

Office of Special Counsel
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Preface

On the day that Attorney General Reno appointed me Special Counsel, I said that this investigation would examine whether government agents engaged in bad acts, not whether they exercised bad judgment. It is an important distinction. A free society cannot tolerate a government that commits bad acts such as killing citizens because they pose a nuisance, or because they express unpopular ideas, or even because they are dangerous. While charges of deliberate governmental misconduct justify a far-reaching investigation of this type, there are good reasons why poor judgment – conduct alleged to be careless or imprudent – does not. In our democracy, established mechanisms are available and sufficient to resolve such charges against the government.

Make no mistake: the bad acts alleged in this case are among the most serious charges that can be leveled against a government – that its agents deliberately set fire to a building full of people, that they pinned children in the burning building with gunfire, that they illegally employed the armed forces in these actions and that they then lied about their conduct. I took these charges very seriously and began this investigation with my own mind totally open as to the issues before me. I required all members of my investigative staff to affirm in writing their commitment to objectivity. This Report summarizes the exhaustive efforts undertaken by the Office of Special Counsel to investigate every lead and to test every theory. There is no doubt in my mind about the conclusions of this report. Government agents did not start or spread the tragic fire of April 19, 1993, did not direct gunfire at the Branch Davidians, and did not unlawfully employ the armed forces of the United States.

In fact, what is remarkable is the overwhelming evidence exonerating the government from the charges made against it, and the lack of any real evidence to support the charges of bad acts. This lack of evidence is particularly remarkable in light of the widespread and persistent public belief that the government engaged in bad acts at Waco. On August 26, 1999, for example, a *Time* magazine poll indicated that 61 percent of the public believed that federal law enforcement officials started the fire at the Branch Davidian complex.

This is a matter of grave concern. Our country was founded on the belief that government derives its “just powers from the consent of the governed.” When 61 percent of the people believe that the government not only fails to ensure “life, liberty and the pursuit of happiness” but also intentionally murders people by fire, the existence of public consent, the very basis of government, is imperilled.

The readiness of so many of us to accept as true the dark theories about government actions at Waco deserves serious attention by all of us. To that end, I offer the following thoughts.

We all carry the horror of the Waco tragedy with us. We have reviewed the events of February 28 and April 19, 1993 so many times, and they will not leave us alone: the sight of ATF agents carrying their dead and wounded from the Branch Davidian complex, the image of that

same complex burning against the sky and the sound of the wind whipping the flames. In the face of such calamity, we have a need to affix blame. Things like this can't just happen; they must be the government's fault. We are somehow able to ignore the contrary evidence— never mind the fact that the FBI waited for 51 days without firing a shot, never mind the evidence that Davidians started the fire, never mind that FBI agents risked their own lives in their efforts to rescue the Davidians— and we buy into the notion that the government would deliberately kill 80 people in a burning building.

Ample forums exist to nurture our need to place blame on government. Sensational films construct dark theories out of little or no evidence and gain ready audiences for their message. Civil trial lawyers, both in the public and private sectors, carry the duty of zealous representation to extremes. The media, in the name of “balance,” gives equal treatment to both outrageous and serious claims. Congressional committees and Special Counsels conduct their own lengthy investigations, lending further credence to the idea that there are bad acts to investigate. There is even pressure on them to find some bad act to justify their effort and expense. Add to all of this the longstanding public cynicism about government and its actions, and the result is a nearly universal readiness to believe that the government must have done *something* wrong.

The only antidote to this public distrust is government openness and candor. Instead, and tragically, just the opposite occurred after Waco. Although the government did nothing evil on April 19, 1993, its failure to fully and openly disclose to the American public all that it did do has fueled speculation that it actually committed bad acts on that day. Specifically, the government did not disclose to the public its use of pyrotechnic devices at Waco until August 1999 – six years after the fact. This non-disclosure is especially puzzling because the use of these pyrotechnic tear gas rounds had nothing to do with the fire. They were used four hours before the fire began, 75 feet from the Branch Davidian residence, and in a manner that could cause no harm. Yet the failure to disclose this information, more than anything else, is responsible for the loss of the public faith in the government's actions at Waco, and it led directly to this investigation. The natural public reaction was that, if the government lied about one thing, it lied about everything.

We have not found evidence of a massive government conspiracy to cover up this information. The team of agents who fired the pyrotechnics told the truth about it from the very beginning. Many government officials, including the Attorney General and the Director of the FBI, did not know that pyrotechnics had been used at all. Unfortunately, a few individuals within the FBI and a few Department of Justice lawyers had this information and did not tell. Several of these same individuals continued to conceal their knowledge of the use of pyrotechnic military rounds even in the course of this investigation, misleading this office and obstructing its efforts to uncover the truth.

Lawyers in private practice often volunteer as little information as possible. But playing it close to the line is not acceptable for people representing the United States government. Government lawyers have responsibilities beyond winning the cases at hand. They are not justified in seeking victory at all costs. A government lawyer should never hide evidence or shade the truth, and must always err on the side of disclosure.

Government lawyers carry on their shoulders responsibility for not only the prosecution of specific cases, but also for public confidence in our system of government – the “consent of

the governed” enshrined in the Declaration of Independence. Indeed, this responsibility rests heavily on the shoulders of all government officials. The actions of these few government employees who failed to disclose the use of pyrotechnics are reprehensible because they undermined the public confidence with which they were entrusted.

In today’s world, however, it is perhaps understandable that government officials are reluctant to make full disclosures of information for fear that the result of candor will be personal or professional ruin. Any misstep yields howls of indignation, calls for resignations, and still more investigations. Several Department of Justice personnel told Office of Special Counsel investigators that they viewed the 1995 Congressional hearings as a partisan effort to attack Attorney General Reno. An FBI official complained about the “us against them” atmosphere and said “when [Congress] started government by subpoena, I stopped sending e-mails.” Reacting to exposés, investigations and lawsuits, government officials develop a bunker mentality and protect rather than disclose information, and in the process do immeasurable damage to public confidence in government.

Breaking this vicious circle of distrust and recrimination is essential if we are to rebuild the consent of the governed on which our system depends. We all have the responsibility to distinguish between healthy skepticism about government and the destructive assumption that government is an evil force engaged in dark acts. Government, in turn, has a responsibility to be open and candid, so that light might dispel all suspicion of darkness.

This is why the Waco investigation is the most important work I have ever done. It was important to unearth the facts about Waco, one way or the other, and to set those facts out as clearly and openly as possible. It is my hope that, in so doing, this investigation will not only resolve the dark questions of Waco, but will also begin the process of restoring the faith of the people in their government and the faith of the government in the people.

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