

To: The U.S. Senate Judiciary Committee

Re: A Juror's View of the Events at Mt. Carmel and the Trial of Eleven Branch Davidians

In January, 1994, eleven Branch Davidians stood trial in San Antonio, TX, on charges that included Conspiracy to Murder Federal Agents, Murder of Federal Agents, Aiding and Abetting Voluntary Manslaughter, Using and/or Carrying a Firearm during the Commission of a Crime of Violence (a charge that was misinterpreted by the jury), and other charges that accused certain individuals of single, specific crimes.

The trial lasted from January 10 to February 27: with two days devoted to jury selection and almost four days devoted to jury deliberations. In the interim approximately 200 witnesses testified and innumerable exhibits were presented.

As the facts emerged, so did questions. The following were a few of the facts that were proven.

- The Branch Davidians did have numerous firearms, including a 50 caliber rifle, all of which were purchased legally.
- the Bureau of Alcohol, Tobacco, and Firearms, following an eight month investigation, felt it was necessary to investigate the number and types of firearms and to arrest Vernon Wayne Howell, also known as David Koresh.
- the BATF planned, rehearsed, and initiated a raid of dynamic proportions at Mt. Carmel, utilizing 75 agents and three helicopters.
- Wayne Martin, one of Koresh's "inner circle", made a telephone call to 911 requesting that the police tell those who were firing to "call it off" and that there were women and children present.
- the raid resulted in the deaths of four BATF agents and six Branch Davidians, including at least one female.
- a 51-day siege ensued.

During the standoff, these are a very few of the points that were proven:

- some individuals chose to leave Mt. Carmel: most were women and children, but some were able-bodied men.
- the FBI brought in tanks that continuously narrowed the perimeter of surveillance.
- the FBI utilized nerve-shattering nighttime tactics to drive the Branch Davidians out: bright lights, Tibetan chants, wailing siren noises, etc.

- the Branch Davidians tried to establish telephone and radio contact with those outside Mt. Carmel but were only permitted to communicate with the FBI..
- the tanks "inserted" CS gas into Mt. Carmel, demolishing the home and church of the Branch Davidians in the process.
- a fire broke out which burned Mt. Carmel to the ground in less than one hour and took the lives of approximately 80 Branch Davidians, at least 17 of which were children under the age of 12.

But the questions raised after these and other facts were established remain to be answered.

If it were to be granted that the BATF might have had a proper concern regarding the firearms owned by Koresh, what was there that justified a raid of dynamic proportions--especially considering the presence of women and children? Warrants called for searching the premises and arresting David Koresh.

- Prosecution testimony established that Koresh had a good relationship with the McLennon County sheriff. The sheriff undoubtedly could have gone peacefully to Mt. Carmel, searched the premises and, if warranted, arrested Koresh.
- Further prosecution testimony showed that the ATF agent who began the investigation of Koresh and his collection of firearms, Davy Aguilera, was invited by Koresh to go to Mt. Carmel to see the guns. But Aguilera declined.
- Defense testimony proved two instances when Koresh had gone to businesses away from Mt. Carmel shortly before the raid. The warrant could have been peacefully served away from Mt. Carmel.

Since it is true that "approach dictates response", the BATF dictated a tragic reaction as a result of their dynamic entry. Utilizing any of the above alternatives would have "dictated" a far different result.

Testimony from Kathryn Schroeder, a Branch Davidian who turned State's evidence, described Koresh's teachings that the government was "the Beast" that is referred to in the Biblical Book of Revelations. During the eight month investigation of Koresh by the BATF prior to the raid, and especially after receiving reports from Robert Rodriguez, the undercover agent who infiltrated the Branch Davidians and attended several of the studies conducted by Koresh, the ATF was aware of these teachings. Those who insisted on nothing less than a dynamic entry and those who planned the raid and insisted that it go forward, especially after Robert Rodriguez advised that Koresh knew the ATF was coming, are the ones

responsible for what can at best be described as a tragic fiasco resulting in ten unnecessary deaths.

Part of this tragedy is that when the FBI replaced the BATF, the FBI intensified the ATF's dynamic scenario. If they did indeed believe they were dealing with neurotic fanatics, then their tactics were certainly not those that would establish or maintain calmness on the part of those "fanatics". Nothing that the FBI did contradicted Koresh's teachings that the government was "the Beast". On the contrary, the teachings were given credence: given credence when communication with the outside world was severed; given credence when the armored personnel carriers were joined by tanks; given credence when those who chose to leave Mt. Carmel were arrested and paraded on television wearing shackles; given credence when the tanks began "clearing" the area by destroying cars, fences, children's go-carts, landscape, and an Air Stream trailer that had been occupied by a 70-something year old woman; given credence when the FBI encircled Mt. Carmel with concertina wire, given credence when "flash bang" grenades were used to keep people inside the building while the negotiators were trying to get them to come out; but "the Beast" roared the loudest when the tanks began inserting CS gas into the building.

Under the guise of concern for the children and "hostages", the FBI terrorized the residents of Mt. Carmel for 51 days. And, supposedly, because the FBI was still concerned for the children, they began inserting canisters of CS gas: driving tanks a full tank's length into the building knowingly collapsing stairways that blocked egress from the second floor where the women and children lived, and totally collapsing a very large room referred to as the gym. All the while, Byron Sage of the FBI is broadcasting over the P.A. system "This is not an attack. This is not an attack." Ladies and gentlemen of this Committee, how do you define such action?

These are but a few of the most glaring atrocities perpetrated on the residents of Mt. Carmel that were brought out in the trial. Yet the most poignant aspect was the fiery end of the siege. Approximate 80 individuals, including at least 17 children died. Why? because the ATF wanted to search for firearms and arrest Koresh.

To compound this tragedy, there are right now five Branch Davidians who in June of this year were sentenced to 40 years in prison plus fines and restitution, and three others who were sentenced to 20, 15, and 5 years in prison plus fines and restitution. The jury never believed there was a conspiracy on the part of these defendants to murder federal agents. Yet

most of them were sentenced for the crime of "using or carrying a firearm" as part of "a conspiracy". That is in direct opposition to the jury's intention. And to compound all the other injustices, Judge Walter Smith, who presided over the trial and passed the sentences, determined that the firearms that were used during this non-existent conspiracy were illegal, "enhanced weapons". The jury was never asked to determine anything about "enhanced weapons": not whether they existed before the raid and not whether any of the defendants used or carried such weapons. Yet on this one charge, sentences of 30 years were handed down.

Although not presented in the trial, it is public knowledge that the Department of the Treasury and the Department of Justice issued reports on the events at Mt. Carmel. Although some procedural changes were made and some individuals either resigned or were re-assigned in the effort to assure there would not be another "Mt. Carmel-type incident", there has not yet been any retribution or restitution or apology issued by either Department for the events that did occur there.

Attorney General Janet Reno accepted "responsibility for Waco". Her decisions were based on questionable, unfounded advice from her "advisors". Her responsibility, in my opinion, should be limited to her selection of advisors and to making hasty decisions based solely on their advice. An investigation should include the advisors who mislead Ms. Reno.

Since the trial, I have been told about many other disturbing matters that should have been presented to the jury. Not only do these matters deserve detailed investigation independent of the BATF's Treasury Department and the FBI's Justice Department; but why these matters were concealed from a jury who took an oath to base the verdicts only on the testimony heard in court is also a paramount question.

I implore you not only to seek answers to the many questions raised, but also to provide redress as warranted.

For your time and for your patience, I thank you. But for being bold enough to pursue justice, I commend you.

Respectfully submitted,

Sarah L. Bain
Juror #16, Foreman
Branch Davidian Trial