

**THE AFTERMATH OF WACO: CHANGES IN
FEDERAL LAW ENFORCEMENT: HEARINGS
BEFORE THE COMMITTEE ON THE JUDICIARY,
UNITED STATES SENATE, ONE HUNDRED
FOURTH CONGRESS, FIRST
SESSION, OCTOBER 31 AND NOVEMBER 1,
1995, SERIAL NO. J-104-51**

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THE AFTERMATH OF WACO: CHANGES IN FEDERAL LAW ENFORCEMENT

TUESDAY, OCTOBER 31, 1995

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:06 a.m., in room SH-216, Hart Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee), presiding.

Also present: Senators Grassley, Specter, Kyl, DeWine, Abraham, Biden, Simon, Feinstein, and Feingold.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

The CHAIRMAN. Over the years, I have been a very strong supporter of Federal law enforcement, both of its people and agencies, and I still am. However, in recent years and recent months, law enforcement at both the Federal and State levels has been the subject of much scrutiny and criticism. I sense the frustration of those men and women of high integrity who are true public servants employed to enforce our Nation's laws and who often endanger their own lives in the process.

Not surprisingly, there is a growing sentiment in law enforcement that they are being unfairly treated. Recent tragedies and other troubling news stories they feel are being used by the media and by some in Congress to undermine public confidence in those we have hired to protect the public. To those brave men and women, I say this Senator shares your concern. I want nothing but the best for you who serve with the FBI, ATF, DEA, and every other law enforcement agency. And that includes fair recognition for the sacrifices you make.

But I also want what is best for the public, and that is something that is part of these hearings. We want what is best for the public as a whole. It is for this reason that I am particularly saddened by the events that have transpired in the last 3 years. Such events, if not responded to, will permanently erode the public's confidence in Federal law enforcement in our country. This we cannot allow to happen.

This hearing is not an effort to place blame on any individual or on the administration. Indeed, we will be examining the systemic bureaucratic problems and policies at ATF and FBI that resulted in the tragedy at Waco. The mandate for this committee is to ensure that tragedies like the one at Waco—I am specifically referring to the deaths of the residents of Mt. Carmel Center, including

25 children, and to the 4 ATF agents who were killed in the line of duty—are never again associated with a law enforcement operation.

What I find most troubling is that the American people now perceive law enforcement as it is suggested in this picture over here, and I would just point to poster No. 1. Contrary to what one may think when first glancing at this photograph, this picture is not a soldier fighting for peace in the gulf war or in Somalia; rather, it is an FBI agent at Waco.

It is my absolute belief that this is not the image that the Framers of our Constitution had in mind when they carefully constructed that sacred document. It is certainly not how I perceive the FBI, nor is it the image held by the legions of American citizens who have worked with, and been helped by, the FBI over the years.

Ask the parent of a missing child. Ask a senior citizen in my own home State of Utah whose life savings were saved when the FBI shut down a fraudulent telemarketing racket that preyed on seniors. And you could go through countless other innumerable illustrations. But, sadly, the image in this poster is the image many people now have, and it is imperative that we address these concerns.

I hope that the Americans who serve in Federal law enforcement will see this hearing as an opportunity. My mother used to tell me that whenever I made a mistake, I should learn lessons from it, correct my actions or my thinking, and then move on. This hearing is an opportunity to find the lessons in this tragedy, make necessary corrections in our actions or our thinking, and then move on.

It is with these ideas in mind that this committee conducted its investigation into the events at Waco, and in this framework, I intend to conduct these hearings. We have met with, heard from, and examined information from numerous Federal agencies, private citizens, activist groups, and the media. In excess of 300,000 documents and 700 hours of videotape and audiotape have been analyzed, and dozens of interviews have been conducted in preparation for these hearings.

Let me be clear. This investigation has not uncovered any evidence of political corruption or influences. We have not found any of that. There was no conspiracy to kill Branch Davidians. What the investigation has uncovered is that there are several troubling patterns which have developed in Federal law enforcement. Over the next 2 days, we hope to discuss just what those patterns are, as well as review what Congress and the American people expect from their law enforcement agencies.

This country is based on the principles embodied in the Constitution. Fundamental to this document is the concept that Government must be kept within bounds. The fourth amendment—ironically, a charred copy of the very amendment, was found in the debris at Waco, and that is poster No. 2; there is the charred copy that was found right there at Waco—guarantees the right of the people to be secure in their persons, houses, papers, and effects.

In my opinion, the handling of this situation by Federal law enforcement was not in keeping with that principle. Americans have

come to expect that law enforcement's primary responsibility is the investigation of crime and protection of the public, not the frightening of people via paramilitary units.

Having had the benefit of the Ruby Ridge hearings, the House of Representatives hearings on Waco, and the enormous documentation regarding these matters, I believe that it is in the best interest of this committee, the U.S. Senate, and, most importantly, the American public to air these concerns.

Further, we must establish a level of oversight over the management of law enforcement agencies that will ensure that debacles like Ruby Ridge and Waco will never happen again. To that end, I would like to briefly outline what will be addressed at these hearings.

The first day of this 2-day hearing will focus on the collecting and processing of intelligence information by the Bureau of Alcohol, Tobacco, and Firearms [ATF]. ATF's failure to adequately collect and analyze the relevant and available information on David Koresh and his followers directly resulted in a plan that did not properly assess the mindset of the Davidians. ATF only considered information that supported the tactical approach it had preselected. No contingencies were ever developed. It defies logic that any law enforcement agency would attempt to accomplish such an operation without a contingency plan, especially a plan that puts more than 100 agents in harm's way. This fatal flaw paved the way for the tragic deaths of four brave, young, dedicated law enforcement officers.

The second day, the committee will carefully examine the relationship between the FBI negotiators and the FBI Hostage Rescue Team, or the HRT. At the heart of this debate is the degree to which the employment of an HRT is appropriate in U.S. law enforcement operations. I believe it is appropriate in many instances, but not so in others. These people are people who risk their lives for us, but they should be used very sparingly. This issue is particularly relevant in barricade situations.

In the case of Waco, there appears to have been tension between those who felt that a military-style response was appropriate and those who believed that the negotiation process would be more effective. Although I am a proponent of using the HRT in appropriate situations, the question whether Waco and Ruby Ridge were two of those circumstances does arise.

Unfortunately, there are numerous situations where HRT has been successfully employed that have not made the newspapers. I am aware that many of these successes, both domestically and overseas, are situations that could not have been resolved without the use of the Hostage Rescue Team. However, I firmly believe that paramilitary units such as HRT must be employed against U.S. citizens as a last resort, not as the first.

One of the major problems at Waco appears to have been the infusion of HRT tactics into the negotiations process. Such an infusion served to work at cross purposes with what was a successful negotiation strategy. Negotiations had successfully resulted in the release of a number of men, women, and, most importantly, children. Although we will never know whether a strict negotiation strategy would have been completely successful if it had been al-

lowed to play out, it is clear that the mechanism for continuing negotiations was available to the FBI. As there was no escalation in the level of threat or violence by the Davidians, the use of military-style tactics by HRT was arguably not appropriate or necessary.

In conclusion, I look forward to hearing from the administration as to how they intend to ensure that tragedies like Ruby Ridge and Waco are never repeated. So I stand ready to work constructively with them toward this goal, and I believe this committee as a whole does as well.

We will now turn to our Republican—or excuse me, our Democrat leader on the committee, Senator Biden.

Senator BIDEN. It is happening all too often, Mr. Chairman. [Laughter.]

**STATEMENT OF HON. JOSEPH R. BIDEN, JR., A U.S. SENATOR
FROM THE STATE OF DELAWARE**

Senator BIDEN. Mr. Chairman, thank you and good morning.

The stated goal of these 2 days of hearings on the siege at Waco is, in my view, a good one: To discuss with two Federal law enforcement agencies involved in the siege a number of important changes in policies and practices they have implemented in order to improve their operations and to reduce the possibility that another tragedy like Waco could occur in the future.

Both agencies have candidly admitted that serious mistakes occurred at Waco and that improvements needed to be made. This hearing provides a forum to evaluate these new policies and procedures and to ensure that the changes made are the right ones and that implementation is complete and effective.

But, I believe, it is important that these hearings serve a second goal as well, and that is, to put the incident at Waco, with all the mistakes that were made, into its proper context.

Let me make this point absolutely clear: There is no place in our country for racist cops like Mark Fuhrman. There is no place in our country for abusive cops. There is no place in our country for law enforcement bent on the use of unjustified force.

But there is a big difference between mistakes and malevolence. The record of the Waco incident documents mistakes—mistakes in gathering intelligence and mistakes in planning and executing operational plans. And law enforcement should and must be held accountable for such mistakes.

What the record from Waco does not evidence, however, is any improper motive or intent on the part of law enforcement.

I believe this is a very important point to make to the American public because there are a growing number of people across the country who are seizing on the incidents at Waco as well as at Ruby Ridge to suggest that law enforcement is our enemy.

This suggestion is powerful because every Federal law enforcement officer is entrusted with one of the most important powers the public bestows upon its Government: The authority to investigate and prosecute violations of our laws, particularly the criminal laws of the United States.

But this suggestion stands in conflict not only with the record from Waco, but with the excellent overall record of the Federal law enforcement agencies, including both the ATF and the FBI. It

stands in conflict with the vast majority of Federal law enforcement officers who deserve our trust. They are hardworking, dedicated professionals who protect the public every day, and as we saw in Waco and in many other instances, by giving their lives, not just putting them on the line.

So as we examine the mistakes made by ATF and the FBI, I think it is very important we, as elected members of this Government, keep certain key facts in mind.

First, that the ATF had a legitimate and very important reason to be at Waco in the first place, that is, to serve warrants on those reasonably suspected of violating the Federal criminal laws.

Second, that the FBI had a legitimate and very important reason to get David Koresh and the Davidians out of their fortified compound and brought to justice. The Davidians had responded to the agents' attempting to serve lawful warrants by killing 4 and wounding 21.

Third, that in the end, David Koresh and the Davidians set fire to themselves and committed suicide. The Government did not do that.

And, finally, we must keep in mind one other fact, and that is, the changing nature of criminal activity and the very difficult problem this creates for American law enforcement.

The days of the FBI agent with his trusty revolver are over. Today's criminals are armed with automatic and semiautomatic weapons, including high-caliber, armor-piercing ammunition.

Consider, for example, that the ATF and FBI agents at Waco were facing a group that was heavily armed—in addition to numerous fully automatic and semiautomatic assault rifles, grenades, rocket projectiles, and hundreds of thousands of rounds of ammunition; the Davidians possessed two antitank, armor-piercing, long-range assault weapons as well. Not your usual walk in the park.

I would like to show you this. This is an example of the .50 caliber ammunition used in the two guns I just referred to. This is a serious piece of weaponry. For comparison's sake, let me show you the ammunition from the standard issue, 9 millimeter handgun, carried by law enforcement. Times have changed. Bonnie and Clyde didn't walk around with this .50 caliber ammunition. This is a different world in which these poor folks find themselves as they go out to enforce our laws.

In short, law enforcement today faces criminals armed with military-style weapons. Law enforcement today faces terrorist bombings like we have never seen in our history as a nation, like that which occurred in Oklahoma, and also other deadly acts of sabotage.

The safety of the public, as well as law enforcement officers themselves, requires capabilities unthought of even 10 years ago. Now, of course, these capabilities carry with them responsibilities that did not exist to the same degree before. We have to ensure that our Federal law enforcement receives the best training and the best leadership possible.

This, in my view, is the context in which we must consider the actions ATF and the FBI have taken at and since Waco.

Some of the specific questions I will pose to the panel of witnesses today include: What is the process by which ATF and FBI