

VIII. THE DECISION TO LET THE FIRE BURN

In the previous chapters we discussed various tactics used to attempt to force MOVE out of 6221 Osage Avenue, including dropping explosives on the roof. In this chapter we examine the last of those strategies, the decision to let the fire resulting from the satchel charge burn the bunker.

The evidence, considered in great detail below, establishes that, at about 5:27 p.m., Goode watched the explosion of the satchel charge on television in his City Hall office. Brooks, Sambor and others watched from a ninth-floor balcony at the Geriatric Center at 63rd and Walnut Streets, while Richmond watched from Osage Avenue.

Shortly after the explosion a small roof fire became evident. Sambor and Richmond subsequently made an on-the-scene, tactical decision -- which they did not communicate to Brooks or Goode -- to permit this fire to burn. They hoped the fire would accomplish what the charge had not: The destruction of the bunker. The fire did eliminate the bunker, but not in the manner intended. Instead of burning the bunker above the roof line, the fire weakened the roof and, at 6:21 p.m., the flaming bunker fell into the second floor of 6221. The moment that the fire spread to the interior of the house it could no longer be fought without grave risk to fire fighters.

Although the Fire Department could have easily extinguished a roof fire with its squirts, it could only fight an interior

fire with hand-held lines capable of extinguishing the fire at its base. Spraying water on the fire from the overhead squirts would only exacerbate the interior fire by forcing it down through the house and into adjoining properties. Extinguishing the blaze with hand-held lines, however, was too risky because MOVE members might shoot at fire fighters as they had in 1978. This significant danger prevented the Fire Department from actively fighting the fire for several hours. In that interim, the Fire Department did attempt to contain the fire to the MOVE compound, but was not successful. MOVE members and children remained in the house for nearly two hours as the fire grew in intensity. Ultimately, only Ramona and Michael escaped. The others apparently chose to remain inside, or left and then returned to the compound, where they died.

In this chapter, we first review the evidence of how Sambor and Richmond made the decision to let the fire burn. Because no determination of their criminality is possible without reference to how much each knew and when, we also examine evidence concerning the progression of the fire. Using the testimony of numerous witnesses as well as video tape footage taken that day, some of which was time-coded, we chronologically discuss the fire's progression. Further, from the testimony of an expert in the cause and origin of fires, we have determined at what point the fire became out of control. Having thus established a factual framework, we then examine this evidence under the relevant law to determine whether Sambor or Richmond acted criminally. We have

not considered whether anyone else is criminally liable because we have concluded from the evidence that no one else was involved in the decision to let the fire burn.

As with the decision to use the satchel charge, we have encountered significant factual questions and problematic legal issues in determining whether Richmond or Sambor acted criminally in permitting the bunker to burn. We have concluded that they did not. Sambor intended to use the fire to destroy the bunker. He relied on Richmond's judgment that the fire could be controlled. Richmond gave that opinion not knowing, even as he spoke, that the fire was imminently uncontrollable or already out of control and never anticipating that, if the fire did grow, MOVE would remain inside. The law and facts underlying these conclusions are set out below in detail.

The accounts of these events offered by Richmond, Sambor, Brooks and Goode vary greatly. Most of the critical facts, however, are not in dispute. For purposes of comparison and completeness, the testimony of the main actors regarding the crucial evening period is described below.

Richmond told us that he was standing on 62nd Street north of Osage Avenue at 5:27 p.m. when the satchel charge was dropped. He testified that, a few minutes after the explosion, an aide said that he thought that there was a fire on the roof. Richmond went to the WCAU-TV Channel 10 van at 62nd and Pine where a camera had been mounted and raised on the van's mast. On the mast-camera

monitor in the van, Richmond could see light smoke rising above the MOVE compound's roof. (He could not actually see the roof because parapets on the adjoining property blocked his view.) Richmond made several trips between the van and the north side of Osage Avenue, speaking with Deputy Fire Commissioner Frank Scipione and ordering the placement of fire-fighting equipment when he was not monitoring the fire from the van.

Richmond said that, at approximately 5:45 p.m., there was a minor fire visible. He and Scipione ordered Engine 57 to be dispatched to the scene. Richmond also instructed Scipione to ask the police what they wanted to do about the fire, which at that time was small and could be extinguished easily by the squirts. Richmond did not order the squirts on because he thought that the police were still trying to get onto the roof so that they could insert tear gas. He feared that if he directed the squirts toward the bunker he might wash officers off the roof. He was not told that police would not be put on the roof. After speaking with police, Scipione told Richmond that they did not want any action taken against the fire at that time.

Scipione corroborated Richmond's testimony that the police instructed them not to fight the fire at that time. Additionally, two fire fighters testified that they heard a communication to this effect relayed over the F-4 radios. Inspector John Tiers, however, the police officer with whom Scipione spoke, denied giving any such instruction. After carefully considering the varying

recollections of this event, we have concluded that Scipione and Richmond's recollection is the most accurate.

Scipione told us that he relayed Tiers' message to Richmond at about the time that Engine 57 arrived, which other evidence shows occurred at 5:57 p.m. Scipione further testified that he subsequently went back to Tiers and asked whether he could turn the water on yet. (Tiers said, however, that he had only one conversation with Scipione.) Tiers told him that "My Commissioner and your Commissioner are going to meet in two minutes to decide what to do." Scipione radioed Richmond, telling him that he had spoken again with Tiers, who had said that Sambor was going to meet with him (Richmond) in two minutes and decide what to do. At that moment, Scipione saw Sambor coming up 62nd Street. Sambor asked Scipione where Richmond was, and Scipione pointed to Richmond, who was on 62nd Street north of Osage Avenue. Sambor went to Richmond and the two spoke, although Scipione was too far away to hear what they were saying.

Richmond had a similar recollection of Scipione's radio call about the meeting with Sambor. Richmond said that he left the van at approximately 6:11 (a time he determined by later viewing Channel 10's time-coded footage of the fire and noting the frame depicting the fire as he recalled it when he left the van). He met Sambor two or three minutes later on 62nd Street north of Osage Avenue. Richmond told us that, although he could not recall Sambor's exact words, Sambor

essentially [said] it was important to them
... to secure the higher ground and to let

the bunker burn to eliminate that higher ground advantage.

Sambor then asked whether Richmond could control the fire on the roof if they let the bunker burn. Richmond responded affirmatively.

According to Richmond, Sambor then crossed Osage Avenue and spoke with Scipione. Minutes later, the squirts were turned on. (Scipione explained that, after speaking with Richmond, Sambor asked Scipione whether he could put water on the roofs of the houses "on either side" [of the MOVE house]. Scipione said he could, and Sambor said "Well, do it." Scipione then radioed Deputy Fire Chief Walter Miller and instructed him to turn on the squirts.) The squirts were subsequently shut off because the resultant smoke prevented surveillance by the police, who were expecting MOVE to leave the house at any time. This sequence of turning the squirts on and off was repeated a few times.

Just before the squirts were turned on, Richmond said that he looked at the MOVE house and realized "we had a problem on our hands." Richmond recalled saying to Scipione that there was a good chance that they would lose the block. There was nothing they could do, however. Because the police still expected MOVE combatants to emerge from the compound, the Fire Department could not access the streets. Although the Fire Department repeatedly played the squirts on and off the roof, it could not use hand-held lines to extinguish the fire.

Sambor, Brooks, Deputy City Solicitor Ralph Teti, Licenses and Inspections Commissioner James White, and Police Officer Louis Mount (Brooks' bodyguard), among others, watched the helicopter drop the charge from a ninth-floor balcony at the Geriatric Center on 63rd and Walnut Streets. Sambor testified that after the device exploded he realized that it had not destroyed the bunker. He could not see whether it had made a hole in the roof. Instead of discussing with Brooks what to do next, Sambor went to Post One (6218 Osage Avenue) and then went to the corner of 62nd and Osage. While there, Sambor said he received two radio calls from Brooks. In the first, Brooks said there was smoke coming from the compound. Sambor could not see any. In the second, which Sambor estimated occurred about 6:00 p.m., Brooks said there was fire. Sambor now could see smoke but not fire. Shortly after receiving the second call, Sambor saw Richmond on 62nd Street and spoke with him:

[We] started out just very briefly talking about things in general. And eventually we got to the point where I asked him if we allowed the fire, which at that time was still not really observable, if we allowed the fire to burn to get the bunker, could he control it? And Bill [Richmond] responded in whatever way he responded indicating yes, he could control it.

Sambor said that, at the time of this conversation, he still could not see any fire and claimed that he did not know the extent of the fire or where it was located. Sambor continued:

When I had part of this conversation or shortly thereafter, Bill and I had discussed the fact that water would be -- I think it was my own suggestion that water be put on

either side of 6221 to see that the fire did not spread beyond 6221.

* * *

And shortly thereafter, I don't know whether he gave the order specifically, or however, but I do remember water going on.

Sambor said that within a "very, very short time" after the conversation, the squirts went on. Because the water caused visibility problems for the police, however, it was shut off. In the next half hour, the water went on and off several times.

Sambor said he did not inform Brooks of his decision to let the bunker burn before receiving a third call from Brooks:

I just didn't. But I can't give you a reason why I didn't. It wasn't a matter of not wanting to or anything else or trying to eliminate the chain of command. I just never got around to it before he got me on the radio.

Sambor claimed that, at about 6:10 p.m., he received the third radio call from Brooks, who wanted to know why the fire was not being extinguished. Sambor explained that he and Richmond had agreed to let the fire destroy the bunker, and added that use of the squirts was causing visibility problems. Brooks told him that the fire had done what Sambor wanted it to do, and that he should get the water back on. Sambor said he relayed the order either to Richmond or Scipione or one of the Fire Department commanders and then returned to Post One. He was inside Post One for a few minutes. During that time he saw that the second floor was on fire, but no water was on. He left to find out why the fire was not being fought. Within a few minutes of the time he reached 62nd and Osage Streets the water already had been turned

on. Again, he said, there was discussion about the inability of police officers to see.

Finally, Sambor testified that he spoke with Brooks at about 7:00 p.m.:

Well, the Managing Director saw me. He was visibly upset. And his question to me was, "Why didn't he put the fire out sooner?" And I told him at that time that it was only fair for him to direct that question to the Fire Commissioner and not to me. I could not answer that. I couldn't or wouldn't, because I wasn't prepared to tell him the statements that the Fire Commissioner had made several times during the day, that he wasn't going to put his personnel in any danger [of being shot by MOVE as they had been in 1978].

Recently, months after testifying before us (and almost three years after the event itself), Sambor sent us a proffer of his "best present recollection" of conversations with Brooks on the evening of May 13, 1985. In it he said that he and Richmond made their decision to let the fire burn within minutes after Sambor's first conversation with Brooks. He also said that five or ten minutes after the first call, Brooks called again and Sambor told him of the plan to let the fire burn. This second call came very shortly after 6:00 p.m. -- i.e., when the fire still could have been extinguished by the squirts. In a third call five or ten minutes later, Brooks asked why the water was not on, noting that the objective has been accomplished. Thus, Sambor's "best present recollection" now implicates Brooks in the decision, implying that he tacitly authorized the tactical use of fire. We do not credit this eleventh-hour proffer.

Brooks' testimony differed markedly from Sambor's except as to the critical question of who decided to let the bunker burn. Brooks was among those who watched the explosion from the ninth-floor balcony of the Geriatric Center. Although his view was partially obscured by a large tree, with binoculars he was able to see that the charge had not destroyed the bunker, but had made a hole in the roof. He recalled that five or ten minutes after the explosion, he heard a radio report (he thought from the state troopers in the helicopter) of "No fire." Although it is unclear what prompted this comment, the initial dust and smoke from the debris may have led the person transmitting (probably a Stake Out officer in a rooftop position) to investigate. As the radio reports continued, Brooks grabbed his bodyguard's radio and rebutted "Yes, there is a fire." Brooks had seen smoke; after he relayed this message he saw flames three or four feet high near the bunker. He then became concerned and tried unsuccessfully to reach Sambor:

I stood there, waiting for water to come on or something to happen, and ... I saw none of that happening. Then, I began to call Commissioner Sambor on the radio, and I tried and tried and tried, and my police officer [Mount] tried and tried and tried for an awful long time.

* * *

[T]he longer we tried on the radio, the greater the fire got. And by now, it was on the bunker and [had] begun to engulf the bunker.

Brooks estimated that he reached Sambor approximately fifteen minutes after his initial efforts to do so. (Although Brooks had

estimated in his MOVE Commission testimony that this conversation had occurred at 6:00, in his testimony before us, after viewing time-coded Fire Department logs and other materials, he changed that estimate to sometime after the bunker had been neutralized.) By then, the fire was "all over the bunker." Brooks could not see the front of the house from the balcony and thus could not determine whether it, too, was on fire. Brooks ordered Sambor to extinguish the fire:

I said, "You've accomplished your mission. Why don't you put out the fire? What are you doing?", you know, two or three statements of that nature. And he talked about wanting to destroy the bunker some more and whatnot, and after relatively short -- back and forth on the radio, I said, "You've accomplished your mission. Put out the fire." And that was the end of that conversation, and I think he understood that.

After this conversation, Brooks was informed that Goode wanted to speak with him. (Goode's police officer, Lieutenant Fred Ragsdale, had called Mount and asked him to have Brooks telephone Goode.) Brooks went back inside the Geriatric Center and called Goode. This was Brooks' first conversation with Goode after the explosion. From M-band radio time logs showing that Ragsdale attempted to reach Mount at 6:25 p.m., Brooks estimated that this conversation with Goode occurred at about 6:27-6:29 p.m. Goode told Brooks that he could see the fire on television and it was bad, and asked him why he had not put out the fire. Brooks replied that he had just given that order to Sambor. Brooks specifically testified that he never had any conversation with Goode where either of them indicated that fire would be used to destroy the bunker.

Brooks then went back out on the balcony. The squirts came on and then went off, and Brooks again tried to reach Sambor. When he could not reach him after trying for several minutes, Brooks went to the scene to have the fire extinguished. After reviewing television footage showing Brooks' car arriving simultaneously with Engine 24 and from examining Fire Department logs showing that that Engine was dispatched at 6:53 p.m., Brooks estimated, contrary to his earlier MOVE Commission testimony, that he arrived on the scene shortly after 6:53 p.m. Brooks first found Richmond on Pine Street and then found Sambor on 62nd Street. At this time the fire had spread to the roofs of at least three adjacent houses. Flames were visible from the north side of Pine Street. Brooks testified that Richmond updated him about every five minutes: "We've lost three houses now ... we now have lost four houses...." In addition to briefing Brooks on the fire-fighting activity, Richmond told him that fire fighters were not going directly to the MOVE house to extinguish the fire because they were concerned about being shot. Brooks was also informed that no one had come out of the compound. Brooks told us that he thought that MOVE already had escaped into the tunnels they were rumored to have. Finally, Brooks told us that Mount informed him that Goode was trying to reach him, and Brooks updated the Mayor three or four times by phone from a house on Pine Street as to the status of the fire and whether MOVE members had come out of 6221 during this period.

Goode did not participate in the decision to let the bunker burn; in fact, he did not even know about it until the following day. While review of the evidence concerning his actions is thus not necessary to resolve the question of whether he is criminally liable, a brief description of the Mayor's management of the crisis is illuminating.

Goode and members of his staff watched the explosion on a television in the office of his Chief of Staff, Shirley Hamilton. Goode testified that from 5:30 to 6:30 p.m. he went back and forth between his office and Hamilton's office. He watched Channel 10 continuously, either in his office or Hamilton's, except to speak briefly on the phone with various people. When he could see no fire-fighting activity, Goode said he became concerned about the fire and called Brooks, ordering him to put the fire out.

Goode has repeatedly stated publicly, both before and after testifying, that he made this call at or before 6:00 p.m. We have found, however, that he did not call Brooks until 6:25 p.m., after the bunker had been destroyed and after the fire in 6221 had become uncontrollable. Using the chronology prepared by Brooks, Sambor and Richmond on May 16, 1985, as well as his own memory, Goode had testified before the MOVE Commission that he gave Brooks the order to extinguish the fire at 5:55 p.m., about five minutes after the fire was visible on the television broadcast which he was watching:

... I saw initially a small fire on the roof. I saw what appeared to be some water coming in. I determined later that was not water at all, that was basically a kind of snow on my

television screen. After about five minutes of watching that I indicated to my office, "Get Leo Brooks on the phone." At some time close to 6:00 p.m. that day I gave my first order of the day, which was to Leo Brooks, which was put the fire out. He indicated to me at that time that he had already given that order two minutes earlier.

Goode ultimately admitted before us that it was not a "small" fire but a "serious" fire when he finally called Brooks, and that he made the call later than 6:00. In testifying before us Goode initially estimated that he called Brooks "about 6:00 p.m., around that time." After reviewing time-coded M-band radio logs showing that Goode's first phone call to Brooks after the explosion was placed at 6:25, however, Goode conceded that it was an "absolute possibility" that he had called not at 6:00 p.m. but at 6:25, but maintained that he was "not firmly convinced of that at this point." When shown a time-coded Channel 10 tape showing the water coming on at 6:31 p.m., Goode acknowledged that he had seen this on television seven to ten minutes after he told Brooks to put out the fire. That would fix the time he gave the order at 6:20 p.m. Goode then admitted that he could have given Brooks the order "as late as 6:20."

Finally, Goode said that throughout the day, the delay from the time he asked someone to call Brooks until the time that Brooks got back to him varied from "two to ... twenty minutes, depending upon where [Brooks] was in relationship to a telephone." Asked how long the delay was from the time he asked Ragsdale to get Brooks until Brooks got back to him and he gave his order to extinguish the fire, Goode replied "It was not two or three minutes,

if you ask that question. It was not a quick return call. Whether it was fifteen minutes, I cannot recall at this time."

Goode's staff, present with him as he watched the charge explode and the fire progress, attested to his concern over the growing fire but offered no additional detail on the Mayor's actions that evening. Goode's bodyguard, secretary, press secretary and Chief of Staff all recalled only that, as the fire became more intense, Goode became upset that no efforts were being made to fight it and asked someone to call Brooks. None could remember the time at which this call was made. Hamilton said that, after the explosion, Goode's first attempt to reach Brooks occurred after the bunker had fallen in. Ragsdale could not remember whether the bunker had fallen through at that time, but did recall that the fire was "raging pretty good." Goode's press secretary, Karen Warrington, said that the fire was "raging" when Goode was trying to reach Brooks.

Other than this information, the people present with Goode during these critical moments could not recall a single thing that the Mayor did or said or with whom he spoke, if anyone. His secretary explained that she was not paying any attention to the Mayor (who was in the same room as she) because she was busy watching television:

Q. Aside from this concern that the Mayor had regarding the fire, you cannot recall anything else that he said [regarding the fire]; is that right?

* * *

A. No, sir. I'm sorry. As I indicated, I was watching the television. I wasn't necessarily --

Q. But he's the man; he's making the decisions. You must have been curious to know what the decision was --

A. Well, I'm not involved in that process. I'm the Mayor's secretary. I'm not involved in management decisions.

Hamilton, the Mayor's Chief of Staff (a cabinet-level position) similarly testified that she did not recall Goode's actions or conversation during that critical time period because, although in the same room as the Mayor, she too was busy watching television:

Q. Did you ever overhear any conversation while he spoke on the phone in your office which indicated to you in some way what might be next?

A. No, I did not, because again, I was constantly watching the T.V. and as the Mayor would go to the phone, I sort of didn't listen to his conversation; I just continued to look at the T.V.

Warrington said that she went to Goode's office approximately thirty-six times on May 13, 1985 -- not to gather information but "just to leave my office." Although reporters were asking her throughout the day what was going to happen next, Warrington explained that she never asked Goode this question because:

[T]hat's such an obvious question and since the Mayor had the primary information and was talking to his people, that to ask that question is almost redundant.

Finally, she told us that she recalled hearing discussions about the fire while she was in Hamilton's office but had no specific memory of their content.

Because any determination of criminality necessarily involves consideration of who knew what when, we will briefly review the fire's progression and the evidence of how much each decision-maker knew at critical moments. In compiling this chronology, we have had the benefit of more information than any one person possessed at that time. We have reviewed all of the film taken that day (both that which was broadcast and that which was not aired), including film shot by Channel 10's mast camera at 62nd and Pine Streets, film taken by a Channel 10 cameraman who had hidden himself in a house on 62nd Street looking west on Osage Avenue, and footage taken from Post One by the Police Department's audio-visual personnel after the bunker had fallen in. We have also reviewed the testimony of witnesses who watched the progression of the fire from different angles: Fire Department Battalion Chief Carlo Allodoli, who reported his view from an Addison Street roof; Lieutenant Frank Powell, who photographed the fire from a helicopter at approximately 6:00 p.m.; and police in Post One, among others. Reference was also made to a chronology compiled (without the benefit of Channel 10's film) on May 16, 1985 by Brooks, Sambor, Richmond and Warrington. This was useful as a contemporaneously prepared recollection of individuals' actions, but was far from an accurate documentation of times and events. Finally, Charles

King, a nationally known fire expert, assisted us in reviewing all of this evidence and determining from it the cause and origin of the fire, the point at which it became uncontrollable, and the reasonableness of Richmond's assessment, at the time he made it, that the fire could be controlled. Despite all of this information, the conditions at the time and the distance from which the observations were made makes a definitive record of the fire's progress difficult.

Powell dropped the satchel charge, which missed the bunker and landed on the MOVE roof along the 6221/6223 party wall. The charge detonated at 5:27 p.m. Powell said he circled over the compound and saw a one-foot by two-foot hole in the roof at the point of detonation. The bunker was not damaged. Powell saw a cloud of dust, but no fire. He then went back to the Geriatric Center.

Smoke (distinct from the dust cloud immediately apparent after the explosion) was not visible from the street until about ten minutes after the explosion. However, wispy white smoke indicating an incipient fire was visible on the mast camera almost immediately after the explosion. Using video frames slowed to 1/32 of a second, King explained the cause of the fire:

The heavy lumber and miscellaneous boards on the roof were reduced to kindling; the bomb shattered and tore the material, hurtling it in a westerly [sic] direction, where a can marked "gasoline" was located. Almost instantaneously, a vapor ignition could be seen coming from the area of this gasoline can. It could be observed that this kindling and

broken wood was actually passing through the flame front created by the vapor ignition from the gas can. I believe that the ignition of these gas vapors was caused by any of the following: The gas can being punctured by some frangible material; blast pressure from the bomb; or the can was open at the time of the explosion, exposing the flammable vapor to the air. For any of the above reasons, a vapor ignition can have easily taken place.

* * *

[A]lthough the bomb can be viewed as the ignition source of this fire ... the actual heat and flame it generated was both limited and minimal. We can ... conclude that the presence of the gasoline cans on the roof (flammable combustible liquids) played a key role in the growth, spread and acceleration of this fire. The extension of the fire beyond the initial ignition point was due to the presence of these other combustibles, particularly the contents of the gasoline cans.

Wispy smoke was visible on the mast camera from the detonation until 5:36 p.m., when the film crew lowered the camera to change its batteries. King explained that this wispy white smoke was typical of a wood-burning fire. He further explained that the smoke seen in the first nine minutes of film indicated that the fire was incipient, meaning that without intervention it would either burn out of control or burn itself out.

No flame was visible until approximately 5:49 p.m. At that time, a Channel 10 live broadcast shows fire on the roof. Pete Kane, a Channel 10 cameraman hidden in a house on the scene, spoke to anchor Larry Kane on the air at 5:50 p.m., telling him that he could see flames and that there was a helicopter in the air. Powell and Officer William Klein were in the helicopter. After

being informed that there was a fire, they flew over the compound and photographed it at approximately 6:00 p.m. Powell recalled that the fire was not emanating from the hole caused by the charge but from the 6221/6219 party wall. He described the flames along the back of the bunker as the highest, about four feet high, although he wasn't sure.

King viewed Powell's pictures. He explained that the fire depicted in these photographs, taken at approximately 6:00 p.m., was a limited surface fire. Some of the combustible materials were burning, and the surface of the roof (asphalt, a petroleum distillate) was burning. The fire had spread to the roof of an adjoining property. The last in this sequence of photographs showed about six to eight feet of flame, just beginning to communicate to the area where the bunker was. King testified that this fire could have been extinguished by the squirts on Pine Street.

At approximately 6:00 p.m., Allodoli ascended a ladder on the northwest corner of 62nd and Addison Streets to act as a Fire Department spotter, directing the placement of water streams. Although he did not have binoculars, Allodoli could see the roof line of the MOVE house and approximately two feet below it. He observed that an area measuring approximately ten feet by ten feet was on fire between the two bunkers, and that the flames were about six feet high. Allodoli transmitted this information over the Fire Department radio band (F-4) to Deputy Fire Chief Walter Miller, who in turn transmitted it to Car One (Richmond).

Allodoli testified that Richmond acknowledged receipt of these transmissions. (Richmond testified that he did not remember receiving progress reports from Allodoli, although he did recall his dialogue with Allodoli concerning the direction of the water streams. In any event, King testified that the information Richmond was receiving from Allodoli was essentially the same information that Richmond would receive by viewing the mast camera.) Allodoli subsequently observed the Engine 57 deluge gun go on. He next reported to Car One that the bunker had collapsed, additionally stating that the second floor was fully involved. (The bunker collapsed in a matter of seconds, so that Allodoli missed the actual event in the time he took to shift his weight on the ladder.) The time-coded mast camera film shows that the bunker fell in at 6:21 p.m.

Allodoli further testified that, after the bunker had fallen in, he told Richmond that the fire was spreading to both sides and Richmond ordered that the squirts be directed on these properties. When the water hit the flames, a lot of smoke and steam was created which banked down into the street under the weight of the water and wind created by the squirts. Allodoli told us that Stake Out officers complained to him that they could not see. When Allodoli told them he could not order the water to be shut off, they radioed their complaints elsewhere; and the squirts were shut off. Finally, Allodoli told us that he could not say when the fire was out of control based on the limited information he had at the time.

At 6:31 p.m., Pete Kane told Larry Kane that water was now being poured on the fire; at 6:34 p.m. he reported that the Fire Department had just set up a hose at 62nd and Osage and was now fighting the fire from the front with one hose. Harvey Clark first reported seeing water from his location on Pine Street at 6:34 p.m.

The evidence reviewed above summarizes fire-fighting efforts in the critical time frame between the explosion of the satchel charge and the point at which the first significant efforts were undertaken to combat the fire. Fire-fighting efforts after 6:35 p.m. are discussed in Part X. We will now briefly summarize the critical testimony of King regarding the progression of the fire.

King first explained the path that the fire could be predicted to take:

[W]hen you have a fire, it burns upwards. It does not burn down.... [T]he fire is seeking oxygen....

* * *

Q. Would the same principle apply with regard to the bunker on top of 6221?

A. Yes. The bunker was made with heavy timber and railroad ties and deck plate. So if I were to have a fire on the roof, and if this were the bunker, as the fire communicated to the bunker, its tendency, as all fires do eventually, would have caught onto the wood, and it would have burned upward. The fire does not burn down. It burns upward.

King next explained the fire's actual progression. He viewed film shot by Pete Kane in which the fire has clearly progressed to the second floor of the house. King said the fire could not

Lieutenant Fred Endricat, the fire fighter in command of Engine 57, testified that he received a call to go to 6221 Osage Avenue. Engine 57 was dispatched at 5:53 p.m. and arrived at 5:57. Endricat set up a deluge gun on 62nd and Osage and, at Scipione's instruction, turned it on at about 6:05 p.m. He directed it against MOVE's roof but could not see whether the water actually hit there. Endricat estimated that the water was on for three or four minutes before Scipione ordered him to shut it off. About two to five minutes later, Scipione ordered it back on. After three or four minutes, Endricat again received an order to turn it off. Endricat said that this sequence may have been repeated once or twice again. Although Endricat was never told why he was ordered to shut off the water, he recalled hearing reports on his F-4 radio that the water was causing visibility problems for police.

Pete Kane testified, however, that he saw no water directed against the front of Osage at any time before the bunker collapsed, and did not see any evidence of water being sprayed from the back of the house. Moreover, the street depicted in film taken after the bunker collapsed appears to be dry, even while the fire is down to the first floor of the MOVE house. Possibly, this variance in the testimony is explained by Kane's other testimony that he may have left the second-floor window during this time period, and by the possibility that the heat of the fire could have caused the water to evaporate.

be extinguished with the squirts at this point, which he estimated was approximately 6:15 p.m. He explained that once the fire gets inside the cock loft (the area below the roof and above the ceiling of the highest floor), the fire cannot be extinguished by the squirts because they are unable to penetrate below the roof level. He further explained, however, that had the fire burned just slightly below the roof's surface, it could have been extinguished by the squirts. King said the squirts absolutely could not extinguish the fire once the bunker fell in at 6:21 p.m. Moreover, he explained that the squirts would have made the fire worse at that point, because their pressure would have caused the fire to spread. The only way to fight this kind of fire would have been to take hand-held lines into the building on fire. (Firemen were not even permitted onto Osage Avenue at that time, however, because they could be shot by MOVE members.)

After establishing this factual predicate, King was asked about the reasonableness of Richmond's belief that he could extinguish the fire visible to him on the mast camera at 6:11 p.m. King stated that this was a reasonable position to take. The fire visible at 6:11 p.m. was a surface fire of combustible materials with a "slight impingement on the bunker." King testified that, in his opinion, this fire could easily have been controlled by 2,000 gallons of water. (Each of the two squirts pumped 1,000 gallons of water per minute at one hundred pounds pressure.) King therefore concluded that, if Richmond said he could put that fire out with the squirts, he would consider that to be a "very

reasonable position at that time." He concluded that Richmond's judgment that the fire could be permitted to burn the bunker and still be controlled was a "fair call" even though there was some risk involved:

I think that was a judgment call. I consider it a fair call. I'm sure the Commissioner has certainly a very good knowledge of how fires burn. I think it is reasonable to assume that that fire on the roof would spread to the bunker, and I think quite predictably it would burn up the side of the bunker. Although you would have a larger fire when we talk about volume, you still would have a fire on the roof and top of the roof, which means all those factors that he had at his disposal, his judgment would be, "I can still reach it with the water, and I can still put it out."

* * *

You think there is always a risk involved when you let the fire burn. I think that the extreme unusual situation, I think the emotional pressures that were brought to bear on firemen who were not use[d] to gunfire, who are not use[d] to staying up 18 hours, continuously, I think he made a judgment that he could control the fire as he saw it. I think that was his judgment. I believe he believed he could. And I also believe that there is a risk involved in that judgment.

King continued, however, assuming that Richmond did not know that gasoline might be on the roof, and explained that he did not think that Richmond would have made the judgments he did had he known about the cans on the roof and had he realized MOVE's commitment to stay in the compound:

I looked at that film at 7:30 when they exited the house. And when I saw the amount of fire that was on that block, I could not believe that they still stayed in the house. I mean

it was a resolve of willing to give up your life for your cause.

... [T]he city fire fighter does not run into that. It is just not a common experience.

Finally, we asked King to evaluate Richmond's failure to perceive that the bunker could fall through the roof and cause a fire which the squirts could not control:

I think you'd have to look at it in two ways. I think, one, what you said is true. Maybe it was not thought through, if that is what you are stating.

I think the other way of looking at it would be, at some point the Police Department would say, "Put the fire out."

So it is a judgment call. If you let it free-burn, you should consider what do you do next. If you feel that there is a minimal involvement in it, and you would be permitted to use the equipment on hand, then your judgment is accurate.

Given this analysis, we attempted to summarize King's testimony:

Q. And what you are testifying to, if I understand you correctly, is that Commissioner Richmond believed that the fire could spread to the bunker, neutralize the bunker, and still be controlled was a reasonable belief that he had and bad judgment that he exercised under the circumstances?

A. That would be my testimony, yes.

Having reviewed the evidence of how the decision to let the fire burn was made, we will now analyze whether, under the law, this evidence warrants the lodging of criminal charges. We have previously discussed at length the elements common to all crimes:

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(1) an act (here, the decision to let the fire burn); (2) a result (e.g., the deaths of MOVE members and children inside the house); (3) a criminal state of mind associated with the act (e.g., recklessness); and (4) a direct causal relationship between the act and the result. (These prerequisites are more fully discussed in Part VII.) Each of these elements must be present before a crime may be found or charges brought. Individual crimes also have additional specific elements which must be present, together with the four elements listed above, before a crime may be found or charges brought.

Our inquiry regarding the decision to let the fire burn focused only on two people: Sambor and Richmond. Both men admitted that Sambor asked Richmond whether the fire could be controlled if it were permitted to burn the bunker, and that Richmond responded affirmatively. We have concluded that no one else was involved in this decision. Therefore, we discuss in detail only whether these two men acted criminally.

There is no basis for any charges against Goode for the decision to let the fire burn because there is no evidence that he had any part in or prior notification of that decision. Neither Richmond nor Sambor testified that they communicated their decision to Brooks or Goode, and we reject Sambor's belated written proffer that he did so. Brooks testified that in none of their discussions did either Brooks or Goode indicate that fire would be used to neutralize the bunker. Instead, Goode testified that he first learned of the decision to use the fire offensively on

May 14, 1985, at or prior to a press conference. It could be inferred from Goode's failure to call Brooks before 6:25 p.m. that he tacitly approved the decision; however, it is equally likely from the evidence presented that Goode assumed that his Managing Director and Police and Fire Commissioners were attempting to extinguish the fire. We have concluded that Goode's failure to take aggressive and immediate action to have the fire extinguished was not because he acquiesced in the decision, but because that was his management style that day.

Similarly, no detailed consideration of whether Brooks acted criminally is necessary because he did not participate in the decision to let the bunker burn. Indeed, despite some evidence which suggests that Brooks agreed with the decision to let the fire burn, we have concluded that he was not even informed of the decision until the bunker had been destroyed. The evidence which arguably implicates Brooks is both direct and circumstantial. First, while Brooks saw smoke at about 5:40 p.m., he did not order Sambor to extinguish the fire until 6:15 p.m. or later, by which time the bunker had been destroyed. Additionally, in a press conference held shortly after midnight on May 14, 1985, Brooks said that "we" thought that the decision to use fire to destroy the bunker was "appropriate." (Sambor's most recent recollection of events, as set forth in the proffer, of course, makes Brooks a party to the decision to let the bunker burn. We do not credit that proffer, however.)

Nonetheless, we have concluded that Brooks did not approve of or participate in this decision. Brooks testified that the fire visible to him from 63rd and Walnut Streets appeared significantly smaller than it actually was. He further testified that he initially took no action to have the fire extinguished because he assumed that the Police and Fire Commissioners were doing that. When it became apparent that they were not fighting the fire, he tried for some fifteen minutes to reach Sambor. When he finally contacted Sambor, Brooks asked him what he was doing and curtly ordered him to extinguish the fire. Further, Brooks explained that, in making his statement to the press, he was speaking not for himself but for other members of the Mayor's cabinet:

What you're doing in a press conference is attempting to take all of the information that you have ... and you have to roll everything up into us, we, etcetera.... [Y]ou generally wouldn't say, well, the Police Commissioner did this and the Fire Commissioner did that.... I did ... say, "We thought it was appropriate," meaning that somebody in the operation thought it was appropriate, and that turns out to be true.... The bad choice in my case turns out to be the use of the word "we."

Finally, as already noted, we completely discredit Sambor's recent, revised version of events. We have no reason to believe that Sambor's memory three years after the event, on the eve of our decision with respect to possible criminal charges, is more accurate than it was closer in time to May 13, 1985. Having considered all of this evidence, we find credible Brooks' testimony that he had no part in the decision to use the fire to neutralize the bunker.

We now consider the far more difficult questions of whether either Sambor or Richmond acted criminally. The charges which we considered bringing against Sambor for his part in the decision to let the fire burn were murder, involuntary manslaughter, conspiracy, aggravated assault, recklessly endangering another person, arson by failing to control a dangerous fire, failing to prevent a catastrophe, causing or risking a catastrophe and criminal mischief.

The initial question in assessing Sambor's liability for these crimes is whether he acted with a criminally culpable state of mind in suggesting that the fire be permitted to burn. First, a significant factual issue which we considered in deciding if Sambor acted with a criminally culpable state of mind was whether he relayed Brooks' order to extinguish the fire. Failure to communicate this order (even after the bunker was destroyed) would be circumstantial evidence of criminal intent.

Neither Richmond nor Scipione substantiated Sambor's testimony that he relayed Brooks' order. In fact, Richmond vehemently denied ever receiving any such order from Sambor. (Although Richmond realized that the May 16, 1985 chronology indicated that he did receive the order, he discounted the chronology's accuracy. He said that he, Brooks, Sambor and Warrington prepared the chronology hurriedly and never used it.) Likewise, nothing in Scipione's testimony suggested that Sambor relayed Brooks' order to him. (Rather, Scipione's testimony that Sambor directed him to put water on the roofs of 6219 and 6223 Osage Avenue merely

corroborates Sambor's testimony that, when he and Richmond agreed to let the bunker burn, Sambor suggested that they put water on the adjoining houses.)

We credit Richmond's testimony, both before this Grand Jury and before the MOVE Commission, that Sambor never relayed Brooks' order to him. As discussed below, all of Richmond's initial actions were directed at extinguishing the fire as soon as he had permission to do so. Moreover, Richmond was at the scene in a supportive role. He took no independent actions on May 13, 1985 other than to prepare to fight the fire as soon as he was permitted to do so. There simply is no basis for finding that Richmond received the order to extinguish the fire but ignored it. Similarly, we found Scipione to be a credible witness.

This does not necessarily mean, however, that Sambor failed to urge fire-fighting efforts. Evidence concerning the content and timing of conversations among Brooks, Sambor and Richmond after the bunker fell in is inconsistent and sketchy. Richmond did begin, soon after his discussion with Sambor, to take all of the fire-fighting action possible. Whether these efforts were pursuant to conversations with Sambor is unclear. Regardless of whether Richmond wished to extinguish the fire or merely to contain it, his fire-fighting activities would have been the same once the second floor was involved and the outside hoses could no longer be used. Even if Sambor had told Richmond to put the fire out, all that Richmond could do at that point, with MOVE still inside, was to play water on the adjoining houses. Hence, the

question of whether Sambor failed to relay the order, while disturbing, is not relevant to the spread of the fire or criminal liability.

Because recklessness is the minimum mens rea required to prove most of the crimes which we considered bringing against Sambor, we will first address that mental state. From the evidence we have heard, we have concluded that Sambor's conduct was not reckless. As explained earlier in this report, "recklessness" has a specific definition under the law:

A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and intent of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

The risks here were substantial. Because the Fire Department could not fight an interior fire so long as MOVE members remained in the house, the moment that the fire progressed to the second floor it became uncontrollable. There is no evidence, however, that Sambor was aware of or understood this risk, let alone that he consciously disregarded it. To the contrary, he was aware that Fire Department personnel -- including the Fire Commissioner himself -- and fire-fighting equipment were at the scene. Most importantly, he specifically asked the Fire Commissioner whether the fire could be controlled if it were permitted to burn the bunker and was told that it could be.

Recklessness, as defined by the Crimes Code, also requires an assessment of the nature and intent of the actor's conduct and the circumstances known to him. Here, Sambor's intent was to disable the bunker, thereby destroying MOVE's tactical advantage and enabling police to pump tear gas into the house through the roof. This purpose was plainly lawful. The City could have dismantled the bunker had it pursued its civil remedies, and the use of tear gas to effectuate the arrests of MOVE members was a permissible use of force. Further, the "circumstances known to [Sambor]" included an awareness that MOVE had used the advantage gained by its bunker to successfully resist arrest. This advantage could be overcome by permitting the fire to do what the satchel charge had not -- and the Fire Commissioner assured Sambor that such a course of conduct was safe. Finally, although Sambor would not have known whether the gasoline can(s) on the roof already had ignited, we do not believe that this unknown appreciably changed his perception of the risk. A reasonable person would not necessarily believe that the gasoline would convert a fire which could be extinguished by the powerful squirts to one which could not. Additionally, Richmond and Sambor both attended the meeting at which the gasoline can(s) were discussed; thus, in asking Richmond whether the fire could be controlled, Sambor would have expected Richmond's answer to take the presence of gasoline into account. For these several reasons, we have concluded that Sambor did not act recklessly.

These reasons also mandate our finding that Sambor's actions do not demonstrate a mens rea of knowledge or intent. There is insufficient evidence that Sambor intended that the fire do anything other than destroy the bunker which he was empowered to destroy. Furthermore, given the assurances from Richmond, Sambor could not know the eventual result of letting the fire burn. Thus, we cannot find that Sambor committed any crimes for which the requisite mental state is intent, knowledge or recklessness.

We also considered whether Sambor acted negligently as involuntary manslaughter and criminal mischief require proof of gross negligence and negligence, respectively. As discussed in Part VII, negligence has a specific legal definition:

A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and intent of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

Here, Sambor suggested letting the fire burn to accomplish a tactical objective. He consulted with the Fire Commissioner, asking him whether such a course could be pursued. As we concluded above, there is no evidence that Sambor was aware of the risk inherent in this plan (i.e., that the fire would spread into the second floor, where it could not be extinguished without exposing fire fighters to MOVE gunfire). We now further conclude that there was no reason why the Police Commissioner, relying on the Fire

Commissioner's professional judgment, should have been aware of this risk: A reasonable person would reasonably rely on an expert's opinion. The only question remaining for us then was whether Richmond's opinion was so unreasonable on its face that even a reasonable lay person would not have accepted it, but would have explored the answer further. Given all of the circumstances known to Sambor and which he assumed were known to Richmond, we cannot conclude that Sambor acted unreasonably in relying on the Fire Commissioner's response that the fire could be controlled. Thus, we find that Sambor was not negligent.

Because we found that Sambor lacked the requisite mens rea for any of the relevant crimes, we did not further consider whether the other elements of these crimes such as causation were established by the evidence, or whether other legal doctrines would affect our determination of criminality. While it is unnecessary to reach those questions, we note that many of the factors mentioned in our discussion of Richmond's conduct would also be applicable to charges against Sambor had they been brought.

We have also carefully considered whether Richmond acted criminally in telling Sambor that they could let the bunker burn and yet control the fire. We have concluded that Richmond's actions were not criminal.

As with Sambor, the charges which we considered bringing against Richmond for agreeing to let the fire burn were murder, conspiracy, involuntary manslaughter, aggravated assault,

recklessly endangering another person, arson, causing or risking a catastrophe, failure to prevent a catastrophe and criminal mischief. We have carefully considered whether Richmond acted with a criminally culpable state of mind, whether his actions were, under the law, the cause of the harm which resulted, and whether even a prima facie finding of criminality is precluded by other factors.

We began by considering whether Richmond acted with a criminally culpable state of mind. Again, because it is the most common mental state for the crimes listed above, we discuss recklessness first. We have concluded that Richmond did not act recklessly, that is, that he did not consciously disregard a substantial and unjustifiable risk. Richmond did possess facts sufficient to constitute knowledge of the risks. He was aware that there allegedly were explosives and gasoline in the house, and that there were cans on the roof marked "gasoline," which some people believed contained water because similarly marked cans containing water had been found on the roof of the Chester MOVE house. Although he was never told whether the children had been removed prior to the confrontation, at some point that day he had become aware that they had not. He knew that he had squirts and some other equipment on the scene, but that he had not come prepared to fight fires. Most important, he knew that he could not fight a fire conventionally because MOVE members probably would shoot at firemen as they had done in 1978. This last fact gave all the other facts added significance: Although the Fire Department could

have quickly brought in additional equipment, and although it ordinarily could have readily extinguished even an interior fire fueled by explosives, here the inability of the fire fighters to safely access the MOVE compound made any interior fire uncontrollable. This made the risk from an interior fire "substantial."

However, we have concluded that Richmond did not consciously disregard this risk. Asked whether, when Sambor suggested letting the fire burn, Richmond considered the possibility that the bunker might fall through the roof and into the second floor, causing a fire which could not be fought, Richmond replied:

I did not factually follow that through. It was a unique kind of thing. It was something I had never seen in twenty-seven years. I guess in retrospect I certainly could have pursued it with Mr. Sambor.

* * *

I just did not follow through with that logic, no, sir.

Having carefully observed Richmond's demeanor and carefully considered all of his testimony, we find credible his statements that he simply did not consider the risks. All of Richmond's actions that day and his testimony before us concerning them (discussed below) support the conclusion that Richmond did not choose to pursue a course he believed to be dangerous, but rather made a terrible misjudgment in the haste of the moment.

The definition of recklessness requires not only an assessment of the nature of the risk, but also a consideration of the nature and intent of the actor's conduct. Richmond's testimony, corroborated by Scipione, showed that his intent was to extinguish the

fire. When Richmond was first informed that there was a fire, he immediately went to the Channel 10 van to view the roof. Within approximately ten minutes of when he received the first report of smoke, Richmond made several trips between the van and Osage Avenue to monitor the smoke. He also ordered that an engine company be dispatched to the scene and a deluge gun be placed on Osage Avenue. Richmond additionally instructed Scipione to ask police what they wanted to do about the fire, which was only a small roof fire that could be extinguished by the squirts. Shortly after being told that that the police did not want the fire extinguished, Richmond met with Sambor on the scene to ascertain what was to be done. Clearly, the intent of Richmond's conduct was to put out the fire.

The circumstances known to Richmond are also relevant under the recklessness statute in judging his conduct. There are two critical considerations. First, the Fire Department was present at the scene in an auxiliary role to the Police Department. At the May 11, 1985 meeting, Richmond was told that the Fire Department was to provide diversionary water, emergency medical services and ladders for Stake Out officers assigned to rooftop positions. He understood, pursuant to a pre-existing Managing Director Directive, that this was a police operation and that the Police Commissioner was in charge. At the time that Sambor said he wanted to let the bunker burn, Richmond felt that he was still in an auxiliary role to the Police Department. Significantly, Richmond testified that after the charge exploded he was never told that the police

had abandoned their plan to send officers to the roof of the MOVE house. He thought that if he unilaterally decided to turn on the squirts, the water might wash officers off of the roof. Further, when water was directed at the fire, police objected because it caused the smoke to bank down into the street, obscuring the vision of officers who were expecting MOVE combatants to exit.

Although Richmond's subordinate position did not compel him to give an opinion that they could let the bunker burn and still control the fire, the evidence concerning his understanding of the Fire Department's role is nonetheless probative of his state of mind. Richmond was not at the scene in his usual capacity. Accustomed to directing fire-fighting activities in non-hostile situations, he was not in charge on May 13, 1985 when he was asked to make a judgment about using fire as a tactical weapon in an armed confrontation. While we find his advice a tragic misjudgment, we also find that the very different and difficult circumstances in which he made his decision affect our determination of whether he acted with a criminally culpable state of mind. These conditions militate against a conclusion that he was criminally reckless.

The second circumstance warranting our consideration is the nature of the information available to Richmond when he offered his judgment that the fire could be controlled. Although any fire is potentially risky, at the time he acquiesced to Sambor's desire to permit the fire to burn, Richmond's impression of the fire was such that he thought it could be safely controlled.

King, an expert witness, testified that this was a reasonable conclusion. King told us that the fire which was visible before 6:00 was a small roof [not second-story] fire, whose smoke was consistent with that from burning wood [not petroleum products], and which could have been extinguished by the squirts on Pine Street. When asked whether Richmond's conclusion that the fire could be controlled was reasonable, given that the evidence showed Sambor and Richmond met sometime between 6:05 and 6:15, King replied that it was:

What you have [on the mast camera] just prior to 6:11 ... [is] surface fire on the top of the roof.... If [Richmond] said he could put that fire out with the squirts, I could consider that to be a very reasonable position at that time.

More significantly, King termed Richmond's conclusion that the fire could consume the bunker and still be extinguished with squirts a "fair call." King testified that fire burns in an upward direction and generally he would expect a fire of a wooden structure like a bunker to consume itself without falling through the roof. King testified that even if the bunker were consumed by fire, and the roof were penetrated to some extent by the fire during that process, the fire nevertheless could have been extinguished by the squirts if it did not substantially involve the second floor. Thus, Richmond's belief that he could control and extinguish such a fire was a reasonable belief under the circumstances.

Finally, the statutory definition of recklessness requires consideration of the "standard of conduct that a reasonable person

would observe in the actor's situation" (emphasis added). Richmond was first notified of this operation less than forty-eight hours before it began. He was present during the extensive early morning gun battle and had been active on the scene since shortly after midnight when Sambor asked him to make a decision about the fire. Trying to explain why it did not occur to him that the bunker might fall into the second floor, Richmond attributed his critical oversight to extreme pressure and fatigue. He further recalled that:

[Y]ou are talking about an extremely unusual situation.... [T]here is no way you can recreate Osage Avenue in this room. You cannot do it. When you looked up at that bunker, it was just the most awesome thing you ever saw in your life. To say you were scared, everyone was scared. There were bullets ricocheting over the streets, which was frightening, for a long extended period of time. I did not make the decision I normally make. I have a good history in Philadelphia. If I didn't make those decisions on that day, I feel maybe they cannot be excused, but they certainly should have taken some consideration to the environment that we were working in at the time.

Given all of these factors, we cannot say that Richmond acted recklessly.

There is even less cause to find that Richmond acted with the intent to commit a crime or with knowledge that a crime would occur. The evidence discussed above shows that the only action taken by Richmond was intended to destroy the bunker, a result which the City was authorized to achieve. There is no evidence that Richmond intended or knew that the fire would become

uncontrollable. Therefore, we cannot find that he acted with the criminal mental states of intent or knowledge.

While all of the above-referenced evidence negates the conclusion that Richmond acted recklessly, knowingly or intentionally, it does support the conclusion that his actions rose to the level of simple negligence, that is, that he failed to perceive a substantial and unjustifiable risk. As explained above, the evidence establishes both that the risk was substantial and that Richmond failed to perceive it; Richmond himself testified that the risk that the bunker might fall into the second floor and ignite a fire he could not successfully fight simply did not occur to him. The factors noted above -- the prolonged and extremely stressful situation in which Richmond found himself, his subordinate role to Sambor in this police operation, the minimal time in which key decisions had to be made, the extent of information on the fire's progress which was available to Richmond, and Richmond's inexperience in fighting fires in hostile situations -- all militate against finding that Richmond's conduct amounted to simple negligence. Nonetheless, we have concluded that the extreme nature of the risk made Richmond's failure to perceive it, even given these circumstances, a deviation from the standard of care that a reasonable person would observe in his situation. There is only one crime for which simple negligence is an adequate mental state: criminal mischief. For the reasons below, Richmond cannot be charged with this crime. Neither can he be charged with involuntary manslaughter because he did not have the requisite mens rea.

In addition to proving that a person acted with a criminally culpable state of mind, the person's conduct must also be shown to be the legal cause of the harm which followed before charges can properly be brought. As discussed above, in order to be the direct cause of a result, a person's conduct must be a direct and substantial factor in bringing about that result. A person whose conduct is such a direct cause may be criminally liable even though there are other direct causes. There can be more than one direct cause. But a person's conduct is not a direct cause if the intervening acts of others, or the actions of the victims themselves, or the occurrence of other events, play such an independent, important and overriding role in bringing about the result, compared with the first act, that the first act does not amount to a direct and substantial factor in bringing about the result. The conduct need only start an unbroken chain of events. However, whether the conduct of others relieves the original actor of liability for his first act also depends on whether the intervening conduct was foreseeable to the original actor.

Of primary importance was whether MOVE's refusal to leave a burning building was a superceding cause relieving Richmond of responsibility. Probably more than any other official on the scene, it would have been hard for Richmond to imagine anyone remaining or forcing children to remain in a burning building. In Richmond's long history with the Fire Department, he had not encountered a situation like this. In his experience, people fled burning buildings, only returning to them to rescue their

children; people did not remain inside and certainly did not keep their children inside. We find that Richmond could not foresee that MOVE members would remain inside and keep their children with them. We further find that this intervening action precludes criminal liability.

Two other factors must also be noted in substantiation of our decision not to bring charges. First, at the time that he made his conclusion that the fire on 6221 was limited to the roof, Richmond had several sources confirming this information, including his own observations of the mast camera monitor and observations by Battalion Chief Allodoli who was watching the fire from 62nd Street. What he did not know was that the camera's depiction of the location and size of the fire was deceptive. King testified that Richmond's reliance on this unfortunately erroneous information was "very reasonable."

Lastly, it is entirely possible that the fire was so advanced by the time that the Sambor/Richmond conference occurred, that nothing could have saved 6221 even if a different decision had been reached. As King testified, the squirts probably could not have extinguished the fire at 6:15 p.m., which was probably the time that Sambor and Richmond met. Thus, Richmond's decision may have been irrelevant.

All of the above considerations, particularly the intervening actions of MOVE members, would further preclude Richmond's liability for involuntary manslaughter. As to criminal mischief, the defense of justification bars any charges. Criminal mischief can

be proven where the actor negligently damages tangible property of another in the employment of fire. However, we have concluded that Richmond only intended to permit the fire to destroy the bunker, which the City could have dismantled lawfully had it pursued its civil remedies, and which police could have destroyed legitimately pursuant to the statutorily authorized use of force to effect arrests. Therefore, criminal mischief charges cannot be lodged against Richmond.

For these reasons, we have concluded that no charges may be brought for the decision to let the fire burn.