information, some of which, in accordance with Federal Statute, can not be publicly revealed. This evidence overwhelmingly proves that David Koresh and the Branch Davidians set the fire and killed themselves in the conflagration at Waco, which fulfilled their apocalyptic prophecy. This report does not question that conclusion; instead, my concern as a member of the Behavioral Science Panel is whether the FBI strategy pursued at Waco in some way contributed to the tragedy which resulted in the death of twenty-five innocent children along with the adults. The Justice Department Investigation and the Dennis Evaluation seem to agree with the FBI commander on the ground, who is convinced that nothing the FBI did or could have done would have changed the outcome. That is not my impression.

I therefore decided it was necessary to include in this report my own account of the events I considered critical. I have attempted to confirm every factual assertion of this account with the FBI or the Justice Department. Although, in my discussions with the Justice Department, I encountered a certain skepticism about what I shall report here, I was quite reassured by interviews with the FBI's behavioral scientists and negotiators, who confirmed some of my impressions and encouraged my efforts. Because they share my belief that mistakes were made, they expressed their determination to have the truth come out, regardless of the consequences. I hope that this report will bolster the FBI and its new Director's efforts to conduct their forthcoming review of Waco, which has not yet begun. I also

hope that my report and suggestions for change will in some measure enable the FBI to work more effectively with the Justice Department, the Attorney General, and other law enforcement agencies.

B. Mandate to the panel as I understood it

The mandate to the panelists was ''to assist in addressing issues that Federal Law Enforcement confronts in barricade/hostage situations such as the stand-off that occurred near Waco, Texas. . . .'' Specifically, my sub-group (Ammerman, Cancro, Stone, Sullivan) was directed to explore: ''Dealing with persons whose motivations and thought processes are unconventional. How should law enforcement agencies deal with persons or groups which thought processes or motivations depart substantially from ordinary familiar behavior in barricade situations such as Waco? How should the motivations of the persons affect the law enforcement response? What assistance can be provided by experts in such fields as psychology, psychiatry, sociology, and theology?''[1]

These seemed to be two premises in this request by the Deputy Attorney General (DAG). The first premise was that Waco had been a tragic event, so it was important for the agencies and the people involved to examine the evidence, evaluate their actions, and initiate change based on those conclusions. Second, although there were questions about the psychiatric status of David Koresh, the DAG's use of the term, ''unconventional,'' indicated that we were also broadly to consider groups with ''belief systems'' that might cause them to think and behave differently than ordinary criminals and therefore to be more difficult for law enforcement to deal with and understand. As I understood it, the Branch Davidians' religious beliefs were considered unconventional,'' which was not intended to be a pejorative term, but rather a descriptive one. The panelists were also told that there was concern among federal law enforcement officials that more such ''unconventional'' groups might, in the near future, pose problems for which law enforcement's standard operating procedures might not be suitable.

Given this important responsibility and the fact that we were asked to make recommendations ''[c]oncerning the handling of incidents *such as the Branch Davidian Standoff in Waco, Texas*'' (emphasis added), I felt unprepared to go forward without a thorough grasp of the events and decisions that led to the tragedy. However, the Justice Department was still in the preliminary stage of their own fact-gathering investigation at our panel briefings in early July. Hoping to convey the particular issues of concern to me, I prepared a preliminary report based on the initial briefings. Since the factual information I wanted and needed was still being gathered by the Justice Department, I did not attend the subsequent special briefings arranged for the panel at Quantico, Virginia. Because of my reticence to furnish a report based on incomplete information, the DAG and I resolved that I would submit my report subsequent to the completion of the Justice Department's factual inquiry. I have now had the opportunity to review the following documents:

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;

2. Report to the Deputy Attorney General on the Events at Waco, Texas, February 28 to April 19, 1993 (Redacted Version), October 8, 1993;

3. Edward S.G. Dennis, Jr., Evaluation of the Handling of the Branch Davidian Standoff in Waco, Texas, February 28 to April 19, 1993 (Redacted version), October 8, 1993;

4. Deputy Attorney General Philip B. Heymann, Lessons of Waco: Proposed Changes in Federal Law Enforcement October 8, 1993;

5. Recommendations of Experts for Improvements in Federal Law Enforcement After Waco.

As previously mentioned, the Justice Department and the FBI have answered my further questions, supplied me with documents, and helped me explore issues of greatest relevance to my inquiry.

III. ACCOUNT OF THE EVENTS AT WACO

The FBI replaced the BATF at the Branch Davidian compound on the evening of February 28 and the morning of March 1. There had been casualties on both sides during the BATF's attempted dynamic entry. David Koresh, the leader of the Branch Davidians, had been shot through the hip, and the situation was in flux. It would become, as we have been told, the longest stand-off in law enforcement history. The FBI, with agents in place who were trained for rapid intervention, was locked into a prolonged siege. The perimeter was difficult to control, the conditions were extreme, and the stress was intense. Furthermore, the FBI's people had inherited a disaster that was not of their own making. ''Under the circumstances, the FBI exhibited extraordinary restraint and handled this crisis with great professionalism'' the Dennis Evaluation concludes. While this may be true from the perspective of experts in law enforcement, it does not contribute to establishing a clear explanation of what happened at Waco from a psychiatric and behavioral science perspective. The commander on the ground believes that the FBI's actions had no impact on David Koresh. He and others who share his opinion will likely disagree with the account that follows, which is the product of my own current understanding of the events.

Phase I

During the first phase of the FBI's engagement at Waco, a period of a few days, the agents on the ground proceeded with a strategy of conciliatory negotiation, which had the approval and understanding of the entire chain of command. They also took measures to ensure their own safety and to secure the perimeter. In the view of the negotiating team, considerable progress was made—for example, some adults and children came out of the compound; but David Koresh and the Branch Davidians made many promises to the negotiators they did not keep. Pushed by the tactical leader, the commander on the ground began to allow tactical pressures to be placed on the compound in addition to negotiation; e.g., turning off the electricity, so that those in the compound would be as cold as the agents outside during the twenty-degree night.

Phase II

As documented in the published reports and memoranda, this tactical pressure began at the operational level over the objections of the FBI's own experts in negotiation and behavioral science, who specifically advised against it. These experts warned the FBI command about the potentially fatal consequences of such measures in dealing with an ''unconventional'' group. Their advice is documented in memoranda. Nonetheless tactical pressure was added. Without a clear command decision, what evolved was a carrot-and-stick, ''mixed-message'' strategy. This happened without outside consultation and without taking into account that the FBI was dealing with an ''unconventional'' group.

Although this carrot-and-stick approach is presented in the factual investigation as though it were standard operating procedure for law enforcement and accepted by the entire chain of command, it was instead, apparently, the result of poor coordination and management in the field. Negotiators and tactical units were at times operating independently in an uncoordinated and counterproductive fashion.

Phase III

During the third phase of the stand-off, the FBI took a more aggressive approach to negotiation and, when that failed, gave up on the process of negotiation, except as a means of maintaining communication with the compound. By March 21, the FBI was concentrating on tactical pressure alone: first, by using all-out psycho-physiological warfare intended to stress and intimidate the Branch Davidians; and second, by ''tightening the noose'' with a circle of armored vehicles. The FBI considered these efforts a success because no shots were fired at them by the Branch Davidians.

This changing strategy at the compound 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. When the fourth and ultimate strategy, the insertion of C.S. gas, was presented to Attorney General Reno, the FBI had abandoned any serious effort to reach a negotiated solution and was well along in its strategy of all-out tactical pressure, thereby leaving little choice as to how to end the Waco stand-off. It is unclear from the reports whether the FBI ever explained to the AG that the agency had rejected the advice of their own experts in behavioral science and negotiation, or whether the AG was told that FBI negotiators believed they could get more people out of the compound by negotiation. By the time the AG made her decision, the noose was closed and, as one agent told me, the FBI believed they had ''three options—gas, gas, and gas.''

This account of the FBI's approach at Waco may not be correct in every detail. It is certainly oversimplified, but it has been confirmed in its general outline by FBI behavioral scientists and negotiators who were participants at Waco. This account with their assistance brings into focus for me the critical issues about law enforcement response to persons and a group whose beliefs, motivations, and behavior are unconventional.

IV. ANALYSIS

A. The FBI's behavioral science capacity

1. FBI Expertise in Dealing With Persons Whose Motivations and Thought Processes Are Unconventional

The evidence now available to me indicates that, contrary to my previous understanding and that of the other panelists, the FBI's 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 Branch Davidians. The FBI has excellent in-house behavioral science capacity and also consulted with reputable experts outside the agency. Panelists may have been misled, as I was, by FBI officials at the original briefings who conveyed the impression that they considered David Koresh a typical criminal mentality and dealt with him as such. They also conveyed the impression that they believed his followers were dupes and he had ''conned'' them. Based on reports and interviews, the FBI's behavioral science experts who were actually on the scene at Waco had an excellent understanding of Koresh's psychology and appreciated the group's intense religious convictions.

[1] Memorandum of June 25, 1993.

My preliminary report of August 3 emphasized at some length those aspects of David Koresh's clinical history and psychopathology that contradicted the simplistic and misleading impression given at the first briefings. Much more information has been made available about his mental condition, his behavioral abnormalities, his sexual activities, and his responses under stress. All of this evidence is incompatible with the notion that Koresh can be understood and should have been dealt with as a conventional criminal type with an antisocial personality disorder. However, the evidence available does not lead directly to some other clear and obvious psychiatric diagnosis used by contemporary psychiatry. Nonetheless, based on the FBI's in-house behavioral science memoranda and other information from outside consultants, 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.

This is not to suggest that David Koresh did not dominate and exploit other people. He was able to convince husbands and wives among his followers that only he should have sex with the women and propagate children. He convinced parents on the same religious grounds to permit him to have sex with their young teen-age daughters. He studied, memorized, and was preoccupied with Biblical texts and made much better educated people believe that he had an enlightened understanding of scripture and that he was the Lamb of God. His followers took David Koresch's teachings as their faith. He exacted strict discipline from adults and children alike while indulging himself.

Whatever else all this adds up to, it and other information clearly demonstrate as a psychological matter that Koresh had an absolute need for control and domination of his followers that amounted to a mania. He also had the ability to control them. The intensity and depth of his ability and need to control is attested to by everyone in the FBI who dealt with him, from negotiators and behavioral scientists to tactical agents and the commander on the ground.

Unfortunately, those responsible for ultimate decision-making at Waco did not listen to those who understood the meaning and psychological significance of David Koresh's ''mania.'' Instead they tried to show him who was the ''boss.''

What went wrong at Waco was not that the FBI lacked expertise in behavioral science or in the understanding of unconventional religious groups. Rather the commander on the ground and others committed to tactical-aggressive, traditional law enforcement practices disregarded those experts and tried to asset control and demonstrate to Koresh that they were in charge. There is nothing surprising or esoteric in this explanation, nor does it arise only from the clear wisdom of hindsight. As detailed below, the FBI's own experts recognized and predicted in memoranda that there was the risk that the active aggressive law enforcement mentality of the FBI—the so-called ''action imperative'' would prevail in the face of frustration and delay. They warned that, in these circumstances, there might be tragic consequences from the FBI's ''action imperative,'' and they were correct.

2. Evaluating the Risks of Mass Suicide

As I have previously stated, there is, to my mind, unequivocal evidence in the report and briefings that the Branch Davidians set the compound on fire themselves and ended their lives on David Koresh's order. However, I am also now convinced that the FBI's noose-tightening tactics may well have precipitated Koresh's decision to commit himself and his followers to this course of mass suicide.

The official reports have shied away from directly confronting and examining the possible causal relationship between the FBI's pressure tactics and David Koresh's order to the Branch Davidians. I believe that this omission is critical because, if that tactical strategy increased the likelihood of the conflagration in which twenty-five innocent children died, then that must be a matter of utmost concern for the future management of such stand-offs.

Based on the available evidence and my own professional expertise, I believe that the responsible FBI decision makers did not adequately or correctly evaluate the risk of mass suicide. The Dennis Evaluation's executive summary concludes that ''the risk of suicide was taken into account during the negotiations and in the development of the gas plan.'' It is unclear what ''taken into account'' means. The questions that now need to be explored are: how was the risk of suicide taken into account, and how did the FBI assess the impact of their show of-force pressure tactics on that risk?

Gambling with death

There is a criminology, behavioral science, and psychiatric literature on the subject of murder followed by suicide, which indicates that these behaviors and the mental states that motivate them have very important and complicated links. Family violence often takes the form of murder followed by suicide. Multiple killers motivated by paranoid ideas often provoke law enforcement at the scene to kill them and often commit suicide. Even more important is what has been called ''the gamble with death.'' Inner-city youths often provoke a shoot-out, ''gambling'' with death (suicide) by provoking police into killing them. The FBI's behavioral science unit, aware of this literature, realized that Koresh and his followers were in a desperate kill-or-be-killed mode. They were also well aware of the significance and meaning of the Branch Davidians' apocalyptic faith. They understood that David Koresh interpreted law enforcement attacks as related to the prophesied apocalyptic ending.

In moving to the show of force tactical strategy, the FBI's critical assumption, was that David Koresh and the Branch Davidians, like ordinary persons, would respond to pressure in the form of a closing circle of armed vehicles and conclude that survival was in their self-interest, and surrender. This ill-fated assumption runs contrary to all of the relevant behavioral science and psychiatric literature and the understanding it offered of Koresh and the Branch Davidians.

Furthermore, there was direct empirical evidence supporting the assumption that the Branch Davidians, because of their own unconventional beliefs, were in the ''gamble with death'' mode. The direct evidence for this was their response to the ATF's misguided assault. They engaged in a desperate shootout with federal law enforcement, which resulted in deaths and casualties on both sides. The AFT claims gunfire came from forty different locations. If true, this means that at least forty Branch Davidians were willing to shoot at federal agents and kill or be killed as martyr-suicide victims defending their ''faith.'' The idea that people with those beliefs expecting the apocalypse would submit to tactical pressure is a conclusion that flies in the face of their past behavior in the ATF crisis. Past behavior is generally considered the best predictor of future behavior.

Willing to kill but not cold-blooded killers

The BATF investigation reports that the so-called ''dynamic entry'' turned into what is described as being ''ambushed''. As I tried to get a sense of the state of mind and behavior of the people in the compound the idea that the Branch Davidians' actions were considered an ''ambush'' troubled me. If they were militants determined to ambush and kill as many AFT agents as possible, it seemed to me that given their firepower, the devastation would have been even worse. The agents were in a very vulnerable position from the moment they arrived. Yet, as ordered, they tried to gain entry into the compound in the face of the hail of fire. Although there is disagreement, a senior FBI tactical person and other experts confirmed my impression of this matter. The ATF agents brought to the compound in cattle cars could have been cattle going to slaughter if the Branch Davidians had taken full advantage of their tactical superiority. They apparently did not maximize the kill of ATF agents. This comports with all of the state-of-mind evidence and suggests that the Branch Davidians were not determined, cold-blooded killers; rather, they were desperate religious fanatics expecting an apocalyptic ending, in which they were destined to die defending their sacred ground and destined to achieve salvation.

The tactical arm of federal law enforcement may conventionally think of the other side as a band of criminals or as a military force or, generically, as the aggressor. But the Branch Davidians were an unconventional group in an exalted, disturbed, and desperate state of mind. They were devoted to David Koresh as the Lamb of God. They were willing to die defending themselves in an apocalyptic ending and, in the alternative, to kill themselves and their children. However, these were neither psychiatrically depressed, suicidal people nor cold-blooded killers. They were ready to risk death as a test of their faith. The psychology of such behavior-together with its religious significance for the Branch Davidians was mistakenly evaluated if, not simply ignored, by those responsible for the FBI strategy of ''tightening the noose.'' The overwhelming show of force was not working in the way the tacticians supposed. It did not provoke the Branch Davidians to surrender, but it may have provoked David Koresh to order the mass-suicide. That, at least, is my considered opinion.

The factual investigation reports in detail the many time negotiators asked Koresh and others in the compound whether they planned suicide. Also documented are Koresh's assurances that they would not kill themselves. Such questions and answers are certainly important from a psychiatric perspective in evaluating a patient's suicidal tendency. But the significance of such communication depends on the context, the relationship established, and the state of mind of the person being interviewed. The FBI had no basis for relying on David Koresh's answers to these questions. Furthermore, his responses provided no guidance to the more pertinent question?—'What will you do if we tighten the noose around the compound in a show of overwhelming power, and using CS gas, force you to come out?'

The psychology of control

The most salient feature of David Koresh's psychology was his need for control. Every meaningful glimpse of his personality and of day-to-day life in the compound demonstrates his control and domination. The tactic of tightening-the-noose around the compound was intended to convey to David Koresh the realization that he was losing control of his ''territory,'' and that the FBI

was taking control. The FBI apparently assumed that this tactic and the war of stress would establish that they were in control but would not convey hostile intent. They themselves truly believed these tactics were ''not an assault,'' and because the Davidians failed to respond with gunfire, the FBI considered their tactics effective and appropriate. The commander on the ground now acknowledges that they never really gained control of David Koresh. But, in fact, my analysis is that they pushed him to the ultimate act of control—destruction of himself and his group.

The FBI's tactics were ill considered in light of David Koresh's psychology and the group psychology of the people in the compound. The FBI was dealing with a religious group, with shared and reinforced beliefs and a charismatic leader. If one takes seriously the psychological syndrome of murder/suicide gamble with death and the group's unconventional belief system in the Seven Seals and the apocalypse, then you may conclude, as I have, that the FBI's control tactics convinced David Koresh that, in this situation, he was becoming hopeless and helpless—that he was losing control. In his desperate state of mind, he chose death rather than submission. When the FBI thought they were at last taking control, they had in fact totally lost control of the stand-off.

3. The Waco Tactics in Light of the Group Psychology of the FBI

If this had been a military operation, the Waco conclusion would have been a victory. The enemy was destroyed without a single loss of life for the FBI. This situation, however, was not a military operation. The question is; did a ''military'' mentality overtake the FBI? We were told that the FBI considers a conflict which results in any casualties on either side a failure. The law enforcement experts on the panel agreed.

There is little doubt that the FBI inherited a terrible situation. Federal agents had been killed and wounded, and there were killed and wounded Branch Davidians in and around the compound. The FBI knew that they were in a dangerous situation, and that they confronted a group of religious fanatics who were willing to kill or be killed. The FBI's initial decision to mount a stand-off and negotiate was a remarkable exhibition of restraint under the circumstances. In retrospect, tactical units will wonder whether an immediate full-scale dynamic entry by an overwhelming force would have produced less loss of life.

The FBI stand-off, we were repeatedly told, was the longest in law enforcement history. The costs in money and manpower were mounting and, Waco had the media impact of the Iran Hostage taking as the days mounted. The FBI was under enormous pressure to do something. Given what I believe the FBI's group psychology to have been, the desultory strategy of simultaneous negotiation and tactical pressure was enacted as a compromise between doing nothing (passivity) and military assault (the action imperative). The appeal of any tactical initiative to an entrenched, stressed FBI must have been overwhelming. It may have better suited their group psychology than the group psychology of the unconventional people in the compound they wanted to affect. Given the escalating pressure to act, the final tightening-the-noose'' and C.S. gas strategy must have seemed to the tacticians a reasonable compromise between doing nothing and overreacting.

This analysis of the FBI's group psychology is not intended as a matter of placing blame. If it is accurate, it at least points to what might be done differently in the future. The FBI should not be pushed by their group psychology into misguided *ad hoc* decision making the next time around.

B. Failure To Use Behavioral Science Capacity

1. Failure of coordination between tactical and negotiating arms of the FBI

Throughout the official factual investigation, there are references to the failure of communication between the tactical and negotiation arms of the FBI. The commander on the ground thinks that the official investigation and evaluation exaggerate the extent and significance of that failure. I disagree. The situation can only be fully appreciated by a thoroughgoing review of the documents. Consider the Memo of 3/5/93 from Special Agents Peter Smerick and Mark Young on the subject, ''Negotiation Strategy and Considerations.'' The memorandum not only defines the basic law enforcement priorities at Waco in the identical fashion as the after-the-fact panel of law enforcement experts, also anticipates most of the panel's own behavioral science expertise and retrospective wisdom. Agents Smerick and Young were not Monday morning quarterbacks as we panelists are; they were members of the F.B.I. team on the field of play. The basic premise of their overall strategy was:

1. Insure safety of *children* [emphasis in original], who are truly victims in this situation.

2. Facilitate the peaceful surrender of David Koresh and his followers.

The agents went on to emphasize that the strategy of negotiations, coupled with ever-increasing tactical presence was inapplicable. They wrote, ''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.'' p. 2, Memo of 3/5/93. The agents also were fully aware that Koresh's followers believed in his teachings and would ''die for his cause.'' They were fully aware, therefore, of the religious significance of the Branch Davidians' conduct and attitudes and were sensitive to all of the concerns emphasized by the religious experts on the panel in their reports. They suggested that the F.B.I. should consider ''offering to pull back, *only* if they release more children'' (emphasis in original). The agents further recommended that, ''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.''

These agents recognized that although some in the F.B.I. might believe the Davidians were ''bizarre and cult-like,'' the followers of Koresh ''will fight back to the death, to defend their property [described elsewhere by the agents as sacred ground, the equivalent of a cathedral to Catholics, etc.] and their *faith*'' (emphasis added). Memo of Smerick and Young 3/7/93.

My reading of these memos indicates that these agents had placed the safety of the children first, exactly as did AG Reno. They recognized that it was not a traditional hostage situation, as the British law enforcement expert on the panel, C.E. Birt, repeatedly emphasized during our briefings of July 1 and 2, when he found it necessary to correct the misrepresentation of the briefer. They warned against the carrot-and-stick approach, which was employed and has been criticized by several of the panelists in their reports. Professor Cancro speaks of it as a ''double bind,'' a term used by behavioral scientists to describe a mixed message for which their is no correct response and which, as a result, creates anxiety and agitation in the recipient of the message.

The factual investigation does not explain how or why these expert opinions of behavioral scientists and negotiations within the FBI were overridden. The Justice Department emphasized that these same agents whose views I have described gave quite contradictory views the very next day. When I asked whether the Justice Department's fact-finders had questioned these agents as to why they had changed their views, no adequate answer was given. I therefore pursued that inquiry with the agent who authored the two reports. He made it quite clear that the contradictory suggestions were offered only in response to an expression of dissatisfaction with the previous recommendations. Although the commander on the ground and the official investigation disagree with my view, I have concluded that decision-making at Waco failed to give due regard to the FBI experts who had the proper understanding of how to deal with an unconventional group like the Branch Davidians.

2. Was tactical strategy appropriate with so many children in the compound?

The pressure strategy as we now know it consisted of shutting off the compound's electricity, putting search lights on the compound all night, playing constant loud noise (including Tibetan prayer chants, the screaming sounds of rabbits being slaughtered, etc.), tightening the perimeter into a smaller and smaller circle in an overwhelming show of advancing armored force, and using CS gas. The constant stress overload is intended to lead to sleep-deprivation and psychological disorientation. In predisposed individuals the combination of physiological disruption and psychological stress can also lead to mood disturbances, transient hallucinations and paranoid ideation. If the constant noise exceeds 105 decibels, it can produce nerve deafness in children as well as in adults. Presumably, the tactical intent was to cause disruption and emotional chaos within the compound. The FBI hoped to break Koresh's hold over his followers. However, it may have solidified this unconventional group's unity in their common misery, a phenomenon familiar to victimology and group psychology.

When asked, the Justice Department was unaware whether the FBI had even questioned whether these intentional stresses would be particularly harmful to the many infants and children in the compound. Apparently, no one asked whether such deleterious measures were appropriate, either as a matter of law enforcement ethics or as a matter of morality, when innocent children were involved. This is not to suggest that the FBI decisionmakers were cold-blooded tacticians who took no account of the children; in fact, there are repeated examples showing the concern of the agents, including the commander on the ground. Nevertheless, my opinion is that regardless of their apparent concern the FBI agents did not adequately consider the effects of these tactical actions on the children.

3. The plan to insert CS gas

During U.S. military training, trainees are required to wear a gas mask when entering a tent containing CS gas. They then remove the mask and, after a few seconds in that atmosphere, are allowed to leave. I can testify from personal experience to the power of C.S. gas to quickly inflame eyes, nose, and throat; to produce choking, chest pain, gagging, and nausea in healthy adult males. It is difficult to believe that the U.S. Government would deliberately plan to expose twenty-five children, most of them infants and toddlers, to C.S. gas for forty-eight hours. Although it is not discussed in the published reports, I have been told that the FBI believed that the Branch Davidians had gas masks and that this was one of the reasons for the plan of prolonged exposure. I

have also been told that there was some protection available to the children, i.e., covering places where the seal is incomplete with cold wet towels can adapt gas masks for children and perhaps for toddlers though not for infants. The official reports are silent about these issues and do not reveal what the FBI told the AG about this matter, and whether she knew there might be unprotected children and infants in the compound.

The written information about the effects of C.S. gas which was presented to the AG has been shared with the panelists. We do not know whether she had time to read it. Based on my own medical knowledge and review of the scientific literature, the information supplied to the AG seems to minimize the potential harmful consequences for infants and children.

Scientific literature on C.S. gas is, however, surprisingly limited. In the sixties, the British Home Office, commissioned the Himsworth Report, after complaints about the use of C.S. gas by British troops in Londonderry, Ireland. The report is said by its critics to understate the medical consequences. The published animal research on which the report is based acknowledged that at very high exposure, which the authors deemed unlikely, lethal effects were produced. The researchers assumed (as did the Himsworth report) that C.S. gas would be used primarily in open spaces, to disperse crowds, and not in closed areas.

The AG's information emphasized the British experience and understated the potential health consequences in closed spaces. The AG also had a consultation with a physician; but the exact content of that discussion has not been reported, and the available summary is uninformative. The FBI commander on the ground assures me that the agency has detailed, ongoing expertise on C.S. gas and its medical consequences. If so, no such FBI information was supplied in the written material to the AG or subsequently to this panelist.

Based on my review, the American scientific literature on the toxic effects of C.S. gas on adults and children is also limited. Of course, there has, been no deliberate experimentation on infants. The Journal of the American Medical Association published two articles in recent years in which physicians expressed concern about the use of C.S. gas on civilians, including children in South Korea and Israel. Anecdotal reports of the serious consequences of tear gas, however, approved as early as 1956. Case reports indicate that prolonged exposure to tear gas in closed quarters causes chemical pneumonia and lethal pulmonary edema. (Gonzalez, T.A., et al, Legal Medicine Pathology and Toxicology East Norwalk, Conn: Appleton Century Crofts, 1957). According to a 1978 report, a disturbed adult died after only a half-hour exposure to C.S. gas in closed quarters. Chapman, A.J. and White C. ''Case Report: Death Resulting from Lacrimatory Agents,'' J. Forensic Sci., 23 (1978): 527–30) The clinical pathology found at autopsy in these cases is exactly what common medical understanding and ordinary pulmonary physiology predicts would follow prolonged exposure in closed quarters.

The potential effects of C.S. gas are easily explained. C.S. gas causes among other things, irritation and inflammation of mucus membrane. The lung is a sack full of membranes. The inhalation of C.S. gas would eventually cause inflammation, and fluid would move across the membranes and collect in the alveoli, the tiny air sacks in the lungs that are necessary for breathing. The result is like pneumonia and can be lethal. Animal studies are available to confirm that C.S. gas has this effect on lung tissue. Ballantyne, B. and Callaway, S., ''Inhalation toxicology and pathology of animals exposed to omicron-chlorobenzylidene malonitrile (CS),'' Med. Sci. Law, 12 (1972): 43–65. The Special Communication published in J.A.M.A. 220 (1993): 616–20 by Physicians for Human Rights reported that its teams, investigating the use of C.S. gas in South Korea and Panama, found ''skin burns, eye injuries and exacerbations of underlying heart and lung disease . . . on civilians at sites far removed from crowd gatherings.'' Dermatologists have reported blistering rashes on skin exposed to self-defense sprays, which use the same C.S. gas. Parneix-Spake, A. *et al*, ''Severe Cutaneous Reactions to Self-Defense Sprays, Arch. Dermatol 129 (1993): 913.

The medical literature does contain a clinical case history of a situation that closely approximates the expected Waco conditions. Park, S. and Giammona, S.T.m, ''Toxic Effects of Tear Gas on an Infant Following Prolonged Exposure,'' Amer. J. Dis. Child 123,3 (1972). A normal four month-old infant male was in a house into which police officers, in order to subdue a disturbed adult, fired canisters of C.S. gas. The unprotected child's exposure lasted two to three hours. Thereafter, he was immediately taken to an emergency room. His symptoms during the first twenty-four hours were upper respiratory; but, within forty-eight hours his face showed evidence of first degree burns, and he was in severe respiratory distress typical of chemical pneumonia. The infant had cyanosis, required urgent positive pressure pulmonary care, and was hospitalized for twenty-eight days. Other signs of toxicity appeared, including an enlarged liver. The infant's delayed onset of serious, life-threatening symptoms parallels the experience of animal studies done by Ballantyne and Calloway for the Hinsworth Report. The infant's reactions reported in this case history were of a vastly different dimension than the information given the AG suggested.

Of course, most people without gas masks would be driven by their instinct for survival from a C.S. gas-filled structure. But infants cannot run or even walk out of such an environment; and young children (many were toddlers) may be frightened or disoriented by this traumatic experience. The C.S. gas tactics, planned by the FBI, and approved by the AG, would seem to give parents no choice. If they wanted to spare their inadequately protected children the intense and immediate suffering expectably caused by the C.S. gas, they would have had to take them out of the compound. Ironically, while the most compelling factor used to justify the Waco plan was the safety of the children, the insertion of the C.S. gas, in my opinion, actually threatened the safety of the children.

The Justice Department has informed me that because of the high winds at Waco, the C.S. gas was dispersed; they believe it played no part in the death by suffocation, revealed at autopsy, of most of the infants, toddlers, and children. The commander on the ground, however, is of the opinion that the C.S. gas did have some effect, because the wind did not begin to blow strongly until two hours after he ordered the operations to begin. As yet, there has been no report as to whether the children whose bodies were found in the bunker were equipped with gas masks. Whatever the actual effects may have been, I find it hard to accept a deliberate plan to insert C.S. gas for forty-eight hours in a building with so many children. It certainly makes it more difficult to believe that the health and safety of the children was our primary concern.

The commander on the ground has informed me that careful consideration was given to the safety of the children, and that the initial plan was to direct the gas at an area of the compound not occupied by them. We will never know whether that plan would have worked: the Branch Davidians began to shoot at the tank like vehicles inserting the gas canisters, and C.S. gas was then directed at all parts of the compound, as previously decided in a fall back plan recommended by military advisers.

V. RECOMMENDATIONS

A. The Deputy Attorney General's formulation and recommendations

The DAG has, in his overview, outlined the critical elements to be considered in dealing with a situation like Waco in the future. This is an excellent formulation. Based on what I have learned and what I have described above, I strongly endorse his formulation and the recommendations which follow. However, unlike the other panelists in my group, I am impressed that the FBI has adequate in-house expertise to deal with unconventional groups like the Branch Davidians. Furthermore, it seems clear that at Waco, the FBI was suffering from information overload, if from anything. Thus, I believe that the crisis management capacity (see DAG recommendations) and what I would describe as information management have to be the particular focus for future change.

B. Recommendations of this panelist

1. Further investigation is necessary

On might think that the highest priority after a tragedy like Waco would be for everyone involved to consider what went wrong and what would they now do differently. I must confess that it has been a frustrating and disappointing experience to discover that the Justice Department's investigation has produced so little in this regard. The investigators have assured me that everyone involved was asked these questions and that few useful responses were given. An undercurrent of opinion holds that everything depends and will depend in the future on the commander on the ground. SAC Jamar, the commander on the ground, knows that he is on the spot and that there are those who point to his position as the weak link at Waco. When I asked him what went wrong and what should be done differently, he candidly acknowledged his difficult position; but he emphasized how much was still unknown about what happened, and that he still had not met with the FBI Waco negotiators to discuss their view of what happened. His basic conclusion in retrospect, however, was that nothing the FBI had done at Waco made any real impact. His opinion is that Koresh sent people out because he didn't want them, and not because of the FBI's conciliatory negotiation strategy. His opinion is that Koresh ended it all in mass suicide not because of the FBI tactical strategy, but because that was always his intention. His deep and serious concern about his responsibilities was impressive and he made it convincingly clear how much more I and the other experts needed to know about the acts. On this, he was preaching to the converted. There is no doubt in my mind that much more needs to be known about Waco. In my opinion, it is now time for the FBI itself, with the help and participation of outside experts, to take on that responsibility. Indeed, that is my first recommendation. I agree with the FBI's commander on the ground that we still do not know enough about what happened at Waco. We need to know more, not in the spirit of who is to blame, but in the spirit of what went wrong that can be made right. What can we learn from a careful study of David Koresh and the Branch Davidians that will help us in learning about other unconventional groups?

What can the FBI learn about its own behavior at Waco that will help in the future?

Just as I believe the FBI has more work to do, I believe the Justice Department has work to do as well. No clear pictures has emerged of how and on what basis the AG made her decision. Given on my current information about C.S. gas, it is difficult to understand why a person whose primary concern was the safety of the children would agree to the FBI's plan. It is critical that in the future, the AG have accurate information, so that she can make an informed decision. If the only information she was given about C.S. gas is what has been shown to the panelists then, given my current understanding, she was ill advised and made an ill-advised decision. None of these matters have been clarified. Certainly for its own effective functioning, the Justice Department needs to sort this out for the future.

The sequence of decision making set out in the earlier account indicates that the FBI had already moved very far down the branch of the decision tree before consulting the AG. This made it difficult for her to make any other choice. Presumably, others in the Justice Department had been involved every step of the way. Like the FBI, they need to re-examine their own behavior, the channels of communication, the processing of information, and what went wrong or needs to be done differently in the future. I assume that the DAG's recommendation of a ''senior career official'' within the Justice Department, who maintains ''a familiarity with the resources available to the FBI,'' is a forward looking solution to some of these problems.

2. The FBI Needs To Make Better Use of Past Experience and Existing Behavioral Science Capacity

As we have been told, the commander on the ground was not selected because of his past experience in standoffs or because of his knowledge of unconventional groups. He was the special agent in charge of the geographical area in which the action took place. The DAG has recommended a different command structure. Nonetheless, the FBI had a situation room in Washington and a command structure in place at Waco which could have brought the agency's past experience to bear. At the first briefings, when asked to describe their most successful resolution of a standoff with an unconventional group, an FBI official reported the successful use of a third party intermediary (negotiator). When I subsequently inquired about the FBI's previous experience with the successful use of CS gas, the example given was a prison riot.

These examples speak for themselves and suggest to me that in making decisions at Waco, the FBI did not make the best use of its own past experience. The commander on the ground believes his decision to allow lawyers and the local sheriff to meet with Koresh is an example of using a third-party intermediary. However, in their own highly successful resolution of a stand-off with an armed unconventional group, the FBI used a fellow member of the religious faith as the intermediary. This option was apparently rejected at Waco for reasons that I find unconvincing.

The DAG has recommended that a computer database of past stand-offs be developed. The critical importance of this is to insure that the FBI makes better use of its own experience. It will be important for the FBI to distinguish between unconventional groups and prison populations in deciding which tactical measures are strategically and ethically appropriate.

3. The FBI Needs a Clear Policy on Third Party Negotiators/Intermediaries

The FBI has well-trained negotiators whose skills are impressive. Nonetheless, there came a time at Waco when the FBI's frustration led them to introduce a new negotiating approach. They changed from a conciliatory, trust-building negotiator to a more demanding and intimidating negotiator. The change had no effect and may have been counterproductive. The negotiators also tried, at times, to talk religion with Koresh but concluded that this was not productive.

Some FBI negotiators are convinced that they could have gotten more people out of the compound if the FBI had stayed the course of conciliatory negotiation. Whether or not that is true, the FBI reached a point where tactical strategy became the priority and negotiation under those circumstances became ineffective.

It is my recommendation that this point of change be defined as a red light, a time when the decision makers in future standoffs should consider the use of a third party negotiator/intermediary. The red light should go on when the commander on the ground or the chain of command begins to feel that FBI negotiation is at a stand still.

The FBI negotiation and behavioral science experts should, at the least, develop a policy in consultation with experts on when they might consider the use of third party negotiators/intermediaries. The current working policy seems to be that third party negotiators are counterproductive. The experience justifying that policy needs to be reviewed in light of Waco. It was a significant omission at Waco not to involve as a third-party negotiator/intermediary a person of religious stature familiar with the unconventional belief system of the Branch Davidians.

4. The FBI and the Justice Department Need a Systematic Policy for Dealing With Information Overload in a Crisis

A critical element of crisis management based on my analysis of what happened at Waco is information management. Information overload allows decision-makers to discount all of the expert advice they are given and revert to their own gut instincts. Alternatively—as I believe we learn from Waco—the decision-makers can insist on being given advice compatible with their gut instinct. In my opinion, the gut instinct that prevailed at Waco was the law enforcement mind-set, the action-control imperative.

If, as the DAG recommends, the FBI develops a network of academic experts in behavioral science, religion, sociology, and psychiatry, the FBI can certainly expect an information overload in the next crisis. The problem will be how to manage the expert information overload. This is a complex problem that requires careful consideration by appropriate experts. However, one pattern that emerged from my understanding of Waco needs to be changed. The official investigation lists all kinds of experts who allegedly were consulted or who took it upon themselves to offer unsolicited advice. It is almost impossible to determine what all this adds up to. 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 Branch Davidians. The investigators at the Justice Department disagree with this conclusion. My concern about this is not a matter of fault-finding: it is critical to my concern about information management in a crisis. The question is: what counts as a consultation with the FBI? One has the impression from the Waco experience that a variety of agents were talking to a variety of experts, and that some of these contacts were listed as consultations. We are not told how those contacts or consultations were sorted through. Who in the process would decide what was relevant and important and what irrelevant and unimportant.

In any event, the prevailing pattern in the information flow during the crisis was for each separate expert to offer the FBI an opinion. As a preliminary matter, it seems to me important for the FBI to establish who the relevant experts are and then arrange through conference calls or more high-tech arrangements for sustained dialogue among them, to understand and clarify the dimensions of their disagreements and, when possible, to achieve consensus. Information should be exchanged and differences directly confronted in the circle of consultants; they should not vanish in the information overload.

5. The FBI Needs a Better Knowledge Base About the Medical Consequences of CS Gas

As discussed above, is my opinion that the AG was not properly informed of the risks to infants and small children posed by CS gas. This is not to imply that the FBI intentionally misled her. Indeed, the FBI may not have had the proper medical information. The use of CS gas is, in any event, a controversial matter, and although it is understandable that the Justice Department investigation did not explore medical considerations, a careful evaluation is clearly indicated. The FBI, the Justice Department, and all of law enforcement that uses CS gas ought to have as clear an understanding of its medical consequences as possible. The hasty survey of the medical and scientific literature done for this report is hardly definitive. These matters should be sorted out so that the AG clearly understands what the use of CS gas entails.

6. The FBI Needs a Specific Policy for Dealing With Unconventional Groups

The basic conclusion of my account and analysis is that the standard law enforcement mentality asserted itself at Waco in the tactical show of force. The FBI should be aware of its own group psychology and of the tendency to carry out the action imperative. Doubtless, that imperative is appropriate in dealing with conventional criminals; it may be necessary even in dealing with unconventional groups. However, the lesson of Waco is that once the FBI recognizes that it is dealing with an unconventional group, those who urge punishing tactical measures should have to meet a heavy burden of persuasion. When children are involved, the burden should be even heavier and ethical considerations, which need to be formulated, would come into play.

VI. FINAL WORD

The events at Waco culminated in a tragic loss of life—on that everyone involved in law enforcement and in the official inquiry agree. There is a view within the FBI and in the official reports that suggests the tragedy was unavoidable. This report is a dissenting opinion from that view. There is obviously no definitive answer; but my account and analysis tries to emphasize what might have been done differently at Waco, and what I believe should be done differently in the FBI's future dealings with unconventional groups. I endorse the DAG's recommendations for change and offer additional suggestions. Although such a determination falls outside my province, it is my considered opinion that the failings of the FBI at Waco involve no intentional misconduct.

The PRESIDING OFFICER. The pending question is amendment No. 1199. Is there further debate?

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.