

**Office of Special Counsel  
John C. Danforth**

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November 8, 2000

**By Hand Delivery**

The Honorable Eric H. Holder, Jr.  
Deputy Attorney General  
United States Department of Justice  
Tenth Street and Constitution Avenue, N.W.  
Washington, D.C. 20530

Dear Mr. Holder:

Pursuant to the Attorney General's Order of September 9, 1999, I transmit my Final Report to the Deputy Attorney General Concerning the 1993 Confrontation at the Mt. Carmel Complex. This Final Report reaffirms the conclusions set forth in the Interim Report I issued on July 21, 2000, and adds the conclusions I have reached on the few issues that remained under investigation at that time.

One of my goals in issuing the Interim Report was to allow people to read the Report before it became final and to question and criticize its conclusions. The Office of Special Counsel gave copies of the Interim Report to many interested parties, including members of the Congressional Committees investigating the Waco matter, and it actively sought their comments. On the day I issued the Interim Report, our website received some 12,000 "hits," but in the months since its issuance, the Office of Special Counsel has received fewer than 10 calls or letters critical of the Report's contents. My Office has analyzed each of those calls and letters, and has reviewed the many editorials and articles regarding the Interim Report, very few of which contained substantive criticism. No one has provided the Office with any evidence to contradict any of my conclusions. As a result, I remain one hundred percent confident in the conclusions contained in the Interim Report.

To summarize those conclusions: the government of the United States and its agents are not responsible for the April 19, 1993 tragedy at Waco. The government did not cause the fire, did not direct gunfire at the Branch Davidian complex, and did not illegally employ the armed forces of the United States. As stated in the Interim Report, the FBI did fire three pyrotechnic military tear gas rounds at the concrete construction pit 75 feet from the Davidians' living quarters early in the morning of April 19. These rounds, however, did not cause or contribute to

the fire that engulfed the complex some four hours later. Rather, several Branch Davidians deliberately started the fire in several different locations. The expert reports attached as appendices provide substantial support for these conclusions, and supplement the other evidence detailed in the Final Report.

I call your attention to the expert analysis concerning the effects of CS tear gas. One expert, Dr. Jerry Havens, concluded that tear gas, which is a combination of CS and methylene chloride, did not start or contribute to the spread of the fire. A second expert, Dr. George Lucier, found that methylene chloride did not kill any Branch Davidian on April 19, 1993. Notably, however, a toxicologist, Dr. Uwe Heinrich, stated that CS is potentially lethal to individuals who are exposed to high levels of tear gas and are unable to leave an enclosed space. For the reasons stated in the Final Report, I have concluded that CS did not cause the deaths of any Davidian at Waco. Nevertheless, in light of Dr. Heinrich's views, I urge the Department of Justice, the FBI and the Department of Defense to give serious consideration to his report in considering the appropriate circumstances for using CS tear gas.

This Final Report contains new conclusions on whether government employees covered up evidence relating to the firing of pyrotechnic tear gas rounds at the concrete construction pit four hours before the outbreak of the fire. I conclude that there was no large scale government cover up. Most people within the Department of Justice and the FBI, including Attorney General Reno and FBI Director Sessions, did not know that the FBI had used pyrotechnic rounds at Waco. Others, including the rank and file members of the FBI's Hostage Rescue Team, told the truth about the use of pyrotechnic rounds from the very beginning. Unfortunately, not everyone was so forthcoming. This Report details my finding regarding several individuals within the Department of Justice and the FBI who knew about the use of pyrotechnic rounds and failed to inform Congress, attorneys for the Davidians, or their superiors at the FBI and the Department of Justice.

The failure of these individuals had serious consequences. By withholding from the American people the truth about a relatively insignificant issue, these employees of the Department of Justice and the FBI fueled conspiracy theories and encouraged the widespread but erroneous belief that the government actually had committed bad acts at Waco. Instead of acknowledging these errors, moreover, several of these individuals compounded them by obstructing this investigation and misleading investigators in order to conceal their roles in this matter. For representatives of the United States Department of Justice and the FBI, this conduct is most reprehensible.

As I said in the Preface to the Interim Report, government candor and openness is critical to regaining the trust of the American people. But the temptation to conceal mistakes is understandable. Our political culture tolerates no missteps. Errors in judgment can ruin careers,

destroy reputations and subject government employees to public disgrace. It is easy to feel under siege, to feel that it is better to lie than to face public exposure.

But anything less than complete candor cannot be the response of those who represent the United States government. Indeed, in most cases, it is not. In the course of this investigation, the Office of Special Counsel has interviewed several hundred employees of the federal government, the overwhelming majority of whom conducted themselves honorably and sometimes even heroically. For more than a year, I have been privileged to work with Assistant United States Attorneys and present and former members of the United States Postal Inspection Service, the Internal Revenue Service, and the Drug Enforcement Administration who represent the highest ideals of government service.

At all levels and at every opportunity, the Department of Justice, the FBI, and indeed all law enforcement agencies must continue to affirm that the highest values are not winning cases or protecting reputations. The highest values are justice, and openness, and honesty. The government can survive mistakes and lost trials. The loss of honesty and integrity on which the public's trust depends is much more damaging.

In addition to one individual who has been indicted for his conduct in the course of this investigation, the Final Report is critical of several others whom I have declined to prosecute. I have thought long and hard about the fairness of publicly criticizing people whom I will not prosecute, because I have not afforded them the opportunity to respond to these charges in a court of law. As Special Counsel, however, I am not primarily a prosecutor. Indeed, my primary responsibility has been to find the facts regarding the questions put to me in the Attorney General's appointment order and to publish my findings in a report for public dissemination. My prosecutorial role was secondary to this obligation. Thus I felt that I had to set forth the facts in this Final Report, in as much detail as possible.

I believe that the conclusions in this Report are reasonable, fair, and accurate. I emphasize, however, that some of the conclusions regarding the "cover-up" are based on my analysis of the facts. I cannot prove them beyond a reasonable doubt. I have given the individuals I have criticized in this Report but declined to prosecute a chance to review its findings and submit their responses, which I have attached as Exhibit 2 to the Final Report.

Finally, we have discussed in the past ways in which the Department of Justice might improve the ability of future special counsels to conduct their investigations. My primary recommendation is that special counsels be given the ability to subpoena witness testimony and documents without the use of grand juries. This would allow future special counsels the power to gather evidence and to make it public without interfering with the procedural rules regarding grand jury secrecy. I recognize that such a change may require legislation, but it would be

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immensely helpful to future investigations.

Please convey my appreciation to Attorney General Reno for entrusting me with this responsibility. It has been an honor to serve as Special Counsel in this investigation. I truly believe, as I said in the Preface, that it is the most important work that I have ever done.

Very truly yours,