

Policy Analysis

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No Confidence An Unofficial Account of the Waco Incident

by Timothy Lynch

Executive Summary

On February 28, 1993, a force of 76 agents from the Bureau of Alcohol, Tobacco, and Firearms tried to storm the residence of a religious group known as the Branch Davidians. A firefight broke out, and there were deaths and injuries on both sides. The ATF maintains that its agents were ambushed while the Davidians claim that they were fired upon without provocation, feared for their lives, and acted in self-defense.

The Branch Davidian residence was subsequently surrounded by federal and state authorities and the Federal Bureau of Investigation assumed control. Weeks went by as the FBI and the Davidians engaged in negotiations to resolve the standoff peacefully.

On April 19, 1993, Attorney General Janet Reno gave the FBI permission to flush the Davidians out of their residence. FBI agents used tanks to smash holes in the walls of the building

and then sprayed tear gas into the residence. Agents also used hand-held grenade launchers to fire more than 350 “ferret” rounds into the windows of the building, but none of the Davidians obeyed the FBI’s command to exit the residence. A fire then broke out, and 76 Davidians, including 27 children, perished.

That incident—which is now referred to simply as Waco—has become the most controversial law enforcement operation in modern American history. Although the “official” investigation of the incident now places all of the blame for the carnage on the Branch Davidian leader, David Koresh, numerous crimes by government agents were never seriously investigated or prosecuted. If those crimes go unpunished, the Waco incident will leave an odious precedent—that federal agents can use the “color of their office” to commit crimes against citizens.

For years questions have lingered about whether the federal government was completely forthright about what happened at Waco.

Introduction

On April 19, 1993, agents of the Federal Bureau of Investigation used tanks to assault a building that contained 76 men, women, and children. The tanks rammed holes through the walls of the building and sprayed tear gas inside. Because the adults in the building had gas masks, the FBI's tactical objective was to gas the children so as to prompt the parents to gather them up and flee the structure.¹ After several hours of gassing, a fire broke out and almost everyone in the building died. That incident, which is now commonly referred to as Waco because it took place a few miles outside of Waco, Texas, has become the most controversial law enforcement operation in modern American history.

For years questions have lingered about whether the federal government was completely forthright about what happened at Waco. Did the people in the building really commit mass suicide? Or was it closer to murder, with federal agents abusing their power and then covering up their misdeeds? The "official" investigation of the Waco incident was headed by former Missouri senator John C. Danforth, whose report essentially exonerated the federal government of wrongdoing.² The factual record, however, does not support Danforth's sweeping exoneration. On the contrary, it raises deeply disturbing questions not only about the tactics used at Waco but, more generally, about the mindset often found in America's increasingly militarized law enforcement agencies.

Because several federal agencies were involved in the Waco incident and because eight years have passed since the primary events took place, I will begin by chronicling the federal government's actions and related events to provide a frame of reference for the conclusions that follow. I will then identify serious crimes that I believe were committed by government agents at Waco—crimes that have never been thoroughly investigated or prosecuted. My identification of crimes is not based on conspiracy theories or newly

discovered evidence. Rather, I identify crimes on the basis of the *undisputed* actions of high-ranking federal officials. I conclude by identifying questionable conduct that warrants further investigation.

Chronology of Events

An exhaustive chronology of the events that have taken place over the past eight years is beyond the scope of this study. The chronology that follows should suffice as a frame of reference for the findings and conclusions that follow.³

- June 4, 1992: After receiving a tip about the possible manufacture of illegal firearms, the Bureau of Alcohol, Tobacco, and Firearms opens an investigation of a religious sect, known as Branch Davidians, located at the Mt. Carmel complex near Waco, Texas.⁴ Mt. Carmel is a 77-acre ranch with several buildings. The main residence houses approximately 100 men, women, and children.

- July 30, 1992: ATF agents interview Texas firearms dealer Henry McMahon about his business dealings with Branch Davidian leader David Koresh. During the interview, McMahon telephones Koresh. Koresh tells McMahon that if the ATF agents perceive any legal problem, they can come to Mt. Carmel and check his inventory and paperwork. ATF agents decline the invitation.⁵

- November 1992: Producers of CBS's *60 Minutes* contact ATF officials about sexual harassment in the agency, requesting an interview with the director, Stephen Higgins. ATF officials brace themselves for an unflattering report on national television.⁶

- December 1992: On the basis of information developed through its investigation, ATF concludes that there is probable cause to believe that David Koresh is in violation of federal firearms regulations. ATF begins to develop a plan to search Mt. Carmel and arrest Koresh.⁷

- January 10, 1993: *60 Minutes* airs a story titled "Alcohol, Tobacco, Firearms and

Harassment," a devastating report on sexual harassment within the ATF. Several female agents describe how they were sexually harassed by fellow agents and further describe the retaliation they received after they lodged complaints with their supervisors. Agent Bob Hoffman, who corroborated one of the female agent's complaints, tells Mike Wallace: "In my career with ATF, the people that I put in jail have more honor than the top administration in this organization. I know it's a sad commentary, but that's my experience with the ATF."⁸

- January 21, 1993: ATF solicits military assistance for its planned raid. Among other things, the ATF requests use of the Military Operations in Urban Terrain facility at Fort Hood, Texas.⁹

- February 25, 1993: ATF agents seek and obtain an arrest warrant for David Koresh and a search warrant for the Mt. Carmel complex.¹⁰

- February 26–27, 1993: U.S. Army Special Forces at Fort Hood assist ATF agents in rehearsing a raid on the Branch Davidian residence.¹¹

- February 28, 1993: The ATF tries to storm the Mt. Carmel complex. At about 9 a.m., National Guard helicopters carrying ATF agents arrive and circle Mt. Carmel in an attempt to divert the attention of the Branch Davidians. Moments later, two pickup trucks hauling covered cattle trailers pull into the Mt. Carmel driveway. The trucks and trailers contain 76 heavily armed ATF agents.

As the agents exit the trailers and approach the front door of the complex, shots are fired and a fierce gun battle ensues. The ATF and the Davidians accuse one another of firing the first shot. After an hour-long firefight, a ceasefire is arranged. The Davidians agree to hold their fire in return for the ATF's promise to leave the property.

During the raid, ATF agents shoot and kill two Davidians and wound five others. The Davidians shoot and kill four ATF agents and wound 20 others. Measured in casualties, it is not only the worst day in the history of the ATF but the worst day in the history of federal law enforcement.¹²

That afternoon, ATF agents and Texas

police surround Mt. Carmel, and telephone negotiations begin. The standoff will last another 51 days.

- March 1, 1993: ATF relinquishes jurisdiction to the Department of Justice and, in particular, to the FBI. (The ATF is a component of the Department of the Treasury; the FBI is a component of the Department of Justice.)¹³

- March 2, 1993: David Koresh promises to surrender to the authorities if they agree to facilitate a national radio broadcast for him. A cassette tape is recorded and played on the Christian Broadcasting Network, but Koresh does not surrender. Koresh tells the FBI and his followers that God has told him to "wait."¹⁴

Within a week, however, 23 Davidians leave Mt. Carmel. The adults are immediately arrested and jailed; the children are turned over to Texas authorities or relatives.

- March 8, 1993: ATF agents execute another search warrant for a property approximately five miles from Mt. Carmel. They break into a garage rented by one of the Davidians in the hope of discovering incriminating evidence. The owner of the garage, who is not a Branch Davidian, is outraged by the property damage and tells reporters: "The feds have torn the building to pieces. . . . I don't understand why they had to do that. I offered yesterday to give them a key."¹⁵

That evening, the Davidians send out videotapes of the children within Mt. Carmel. The FBI had video camera equipment sent in and asked the Davidians to film the children to reassure the bureau that they were all right. After reviewing the videotapes, FBI agents conclude that it would not be in their interest to release the tapes to the media. A notation in an FBI logbook cautions that, because Koresh shows his bullet wounds and explains the circumstances in which he was shot on February 28, he would gain much "sympathy" if the tapes were ever disclosed.¹⁶

- March 15, 1993: ATF headquarters in Washington, D.C., orders its agents in Texas not to discuss the February 28th raid publicly. The message implies that anyone who

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violates the order will be disciplined, dismissed, and possibly prosecuted.¹⁷

- March 26, 1993: David Troy, chief of intelligence for the ATF, defends his agency's February 28th raid. Troy tells reporters, “We feel confident that there were no mistakes made on our part.”¹⁸ Troy dismisses critics of raid as “second guessers and Monday morning quarterbacks who do not have access to the facts.”¹⁹

- March 28, 1993: ATF field agents begin speaking to reporters—on the condition that their identities not be revealed.

The *New York Times* reports that the ATF agents involved in the February 28th raid have likened it “to the Charge of the Light Brigade, laden with missteps, miscalculations and unheeded warnings that could have averted bloodshed.”²⁰ One of the unexplained issues raised by the *New York Times* report is why the ATF did not try to arrest Koresh when he was away from Mt. Carmel: “At first, [ATF officials] said they believed Mr. Koresh remained in the compound for months at a time and could be captured only there, but many people in Waco insisted that they had seen him at bars and jogging in the weeks before the raid. Then in response to the apparent discrepancy, the [ATF] conceded that it never conducted round-the-clock surveillance of Mr. Koresh, so that it did not know whether or how often he left the compound.”²¹

Another issue is whether the ATF had given the news media advance notice of the raid. According to the *New York Times*, ATF officials “initially insisted that the raid had been conducted under the strictest secrecy and that no members of the news media had been given any information that could have been construed as a tip-off. But later, when questions arose, they conceded that some news organizations had been called.”²²

- March 30, 1993: The FBI allows criminal defense attorney Dick DeGuerin to enter Mt. Carmel, unescorted, to meet with David Koresh to discuss his legal defense and to negotiate a peaceful settlement.²³

- April 19, 1993: After 51 days of negotia-

tions, Attorney General Janet Reno and the FBI decide to flush the Davidians out of Mt. Carmel.

At approximately 6:00 a.m., FBI agents approach the residence in tanks that are specially equipped with giant booms, which can insert a chemical agent called CS gas. As the booms on the tanks smash through the walls of the Mt. Carmel residence and CS gas is sprayed inside, the FBI repeatedly broadcasts a message over loudspeakers. Among other things, the message says, “This is not an assault” and “This standoff is over.”²⁴

Some Davidians shoot at the tanks, but no Davidians exit Mt. Carmel.

At 6:47 a.m., the FBI tactical commander orders his field agents to use their grenade launchers to fire “ferret” rounds through the windows (a ferret is a 40-mm canister that discharges tear gas on impact). At 7:10 a.m., field agents report that ferret rounds have been fired into all of the windows of Mt. Carmel. Some 389 ferret rounds are fired into the residence throughout the morning.²⁵

At approximately 12:00 p.m., a fire breaks out and the Mt. Carmel complex is soon engulfed in flames. FBI officials do not let fire trucks approach the residence because of the risk of hostile gunfire.

Nine Davidians survive the fire; seven of them manage to get out of the complex on their own, and two are aided by FBI field agents. The survivors are immediately arrested and turned over to ATF for booking. One ATF agent sees to it that his agency's flag is hoisted to the top of the Davidians' flagpole.

Seventy-six Davidians die, including 27 children. Most die from smoke inhalation, but at least 20 Davidians have gunshot wounds.²⁶

In Washington, D.C., Reno holds a news conference, telling reporters that the tear gas operation was necessary because she had received reports that “babies were being beaten.”²⁷ Reno nonetheless recognizes that the FBI operation was an abject failure and offers her resignation to President Bill Clinton.

President Clinton tells reporters that he has no intention of asking for or accepting

Reno's resignation just "because some religious fanatics murdered themselves."²⁸

- April 28, 1993: The Judiciary Committee of the House of Representatives holds a one-day hearing on the Waco incident.

Reno admits that she had no evidence that any child was being beaten at any time during the standoff.²⁹

Reno and FBI officials testify that they did not use any pyrotechnic devices, that they were surprised and saddened that the Davidians started a fire, and that their field agents did not fire their guns at the Davidians on April 19th.

- May 23, 1993: *60 Minutes* rebroadcasts its January report about sexual harassment within the ATF. After the rebroadcast, Mike Wallace reports that almost all of the ATF agents that he talked to said that they believed the initial raid on the Branch Davidians in Waco "was a publicity stunt, the main goal of which was to improve the ATF's tarnished image."³⁰

- August 6, 1993: The Department of Justice seeks and obtains a grand jury indictment against 12 Branch Davidian survivors. The Davidians face various charges, including conspiracy to murder ATF agents.³¹

- October 1, 1993: The Treasury Department issues its report on the ATF's handling of the Waco raid. Among other things, the report says that "senior agency officials went to even greater lengths than previously believed to deceive investigators and Congress. It said officials had changed a written record of the plan after the raid in a self-serving way, and then lied about the alterations. It also concluded that the officials had tried to pin blame for the failure on an undercover agent, who in fact had tried to stop the raid."³²

After issuing the report, Treasury Secretary Lloyd Bentsen announces that he is replacing the head of the ATF, Stephen Higgins, and is suspending five other officials who misled Congress, the Clinton administration, and the press about what had occurred.³³

- October 8, 1993: The Justice Department issues its report on its handling of the Waco

incident. The report finds that neither Reno nor any official with the FBI engaged in misconduct or made any mistakes.³⁴

- January 10, 1994: The criminal trial of 11 Branch Davidian survivors begins. (one survivor pled guilty and did not stand trial). Prosecutors with the Department of Justice claim the Davidians ambushed and murdered ATF agents who were attempting to execute lawful warrants. Lawyers for the Branch Davidians maintain that their clients feared for their lives and acted in self-defense.³⁵

- February 26, 1994: The jury returns its verdict in the criminal case. Eleven Branch Davidians are acquitted of all the conspiracy charges. Seven of the 11 are convicted of lesser charges, and 4 are acquitted of all charges. The *New York Times* reports that "the jury's verdict amounted to a stunning defeat not only for the Justice Department, which prosecuted the case, but for the Bureau of Alcohol, Tobacco, and Firearms."³⁶

Reno issues a statement that says the jury's verdict is actually a vindication of the federal government's version of events. Because the jury did not reject every single allegation made by the prosecutors, Reno claims the jury was sending "a message that we were justified in our actions."³⁷

- March 21, 1994: The surviving Davidians and relatives of deceased Davidians file a \$100 million wrongful death lawsuit against the federal government.³⁸

- June 17, 1994: U.S. District Court Judge Walter Smith metes out stiff prison sentences to the Davidians who were convicted by the jury in the criminal case. Five Davidians receive the maximum sentence of 40 years imprisonment. Three Davidians receive sentences ranging from 5 to 20 years.³⁹

The jury forewoman, Sarah Baine, wept outside the courtroom. After the trial, but before the sentencing hearing, Baine sent Judge Smith a letter that said, "Even five years is too severe a penalty." Baine attended the sentencing hearing in the hope that her presence in the courtroom would remind Judge Smith of her request for leniency.⁴⁰

- July–August 1995: The House of

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Representatives holds extensive hearings on the Waco incident.

Justice Department and FBI officials testify that they had no warning that the Davidians were preparing to set a fire and that no agent fired a gun at the Branch Davidians on April 19, 1993.

Reno defends her decision to have the FBI tanks attack Mt. Carmel and blames David Koresh for the disastrous results. This is a new development. In 1993 Reno acknowledged that the April 19th assault was a mistake and tried to demonstrate that there would be accountability for that mistake by offering to resign.⁴¹

The House committee subsequently issues a finding that Attorney General Reno “knew or should have known that the plan to end the standoff would endanger the lives of the Davidians inside the residence, including the children.”⁴² Her decision to approve the FBI tank assault was “premature, wrong, and highly irresponsible.”⁴³

• January 18, 1997: A new film, *Waco: The Rules of Engagement*, is released at Robert Redford’s Sundance Film Festival in Park City, Utah. The most dramatic contention in the film comes from a technical expert who examines the FBI’s aerial Forward Looking Infrared (FLIR) film from April 19, 1993. The FBI used the FLIR film at the Davidians’ criminal trial in 1994 in an attempt to show that the Davidians started the fatal fire. The technical expert in *The Rules of Engagement* claims the FLIR film shows numerous gunshots directed at the Mt. Carmel complex. This documentary film is subsequently nominated for an Academy Award and wins an Emmy for investigative reporting.⁴⁴

• July 1, 1999: Judge Smith denies a pivotal legal motion filed by the Department of Justice to dismiss the wrongful death lawsuit. The ruling paves the way for Branch Davidian lawyers to question under oath government witnesses about their conduct and to demand physical evidence from the federal government.⁴⁵

• July 28, 1999: The *Dallas Morning News* reports that the Texas Rangers have discovered evidence that calls into question the federal government’s claim that its agents used

no incendiary or pyrotechnic devices on April 19, 1993. Myron Marlin, a spokesman for the Justice Department, tells the newspaper that the allegation is “nonsense.”⁴⁶

• August 25, 1999: The FBI issues a statement saying that “pyrotechnic devices may have been used in the early morning of April 19, 1993.”⁴⁷

• August 30, 1999: The federal prosecutor in Waco, Bill Johnston, bypasses the chain of command and sends a letter directly to Attorney General Reno. Among other things, the letter says, “I have formed the belief that facts may have been kept from you—and quite possibly are being kept from you even now, by components of the Department [of Justice].”⁴⁸ Sen. Phil Gramm of Texas tells the press: “I hope [Johnston] is not punished for that. There’s a long history in the federal government of hostility toward people who come forward with bad news.”⁴⁹

• September 1, 1999: The Justice Department dispatches U.S. marshals to FBI headquarters to seize previously undisclosed videotapes containing footage of pyrotechnic tear gas rounds being fired at the Mt. Carmel complex. The videotapes also contain radio traffic of an FBI commander authorizing the use of the pyrotechnic rounds. FBI officials had previously submitted sworn affidavits that they had no videotape before 10:42 a.m. on April 19, 1993. And, in a Freedom of Information Act lawsuit, FBI officials told a federal judge under oath that the bureau had no recorded radio traffic during the entire tear gas assault.⁵⁰ The bureau does not explain how the evidence in its files remained unnoticed.

• September 9, 1999: Reno appoints former Missouri senator John C. Danforth as a special prosecutor to investigate whether the federal government engaged in misconduct at Waco and then tried to cover up its actions.⁵¹ Danforth says he will investigate allegations of “bad acts” but will not prosecute any government employee for “bad judgment.”⁵²

In Texas Judge Smith becomes furious when he learns that the local U.S. marshal has delayed executing his order to seize any evidence relating to the Waco incident from

the local ATF office. Smith issued his directive quietly under a court seal when he learned that the ATF was closing its office. The local U.S. marshal spent hours consulting with both his agency's headquarters in Washington and the U.S. attorney's office in San Antonio before taking any action. It is unclear whether any evidence from the ATF office was removed, altered, or destroyed.⁵³

• September 15, 1999: The Justice Department removes federal prosecutor Johnston from the Waco case. Justice Department officials say the move has nothing to do with Johnston's public comments suggesting a possible government cover-up.⁵⁴

• September 20, 1999: Judge Smith postpones the wrongful death trial and related depositions so that Danforth can interview witnesses. In a letter to Danforth, Smith writes, "It is my fervent hope that your investigation, and certainly to a lesser extent, the civil proceedings here, will help to restore the public's confidence in its government."⁵⁵

• October 5, 1999: An expert in thermal imaging and videotape analysis tells the *Washington Post* that he has spent hundreds of hours reviewing various tapes of the Waco siege and has concluded that "the FBI fired shots that day." The expert, who had previously been retained by the FBI as a thermal imaging consultant, says, "The gunfire from the ground is there, without a doubt."⁵⁶

• October 8, 1999: U.S. Army Col. Rodney L. Rawlings tells the *Dallas Morning News* that the FBI knew that David Koresh and his followers were preparing to set fires on April 19, 1993.⁵⁷ Rawlings was in Waco assisting the FBI during the siege. On the morning of April 19th, he was in an FBI monitoring room where voices from within the Mt. Carmel complex could be overheard. FBI "bugging" devices allowed the colonel and law enforcement officials to "hear everything from the very beginning, as it was happening."⁵⁸ Rawlings says, "Anyone who says you couldn't [hear what was happening at the time] is being less than truthful."⁵⁹ The FBI has always maintained that it was unaware of any Davidian plan to set fires.

• October 9, 1999: Newly released documents from the FBI show that agents asked for permission to shoot any unarmed Branch Davidians who left Mt. Carmel and approached their armored vehicles. The request to use illegal deadly force was denied by FBI officials in Washington. The documents also outlined seven instances in which FBI agents threw or launched "flash bang" grenades at Davidians who were exiting Mt. Carmel earlier in the standoff. The documents containing this information were not turned over to lawyers representing the Davidians at the 1994 criminal trial or to Congress as it was preparing for the 1995 hearings on the incident. Bureau officials said that the documents were either overlooked as they responded to previous inquiries or that such information was not specifically sought by Congress.⁶⁰

• October 14, 1999: The *Dallas Morning News* reports that the FBI had closed-circuit cameras around the Mt. Carmel complex throughout the 51-day siege. No videotape from those surveillance cameras has ever been made public by the federal government. Lawyers who represented the Davidians in both the criminal trial and the pending wrongful death lawsuit are outraged by the newspaper report. The Davidian lawyers suspect that the FBI withheld the information about the cameras because of the images that they captured on April 19, 1993. References to those cameras were blackened out on the documents that the Justice Department has thus far disclosed to the Davidians in the civil lawsuit.⁶¹ FBI and Justice Department officials have no comment on the leaked documents.

• November 1, 1999: Justice Department lawyers acknowledge that about 10 individuals from the U.S. Army's Special Forces were at Waco during the siege but insist that they were only providing technical assistance to FBI agents. Lawyers for the Branch Davidians are told that they cannot question those soldiers face to face and cannot have their names. The Branch Davidian lawyers are told that, if they want to persist in their claim that the soldiers had a more active role at Waco, they should submit written questions and

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A new documentary film, *Waco: A New Revelation*, shows several ATF agents kicking and punching a cameraman from a local TV station on February 28, 1993.

they will receive anonymous answers.⁶²

- November 2, 1999: Judge Smith warns Justice Department officials that he will hold them in contempt of court if they do not surrender all of the Waco evidence in their possession. The judge's order complains that the Justice Department has unnecessarily delayed and possibly even deliberately stalled making arrangements for the transfer of classified documents.⁶³

- November 3, 1999: A new documentary film, *Waco: A New Revelation*, is shown in Washington, D.C., to reporters and researchers. Among other things, the film shows several ATF agents kicking and punching a cameraman from a local TV station on February 28, 1993. The ATF agents were angry because the cameraman was filming their humiliating retreat from the Mt. Carmel ranch.

- January 24, 2000: Federal prosecutor Bill Johnston announces that he is leaving the Department of Justice. Johnston tells the *Dallas Morning News* that he has been ostracized by the Department of Justice since he wrote Attorney General Janet Reno about the possibility of a cover-up.⁶⁴

- January 25, 2000: *60 Minutes* airs a story titled, "What Really Happened at Waco?" Dan Rather reports that *60 Minutes* has hired an expert in infrared imagery to examine the controversial FBI FLIR tape. The only thing plainly visible to the naked eye on the FLIR tape is a series of flashes. Some experts say the flashes represent gunfire, but the FBI maintains that the flashes are "reflections of sunlight." As the expert views the FLIR tape on a television monitor, he exclaims: "It's not the sun striking something. It's not swamp gas reflecting off the planet Venus. This is somebody shooting [at the Mt. Carmel complex]."⁶⁵

- February 1, 2000: In response to questions posed by lawyers for the Branch Davidians in the pending wrongful death lawsuit, Pentagon lawyers file a sworn denial that there was any military gunfire on April 19, 1993. But the formal denial includes a caveat: the Pentagon denial is based on "currently available information." This response confounds Davidian lawyers, who are seeking

to identify key witnesses before the upcoming trial.⁶⁶

- March 15, 2000: Branch Davidian lawyers file a formal legal motion with Judge Smith, accusing the federal government of mishandling and tampering with key evidence in the wrongful death case. Among other things, the motion notes that an FBI aerial photographer testified in a deposition that he shot 10 rolls of film, but only 7 rolls of film now exist.⁶⁷

- March 19, 2000: An elaborate reenactment of the FBI's tactical operations of April 19, 1993, is conducted at Fort Hood, Texas. Judge Smith ordered the experiment to help resolve the disputed question of gunfire on April 19th. The FBI has long maintained that no agent fired any gun at the Davidians during the entire standoff. But the Davidians' lawyers and others maintain that the FBI's own FLIR film shows numerous individuals shooting at Mt. Carmel, preventing the Davidians from escaping the burning structure.

Judge Smith and Special Prosecutor John Danforth are witnesses to the reenactment, and both say they will rely on an analysis of the filmed experiment by a British firm, Vector Data Systems. The news media are not permitted to witness the reenactment.⁶⁸

- May 18, 2000: Judge Smith rules that the Branch Davidians' lawyers have failed to prove that the federal government intentionally altered or destroyed evidence. Although some evidence may have been mishandled, the judge sees no reason to impose sanctions on the federal government.⁶⁹

- June 18, 2000: Trial begins of the Davidians' wrongful death suit against the federal government.⁷⁰

- July 14, 2000: The jury returns its verdict in the civil wrongful death case. The jury finds that federal officials are not liable for the deaths of the Branch Davidians who were killed at Mt. Carmel in 1993. The Justice Department releases a statement saying, "This terrible tragedy was the responsibility of David Koresh and the Branch Davidians, not the federal government."⁷¹

- July 21, 2000: Danforth issues an "Interim Report" that exonerates federal offi-

cials and agents of wrongdoing. Danforth tells reporters: "I give you these conclusions with 100 percent certainty. The blame rests squarely on the shoulders of David Koresh. This is not a close call."⁷² Although his investigation is not yet over, Danforth tells reporters that it is "95 percent complete."

Justice Department officials release a statement saying, "We join Senator Danforth in wishing that this report begins the process of restoring the faith of the people in their government."⁷³

- September 20, 2000: Judge Smith formally dismisses the wrongful death civil lawsuit brought by the Branch Davidians. Smith rejects all of the Davidians' legal claims and finds that "the entire tragedy at Mount Carmel can be laid at the feet" of one individual, David Koresh.⁷⁴

- November 8, 2000: Danforth seeks and obtains a grand jury indictment of former federal prosecutor Bill Johnston. The five-count criminal indictment accuses Johnston of concealing his knowledge that pyrotechnic devices were used by the FBI at Waco. Johnston tells reporters that he is being made a scapegoat because he undermined the legal stance of the Justice Department in the then-pending wrongful death lawsuit by raising the possibility of a cover-up. Danforth maintains that Johnston is being prosecuted because he broke the law.⁷⁵

- February 6, 2001: Former federal prosecutor Bill Johnston pleads guilty to a single felony count. In exchange for Johnston's guilty plea, Danforth agrees to drop a five-count felony indictment and to recommend a sentence of probation.⁷⁶ Johnston, the only person to be criminally prosecuted by Danforth, is scheduled to be sentenced on June 7, 2001, in St. Louis, Missouri.

Danforth's Office of Special Counsel officially closes.⁷⁷

Unofficial Findings of Crimes at Waco

In a free society, a person who commits a crime is not exempt from investigation or

prosecution merely because he works for the government, wears a uniform, and carries a badge. If that basic legal principle is taken seriously, it is not extraordinarily difficult to identify crimes that were committed by government agents at Waco in 1993.

ATF Agents Attacked TV Cameraman Dan Mulloney

On February 28, 1993, several ATF agents physically attacked a local television cameraman named Dan Mulloney. Mulloney was on the scene at Mt. Carmel covering the ATF raid for KWTX-TV. After the fire, Mulloney was filming the ATF agents as they were retreating from the Davidian property. When several ATF agents noticed what he was doing, they screamed obscenities at him and actually punched and kicked him while others tried to steal his camera. Because Mulloney kept his camera rolling during the entire episode, this assault, battery, and attempted theft are captured on film. The evidence is thus overwhelming. It is a crime for an ordinary citizen to punch and kick a cameraman. It is no less a crime for ATF agents to do so, yet they were never criminally prosecuted.

Although this incident lasted for approximately one minute, the film footage is telling because it clearly shows that certain ATF agents felt perfectly justified in breaking the law.⁷⁸

ATF Agents Lied to Federal Investigators

To avoid an actual or perceived conflict of interest, Texas Rangers were asked to conduct an investigation of possible criminal wrongdoing by ATF agents. The Rangers were deputized as U.S. marshals and were asked to look for possible federal criminal violations. In sworn testimony before Congress, one of the investigating Rangers said that the two ATF raid commanders, Phil Chojnacki and Chuck Sarabyn, lied to him about what had happened on February 28, 1993. Because ordinary citizens are sent to jail for lying to federal investigators, the Ranger recommended that Chojnacki and Sarabyn be indicted and prosecuted.⁷⁹ The Ranger gave his recommendation to federal prosecutor Bill Johnston. Johnston, in turn, referred the matter

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to the Department of Justice in Washington, which took no action.⁸⁰

In October 1994 the Treasury Department did suspend Chojnacki and Sarabyn from active duty for making false statements, but they were subsequently reinstated with full back pay and had the entire Waco incident expunged from their personnel records.⁸¹

FBI Agents Fired More Than 350 Ferret Rounds into Mt. Carmel

The FBI has always admitted firing more than 350 ferret rounds at the Davidians on April 19, 1993. The ferrets were fired into the residence from hand-held grenade launchers. Ferret rounds are fired at such a speed that they are capable of causing serious injury or death. Government documents and testimony euphemistically refer to the “delivery” of tear gas into the residence—as if the ferrets were delivered by United Parcel Service. Firing ferret rounds into a building without knowing which adults are threatening and which are not—and without knowing where children are located—manifests an extreme indifference to human life. Such indifference is not only unconscionable but criminal.

Special Prosecutor Danforth's investigation of the Waco incident tried to draw a distinction between “bad judgment” and “bad acts.” When he was appointed special prosecutor, Danforth promised that he would not file charges against any government employee for exercising bad judgment. But the firing of ferret rounds on April 19th cannot be brushed aside as simply poor judgment. A police officer exercises bad judgment if he uses the siren on his car to speed through traffic to a dental appointment. What happened at Waco was far more serious.

An ordinary citizen would not be accused of mere “bad judgment” if he used a grenade launcher to fire ferret rounds into a nursery school. If a child were struck and killed by one of the ferrets, the citizen could face murder charges. Even if the citizen intended only to scare people, he could be held liable for second degree murder because his actions consciously disregarded a substantial and

unjustifiable risk of harm to others.⁸²

FBI agents might have been justified in firing ferret rounds into all of the windows of the Mt. Carmel complex if they had reasonably believed the children were going to be killed in a mass suicide. Attorney General Janet Reno has already admitted, however, that no such exigency existed on the day of the assault.

Government officials cannot use the color of their office to commit crimes against citizens.⁸³ Since at least one child was struck by a ferret round, second degree murder charges may be appropriate.⁸⁴ Note that such charges have been leveled against law enforcement officers after other controversial incidents. In 1999, for example, prosecutors in New York charged the police officers involved in the Amadou Diallo killing with “depraved indifference to human life,” a second degree murder charge that carried a sentence of 25 years to life.⁸⁵

Whether or not sufficient proof can be mustered to sustain a second degree murder charge, charges relating to the reckless endangerment of human life are certainly in order.

FBI Agents Used Tanks to Demolish Sections of Mt. Carmel

The FBI has always admitted that its tear gas “insertion” plan called for tanks to smash holes in the walls of the Mt. Carmel complex. Government documents and testimony employ euphemisms to describe what happened. Reno, for example, referred to the tanks as “good rent-a-cars,” and FBI supervisor Larry Potts spoke of “poking holes” in the building—as if nails, instead of tanks, were being driven into the walls of Mt. Carmel.⁸⁶ Because federal officials and agents did not know where the Davidian children were located, it was both unconscionable and criminal to have the tanks smash into the residence and knock down walls.

Does anyone doubt that, if the Davidian adults had been holding children of senators and congressmen hostage within the Mt. Carmel buildings, the FBI's tank assault plan would have been rejected out of hand? Is it

not equally clear that, if an ordinary citizen were to drive a car into the side of someone's home—indifferent to what might be on the other side of the wall—he would be prosecuted for second degree murder should someone be killed? The driver would also face lesser charges, such as reckless endangerment of human life.

The FBI's use of tanks on April 19, 1993, evinced an extreme indifference to human life. While it is unclear whether any Davidian was actually killed by the destructive activity of the tanks, the law pertaining to the reckless endangerment of human life was once again violated.⁸⁷

Conduct That Warrants Further Investigation

Whether the National Guard Helicopters Strafed Mt. Carmel

The Texas National Guard, the ATF, and the Department of Justice have always maintained that no one aboard the National Guard helicopters fired on the Davidians on February 28, 1993. The pilots and ATF field agents have all given sworn statements that no person fired on Mt. Carmel.

There is evidence to the contrary, however. Several Branch Davidians claim they received fire from the helicopters. Davidian Wayne Martin called 911 soon after the ATF arrived in a frantic attempt to end the gunfight. His recorded phone call includes a statement about shots from the helicopters. Federal officials have scoffed at the recorded statements, calling them "self-serving." (While that is possibly true, the same can be said about the denials from the ATF agents.)

Catherine Matteson, a 72-year-old Davidian, who was never accused of any crimes, told reporters that the helicopters fired on the residence.⁸⁸ Another Davidian woman, Rita Riddle, told the *Los Angeles Times*, "I heard [the helicopters] spraying the building when they went over."⁸⁹

In a phone conversation recorded a few

days after the initial raid, ATF agent Jim Cavanaugh tried to get David Koresh to acknowledge that the helicopters did not fire on Mt. Carmel. When Koresh called the ATF agent a liar, Cavanaugh backed off and said he was not disputing the fact that there was fire from the helicopters, only that the helicopters did not have outside "mounted" guns, to which Koresh offered no objection.

The criminal defense attorneys who went into the residence during the siege saw bullet holes in the ceiling of Mt. Carmel with splinters of wood punched inward. The Davidians explained that those were some of the shots fired from the helicopters.

Special Prosecutor Danforth brushes all of those witnesses aside and concludes that there was no gunfire from the helicopters on February 28, 1993.⁹⁰

The ATF agents aboard the helicopters were supposed to divert the attention of the Davidians at the outset of the raid, film the raid as it unfolded, and, finally, transport the wounded (if any) to a nearby hospital. As the raid went awry, however, it is certainly plausible that the agents aboard the helicopters wanted to assist their fellow agents on the ground who were under heavy fire.

Understandable as that may be, National Guard regulations prohibit guard personnel from active participation in law enforcement activity.⁹¹ But if there was strafing of the roof of the Mt. Carmel residence, an even more serious allegation arises. Indiscriminate firing into the roof or walls of a building known to contain innocent people (e.g., children) could result in possible murder and reckless endangerment charges. Because of the conflicting testimony and the gravity of the allegations, further investigation of this matter is warranted.

Whether FBI Agents Knew about Any Davidian Fire Plan

FBI officials have always maintained that they had no prior knowledge of the Davidian plan to set fires. In testimony before Congress, Jeff Jamar, the FBI's on-scene commander at Waco, said: "If I knew about his

Does anyone doubt that, if the Davidian adults had been holding children of senators and congressmen hostage within the Mt. Carmel buildings, the FBI's tank assault plan would have been rejected out of hand?

When asked about the bureau's claim that it had no forewarning of the fire, Rawlings said, "That is the worst lie of all."

plans to burn the place, we would have had another approach. . . . We would not even come close to approaching that place [e.g., the Branch Davidian residence]."⁹² Larry Potts, who was Jamar's supervisor in Washington, D.C., testified, "Any indication about danger to those children, the rule was—back off."⁹³ The veracity of those high-ranking officials has now been directly challenged by a U.S. Army colonel who was at Mt. Carmel on April 19, 1993.

According to the *Dallas Morning News*, Col. Rodney L. Rawlings was assisting the FBI during the Waco siege. Rawlings told that newspaper that FBI "bugs" had been placed in Mt. Carmel during the standoff and that on April 19 he was present in an FBI monitoring room where the voices of the Davidians could be clearly heard.⁹⁴ As the FBI tanks began to ram holes in Mt. Carmel, Rawlings said the bugging devices picked up the voices of David Koresh and his followers as they were preparing to start, and then starting, the fires.⁹⁵

Those audio recordings have been part of the public record for years. The FBI has used them in an effort to prove that the Davidians, not the bureau, started the fire. What is significant is that bureau officials have always maintained that the voices on the tapes were not clearly audible in "real time." The tapes had to be "enhanced" later to discover what was actually being said. Thus, the FBI did not have any advance warning of the Davidian fire plans.

Col. Rawlings, however, claimed that "you could hear everything from the very beginning, as it was happening."⁹⁶ Rawlings further stated that FBI officials were "using the excuse of technical difficulties to cover why they didn't react to the information they had."⁹⁷ When asked about the bureau's claim that it had no forewarning of the fire, Rawlings said, "That is the worst lie of all."⁹⁸

Colonel Rawlings appears to be a credible whistleblower. He is a combat-decorated helicopter pilot and a 31-year veteran who retired from the Army in 1997. Inexplicably, the Waco report prepared by Special Prosecutor John

Danforth does not discuss Colonel Rawlings's allegations. If the FBI knew the Davidians were spreading fuel and making fire plans and did not stop the tanks from ramming the residence, murder, manslaughter, and perjury laws, among others, were violated.

Whether Gunfire Was Directed at the Davidians on April 19th

The FBI has always maintained that, throughout the entire siege, its agents never fired at the Branch Davidians (The bureau does not deny firing the ferret rounds, however.) According to the FBI, the Davidians' gunshot wounds were either self-inflicted or inflicted by other Davidians.

Several infrared experts have come forward to contradict the FBI's claim. The FBI's aerial FLIR film from April 19, 1993, contains flashes of light. Edward Allard, a former employee of the Defense Department and a thermal imaging consultant for more than 30 years, appeared in the documentary film, *Waco: The Rules of Engagement*, and said those flashes were gunfire directed at Mt. Carmel. Maurice Cox, a retired intelligence analyst who worked on military satellite operations, appeared in the film, *Waco: A New Revelation*, and said the flashes of light were gunfire directed at Mt. Carmel. Carlos Ghigliotti, an expert in thermal imaging and videotape analysis who once did freelance work for the FBI, examined the FLIR tape and reached the same conclusion as Allard and Cox. Ghigliotti told the *Washington Post*, "The FBI fired shots that day."⁹⁹ *60 Minutes* hired a British army expert in infrared imagery to examine the FLIR tape from April 19, 1993. That expert, Paul Weaver, said the flashes "look exactly as if they're gunfire."¹⁰⁰

Special Prosecutor John Danforth hired two experts to analyze the FLIR tape. They concluded that the flashes on the film were reflections off debris on the ground. Instead of acknowledging the conflicting expert testimony on this important issue and reporting that the evidence was inconclusive, Danforth proclaimed with "100 percent certainty" that the analyses performed by his experts showed that

no gunfire was directed at the Davidians from government positions.¹⁰¹

Ordinary citizens can use deadly force to defend themselves and others from imminent harm. But if someone fired a gun to keep others from fleeing a burning building, he would be subject to prosecution for murder. Because there is conflicting expert testimony as to what appears on the FLIR tapes, and because of the gravity of some of the experts' allegations, further investigation of this matter is warranted.

Whether Federal Employees Obstructed Justice

When Attorney General Janet Reno was asked in 1993 to identify those at the FBI who participated in the decisionmaking process regarding the April 19th assault plan, she mentioned, among others, (1) Assistant Director Larry Potts, (2) Deputy Assistant Director Danny Coulson, and (3) Michael Kahoe, chief of the FBI's Violent Crimes and Major Offenders Section.¹⁰² Those names should have set off alarm bells with Special Prosecutor Danforth's investigators.

Potts, Coulson, and Kahoe were suspended by the FBI in 1995 for their role in the controversial Ruby Ridge incident. Danforth does not mention that in his Waco report. The suspensions were not obscure personnel decisions. They were reported on the front pages of the *New York Times* and the *Washington Post*, among other newspapers.¹⁰³

Kahoe was eventually sentenced to 18 months imprisonment for destroying evidence and lying to investigators about his role in the Ruby Ridge cover-up. He admitted boasting to his subordinates that, when Justice Department investigators asked him about his conduct in the affair, he gave them a bunch of "[expletive]."¹⁰⁴ (That admission is itself a damning indictment of the FBI's internal culture.) Kahoe's defense attorney told the sentencing judge that Kahoe committed crimes to protect "what he wrongly perceived as the institutional best interest of the bureau."¹⁰⁵ Department of Justice prosecutors told reporters that there was "insufficient evi-

dence" to prosecute Potts and Coulson.¹⁰⁶ Although FBI director Louis Freeh and the Department of Justice condemned Kahoe's crimes, they allowed him to remain on the federal payroll until he reached his 50th birthday—thus ensuring his eligibility for a federal pension.¹⁰⁷ Potts and Coulson presumably received their pensions as well.

A serious probe into obstruction of justice by the bureau with respect to Waco would have quickly identified Potts, Coulson, and certainly Kahoe as potential suspects. Danforth should have hauled those individuals before a grand jury and questioned them about missing Waco evidence. He did not.

The FBI tactical commander at Waco, Richard Rogers, was also involved in the Ruby Ridge incident and was disciplined for his conduct there.¹⁰⁸ When Congress sought to question him about his role at Ruby Ridge in 1995, Rogers declined to testify, citing his Fifth Amendment right against self-incrimination.¹⁰⁹

In the summer of 1999, previously undisclosed audiotapes surfaced and revealed that Rogers actually gave the order to FBI field agents to fire pyrotechnic devices. That disclosure raised a deeply disturbing question: Why did Rogers sit passively behind Attorney General Reno when she gave sworn testimony to Congress in 1993 that pyrotechnic devices were not used against the Branch Davidians on April 19, 1993? When Danforth's investigators asked Rogers about the obvious discrepancy, Rogers said that he was not paying attention to Reno's testimony.¹¹⁰ Danforth chided Rogers for dereliction of duty but declined to prosecute him for "making or allowing others to make false or misleading statements."¹¹¹ Danforth could have sent his dereliction of duty finding to the FBI and demanded disciplinary action, including revocation of Rogers's pension. He did not. And FBI director Freeh, who tells Congress and the press that he takes any bureau controversy "with the most extreme seriousness," has not taken any action on his own against Rogers.¹¹²

It is now clear that the FBI withheld relevant documents and videotapes from Congress, the Davidian lawyers, and citizens who filed

A serious probe into obstruction of justice by the bureau with respect to Waco would have quickly identified Potts, Coulson, and certainly Kahoe as potential suspects.

With a convicted felon in a supervisory position on the Waco case, obstruction of justice seems not only possible but probable.

Freedom of Information Act requests. The only question is whether that evidence was deliberately withheld or there was a series of bureaucratic "snafus." Special Prosecutor Danforth did not investigate the matter thoroughly. Obvious investigative leads were not followed. Indeed, with a convicted felon in a supervisory position on the Waco case, obstruction of justice seems not only possible but probable. Further investigation into tampering and spoliation of evidence is warranted.

Conclusion

The Waco incident was the worst disaster in the history of federal law enforcement. More than 80 people (agents and civilians) lost their lives in 1993. The American people are entitled to know exactly what happened and why.

Unfortunately, the "official" investigation of the incident, headed by former senator John Danforth, was soft and incomplete. Danforth's sweeping exoneration of federal officials is not supported by the factual record.

It is certainly true that Branch Davidian leader David Koresh cannot escape his share of responsibility for the tragedy. Scores of lives could have been saved if he had simply walked out of Mt. Carmel and surrendered peacefully. But his refusal to do so cannot absolve federal officials from what they did at Waco.

Danforth hoped his report would help to restore the American people's "faith in government." After everything that has come to light in the years since the agents and the Davidians perished, it is difficult to follow Danforth's logic. The ATF, the FBI, and Attorney General Reno exploited the public's faith in government when they tried to deceive everyone about what happened in Waco. Recall, for example, that Reno had to recant her statement that "babies were being beaten" during the standoff.

Because numerous crimes at Waco have gone unpunished, the people serving in our federal police agencies may well come to the conclusion that it is permissible to recklessly

endanger the lives of innocent people, lie to newspapers, obstruct congressional subpoenas, and give misleading testimony in our courtrooms.¹¹³ If such activity becomes more common than it is today, those agencies will surely become lawless and unaccountable. The only way to counter that danger is for the American people to *distrust* government officials, limit their powers, and demand accountability. In 1997 FBI director Louis Freeh told Congress, "We are potentially the most dangerous agency in the country if we are not scrutinized carefully."¹¹⁴ The carnage at Waco is grisly testament to that.

Notes

1. Harvard law professor Alan Stone was retained by the U.S. Department of Justice to review and critique the government's handling of the Waco incident. Despite the government's protestations of concern for the children, Stone found that the FBI's ultimate strategy was to try to force the Davidians out of their residence by threatening the lives of their children. According to Stone, one federal agent told him that they were trying to stir up the maternal instinct of the Branch Davidian mothers—that when they saw their children suffering, they would come to their senses and leave the Mt. Carmel residence. See *Activities of Federal Law Enforcement Agencies toward the Branch Davidians*, Joint Hearings before the Subcommittee on Crime of the House Committee on the Judiciary and the Subcommittee on National Security, International Affairs, and Criminal Justice of the Committee on Government Reform and Oversight, 104th Cong., 1st sess., 1995 (Washington: Government Printing Office, 1996), part 2, p. 424. Cited hereafter as 1995 Congressional Hearings. See also Stephen Labaton, "Harsh Criticism of F.B.I. in Review of Cult Assault," *New York Times*, November 16, 1993.
2. See Susan Schmidt, "Investigation Clears Agents at Waco," *Washington Post*, July 22, 2000, p. A1
3. For a good book-length treatment, see David B. Kopel and Paul H. Blackman, *No More Wacos: What's Wrong with Federal Law Enforcement and How to Fix It* (Amherst, N.Y.: Prometheus, 1997). Note, however, that significant events relating to Waco have taken place since this book was published in 1997.
4. John C. Danforth, *Final Report to the Deputy Attorney General Concerning the 1993 Confrontation at the Mt. Carmel Complex, Waco, Texas*, November 8, 2000, photocopy, pp. 120–25. Cited hereafter as

- Danforth Report.
5. Henry McMahon, Testimony, 1995 Congressional Hearings, part 1, pp. 162-63.
 6. See Kopel and Blackman, p. 47.
 7. Danforth Report, p. 125.
 8. "Alcohol, Tobacco, Firearms and Harassment," *60 Minutes*, January 10, 1993, transcript, p. 5.
 9. Danforth Report, pp. 127-31.
 10. *Ibid.*, p. 132.
 11. Lee Hancock, "ATF Official Defends Raid Planning," *Dallas Morning News*, March 27, 1993. For more on the militarization of police tactics, see Diane Cecilia Weber, "Warrior Cops: The Ominous Growth of Paramilitarism in American Police Departments," Cato Institute Briefing Paper no. 50, August 26, 1999.
 12. Kopel and Blackman, p. 16.
 13. Danforth Report, pp. 134-35.
 14. *Ibid.*, p. 141.
 15. Quoted in Lee Hancock, "Koresh Trying to Provoke 'War,' Federal Officials Say," *Dallas Morning News*, March 9, 1993.
 16. See Edward S. G. Dennis Jr., "Evaluation of the Handling of the Branch Davidian Standoff in Waco, Texas," U.S. Department of Justice, 1993, p. 9.
 17. See Stephen Labaton and Sam Howe Verhovek, "Missteps in Waco: A Raid Re-examined," *New York Times*, March 28, 1993.
 18. Quoted in Hancock, "ATF Official Defends Raid Planning."
 19. Quoted in *ibid.*
 20. Labaton and Verhovek.
 21. *Ibid.*
 22. *Ibid.*
 23. Danforth Report, p. 142.
 24. See "Report to the Deputy Attorney General on the Events at Waco, Texas" (February 28 to April 19, 1993), U.S. Department of Justice, 1993, p. 286.
 25. Danforth Report, p. 157.
 26. *Ibid.*, p. 178.
 27. Quoted in Sam Howe Verhovek, "Death in Waco: Scores Die As Cult Compound Is Set Afire after F.B.I. Sends in Tanks with Tear Gas," *New York Times*, April 20, 1993, p. A1
 28. Quoted in "Death in Waco: Excerpts from Clinton News Conference," *New York Times*, April 21, 1993.
 29. "I cannot tell you that a child was beaten after February 28." Janet Reno, Testimony, *Events Surrounding the Branch Davidian Cult Standoff in Waco, Texas*, Hearing before the House Committee on the Judiciary, 103d Cong., 1st sess., April 28, 1993 (Washington: Government Printing Office, 1995), p. 53. See also Stephen Labaton, "Reno Contradicted in New Report on Decision to Attack Waco Cult," *New York Times*, October 9, 1993, p. A1.
 30. "Alcohol, Tobacco, Firearms and Harassment," *60 Minutes*, May 23, 1993, transcript, p. 19.
 31. Danforth Report, p. 181.
 32. Stephen Labaton, "Report on Initial Raid on Cult Finds Officials Erred and Lied," *New York Times*, October 1, 1993, p. A1.
 33. *Ibid.*
 34. Labaton, "Reno Contradicted in New Report on Decision to Attack Waco Cult," p. A1.
 35. Sam Howe Verhovek, "Texas Sect Trial Spurs Scrutiny of Government," *New York Times*, January 10, 1994.
 36. Sam Howe Verhovek, "11 in Texas Sect Are Acquitted of Key Charges," *New York Times*, February 27, 1994. See also Paul Craig Roberts, "Who Holds Federal Agents Accountable?" *Houston Chronicle*, March 3, 1994.
 37. Quoted in "A Jury Judges Waco," Editorial, *New York Times*, March 1, 1994. The editors of the *New York Times* respond with the following observation: "Just about the only person who does not view the verdict as a rebuke to the massive and unnecessary police action is Attorney General Janet Reno." *Ibid.*
 38. Danforth Report, p. 189.
 39. "5 Each Get 40 Years in Waco Case," *New York Times*, June 18, 1994. Although the jury acquitted all of the Davidians of the murder charges, the jury did return a guilty verdict on the charge of "carrying a firearm during the course of a crime." That charge was, in turn, tied to the murder

- counts. Judge Smith initially decided to deal with the inconsistent verdict by throwing out the weapons charge convictions, but he later changed his mind at the urging of the prosecutors. Davidian Ruth Riddle was set free after trial but was rearrested after Judge Smith changed his mind. See Kopel and Blackman, pp. 242–43.
40. Quoted in “5 Each Get 40 Years in Waco Case.” The Davidians appealed their case all the way to the Supreme Court—and prevailed. On June 5, 2000, the Supreme Court ruled that the Davidians were improperly sentenced to 30 years for possession of machine guns because the jury had not found specifically that they had possessed machine guns (as opposed to some other firearm). See *Castillo v. United States*, 121 S. Ct. 114 (2000). Judge Smith subsequently reduced from 30 to 5 years the sentences he originally imposed in June 1994.
41. Kopel and Blackman, p. 260. See also James Bovard, “Hearings Show Waco Defense Is Wacky,” *Wall Street Journal*, August 2, 1995.
42. House Committee on the Judiciary, *Materials Relating to the Investigation into the Activities of Federal Law Enforcement Agencies toward the Branch Davidians* (Washington: Government Printing Office, 1997), p. 149.
43. *Ibid.*
44. See Terry Ganey, “Filmmakers’ Tenacity Brought the Dark Questions of Waco Tragedy into the Mainstream,” *St. Louis Post-Dispatch*, October 17, 1999; Richard Leiby and Jim McGee, “Was Waco a Massacre? Four Years Later, the Question Hasn’t Been Extinguished,” *Washington Post*, April 18, 1997, p. C1; Stephen Hunter, “‘Waco’: Breaking the Rules of Disengagement,” *Washington Post*, June 20, 1997, p. C1; and Sam Howe Verhovek, “Four Years after the Flames of Waco, a Film Keeps the Doubts Smoldering,” *New York Times*, August 19, 1997.
45. Richard Leiby, “Trial Set in Suit over Davidians’ Fiery End,” *Washington Post*, July 14, 1999, p. A3.
46. Quoted in Lee Hancock, “DPS Head Raises Questions about Davidian Fire,” *Dallas Morning News*, July 28, 1999, p. A1.
47. Quoted in David Stout, “F.B.I. Backs Away from Flat Denial in Waco Cult Fire,” *New York Times*, August 26, 1999, p. A1.
48. “Text of Johnston’s Letter to Janet Reno,” *Dallas Morning News*, September 12, 1999.
49. Quoted in Lee Hancock, “A Standoff with Washington,” *Dallas Morning News*, September 9, 1999.
50. Lee Hancock and Catalina Camia, “FBI Tape from Davidian Siege Captures Order to Use Pyrotechnics; Order to Fire Pyrotechnics, Images of Use Found on Tape,” *Dallas Morning News*, September 2, 1999, p. A1.
51. David Johnston, “Danforth Says He’ll ‘Answer the Dark Questions’ on Waco,” *New York Times*, September 10, 1999.
52. Quoted in *ibid.*
53. Lee Hancock, “Evidence Delay Angers Siege Judge,” *Dallas Morning News*, September 10, 1999.
54. David Vise and Lorraine Adams, “Branch Davidian Prosecutors Recused from Further Inquiry,” *Washington Post*, September 15, 1999, p. A6.
55. Quoted in Lee Hancock and David Leeson, “Danforth Visits Site of Davidian Siege,” *Dallas Morning News*, September 21, 1999.
56. Quoted in David A. Vise and Richard Leiby, “Expert Concludes FBI Fired Shots during Waco Siege,” *Washington Post*, October 6, 1999, p. A2.
57. See Lee Hancock, “Ex-colonel Says FBI Heard Sect’s Fire Plans,” *Dallas Morning News*, October 8, 1999.
58. Quoted in *ibid.*
59. Quoted in *ibid.*
60. See Lee Hancock and David Jackson, “Files Detail Tactics FBI Considered,” *Dallas Morning News*, October 9, 1999.
61. Lee Hancock and David Jackson, “FBI Cameras Encircled Compound, Files Show,” *Dallas Morning News*, October 14, 1999.
62. Lee Hancock, “Government Seeks Delay on Waco Files; White House Weighs Withholding Documents,” *Dallas Morning News*, November 2, 1999.
63. Lee Hancock, “U.S. Warned to Release Waco Siege Documents; Judge Again Threatens Government with Contempt,” *Dallas Morning News*, November 3, 1999.
64. Lee Hancock, “U.S. Prosecutor Who Wrote Reno about Waco to Resign,” *Dallas Morning News*, January 25, 2000.
65. “What Really Happened at Waco?” *60 Minutes*, January 25, 2000, transcript, p. 7.
66. See Lee Hancock, “Special Counsel in Waco

- Siege Uses Polygraph on Commando," *Dallas Morning News*, February 1, 2000.
67. Lee Hancock, "Sect Lawyers Say Evidence Lost, Altered," *Dallas Morning News*, March 16, 2000.
68. Paul Duggan, "Experiment Aims to Settle a Key Waco Question; Gunfire Recorded for Comparison with 1993 Video," *Washington Post*, March 20, 2000, p. A3.
69. "Judge Says FBI Didn't Bungle Waco Evidence on Purpose," *Washington Post*, May 18, 2000.
70. Jim Yardley, "Finally Taken Seriously, Waco Suit Goes to Trial," *New York Times*, June 19, 2000.
71. Quoted in Ross E. Milloy, "Jury Finds for U.S. in Deaths at Waco," *New York Times*, July 15, 2000, p. A1.
72. Quoted in Jim Yardley, "A Special Counsel Finds Government Faultless at Waco," *New York Times*, July 22, 2000, p. A1.
73. Quoted in *ibid.*
74. *Andrade v. United States*, Civil No. W-95-CA-139, slip opinion, p. 10 n. 2. See also Jim Yardley, "Suit Dismissed in Deaths of 80 in Waco Siege," *New York Times*, September 21, 2000.
75. David A. Vise, "Davidian Raid Whistle-Blower Indicted on Obstruction Charges," *Washington Post*, November 9, 2000, p. A2.
76. Lee Hancock, "Ex-prosecutor Guilty in Davidian Case," *Dallas Morning News*, February 7, 2001.
77. *Ibid.*
78. If certain ATF agents felt justified in assaulting Mulloney, who was not even a Branch Davidian, those agents likely felt justified in acting lawlessly against the people within Mt. Carmel. The Treasury Department's claim that the ATF agents fired their weapons "only when they saw an individual engage in a threatening action, such as pointing a weapon," is not credible. See U.S. Department of the Treasury, *Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms Investigation of Vernon Wayne Howell also Known as David Koresh* (Washington: Government Printing Office, 1993), p. 101. The author has seen film footage of the February 28, 1993, gunfight, and one ATF agent can be heard admonishing his fellow agents that there is "too much wildfire." Indiscriminate firing on a building known to contain children could result in murder or manslaughter charges against ATF agents.
79. Lying to federal investigators is a federal offense. See 18 U.S.C. 1001.
80. See 1995 Congressional Hearings, part 2, pp. 186–87.
81. See "2 Agents Suspended in Waco Raid Are Reinstated," *New York Times*, December 25, 1994.
82. See Wayne R. LaFave and Austin W. Scott Jr., *Criminal Law* (St. Paul: West, 1986), pp. 617–21.
83. See Steven L. Winter, "The Meaning of 'Under Color of' Law," *Michigan Law Review* 91 (1992): 323. Note also *People v. Klein*, 137 N.E. 145 (1922); *State v. Hoskins*, 77 N.C. 530 (1877); and *Idaho v. Horiuchi*, 215 F.3d 986 (2000) (Kozinski, J., dissenting).
84. An autopsy report mentions the ferret round. See 1995 Congressional Hearings, part 2, p. 370.
85. See Christopher Drew, "The Diallo Shooting: The Charges," *New York Times*, April 1, 1999. See also Timothy Lynch, "'We Own the Night': Amadou Diallo's Deadly Encounter with New York City's Street Crimes Unit," Cato Institute Briefing Paper no. 56, March 31, 2000.
86. 1995 Congressional Hearings, part 3, pp. 366 (Reno), 60 (Potts).
87. See Jeffrey F. Ghent, "Validity and Construction of 'Extreme Indifference' Murder Statute," *American Law Reports* 7 (2000): 758.
88. See Kopel and Blackman, p. 107.
89. Quoted in J. Michael Kennedy and Louis Sahagun, "Sect Member Says Helicopter Shot at Compound in Gun Battle," *Los Angeles Times*, March 30, 1993.
90. Danforth Report, pp. 43–44.
91. *Ibid.*, p. 43.
92. 1995 Congressional Hearings, part 3, p. 301.
93. *Ibid.*, part 2, p. 486.
94. See Hancock, "Ex-colonel Says FBI Heard Sect's Fire Plan."
95. *Ibid.*
96. Quoted in *ibid.*
97. Quoted in *ibid.*
98. Quoted in *ibid.*
99. Quoted in Vise and Leiby.

100. "What Really Happened at Waco?" transcript, p. 7. January 7, 1995.
101. Danforth Report, p. 19. **[Postscript: See "Waco Inquiry Failed to Test Correct FBI Gun, Official Says," *New York Times*, June 2, 2001, p. A14.]**
102. *Events Surrounding the Branch Davidian Cult Standoff in Waco, Texas*, p. 178.
103. See Neil A. Lewis, "F.B.I. Suspends 4 As Inquiry Widens into Idaho Siege," *New York Times*, August 12, 1995, p. A1; and George Lardner Jr., "4 at FBI Suspended As Justice Probes Bureau in Idaho Siege," *Washington Post*, August 12, 1995, p. A1.
104. See George Lardner Jr., "FBI Ex-Official Gets 18 Months for Role in Ruby Ridge Cover-up," *Washington Post*, October 11, 1997, p. A2.
105. Quoted in *ibid.*
106. George Lardner Jr., "Justice Dept. Closes Probe of Ruby Ridge," *Washington Post*, August 16, 1997, p. A8.
107. Jerry Seper, "FBI Agent Gets Full Pension in Plea Deal," *Washington Times*, November 1, 1996.
108. See David Johnston, "F.B.I. Chief Reprimands Officials on Raid," *New York Times*, January 7, 1995.
109. See Neil A. Lewis, "Commander at Idaho Standoff Calls F.B.I. Inquiry Cover-up," *New York Times*, September 20, 1995.
110. Danforth Report, p. 57.
111. *Ibid.*, p. 58.
112. Louis Freeh, Testimony, "Hearing of the Crime Subcommittee of the House Judiciary Committee," Federal News Service, June 5, 1997.
113. Although federal officials insist that they have learned "lessons" from some of the "mistakes" that were made at Waco, the April 2000 raid on the home of Lazaro Gonzalez exhibited many of the same abuses that occurred at Waco. See George F. Will, "The Raid in Little Havana," *Washington Post*, April 25, 2000; William Safire, "In the Dead of Night," *New York Times*, April 24, 2000; Charles Krauthammer, "The Picture," *Washington Post*, April 25, 2000; Laurence Tribe, "Justice Taken Too Far," *New York Times*, April 25, 2000; Alan Dershowitz, "A Bad Precedent Is Reinforced," *Los Angeles Times*, April 25, 2000; Deroy Murdock, "Shrugging Off an Outrage," *Montreal Gazette*, April 28, 2000; and Roger Pilon, "Hiding behind the Rule of Law," *Wall Street Journal*, April 17, 2000.
114. Freeh.

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